

Special Report:

The 10 Biggest Mistakes People Make When Creating A Living Trust

**What You Don't Know Could Cost Your Family Thousands Of
Dollars In Needless Taxes And Fees!**

by



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Types of Clients: The Firm's clientele consists primarily of physicians, entrepreneurs, retirees, and successful business owners.

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The 10 Biggest Mistakes People Make When Setting Up A Living Trust

What You Don't Know Could Cost Your Family Thousands Of Dollars In Needless Taxes And Fees!

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Introduction

It's a terrible tragedy to see people work hard, and scrimp and save their whole lives, then just throw away their money when they die.

Unfortunately, in over 25 years that I have practiced law as an Estate Planning Attorney, I have seen this occur all too often.

How can this happen to someone who diligently watches their financial affairs?

It's just plain lack of knowledge. Think about it. . . most of our knowledge is acquired through experience. But few of us have yet to experience the consequences of death (unless someone close to you has passed away).

The fact is, whether or not you've dealt with a death in the family, many people just don't want to face the inevitability of their own death. . . or, even if they *are* concerned about what will happen to their family when they pass away, they just don't *know* what to do.

Because of certain common misconceptions about Estate Planning, most people commit some terrible mistakes that later cause tremendous grief for them and their family.

Let me share some of these mistakes with you . . . in the hope that you will not repeat them!

The First Big Mistake:

"I Don't Think I Need a Living Trust."

Although a Living Trust may not be a fit for everybody, it's a must for most people. (If you already have one, good, skip to the Second Big Mistake, below. If you don't have a Living Trust, read on...)

Many people rely on Joint Tenancy or a Will to distribute their assets. These can be a TERRIBLE DISASTER for your family.

There are many advantages to a Living Trust, as compared to Joint Tenancy or a Will. In fact, a Living Trust is the *only* Estate Planning device that can achieve all of the following benefits:

- Distribution of your hard-earned assets to the people *you* choose, rather than to whom a court chooses.
- Immediate management of your affairs should you become ill, disabled or die -- by the person *you* choose -- without any court interference.

- Avoidance of the delays, headaches and considerable expenses of a death probate. If you don't have a Living Trust, this court procedure may take over a year and cost your family tens of thousands of dollars--- even ~you only have a relatively small estate!
- Reduction or elimination of Estate Taxes, if you are married. As opposed to Joint Tenancy or a simple Will, a Living Trust may save your family Estate Taxes!
- Privacy and protection against attacks from disgruntled heirs, in-laws, or other fortune hunters. A Will makes your personal affairs a matter of public record --- that anyone can stick their "two cents" into. A Living Trust doesn't have to be filed in open court records.
- Management of your intend\$ heirs' inheritance if they are too young, inexperienced, elderly or otherwise unable to manage money on their own.
- Added divorce protection, if you are single, live in a community property state (like Texas) and should later marry.
- As well as many other benefits. (I could go on and on. . .)

In short, if you own any real estate, even just your home, or your total assets exceed \$200,000, you should probably look into a Living Trust. . . because your family's probate fee savings, alone, could be substantial.

The probate fees paid to the Executor and Estate Attorney in Texas often run about \$5,000 or more.

No wonder I call the decision to get a Living Trust a "no-brainer" decision.

If you're still unsure whether a Living Trust is right for you, then give us a call and register to come to one of our free Living Trust seminars -- where we have a full two hours to share with you in more detail the substantial benefits of a properly drafted Living Trust.

The Second Big Mistake:
"All living Trusts Are The Same."

A lot of people think that a Living Trust is just a form that can be pulled off a bookshelf or printed out of a computer. The unsettling fact is, all Living Trusts are NOT created equal!

True, all Living Trusts are similar. You could buy a car that's either a Yugo or a Cadillac -- both have four wheels and an engine -- but which one would you rather have your family drive? (Well, according to *Consumer Reports*, you don't want to be caught in a Yugo because it could be a real death trap!)

The problem is. . . when will you know whether your Living Trust is a Yugo or a Cadillac?

When you die it's a little too late! You see, you have to be careful about who you have prepare your Living Trust.

First of all, it should be done by a Law Firm, because if it isn't you're asking for trouble right away. (In fact, in many states it is illegal for anyone other than an attorney or his or her firm to prepare a Living Trust!)

