

AGING & DISABILITY RESOURCES

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Advice from the Attorney General Regarding Living Trusts

The Attorney General's office is concerned about sales tactics currently being used to sell living trusts to senior citizens throughout Washington State. Some salespersons appear to be misrepresenting the benefits of living trusts and the costs/delays associated with probate in order to sell their products.

The revocable living trust is a valid legal tool and is of benefit to some people. Probate can be avoided if a living trust is properly established. To avoid probate, a living trust must designate beneficiaries to receive assets after the individuals' death, and all significant assets of the individual must be transferred to the trust.

Some sellers of living trusts suggest that they can save the consumer thousands of dollars in costs by avoiding difficult and expensive probate procedures. This is simply not true in many cases. Compared to other states, Washington has a simple and inexpensive probate system. For instance, real estate can be sold in probate without obtaining several different appraisals, without obtaining several bids, and without detailed court supervision. In addition, Washington only allows the attorney or personal representative handling a probate "reasonable compensation". The attorney or personal representative is **not** entitled to a flat percentage of the estate. In states where a percentage fee is required, the cost of probate can be unreasonably high. **Washington is not one of those states.**

A living trust does not shield assets from eligibility for Medicaid long-term care. All assets in a living trust are considered available for use by the person needing long-term care coverage.

Also under the Washington community property laws, it is easy to transfer assets to a surviving spouse without going through probate. A living trust is not required.

Finally, a living trust is not the only way to save estate taxes. A properly drafted living trust can do this, but a will can too. In any case, most people do not have to worry about estate taxes because there is no longer a Washington inheritance tax, and no estate taxes have to be paid on estates less than \$2 million. For estate tax questions, contact the Department of Revenue at **(360) 570-3265, opt. 2 or 1-800-647-7706**; information available online at www.dor.wa.gov/estatetax. Representatives are not able to answer any legal questions.

If you are considering the purchase of a living trust, you should consult with an attorney who is knowledgeable about estate and long-term care planning. Ask the attorney to estimate the costs of probate in your case and compare this cost to the cost of purchasing a living trust. If you do choose a living trust, make sure that a knowledgeable attorney with experience in estate planning and long-term care drafts it. For instance, it is important that all assets be transferred to the trust or your assets may end up going through probate anyway.

If you have information about living trusts sales tactics which you feel are misleading, please call the Attorney General Consumer Protection Division at **1-800-551-4636**.