

SOUTH CAROLINA BAR

Trust kits



Estate planning is complicated. There are a host of legally recognized arrangements and documents that may be used in a person's estate plan, such as:

- joint property ownership,
- beneficiary designations,
- intestate proceedings,
- wills and
- a variety of different types of trusts.

All of these have both strengths and weaknesses, depending on the situation for which they are used. You need careful and accurate advice about which of these will work best for you.

Unfortunately, you will probably not receive objective advice if you buy a "trust kit" (i.e., standardized "fill-in-the-blank" trust forms). Before deciding if you need a trust or purchasing a trust kit, you should first understand what a trust can and cannot do for you.

WHAT IS A TRUST?

A trust is a legal contract by which you, the "grantor," give your assets to a "trustee" who manages and uses them to care for your "beneficiaries," based on 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 an "irrevocable" or unchangeable trust for tax purposes, or you may set up a trust to care for someone else, such as a disabled adult child.

You also may set up a trust to

care for yourself during your lifetime and then to care for others after your death. Usually in this case, you specify 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 or grantor trusts.

A revocable trust allows your trustee or successor trustee to care for you if you become disabled. It also allows your trustee to care for others as you specify in your trust document. At your death, your trust will avoid probate court proceedings if funded and allow fairly quick distribution of the assets in the trust. Depending on the size of their estates, married couples may also avoid or delay federal estate taxes.

TRUST DISADVANTAGES

Not everyone benefits from a trust. Trusts are generally far more complex and more expensive than wills. Lawyers charge from \$500 for a “bare bones” trust to \$1,500 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. Also, you must pay the cost of preparing the trust up front, while probate expenses are deducted from your beneficiaries’ shares after your death.

Trusts must also be formally administered. The trust document must be drawn up and properly signed, and your assets must be transferred into the trust. Anything not placed in the trust may go through probate court anyway. You also must find a successor trustee, who may ask for an ongoing fee, to serve after your death or disability. 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 on its merits, costs and advantages, based on your own circumstances.

THE PROBLEM WITH “TRUST KITS”

For most people, probate

court, trusts and the costs 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 believe it is very expensive fall prey to the stories of how courts and lawyers will take everything they own unless they buy a kit. The kit sellers, trying to gain credibility, may use names similar to existing, 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 easily confused with the well-known American Association of Retired Persons (AARP).

Potential trust kit customers are usually visited in their homes. The salesperson offers to fill in information on preprinted trust forms, promising to have the information typed and returned for signature and witnessing. At the initial visit, partial or full

payment is usually required.

Improperly drafted or administered kits have created problems in South Carolina. These kits can be far more expensive than hiring a lawyer and having it done correctly.

Because trust kits consist of pre-printed forms, the purchaser’s financial or personal circumstances are not considered. “Trust kit” companies have gone out of business, either voluntarily or after legal action, making them unavailable to make changes needed because of personal or financial circumstances or changes in the law.

General information:

South Carolina Bar Lawyer Referral Service

If you need a lawyer, contact the South Carolina Bar Lawyer Referral Service from 9 a.m. to 5 p.m. Monday through Friday. Call 1-800-868-2284; if you are in Richland or Lexington Counties, call 799-7100.

Additional Legal Tips Available

To access answers to frequently asked questions on other legal issues, visit the South Carolina Bar's LawLine online at www.scbar.org/public/lawline.asp

Provided as a public service of the



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