

Thinking About Getting a \$399 Living Trust?

Think Again, Very Carefully...

You may have noticed certain ads that offer Living Trusts at cut rates. This may sound great, but before you jump to get a “bargain” trust, be sure you know all the facts -- and pitfalls!

First, ask if you will be meeting with a qualified estate planning attorney in developing your plan, and if the attorney will then draft your documents.

The companies selling “bargain trusts” usually have to produce them in high volume – hundreds or even thousands a month – in order to cover their marketing and other overhead costs and still make a profit. That’s why they’re often referred to as “trust mills.”

The companies often try to give the appearance of being a law firm. They use language in their ads such as “Estate Planning Firm,” “Reputable Estate Planning Attorneys,” “Estate Planning Specialists”; or mentioning the names of certain attorneys; or use a firm name (such as “Estate Services,” “Estate Planners,” “Trust Services,” etc.) that makes them sound like a legitimate law firm: They may have an attorney give their presentation. However they do it, they’re intentionally hiding the real truth from you. Here’s why: usually, you will have no direct contact with an attorney at all during the process of establishing your trust. That’s like getting critical surgery from a doctor you’ve never seen and who has never examined you!

Worse yet, imagine having the surgery performed by a nurse or anyone right off the street! Here’s how most of these trust mills set up your trust: first, they don’t have a consultation meeting with you, rather they merely have you fill out a simple form questionnaire; no doctor or even nurse examines you, instead you do it yourself! They then send your questionnaire to their document production facility, which is usually out of state (we’ll tell you the reason why a little later). They crank out your trust – along with thousands of other “one size fits all” trust documents – by inserting a few items of information from your questionnaire into a pre-printed package with blanks or using a simple computer program. No attorney is involved in drafting your

trust and the non-lawyer doing it may not even be trained as a paralegal! So who's really doing your surgery?

Sometimes, the trust mills will try to soft-pedal this issue by claiming that their documents were created by an attorney or that they are reviewed and approved or signed off by an attorney after they are generated. If they claim this, ask, "How many attorneys do you have on staff?" Think about it – how can one or two attorneys properly review thousands of trusts, particularly if they have never met the clients and have relied on a simple questionnaire that may not tell them all they need to know and they never ask any follow-up questions? You might also ask "Are the attorneys (if any) licensed in California?" If not, they know they can't be regulated by the California Bar!

Another way that these trust mills will try to cleverly get around this Issue of the "mystery surgeon" is through hidden disclaimers.

When you sign up for one of their trusts, a disclaimer will be innocuously buried in the form stating, "We are not providing legal advice." That should be your warning, right there, to stay away! Unfortunately, people often don't have time to read this fine print, because they are pressured to immediately sign up for their trust!

Another tactic these trust mills use is to claim that their attorneys or other personnel "specialize in estate planning." Sometimes they even create their own bogus title for their representatives, like "Certified Estate Planner," which they award after a two hour course! Unfortunately, most consumers don't realize that literally anyone can say they are an estate planning specialist. However, only an attorney who has demonstrated a certain number of years of experience in estate planning, passed a special Bar examination, and been reviewed by his professional peers can call himself a "State Bar Certified Specialist in Estate Planning, Trust & Probate Law."

Think about it this way – if the State Bar, which is empowered with regulating attorneys and the practice of law in California, says that estate planning is a specialty area of law, why would you think that someone who has never even gone to law school and become an attorney would be properly qualified to take care of this for you? Or that any attorney with limited experience and training can do it properly?

In fact, many of these trust mills are operating *illegally!*

They are engaged in the "unauthorized practice of law" in violation of the California Business and Professions Code Section 6126. Of course, this is exactly what they want to do, so that they can't be regulated by the State Bar and they can avoid restrictions placed on attorneys. An attorney can lose his license if he engages in false and misleading advertising and marketing, or operates a "feeder organization," or makes face-to-face solicitations.

What "false and misleading advertising and marketing" do the trust mills use to their advantage (and your disadvantage)? They often – in their ads and seminars – exaggerate the cost of probate to scare you into buying their trust, *right now!* They

say probate “averages” or “often takes away” 10% of your estate; the truth is, in California, probate fees are generally less than 5% and often only about 2%. These trust mills also make false and misleading statements regarding the possibility that you might enter a nursing home, for how long and the costs – plus, they don’t apprise you of all your legal options to qualify for Medi-Cal or other government benefits (because, as you’ll see, they really want to sell you annuities, long-term care insurance or some other insurance or investment products for a big commission).

What’s a “feeder organization”? An attorney cannot run a law practice strictly to generate work for another affiliated business enterprise. Think about this –how do you think these trust mills make money doing \$399 trusts, considering their large, expensive newspaper ads, seminar costs, etc.? The answer is:

Their trusts are merely “loss-leaders” which open the door for them to sell something else that’s far more profitable – for them!

