

# **What if everything you ever thought about living trusts is dead wrong?**

**- by Robert A. Sagar**

Founder of The Senior Financial Center

**Unbelievable!** The story you're about to read represents a real family – it could be yours. It illustrates the very real dangers and terrors that can impact families who do not take the right steps to protect themselves. Failure to think ahead and take the right steps can truly expose your family to a fate worse than death. The irony is, protection is both simple and affordable, but for now, let's look at *why* you should care.

**Pam was blind-sided.** She never saw it coming. Like a sucker punch to the ribs, she was knocked down both emotionally and financially. Looking back, she and Mike had done everything right – well, nearly right. And, that subtle difference between right and nearly right meant she would lose some of the most important things in her life – including her reputation, her family, her financial security and her quality of life.

**He was so innocent.** When Mike turned 60, he started to think about retiring. His little construction firm had done well enough, so he cut back on his hours and let his long-time supervisors run the business. This allowed him to devote more time to his family and their quality of life.



In the meantime, he asked two of their best friends for help with his retirement. Steve was a stockbroker and managed Mike's 401(k). He was a really good stock picker but not a trained estate planner. Still, he did his best to save Mike some money. The second was Rhonda, the attorney. Rhonda was a pit bull in during a trial, but she wasn't an expert with estate planning. Still, any attorney should be able to handle a simple Will. So, Rhonda took care of the Will.

**Mike and Pam celebrated.** They had a solid retirement, with an estate plan and a legal Will. They turned their attention to spoiling their grandchildren and volunteering at their church. Life was good. Then, it all came crashing down. Mike had a stroke. Within days, he was lying in a nursing home, unable to communicate.

**The subtle difference.** This is where that subtle difference between right and nearly right first reared its ugly head. First, the nursing home bills began to pile up. Pam paid them from their checking and savings, but those accounts ran low quickly. When she considered her options, she was relieved to have Steve the stockbroker to rely on. She asked him to help her draw money from the 401 (k). His reply was silence.

Steve had not planned for that. He was helpless because the 401(k) was in Mike's name, not Pam's. By law, a 401(k) is not a joint account. So, Pam could not get to any of the money. Even though she was the legal beneficiary – and even though Mike desperately needed his own money - she could not get to the money. Pam was starting to panic. She thought, "What do you do when you have bills to pay and no money?"

Had everything stopped right then, the situation would have been horrible enough, but Pam could have moved on. But, it didn't stop. Mike lingered and the debts mounted. Pam was about to put their house up for sale when she called Rhonda, the attorney. If anyone could find a way for her to gain access to the 401(k) money, it was her. Because of their friendship, Rhonda had handled all the family's legal affairs for many years. But, she was out of her element dealing with serious estate issues, so she referred Pam to an estate planning attorney who patiently explained the facts to Pam.

**How to gain access to the 401(k).** This new attorney said that there were only two ways to get money from the 401(k). First was through a Durable Power of Attorney. If Rhonda had helped Mike set one up, the problem would be solved. But they had not set one up because Rhonda didn't know to do it. At this point, because Mike was incapacitated, it was just too late.



The second way was to initiate something called, the “Guardianship/conservatorship process.” It requires an attorney to petition the court to declare Mike “legally incompetent.” Then, to request that Pam be made the legal guardian and conservator of his personal and business affairs. That sounded easy enough, so Pam started to get optimistic. Just sign some papers and call it a day – so she thought.

Next, the attorney asked Pam, “You helped Mike manage the construction business, right?” And, all the optimism faded. The attorney continues, “Please, understand this. Someone – anyone- could challenge your request, saying that you’re incapable of looking after Mike or running the business. The court could then turn around and appoint a professional to do that. And, that person would hire a lawyer, CPA and other specialists. Instead of solving the problem, this would just create more problems and each would cost you more money, because you would have to pay for all of that.”

