

# DEATH PLANNING MADE DIFFICULT: THE DANGER OF LIVING TRUST SCAMS

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**HEARING**  
BEFORE THE  
**SPECIAL COMMITTEE ON AGING**  
**UNITED STATES SENATE**  
ONE HUNDRED SIXTH CONGRESS  
SECOND SESSION

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WASHINGTON, DC  
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JULY 11, 2000  
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**Serial No. 106-31**

Printed for the use of the Special Committee on Aging



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 2000

66-804 cc

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# **DEATH PLANNING MADE DIFFICULT: THE DANGER OF LIVING TRUST SCAMS**

**TUESDAY, JULY 11, 2000**

**U.S. SENATE,  
SPECIAL COMMITTEE ON AGING,  
*Washington, DC.***

The committee met, pursuant to notice, at 9:30 a.m., in room SD-628, Dirksen Senate Office Building, Hon. Chuck Grassley, (Chairman of the Committee) presiding.

Present: Senators Grassley, Hutchinson, Reed, Breaux, and Kohl.

## **OPENING STATEMENT OF SENATOR CHARLES GRASSLEY, CHAIRMAN**

The CHAIRMAN. I am Senator Grassley and I would like to call this hearing to order. I thank my colleagues, Senator Reed from Rhode Island who is here with us now. Senator Breaux will be along a little later on, so I want to thank my fellow members for joining me today on this hearing for living trust scams against the elderly.

In addition, I want to thank the witnesses who are here with us today. Your testimony will assist the committee greatly in educating senior citizens about living trust scams. Your testimony will also assist the committee in determining how best to address this increasing problem.

Living trusts are a perfectly legal and useful tool for handling one's estate and can function as a will by distributing one's assets. However, this hearing focuses on the growing trend of selling unnecessary, incomplete and even dangerous living trusts to the elderly. For more than a decade, various organizations and government offices have been concerned about abusive trust mills. By trust mill, I am referring to companies that market living trust kits to the elderly that are often deceptive.

Various companies engaged in trust mills have been prosecuted and some have declared bankruptcy. However, there is evidence that some of these companies are shut down in one State, only to reappear in another State under another name. Certain unscrupulous companies offer senior citizens advice on estate planning.

They contact them through mail, door-to-door sales, telemarketing and by sponsoring special seminars at local hotels. This advice is marketed as free, yet senior citizens and their families should beware. As the baby boomers age, scams such as these living trust sales seem to be on the increase. This is why I believe it is important to hold this hearing and to do it now.

In a recent study, the AARP estimated that as many as 4 million low-income seniors may have purchased costly, unnecessary and potentially dangerous living trusts as a result of high-pressure sales tactics. The AARP even found that some of these firms masquerade as affiliates of AARP, the Better Business Bureau and other reputable organizations.

Many people who have already purchased a living trust may not realize that it is inadequate or worthless. Others may rely on the boilerplate living trust kits that are based on another State's law and can cause problems in the State of residence. They may believe that they avoid probate or taxes with this living trust or they may have provided financial information to salespeople who saw the opportunity to sell them annuities.

For those seniors who purchased annuities, they may learn, as did Walter Kulinski of Wisconsin, that significant taxes and penalties can be incurred in connection with annuities. One of the living trust's main selling points is that it can help pass assets on to heirs without going through the probate process.

However, avoiding probate does not avoid paying taxes or estate taxes, although it can save time and limit attorneys fees. What scam artists may not tell senior citizens is that they may not need a will or a trust at all because their estate is below \$675,000. This is the maximum an estate can hold, under the Federal estate taxation laws—to avoid Federal taxes.

States set various other maximum estate limits to avoid taxes. Today, we will learn how some of the companies typically make the first contact to sell a living trust. Then we will learn that a living trust is often boilerplate and may be based on another State's law that does not apply to the victim. Moreover, we will learn that the victim is not told in some instances that, to effectuate living trusts, assets must be deeded over to the trust.

We will learn how creating a living trust can have certain disadvantages for senior citizens who need long-term care. Finally, we will hear how living trusts are sometimes used primarily to get access to the victim's assets and to sell the victim other annuities. These sales can be costly to the victim in terms of penalty and capital gains taxes.

The bottom line is that senior citizens need to be aware that these scams do exist. Senior citizens and their families need to be educated to recognize living trust scams. It is important that senior citizens consult family, friends and knowledgeable people before entering into any of these transactions described today. Simply stated, living trusts are not for everyone.

Before I introduce the witnesses, I want to recognize Senator Reed, who came first, and then Senator Kohl.

### STATEMENT OF SENATOR JACK REED

Senator REED. Thank you very much, Mr. Chairman, and let me commend you for holding this hearing. We are all terribly troubled when we find that seniors are being exploited by predatory marketing practices, whether it is with respect to living trusts or other financial measurements. It is something that we have to know more about and take appropriate action to prevent.

When I was made aware of this particular problem, I contacted my attorney general in Rhode Island, and fortunately this practice has not yet arrived on the scene; but unless we act promptly, we could see it even there in Rhode Island, which has a significant population of seniors.

Today's hearing is going to be extremely useful because it will show not only the members of this committee, but also a broader public, some of the techniques that are being used and some of the dangers that seniors face. We would like to think that not only can we provide for a decent and safe retirement, but that we can, in fact, protect our seniors from these predatory practices, and I hope and know that this hearing will go a long way to do that.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Senator Kohl and then Senator Breaux.

### STATEMENT OF SENATOR HERB KOHL

Senator KOHL. Once again, Mr. Chairman, we are meeting to discuss a scam that targets the elderly. Hearings like this are worst and the best parts of our job; worst because we end up hearing about shocking schemes that can and have destroyed the lives of vulnerable senior citizens; best because by exposing scams like this one to the light of day, we have a real chance of stopping them.

Today we are investigating the problems of fraudulent and inadequate living trusts. Living trusts, when executed honestly, are a valid and sometimes valuable method for estate planning. In this legal arrangement, the person creating the trust gives property to a trustee who controls it for the benefit of a third person, sometimes the grantor's heirs and sometimes the grantor him or herself.

This complicated legal document can ease the distribution of assets after death and may help avoid some court costs. Unfortunately we will hear today about unscrupulous companies that, for a high fee, set up living trusts that their senior clients do not need or simply do not work. State laws govern these trusts and each State's laws are different.

Some companies who sell trusts do not bother to find out what the local laws governing trusts are, and instead charge thousands of dollars for a pile of papers that are meaningless. Worse yet, these same companies use the access they gain to the financial information of their clients to pressure them to buy more expensive and often poor-quality financial products.

A senior's dream of simplifying his or her estate can quickly degenerate into a nightmare of high-pressure salesmanship, bad investments and confusing, worthless legal documents. The dishonest sellers of these trusts prey on the elderly's fear that they will outlive their savings or that they will have nothing to pass on to their children.

Using high-pressure tactics and misrepresenting their product, these hucksters force seniors to make decisions they will later regret. Through a combination of persuasion and fear-mongering, these salespeople endanger the financial security of seniors who worked so hard throughout their lives to achieve.

I would also like to extend a welcome and a thank you to the Kulinski family for being with us today. By bravely coming forward, you are helping many others around the country by educating them on the risks involved. Financial scams can be embarrassing and people often are unwilling to admit they were a victim. Unless people like you speak up, however, law enforcement cannot respond and these scams will continue.