Second, whoever prepares your trust should be experienced in drawing up trusts and do this everyday for a living, not dabble in it on the side. Some Law Firms only produce a dozen or so Living Trusts in an entire year; I certainly wouldn't want to get heart surgery done by a doctor who has only performed a couple of operations, or worse yet by a general practitioner!

Think about this. . . most law schools don't even teach attorneys about Living Trusts or how to draft them! A Law Firm that doesn't have a lot of experience drawing Trusts is learning how to do it *with you as the guinea pig!*

Third, look at the credentials and experience of the Law Firm. Do they have a State Bar Certified Specialist in Estate Planning, Trust and Probate Law as a member of their Firm? How many years of experience do they have in Estate Planning?

It's even more important that you ask if they have handled Living Trusts *after* their clients have died -- when they're really tested. How many deceased clients' Trusts have they handled? Are they building cars and selling them but have never even test-driven one?

Here's another warning: Watch out for those "bargain" Living Trusts!

You may have noticed certain ads that offer Living Trusts at cut rates. This may sound great, but please, *don't be penny wise and pound foolish* Often, these "bargain" trusts cause more problems than if you had no trust at all!

Many are not prepared by experienced Law Firms. Drafting errors can cause needless taxes and probate expenses for your *family* and can even unintentionally cut out certain people you want to share in your estate.

Think about it. . . would you select a doctor, who your life depends on, simply because he's the cheapest? Then, why do that with the financial assets that you've worked so hard to accumulate and that your family's lives may depend on?

I could go on and on about all the technical deficiencies of poorly drafted Living Trusts. . . many of the Trusts that I review for clients who *of* them elsewhere have significant problems. . . but let me move on and address some other common exceptions like. . .

**The Third Big Mistake:
"I Have A Living Trust.
My Family Will Avoid Probate."**

The harsh fact is, all Living Trusts do NOT avoid probate!

Are you shocked? Confused? You see, although you may have signed your living Trust, there is another step that must be accomplished properly and completely in order for your assets to avoid a costly, disastrous probate.

That is, the titles (or in some cases, beneficiaries) to each of your assets must be properly placed into the name of the Living Trust. Asset left outside your Trust will generally go through probate.

In fact, if you're married, the failure to transfer assets to your Trust could cause two probates when normally in Texas you only have one probate at the second death (and the failure to transfer assets to the Trust may also cause unnecessary Estate Taxes!).

Some people think that simply attaching a list of your assets to your Living Trust is sufficient to transfer them into it. The unfortunate truth is this just doesn't work

Other people think that the Will they got along with their Living Trust -- commonly referred to as a "Pour-over Will" -- will avoid probate of those assets left out of the Trust when you die. It's true that this Pour-over Will catches those assets left outside the Trust and makes sure that they are placed into the Trust and distributed according to its terms. . . but assets passing through a Will must typically go through probate first!

Ask yourself. . . are all your assets properly placed into or payable to your living Trust? What about your IRA's and pension type accounts? (These are tricky and most people get them wrong!)

If you set up a Living Trust and don't get your assets into it, you've only gotten half (or less) of the job done. At our firm, we make sure to assist our clients with placing their assets into their Trusts --- so they *know* their families *will* avoid probate.

**The Fourth Big Mistake:
"I've Got A Living Trust So My Family Will Avoid Paying Any Estate Taxes."**

Watch out! A Living Trust may avoid probate, but probate and Estate Taxes have *nothing* to do with one another.

In case you don't know what Estate Taxes are, they are a Federal (IRS) *Death Tax!* Yes, it's true that the IRS gets to income tax us to death and then when we die the IRS gets another bite of our assets.

And it's a BIG BITE ... currently 45%.

The Estate Tax or Death Tax is levied on the total value of *everything* you own -- including your cash, CD's, checking accounts, savings accounts, money market fiends, stocks, bonds, mutual funds, home, rental property, IRA's, pension accounts, cars, home furnishings, jewelry, etc. . . and it doesn't matter whether these assets pass through probate or not.

It's true that each individual is allowed a tax "exemption" against this tax. Currently there are 11 Bills before Congress to change the tax exemption as Congress figures out how to pay for wars and financial bailouts and health care. This area of the law is in a state of flux.

