

## Chapter 9. Your Living Trust

Your Living Trust is the key safety and protection component of your Estate Plan. So I like to illustrate it as a safe. You keep the “combination” to your Safe while you are alive and well. You appoint successors to have the “combination” upon your death or disability.

Your Living Trust is designed to accomplish the following:



### **During Your Lifetime:**

- You manage and have total control over the assets of the Trust during your life.
- You can amend or revoke your Trust any time for any reason.
- You can add property to, or take property out of, your Trust at any time.
- Protects against conservatorship proceedings (or Disability Probate) if you become legally incompetent or disabled.

### **After Your Death:**

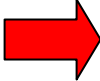
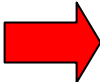
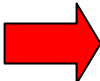
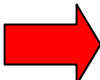

- Distribute your assets to your spouse, children or other heirs as you've directed or continue to hold your assets in trust for certain beneficiaries (such as minors, young adults, grandchildren and spendthrifts) until an age or ages when they are financial responsible. For example, the trust can hold all assets in a pool for the benefit of all children until the youngest is 22 (i.e. graduates from college) then split into equal shares for each child, distributing 1/3 at ages 25, 30 and 35.
- Avoid or substantially reduce Estate Taxes, depending on the size of your estate, by obtaining the Lifetime Estate Tax Exemptions for both spouses for married couples.
- Avoid Death Probate for all assets and property transferred to the Trust during your life.
- Receive all assets probated after your death from your Will that were not transferred to the Trust during your life.
- Receive all life insurance and retirement plan proceeds where you've named the Trust as the beneficiary.
- Reduce the risk of a will contest and court challenges to your Estate Plan.

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## SUMMARY OF A LIVING TRUST

A Living Trust is created simply by signing the Trust Agreement prepared by your Estate Planning Attorney. The Trust will refer to some terms you might not be familiar with. These are summarized below:

<b>SETTLOR</b>		Person Who Creates Trust by Signing Trust Agreement (You and Spouse)
<b>TRUSTEE</b>		Person Who Manages Investments and Distributions (You and Spouse)
<b>SUCCESSOR TRUSTEE</b>		Person Who Steps In For Trustee Upon Death or Resignation (Family, Friend, Advisor, Bank)
<b>BENEFICIARIES</b>		Persons Who Receive Income and Assets (You, Spouse, Family, Charities)
<b>TRUST AGREEMENT</b>		Written Instructions (Who Gets What & When) Prepared by Estate Planning Attorney

### LIVING TRUSTS

- Wall Street Journal:*
- “The advantages of Living Trusts over Wills are considerable.”
  - “Living Trusts have become the preeminent modern estate planning tool.”
- Readers Digest:*
- “The Living Trust is the finest gift a husband can give his wife.”

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## THE STANDBY LIVING TRUST

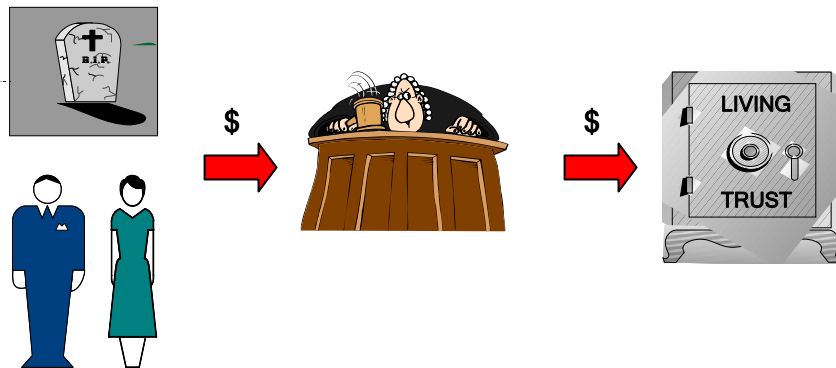
When you sign your Living Trust, you have created a Standby Living Trust. In essence, the Trust is now “standing by”, ready to receive whatever assets you re-title into it.

When you re-title your assets into the name of your Living Trust, you have now “funded” it, so it becomes a Funded Living Trust.

