

There is no free lunch; approach Trust seminar with caution

Dear Mr. Premack: I often get cards in the mail inviting me to seminars and free lunches. They want to tell me about my opportunity to avoid probate with a living trust. Now and again they say that laws have changed and that all estates must now go through expensive and time-consuming probates. I'd like a free lunch, but I'm worried about what it might really cost me to go to one of these seminars. What do you think? – T.A.

There is nothing wrong with gathering information, so long as it is unbiased and accurate. I don't know who is sponsoring the seminar to which you refer, but if the invitation was misleading it is a good indicator that the seminar will be misleading.

The invitation, as you related it, first tells you to avoid probate with a living trust. There is nothing wrong with that concept, as long as you understand a few details:

A) Just having a living trust does nothing to avoid probate. To avoid probate, the trust must be properly "funded". That means that you must convey virtually all of your assets into the name of the trust. It also means that as you acquire new assets, you must do so in the name of the trust. If even one testamentary asset is left out of the trust, your estate may still go through probate.

B) Probate is not a dirty word. Texas has a streamlined and efficient system. If you have a qualified attorney prepare for you a well thought out Will, then probate is fast and affordable. The cost of probate may be about the same as the cost of setting up that living trust, so avoiding probate by using a living trust may not save you a lot of money.

The next thing the invitation states is that "laws have changed" and all estates must go through expensive and time-consuming probates. In fact, the laws do change in Texas about every two years when the legislative session ends. A whole batch of new laws will be coming into effect between now and September 1, 2011. But none of those laws require that "all estates must go through probate". None of the changes to the probate laws that were passed in this last session of the legislature were designed to require all estates to be probated.

On the contrary, the Texas Probate Code provides several methods to pass your estate without a courtroom probate. One of them is to use a "community property survivorship agreement". Another is to utilize accounts with "pay on death" or other beneficiary designations. Our laws do not require all estates to go to probate court (though generally the less preplanning that you do, the likelier it is that your estate could end up in court).

What might it cost you to get this free lunch? The sponsor wants to sell you something. This sponsor is a broker/insurance agent who is using your fear of probate, and the lure of avoiding it using a trust, to get a foot in the door. The sponsor hopes to gain your confidence and gather your personal information. If the sponsor is like many others who hold these lunches, sell an annuity to you is the ultimate goal.

Using a trust as the wedge to sell an annuity is ironic. Why? Because one purpose of a trust is to avoid probate. But if you invest your funds in an annuity, you will be buying a policy with a beneficiary designation. The annuity policy does not go through probate, so why do you need the trust? Because you won't go to the free lunch if he invites you to an annuity sales pitch. (Annuities are also fraught with other issues, like penalties for early withdrawal and non-guaranteed interest rates.)

Remember that the sponsor is not licensed to give legal advice, but is still doing so by holding this seminar. Your best bet: give up the free lunch. If you want an annuity, talk to your trusted investment advisor. If you want a living trust, make an appointment with a qualified Elder Law Attorney who can give you the pros- and cons- and help you find the best legal tool for your specific goals and circumstances.