However, if you have a larger estate, there's going to be some heavy Estate Taxes, whether or not you have a Living Trust. (But don't despair. There *is* planning that we can do to reduce or eliminate the Estate Tax -- beyond the Living Trust. You may want to call us and register to attend one of our free Advanced Planning seminars.)

**The Fifth Big Mistake (Part One):
"My Estate Isn't Large Enough To Be Estate Taxed."**

Most people don't calculate the size of their estate correctly.

They remember to add up the value of their cash accounts, all their real estate (net of mortgages for Estate Tax purposes), stocks and bonds and other investments. However, they fail to add in the total value of all their IRA's and pension-type accounts (401K, Profit Sharing, Thrift, Stock Savings, 403B, etc.).

You may not be retired yet, or even if you are retired, you may be withdrawing only the minimum out of your IRA's and pension accounts -- so it's easy for you to forget that the remaining amount which passes to your family when you die be included in your taxable estate.

Also, don't forget about all your personal belongings, such as your cars, clothing, jewelry, home furnishings, collectibles, antiques, junk (you know there's a fine line between the antiques and the junk!). A lot of people think these items will "disappear" when they die. However, the IRS has gotten smarter.

Plus, there's one other *big* item that people overlook when calculating the size of their estate and the potential for Estate Taxes. . .

**The Fifth Big Mistake (Part Two):
"Life Insurance Is Tax Free."**

Here's an asset that a lot of people forget about because it usually has little or no "cash surrender value" while you're living, or you never intend for your family to surrender the policy until you die.

But watch out!

When you die, the full, matured faces amount of your life insurance policies are taxable as part of your estate! For example, if you own a \$500,000 policy, your taxable estate just grew by \$500,000!

I'm talking here not only about the insurance policies that you own, but also policies on your life that your *employer* may have purchased; as part of your benefits package. (Many people have a "death benefit" through their employer, even for several years after they retire!) Employer provided insurance often runs anywhere from \$10,000 to several times your annual salary -- and that amount may be added to your taxable estate on top of the policies you own!

People always tell me that they can't believe this because they've been told that life insurance proceeds are tax free. However, they're only half right. Life insurance proceeds are *income* tax free, but they are not *Death Tax* free and which is the worse tax? You bet. . . the Estate Tax at up to 45%!

With traps like this, it's no wonder that I sometimes call the Federal Estate Tax "the silent killer of family estates." The sad thing is, life insurance doesn't have to be taxable as part of your estate, if you plan for it properly. For example, if the "ownership" (not just "beneficiary") of your life insurance is carefully placed in the name of your mate beneficiaries or an "irrevocable" trust for their behalf, then the entire matured face amount may pass on tax free!

**The Fifth Big Mistake (Part Three):
"My Estate Won't Grow.If Anything, I'm Going To Spend It Down During My Lifetime."**

Many people who are *currently* under the Estate Tax exemption feel very secure that their family will be spared the horror of the Federal Estate Tax. In reality, that's just not correct!

It is a fact people are living longer than ever. Life expectancies are now in the mid 80's. Many people feel that they will have to use up most of their estate to support them for all those retirement years. However, the exact opposite is usually true. Over that long period of time their estate will likely *grow in value*.

I know first hand because I periodically review my clients' financial positions. Based upon over fifteen years of experience, I've found that most peoples' estates do, in fact, *go up* in value during their remaining lifetime. There are several reasons for this.

First, many people do not spend all of the income that their assets generate. They use their Social Security and maybe *some* of their income from their other assets to live on, but they're constantly rolling over a good deal of their CD income or letting their money continue to compound inside their mutual funds or inside their IRA's or annuities.

Second, there's something called inflation that, in the long term, may offset the effect of spending. That's because many peoples' estate largely consist of real property such as their home, rental units and raw land. In the long term, no asset reflects inflation better than the value of real estate.

(Now, I know you may be thinking that inflation is only two or three percent right now, but it wasn't too long ago that we had almost 20% inflation under President Carter. And there's one sad truth about inflation -- as long as the Federal Government spends more than it takes in, there is always going to be inflation, whether it's at 3% or 20%!)

Here's my point. If your assets only accumulate 3% income a year and there's also 4% inflation, that 7% total growth will double the size of your estate in just about ten years!