Many people decide to not yet take the added steps now to fund their Living Trust, but instead just leave their trust as a Standby Living Trust. They can always fund it later. As long as you do this before death, Probate can be avoided. If you become disabled before death, the person appointed under your Financial Power of Attorney can fund your Living Trust for you before death.

The Standby Living Trust has all of the advantages of a Funded Living Trust and will accomplish for you all of the same objectives as a Funded Living Trust except for one - the Standby Living Trust doesn't avoid Probate. If you die with a Standby Living Trust, your Will needs to be filed in Probate Court and your property will be distributed to your Living Trust, to be held in trust or distributed to your family as you provided - but Probate is needed to accomplish this.

Therefore, if you wish to avoid Probate, you should “fund” your Living Trust before death (by re-titling your assets to it).



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## THE FUNDED LIVING TRUST

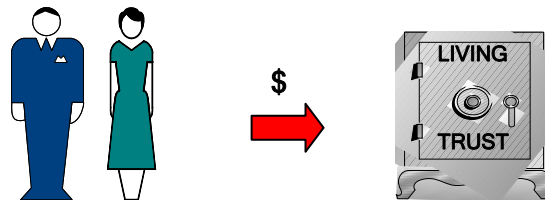
### If You Want to Avoid Probate

In Nebraska, your Estate must go through Probate if it is larger than \$30,000 real estate or \$50,000 of personal property. Other states require Probate at different levels.

Following execution of your Living Trust and other Estate Plan documents of your Basic Estate Plan, you now have the option -- should you choose to take advantage of it -- to avoid Probate on all or part of your Estate. This can be done by transferring ownership (i.e. title) of your assets to your respective Living Trusts. To the extent that title is in the name of your Living Trusts upon death, then those assets do not need to go through Probate Court. In other words, you can convert your Standby Living Trust into a Funded Living Trust by re-titling your assets to your Living Trust while you're alive.

Many people choose not to implement this option until later in life and are willing to take the chance that they will have an opportunity prior to death to transfer title to their Living Trusts. This is your choice. As a fallback, we can provide in your Financial Powers of Attorney that the Agent you have appointed under the power of attorney has authority to transfer title to your Living Trusts. This could be useful, for example, if you were to have a period of disability prior to death, which would enable your Agent to assist in putting these types of matters in order before death.

If you choose not to transfer title to all of your assets to your Trust for now, then upon your death, those assets in your name (other than Joint Tenant with Rights of Survival assets and those assets with different beneficiary designations) would pass under your Will, through Probate Court, to your Trust, to be distributed as your Trust directs.



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## HOW DO YOU RE-TITLE YOUR ASSETS TO YOUR LIVING TRUST?

To re-title your assets to your Living Trust (i.e. to turn it into a Funded Living Trust), the following documents must be executed:

ASSET	ASSET RE-TITLING DOCUMENT	FUNDED LIVING TRUST
Home	→ Deed	→
Bank Accounts	→ Bank Account Re-Title Letter	→
Household Items	→ Household Items Assignment	→
Personal Possessions	→ Personal Possessions Assignment	→
Stocks & Bonds	→ Stock or Bond Power	→
Retirement Plans	→ Change of Beneficiary	→
Life Insurance	→ Change of Beneficiary	→
Real Estate	→ Deed	→
Family Business	→ Assignment of Assets	→
Family Farm	→ Deed	→
Automobile	→ Title Assignment	→



*To Do List*

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<b>COMPARING THE SIMPLE WILL TO THE LIVING TRUST</b>			
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Features	Simple Will	Standby Living Trust	Funded Living Trust
<b>Your Disability</b> – Upon your disability, holds and manages your assets to avoid Disability Probate.	No	Yes	Yes
<b>Spouse Distributions</b> – Upon your death, distributes protection for your Spouse.	Yes	Yes	Yes
<b>Spouse Protection</b> – Can hold assets in trust for liability protection for your Spouse.	No	Yes	Yes
<b>Child Fairness</b> – Upon death of both Spouses, holds assets as one pool until youngest child reaches age 22 or graduates (where applicable).	No	Yes	Yes
<b>Child Equal Shares</b> – Upon death of both Spouses, divides assets into equal shares based on number of children.	Yes	Yes	Yes
<b>Child Living Expenses</b> – Holds shares in trust, but distributes principal and income as needed.	No	Yes	Yes
<b>Investments</b> – Allows designation of professional investment manager.	No	Yes	Yes
<b>Asset Protection</b> – Protects assets from child's creditors or marital disputes.	No	Yes	Yes
<b>Financially Responsible</b> – Final distributions to children at designated ages, e.g. 1/3 at ages 25, 30 and 35, when children are financially responsible.	No	Yes	Yes
<b>Estate Tax Deferred</b> – No Estate Tax till death of both Spouses.	Yes	Yes	Yes
<b>Estate Tax Exemptions</b> – Obtains full use of both Federal Lifetime Estate Tax Exemptions.	No	Yes	Yes
<b>Death Probate</b> – Avoids Death Probate.	No	No	Yes
<b>Charities</b> – Can designate charitable bequests.	Yes	Yes	Yes
<b>Other</b> – Potentially several other features mentioned in the Estate Planning Guide.	No	Yes	Yes

