

ONE FOR ALL, ALL FOR ONE? - A LOOK AT LIVING TRUSTS

“Do we have a deal for you! You can have a living trust agreement for a fraction of the cost that your local attorney would charge. All you need to do is fill in the blanks and sign your name.”

WRONG! Trust agreements are very complex instruments that frequently attempt to address a variety of anticipated future events --- and which almost always create substantial duties and potentially significant liabilities for the trustee --- even when the trustee is the creator (settlor) of the trust. Each trust agreement should reflect the circumstances and desires of the settlor. To think that a fill-in the blank form can meet the needs of every individual is unrealistic.

Ask yourself the following questions: “Why do I need a trust?” “Who would I appoint as trustee?” “Do I want to avoid probate?” “Do the expenses of creating and maintaining a trust exceed the costs of probate?” “Do I want to maintain control over my assets?” “Do I want to reduce (and, perhaps, eliminate) death taxes?” “How do I want the trust property to be managed and distributed following my death?” The answers are not simple and once you hear them, you may change your mind about a “living trust”. Nevertheless, when properly established and utilized, trusts are the most useful devices we lawyers have in our little black bags of legal medications.

The next time you get an advertisement in the mail, or a phone call, offering you the living trust deal of a lifetime, please investigate before you agree to anything. Talk it over with your family and call a local attorney who is experienced in establishing trusts. If you don't know an attorney who is experienced in establishing trusts, talk to your friends, neighbors, and relatives who may have established a trust --- and see who they have relied on for advice about trusts. Another good reference source is bankers and charitable foundations (such as your local community foundation). Beware of living trust peddlers who try to discourage you from getting a “second opinion” about the services they are trying to sell.

You need to find a local attorney who is experienced in estate planning --- a real live professional who will sit down with you and answer all of your questions --- and who will be accessible later on if you have questions or problems with the trust.