

JEFFREY L. CONDON

THE
**LIVING
TRUST
ADVISOR**

[SECOND EDITION]

Everything You (and Your Financial Planner)

Need to Know About Your Living Trust

WILEY

The Living Trust Advisor

Second Edition

**EVERYTHING YOU (AND YOUR
FINANCIAL PLANNER) NEED TO KNOW
ABOUT YOUR LIVING TRUST**

Jeffrey L. Condon, Esq.

WILEY

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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 70 years, my late 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 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 (a) you have a Living Trust and (b) 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 this revised edition of *The Living Trust Advisor*, and congratulations on dealing with the often unpleasant task of facing your mortality!

Now, for you readers who are in the financial planning and advising profession, I also extend my heartiest welcome. At first blush, you may say to yourself, “Self, why do you need an education in the nuts and bolts of the Living Trust? You’re not a lawyer. Your job description is to make as much money for your clients as safely possible. If your clients have any estate planning needs, you’ll simply advise them to see an estate planning attorney. Have a nice day, Self!”

That’s what I used to think as well. You financial people come up with a plan to make your clients money, and I’ll come up with a plan to leave your clients’ money to their children, grandchildren, and other heirs. And never the twain shall meet.

Let me tell you how I learned otherwise with the tale of the comeuppance that I received from a 300-plus group of your colleagues. It wasn’t pretty. But if it wasn’t for that experience, I would never have come to know about the importance of the financial advisor in my professional life.

About 10 years ago, I was invited to speak on “The Right Way and the Wrong Way of Leaving Money to Your Children (& Others)” before a national conference of the Financial Planning Association (FPA) in Colorado Springs. I gave this talk at a few previous regional

FPA conferences (including Providence, Rhode Island, where I met an FPA member named . . . Jeff Condon. What are the odds?). I assume I was a big enough hit at those prior gigs to justify the FPA paying my speaking fee and travel expenses for the national gathering. Using baseball parlance, it was like going from the minor leagues to the Show.

When I am introduced at my talks, my “credits” never fail to strike a chord with the attendees. Although there are numerous estate planning attorneys with more impressive professional credentials than mine, none can claim that they wrote the best-selling inheritance-related book in American publishing history that the *Wall Street Journal* called the “best estate planning book in America” . . . or can say they have appeared on dozens of well-known television, radio, and Internet shows and outlets. As the conference’s program coordinator ran through my accomplishments, I heard the usual mutters of “Wow!” “Really?” “Impressive.” “Gee.” “This should be good.” Before I uttered word one, I had won over the 300 or so attendees—and I knew for certain that my presentation would leave them entertained and edified.

Yes, I was all full of myself. But that feeling was relatively short-lived.

After the (yet another successful) presentation, a standing microphone was placed on the floor near the dais for those who wanted to ask questions. The line quickly formed and snaked to the ballroom entrance. I believe it was the fourth person in line who asked me this: “Mr. Condon. I just want to say that was a terrific talk, and I learned a lot. Can you tell me how you use the financial planner in your practice?”

And this was my exact word-for-word response: “Ummm . . . I . . . uhhh . . . I don’t really use the financial planner at all. Why would I?”

Have you ever had the experience of being ostracized by a large gathering of people? You don’t want it. It’s the initial silence of incredulousness. Then the sounds of notebooks shutting, chairs backing away, barely disguised mutterings, and feet walking in a direction other than yours. The sight of faces who were moments

before enraptured, now revealing disdain and disgust. The sudden feeling of warm sweat permeating throughout the body. I take great pride in making a great impression on my audience. Not just good, but great. But now I was doing the polar opposite.

This was one of those times when the truth—that bringing the financial planner into the estate planning process had never before crossed my mind—was not the best response. The financial planner helps the client make money; the estate planning lawyer helps the client transfer that money to their children, grandchildren, and other heirs. Two separate worlds. And I assumed that financial planners believed likewise. But at that nightmarish moment—where I undid in 3 seconds the goodwill I had established in the previous 90 minutes with my inadvertent diminishment of the entire financial planning industry—I discovered that such an assumption was erroneous.