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## Typical Simple Will Estate Plan

### Period #1 – Both Bob & Betty Parent Living

**Bob Parent Will**  
Executor: Betty Parent

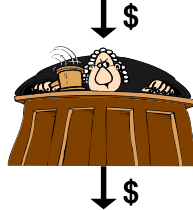
- Retain complete control of Assets until disability
- Disability Probate or Conservatorship if disabled

- Can be amended or revoked until death
- No change in income taxes



### Period #2 – After Death of Bob Parent

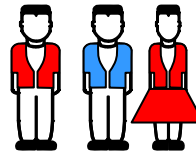
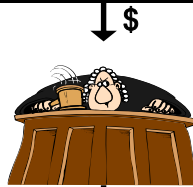
- All property goes to Betty outright
- Must go through Probate Court
- Executor: Betty Parent
- Beneficiary: Betty Parent



- None of the property grows estate tax free
- None of the property protected from creditors
- All principal and income used as needed.



### Period #3 – After Death of Betty Parent



- Must go through Probate Court
- Property divided into equal shares based on number of children
- Children still in school must pay education and living expenses out of their share
- Property for minor children must be managed by Probate Court in a Conservatorship

- Property for young adult children (age 21+) is distributed outright, even if they are not yet financially responsible.
- No protection of assets from child's creditors or marital disputes
- No provision to hold in trust for grandchildren in case child dies
- No designation of professional investment manager

#### Features

- Subject to both Disability and Death Probates
- No Estate Tax till death of Betty Parent
- Full benefit of only one Lifetime Estate Tax Exemption

# Typical Living Trust Estate Plan

## Period #1 – Both Bob & Betty Parent Living

**Bob Parent Living Trust**  
 Settlor: Bob Parent  
 Trustee: Bob Parent  
 Beneficiary: Bob Parent



- Retain complete control of assets
- Avoids “Disability Probate” or conservatorship

- Can be amended or revoked until death
- No change in income taxes

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## Period #2 – After Death of Bob Parent

\$ BALANCE

Up to \$5,430,000

### Marital Trust

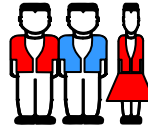
Executor: Betty Parent  
 Beneficiary: Betty Parent



### Family Trust

Executor: Betty Parent  
 Beneficiaries: Betty Parent and Children

- May distribute to Betty Parent as needed
- Betty Parent may terminate Trust and hold assets personally (unless QTIP)

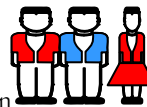


- Grows estate tax free
- Protected from creditors
- Principal and income used as needed for living, education and health expenses

## Period #3 – After Death of Betty Parent

### Family Trust

- Held as one pool until youngest child reaches age 22
- Then divided into equal shares based on number of children
- Holds shares in Trust, but distributes principal & income as needed
- Allows designation of professional investment manager
- Protects assets from child’s creditors or marital disputes
- Final distribution to children at stated ages, e.g. 1/3 at ages 25, 30, 35
- If child predeceases (or dies before e.g. age 35) child’s share held in trust for grandchildren till designated ages (e.g. 1/3 at ages 25, 30, 35)



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### Features

- No Disability Probates
- No Death Probates if Funded Living Trust
- Assets Protected for Children and Grandchildren
- No Estate Tax till death of Betty Parent
- Full benefit of both Lifetime Estate Tax Exemptions



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## COST OF SIMPLE WILL vs. LIVING TRUST

A Simple Will can be less expensive on the front end. But the use of it means you and your family will incur higher costs later (e.g. due to Death Probate). The Living Trust gives you the opportunity to plan your Estate to avoid or minimize the other future costs covered in this Guide.

