

## Legal Matters – June, 2008

Legal Matters is a column that answers your legal questions. It is written by Barry Evans, Attorney at Law, located at 550 Egret Bay Blvd., League City, TX 77573. Barry has been practicing as an attorney for over twenty-five years. If you have any questions regarding Living Trusts, you may contact Barry Evans at 281-557-1900 or email him at [barryevans@msn.com](mailto:barryevans@msn.com).



### I've been told I need a living trust. What are your thoughts?

Unfortunately, some con artists promote their living trust businesses by making false or incomplete statements about the probate process, guardianships, and the taxation of estates to frighten you into buying a living trust. Examples include:

- "Living trusts save taxes." **This is misleading.** Most Texans' estates will face no death taxation at all. If your estate is taxable, a will can accomplish exactly the same tax savings as a trust at a much cheaper cost.
- "Living trusts help you avoid contested wills." **Misleading.** Trusts, just like wills, are subject to attack on the basis of lack of capacity, undue influence, and fraud.
- "Living trusts avoid the expense of a guardianship." **Misleading.** A living trust is helpful to avoid the expense of a guardianship in case of your future incapacity. In some circumstances, a durable power of attorney is a simpler and less costly way to achieve the same goal.
- "Attorneys charge from 3 to 10 percent or more to probate your estate." **False.** Rarely do attorneys charge as much as three percent. In fact, most attorneys do not charge a percentage of the estate but instead charge an hourly rate for their work. (Source-State Bar of Texas)
- "Probate takes years to complete." **Misleading and very unlikely.** Non-taxable probate estates generally only take several months to complete. In most circumstances, the administration of a living trust is no more time efficient than the administration of a will in probate.
- "Probate requires excessive time and money." **False.** Texas has adopted a simplified probate process under the Texas Probate Code. These independent administrations, accounting for more than 80 percent of Texas probates, involve only one court hearing and the filing of an inventory.
- "Everyone should have a living trust". **False.** While a living trust may be appropriate for multimillionaires or someone with special needs, the cost of creating, funding, and administering a living trust outweighs the benefits for most people.

### How do I protect myself?

- Take time when making your decision. Do not fall victim to high pressure, "act immediately" sales tactics.
- Seek the advice of someone that is trustworthy and knowledgeable. Contact your accountant, estate planning attorney, banker, or financial advisor.
- If you conclude that a trust might be right for you, deal directly with a licensed Texas attorney who has substantial expertise in estate planning.

**Editor's note:** *The information in this column is not intended as legal advice but to provide a general understanding of the law. Readers with legal problems, including those whose questions are addressed here, should consult attorneys for advice on their particular circumstances.*