There was no pulling up from this nosedive. The program ended with the en masse walkout. As I was about to trudge from the dais, the program coordinator stood in front of me, put his hands on my shoulders, and said, “Jeff, I can see you are about to go into a deep funk. But try to hear me. Instead of castigating you, I think they should be thanking you. You woke us up to the fact that your industry is totally in the dark about what we do and how we can be of service. What you said about not needing us—that should be our rallying cry to find ways to explain to you why and how you need us. Not as a reason to get out the tar and feathers.”

Those words talked me off the ledge. But more important, they were the impetus for my awakening to the fact that the financial planner is integral to the estate-planning process. While the estate-planning lawyer rarely sees or communicates with his Living Trust clients, you, the financial planner, are on the front line of your clients’ lives. You are in touch with them at least every few months with calls, statements, emails, and invitations to seminars. You make, at least, annual inquiries about their financial health and status, which, typically, beget a discussion of their latest family goings-on. Births of grandchildren. Graduations. Deaths. Children’s employment status. What’s going on with the “problem” child. As

part of that discussion, you invariably bring up their estate planning—because you recognize that a sound plan to leave their wealth after death is just as important as the investment strategy that creates that wealth.

So you ask the usual questions about your clients' estate plan. Do they have one? If so, is it a Living Trust or a will? Was it prepared by an attorney? How old is it? When did they last have it reviewed? Does it speak to any of their current family dynamics and circumstances? And after this brief discussion, you advise them to see an attorney, which, most likely, will not be an easy sell. Why? Because your clients, like most people, are not accustomed to seeing lawyers. Most people go through almost their entire lives without anything "legal" happening to them. No divorces, arrests, lawsuits, or entity formations. Or, if your clients have had previous brushes with lawyers, those experiences may have been less than pleasant. Well, whether your clients go willingly or reluctantly, you, the financial planner, must strongly advise them to see an estate planning attorney about establishing or amending their Living Trust.

Is that it? Do I think you are just the shill for the estate planning attorney? Absolutely not. You are part of the estate planning *team*. While the attorney sits at his desk, you sit in front of your clients. You're there with them . . . and their Living Trust. With the Financial Alerts peppered throughout this book, you will be able to confidently sift through your clients' Living Trust and zero in on certain sections that could inadvertently cause harm to your clients' children and their relationships with each other. These alerts will give you the knowledge you need to engage in a productive conversation about the effect and ramifications of certain provisions that they may have never before considered.

Your clients don't know what they don't know. They don't know whether their Living Trust will solve inheritance problems . . . or create them. However, after you read this book—and after your clients regale you with their current family circumstances—you will have the ability to recognize whether certain provisions in their Living Trust should be changed or removed to ensure that your clients' Living Trust applies to those family conditions.

These Financial Alerts do not ask you to practice law. They are educating you on recognizing problems. As my father taught me, 95 percent of the solution to any problem is recognizing the problem in the first place. Once you are able to point out the unwanted or unintended ramifications of certain provisions of your clients' Living Trust, then your advice for them to see the lawyer is not just lip service to make you look good or protect your back.

Without you first reviewing your clients' Living Trust . . . and without you first having taken the tour of your clients' financial and family lives . . . and without you looking at important provisions in your clients' Living Trust in the context of their present circumstances, it is highly unlikely they will ever see a lawyer for a Living Trust review and fix.

Maybe this isn't a traditional part of the financial advisor job description; still, it's an important function that helps to maintain family harmony in the inheritance arena, which can only enhance the valuable services you bring to your clients.

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 might 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? I understood every word you said." The second: "Mr. Condon, I never thought I would find myself laughing at a 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 an 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.

