

Do You Really Need a

Living Trust?

Tips to Avoid Fraud

What You Can Do to Protect Yourself

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Living Trust Sales are a Growing Area of Consumer Fraud

Each year Idahoans lose thousands of dollars through the purchase of unnecessary living trusts. Often, families face potentially greater costs after a death from dealing with problems caused by the trusts than if there had been no trust.

A living trust is an arrangement to hold your property and assets in trust while you are living, with directives for the disposition of the property at your death. The person establishing the living trusts frequently acts as his or her own trustee. Living trusts go by many other names, including, "Loving Trusts," "Family Trusts," "Revocable Living Trusts," and "Intervivos Revocable Trusts."

There are some situations when a living trust is appropriate. However, the living trust is being sold and promoted for use by people in situations where it serves no useful purpose, or by people whose purpose could be achieved by far less expensive means. Protect yourself from abuse by following these guidelines:

Protect Yourself

- 1** Consult with an attorney who is not involved in promoting living trusts to see if it would be appropriate for you.
- 2** Take time to make your decision. If you are being pressured to "act immediately," talk to someone else.
- 3** Be wary of living trusts being promoted or sold in conjunction with "free" seminars.
- 4** If you conclude that a trust may be right for you, have it prepared by a licensed Idaho attorney who has substantial expertise in estate planning.

Fraudulent and Misleading Statements Sometimes Promote Living Trusts

The sales of living trusts are often promoted by false or incomplete statements about the probate process, guardianships, and the taxation of estates. Such statements include the following:

- 1** **Your Estate Can Be Destroyed by the Death Tax**
MISLEADING Most Idaho estates will face no death taxation at all. In 2013 the federal estate tax affects those who have taxable estates more than \$5.25 million in value which are transferred to someone other than a spouse or charity. Only the taxable portion of the estates over \$5.25 million in value pay federal and state estate taxes at the maximum rate of 40 percent. The 2013 exemption from the Federal estate tax of \$5.25 million is intended inflation for years after 2013. Idaho does not presently have a separate estate tax.

- 2** **Living Trusts Save Taxes**
MISLEADING A revocable living trust saves no more estate taxes than a properly drafted will with testamentary trust provisions.
- 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 are subject to attack on the basis of lack of capacity, undue influence, and fraud, which are the same grounds used to contest a will.
- 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 your death, these assets are subject to the claims of your estate's creditors.
- 5** **Assets in a Living Trust Don't Count for Medicaid Eligibility**
FALSE Any assets that can be applied to your support are counted toward Medicaid eligibility. Because the revocable trust gives you the right to withdraw its assets for any purpose, including your own support, they are considered in determining Medicaid eligibility. Therefore, a living trust is not an asset protection or Medicaid planning tool. The assets in the revocable living trust are also subject to the Medicaid recoupment lien after the surviving spouse dies. In addition, while the home is generally excluded for Medicaid eligibility purposes, the home loses its exempt status when titled in the name of the trustee of the living trust. This can create complexities when applying for Medicaid. Only assets in certain irrevocable trusts may be excluded in determining Medicaid eligibility 60 months after the assets are transferred to the trust.
- 6** **Living Trusts Avoid the Expense of a Conservatorship**
MISLEADING If you become disabled, a living trust may avoid the cost of a conservatorship in some circumstances, but not in others.
- 7** **Attorneys Charge from 3% to 10% or More to Probate Your Estate**
FALSE If your family wishes to hire the services of an attorney to assist with a probate, your family will agree upon the attorney's fee. That fee should be based on an hourly charge. In Idaho, unless there are unusual problems or disputes among heirs, the total fee should be generally less than three percent of the value of the estate.
- 8** **Probate Takes Years to Complete**
MISLEADING AND VERY UNLIKELY There are rare circumstances where families and others clash for an extended period after death. Such disputes can cause delays in the administration of either a will or a living trust. In other circumstances disputes with the Internal Revenue Service can cause delays. However, in most circumstances the administration of a living trust is no more expeditious than the administration of a will in probate.
- 9** **Probate Requires Court Hearings**
FALSE Idaho provides a simplified probate process under the Uniform Probate Code. These informal procedures, which account for most Idaho probates, involve no court hearing and may not require the filing of an inventory for the estate. Unfortunately, some states, including California, have not adopted the Uniform Probate Code. Thus, some of the criticisms of cost and delay are based on the probate procedures of other states, not those of Idaho.

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Everyone Should Have a Living Trust

False The costs of creating and administering living trusts outweigh the benefits for many Idahoans. For a few, the living trust is a useful device to obtain asset management. These individuals lack the capacity to manage their assets, or have lost that ability through ill health. They name family members or corporate trustees (typically banks) to provide administration through a living trust. For others who own real property outside of Idaho, the living trust can be a useful tool to avoid that state's probate process.

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The Living Trust is the Only Way to Avoid Probate

False If your goal is to avoid probate, there are several other ways to do so: Pay on death (POD) accounts, transfer on death (TOD) designations of securities and joint tenancy on real property are common and inexpensive methods of avoiding probate. However, if your estate, or the combined estate of a married couple, may exceed \$5.25 million, you should consult your tax advisor or attorney before using these methods.

False and misleading statements about living trusts are commonly made through:

1. Free Seminars and workshops
2. Advertisements
3. Telemarketing and mail solicitations
4. Door-to-door sales

It is very difficult to get your money back after you've paid for the living trust. Before you make a commitment at a seminar or before you allow a salesperson in your home, remember:

- Always take sufficient time to make your decision.
- Legitimate advisers understand when you want more information about their offer or their company.
- Be sure to talk with someone knowledgeable whose advice you value when considering a trust. Contact your accountant, attorney, banker, or financial adviser.
- Never sign a document you don't thoroughly understand.
- Avoid buying on impulse or succumbing to sales pressure to "act now."
- If you conclude that a trust may be right for you, we recommend that you deal directly with a licensed Idaho attorney who has substantial expertise in estate planning.

For referral to a lawyer or more copies of this brochure contact:

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