

# Seniors: Living Trusts Are Not for Everyone



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Our office has heard reports about unethical sales of living trusts. Some victims have paid as much as \$1,800 for a living trust on the advice of door-to-door sales persons.

Too often, the sale is made without regard for whether a living trust really is in the client's best interests. The fact is, for a majority of seniors, a living trust is NOT preferable to a will and a durable power of attorney.

A living trust is a legal document that usually is created for the purpose of allowing another person to assist you in managing your assets while you are alive, and for distributing your assets after you are gone.

A living trust is different from a "living will" (now called a "directive to physicians and family or surrogates"), which expresses your health care wishes about being kept alive or not if you are seriously injured or terminally ill.

A living trust involves three parties: the grantor, the trustee and the beneficiary. As grantor, you transfer ownership and control of your money, property, and other assets to the trust, which is managed by the trustee for the benefit of the beneficiary.

You can serve as the grantor, trustee and the beneficiary of the trust. You can also name another person or an institution such as your bank to serve as the trustee for you. This option is typically used when you are facing a debilitating or terminal

illness that may impair your judgment.

If you are currently serving as your own trustee, the successor trustee will distribute the remainder of the trust after your death. The distribution of your assets after your death will be governed by the directions you provide in the trust document.

Some sales people often lead victims to believe that probate proceedings are overly lengthy and costly, and a living trust should be used in order to avoid probate. In fact, the probate process in Texas is one of the least expensive and simplest in the United States. Also, remember that a living trust is not the only way to avoid probate.

"A living trust will reduce death taxes on your estate" is a frequently used, misleading statement. Most Texans will not face estate taxes. If your estate is subject to taxes, you can use a will to accomplish the same tax savings as a trust, usually at a much lower cost.

Living trusts are not appropriate for the majority of seniors. In fact, for some people, the expense of creating, administering, maintaining and funding a living trust can outweigh the benefit of having a living trust.

In deciding if a living trust is right for you, be sure not to succumb to high-pressure sales tactics. Be wary of phrases like "once in a lifetime," "act now," and "don't let this pass you by."

Whether a living trust is an appropriate estate planning tool depends on your personal financial situation, health condition and goals. For example, living trusts are often appropriate for someone who is facing a serious incapacity like Alzhei-

mer's. You should discuss the benefits and drawbacks with accountants, attorneys and financial planners who are experienced in this area and whom you trust before taking any action.

You should also be cautious about allowing a living trust salesperson to see your assets and your net worth because the salesperson may use this knowledge to sell you inappropriate investments. If you are subsequently contacted by a salesperson offering annuity products, you should be aware that there are several types of annuities, many of which are not appropriate for seniors as a tool for financial planning.

You can find more information on living trusts and other forms of advance planning on the Senior Texans Section of our Web site at [www.oag.state.tx.us](http://www.oag.state.tx.us). Be sure also to visit the State Bar's Web Site at [www.texasbar.com](http://www.texasbar.com) for information related to this subject.

If you believe you have been victimized by a living trust scam, you can file a complaint in the Consumer Protection Section of our Web site. You can also request a complaint form by calling the Consumer Protection Division at (800) 621-0508.

## POINTS TO REMEMBER

### ADVANCE PLANNING

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Advance planning tools:

**Medical Power of Attorney** -- used to designate a person who can make decisions for someone who is incapacitated

**Directive to Physicians and Family or Surrogates** -- can prohibit or authorize the use of life-prolonging treatments when a person's condition is terminal or irreversible (also known as Living Will)

**Out-of-Hospital Do-Not-Resuscitate (DNR)** -- instructs emergency medical personnel and other health care professionals to forego resuscitation measures

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Advance planning tools that should be handled by an attorney with expertise in advance planning:

**Living Trust** -- An arrangement for managing and distributing your assets

**Durable Power of Attorney** -- Gives another person power to make decisions about you, your property and your financial affairs

Living trusts and some annuities are NOT advisable for most seniors.

For more information on advance planning, visit the Senior Texans page of the Attorney General's Web site at [www.oag.state.tx.us](http://www.oag.state.tx.us)



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