



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.

To protect yourself, follow these guidelines:

- **Take time when making your decision.** Do not fall victim to high-pressure, “act immediately” sales tactics.
- **Seek the advice of someone trustworthy and knowledgeable.** Contact your accountant, estate planning attorney, banker, or financial advisor.
- **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 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).

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 save taxes. Your estate can be reduced by a 55 percent death tax.

Misleading. Most Texans’ estates will face no death taxation at all. If your

estate is taxable, a will can accomplish exactly the same tax savings as a trust at a much cheaper cost. Each person may transfer assets of a certain amount “tax free.” Limits apply to such tax-free transfers: \$1 million until 2004; \$1.5 million in 2004 and 2005; \$2 million from 2006 until 2009; and \$3.5 million in 2009. Current law states that the estate tax will be repealed in the year 2010, but reinstated in the year 2011. The value of property that can be transferred tax free will be \$1 million at that time. If the value of your assets could exceed the applicable limitation (or if a husband’s and wife’s combined assets could exceed the 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. 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.

4. Living trusts help you avoid your creditors.

False. During your lifetime, assets in a living trust are subject to the claims of





your creditors. After death, these assets are subject to the claims of your estate's creditors.

5. 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.

Be cautious when you are told the following statements:

- Attorneys charge from 3 percent to 10 percent or more to probate your estate. *This is false.*

- Probate takes years to complete. *This is misleading and very unlikely.*
- Probate requires excessive time and money. *This is false.*
- Everyone should have a living trust. *This is false.*
- The living trust is the only way to avoid probate. *This is false.*

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 — better yet, before you allow a salesperson in your home — remember:

- Always take sufficient time to make your decision.
- 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.

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. ❖

The above information is adapted from the brochure "Living Trust Scams and the Senior Consumer," prepared by the Texas Young Lawyers Association and published by the State Bar of Texas. Contact the Public Information Department at the State Bar of Texas at (800)204-2222, Ext. 1800 for a full copy of the publication.

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