



pursues aggressively false and unsubstantiated cure or treatment claims for cancer and other diseases, and other health claims with obvious appeal for elderly consumers.<sup>(5)</sup> The Commission is also vigilant in pursuing predatory lending practices that often target older and low income citizens, to protect them from losing what is typically their most valuable asset - their homes.<sup>(6)</sup>

### **III. Living Trust Scams**

#### **A. Living Trusts**

As you know, a living trust is a legal arrangement where a person, called the "grantor," places his assets into a trust during his lifetime. The trust is administered by a "trustee" for the benefit of the trust's beneficiaries. The grantor may be a trustee and a beneficiary of the trust. Living trusts are a widely recognized and legitimate estate planning device. Because assets transferred to the trust are no longer owned by the grantor, at the grantor's death, the assets are not part of the grantor's estate and do not have to be probated. Accordingly, a living trust can avoid what could be a costly, lengthy process. Whether or not this is a major advantage varies by the size of the estate and by state and locality; for small estates, many states have an informal probate process that minimizes cost and delay. Whether a living trust is an appropriate estate planning tool depends upon an individual's circumstances and goals, and state laws.

#### **B. Sc's13ttss**

#### **IV. The Commission's Experience with Living Trusts**

Unlike state authorities, the Commission has had limited experience with prosecuting living trust scams. Historically, the Commission has received few consumer complaints about living trusts. Nonetheless, the Commission sued two companies selling living trusts after AARP brought their practices to our attention.

##### **A. Cases**

In 1997, the Commission charged that The Administrative Company (TAC), and its president, Michael McIntyre, and Pre-Paid Legal Services, Inc. (Pre-Paid) together violated the FTC Act by engaging in deceptive practices in selling living trusts. The Commission's staff worked with a 21-state coalition in developing the cases.

The Commission's complaint alleged that TAC, McIntyre and Pre-Paid misrepresented that a living trust avoids all probate and administrative costs; the use of a living trust allows assets to be distributed immediately or almost immediately; a living trust cannot be challenged; living trusts are prepared by local attorneys; a living trust protects against catastrophic medical costs; a living trust is the appropriate estate planning device for every consumer; and there are no disadvantages to a living trust. The administrative consent orders obtained by the Commission require the respondents to stop making these misrepresentations and to disclose clearly and conspicuously that living trusts may be challenged on similar grounds as wills; living trusts may not be appropriate in all instances; and all estate planning options should be examined before determining which estate plan best suits a particular individual's needs and wishes.

Given differences in state laws, the orders also require the respondents to disclose, where true, that: (1) the availability of informal probate under a state's law allows minimal or no contact with the courts and reduces the time required to probate a will; and (2) creditors have a longer period of time to file a claim against a living trust than against a probated estate. The order against Pre-Paid also required redress to consumers who had not previously received refunds or did not reside in states in which Pre-Paid already had settled with state authorities. Under the FTC order, 480 consumers received \$129,074.50.

enforcement agencies, such as the U.S. Postal Inspection Service, Canada's Project Phone

new Consumer Alert (attached) about how to spot and avoid living trust scams.

The new Consumer Alert warns consumers about living trust scams, and how

agencies and thousands of media. We also are seeking new partnerships with other organizations that have frequent contact with older Americans. We hope that this outreach effort will prevent additional consumers from being victimized and lead others to report complaints to the FTC or other authorities.

## **VI. Conclusion**

The Commission greatly appreciates the Committee's effort to investigate the problems associated with abuses in the marketing of living trusts and to assess the potential scope of living trust scams. Putting the spotlight on this problem will help alert consumers to the dangers they may face by buying living trusts or other estate planning products from strangers who play on their fears that their loved ones will not get the benefit of their estates in a timely fashion because of probate costs and delays. Thank you for providing the Commission the opportunity to participate in this hearing.

## **Endnotes**

1. This written statement represent the views of the Federal Trade Commission. My oral presentation and response to questions are my own, and do not necessarily represent the views of the Commission or any individual Commissioner.
2. 15 U.S.C. §§ 41 *et seq.* The Commission also has responsibilities under more than 40 additional statutes.
3. 15 U.S.C. §§ 45(a) and 53(b).
4. *See* FTC Press Release, "Cross-Border Lottery-Bond Scheme Alleged to Violate U.S. Laws," dated Jan. 21, 2000. Consumers complaining to the FTC about telemarketing activity often indicate that they are older citizens. Similarly, older Americans account for 60 percent of the fraud victims who call the National Consumer League's National Fraud Information Center.
5. *See, e.g.*, FTC Press Release, "Operation Cure.All Nets Shark Cartilage Promoters: Two Companies Charged With Making False and Unsubstantiated Claims for Their Shark Cartilage and Skin Cream as Cancer Treatments," dated June 29, 2000 (Operation Cure.All is an ongoing federal and state law enforcement and education campaign launched in June 1999 targeting bogus health claims on the Internet); and FTC Press Release, "Marketers of 'Vitamin O' Settle 90.24 4e 8ok 'sel 'rkk3(cat)3()8( t)3(o) 4 ane H ean8(e)-12(-)-16rnin" da

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