Had everything stopped right then, the situation would have been catastrophic, but Pam's life could have restarted. But, it didn't stop. Mike suffered a second stroke. He was rushed back to the hospital and put on life support. His end was near and the doctor asked if Mike had a living Will to guide him in the end-of-life decisions. This was something else Rhonda the attorney had not known to consider.

In addition to all the money worries, the questions of organ donation and life support now fell on Pam's shoulders. She explained the options to their children. The kids were

in their 30s and married, but their family relationships had always been close. When Pam told them that she wanted to put a merciful end to Mike's lingering death, a violent argument erupted. The kids couldn't condone doing that to their father. Between the shouting and cursing, their relationships were wounded and feelings crushed.

That's when Mike died. By the time the funeral was over, Pam's life was a disaster financially and emotionally. She was a grieving wreck. Her children were not speaking to her or to each other. They had been forced to make painful decisions without preparation and under severe duress. Pam had sold their house and liquidated all their assets except the construction business. She even sold her rings.

Had everything stopped right then, Pam would have climbed into bed and cried for weeks. But it didn't end. Her husband was gone, but she had been through a fate worse than his death. And, that's when a new problem entered Pam's life – Probate. This is the process through which the court pours through a Will and decides who gets what. It's also how Pam could finally gain access to Mike's 401(k) and other assets.

First came the delays. Then, the public notice. Then, one of Mike's supervisors contested the Will, claiming that Mike had promised to pass the business to him in return for his loyalty.

**What's worse than death?** One catastrophe after another had smashed into Pam. When she should have been able to care for her husband and family, she was forced to deal with a mountain of debts and legal details. The difference between "right" and "nearly right" was too great. In an all-or-nothing game, that subtle difference defined success and failure. In real life, that subtle difference can turn death into something far worse.

In our story, Pam rebuilt her life. It wasn't the life she had pictured for herself, but she now knew how to make the right decisions. The key, she had learned, is called a Living Trust. You've just seen the results of not having one. The rest of this Paper explains to you what a Living Trust is, and how you can use it to avoid your own fate worse than death.

## WHAT IS A LIVING TRUST?

It's one of the strongest tools available to protect the things that are important to you. This type of legal tool gives you more control, privacy, greater creditor protection, and avoidance of probates.

It's like a bank vault where you keep all your important ownership papers. How does it work? In America today, many business owners set up their business structure so the business is the legal owner of property they use every day. These are things like



buildings, cars, trucks, computers, furniture and bank accounts. For them, it makes perfect sense to add a serious layer of protection.

A Living Trust gives you that same layer of protection. The steps are simple: 1) You establish your trust and name yourself as the trustee. Then, 2) you transfer ownership of your assets to the trust.

Because you own the trust, you decide what happens to your assets. In virtually every case, you are the trustee of your trust while you are alive. You can also name yourself as the beneficiary. In other words, you get to use the assets as well as benefit from them. Your Living Trust gives you that serious layer of protection.

When assets are in your Living Trust, you retain complete control of them and have complete and unlimited access to them. While you are alive and competent, you are the trustee, and you maintain complete control. Therefore, you can sell your assets, or even give them away at any time. The only difference is a legal technicality - your trust "owns" the assets.

Since you do not technically own the property and assets, when you die they do not go through probate. This ability to avoid probate is a huge benefit to your family - as you have just seen. The only assets that must pass through probate are assets that are in your name at the time of your death. Because you do not technically "own" the assets in your trust (your trust does), your Living Trust enables your property to pass directly to family, friends, and others after you die. Using a Living Trust will help your heirs from paying attorney's fees, probate fees, executor fees, and inventory fees. Sound pretty good so far?

Your Living Trust allows you to appoint someone you trust (called a successor trustee) to manage and distribute the assets in your trust. This is extremely important. When/if you are no longer able to do it yourself, your successor trustee becomes your best friend. He or she will make certain your property goes to whomever you choose and your wishes are carried out when you die.

In other words, this is how you protect yourself in case you ever become disabled or incapacitated. You can name someone to care for both your medical care and your estate. You have complete control over who gets your property, and when they get it.