So, we thank you for being here.

The CHAIRMAN. Senator Breaux is the ranking Democrat on the committee, and I appreciate his cooperation in the setting up of this hearing.

#### STATEMENT OF SENATOR JOHN BREAUX

Senator BREAUX. Thank you very much, Mr. Chairman, and thank all of our panelists who are going to be testifying on this very important subject. Thank you once again for having the Senate Aging Committee look at different areas of concern to our Nation's seniors and also, obviously, to their families, their children and even their grandchildren.

I think this hearing is good and it is very important in the sense that it is going to shed more light on the practice of trying to use high-pressure sales tactics to ultimately scam seniors into buying things and doing things that are simply not necessary, not needed for a large majority of seniors.

I know in my own family, my father worries constantly about his estate, which I will say publicly is very, very small and probably comes in under the \$675,000 exemption, but he is so worried about having that estate be taxed at a very high rate upon his death that he constantly is worried about what does he need to do now to prevent that from happening when he passes on.

He somewhat humorously said that he is not going to pass on until his son does something to fix it, and I think there are a lot of seniors who find themselves in that situation of really being very worried about what happens to their estate, and the numbers are really staggering, to find out how many people have engaged in buying some of these products who have absolutely no need for them, absolutely no need.

I mean, their estates do not come anywhere near the amount that is necessary to trigger a tax by the Federal Government on their estate when they pass away. But I will bet you a dollar to a doughnut that when these salesmen come to their houses, they do not mention that, and a lot of people are engaging in purchasing products that they have absolutely no need for.

Hopefully this hearing will shed some light on this problem, and hopefully we will look for some solutions which I think will be very important. I thank the Chairman.

The CHAIRMAN. Well, thank you all of my colleagues for being present on this very important issue. Before we start the testimony, we want to put this living trust scam situation in perspec-

tive. We have been provided by the State of Wisconsin a video that was about an hour-and-thirty minutes long. We have cut it down to only 3 minutes, and I would like to show this to give you some examples of the misrepresentations that we are talking about.

We have over here, on my right, a chart that would include a complete list of the misrepresentations that are made on this undercover tape. The tape shows a salesman for United Seniors Alliance attempting to sell a living trust to a local police chief's wife in 1998, obviously not a very prudent choice of victims.

Subsequently, three salesmen were prosecuted and convicted in the State of Wisconsin, including the salesman in the video. To assist senior citizens, this committee has prepared a list of tips that are available, that I would like to put up to give you my ideas of what senior citizens can do to avoid being involved in one of these scams. Shall we show the video now?

[Videotape played in the hearing room.]

[Brief summary of the video tape follows:]

#### MISREPRESENTATIONS

MADE BY TRUST SALESMAN CRAIG MICHELS TO MARILYN THIEDE ON FEBRUARY 24, 1998

*Provided by: Wisconsin Department of Agriculture, Trade and Consumer Protection*

1. United Seniors had been in business about 10 years.
2. Henry Abts was the founder of United Seniors; he is with AARP.
3. "We're certified by AARP."
4. United Seniors was founded in 1986.
5. When asked by Thiede, "Does AARP back you?" Michels answered, "Absolutely."
6. United Seniors has an "AAA rating through the Better Business Bureau."
7. An estate must be probated if you own a home or have over \$10,000 in assets.
8. United Seniors pays an attorney \$100 to review living trust documents "for the attorney to be certified by AARP."
9. To be certified by AARP, we give a 90-day return-money-back guarantee.
10. When a private attorney prepares a living trust, any changes more than 3 days later result in additional charge to the customer. United Seniors makes no additional charges.
11. United Seniors isn't "for profit" like an attorney's office.
12. There is a \$100 discount if you contract for the trust today.
13. With a living trust there is no probate.

The CHAIRMAN. Well, I think you see an example of what we are up against here, and our testimony will go into further detail and other examples of it. Would the Senator from Arkansas like to speak before I introduce the first witness.

Senator HUTCHINSON. Why don't we go ahead and I will be prepared to speak and ask questions later? Thank you.

The CHAIRMAN. OK. Our witnesses in today's hearing will be divided into two panels. On the first panel, we will hear from Ms. Judy Kulinski of Wisconsin, accompanied by her husband, Reinhard. They are representing Mr. Kulinski's father, Walter Kulinski, a victim of a living trust scam.

Next, we will hear from George Hoffman. Mr. Hoffman is a former living trust and annuity salesman. He will describe deceptive and high-pressure sales tactics used by some salespeople to sell living trusts to senior citizens.

Finally, we will hear from the president of AARP, Tess Canja, with regard to AARP's work in this area. So, we will start with



you, Judy, and then go to George and then to Tess. Thank you very much. You may want to pull down the microphone. Pull it fairly close to you, because it is pretty necessary to speak almost directly into it.

Thank you.

**STATEMENT OF JUDY KULINSKI, ON BEHALF OF WALTER KULINSKI; ACCOMPANIED BY HER HUSBAND, REINHARD KULINSKI, PEWAUKEE, WI**

Ms. KULINSKI. Good morning. My name is Judy Kulinski and I would like to introduce my husband, Reinhard. We are here today on behalf of Reinhard's father and my father-in-law, Walter Kulinski.

The CHAIRMAN. By the way, we have a picture, I presume, of your father—father-in-law over here.

Ms. KULINSKI. Yes. He is a man who was raised with values of trust and honesty. Walter is not at my side today because unfortunately his memory is not as it used to be and he has difficulty remembering what happened to him 2½ years ago. Reinhard and I, along with our two sons, Casey and Chase, live with him in a duplex.

Our intention for this arrangement was so we would be near to help Walter as he got older, to make him more comfortable than a senior home, in essence, to protect him. In November 1997, Walter's trust in a persuasive telemarketer turned his financial situation and our family upside down.

He received a cold sales phone call from a company named United Seniors Alliance. They were interested in setting up a living will and trust for him, saving his heirs many tax dollars, so they said. Being the trusting man that Walter is, they were soon frequenting his home. Many faces from this company came to see him, having him sign this and that, painting a picture of a trustworthy company that was only looking out for his interests.

The trust was drawn up on a master form based on California laws, never filed and deemed to be adequate, but very clumsy. When USA discovered how many assets Walter had, they offered to prepare his 1997 tax returns free of charge. This gave them access to all of his financial records.

Soon his IRA was transferred to another firm and a 30-year annuity was set up with a very attractive interest rate, liquidating over \$280,000 from mutual funds and stocks he had had for many years. The attractive interest rate was only a tease. The first-year rate was 7 1/4 percent, dropping to 4 1/2 percent in the second year. The annuity was set up so that Walter could not withdraw any funds for 10 years without a substantial penalty. What does an 84-year-old individual need with a 30-year annuity?

In March 1998, USA attempted to liquidate savings and certificate accounts of roughly \$325,000 from a Pewaukee bank that knows our family well. Upon receiving the transmittal information, the branch manager contacted us. I contacted the local police, knowing this wasn't right; but since Walter had willingly signed and consented to this, there was nothing they could do.

After contacting numerous other agencies, I felt helpless and frustrated. No one was willing to help and I knew he was being

scammed. I finally spoke with a then-Detective, now Lieutenant David LaFond of the Waukesha County Sheriff's Department. He seemed willing to listen and followed up the next day with Elmer Prenzlou of the Department of Consumer Affairs.

