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NebFact



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"Living" Trust: Cause for Consumer Concern

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In Nebraska, "living" trusts are being marketed as an alternative to a will for property distribution at death. On November 20, 1990, the Attorney General's office issued a press release announcing that more than 35 civil investigative demands under the Deceptive Trade Practices Act had been issued to persons and companies advertising and selling "living" trusts in Nebraska.

"We're concerned that Nebraska consumers are buying these trusts based on representations that these trusts possess qualities or benefits that they just don't have," then Attorney General Robert Spire was quoted as saying. He went on to say "The most frequent victims will probably be senior citizens. Worst of all, the deficiencies or defects in the trusts won't be discovered until after it's too late to correct them, leaving the survivors with a legal and financial tangle."

Spire further noted that "the advertisements we've reviewed and the complaints and inquiries we've received have led us to believe that the deceptive and misleading representations being made in connection with the sale of these trusts cannot be allowed to continue unchecked." The **deceptive representations** about current "living" trust sales noted in the press release include:

- "living" trusts are markedly superior to a will for the estate-planning needs of most persons.
- the costs associated with probate of a will generally consume a significant portion or a majority of the estate of most persons.
- the cost of establishing a "living" trust drafted by a non-attorney is significantly less than the cost of retaining a licensed Nebraska attorney to draft it.
- the completed "living" trust document is fully and completely valid according to Nebraska law.
- "living" trusts generally provide trust settlers and beneficiaries much greater tax advantages than a will provides.
- a "living" trust document is impervious to legal challenges to its validity or scheme of asset distribution.
- the "living" trust documents purchased by the consumer have been reviewed by a licensed attorney prior to their completion.

Because of these deceptive representations as cited by the Attorney General's office, consumers are advised to exercise caution when looking at "living" trusts, especially those offered by non-local and/or

non-Nebraska-based companies.

Check the potential cost for developing a trust with an attorney; use this figure as a cost comparison with the figures quoted by persons or companies selling "living" trusts. The fee for a trust drawn up by an attorney typically runs \$300-\$500 in Nebraska. Fees as high as \$3,000 have been reported by people who have purchased a "living" trust from one of the 35 individuals or companies being investigated by the Attorney General's office.

Do not sign anything at the initial meeting or dinner where "living" trusts are discussed. If you do decide to purchase a trust developed by someone non-local, or from a state other than Nebraska, have your Nebraska attorney check the documents for compliance with Nebraska law before you sign on the dotted line.

Parts of this NebFacts were taken directly with permission from a press release issued by the State of Nebraska Department of Justice, November 20, 1990.

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