



# FACTS

## FOR OLDER CONSUMERS

National Consumer Law Center®

### TIPS FOR SENIORS ON LIVING TRUSTS

Many seniors worry about what will happen to their property after they pass away. This process, often referred to as “estate planning,” can be very important but also very confusing.

One of the most critical choices you will face is whether to get a living trust, will, or both. There are many unscrupulous companies that will try to convince you that a living trust is the best way to go. This may be true for some. But for many, a living trust will simply be a waste of precious resources.

The process of estate planning can also be perilous. That’s because predators and unscrupulous sellers of financial products sometimes market estate planning products and services as a pretext to drain or steal seniors’ assets.

This fact sheet will give you basic information about living trusts and wills, and describes some of the most common scams.

### UNDERSTANDING THE TERMS

#### • TRUST

A trust is a legal arrangement where one person (known as the “trustee”) controls property given by another person (known as the “grantor” or “trustor”) for the benefit of someone else (known as a “beneficiary”). Although it is not a requirement, with most living trusts, the grantors are also the trustees during their lifetimes, as long as they remain competent.

#### • LIVING TRUST

The term “living” refers to the fact that these trusts take effect while the grantor is still alive. In order for this to happen, grantors must transfer their property and assets into the trust. Under most living trust arrangements, grantors, while still competent, are free to change the terms of the trust. A **living trust** is different from a **living will**. **Living wills** are documents that express your wishes about being kept alive if you become terminally ill or seriously incapacitated.



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- **WILL**

A will is a legal document that gives direction about how you want to distribute your property after death. It does not take effect until your death.

- **PROBATE**

Probate is the legal process that usually involves filing a deceased person's will with the local probate court, taking inventory of the person's property, paying all legal debts, and distributing the remaining assets and property. If the person died without a will (this is called intestacy), the estate still must be probated and property will be distributed according to state law.

## **LIVING TRUSTS VS. WILLS: WHATS THE DIFFERENCE?**

Wills and living trusts allow you to choose how your property will be distributed after death. Although there are other issues to consider, the primary advantage of a living trust is that it can make it easier to avoid the delays and costs that sometimes arise in probate. Property transferred into a living trust before death does not go through probate. However, this may not matter to you because you may not have to worry about probate in any case.

It is important to understand that:

- **A living trust is not the only way to avoid probate.** The rules about probate and avoiding probate are often different in different states. It is best to check with a lawyer to find out more information.
- **Most states have rules that allow small estates to be administered outside of probate or through an "expedited" probate process.** These rules are different in each state. You can find out more from the Clerk (or Register) of Wills or from a local attorney.

## **MAKING CAREFUL DECISIONS**

Deciding whether to purchase a living trust is difficult. You will need to weigh the likelihood and advantages and disadvantages of having your estate probated after your death against the cost of purchasing a living trust now. Try to stick to the facts and be wary of the exaggerated and often outrageous claims that living trust companies make about their products. Claims to look out for include:

- **False Claims About the Probate Process.** Many companies use advertising slogans such as "The Choice is Yours: Sacrifice Money to the State or Protect Your Loved Ones." These companies are usually exaggerating the costs and hassles of probate. In any case, you may be able to avoid probate in other ways.

- **False Claims About Tax Benefits.**

Many companies advertise the tax benefits of living trusts. The truth is that a simple living trust (as opposed to a more expensive and complicated tax-saving living trust) has no effect on taxes.

- **False Claims That Living Trusts Will Shelter You From Creditors.**

A living trust will not automatically protect your assets and property from creditors.

- **False Claims About the Cost of Setting Up A Living Trust.**

Living trusts can be expensive. Lawyers often charge five or six times the cost of a will. Depending on the size of your estate, the costs of a living trust may be much higher than the cost of probate.

- **False Claims About How Much Time it Takes to Set Up A Living Trust.**

It can take a lot of time to set up a trust properly. Most important, writing up the document is not enough. The trust will not be valid until property is transferred from your name to the trust. This is called "funding the trust."

- **False Claims That You Don't Need a Will If You Have A Living Trust.**

Even if you decide to buy a living trust, it is still a good idea to have a will as a back-up.

If you decide you want to go ahead and find out more about setting up a living trust, keep these basic rules in mind:

- **Consult a lawyer if possible.** Make sure the lawyer has experience in estate planning issues. It is also important to ask about how a living trust may affect your eligibility for Medicaid nursing home benefits later on.

- **Find out more about the company that is selling the trust.** One way to do this is by contacting your local Better Business Bureau. You might also want to check with your Attorney General or local consumer protection agency to find out whether complaints have been filed against this company.

- **Beware of companies that use names that sound a lot like legitimate organizations such as AARP.** Companies will often try to use these names to make you think that they are affiliated with AARP or other senior rights organizations.

- **Beware of self-help living trust kits.** These kits are usually not a good idea because they are not designed for your unique needs. There are a few high quality products available, but many are rip-offs. Be careful.

- **Avoid giving out private information when you're shopping around.** Many companies will use the living trust as an excuse to find out more about your assets and then try to sell you other products such as annuities or life insurance.

- **If someone is trying to sell you a living trust, ask if the seller is an attorney.** Some states require that only attorneys draft living trust documents. In any case, it is against the law if the seller is not an attorney but tells you that he is.

## WHERE DO I GO FOR HELP?

The following is a selected list of publications, organizations and web sites that can help you decide what works best for you:

AARP, "10 Things You Should Know About Living Trusts", posted on-line at [www.aarp.org/money/estate-planning/info-09-2010/ten\\_things\\_you\\_should\\_know\\_about\\_living\\_trusts.2.html](http://www.aarp.org/money/estate-planning/info-09-2010/ten_things_you_should_know_about_living_trusts.2.html). For more information, contact AARP at 1-800-424-3410 or visit their web site at [www.aarp.org](http://www.aarp.org).

American Bar Association (ABA), "Guide to Wills and Estates" (2d ed. 2004). For more information, contact the ABA at 1-800-285-2221 or visit their web site at <http://www.abalawinfo.org/mon1.html>.

Council of Better Business Bureaus, Inc., 4200 Wilson Blvd., Suite 800, Arlington, VA 22203-1838; 703-276-0100 or visit their web site at [www.bbb.org](http://www.bbb.org)

Federal Trade Commission, "Living Trust Offers: How to Make Sure They're Trust-worthy" <http://www.ftc.gov/bcp/edu/pubs/consumer/products/pro08.shtm>.


National Academy of Elder Law Attorneys: [www.naela.org](http://www.naela.org)

National Association of Consumer Advocates: [www.naca.net](http://www.naca.net)

National Consumer Law Center: [www.consumerlaw.org](http://www.consumerlaw.org)

Nolo Press: <http://www.nolo.com/legal-encyclopedia/wills-trusts-estates/>

Complaints about particular companies or salespeople can be filed with state and local consumer protection agencies as well as the Federal Trade Commission (1-877-FTC-HELP; <http://www.ftc.gov>).



**NATIONAL CONSUMER LAW CENTER®**  
7 Winthrop Square, 4th Floor  
Boston, MA 02110-1245

**Phone: 617-542-8010**  
**Fax: 617-542-8028**  
**E-mail: [consumerlaw@nclc.org](mailto:consumerlaw@nclc.org)**  
**[www.nclc.org](http://www.nclc.org)**

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