THE DANGERS OF "ONE SIZE FITS ALL" LIVING TRUSTS

In an effort to safeguard their money, provide themselves with a "nest egg" for their retirement, and to leave assets to their children, many elder Americans plan for the distribution of their assets upon their deaths through Estate Planning. There are many ways to accomplish this objective. In order to make the right decision, the concerned senior needs to consider the type of Estate Planning that is appropriate for him/her. An example of Estate Planning involves a Living Trust which avoids probate because the individual's assets are transferred to the Trust, whereby the Trust becomes the owner of the assets.

Unfortunately, when it comes to Living Trusts, individuals who are age 65 or older have become a target of salespeople who prey on unwary senior's worries about both preserving assets for their family and avoiding probate. Seniors in Pennsylvania have been flooded with offers for free seminars or workshops promoting Living Trusts. These seminars or workshops typically include either breakfast or lunch at a local restaurant.

Once these individuals attend the free seminar or workshop, they are exposed to high-pressure sales tactics concerning Living Trusts. Furthermore, if the consumer makes the mistake of signing up for more information, they are usually signing up for a Living Trust salesperson to visit their home.

Typically, these sales pitches are fraught with false claims of avoiding death taxes, protection of assets from nursing homes, and inaccurate descriptions of the probate process. Living Trust salespeople will tell the consumer two falsehoods. First, they will state that by creating a Living Trust, the consumer will not have to pay taxes. This simply isn't true. In Pennsylvania, Living Trusts do not prevent an individual's assets from being subject to Inheritance Tax. While Living Trusts may help an individual escape some Federal Estate tax liability, currently, only individuals with assets of over $5,000,000 need to worry about Federal Estate tax. Second, these salespeople will claim affiliation with legitimate nonprofit organizations, such as AARP. In most of the cases, there is no affiliation.

As if these high-pressure sales tactics weren't bad enough, two major problems with these sales seminars include: 1) they are not conducted by attorneys; and 2) the Living Trust the consumer purchases is simply a "kit" or standard form. This ever-growing trend of Living Trust scams aimed at our nation's seniors was illustrated by Congressional testimony taken before the Senate Special Committee on Aging on July 11, 2000, when AARP President stated that since 1991, data shows a 125% increase in people age 50 and older, with incomes of $25,000 or less, who own Living Trusts. This growth outpaced the Living Trust ownership rate of seniors with moderate and higher incomes.

During this same Senate Special Committee on Aging hearing, Chuck Grassley, U.S. Senator and Chairman of the Special Committee on Aging offered this tip to avoid fraud: "My advice to older Americans is, find a financial planner who lives in your town, who has roots in your community, and stick with that person. A stranger who knocks on the door may be here today and gone tomorrow, along with a chunk of your savings."

As an Elder Law Attorney in Mercer County, I have seen firsthand the potentially devastating effects of Trusts purchased through these Living Trust companies. Many consumers who purchased Living Trusts from one of these outfits may not realize that their Trust is unnecessary, drafted improperly, or that in order for their Trust to avoid probate, their assets need to be placed in the name of the Trust. My advice to these individuals is to consult a local attorney who is experienced in Estate Planning to determine whether they have a valid Living Trust document and whether their assets have been properly transferred to the Trust.

Hartle Elder Law Practice, LLC
2500 Highland Road, Suite 105
Hermitage, PA 16148
(724) 962-3606