**Types of Living Trusts:** (Called a “living” trust because you create it while you’re still alive.)

- 1 ~ **A revocable Living Trust.** These trusts are “revocable” because, as long as you’re mentally competent, you can change or end the trust at any time, for any reason. You need no one’s permission to do so.
- 2 ~ **Irrevocable Trust.** These types of trusts cannot be changed once executed. They can be used to provide a source of income for your spouse and/or children. The trust’s assets will also pass to the named beneficiaries.

## **Benefits of a Living Trust**

### **Control**

A Living Trust puts the power of control in your hands. You distribute your estate exactly as you see fit. You choose who benefits, how much they receive, when they receive it. You also choose if they must meet certain conditions before they receive the inheritance.

Here’s how you get to exercise control:

### **Who**

First, you! The trust is yours, so you can benefit however you want. Second, whomever you want! to share your property with. You are able to distribute your assets to whomever you wish. You can give everything to one individual (for example: your spouse or child or friend). You could even elect to support hundreds of people, like graduates from an orphanage or local military veterans. You can even include future generations that have yet to be born if you wish. And, you can exclude people, too. The point is, you get to decide! Isn’t that better than a probate court determining who is most worthy of your estate.

### **How Much**

You also are in complete control of how much of your estate each individual receives. Whether you want your children to equally share your estate, or stipulate more specific instructions, the choice is entirely yours.

### **When**

The Living Trust allows for you to distribute your estate immediately, or whenever you choose. You can choose any amount of time to pass after your death to distribute your assets. You can even pass along your assets to unborn children and future generations.

### **If**

To illustrate how much control you have with a Living Trust, imagine you have a grandchild with a drug problem? Or a grown child without the maturity to handle a large inheritance? For whatever reason you choose, you retain complete control of the assets you place into your Living Trust.

You could decide to use the Living Trust to care for a loved one with special needs. If you want, you can stipulate a certain portion of your assets to provide for medical and daily living financial needs. The decision is entirely yours!

## **PROTECTING YOUR PRIVACY**

The probate system makes all transactions a matter of public record, including your personal finances. Your Will (like all Wills) must go through probate. When your entire estate is represented in your Will, your personal information is open to the general public. That's just an unfortunate fact.

However, if you transfer your assets into a Living Trust, your personal information is shielded from the general public. That's because the assets in your Living Trust do not go through probate. Thus, your secrets by-pass public scrutiny. Your Living Trust keeps your estate and financial information private and secure.



## **Greater Creditor Protection**

An estate that has been planned in advance with a Living Trust is more effective at protecting your assets from disreputable creditors. This is how you avoid a tug of war with your family's money.

You see, when someone dies, most states require an announcement to be placed in the local newspapers. That announcement is actually an invitation for anyone to file a claim against your estate. It could be a completely fraudulent claim, but your family would still have to deal with it - unless you have a Living Trust. This aspect protects you from crooks. In other words, with a Living Trust, there is much less of a chance that strangers will suddenly "appear" and try to separate your money from your heirs.

Since your trust does not become part of the public court records, your family is safe guarded from being hounded by disgruntled heirs and unethical parasites who prey on grieving survivors.

## **Time & Avoiding Probate**

The probate process can take as little as a few months, but some take as long as several years to complete. On average, probate takes about 9 months to complete. In complex situations, it is not unusual for probate to last 18 months to three years.

Without a Living Trust, your family could spend months, or years in probate courts paying for legal acrobatics. There are many sad stories of families struggling through the probate system for years without access to bank accounts. A Living Trust shields your family from such agony.

## **Avoids Multiple Probates**

Stop for a moment and think of all the negative experiences the probate process can bring to your family: humiliation, costs, inconvenience, personal agony, and loss of control. Then, multiply those frustrations by the number of states in which you own property. That's how many probate courts your heirs will have to deal with. If you have a rent house in one state, a beach condo in a different state and a ski lodge in another one - well, it quickly gets extremely complicated and inconvenient. It can also get very expensive as you might have to hire a different attorney in each state.