After weeks of frustration, I had finally found someone who could listen and help us. Scott Kann of USA was arrested and released on bail. He closed down shop in Milwaukee, moved to Arizona and apparently suffered multiple heart attacks, leaving him incapable of travel or and unable to stand trial.

After 2½ years of hearings and court appearances, this case against Kann was dropped because of Walter's failing memory. What did Walter get out of trusting USA? A poorly written trust; an incomplete and inaccurate tax return; taxes incurred on capital gains when his mutual funds were liquidated; potential interest and dividend income lost in excess of \$46,000; legal fees and less than \$27,000 in restitution, enough to cover the penalties incurred when the annuity was withdrawn and deposited into a reputable fund.

What did Mr. Kann get out of taking advantage of an elderly man? His freedom and the ability to possibly do this again to someone else; very large commission for liquidating Walter's mutual funds. When Walter was younger, this world was more trusting and people respected each other.

With the increasing number of elderly adults, we need to find a way to protect them from today's not-so-trusting world. From my experience and discussing this issue with my sister, Shari, who has established her own business as a companion to the elderly, this abuse and disrespect is happening more and more.

The family needs to get more involved. We cannot just tell our parents or our grandparents to say no to all the telemarketers or salespeople. They hear the word "free" and they believe they will be receiving something free. It is sad that my generation has no respect for the elderly. We need to start respecting these people, help them and be patient with them.

The elderly don't realize that everyone they interact with may not be legitimate. We need to help them and advise them, support them. They are only acting on trust and honesty. It is time to get back to basics and start taking care of the generation that built this country, as they have so carefully taken care of us.

It is time to educate the Baby Boomers and the Generation X'ers that they cannot and will not get away with scamming the elderly. We need to update an upgrade our current laws to suit the new millennium.

[The prepared statement of Ms. Kulinski follows:]

**TESTIMONY OF**  
**JUDY KULINSKI**  
**before the**  
**SPECIAL COMMITTEE ON AGING**  
**JULY 11, 2000**

### Statement of Judy Kulinski

Good morning. My name is Judy Kulinski and I would like to introduce my husband Reinhard. We are here today on behalf of Reinhard's father, and my father-in-law, Walter Kulinski, a man who was raised with values of trust and honesty. Walter isn't at my side today because, unfortunately his memory isn't as it used to be and he has difficulty remembering what happened to him 2 ½ years ago. Reinhard and I, along with our two sons, Casey and Chase, live with him in a duplex. Our intention for this arrangement was so we would be near to help Walter as he got older, to make him more comfortable than a senior home, in essence, to protect him.

In November 1997, Walter's trust in a persuasive telemarketer turned his financial situation and our family upside down. He received a cold sales phone call from a company named United Seniors Alliance. They were interested in setting up a living will and trust for him, saving his heirs many tax dollars; so they said. Being the trusting man that Walter is, they were soon frequenting his home. Many faces from this company came to see him; having him sign this and that, painting a picture of a trustworthy company that was only looking out for his own interests. The trust was drawn up on a master form based on California laws, never filed, and deemed to be adequate but very clumsy. When USA discovered how many assets Walter had, they offered to prepare his 1997 tax returns, free of charge. This gave them access to all of his financial records. Soon, his IRA was transferred to another firm and a 30-year annuity was set up with a very attractive interest rate, liquidating over \$280,000 from mutual funds and stocks he had had for many years. The attractive interest rate was only a tease. The 1<sup>st</sup> year rate was 7 1/4% dropping to 4 1/2% in the 2<sup>nd</sup> year. The annuity was set up so that Walter could not withdraw any funds for 10 years without a substantial penalty. What does an 84-year-old individual need with a 30-year annuity?

In March 1998 USA attempted to liquidate savings and certificate accounts of roughly \$325,000 from a Pewaukee bank that knows our family well. Upon receiving the transmittal information, the branch manager contacted us. I contacted the local police, knowing this wasn't right, but since Walter had willingly signed and consented to this, there was nothing they could do. After contacting numerous other agencies, I felt helpless and frustrated. No one was willing to help and I knew he was being scammed. I finally spoke with a then Detective, now Lieutenant, David LaFond of the Waukesha County Sheriff's Department. He seemed willing to listen and followed up the next day with Elmer Prenzlow of the Department of Consumers Affairs. After weeks of frustration, I had finally found someone who would listen to me and help us. Scott Kann, of USA, was arrested and released on bail. He closed down shop in Milwaukee, moved to Arizona and apparently suffered multiple heart attacks, leaving him incapable of travel or unable to stand trial. After 2 ½ years of hearings and court appearances, this case against Kann was dropped because of Walter's failing memory.

What did Walter get out of trusting USA?

- A poorly written trust
- An incomplete, inaccurate tax return
- Taxes incurred on capital gains when his mutual funds were liquidated
- Potential interest and dividend income lost of in excess of \$46,000

- Legal fees
- Less than \$27,000 in restitution, enough to cover the penalties incurred when the annuity was withdrawn and deposited into a reputable fund.

What did Mr. Kann get out of taking advantage of an elderly man?

- His freedom; and ability to possibly do this again to someone else.
- A very large commission for liquidating Walter's mutual fund.

When Walter was younger, this world was more trusting and people respected each other. With the increasing numbers of elderly adults, we need to find a way to protect them from today's not so trusting world. From my experience and discussing this issue with my sister Shari, who has established her own business as a companion to the elderly, this abuse and disrespect is happening more and more. The family needs to get more involved. We cannot just tell our parents or grandparents to say no to all telemarketers or salespeople. They hear the word FREE, and believe they will be receiving something free! It is sad that my generation has no respect for the elderly. We need to start respecting these people, help them and be patient with them. The elderly don't realize that everyone they interact with may not be legitimate. We need to help them and advise them, support them. They are only acting on trust and honesty. It is time to get back to basics and start taking care of the generation that built this country, as they have so carefully taken care of us. It is time to educate the Baby Boomers and Generation X'ers that they cannot and will not get away with scamming the elderly. We need to update and upgrade our current laws to suit the new millennium.

The CHAIRMAN. Thank you very much, Judy. Now we will go to George.

**STATEMENT OF GEORGE HOFFMAN, FORMER SALESMAN, ALLIANCE FOR MATURE AMERICANS, AND PRESIDENT, GEORGE B. HOFFMAN ESTATE AND RETIREMENT PLANNING, LONG BEACH, CA**

Mr. HOFFMAN. My name is George B. Hoffman. I presently own my own business, known as George B. Hoffman Estate and Retirement Planning, with offices in California. I am a second-year law student and I have been in the field of retirement and estate planning since 1980.

In 1989, when I was employed overseas, my mother passed away and her relatively modest estate was subjected to a 22-month-long California probate process, with the largest portion of the fees going to the attorney who advised her not to set up a living trust so that he could collect the probate fees at the end.

In 1992, when my overseas contract was terminated, I returned to the United States and I began the process of re-entry into the United States job market. During this time, I was introduced to an attorney and a couple who were in the development stages of establishing a living trust sales organization they called the Alliance for Mature Americans.

Because I had only recently experienced the California probate process with my mother's estate, I recognized the tremendous benefit a trust would have for heirs and decided to team up with them and act as a sales representative. When I began working for the AMA, the trust sales group consisted of a rock band musician, an unemployed used-car salesman, two housewives, an ex-Marine with no work experience, a guy who sold cabinets for Sears and a married couple that seemed to have an assorted set of various sales jobs and me.

