



Living Trust Offers:

How to Make Sure They're Trust-worthy



You've worked hard for your money, and made every attempt to be a conscientious saver. So it's only natural that you want some control over what happens to your assets in the event of your death. At the very least, you probably want to minimize or avoid potential hassles and headaches for your loved ones.

Estate planning deals with what happens to your assets after you die. Even if you are a person of modest means, you have an estate — and several strategies to choose from to make sure that your assets are distributed as you wish and in a timely way. The right strategies depend on your individual circumstances. That is, what is best for your neighbor might not make the most sense for you.

Facts for Consumers

Misinformation and misunderstanding about estate taxes and the length or complexity of probate provide the perfect cover for scam artists who have created an industry out of older people's fears that their estates could be eaten up by costs or that the distribution of their assets could be delayed for years. Some unscrupulous businesses are advertising seminars on living trusts or sending postcards inviting consumers to call for in-home appointments to learn whether a living trust is right for them. In these cases, it's not uncommon for the salesperson to exaggerate the benefits or the appropriateness of the living trust and claim — falsely — that locally-licensed lawyers will prepare the documents.

Other businesses are advertising living trust “kits”: consumers send money for these do-it-yourself products, but receive nothing in return. Still other businesses are using estate planning services to gain access to consumers' financial information and to sell them other financial products, such as insurance annuities.

What's a consumer to do? It's true that for some people, a living trust can be a useful and practical tool. But for others, it can be a waste of money and time. What is a living trust, anyway, and how does it differ from a will? Who should you trust when it comes to estate planning? And how can you tell which tools and strategies will work best for your particular circumstances?

The Federal Trade Commission (FTC), the government agency that works to prevent fraud, deception and unfair business practices in the marketplace, says that it helps to learn the terms that are used in this aspect of financial planning before you begin conversations about it. For example:

Probate is a legal process that usually involves filing a deceased person's will with the

local probate court, taking an inventory and getting appraisals of the deceased's property, paying all legal debts, and eventually distributing the remaining assets and property. This process can be costly and time-consuming. Many states have simplified probate for estates below a certain amount, but that amount varies among states. If an estate meets the state's requirements for “expedited” or “unsupervised” probate, the process is faster and less costly.

A **trust** is a legal arrangement where one person (the “grantor”) gives control of his property to a trust, which is administered by a “trustee” for the “beneficiary's” benefit. The grantor, trustee and beneficiary may be the same person. The grantor names a successor trustee in the event of incapacitation or death, as well as successor beneficiaries.

A **living trust**, created while you're alive, lets you control the distribution of your estate. You transfer ownership of your property and your assets into the trust. You can serve as the trustee or you can select a person or an institution to be the trustee. If you're the trustee, you will have to name a successor trustee to distribute the assets at your death.

The advantage of a living trust? Properly drafted and executed, it can avoid probate because the trust owns the assets, not the deceased. Only property in the deceased's name must go through probate. The downside? Poorly drawn or unfunded trusts can cost you money and endanger your best intentions.

A **will** is a legal document that dictates how to distribute your property after your death. If you don't have a will, you die *intestate*, and the law of your state determines what happens to your estate and your minor children. The probate court governs this process.

A *living trust* is different from a *living will*. A *living will* expresses your wishes about being kept alive if you're terminally ill or seriously injured.

And, the FTC advises, proceed with caution. Because state laws and requirements vary, "cookie-cutter" approaches to estate planning aren't always the most efficient 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 estate 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 your local probate laws from the Clerk (or Register) of Wills.
 - If you opt for a living trust, make sure it's properly funded — that is, that the property has been transferred from your name to the trust. If the transfers aren't 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.
- Remember the **Cooling Off Rule**. 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.

The Cooling Off Rule provides that during the sales transaction, the salesperson 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 don't receive a cancellation form. You do not have to give a reason for canceling. Stopping payment on your check if you do cancel in these circumstances is a good idea. If you pay by credit card and the seller does not credit your account after you cancel, you can dispute the charge with the credit card issuer.

- Check out the organization with the Better Business Bureau in your state or the state where the organization is located before you send any money for any product or service. Although this is prudent, it is not foolproof: there may be no record of complaints if an organization is too new or has changed its name.

For More Information

To learn more about estate planning strategies, talk with an experienced estate planning attorney or financial advisor, and check out the resources on the following page.

Facts for Consumers

AARP: 1-800-424-3410; www.aarp.org. Ask for a copy of *Product Report: Wills & Living Trusts*. AARP does not sell or endorse living trust products.

The American Bar Association, Service Center, 541 N. Fairbanks Ct., Chicago, Ill. 60611; 312-988-5522; www.abanet.org/publiced/publicpubs.html

Council of Better Business Bureaus, Inc., 4200 Wilson Blvd., Suite 800, Arlington, Va. 22203-1838; 703-276-0100; www.bbb.org

The National Academy of Elder Law Attorneys, Inc., 1604 North Country Club Road, Tucson, Ariz. 85716; 520-881-4005; www.naela.org

The National Consumer Law Center, Inc., 18 Tremont St., Ste. 400, Boston, Mass. 02108-2336; 617-523-8010; www.consumerlaw.org

Where to Complain

The FTC works for the consumer to prevent fraudulent, deceptive and unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint or to get free information on consumer issues, call toll-free, 1-877-FTC-HELP (1-877-382-4357), or use the complaint form at www.ftc.gov. The FTC enters Internet, telemarketing, identity theft and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.



Federal Trade Commission
Bureau of Consumer Protection
Office of Consumer and Business Education

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