

DON'T TRUST "TRUST KITS"

WARNING:
TRUST KITS MAY BE
HAZARDOUS TO YOUR HEALTH

Throughout the last decade, living trusts have been aggressively marketed to the general public. Although living trusts have been around for a long time and have been used successfully to avoid probate, it is mostly people with large estates that have realized the most benefit. But people who really don't need a living trust are still talked into buying one. Lawyers at the Legal Hotline for Michigan Seniors have talked to hundreds of seniors about living trusts. Many seniors call for advice as well as clarification of information they have received while at a free seminar, estate planning presentation or from a salesperson who came to their home after they filled out a card requesting estate planning information.

Buying a "trust kit" may be a large financial mistake that can interrupt your life and the lives of those you love. A "trust kit" is often just a standardized set of fill-in-the-blanks trust forms, usually offered by non lawyers.

Estate planning is complicated, and there are a host of legally recognized arrangements and documents that may be used in a person's estate plan. These include joint property ownership, beneficiary designations, intestate proceedings, wills and a variety of different types of trusts. These documents and arrangements all have both strengths and weaknesses, depending upon the situation in which they are used. You need careful and accurate advice about which of these documents and arrangements will work best for you, in light of your own circumstances. Unfortunately, you probably won't get this kind of advice if you buy a "trust kit."

Before deciding if you need a trust, you first need to understand what a trust can, and cannot, do for you. What is a Trust?

A trust is a legal arrangement in which you, the "grantor," give your

assets to a “trustee,” who then manages and uses these assets to take care of the “beneficiaries” you name, pursuant to the terms of your written trust document.

There are many types of trusts, and each may be used for a different purpose. For example, you may set up a trust for the sole purpose of taking care of another person, such as a disabled adult child, or you may set up an “irrevocable” (unchangeable) trust for certain tax purposes. You also may set up a trust to take care of yourself during your lifetime, and then to take care of others after your death. In these sorts of trusts, you usually specifically provide that you can “revoke” (or change) the trust at any time. Trusts like these often are called “living” (or “loving”) trusts, although lawyers, financial managers and the IRS usually refer to them as Revocable Grantor trusts.

This type of trust, **if properly written, funded and administered**, can do very useful things. First, it allows your trustee (or successor trustee) to take care of you in the event of your disability. It also allows your trustee to take care of others in the circumstances that you have described in your trust document. At your death, your trust will avoid probate court and allow fairly quick distribution of the assets in the trust to your ultimate beneficiaries. For married couples, your trust may also help avoid or reduce federal estate tax if you have more than \$2,000,000 in assets for 2007-2008.

Trust Shortcomings

Not everyone benefits from a trust. For one thing, trusts generally are far more complex, and therefore more expensive, than wills. Attorneys charge from \$500 for a “bare bones” trust to \$1500 **or more** for trusts and supporting documents for couples. For some people, this is more than it will cost to have their property go through probate after their death. Further, the cost of having the trust prepared has to be paid up front, by the grantor, rather than after his or her death, and out of the beneficiaries’ shares, as is true for probate expenses.

Trusts must also be formally administered. Not only must the trust document be drawn up and properly signed, but your assets need to be transferred into the trust. Anything not placed into your trust may end up going through probate court anyway. You also must find a successor trustee

to serve after your death or disability, who may ask for an ongoing fee for his or her services. Trusts also can pose problems with eligibility for Medicaid, a government benefit that pays for nursing home care.

In short, there are both strengths and weaknesses to using trusts. You should not consider a trust without expert advice as to its merits, costs and advantages, considering your own circumstances.

THE PROBLEM WITH “TRUST KITS.”

For most people, probate courts, trusts and the cost of estate planning are mysteries. Consequently, people are vulnerable to sales pitches from fast talking door-to-door salespeople and telephone solicitors offering “trust kit” packages. People who fear probate, and who believe it very expensive, fall prey to the salespeople’s stories of how courts and lawyers will take everything they own unless they buy a kit. The kit sellers, trying to gain credibility, often use names similar to existing and legitimate organizations that provide services to seniors. For example, two kit companies, The American Association of Retired Citizens and the American Association of Senior Citizens, have names obviously intended to be confused with the well known American Association of Retired Persons (AARP).

The potential customers of these kits are usually visited in their home. The salesperson offers to fill in information on preprinted trust forms. He or she then promises to have the information typed in by someone else, and schedules a return visit to deliver the document for signature and witnessing. At the initial visit, partial or full payment for the “trust kit” usually is required. The cost of these trusts is often exorbitant—usually much higher than if the trust was arranged through a local estate planning attorney.

Improperly drafted or administered kits have created a number of problems in Michigan. These kits can be very expensive, in many cases, far more than hiring an attorney and having it done correctly. For example, an older resident of White Cloud was told a “trust kit” would *only* cost her \$5000 (in Connecticut, one kit was sold for \$7000). The kits, because they consist of preprinted forms, often fail to take the purchaser’s financial or personal circumstances into consideration. One “trust kit” put a Southeastern Michigan couple’s \$1.1 million estate into a joint trust, creating federal estate tax liability of about \$200,000 (fortunately, the couple

had the trust kit they bought looked over by a lawyer, who spotted the problem and prepared a new trust that avoids the tax). “Trust kit” companies frequently go out of business, either voluntarily or after legal action (as happened to a kit company in the Traverse City area), becoming unavailable to make modifications that may be needed because of changes in a person’s personal or financial circumstances or in the law.

What can you do?

You need reliable information to decide if a trust is a good idea for you. You may find it at your library, from the State Bar of Michigan, from the Legal Hotline for Michigan Seniors (1-800-347-5297), and even from many of the seminars on trusts now being put on by brokerage companies, insurance companies and attorneys. However, you **should not** purchase a trust based on a phone call, or from a visit by a door-to-door salesman, or immediately following a seminar. Important estate planning documents like a will or a living trust require thoughtful consideration before signing.

Think over the information you’ve received, and what your needs are. In all cases, you should consult with someone with the necessary background to help you decide what is best for **you**, not just what will pay the seller the biggest commission. In most areas there are attorneys who specialize in estate planning and who can prepare a living trust for you. Seek information about local attorneys from people whose opinion and judgment you trust.

NOTE:

Be aware that in a number of states, including Michigan, the Attorney General’s office has brought lawsuits against trust kit companies, seeking fines and the cessation of business. Other states have sought criminal sanctions. Investigations have shown that agents may fraudulently claim they are skilled in preparing documents, they may misrepresent legal practices, they may use high-pressure tactics to coerce people into purchasing kits, and often fail to resolve problems or disclose the drawbacks of trusts.