In addition, the company had an attorney and three or four telemarketers who appeared to be quite experienced at their job. The telemarketers utilized purchased mailing lists to identify homeowners over the age of 55 for the purpose of setting appointments and purportedly to explain the benefits of a living trust.

In their telephone presentation, telemarketers would refer to an article on living trusts published in an AARP magazine and offer to send a certified trust adviser to their home for a consultation at no extra cost or at no cost at all. The sales group was subject to a 2-day sales training session. Here, we were given a sample living trust, the company brochures, a pitch book consisting of several AARP articles on living trusts and there were newspaper reports on the probate of celebrity estates. Bing Crosby was one of the ones that comes to mind.

The first half-day of the training session was an overview of the AMA marketing plan, which included a telemarketing process, and a 30-minute attorney presentation on the probate process, where he explained the cost of going through probate and why attorneys normally do not recommend people to set up a living trust, and that is so they can collect the probate fees at the end.

I just experienced that, so I was quite ripe for this type of presentation. Next, one of the principals talked about the virtues of the

AMA organization and informed us that the salespeople receive a sales commission on living trusts; 35 percent if the selling price was \$1195 or higher, and it was on a gradually reducing scale down to 25 percent if the living trust sale was \$850, which was our minimum amount.

Two of the things that come to mind is that during this presentation, AMA identified certain characteristics of the senior market. Two of those are that seniors will respond better to an emotional presentation, rather than a factual one. Basically if the salespeople knew too much about the laws and the living trusts and estate planning, he would not be able to convey the emotion necessary to make the sale.

Second, is that seniors generally need to be treated like children, as if they do not always know what is good for them, and they need to be told what to do, rather than asked for an opinion. We were given what was referred to as a smoke sheet, and basically what this was was a prequalifying sheet of paper that we were to ask a family questions about.

The purpose of it was to find out if the client had any money, specifically if they had \$1000 or more in a checking account that they could afford to buy a living trust, and if they had any other assets in their estate that needed to be funded. We were taught to direct the clients to produce originals or copies of the necessary documents so that we could actually transfer these assets into the trust.

These things were like grant deeds, titles to the mobile home, time-shares, stock certificates, bank brokerage accounts, IRAs and that type of thing. At the end of the training session, we were given a certified trust adviser certificate that was signed by the attorney who held the 30-minute presentation and we each had our color photograph taken and were issued a name badge that we were to wear when we went to see the clients.

In the beginning, the company principals are the ones who actually delivered all of the trusts that we sold. As the company grew, of course, then there were just so many clients they could not handle at all, and so several people there were in the sales group for the living trusts were actually promoted into the annuity sales.

The company maintained themselves or, I should say, they maintained an intensive ongoing recruiting program. It seemed like for every two people that were hired, another person left the company, and so that was an ongoing process. Separate training classes were conducted for the delivery agents to maximize their annuity production, and the techniques included instilling fear of a banking industry collapse. This was during the time of the savings-and-loan scam, so it was very appropriate.

Separate presentations were developed for clients, and one of the techniques that some of the members of the sales force developed on their own to a more trusting class of clients was simply to fill out forms to transfer the client's accounts at banks and brokerage houses into annuity contracts, and they did this on the premise of simply funding a trust.

The sales force set as a production level of \$40,000 in annuity sales per delivery. There was a tremendous amount of pressure put on the salespeople to do that type of production. In other words, for

every delivery we were expected to sell \$40,000 in annuities. The financially damaging part of this whole process was the annuity sales. It was not the trust themselves.

The annuities that were pushed by the company paid very high commissions. The high commissions were usually at the expense of the people who bought the annuity. Most of these contracts, for example, if the client would put in \$100,000 and they died 6 or 8 months later, the heirs were lucky, after paying the penalties and the surrender charges and everything else, they would be lucky to get \$85,000 or \$87,000 in cash out of a \$100,000 investment made 6 months prior, and this was simply to support the high commissions at the front-end.

The AMA eventually closed its doors. The California Attorney General brought suit against the company and they were able to prevail in their allegations against AMA and the insurers. They were fined \$1.5 million and in exchange they closed down their operations and they were accused of no wrongdoing.

The last I heard, they had established a new operation based in Arizona, and if the sales estimates for California are correct, AMA earned approximate \$20 million in annuity sales, approximately \$1 million in living trust sales in just over 3 years, and again they paid a \$1.5 million fine for doing this.

The original AMA attorney was fined \$100,000 for aiding and abetting the practice of law, and some of the larger insurance companies that had contracts with AMA that did not participate in designing special high commission annuities for AMA, actually gave back all of the money that was collected from clients plus the interest that was earned on it. Several ex-AMA agents have set up similar operations in the State and outside of the State, and they have skirted the issue of attorney fee-sharing for legal services by selling what is called a prepaid legal service plan that happens to include a living trust, discounted to \$995, and they continue to sell their trust clients questionable annuity products.

I want to thank you for the opportunity to relate this information to you and I hope you will find it useful for your purpose.

[The prepared statement of Mr. Hoffman follows:]



## **George B. Hoffman**

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### **George B. Hoffman's Statement for US Senate Special Committee on Aging**

My name is George B. Hoffman. I presently own my own business known as George B. Hoffman Estate and Retirement Planning with offices in Newport Beach and Whittier California. I am a second year law student and I have been in the field of retirement and investment planning since 1980.

In 1989, while I was employed overseas, my mother passed away and her modest estate was subjected to a 22-month long California probate with the largest portion of the cost being paid to the attorney who drafted her will and advised her against establishing a living trust.

In 1992, when my overseas contract terminated, I returned to the US and began the process of re-entry into the US job market. During that time, I was introduced to an attorney and a couple who were in the development stages of establishing a living trust sales organization they called The Alliance for Mature Americans (AMA).

Because I only recently had experienced the California Probate Court process with my mother's estate, I recognized the tremendous benefit a trust would be to heirs and decided to go to work for AMA as a trust sales representative.

When I began working for AMA, the trust sales group consisted of a rock band musician, an unemployed used car salesman, two housewives, a young ex-marine with no other work experience, a person who sold kitchen cabinets for Sears, a married couple with a lifelong series of various sales jobs and me. It was apparent that, other than myself, none of the other trust sales people had any legal or financial experience. In addition the company employed an office secretary, an attorney and three or four "telemarketers" who appeared to be quite experienced. The telemarketers utilized purchased mailing lists to identify and call homeowners over the age of 55 for the purpose of setting appointments, purportedly to explain the benefits of a living trust.

In their phone presentation the telemarketers would refer to an article on living trusts published in an AARP magazine, and offer to send a "Certified Trust Advisor" to their home for a consultation at no cost to them or obligation to purchase anything. The telemarketing manager would then allocate the appointments made among the sales group and each of us would have two or three potential clients per day.

The sales group was subjected to a two-day sales training session. Here we were given a sample living trust, company brochures on living trusts, and a "pitch book" consisting of copies of several AARP articles on living trusts and estate planning along with an introductory letter from the attorney, a schedule of probate fees and costs for different estate values and a few newspaper articles on the probate of celebrity estates (Bing Crosby's and others).