### SIMPLE WILL



But the Cup is \$10.00

### LIVING TRUST



Including the Cup

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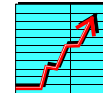
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## INVESTMENT ADVISOR DESIGNATION

Most parents have developed a good relationship with an investment adviser they know and trust. You've come to realize a good investment adviser will help you achieve a better annual return on your investments and will also help you avoid making bad investment choices and losing your principal. However, when you are gone, the last thing you want is for your children (or your selected Successor Trustee) to take on investing without professional help. For this reason, you can include in your Living Trust an Investment Advisor Designation.

### BENEFITS

- Designates the Investment Advisor or Advisor You Want Your Successor Trustee to Use After Your Death
- Provides Continuity of Your Investment Plans With the Person You Already Trust
- Can Be Designated in Your Living Trust



### EXAMPLE:

#### \$500,000 Investments

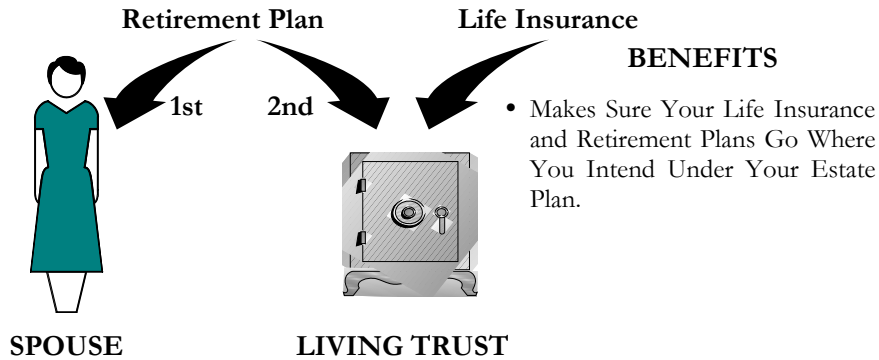
**ASSUMPTION:** The right advisor will add 4% +/- higher average annual return (better returns and/or less losses) due to better investment selection.

**RESULT:** 10 Year Additional Growth = \$200,000



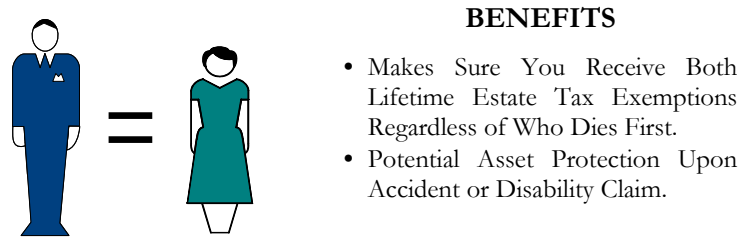
## BENEFICIARY DESIGNATIONS

When you have a Living Trust, you can name the Trust as beneficiary of your Life Insurance and Retirement Plans so that these dollars funnel through the Trust and are held in Trust or distributed according to your overall Estate Plan. This also enables you to avoid Probate on these funds. (Typically your Spouse is primary beneficiary of retirement plans, and your Trust is secondary - for income tax reasons).



## SPOUSE ASSET EQUALIZATION

By balancing asset ownership amongst spouses, you reduce the risk of loss if a spouse incurs a substantial, uninsured accident claim, a business loss indemnity or guarantee obligation or other uninsured claim. In addition, a Living Trust by itself will not assure that you receive the full benefit of both Federal Estate Tax Exemptions if the first spouse to die doesn't have property titled in his or her name at least equal to half of your combined estates (up to the Lifetime Estate Tax Exemption amount). The new portability provision of the new Federal Estate Tax does not cover value growth after the death of the first spouse, so ownership balance remains important.