Here’s how they do it. They present an emotionally charged seminar that pressures you to sign up for your trust right there – you have to immediately make your decision, sign an agreement and leave them a deposit right then and there, otherwise you don’t get the advertised “discount”! This high pressure tactic often winds up with people signing up to do a trust before they really ask all the questions they need to or before they even read in detail the agreement they sign. (Attorneys are prohibited from such “face-to-face” solicitation; they can give a seminar and offer for you to come in for a free consultation, but they can’t sign you up to do business and take your money right at the seminar.)

Here’s where things get even more sinister.

Often, their ads say something like: “A licensed insurance representative will contact you and present your trust once it has been processed.” Why is that?

Often buried in the fine print of the agreement you sign is a statement that the trust mill “can use your information for estate and *financial* planning purposes.” This now permits them to immediately give all of your financial information to their affiliated commission-based salesmen. When your trust document is ready, its’ delivered to you, often in your home, and signed and notarized not by an attorney – but by this salesman, who then will pressure you and won’t leave until you move your assets into annuities or other insurance or investments, usually ones with high commissions and low performance! Worse yet, the products they sell usually charge you large penalties if you try to get out of them later!

Also, these trust mills don’t want to be subject to State Bar rules and California statutory laws that prohibit attorneys from paying compensation to a non-attorney in exchange for referring new clients to them. Often, at the trust mill’s seminars or in their handout materials, they state that they will pay you a special fee if you recommend your friends to them! Again, it’s all about the money (not the quality of what you get, as you’ll see later).

If you think we're making all this up, then consider the real life case of a trust mill called "Alliance for Mature Americans." They operated pretty much as we have described above and were put out of business by the State Attorney General in 1999, fined \$1.5 Million, and required (along with their affiliated insurance company) to return over \$100 Million to their customers! In addition, the "back room attorneys" assisting them were disciplined by the State Bar for "aiding and abetting the unauthorized practice of law," as well as other professional ethics violations.

You may wonder, "If these trust mills are operating illegally, how are they getting away with it?"

Although law enforcement agencies have made an effort to crack down on these illegal organizations, they keep coming back, typically using "blitzkrieg" marketing campaigns (large ads and massive direct mail, with lots of seminars in an area for a short time period). Remember, we mentioned that they very often have their primary office out of state. The reason why is that the State Attorney General's office can't reach them there. Nor can their customers – who may later want to sue them to recover the money they've paid for their poorly drafted trust, or worse yet, recover their life savings that they hastily invested.

This is why you will often see these trust mills "fly by night" by having a series of seminars all over the local area for awhile and then disappearing – to another state.

These trust mills like you to think that they're solid and that they've been around for some time. They even promise they'll make free changes to your trust forever – but will they really be there when you and your loved ones need them? Or will they have run to new "virgin territory" or been run out of business by the law?

You might be thinking – if these trust mills are operating illegally, why doesn't anyone stop them? Unfortunately, the State Bar can only regulate attorneys and law firms, not these trust mills. The State Consumer Affairs Department and Attorney General's office, plus the local District Attorneys, generally do not want to pursue action until people can demonstrate that they have already suffered significant harm! In other words, these enforcement agencies are just too busy with other more serious crimes.

If thousands of Californians, in particular unsuspecting seniors, are being targeted by these trust mills and having their life savings jeopardized, is there any doubt that serious public harm will inevitably follow?

**Even if we give these trust mills the benefit of the doubt – that some are operating legally – the question now is:
What kind of trust are you going to get from them?**

All trusts are not created equal! Like anything else made by man, there are good trusts and bad trusts.

Unfortunately, most “one size fits all” trusts that come from these mills are bad, very bad. They are generally only a few pages long and lack many of the important provisions that a well drafted trust should have.

Often, important considerations are not taken into account when the trust is drafted: the trustees may not be appropriate for the plan; the distributions of your assets aren’t tailored to each beneficiary’s money management skills, needs, and marital and family situation; your beneficiaries’ inheritance is often not protected, once they receive it, from their spouse, creditors, and other unscrupulous fortune hunters; your distribution plan may not fit the “one size fits all” form, such as if you have children of different marriages; there is generally little or no coordination with beneficiary designations of your IRAs, other retirement plans and life insurance, which do not pass under your trust; and their “bargain” trusts often have little or poor estate tax planning built in.

Worse yet, the trust mills like to give you the idea that they will get all your assets into the trust, but they don’t. They may even say they will at the seminar, but the agreement you sign says in small print, “You are responsible for making the transfers to your trust.” Having a trust without your assets properly transferred to it is like having a car with no gas in the tank – it simply isn’t going to run properly. If assets are left out of your trust, your loved ones may not avoid probate, which was probably the major reason they “sold” you the trust in the first place.

We know all this, because we fix a lot of these “bargain” trusts, just about every one we see. Unfortunately, sometimes it’s too late. Don’t let this happen to you!

For further information on how to properly shop for a Living Trust, see the Kavesh, Minor and Otis Consumer Checklist, “What You Should Ask When Choosing Your Estate Planner.” (at www.kaveshlaw.com)

Also, for more information, see:

www.insurance.ca.gov/LGL/Life_Insurers.htm

www.aarp.org/confacts/money/wills-trusts.html

<http://aging.senate.gov/oas/hr53gh.htm>

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