The first 1/2 of the first day of training was basically an overview of the AMA marketing plan that included a 30-minute attorney presentation on the probate process, the costs and how attorneys generally will not advise a client to set up a trust so the attorney can collect the probate fees at death, and basically how a living trust avoids probate.

Next one of the principals extolled the virtues of the AMA organization and informed us that the sales people were to receive a sales commission on living trust sales of 35% of the selling price for a \$1195.00 sale reducing to 25% on a \$850.00 sale.

AMA identified certain characteristics of the senior market:

1. Seniors will respond better to an emotional presentation rather than a factual one. - Basically, if the sales person knows too much, he will not be able to convey the emotion necessary to make a sale.
2. Seniors generally need to be treated like children in that they need to be told what to do rather than asked for an opinion.

The training continued with how to use what was referred to as a "smoke sheet" to pre-qualify the people with whom the appointment was set. This sheet contained a number of qualifying questions such as how long the people had lived in their home, how many children they had, what the children's occupations were, how much the house was worth, and an approximation of the overall estate value. - The actual purpose of the "smoke sheet" was to find out if the client had any money and whether they had a friend or relative who was an investment advisor or attorney.

If the "smoke sheet" showed savings and checking account balances with more than \$1,000 or so, we were trained to continue with the presentation.

We were taught to direct the client to produce original or copies of the necessary documents needed to actual transfer the client's assets into the trust. (Grant Deeds, Title to Mobile Homes, Time Shares, Stock Certificates, bank, brokerage, IRA and other accounts) as a part of securing the information needed to produce a funded living trust.

Shortly after the end of the training session, based on the 30-minute overview, a "Certified

Trust Advisor" certificate was issued to each member of the sales group and we were photographed individually and given an "official" AMA pocket badge.

At the beginning of my employment with AMA, the company principals actually delivered the completed trusts to the clients. When they were able to convince the client to move some or all of their liquid cash into annuity contracts, the originating sales person received a 1% commission based on the amount the client placed into an annuity in addition to the sales commission already received from the trust sale.

As the company grew, there were too many clients for the principals to handle alone and it became necessary to promote some of the trust sales people to the position of a trust delivery/annuity sales agent. AMA paid for special insurance licensing classes for these sales agents so that they could obtain an insurance sales license.

The company maintained intensive and on-going recruiting programs for both sales people and telemarketing staff as there appeared to be a very high turnover rate. However, by the time I left the company in 1994, there were approximately 100 sales people, 50 telemarketers, and 25 people actually delivering and notarizing the trusts and selling annuities, and a staff of about 10 secretaries that actually produced the trusts and funding documents.

Target annuity production sales goals were set for the delivery/annuity sales agents based on the number of assigned trust deliveries and separate training classes were conducted for the delivery agents to maximize their annuity production. The techniques taught included instilling fear of a banking industry collapse (this was during the time of the savings and loan industry problems). Separate presentations were developed for clients who had their money invested in the stock market through either direct investments or IRA accounts. One such technique to a more trusting class of clients was to simply fill out forms to transfer the client's accounts at banks and brokerage houses into annuity contracts purportedly to properly "fund" the living trust. In some cases the client didn't even know he or she had signed papers to transfer his or her retirement nest egg to an insurance company.

A production level of \$40,000 in annuity sales per delivery was set for the delivery agents and those who experienced less were simply given fewer trusts to deliver or were relegated to the delivery of a high number of trusts to people who had no money to invest. Both the delivery/annuity sales agent(s) and trust sales representatives bore their own transportation and related costs and were compensated on a commission basis only. The annuity agents received approximately 1/2 of the commissions paid by the insurance companies for placing annuity contracts with the balance of the commissions paid to AMA. As a result, the sales and delivery agents that could not maintain a high closing rate left

the company when they began using their personal savings to pay expenses.

The next, and more financially damaging step was to send out high pressure, commission based delivery/annuity sales agents to deliver the trust documents. Here, the goal was to use the senior's fear and concern for outliving his or her savings as a way to convince them to re-invest their savings and retirement funds into annuity contracts with specific insurance companies that paid AMA the highest commissions.

AMA trained the delivery/annuity sales agents to concentrate exclusively on the sale of the high commission annuity contracts. Most of these contracts paid less to the beneficiaries than the initial amount deposited by the customer when he or she died in order to maintain the high commission level.

AMA eventually closed its doors. The California Attorney General brought suit against the company and was able to prevail on their allegations against AMA and the insurers who contracted with them. The principals of AMA agreed to pay a fine of \$1.5 Million, and close their operation in exchange for a finding of "no wrongdoing". The last I heard, they had established a new operation, based on their experience in California, in Arizona. If the sales estimates are correct, AMA earned about \$20 Million in annuity commissions, and approximately \$1 Million from the sale of living trusts in just over 3 years in California.

The original AMA attorney was fined \$100,000 for aiding and abetting the practice of law by non-attorneys in establishing over 10,000 living trusts.

Several ex-AMA agents have set up similar operations in the state by skirting the issue of attorney fee sharing for legal services by selling a pre-paid legal services plan that happens to include a living trust "discounted" to \$995.00 and continue to sell their trust clients questionable annuity contracts.

Thank you for the opportunity to relate this information to you, I hope that you will find it useful for your purpose.

Respectfully submitted,

George B. Hoffman

The CHAIRMAN. And so we have just heard the rest of the story. Thank you. Now, Ms. Canja.

**STATEMENT OF ESTHER "TESS" CANJA, PRESIDENT, 2000-2002,  
AARP, PORT CHARLOTTE, FL**

Ms. CANJA. Thank you, Chairman Grassley and members of the committee. My name is Tess Canja and I am the President of AARP, and thank you for inviting us to discuss the impact that scams based on the sale of living trusts have had on older Americans.

AARP has long been concerned about such scams. As early as 1992, AARP testified before Congress about aggressive sales tactics used by some companies and their sales representatives to bilk people out of money while providing little or no benefit in return. Today, we were also comment on the use of AARP's name to give a fraudulent impression that AARP supports or endorses the living trust product.

Living trusts can be an excellent estate planning document, if it has been carefully tailored for the right person in the right circumstance. However, all too often, purveyors of living trusts exaggerate the costs and delay of probate in an effort to sell their documents, as well as other financial products, to older persons.

They prey on the concerns of those who want their families to quickly receive any inheritance through the least costly process, and typically these salespersons are not skilled estate planners, nor even lawyers. They are simply trying to sell a product. For those with modest assets, the preparation of a living trust can be a waste of thousands of dollars. In other cases, having a living trust can cause new and unexpected problems for both the older person and the heirs. Frequently the document does not even meet the requirements of state law.

AARP recently conducted a national survey of persons over the age of 50 to learn how many had prepared three common legal documents, a durable power of attorney, a will, and a living trust. One of the surprising results from the survey was that 18 percent of persons with an annual income of less than \$25,000 said they had a living trust, as opposed to 34 percent of those with annual incomes over \$50,000.

While some persons with lower incomes have resources that appropriately should be managed in a trust, in general, these are the persons who probably would not have a costly or lengthy probate and would not have a compelling need to set up a trust. Anecdotal evidence suggests that those with modest means who have the least amount to pass onto their heirs are being sold a high-priced package through aggressive financial planning promotions that exaggerate the costliness of probate.

