

LIVING TRUST SCAMS **AND THE SENIOR CONSUMER**

If you are age 50 or older, you should take special care when buying living trusts. Your age group is often a special target of salespersons whose goal is to sell you something without carefully analyzing your needs.

It is easy to become a victim. Living trust sales are a growing area of consumer fraud. Con artists make millions of dollars every year selling unnecessary trusts. Each year thousands of consumers lose from \$500 to \$5,000 through the purchases of unwarranted living trusts. Often families face potentially greater costs after the consumer's death, resulting from problems associated with the trusts.

To protect yourself, follow these guidelines:

- 1. Take time when making your decision. Do not fall victim to high-pressure, "act immediately" sales tactics.**
- 2. Seek the advice of someone trustworthy and knowledgeable. Contact your accountant, estate planning attorney, banker or financial advisor.**
- 3. If you conclude that a trust may be right for you, deal directly with a licensed Texas attorney who has substantial expertise in estate planning. If the attorney is board certified in estate planning and probate law by the Texas Board of Legal Specialization, he or she is presumed to have this expertise (though an attorney does not need to have this designation to be qualified to do your estate planning work).**

FRAUDULENT AND MISLEADING STATEMENTS USED IN LIVING TRUST SCAMS

Con artists promote their business by making false or incomplete statements about the probate process, guardianships and the taxation of estates. Such statements include:

1. Living trusts reduce your estate tax liability.

Misleading. Most Texans' estates will face no death taxation (estate tax) at all. Estate tax is imposed if the decedent's assets at death exceed the limitation imposed by law currently in effect for that year, i.e. the year of death. If your estate is taxable, a will can accomplish exactly the same tax savings as a trust at a much cheaper cost.

For instance, if you die anytime from 2007 until 2009, your estate will be subject to estate tax if your assets total more than \$2,000,000.00 (i.e., any assets over this amount are taxed). In 2009, this amount will increase to \$3,500,000.00. Under current law, the estate tax will be repealed in the year 2010 but the tax will be reinstated in 2011 and the limitation will be \$1,000,000.00 until it is increased.

If the value of your assets could exceed the applicable limitation (or if a husband's and wife's combined assets could exceed that amount), you should see an estate planning attorney to minimize your potential estate tax liability regardless of who receives your property. However, a living trust is not required to take advantage of other techniques to minimize estate tax liability.

2. Living trusts will help you qualify for public assistance benefits.

False. A living trust will not help you qualify for public assistance benefits, particularly nursing home Medicaid benefits.

3. You can avoid the Medicaid Estate Recovery Program (MERP) by placing your homestead in a revocable trust.

Misleading. When a Medicaid recipient dies, MERP is a federally mandated program that attempts to recover from the recipient's estate what Medicaid paid for all services provided to that individual. In some instances, a lien may be placed on the home of the Medicaid recipient to help recoup costs when the home is sold. By placing the homestead in a revocable trust during the recipient's lifetime, MERP might be precluded from attaching a lien to the property in the future. However, what the con artists do not tell you is that by placing the homestead in a revocable trust, the homestead would lose its exempt status for Medicaid purposes and the individual or individuals who placed the homestead in a revocable trust may no longer qualify for Medicaid benefits.

4. Living trusts help you avoid contested wills.

Misleading. Because a "trust" and a "will" are separate legal concepts, a trust is not subject to a will contest. However, trusts just like wills are subject to attack on the basis of lack of capacity, undue influence, and fraud.

5. Living trusts help you avoid your creditors.

False. During your lifetime and even after your death, assets in a living trust are subject to the claims of your creditors.

6. Living trusts avoid the expense of a guardianship.

Misleading. A living trust is helpful to avoid the expense of a guardianship in case of your future incapacity. In some circumstances, a durable power of attorney is a simpler and less costly way to achieve the same goal. However, you should choose between a living trust and a power of

attorney after you have considered the advantages and disadvantages of each.

7. Attorneys charge from 3 percent to 10 percent or more to probate your estate.

False. If your family wished to hire the services of an attorney, his or her fee may be based upon an hourly charge or upon a percentage of your estate and rarely do attorneys charge as much as 3 percent. In fact, most attorneys do not charge a percentage of the estate but instead charge an hourly rate for their work.

8. Probate takes years to complete.

Misleading and Very Unlikely. Nontaxable probate estates generally only take a year or less to complete. There are rare circumstances where families and/or the IRS fight over the assets in an estate for an extended period after a death. Such disputes can cause delays in the administration of either a probate or a living trust. In most circumstances the administration of a living trust is no more time efficient than the administration of a will in probate.

9. Probate requires excessive time and money.

False. Texas has adopted a simplified probate process under the Texas Probate Code. These independent administrations, which account for more than 80 percent of Texas probates, involve only one court hearing and the filing of an inventory. Independent administrations can be accomplished through a properly drafted will, and are not usually available if there is no will.

10. Everyone should have a living trust.

False. While a living trust is appropriate for some people, the cost of creating, funding and administering a living trust outweighs the benefits for many people. It is important to decide what your needs are before creating a living trust. For

example, the living trust can be an important device to enable a person to obtain assistance in managing assets. Many persons lack the capacity to manage their assets, or have lost that ability through ill health. For persons who own out-of-state property, the living trust can help avoid the need to probate their will in that state. If neither of these goals are your objectives, a living trust may not be an appropriate document for you.

11. The living trust is the only way to avoid probate.

False. If your goal is to avoid probate, there are several ways to do so. Joint tenancy with rights of survivorship and multiple party accounts with financial institutions are common and inexpensive methods of avoiding probate. However, always consult with an attorney before proceeding with these options, as they may likely conflict with your current estate planning.

**WHAT YOU CAN DO
TO PROTECT YOURSELF**

It is very difficult to get your money back if you are cheated in a living trust scam. So before you buy, and better yet, before you allow a salesperson in your home, remember:

1. Always take sufficient time to make your decision.

- Legitimate advisors understand when you want more information about their services or products.
- Be sure to talk with someone knowledgeable whose advice you value when considering a trust.
- Never respond to an offer you do not thoroughly understand.
- Avoid buying on impulse or succumbing to sales pressure to “act now.”

2. If you conclude that a trust may be right for you, deal directly with a licensed Texas attorney who has substantial expertise in estate planning.

- Be sure you are working with someone with the necessary training and education.
- If a trust is right for you, an attorney with knowledge of Texas law should draft the documents. Avoid using standard forms, kits or computer software programs for any of your estate documents as the laws vary from state to state and may not be tailored for the requirements of Texas law. A licensed Texas attorney with expertise in estate planning should prepare, or at least review, your living trust. Also, a trust prepared by an attorney will generally cost less than the prices charged by trust salespersons.

**HOW PEOPLE BECOME
VICTIMS OF LIVING TRUST SCAMS**

Con artists make false and misleading statements to older people through:

- 1. telemarketing and mail solicitations;**
- 2. door-to-door sales;**
- 3. “free” seminars and workshops, and;**
- 4. advertisements.**

Often con artists attempt to meet in your home through offers of a free living will, a free power of attorney, or a free estate analysis. Many also offer unnecessary partnerships, limited partnerships, family partnerships, and limited liability companies.

If you feel that you have been a victim of a con artist, a living trust salesperson, or an unethical attorney, please contact the State Bar of Texas. While non-attorneys are not subject to State Bar rules, they may be practicing law without a license.

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