

ALERT

INVOLVING LIVING TRUSTS

Living trusts are being recommended, marketed, and sold by some insurance agents, attorneys, brokers, and salespersons. Living trusts are also promoted by some attorneys and others who conduct "living trust seminars", by advertisements, and by telephone and home solicitations.

Some of the persons who sell and recommend living trusts make false representations in an effort to induce the purchase of living trusts.

All of the following representations are **NOT TRUE** or are **MISLEADING**:

- ! *Living trusts are the best estate plan for everyone.*
- ! *Revocable living trusts will save or eliminate death taxes.*
- ! *Probate is evil.*
- ! *Wills are obsolete.*
- ! *The lawyers and court costs will take a huge percentage of your estate, unless you have a living trust.*
- ! *You don't need a lawyer to help settle a living trust.*
- ! *The way to avoid guardianships is to have a fully funded revocable living trust.*
- ! *Along with your will, a list of your assets and a list of your creditors are filed with the Court.*
- ! *The revocable living trust is never filed with any public agency.*
- ! *The only reason for probate is to protect creditors, not to protect your heirs.*

- ! *Probate is open to the public.*
- ! *Trustees of living trusts do not need to reside in Indiana, which is a big advantage over wills and probate.*
- ! *The average time to probate an estate in Indiana is eighteen (18) months, and during this time all assets are frozen.*
- ! *You can settle a fully funded living trust in a matter of hours.*
- ! *Unlike probate, with a living trust your assets are never frozen.*
- ! *Probate shifts control to outsiders - courts and lawyers.*

Many of those who sell living trusts deliver inferior documents. Some of the living trusts are forms written in an effort to conform with any state's law, and as such are not well-drafted documents with Indiana law. Many living trusts are form trusts that are not customized properly to accomplish individual estate planning objectives. We have seen incomplete living trusts and living trusts that have conflicting provisions. We have also seen living trusts that do not give the intended tax benefits, because they were not properly drafted. Some living trust salespeople furnish living wills, health care powers of attorney or appointments of health care representative, and property powers of attorney that are not properly written pursuant to Indiana law.

Some people have signed living trust agreements, but they have not properly transferred ownership of all of their property to the trustee. Their heirs may be faced with both trust settlement and estate administration proceedings.

There are also gross overcharges for some living trust estate plans. We have seen fees that are well in excess of what a competent estate planning attorney would charge for a much better work product.

Living trusts can be the right estate plan for some people, but they should be used only when they are appropriate. Competent and independent legal advice is necessary for making

the right decision.

Don't purchase a living trust without getting advice from a competent and independent attorney. If you have a living trust that has been purchased as a result of a seminar or solicitation you should have it reviewed by a competent attorney. If it was sold to you through false and deceptive representations you may have a remedy under the Indiana Deceptive Consumers Sales Act.

This information is provided as a public service by the office of **James K. Voelz, Attorney at Law**, 427 Washington Street, Columbus, Indiana.
Telephone: (812) 372-1303