Despicable tactics are being used by some of these scam artists to endear themselves to the consumer. In a number of States, AARP has been receiving complaints from members about living trusts. They report that sales materials are being sent to them with AARP's name used in a way that implies that AARP endorses or supports the product or service, and we certainly saw that in the video. I even received one of those mailings in Florida.

The fact is that AARP is not associated with, nor does it endorse, any company that markets or sells living trusts. We do not give out our mailing list to any such process or to anyone. When AARP members receive these misleading promotional pieces in the mail or hear about them by phone, they often respond in the mistaken belief that the sales agents are working with AARP.

A member returns a business reply card and then a sales representative makes an aggressive pitch in the older persons home. In fact, I have some of those mailings that have come through the mail, and they all talk about AARP and about the survey of AARP, et cetera. But what these fast-talking crooks do not tell their clients is that the living trust they are selling could become the buyer's living hell.

A living trust is not for everyone. One size does not fit all. There are risks associated with generically written, poorly constructed living trusts that the con artists do not disclose. AARP has been active on a number of fronts in an effort to eradicate these operations. Along with the Florida AG's office, we filed a lawsuit against a Texas corporation and its officers, seeking to prevent them from defrauding Florida residents.

AARP has teamed up with the attorney general of Michigan for a series of events to broadcast our mutual concern. Additionally, we have distributed information on our website and in print that clearly explains the advantages and disadvantages of living trusts, and I have some of those publications with me that I will be glad to leave for you.

Now, Chairman Grassley, we thank you for adding the voice of the Senate Special Committee on Aging to this concern, and I look forward to responding to your questions.

[The prepared statement of Ms. Canja follows:]



TESTIMONY OF

ESTHER "TESS" CANJA

President of AARP

Regarding

Living Trust Scams

Before the

United States Senate

Special Committee on Aging

July 11, 2000

628 Dirksen Senate Office Building  
Washington, D.C.

For further information contact:

Jeff Kramer  
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Chairman Grassley and Members of the Committee:

My name is Tess Canja and I am the President of AARP. On behalf of AARP, thank you for inviting us here this morning to discuss the impact that scams based on the sale of living trust packages have on older Americans. AARP has long been concerned about such scams. AARP testified before Congress as early as 1992 about aggressive sales tactics used by some companies and their sales representatives to bilk people out of money, while providing little or no benefit in return. Today, we will also comment on the fraudulent use of AARP's name as an entree by a number of these unscrupulous salespersons.

Living trusts can be excellent estate planning documents—if they have been carefully tailored for the right persons in the right circumstances. For those with complicated estates or with sophisticated estate distribution needs, a living trust may be precisely what is needed. However, people with modest means are not likely to require either sophisticated estate planning services or expensive legal products. And the typical boiler-plate trusts recently being marketed in a number of states are far from being sophisticated estate planning documents.

All too often, purveyors of living trust documents exaggerate the cost and delay of probate in an effort to sell their documents, as well as other financial products, to older persons. They prey on the concerns of those who want their family to quickly receive any inheritance through the least costly process. In some cases, all the living trust



does is enrich the promoter. Typically, these salespersons are not skilled estate planners or even lawyers; they are simply trying to sell a product. For those with modest assets, the preparation of a living trust can be a waste of money and create the false expectation that they will be saving their family time and money when it is time to distribute their estate. In other cases, having a living trust can cause new and unexpected problems in transferring money to heirs. Such individuals frequently end up with a document that does not meet the requirements of state law.

AARP recently conducted a national survey of persons over age 50 to learn how many had prepared three common legal documents – a durable power of attorney, a will, and a living trust. We undertook the survey because we were frequently asked, “how many people have a will?” Or “how many have signed a power of attorney?” We wanted to be able to respond with reliable, current information.

One of the surprising results from the survey was how many lower-income people, defined as those with an annual income of less than \$25,000, said they had a living trust. While some persons with lower incomes have resources that appropriately should be managed in a trust, in general these are the persons who probably would not have a costly or lengthy probate in any event, or the people for whom the hassle and costs of settling their estate would be the same with or without a trust. These individuals are simply not those one would expect to have a compelling need to set up a trust.

The new AARP study found that one-fifth (18%) of persons with incomes of \$25,000 or less had a trust. In comparison, one-third (34%) of those with annual income over \$50,000 also reported that they had prepared a trust. Even more striking are the findings of a survey AARP conducted almost ten years ago. In the 1991 AARP survey, only 8% of respondents with annual income of \$25,000 or less reported having a living trust. Thus, the most recent numbers represent an amazing 125% rate of growth in purchases among lower income older persons, far outpacing the 53% growth rate for seniors of moderate and higher incomes.

We see an increase in all income levels in the use of living trusts over the past decade, but why such a dramatic increase among lower income older Americans? Anecdotal evidence suggests that those with modest means, who have the least amount to pass on to their heirs, are being sold a high-priced package through aggressive financial planning promotions that exaggerate the costliness of probate. Living trusts are being hyped by salespersons – not lawyers – who want to sell products. Frequently they are promoting not only a trust, but other financial services, such as annuities, that the person really does not need.

Unfortunately, we have found that there are some "bad apples" out there – criminals who have built entire careers around scamming older people. But none of these bad apples are more rotten than the fast-talking con artists who are selling costly estate planning services and generically-written "living trust" documents to seniors who just

don't need them. These scam artists will do anything for a buck—no matter who gets hurt – no matter how much pain their scams inflict.

Equally despicable are the tactics being used by some of these criminals to endear them to the consumer. In a number of states, AARP has been receiving complaints from members who have been contacted by sales agents marketing and selling living trusts and other related services. Sales materials are being sent to older adults with the unauthorized use of AARP's name in a way that implies that AARP endorses or supports the product or service. Many of the salespersons' materials cite a 1990 AARP report expressing support for the purchase of living trusts. This citation taken out of context and misrepresents AARP's advice to consumers.

In fact, AARP is not associated with – nor does it endorse – any company that markets or sells living trusts. AARP does produce reports and publications that talk about living trusts, but these publications present the advantages and disadvantages clearly so that our members can judge for themselves whether a living trust might be appropriate for them. Let me also point out that AARP's website includes a listing of attorneys who work for the AARP Legal Services Group. These attorneys are available to help members draft a will, power of attorney or living trust, but they don't promote a product or service.

When AARP members receive these misleading promotional pieces in the mail or hear about them by phone, they often respond in the mistaken belief that the sales agents

are working with AARP. A member returns a business reply card and then receives a call to schedule an appointment at the member's home. The sales representative makes an aggressive presentation to the older person, often misleading him or her about the costs and burdens of probate. The marketer's goal is to sell a living trust – regardless of whether or not the consumer is likely to benefit.

What these fast-talking crooks don't tell their clients is that the "living trust" they're selling could become the buyer's "living hell." That's because while a property-administered living trust is a wise choice for some consumers in certain circumstances, a living trust is not for everyone. When it comes to estate planning, one size does not fit all. There are risks associated with generically-written, poorly-constructed living trusts that the con artists don't disclose. These include: creating additional risk to creditors and impacting eligibility for Medicaid disbursement.

Instead, the con artists who market living trusts as the "be all and end all" of estate planning tell their prospective clients that expensive and time-consuming probate will bankrupt their estate and leave loved ones without an inheritance. And then they hammer the message home with "guilt trips" delivered through the mail, on the phone and at the door – over and over and over again.