A Living Trust can control all your assets, even real estate you may own in other states. If you have a Living Trust, and you've transferred title of your important assets into it (especially those assets in other states), there is usually no need for probates in other states after you pass away.



## **Difficulty in Contesting**

A Living Trust is not the perfect fortress for all situations, but it is far more effective than merely a Will.

With a Will, anyone can come forward and claim part of your estate. To invalidate a Will, a person must generally prove that the Will was not properly executed, that it was signed under duress, or that it was signed under influence or during incompetence. Those accusations are difficult to prove, but such challenges are made in the courts every day.

More importantly, when your Will is contested, your assets are frozen. Everything stops. Nothing can be distributed until the claim against the estate is resolved. Under those conditions, your family might decide to pay-off someone contesting your Will, no matter how absurd the claim.

## **Why A Living Trust**

While a Will is a fine estate planning tool, often it simply is not enough. A Will often lacks the power to protect your privacy and assets. That's why it is vital to consider a more comprehensive approach - the Living Trust is the foundation of your comprehensive protection.

A Living Trust protects your assets, avoids probate, and gives you complete control of your estate both now and after you are gone. As a comprehensive estate planning tool, a Living Trust creates a strong wall around your estate.

## **How to Set up A Living Trust**

The process of setting up your Living Trust is called “funding.” This does not mean transferring funds into the trust. To *fund* a trust, you simply transfer ownership of property and assets out of your name into the name of your trust. By placing the assets under the ownership of the trust, you then place them safely behind a solid legal wall - a safe distance from probate. And, that means you protect them from various greedy hands.

The process of funding your Living Trust takes a little time and effort, but is actually quite simple. You can fund your Living Trust while you are still alive or even after you have passed away.

## **Funding Your Trust While You’re Alive**

If you want to transfer your assets into the Living Trust while you are living, you simply re-title your assets from your personal name, and place in the name of the trust. For example, you would head down to the Department of Transportation in your area and change title of your vehicles from your name to the trust’s name.

Some people wait until just before death to transfer ownership of their assets into the trust. In theory, this seems like a much simpler way to fund your trust, but it relies on your knowing the precise time and date you are going to die. It also requires you to know the precise location of all your assets and related legal documents.

Imagine someone planning to transfer his assets into a Living Trust just before death, but he dies one day too soon. The result would be tragic. His assets would pass through probate. Heirs would pay estate taxes. They would not have access to the account during the probate process. Strangers could make a claim on the assets. The surviving spouse would lose control over who received what portion of the inheritance. And, all of that could have been so easily avoided.

## **In Conclusion**

Is a Living Trust right for you? There is only one way to find out. Ask!

If it is the right tool for you, and you don’t find out, you are taunting fate and opening the door to your own fate worse than death. Except, it won’t be you going through the anguish, it’ll be your family. Please, protect them from that nightmare.



Robert A. Sagar is the Founder and President of The Senior Financial Center. He is a true “out of the box” financial professional. His creative ideas and solutions helped him win numerous regional and national awards for his “dedication and exemplary service.” Bob speaks at many conferences through the year, teaching financial advisors how to provide “different and better” service to senior clients.

Bob is a real specialist. He’s a frequent guest on radio and TV, discussing issues important to retirees. He has recently been featured on Eyewitness News and ABC News “Good Money” Show. He had also been featured in *Newsweek*, *Time* and *U.S. News & World Report*, three years in a row for his outstanding service to the business community.

Bob is the author of the book *Financial Success for Seniors*. He hosted the popular radio show “Senior Straight Talk.” And, he created America’s first financial franchise model exclusively serving people 60 and better.

The Senior Financial Center, Inc.  
330 Sunrise Highway  
Rockville Centre, NY 11570  
800-618-1825  
[info@seniorfinancialcenter.com](mailto:info@seniorfinancialcenter.com)