So you see, a realistic person must consider that the size of his or her estate will, in fact, grow over their remaining lifetime when planning their estate and dealing with the issue of Federal Estate Taxes.

But even if we assume you *are* correct that your estate will stay about the same or decline in value, there's one other trap to look out for. . .

**The Sixth Big Mistake:
"My Living Trust
Locks In My Estate Tax Exemption."**

You may have heard that Congress is looking for more money (aren't they always?).

Well, When Congress needs money, I have a favorite saying: "It's easier to raise money from the dead than it is from the living!"

In fact, Congress recently proposed to reduce the Estate Tax exemption!

What I'm getting to is that there is no assurance what the estate tax exemption will be at the time that you pass away!

And here's the critical fact. . . your Living Trust does not "grandfather" or lock in your exemption. . . unless you're already dead! . . . because you will only be entitled to the exemption amount that is in place at the time you die. Congress can change the law anytime before you die and make it apply *retroactively* to your Living Trust!

Hopefully, you are seeing the importance of planning beyond the Living Trust. A Living Trust alone may simply not be enough to spare your family the disaster of Federal Estate Taxes.

You may be thinking, "so, what do I care about Estate Taxes?" After all, you say, "they will hit after I'm gone and my kids will get plenty anyway." Read on. . .

The Seventh Big Mistake:

**"My Son, Johnny, Will Get My Rental Property (Or Business) . . .
It Says So Right In My Trust!"**

Remember how we asked you to *accurately* calculate the value of your entire estate? Well, you may have done a good job of it . . . or at least *think* you did, from your perspective.

You may have included all the assets we mentioned. But how did you arrive at your values?

You see, the IRS will also get a crack at valuing your estate when you die. And since they know they collect more taxes if they value your estate higher, what do you suppose they'll try to do?

Of course, they'll argue that your assets are worth more than you say! (By the way, the IRS is very good at this valuation game because they do it every day for a living -- your family is only going to do it once.)

What am I driving at? The IRS can't really dispute the amount in your cash accounts, or the values of your publicly traded stocks and bonds -- all they have to do is look at your bank statements or pick up the Wall Street Journal and there's no question what the exact value of those assets are on the date of your death.

But can you really say what your real estate is definitely worth on any given day? Or your privately owned business? The value of real estate or a closely held business is complete *speculation!* And who do you think is going to take advantage of this? The IRS!

There are many types of valuation methods that the IRS can use to jack up the value of your real property or business. . . and these methods have been approved by the courts!

The IRS can often set a value for real property or a privately held business which is many times its perceived value to you. And, although your family can dispute the IRS value, the IRS is often successful in these valuation disputes (and even if you beat the IRS it will cost your family lots of attorney fees and a great deal of aggravation).

Now we're getting to the point. The rental property or business you want Johnny to have, and which your Trust says he will get, may never be received by him. In all likelihood, those assets are going to cause such a huge amount of Estate Taxes that they will have to be sold just to pay off the IRS!

Worse yet, your family probably won't receive one hundred cents on the dollar of the true value of your assets when they sell them, because this "forced liquidation" to pay Estate Taxes has to occur within *nine months* of your death (or your surviving spouse's death). Otherwise, additional penalties and interest may be due.

So you see, that rental property or business that you struggled to keep going during your lifetime may *not* be passed on to your family! (That is, unless you do some Advanced Estate Tax Planning. Learn more about this by giving us a call and reserving your seat for one of our free Advanced Planning seminars.)

The Eighth Big Mistake:

**"I've Done My Living Trust. All My Assets Are Placed In It.
I've Even Done Additional Estate Tax Planning. My Family Is Completely Protected."**

This statement *appears* correct.

However, there are two additional planning items that you may need to take care of. Otherwise, your family could lose a fortune (yours)!

First, do you have the proper "*Health Care Documents*"?

Have you ever thought about what will happen if you become incompetent? (I know a lot of our children already think we're incompetent, but what I mean here is that you become too disabled, either mentally or physically, to transact your daily business).

A Living Trust allows the person(s) of your choosing to step in immediately, without court involvement, to handle your financial matters if you ever become incompetent.

A Living Trust, however, does not help to make *medical* decisions for you should you ever become too ill or disabled to make them for yourself

That's why you should also have, as part of your estate plan, two documents that in Texas allow your family (or whoever else you appoint) to make your key health decisions for you if you are not able to do so.

