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# The Living Trust Advisor



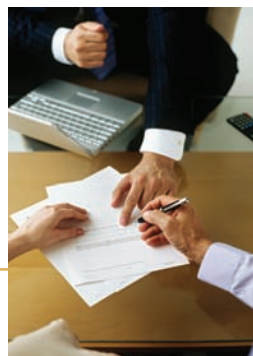
Jeffrey L. Condon, ESQ

Digital Edition

*The*

Everything You  
Need to Know about  
Your Living Trust

# LIVING TRUST ADVISOR



*Learn how to:*

- Live—and die—with your living trust
- Protect your children's inheritance
- Prevent conflict and chaos in division of assets
- Recognize and resolve the most common inheritance problems

**Jeffrey L. Condon, ESQ**

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**The  
Living Trust  
Advisor**



# **The Living Trust Advisor**

**EVERYTHING YOU NEED TO KNOW  
ABOUT YOUR LIVING TRUST**

**Jeffrey L. Condon**



**WILEY**

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*For my father, Gerald  
I miss you, Pop*



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# Pregame Warm-Up

OR

## READ THIS BEFORE YOU READ THIS BOOK

If this book is in your hands, you are probably thinking about putting together a Living Trust, which is the primary tool in the United States for the transfer of your assets after the deaths of both you and your spouse to your children, grandchildren, or other heirs. Or perhaps you already have your Living Trust, which has collected dust on your bookshelf or in your safe-deposit box, and you somehow have been prompted into revisiting it.

For a combined 62 years, my father, teacher, and mentor, Gerald Condon, and I set up thousands of Living Trusts for our clients. After all those years of advising clients on their inheritance instructions, I am left with this one conclusion: **You really don't know much about the Living Trust . . . or how it works . . . or what it should say or do . . . even if you have one!**

Actually, perhaps that assessment is too broad to be of practical use. I do tend to speak in sweeping generalizations. Let me be more specific by lumping you into one of four categories of Living Trust clients.

1. You do not have a Living Trust, and you don't really know much about the Living Trust other than it is some kind of inheritance document.
2. You already have a Living Trust, but you have no real or meaningful understanding of what it is or how it works beyond the basic function of transferring your assets to your children after your death without probate. In other words, you just signed

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it where your attorney told you to sign, threw it into your car, and have not thought about it since.

3. You have a Living Trust and you initially made a real and earnest effort to decipher its form and function. But many years have passed since you established it, and all you really recall is (1) you have a Living Trust and (2) it contains your inheritance instructions.
4. You have a Living Trust, and you refused to sign it until your lawyer explained every single paragraph and provision to your satisfaction. If you are such a person, I say to you: Your kind is so rare that you qualify as an urban legend.

Whether you are a Living Trust rookie or veteran, welcome to the *Living Trust Advisor*, and congratulations on dealing with the often unpleasant task of facing your mortality!

## The Big Game—Living and Dying with Your Living Trust

The purpose of this book is quite simple. I want you to think of me as your Living Trust coach. Like any coach, I want to train you so you will be ready to play the Big Game, which, in this case, is living with your Living Trust with no financial, emotional, or practical upheaval in your life, and dying with a Living Trust that will adequately and effectively provide for your spouse, children, charities, and other heirs and beneficiaries with a minimum of conflict, diversion, tax, and expense.

Like any football or basketball game, this Big Game takes place in a special arena . . . the Inheritance Arena. The players are you, your spouse, your Living Trust lawyer, your assets, your children, your other beneficiaries, and, perhaps, the Internal Revenue Service (IRS). And like any game, there is a warm-up period (which is where you are right now) four quarters of play, and a cool-down period. Think of *The Living Trust Advisor* as your playbook that describes how to play the Big Game during those different periods, which are:

- The First Quarter: Establishing Your Living Trust.
- The Second Quarter: Living with Your Living Trust during the Lifetimes of You and Your Spouse.

- The Third Quarter: Living with Your Living Trust after the Death of Your Spouse.
- The Fourth Quarter: Dying with Your Living Trust.
- Postgame: Review and Lessons Learned.

The Big Game begins the moment the concept of doing your Living Trust pops in your mind. That is when the whistle blows to start play. It ends when both you and your spouse have died and your Living Trust assets are in the hands of your children or other beneficiaries.

Between the beginning and end of the Big Game, though, there is a lot that happens.

