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Most Texans have no need for living trusts

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The Savvy Consumer

Texas may very well be the only state in the union where people do not need a living trust.

Local estate attorneys, retirement planners, the state bar and even the attorney general all say Texas has a model probate system that is inexpensive and time-efficient. Because of that, only in a handful of cases do people need living trusts.

R. Blair Norman, one of 58 attorneys in Tarrant County board certified in estate planning and probate law, said he recommends living trusts only to about 10 percent of his client base.

"If you could have a well-drafted will appointing an independent executor, probate is very simple and inexpensive," said Norman, who teaches a six-week continuing-education course on estate and probate at Texas Christian University twice a year. "Most of the time, what I see is a person buys a living trust, never funds it and then the heirs have to go through probate anyway."

A living trust is a legal arrangement that allows another person to assist, if needed, in managing your assets while you are alive and in distributing your assets after you die. Property and assets transferred to the trust are not subject to the probate process when you die.

Although avoiding probate is an issue in virtually every other state in the U.S., it is not a problem in most Texas cases as long as the deceased had a will, said Steve Blankenship, a certified financial planner with Heritage Financial Planning in Grapevine.

"For any state outside of Texas, you generally need a living trust," he said. "Here it's a lot of hassle for not a lot of benefit."

The simplified Texas probate system requires the executor of a will to have one court hearing, file a list of assets called an inventory, and file a notice to creditors, without any further court oversight, Norman said.

"We're darn independent in Texas and always have been," he said. "The idea of a judge telling us what to do doesn't sit well here. Independent administration basically allows the executor to do the things they need to do without court supervision."

"Too often, the sale is made without regard for whether a living trust really is in the client's best interest," said Texas Attorney General Greg Abbott in an alert to senior citizens. "The fact is, for a majority of seniors, a living trust is not preferable to a will and a durable power of attorney."

Living trusts can be sold in kits costing anywhere from \$500 to \$5,000, sold by promoters who use free meals and high-pressure sales tactics laced with inaccurate or misleading information. Another tactic: The promoters sell the kits for a lower price and use them as a hook to sell annuities and other investments to seniors.

Usually an attorney drafts the living trust, but in many cases salespeople selling the trust kits are the only ones who actually see the client. Often an attorney working with the salesperson drafts the trust on the basis of instructions from the salesperson without ever meeting the client or following through by placing their assets in the trust, Norman said.

When assets are inappropriately placed in a living trust, that creates a complication for heirs, he said. Ownership of some assets – IRAs and 401(k)s, for instance – should never be changed into a living trust. Life insurance should have named beneficiaries and therefore not be subject to the probate process. Other assets, such as title to a house or vehicle or banking accounts, can have multiple names for joint ownership.

“Some of our clients have spent a lot of money on living trusts before they come to us,” said Burk Rosenthal with Rosenthal Retirement Planning in Fort Worth, adding that fewer than 5 percent of his clients have living trusts. “In a lot of cases, they were never funded.”

Financial planners and attorneys also note that living trusts must be updated whenever new assets are acquired. Any acquired asset that isn't placed into an established living trust will require the estate to go through probate anyway.

Wayne Frank Paul, a Grapevine attorney, said sellers often imply that living trusts have tax advantages, but any tax strategies you place in a living trust can be put into a well-drafted will that contains tax-planning provisions, he said. There are no tax advantages specific to a living trust.

“We see that all the time,” he said. “They imply that with a living trust you will save on estate and gift taxes.”

Although most people do not require a living trust, there are times when it is appropriate. Here are some of the major reasons to get a living trust:

You have property out of state. This will force you into probate court in other states that are not as progressive as Texas probate courts.

You are facing a debilitating disease like Alzheimer's that will make you unable to continue to handle your finances.

You are certain your will is going to be contested.

You want your estate holdings to remain private. Probate court documents listing assets are available to the public.

Norman suggests sitting down with an attorney to discuss the pros and cons of a living trust.

“Get education about your options, get a second opinion if you like, and then make your decision based on your individual circumstances and estate-planning goals,” he said.

**Note: Estate planning can involve a complex web of tax rules and regulations.
Tax laws surrounding estate planning concepts are subject to change.
Please consult an estate planning attorney prior to making any financial decisions.**

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