The first document is called a Durable Power of Attorney for Health Care. It enables all the different and difficult medical decisions to be made without any court involvement, such as emergency medical treatments, operations, transfusions, nursing care, tube feeding, etc. . . every decision except for the very last one, which I call the "pull the plug decision."

If you are ever on a respirator or other mechanical device that is the only thing keeping you alive, and two doctors have stated in writing that you do not have a chance to recover, then a second document, commonly known as a "Living Will," assists your family to make that final decision.

I know that none of us likes to think about these terrible decisions that may come up in the twilight hours of our life. However, we must face reality. . . the reality that modern medicine will attempt to prolong your life way beyond your ability to continue to enjoy it . . . or your family's ability to pay for it.

I'm not trying to get philosophical here, or to be critical of our health care system (even *before* the Federal Government gets its hands on it). I always insist that my clients have these two health care documents, regardless of their philosophical or religious persuasion. Why?

Think about it. . . *without* these health care documents, your family may be powerless to make any medical decisions for you (and the courts typically don't like to get involved in these matters). So if you're needlessly hooked up to tube or machines for 90 or 180 days (which is not unusual), who do you think will wind up with a big chunk of your estate?

That's right, the health care providers! (Medicare and Medicare supplement policies won't cover all your intensive care bills!)

So you see, having these health care documents is another way to protect and preserve more of your estate for your family.

WARNING: If you already have these documents, but you signed them before HIPAA (the new Federal Privacy Law), then you need to update your documents.

One other thing. . . if you are married and live in or own property in a community property state like Texas, you should probably also have a short, inexpensive, but powerful document known as a "*Community Property Agreement*." Not to avoid probate. Not to avoid Estate Taxes. But to help avoid some heavy capital gains taxes!

Most married people don't realize that even though there may not be a significant probate when the first spouse dies, and there typically is no estate Tax at that point either, there's another tax lurking in the shadows.

If the surviving spouse goes to sell the home, rental real estate or any other appreciated assets such as stocks, he or she will typically be *walloped* with a huge amount of capital gains (income) taxes!

Let me give you a very simplified example. Let's say that you bought a piece of real estate for \$100,000 and it's now worth \$400,000 (you have bought it some time ago, because you didn't get that kind of appreciation in this recent market!). If you sold that property, the \$300,000 of appreciation would be taxed as a capital gain.

When one spouse dies, if you don't have a Community Property Agreement, and the title to each of your assets doesn't include the words "Community Property" (which won't be the case if your assets are properly titled in the name of your Living Trust), the surviving spouse may still have to pay tax on one-half of this gain if he or she goes to sell appreciated assets. In the above example, that means unnecessary dollars go out the window in the form of capital gains taxes.

However, if you *do* have a Community Property Agreement, the surviving spouse gets to start all over again for capital gain purposes.

In other words, the surviving spouse takes as the new capital gain base the market value at the date of death of the first spouse - \$400,000. If he or she goes out the next day and sells it for \$400,000, there will be NO capital gains tax!

Furthermore, if the property just happened to be rental real estate, the surviving spouse will also be able to begin taking depreciation deductions all over again based on the \$400,000 date of death value! This means that, even if the surviving spouse has no desire to sell the rental property, he or she can now enjoy a lot more tax free-income!

This may sound too good to be true, but the Community Property Agreement has in fact been *approved by the IRS!*

OK, so now you're thinking. . .

The Ninth Big Mistake:

**"I've Taken Care Of Everything You've Talked About Here.
My Estate Plan Is In Perfect Order."**

But is it?

- Will your surviving spouse or whoever else you appointed to be your next trustee under your Living Trust have any idea what to do if you become disabled or die?
- Will they be able to locate all your important papers?
- Will they know all the family members and key advisors that need to be contacted and how to reach them?
- Will they know your wishes about how you want your personal items around the house to be distributed? Or your, special desires about funeral, burial or cremation?

You see, most people only get the 'bare bones' estate plan. However, *a complete* estate plan should include not only all the basic legal documents but something much, much more. . . an "Owner's Manual."