- There is the selection of the Living Trust lawyer.
- There is the understanding of the nuts and bolts of the Living Trust document.
- There is the allocation of the assets—real estate, stocks, bank accounts, brokerage assets, businesses, personal effects—to the Living Trust.
- There is the operation and management of the Living Trust during the lifetimes of both you and your spouse.
- There is dealing with your Living Trust real estate when you sell or refinance that property.
- There is the selection of key players—the managers, agents, and protectors—upon which depends the success or failure of your Living Trust and your inheritance instructions.
- There is the operation and management of the Living Trust when the first spouse dies (the deceased spouse).
- There is the protection of the surviving spouse's ownership and control of the Living Trust assets during that spouse's incapacity or incompetence.
- There is the operation and management of the Living Trust when the last spouse (the surviving spouse) dies.
- There is the filing of the last spouse's estate tax return and payment of estate taxes.
- There is the distribution of the Living Trust assets to your children without creating conflict and chaos between them.
- And there is the protection of your children's Living Trust inheritance from the winds of their fates: their addictions, divorces, remarriages, mental disabilities, financial immaturity, and creditors.

It does not matter whether you have played the Big Game before or whether you already have your Living Trust. After you read *The Living Trust Advisor* playbook, you will know how to play the Big Game the way it should be played. If you follow my training and listen to my advice, I believe you will walk away from the Big Game a winner. In my book, winning means:

- Having a clearer understanding of your Living Trust.
- Opening your eyes to the numerous problems and issues in the inheritance arena that you must consider before your first meeting with your Living Trust lawyer.
- Maintaining ownership and control of your Living Trust assets while you and your spouse are both alive, and then after the death of one spouse.
- Facilitating the smooth transfer of your Living Trust assets to your children, grandchildren, and other heirs after your death.
- Identifying potential inheritance problem areas now so you have the opportunity to build solutions into your Living Trust in order to prevent those problems from arising during your life and after your death.

## **A Few Things You Should Know about My Coaching Style**

Before I say something trite right now like “Let the Big Game begin!” I must first convey a few things you should know about my style of coaching in order to help you follow the instructions in this playbook.

### ***Bringing You into My Personal Life***

Throughout this book, I will pepper you with numerous examples that illustrate a key point or demonstrate how you can do something. While many of these examples may be drawn from experiences with clients, others may provide you with an occasional glimpse into my personal life. Whether I allude to my business history, divorce, girlfriend, or likes and dislikes, I use these personal anecdotes as a device to support certain issues or emphasize particular concepts that arise in this book.

While I understand the viewpoint that divulging one’s personal anecdotes and professional experiences may be unprofessional, I have

always disagreed with it. I believe that providing examples and sharing details that have arisen in my personal life and law practice bring this nonfiction book about estate planning alive and make the advice offered applicable to your life, too.

Therefore, you are not getting a technical lecture filled with charts, graphs, and PowerPoint slides within this book. Instead, you are receiving the advice and opinions of one attorney based on his observations and experiences—both professional and personal. With such a subjective approach, it is near impossible to convey effective lessons by keeping the private life out of the process.

### ***Making Sweeping Generalizations***

I am fond of broad and superlative statements that appear to be intended to apply universally to every reader of this book. Of course, I know that for every person who embodies such an absolute, there is another person for whom that absolute does not apply. Nonetheless, in order to help convey information and emphasize a particular point, a statement must come across as somewhat dogmatic without reference to exceptions. Therefore, the sweeping generalization is a literary device I often employ in *The Living Trust Advisor*.

### ***Using Everyday Language to Explain Technical Ideas***

The Living Trust, family inheritance planning, and estate taxes involve complex personal and financial issues. But discussing these issues in a legal manner would ensure this book's quick demise and bargain basement status, as it would render the book a somewhat lackluster and uninteresting read. Moreover, if I used fancy legal jargon, I fear that many readers might not understand what I was saying. Therefore, I use nontechnical language to explain many technical concepts throughout this book. For example, the person whom you appoint to carry out your instructions after your death is called the "successor trustee." In this book, I refer to that person as the "after-death agent." Since your attorney may wonder what you are talking about if you mention appointing your after-death agent, I also supply the technical term.

### ***Getting My Sense of Humor***

At my seminars, there are two compliments that I can never get enough of. The first: "Gee, Mr. Condon, are you sure you're a lawyer?"

## **xviii Pregame Warm-Up**

I understood every word you said.” The second: “Mr. Condon, I never thought I would find myself laughing at seminar on death and taxes. I was really entertained.”

I’m not using these comments to wow you into buying this book or attending my seminars. I’m just trying to show you that I have found success in using humor as the medicine to help folks digest this material more easily, and that this book follows suit with my usual comedic approach.

