

Living trusts

Many people worry that a large portion of their life savings will go towards taxes when they die or that their assets will be tied up in probate. The living trust has been marketed as an estate-planning device that helps people avoid probate problems. While a living trust can be a valuable financial planning tool for some people, we caution consumers about misleading claims or exaggerations.

What is a living trust?

With a living trust, you designate a trustee with financial expertise to manage your assets and allow for a smooth transition of property when you die. Properly drafted and executed, a living trust can avoid probate because the trust owns the assets, not the deceased. Only property in the deceased's name must go through probate. Probate of the estate may not be required, so court costs and lengthy waiting periods might be avoided. A living trust cannot eliminate tax liability or guarantee the trust will not be legally challenged. Poorly drawn or unfunded trusts can cost you money and endanger your best intentions.

A living trust is different than a living will. A living will expresses

your wishes about being kept alive if you are terminally ill or seriously injured.

Common scams

Prepared forms or kits used to establish living trusts are currently being sold through magazines and door-to-door contacts. Other companies offer free seminars or workshops to lure customers. Senior citizens are particularly targeted. Consumer complaints indicate that some companies send a salesperson to the home of people who return cards asking for more information. Use caution. Consider the following when obtaining information:

- Company representatives may misrepresent the advantages or effectiveness of trusts to make a sale.
- Background material provided on living trusts may omit or misrepresent information related to probate procedures, estate taxes, marital property laws and guardianship. Make sure you get accurate information about all your concerns.
- A living trust should be customized to meet individual needs. For some people, a living trust may not be worth the

effort. Others may consider using the trust in conjunction with a will. How a trust is drawn up depends on the type of property being placed in the trust and the purposes for which the trust is formed. Do-it-yourself kits which contain standard forms and language may not address your needs.

- Mail order trusts can be just as expensive (sometimes more expensive) as trusts drafted by an attorney.
- If you are asked to make a down payment when making arrangements for a trust, be sure to find out how long it will take for delivery of the completed documents and exactly what other fees and payments will be required.

Proceed with caution

Because state laws and requirements vary, "cookie cutter" approaches to estate planning are not always the most useful way to handle your affairs. Before you sign any papers to create a will, a living trust, or any other kind of trust:

- Explore all your options with an experienced and licensed planning attorney or financial advisor. Generally, state law

requires that an attorney draft the trust.

- Avoid high-pressure sales tactics and high-speed sales pitches by anyone who is selling estate planning tools or arrangements.
- Avoid salespeople who give the impression that AARP is selling or endorsing their products. AARP does not endorse any living trust product.
- Do your homework. Get information about probate laws from your county's Register in Probate.
- If you opt for a living trust, make sure it is properly funded – that is, that the property has been transferred from your name to the trust. If the transfers are not done properly, the trust will be invalid and the state will determine who inherits your property and serves as guardian for your minor children.
- If someone tries to sell you a living trust, ask if the seller is an attorney. Some states limit the sale of living trust services to attorneys.
- If you buy a living trust in your home or somewhere other than the seller's permanent place of business (say, at a hotel seminar), the seller must give you a written statement of your right to cancel the deal within three business days.

During the sales transaction, the sales person must give you two copies of a cancellation form (one for you to keep and one to return to the company)

and a copy of your contract or receipt. The contract or receipt must be dated, show the name and address of the seller, and explain your right to cancel. You can write a letter and exercise your right to cancel within three days, even if you do not receive a cancellation form. You do not have to give a reason for canceling. You may wish to consider stopping payment on your check if you do cancel. If you pay by credit card and the seller does not credit your account after you cancel, you can dispute the charge with your credit card issuer.

- Living trusts may be marketed by insurance agents, financial planners, accountants or attorneys. Check credentials.

If not executed properly, a trust may result in costly legal fees for survivors. Trusts are legal documents and should be developed or reviewed by someone who is highly trained. Consult a qualified attorney who can evaluate the use and legality of a trust in the context of other legal issues and your personal situation.

For more information or to file a complaint, visit our website or contact the Bureau of Consumer Protection.

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