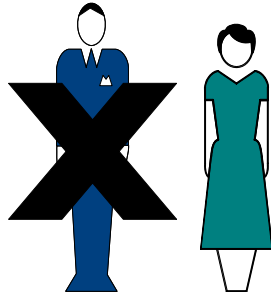
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## QTIP PROVISIONS

The Living Trust can also include provisions (known as QTIP provisions) to help address the following 2 marriage situations. If your first spouse has died and you are remarried, you might be hesitant to leave your Estate outright to your second spouse, if you or your children have a concern your second spouse might disinherit your children. Yet you still want your Estate to provide support for your second spouse. A QTIP provision can do this and still assure that your children inherit the remainder after your second spouse's death.

A QTIP provision can also be useful in a second situation. If you are concerned your first spouse might not protect your assets after your death if your surviving spouse remarries, a QTIP provision can support your surviving spouse and assure your children inherit the remainder.



### **BENEFITS**

- **Second Marriage Situation.** Assures Your Assets Go To Children of First Marriage.
- **Remarriage Situation.** Protects Your Assets for Your Children After Your Death if Surviving Spouse Remarries.

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## SPECIAL NEEDS SUB-TRUST

If you have a special needs child, you realize that special steps need to be taken to provide for the care, health and well-being of your child. Your Living Trust can help, by including a Special Needs Sub-Trust. This is not suitable in all cases, but when it applies, it can enable you to still provide protected funds for your child without disqualifying government funded health and living expense programs.



### **BENEFITS**

- Enables Parents to Address Special Financial Needs of Disabled Children.

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## EDUCATION SUB-TRUST

Most couples want to leave their Estate equally to their children. However, where some children have had more of their own children than their siblings have had, you may wish to provide a separate share to help pay for your grandchildren's education. Your Living Trust can include special provisions to set-aside part of your Estate specifically for the education costs of your grandchildren.



### BENEFITS

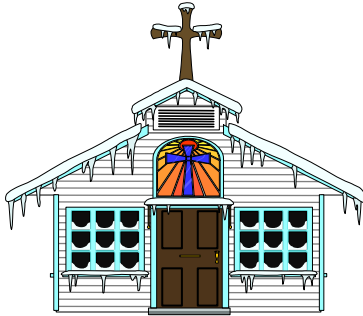
- Allocate Part of your Estate for Grandchild Education.
- Can Do Without Using Your Child's Share of Your Estate.

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## CHARITABLE BEQUEST

While most people will set aside certain amounts for charitable donations during their life, many also like to make additional donations upon their death as part of their Estate Plan. Either your Living Trust or a Will can be used to make charitable bequests.



### BENEFITS

- Helps Your Favorite Charities.
- Can Easily Be Included In Your Will or Living Trust.
- Estate Tax Savings.

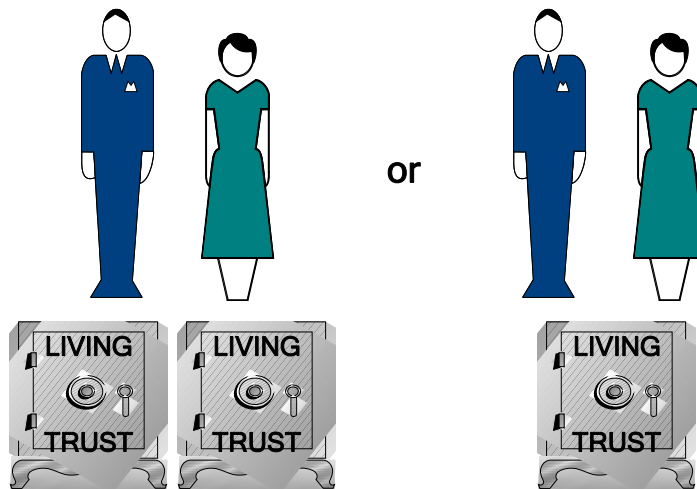
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## ONE OR TWO LIVING TRUSTS

Depending on the size of your Net Worth, we will suggest whether you need a Living Trust for each Spouse or whether you can both use the same Living Trust. With the increase of the Lifetime Estate Tax Exemption to \$5,430,000 per person, those couples who expect their Net Worth to be less than \$5,430,000 may be able to just have one Living Trust.

Other Estate Planning considerations may impact this decision, such as asset protection desires to keep your assets balanced between spouses or a need to reflect separate ownership of inherited assets.



**New \$5 Million Exemption  
Favors Needing Only One**