

CHAPTER 1

How You Established Your Living Trust Without a Clear Understanding of What It Is and How It Works

OR,

**YOU DON'T KNOW WHAT YOU DON'T KNOW
ABOUT YOUR LIVING TRUST**

Before your real Living Trust training begins in Chapter 2, I feel the need to address a point that is somewhat obvious, which I will state in your first person: “I already have a Living Trust. Why do I need your training session on the Living Trust when I have already received that information?”

In the Pregame Warm-Up, I made the bold and very broad assumption that you do not know much about your Living Trust, even if you have one. How did you react to such a presumptive assertion? Did you nod your head in recognition? Or did you fling this book across the room (or the bookstore) in disbelief and anger?

Let me tell you how I came to the assumption that you know very little, if anything at all, about your Living Trust, the document that your lawyer prepared, or you drafted yourself with LegalZoom and that you believe you already know all about.

What Does It All Mean?

I am an estate planning attorney. I am in the business of putting together inheritance plans. In the old days, you would have set forth your inheritance instructions in a will. Nowadays, those instructions will be set forth in a Living Trust. In effect, this makes me a Living Trust lawyer.

I learned this business from my father, Gerald M. Condon, who, in the early 1970s, was perhaps the first lawyer in the United States to conduct Living Trust seminars. This was a real homespun family operation. I manned the check-in table, my father gave the talk, and my mother made the brownies that the attendees devoured during the break.

About a decade after my father conducted his first seminar, Living Trust seminars became ubiquitous. They were seemingly everywhere, offered by attorneys, insurance companies, real estate firms, banks, and brokerage firms. You could not open your newspaper or mailbox without receiving a solicitation to attend one.

In the 1990s, the market for the Living Trust business had become farmed out. It was dog-eat-dog for the same potential pool of clients. Living Trusts became so cheap that reputable attorneys advertised their Living Trust services for as low as \$499.

You get what you pay for in this world of ours, and the Living Trust consumer often experienced firsthand that old adage. Some Living Trust attorneys offered a good price, but at the expense of customer service. Practices became about volume. People never met the attorney who purportedly prepared their document. Instead, they saw paralegals who rushed them through the draft reviews. People felt like numbers instead of clients, and were too cowed by the manic process to ask questions. Ultimately, they signed their Living Trust without any meaningful understanding of the effect and function of the document and were politely shown the door. Next!

At his seminars, my father consistently gave what I believe, in my less-than-objective opinion, was the best presentation on the Living Trust since the world was a ball of molten lava. But the Living Trust world had changed, and we had to change with it.

The client base for Living Trust business had been tapped out, and people were weary of being bombarded with flyers, advertisements, and seminar invitations for low-cost Living Trusts.

As a result, our Living Trust seminars became “Family Inheritance Planning” seminars. Instead of talking about Living Trust mechanics, we focused on the human side of inheritances, such as how your children can share an inheritance when they could not even share their toys, and how you can prevent your surviving spouse from losing control of her money and property if the children are grasping for an early inheritance. Eventually, this new emphasis on the human and personal element in the inheritance arena comprised the theme of the first book my father and I co-wrote in 1996, *Beyond the Grave: The Right Way and the Wrong Way of Leaving Money to Your Children (and Others)*, which has since become the most widely distributed inheritance planning book in American publishing history.

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In connection with the marketing of the book, my father and I appeared on more than 100 radio talk shows throughout the United States, where we answered hundreds of questions from listeners about a wide range of inheritance planning issues—from succession of the family business, to protecting a widow from her own children grasping for an early inheritance, to leaving money to the family dog. Yet, of all the questions asked by callers, 90 percent of them were about the basics of the Living Trust. What is it? How does it work? What does it do? Why should I have one? What happens to it after I die? Where should I keep it? Why does it have so many pages? Moreover, these questions were asked by callers who informed us that they have Living Trusts that were prepared by lawyers!

So . . . consider presenting an inheritance planning seminar for your present and prospective clients with an experienced trusts and estates attorney as the guest speaker. By doing so, you will provide yourself with the opportunity to press the flesh and enhance your reputation as one who takes the time to make available information that the attendees will find absolutely invaluable.

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I have been conducting Family Inheritance Planning seminars on my own for about 15 years. Although my style is certainly more freewheeling than my father's horse-sense suffer-no-fools approach, I proudly walk in his footsteps to offer invaluable information about family inheritance planning to audiences around the country. And as they did years ago, folks come up to me after my talks with their Living Trusts in hand, pointing to certain pages and asking me, "What the hell does this mean?"

And if you think there is a lot of ignorance out there with lawyer-drafted Living Trusts, don't get me started on the misconceptions and misinformation that arise in Living Trusts that are prepared without lawyers.

Too late! You got me started!

The Self-Drafted Living Trust—Don't Do It!

This book's title may have given you the impression that I am going to tell you how to establish your Living Trust on your own—without having to pay for a lawyer.

I hope I did not get your hopes up. This is not a "how to become your own lawyer" book. You would never consider being your own doctor. Why would you even think about being your own lawyer?

Certainly, taking the lawyer out of the process probably sounds pretty good to you. After all, if you are like most people, you have never before met with a lawyer, because, quite simply, you never had to. You have never been sued or divorced. You have never sued anyone. You have never been charged with a crime. You have not set up a corporation or partnership or engaged in a complex business transaction.

Indeed, you may have gone almost your entire life without the need to consult with a lawyer. I said "almost," because now you face the prospect of an inheritance document that, while simple in concept, can be quite daunting to construct. If you have seen a Living Trust before, you have found that they are somewhat lengthy. In my office, the typical Living Trust is 50 pages long.