I have an absurd sense of humor, and this book is riddled with it. With a title like *The Living Trust Advisor*, you probably would not expect to find such a quality in this inheritance planning book. I am aware that some readers may not find it appropriate to address death-and-taxes type matters with a comedic approach. However, I could not restrain myself, for two reasons. First, I just gotta be me. Second, approaching such a tedious subject as the Living Trust with humor simply makes that matter less tedious and, if I have my way, even entertaining.

### ***Consulting Your Own Living Trust Lawyer***

This book is designed to identify situations, problems, and conflicts that arise in the establishment, maintenance, and distribution of your Living Trust. However, because your set of circumstances may differ from the scenarios I describe, it is critical that you do not include any of my suggestions in your own Living Trust without first consulting your own Living Trust attorney.

### **Your Final Locker Room Pep Talk Before Training Begins**

I was on water polo and swim teams throughout high school and college. I remember some amazing locker room pep talks made by my coaches that took us from lackadaisical (“What are we doing here?”) to motivated and focused on the mission (“Let’s go get ‘em!”). Inspired by those sessions in those days of yore, I now want to give you my pep talk to motivate you throughout your training.

You are about to embark on a process that is more than just dollars and cents. Your Living Trust is the last great lesson you will give to your spouse, children, and other beneficiaries. It is the vehicle by which you transfer your lifetime of accumulations to them. If your

Living Trust lesson goes sour—by leaving your beneficiaries in conflict, or by causing your assets to be depleted by taxes and expenses, or by requiring that your beneficiaries go through probate to obtain ownership of your Living Trust assets, or by causing your Living Trust assets to become depleted once they are in the hands of your beneficiaries—so too will the memory of you be impaired.

But it does not have to be that way. That's what I—your Living Trust coach—am here for. That's why you have this *Living Trust Advisor* playbook in your hands. With this book, you will learn all you ever need to know about how to play the Living Trust game—from the time the concept of the Living Trust enters your head to the time its inheritance instructions are carried out after you and your spouse are gone.

Here it comes: Let the Big Game begin!



## Acknowledgments

Writing can be a very rewarding experience. But, when the writing involves trying to turn a subject as complex and tedious as the Living Trust into (one hopes) a lighthearted and entertaining romp, it can also be exasperating. No one thinks of the estate planning attorney as a tortured artist; but, after multiple occasions of spending hours on a single paragraph attempting to be informative *and* witty, I felt I was Van Gogh.

One of the things that kept me going during tough times at the computer was the prospect of writing these Acknowledgments. How many times do I, or any person, get an opportunity to use a public forum to name and thank family, friends, and positive influences?

Actually, I have acknowledged those people on two prior occasions: When my first book was published in 1996, and then when it was revised in 2001. In both Acknowledgments, I mentioned the usual family and friends and thanked them for their support during the often arduous writing process, even if most of them were not aware that I was writing a book. Still, it was fun for me to mention their names, go to their houses, show them their names on the printed pages, and make them feel special for at least 10 minutes.

I also acknowledged two people who are not only unaware of my book, but do not even know I'm alive. These are people who have given me great joy in my life with their particular talents. I secretly hoped that I would hear from those folks if, somehow, the word got to them that their names were mentioned in my book. Of course, this was naive thinking and no such calls materialized.

But did I learn any lesson from that failure? No way! There's always hope! And besides, as my father once said, "Put it out there, Jeff. You never know what will come back to you."

So, once more, a shout-out goes to Mark Knopfler, the lead singer and guitarist from Dire Straits, who also has his own stellar solo career.

## xxii Acknowledgments

On the infinitesimal chance that Mr. Knopfler will read this, I say to him: Sir, no one can ever, and will ever, lay down the sweet licks you do with your ax. You are the best. And by the way, you no longer have to play in concert the usual hits from *Brothers in Arms* that put you on the map. Therefore, as the unofficial spokesman for your worldwide fan contingent, you are hereby authorized to retire “So Far Away,” “Walk of Life,” and “Money for Nothing,” and instead hit us with some incredible album tracks that we have been waiting forever to hear you play live, like “Espresso Love,” “Lady Writer,” and “Portobello Belle.”

Another mention also goes to Patrick Stewart, the actor who portrayed Captain Jean-Luc Picard on *Star Trek: The Next Generation*. One time, I ran into Mr. Stewart at a computer store in Santa Monica and managed to tell him how much I enjoyed his performance on that show, particularly in one episode where his character was forced to live an entire lifetime in 22 minutes. Not wanting to disturb Mr. Stewart more than I already had, I pulled away from that encounter maybe 30 seconds after it began.