With the three editions of my other book and this second edition of the *Living Trust Advisor*, this is the fifth opportunity I've had to publicly acknowledge *in a real book* the important persons in my life and the ones who were integral in producing this book. Such mentions just don't seem as special and permanent in social media, do they? On the Internet, anyone can acknowledge anyone for anything. Just the other day on Facebook I posted my congratulations to my mother's dog, Molly, for successfully jumping off the couch. Just too easy (both the posting and the couch-jumping)! But when folks see their name in print in a real, old-fashioned book that they can see and feel, that must be a thrill for them, yes? Well, at least it's still a thrill for me to have this platform.

In keeping with my lawyer-like penchant to compartmentalize, I shall break my acknowledgments into three separate and distinct categories.

For Those without Whom This Revised Edition Wouldn't Exist

Stacey Rivera and Tula Batanchiev. Stacey is my manuscript editor at Wiley, and Tula is the acquiring editor who originated and championed the idea of this revised edition of *Living Trust Advisor*. Both are not only brilliant and industrious, they are masters of the lost art of editor-author diplomacy. Painful cuts and edits in my precious manuscript and rejections of my inspired cover design ideas (such as a Pomeranian sitting on a wad of cash) were almost a pleasure with their pleasant and engaging manner. From now on, whenever bad news about anything has to be delivered to me, I want Stacey and Tula to be the messengers.

For Those Who Happen to Be My Children

I have previously used my acknowledgments to impart awesome and incredible fatherly advice to my three children, Bradley, Hayley, and Carly. Why should this one be any different? So if you happen to be a child of Jeffrey Condon, listen up (read up?) to this Top Ten List of Things You Need to Do, Not Do or Know:

1. A gift is for the giver.
2. In any non-life-threatening heated discussion or argument with anyone, think before you speak and stay on point.
3. Don't text and drive.
4. Conduct all your interactions and interpersonal relations with the Golden Rule in mind.
5. Although it was really cool to see Han Solo and Chewbacca back in action, *Star Trek* STILL RULES over *Star Wars*.
6. Do not loan money to a friend, and do not borrow money from a friend. The money relationship will end the friendship.
7. When I die, *don't* sell my comic book collection. It's worth more than the three of you combined. Preserve and protect it.
8. As Coach used to say: If you can't do what you want, do what you can.

9. Do some kind of athletic activity every day. Getting the blood pumping energizes you and makes a tangible difference in how you approach and handle the day. Don't wait until you feel like it because no one ever feels like it.
10. I love you all.

For Those Who Made the Cut

In all of my prior acknowledgments, I had fun mentioning everyone with some connection to me. It was fun to see their reactions to their names in my book, especially when they had no reason to expect to ever see their names in my book. Distant relatives. Friends. Acquaintances. My children's friends. My children's friends' parents. My children's coaches and teachers. If I saw somebody once a week who had even a small role in my existence or the lives of my children, they made it in.

Now with my children grown and gone, those old social spheres have disappeared, and I have practically no connection to most of those people. Which leaves the ones who remain whom I am fortunate to have. These are the most meaningful and important people in my life . . . and who made me a happy (or at least, pacified) camper during the arduous process of writing this revision. So if you happen to see your name here, congrats! You made the cut!

My fun, beautiful, charismatic, cookie-pushing, and just plain nice girlfriend, Kimberly Klaskin, and her daughter, Jenna. Best of luck to both of you in your next adventure—life with Jessie!

My closest buddies since elementary and middle school: Bret Donnelly, Brad Wheeler, Mark Beede, Milton Stumpus, Eric Fonkalsrud, and Paul Cooke.

My old law school buddies: Kenneth Aslan and Anthony Caronna.
My secretary, Marbelis Garcia.

My Atlanta cousins: Phillip and Gilda Franklyn, and the majority of their four reasonably well-behaved daughters, Stephanie, Rachel, Sarah, and Julia. I'll leave it up to them to figure out which one did not make the cut. And with regard to Stephanie's and Rachel's