But even though your head says you need a lawyer to help you through the minefield, your heart may be urging you to do it alone. Why? Because you have heard the lawyer horror stories from your family, friends, and co-workers. “My lawyer charges too much.” “My lawyer never returns my calls.” “I paid my lawyer a retainer months ago, and I haven’t seen any documents yet.” And on and on . . .

Of course, there is nothing to stop you from giving it the old college try. In fact, you will find a lot of help. There are a host of how-to books, software programs, and stationery forms, replete with terms and provisions that you can pick and choose to incorporate into your own Living Trust.

In all my years as an inheritance-planning lawyer, I have met with hundreds of do-it-yourselfers who have paid me a fee to review their efforts. Yes, that does sound inconsistent. Why would they want to pay me a fee to review their self-drafted Living Trusts when their main goal was to avoid paying me a fee in the first place? Their answers were universally the same: “I just wanted to be sure that everything is legal.”

Let me tell you something, and please consider this your first piece of my advice. If you prepare your own Living Trust, it will be wrong in some way, shape, or form.

Maybe it will be a harmless error, such as explaining estate tax concepts with outdated language. Does your Living Trust use the term *A-B Trust* to incorporate the plan of preserving the deceased spouse’s applicable exclusion amount? That is the right concept, but the wrong words. The use of the wrong language will not be fatal to that tax-saving plan, but the Living Trust is, technically, still wrong.

Maybe the mistake will be overkill. Several times a year, I review self-drafted Living Trusts that contain complex tax-reduction plans that would be appropriate only for the heads of Fortune 500 companies. But the persons who drafted those Living Trusts are nowhere near that wealth category. If those persons die with those plans in place, their beneficiaries will be stuck in a morass of expensive and unnecessary processes.

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Maybe the mistake will be fatal to your children. One man came into my office explaining that his son was a drug addict. After reviewing the Living Trust he prepared with the help of the Trustmaker software program, I said to him with all the sarcasm I could muster: “Why does your Living Trust leave your drug-addicted son his inheritance share outright and under his full control? The second he gets his inheritance, he’s going to turn it over to his pusher!”

After having reviewed hundreds of self-attempted Living Trusts, I have never seen one that has been correct, complete, or appropriate for the circumstances. It doesn’t matter how smart you are, and what you do for a living is irrelevant (unless you are an inheritance planning attorney). There are too many subtleties and intricacies concerning your inheritance instructions in the Living Trust that the how-to books just don’t pick up. You don’t realize this because, in a circular bit of reasoning, the how-to books have not made you aware of them. In other words, you don’t know what you don’t know.

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When your clients tell you that they have a Living Trust, your follow-up question should always be, “Did an attorney prepare that Living Trust?” If the answer is no, tell them that out of an abundance of caution, they should have it reviewed by an attorney. Expect the response to be of the “We did this on our own to avoid attorney fees” variety. To that you say, “No matter how much energy you poured into your self-drafted Living Trust, you just don’t know if you drafted it correctly. One mistake could lead your family into post-death chaos. One meeting with an attorney to review your Living Trust will give you the peace of mind that you didn’t miss anything.”

The only true way to learn about the dos and don’ts of the Living Trust is the hard way—from on-the-job training. That is why my profession is called the “practice” of law. We get to practice this stuff until we get it right.

For example, when I was a young attorney, I was innocent in my approach to drafting my clients' inheritance instructions in the Living Trust. When my clients told me there would never be any inheritance conflicts between their children, I believed them. After all, who was I to dispute my clients' conclusions about their children?

Nothing, however, prepared me for the harsh reality of human conflict when my clients' perfect children divided their inheritance. Lawyers are not taught to recognize inheritance conflicts in law school. There are no advice books or classes on this subject. The only way I learned about inheritance conflicts was from having a number of clients die and then dealing with their children when they divided the family money. Having observed what happens between children following their parents' deaths, I have arrived at this indelible conclusion: Your children might seem perfect—but you really don't know them until they divide your money.

You Might Have Living Trust Training, but You Haven't Been Trained My Way!

These experiences with both lawyer-prepared and self-drafted Living Trusts caused me to arrive at the sweeping generalization about how little you know about the Living Trust, even if you have one. A ton of people have been to Living Trust seminars, read Living Trust books, downloaded Living Trust software, and attended complimentary Living Trust consultations. Another ton of people have Living Trusts. But, those same tons of people still possess a definite and palpable thirst for knowledge about Living Trust basics.

In order to answer the questions of these many bewildered, misinformed, and mistaken people, I'm back with this, the revised edition of my second book, which is about living and dying with a Living Trust. I like to refer to it as "The Living Trust's Greatest Hits." In other words, this book presents everything you need to know about the establishment, maintenance, and management of a Living Trust at all stages of the game. Why should you pay thousands of dollars for a Living Trust just to have no meaningful and

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practical understanding of what may be the most important document of your life?

If you think you know everything about your Living Trust because your lawyer explained it to you—or you read the guidebook that came with the software—you don't!

If you think you don't need training on your Living Trust because you've already received that training—you do!

You have not been trained in your Living Trust my way. My way is to show you what you need to know before your Living Trust is set in stone. It will follow the flow of your money and property in the Living Trust at all stages of the game: while both you and your spouse are alive, then after the first spouse dies, and then when the last spouse dies and distribution is made to your children and grandchildren. The chapters that lie ahead explore aspects about your Living Trust that your lawyer—or software—never or inadequately explained to you.

So, just when you thought you were done with all matters Living Trust, I've pulled you back in. The Living Trust is back, baby! And I, your Living Trust advisor, will help you get through it.