

## **Buyer Beware – The Trust Mill**

**By Richard J. Shapiro, J.D.**

Since we began writing this column over three years ago, we have often discussed the virtues of counseling-based estate planning, as contrasted with estate planning that consists of mere “word processing” documents. New York has been largely spared a practice that is widespread in other parts of the country, where non-attorney “trust mills” peddle one-size fits all estate planning kits.

We may no longer be so fortunate. Last week a local financial advisor forwarded to me an e-mail presentation that he received from a company that touted the sale by financial advisors of proprietarily named living trust packages. The e-mail pitch was directed at the financial advisor (who is not an attorney), promising that advisors can earn, “\$500 - \$700 Living Trust Commissions [that] are paid fast,” and that for, “every 5<sup>th</sup> Living Trust you sell, we’ll send out a free 1,000 piece mailer to the zip codes of your choice.” The sales pitch included the remarkable statement that the “Living Trust, for a husband and wife, contains 193 pages” (talk about one size fits all!). Finally, the company promises that, “[y]ou are not limited geographically with your Living Trust business.”

One slide revealed the real “benefit” to the financial advisor in selling these forms: because the advisor would presumably obtain the client’s entire financial picture in order to “do” the documents, “[t]his time you’ll get paid for your insurance and investment recommendations.”

It is bad enough that this company is soliciting non-attorneys to engage in the unauthorized practice of law. But an even bigger danger is that many well-meaning people will purchase one of these “estate plans” and believe that their estate planning needs have in fact been provided for. History, however, shows that these types of “plans” are fraught with errors, and often lead to far worse results than if the client had done no planning at all. Use of these documents might result in a loss of significant tax exemptions, and these fill-in-the blank forms will provide no customization to meet the client’s actual goals and objectives. I had the opportunity to review one living trust produced from a “kit” that included language such as, “if you live in Texas, use the following clause;” and “if you live in Ohio, use the following clause ...”

In addition to the problems created by the “fill-in-the-blank” nature of these forms, it is almost certain that no consideration is given to proper funding of the alleged estate plan. One of the common “selling points” by peddlers of these kits is that the client’s estate will magically avoid probate after their death. Unfortunately, there is probably no discussion with the client about how their assets should be titled to effectuate the client’s estate planning goals. Absent a discussion with the client about the importance of property asset titling, the client’s assets will likely remain titled either in their own name (if they are single) and jointly (if they are married). As a result, upon the client’s death (or upon the death of the second spouse with a married couple), the assets

will in fact be subject to probate, and the stated goal of “probate avoidance” is not attained.

While some readers may see this column as merely an attempt to protect my “turf,” consider the following: attorneys will frequently earn far more in fees to help clean up the messes left by these disastrous “estate plans” than they would have earned in creating a sound and well-designed estate plan in the outset.

So, if you are pitched one of these Living Trust kits by anyone – especially a non-attorney -- remember the classic saying: Buyer Beware!

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