We provide all our clients with an "Owner's Manual" which is a handsome, three ringed binder that organizes your important documents for your spouse or other successor Trustee. It includes:

1. A checklist of what the Surviving spouse or other person named as your Trustee will need to do if and when you become too disabled to handle your affairs or pass away. Step by step, in plain English, this checklist tells your Trustee what needs to be done. It takes away a lot of the anxiety that people face at such times.

2. A location list for you to complete, letting your Trustee know where you keep important papers such as deeds, passbooks, stocks and bonds, IRA's and safe deposit box, so that they may be found easily and save your family time, worry and money.
3. A guide for you to complete, indicating the persons you want contacted if something happens to you (such as family members, friends and other heirs) and listing all your key advisors who may need to be consulted (such as your accountant, life insurance agent, doctor, etc.).
4. A personal directions letter for you to complete, indicating any special desires you may have regarding the distribution of personal items in your home and instructions for funeral, burial or cremation.
5. A checklist of how to periodically review your plan.
6. Plus much more!

So what? Well, let me tell you about the last big mistake that people too often make. . .

The Tenth Big Mistake:

"I'll Think About It" Or "I'll Get To It Later."

The number one reason people don't have proper Estate Planning -- as I said at the beginning -- is lack of knowledge.

Hopefully, this Report has gotten you past the knowledge gap, so please don't fall victim to the number two reason why people don't have proper planning. . .

PROCRASTINATION!

Let's face it. If you knew for sure that you were going to live another 20 years, you could start planning your estate 19 years from now. . . but the whole point of Estate Planning is that no one has that certainty. You must plan for the *worst* -- what would happen right now if something went wrong and you become disabled or passed away.

Plus, the planning necessary to reduce or eliminate Estate Taxes becomes much more complicated -- and maybe impossible -- if you wait till shortly before you die. And if you wait until *after* Congress reduces the tax exemption before taking action, your planning opportunities may be severely limited -- and you may cause your family to lose literally hundreds of thousands of dollars in needless Estate Taxes!

Enough said about procrastination. We're going to move you to ACT NOW because we're going to make you a . . .

SPECIAL OFFER

If you come in and visit with us within the next 30 days -- either to start your Estate Plan or review the one you have -- and you bring this Report with you, your meeting will be absolutely FREE! (That's up to a \$295 value!)

Why are we doing this?

Because we're positive that when you witness our expertise and our professional, straight-forward approach, you'll want to make us your Estate Planning Firm! So. . .

CALL US NOW AT
512-263-2886

And Make Your Appointment Right Away!

I hope you've enjoyed this Special Report and our firm looks forward to seeing you soon.

Happy Estate Planning!

P.S. If I still haven't convinced you to come in and start or review your Estate Plan, how about this? If you schedule your appointment within the next 30 days and have us start your Estate Plan or review your current one, not only will the meeting be free, but we'll also give you 10% off our standard fees for any work that you request us to proceed with.

So call us NOW at

This Report is intended to offer general information only. You should consult with a qualified Law Firm before making any important Estate Planning decisions or implementing the ideas discussed here. This report is based on Texas Law. If you reside outside Texas or own assets outside of Texas, the law affecting you may differ.

Estate Planning

Free Living Trust Seminars

Living Trusts

Free Advanced Planning Seminars

Residence Trusts

Insurance Trusts

Family Partnerships

Charitable Trusts

Irrevocable Trusts

Business Buy-Sell Agreements

Other Gift Planning

Post-Death Planning And Estate Administration

- Inventory & Appraisalment Of Assets
- Funding Of Trusts
- Preparation Of Federal Estate Tax Return
- Probate Administration, When Necessary
- Trust Terminations & Distributions To Beneficiaries

We are committed to high quality, highly personalized Estate Planning at an affordable price. Toward that goal, we have assembled a uniquely qualified team, of professionals to guide you through the entire process and to make it not only understandable but enjoyable.

Our firm specializes exclusively in the area of Estate Planning. It is because of our expertise that we prepare more Estate Plans than any other law firm in the entire South Bay and we are one of the largest Estate Planning law in Texas.

We look forward to helping you and your family realize the tremendous benefits of proper Estate Planning. We sincerely hope you'll find that we not only provide you with the necessary legal documents, but with that often forgotten extra . . . *personal service*.

**For A FREE Consultation, Or A Schedule Of Our FREE Upcoming Seminars,
Please Call**