AARP has been active on a number of different fronts in an effort to eradicate these operations. Along with the Florida Attorney General's office, we have filed a lawsuit against a Texas corporation and its officers seeking to prevent them from defrauding

Florida residents. Additionally, we have published and distributed the aforementioned reports and publications that explain living trusts; we frequently publish alerts to our members about these scams in our publications such as Modern Maturity and on our website; and we have teamed with the Attorney General's office in Michigan through a series of events to broadcast our concerns.

Chairman Grassley, thank you again for holding this hearing and for presenting us with the opportunity to provide the committee with background on this critical issue that impacts so many Americans – particularly older Americans – so severely.

I look forward to responding to your questions.

The CHAIRMAN. Thank you very much. I appreciate your organization's leadership in educating seniors and older people about these issues, so that fewer people hopefully will be a victim. I am going to start 5-minute turns for each one of us. I am going to start with Mr. and Mrs. Kulinski. First of all, as a committee and me personally, we regret what you have had to go through for your father-in-law and father, Walter. You have done an awful lot to help him and protect him.

How did you first realize that Mr. Kulinski was purchasing a living trust?

Ms. KULINSKI. I guess by talking to him. When the bank told us that there was money being liquidated—

The CHAIRMAN. So you actually found out from the bank then, more so than from Walter?

Ms. KULINSKI. We found out from the bank that there was money being taken out, and then I finally stepped in and said, "Walter, what is happening?" We did notice a lot of people coming in and out of his house that we did not know, but we did not want to pry, you know. We did not want to take his freedom away.

The CHAIRMAN. Do you know whether Mr. Kulinski needed a living trust?

Ms. KULINSKI. To be honest with you, I do not know the logistics of a living trust. He may need one. We have a family lawyer that can take care of those needs for him, though.

The CHAIRMAN. You testified that Walter Kulinski was not made whole after the \$30,000 restitution that you received last week. Can you place a dollar figure on what more would be needed to make him whole?

Ms. KULINSKI. Well, he paid for the trust. I believe that was \$1,095. He paid one of their attorneys \$100 to look over the trust. Then we had one of our attorneys look over the trust. His capital gains that he had to pay was between \$10,000 and \$12,000, that he had tax-wise, and I think he was in the 36-percent tax bracket.

What saved him was that he had these accounts jointly with his wife, who had passed away 5 years prior. That is what saved his—the basis of the tax—or the mutual funds that were cashed in were upped on the date of her death. It could have been much worse if they were just in his name.

The CHAIRMAN. Mr. Hoffman, from your testimony, it sounds like you were trained on the art of selling living trusts more so than being educated about the product that you were selling. Other than the 2-day training for your certified trust adviser certificate, did you receive any further training on living trusts?

Mr. HOFFMAN. No, we did not, and it was not a 2-day training on living trusts. It was about a 30-minute training on living trusts. The rest was all on sales techniques on how to sell the living trust.

The CHAIRMAN. I see. Were you ever told to misrepresent the benefits of a living trust by preying on the consumer's fears of probate or estate taxes?

Mr. HOFFMAN. I had just gone through the probate process with my mother's estate, and my parents were not very wealthy. It cost us over \$9,000 in 22 months to go through probate in California. I understand the California probate process is much more difficult, much more complicated than in other States. My mother was ad-

vised by an attorney not to set up a living trust. She had a will, and the will went through probate.

When I started with the Alliance for Mature Americans, I did it with a vengeance, to put living trusts in the hands of every home in California so that their families would not have to go through what my sister and I went through with my mother's estate.

The CHAIRMAN. Yes. Ms. Canja, a recent release from your organization stated "Nearly 4 million Americans of modest means have purchased costly and unnecessary living trusts and other expensive financial planning services from high-pressure con artists and fraudulent paper pushers who masquerade as professional estate planners.

What recommendations does AARP have to stop this kind of activity from occurring?

Ms. CANJA. Well, the very big thing right now and why we appreciate this hearing so much is we have to get the word out, and for us there is a very special responsibility to make sure that our members know that we are not involved in any way with these living trusts, so we are doing that.

We have information on the website. We are doing publications. We have information in our bulletin, in our Modern Maturity, doing everything we can to alert our members to this. It is an almost never-ending job, because these things spring up. They are every place. So that is our basic thing right now, to use any bully pulpit we can find to alert our members.

The CHAIRMAN. Yes. I assume that in your monthly magazines and the other newsletters you send to members, that you include information like this in there, that there are potential scams out there in the case of living trusts?

Ms. CANJA. Yes, and, in fact, this is not quite living trust, but it came from living trust. In our latest bulletin, we have a story about promissory notes. This is the hot new scam, and these folks that have a salesman that comes for living trusts, if they have a pot of money and there is an opportunity for them to suggest an annuity or something else as we have been hearing happens, the latest thing they are doing is offering these promissory notes for very risky businesses.

One of them was for laser treatment of chickens, you know, or it could be to startup an Internet company or something where they are not going to get anything for their money. So we are—we are keeping on top of it as best we can, trying to figure out what is going on out there and alerting our members.

The CHAIRMAN. Mr. Hoffman, in your testimony, you stated that you completed a smoke sheet during your visit with the clients. Once you collected the confidential and financial information of the senior citizen and her children, what did you do with this information?

Mr. HOFFMAN. We turned it in to the company if it resulted in a sale.

The CHAIRMAN. Were you ever instructed not to sell a living trust to a senior citizen, and if so, in what situations would you be instructed not to sell?

Mr. HOFFMAN. To my recollection, we were never instructed not to sell a living trust.

The CHAIRMAN. Senator Breaux.

Senator BREAUX. Thank you, Mr. Chairman and thank all of our panelists for being with us.

Mr. Hoffman, the company that you worked for for a short while really would make a used-car salesman look pretty good.

Mr. HOFFMAN. Yes, it would.

Senator BREAUX. What kind of licensing process do you think AMA had to go through to become eligible to do the type of selling that they wanted to sell? I mean, here you had a sales group consisting of a rock band musician, an unemployed used-car salesman, a person who sold kitchen cabinets for Sears—not any of them had any legal or financial experience to do what they were doing within the State of California.

Did AMA have to get approved by the State of California to set up shop or by the county, or did they just set up shop and found people off the street to enter into this enterprise?

Mr. HOFFMAN. Initially, the AMA established the living trust sales company. The first salespeople that I referred to, there were nine of us when we first started at the first meeting. Most of us were recruited off of little ads that they were placed in the Los Angeles Times newspaper. I was recruited by introduction to these folks. But these sales people were introduced to the sale of living trusts as a way of avoiding probate for families in the State of California.

The fact that they were used-car salesman only was important in that they knew sales techniques. They knew how to read people. They knew how to do a close. They knew how to do different parts of making a sale. I unfortunately was not ever a real salesman, but it was quite easy to follow the plan that AMA had laid out in order to get people to sign up for living trusts.

Senator BREAUX. The point I am trying to make is do you know if the company had to do anything to become approved or licensed to engage in this type of business in the State of California? Did they just decide, you know, we are going to set up shop and here we go?

Mr. HOFFMAN. Initially, it was to set up shop and here we go, for the sale of living trusts, but they did have to be licensed with the insurance commissioner in the State of California in order to sell annuity products to the people who bought trusts.

Senator BREAUX. So this company was licensed by the State of California insurance commissioner?

Mr. HOFFMAN. It had an insurance license with the State of California insurance commissioner's office in order to offer the annuities.