I have wanted to say something else to Mr. Stewart since my father died in 2006, and these Acknowledgments have given me the opportunity to do just that: Mr. Stewart, my father almost never watched any television programs other than news and sports. He enjoyed belittling Hollywood, and held disdain for almost anything or any person related to the entertainment industry. He didn't go to the movies except when my mother could drag him. However, he truly enjoyed your performance on *Star Trek: The Next Generation*, which was the only episodic television show we ever watched together.

Your singular presence on that show was a joy to my father and me. It spurred many postshow conversations between us about your compelling portrayal of Captain Picard. And for an Anglophile like my father, he particularly enjoyed your character's captivating and eloquent use of the Queen's English.

When I told my father I ran into you at the computer store, that curmudgeon gave you the highest praise I ever heard from him about any entertainer: “Patrick Stewart, huh? How about that! I would actually walk across the street to meet that guy.”

Thank you, Mr. Stewart, for giving me those moments with my father.

Okay. Now that the Big Dogs have been reacknowledged, it's time to acknowledge the people in my life who actually know who I am.

Bradley, Hayley, and Carly: What can a father say to his children other than the usual “I love you,” which really says it all? Here are just a few brief, independent messages. Bradley, one of these days, I am actually going to follow through on my promise to take you and your little friends paint-balling. Hayley, if you’re going to switch-hit, you actually have to spend some time batting on the right. Carly, “Get in my belly.” And to all three of you, remember that a happy home is more important than a clean one, but you still have to clean up your rooms at some point!

Tristina Cole: What can I say to the person who has pulled me out of so many fires? I do not have the words to express the appreciation I have for you. Thank you so much for everything you have done for me.

Esther Condon: I don’t know where it came from, but you somehow found the strength to carry on after the death of your husband. Mother, you are my rock, the foundation of my life. I love you so very much.

F. Milton Condon: I am still practicing my profession in the law building at which I have spent my entire legal career, the Jack Condon building, and you, Uncle Milt, are the primary reason for that. I could not fathom spending my remaining career in some soulless corporate office building. But thanks to your emphasis on family instead of maximizing rent, you took a financial hit as you built your current tenant pool around me. Thank you so much for that kind gesture, which I will always appreciate. As the Condon family patriarch, I continue to look to you for your wisdom and advice.

Jim Hall and Alan Juarez: You are the bedrock of the girls softball league (Santa Monica Girls Fastpitch) in which my daughter, Carly, plays and in which I coach. My father always said that one should try to find one’s joy in life, and I have found mine in coaching my daughter and her teammates. Your support and advice has been instrumental in allowing me to follow that passion. I cannot sew to save my life, but if I could, each of you would have panels in the Condon family quilt.

Jared Breuer, Ken Southerland, Erin Jones, and Susan Croft: You are the staff of the 2008 Santa Monica Girls Fastpitch All-Star Team (10u Division). During the tail-end of the writing of this book, I had the pleasure to help you and the team as a self-appointed assistant. Serving in that role gave me so much pleasure, as it allowed me to

## **xxiv Acknowledgments**

do what I love the most, which is run around a softball field with the team and spend more time with my daughter Carly. All of you were crucial in that process, and I will never forget it. Jared and Ken, you gave the girls some amazing coaching. Erin and Susan, you are the best All-Star Managers ever. And Susan, see you at El Torito.

Bret Donnelly, Brad Wheeler, Rick Fonkalsrud, Milton Stumpus, Michael Bender, Steven Smooke, Paul Cooke, Anthony Caronna, Kenneth Aslan, and Mark Beede: You guys have been my friends who have supported me from afar for many years. But that's okay, because I can only stand being in your presence maybe once or twice a year, if that.

Kaile Nakao, Hailey Sheridan, Jaimee Kadish, Holly Elander, and Cianna Guerrero: At the time I write this, you are all 16 years old, but I have known you all since you were seven years old and playing softball with my daughter Hayley in the old Santa Monica Bobby Sox days. It has been such a pleasure to see you grow into confident, lovely, and athletic young women. You are part of my family forever.

Mary Armienti, Jordan Breuer, Aleksa Harris, Madison Graval, Rachel Hiltunen, and Maddy Shulman-Clancy: You have been friends with my daughter Carly throughout her elementary school career. It has been a ton of fun hanging with you during your playdates with Carly, and I am so looking forward to seeing what the future has in store for you.

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