

Don't be scammed by estate myths



Estate-Plan Edge
By CURT FERGUSON

PERIODICALLY, a client tells me they were contacted by someone selling living trusts. Typically that someone is not an attorney and they make money by demonizing lawyers. Often their pitch about living trusts is a come-on to find out about your money so they can make commissions by moving your savings into their investments. Let's consider some of the issues involved in these schemes.

First, it's a crime. If such a salesperson comes knocking, beware: When "a non-lawyer" engages in "the assembly, drafting, execution, and funding of a living trust document or any of those acts" it is called "Consumer Fraud and Deceptive Business Practices" and is a misdemeanor. The second offense is a felony.

Our Legislature realized that the complexity involved in living-trust planning must be reserved for licensed attorneys. If a non-lawyer slips into your kitchen and tries to sell you a living trust, help you decide what it should say (drafting), help you sign it (execution) and help you re-title assets to it (funding), then they are engaged in a

criminal activity.

Second, these schemes are based on myths. A client brought me copies of the sales materials they were given. I browsed through the papers and just shook my head. Most of the claims are misrepresentations with a kernel of truth.

Let's compare some common myths to the whole truth.

Myth #1: The first myth is an exaggeration, that will require "a probate of 6%" (and the hand-written note from this salesman said "8% to 12% on average"). This "expense of probate when you die" is the foundation myth upon which many others are built. The truth is, the attorney's fees and court costs in Illinois are more like 4% to 6% on small estates, and 1.5% to 3% on large estates.

Myth #2: "Eliminates costs associated with probate" is the next classic misrepresentation. You just heard that probate costs at least 6% of your estate, so to "eliminate" that would mean your costs go from 6% to zero, right? Wrong! The whole truth is that the professional assistance needed to wind up a living trust upon death can be expected to cost one-half to one-third as much probate. You replace one expense with a different, somewhat smaller expense. Imagine the salesman telling the whole

truth: Probate on an estate like yours would cost around 4%, but if you use a living trust, the costs are more likely 2% to 3%.

Myth #3: "Possible reduction or elimination of estate taxes" and "flexible for future changes" are supposed advantages of a living trust. The truth: A will can provide estate-tax planning and can be changed as easily as a trust. Each is just a paper document!

Myth #4: "Protection for dependents with special needs" and planning that "lets you keep assets in trust until beneficiaries reach ages you want them to inherit" may be important goals. But once again, you can do these with a will or a living trust.

Myth #5: One handout shows an exaggerated 33-step flowchart of what has to be done by the "executor" of your will but is supposedly not necessary with a trust. The whole truth? Your trustee must do substantially the same steps, like safeguard and inventory your assets, collect insurance and interest, get appraisals, pay debts, file tax returns and distribute the estate.

Myth #6: Ironically, the sales material claims the following to be a disadvantage of living trusts: "Your trust needs to be funded (assets titled to the name of your trust) ... we will show you how and help you through this stage."

The truth is, even with a will, you have to change asset titling and beneficiaries in order to make your will work. Unfortunately, this is often overlooked in will and trust planning.

True peace of mind

The "benefits of a revocable living trust" are said to include "peace of mind." But if you actually believe their bill of goods, you will end up with a false sense of security. I recommend living trusts as a planning tool for many clients. By working closely with families from year to year, we have been able to reduce estate settlement costs to about half of 1%. However, a trust is only a tool in a much more thorough planning process based on the truth, the whole truth and nothing but the truth; a process that provides fully justified peace of mind.

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*Quotes are from printed sales materials of non-lawyers selling living trusts.

Like to comment?

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