Senator BREAUX. Do you know if there was ever any kind of requirement that they show the ability to understand the nature of the business they were engaged in? Do you know what they had to do to become licensed by the insurance commissioner? What I'm getting at is I think that one way to prohibit fly by-night scam artists from operating is to have some kind of a licensing process whereby they have to show that they are a credible operation.

What I am trying to figure out is how did this company become approved by the insurance commissioner of the State of California



when it looks like, on its face, this is something that should never had been approved?

Mr. HOFFMAN. That is because in order to get an insurance license in the State of California you do not have to disclose what line of business you are in. The living trust sales is one part of the business; the sale of the annuity is another part of the business.

In fact, the Alliance for Mature American had two different corporations. One is the Alliance for Mature Americans, Inc. The other one is the Alliance for Mature Americans Insurance Sales, Inc. These two corporations conducted business together, but they were always separate entities, which is why the training was different in each one and why, while we were only trust salespeople, we were not permitted to sell annuity products.

We had to get a license through the State of California in order to sell the annuity products.

Senator BREAUX. Was there a point in your short career with this company that you woke up and said to yourself, "I'm embarrassed by what I am doing?"

Mr. HOFFMAN. Yes. It was very shortly after I got my insurance license and took a look at some of the annuity contracts that they were offering.

Senator BREAUX. It seems like the salesmen were getting a 35-percent commission on what they sold. That is pretty generous; isn't it?

Mr. HOFFMAN. There was a 35-percent sales commission on the sale of the living trusts. On the sale of the annuity, the company was splitting the commissions. In other words, they were paying us approximately half of what they were taking in.

The realities of that is that the insurance industry generally in the sale of annuities has limitations as to what they can do. If you build a very high commission at the front end, of an annuity contract somebody has to pay for that and it is usually the client at the back end or the client's heirs when the client passes away. The Alliance for Mature Americans tried to give the image of having a financial services organization by having contracts with many legitimate insurance companies and then, by the same token, they had special high commission products that were specifically designed for AMA by other insurers.

How these particular products ever got approved in the State of California is between the insurers and the insurance commissioner.

Senator BREAUX. Ms. Canja, does AARP feel there is a need for a Federal regulatory program to govern these type of transactions or is it sufficient to leave it to the 50 different States? Do you all have a position on that?

Ms. CANJA. You know, there are regulatory things out there right now and we probably should look at it. The only thing is there is not very much for living trusts. We have no recommendations right now. We have been looking to the States, for example, recommending that they take a look at their probate process.

A lot of States have already done that, but there is still more improvement that could be done. We also are looking at what kind of State laws there are for exploitation of seniors and seeing whether there are loopholes or whether there are any at all.

So I have to tell you that we have been pretty aggressive at the State level because we been working with attorney generals and seeing what we can do together there. Right now, we would like to see what more could be done with what might be on the books federally.

Senator BREUX. Thank you very much. I am finished, Mr. Chairman. I just want to make a note that we got some information from the attorney general's office in my State of Louisiana that points out one particular company operating in Louisiana that had 76 complaints against this company for exactly what this panel has been talking about today, and that there are other complaints coming in from other new companies that are being formed every day down there, which are targeting this very vulnerable group of seniors.

It is getting to be an increasingly serious problem. It is not on the decrease. It is on the increase.

Ms. CANJA. Exactly.

Senator BREUX. Thank you.

The CHAIRMAN. I will go back and forth by arrival. Senator Hutchinson, then Senator Reed, then Senator Kohl. Senator Hutchinson.

#### STATEMENT OF SENATOR HUTCHINSON

Senator HUTCHINSON. Thank you, Mr. Chairman. Thank you for calling this hearing and I appreciate very much the panel for your testimony. It has been said that a society can be judged by how it treats its most vulnerable citizens, and I think that is true. I also thought as I heard the Kulinskis testify what kind of person would go out and prey upon such unsuspecting people?

To your credit, Mr. Hoffman, you got out of the living trust business. In Arkansas, I, like Senator Breux, checked with our attorney general's office. In the early 1990's, the most common problems were non-lawyers who were writing living trusts. So Arkansas passed a statute in 1995 which requires lawyers to prepare the document.

However, that did not end the problem. More recently, problems have arisen with companies using personal financial information to market inappropriate annuities to customers, which are worthless to the customer and tie up their assets so they cannot be drawn upon without penalty, which I think the Kulinskis referred to in their situation.

The Arkansas attorney general's office also has heard reports of marketing tactics by one company, which included a postcard which misleadingly linked the living trust product with the Social Security Administration. So in that case, they went even beyond associating their product with the AARP and tried to make the association with Social Security.

Another marketing ploy they have encountered in Arkansas is the claim that living trusts will protect your assets if you go into a nursing home and will help you to avoid the spend-down of your assets in order to be eligible for Medicaid insurance. So living trust companies continue to hone various kinds of scams. Mr. Hoffman, when you were working for Alliance for Mature Americans, did you

have contact with other companies that were dealing in living trusts?

Mr. HOFFMAN. No, I did not.

Senator HUTCHINSON. Do you believe that most companies that are selling living trusts misrepresents as the AMA did?

Mr. HOFFMAN. The misrepresentation is not—in California, because of our complicated probate process—is not so much in the sale of the living trust as it is in the financial products that come along down the line. The living trust acts as a vehicle for being able to introduce these relatively worthless financial products, and that is where the real harm is done in California.

Senator HUTCHINSON. Other companies that sell the living trust, do they likewise use the living trust as a vehicle for selling more worthless products that take advantage of people?

Mr. HOFFMAN. When I was testifying for the attorney general in the State of California against the AMA, I heard a phrase that went like "it is like when the light went on, this sales organization known as the AMA, the managers scattered like cockroaches, and they just went everywhere." Not just in California, but outside the State of California.

One of the ways they avoid getting entangled in giving legal advice without being an attorney is that they now sell a product called prepaid legal services. They sign people up for a prepaid legal service plan which happens to include a living trust discounted from \$1,499 down to \$995 as their first real benefit for signing up for this plan, is the living trust and then the con artists just go on from there selling the high commission annuities.

Senator HUTCHINSON. Do you have any recommendations for the committee on what should be done to regulate or to deal with the problem of living trusts?

Mr. HOFFMAN. I do not know what we can do at the Federal level, but I do know at the State level, it is important to include the insurance commissioner, in the litigation. For the purpose of imposing sanctions against the trust companies and their agents as well as to initiate a more strict approval process for the types of annuity products offered in the state during the agent annuity product approval licensing and process. If you look at the amount of sanctions that are actually brought down by our judicial system in the States against people who do perpetrate these frauds against the seniors, it is relatively minor compared to the amount of money that can be made in this type of business. This is why you see such a proliferation of these people going out into the other States to try to do the same thing over and over again.

The sale of the living trust is not, was not in the Alliance for Mature Americans anyway, was not their center of financial profit. In fact, one of the principals of the alliance would oftentimes at the monthly meetings say: We are not in the living trust business. We're in the insurance business and our business is to sell annuities.

The living trust was just a way of introducing the sale of these other products. Going back to the living trust itself, if the living trust is not signed properly, if it is not documented properly, if it is not notarized, it is not a valid trust. The people at AMA really did not seem to have a great concern as to whether these things

were ever delivered or executed properly because their main purpose was to get this book in front of the clients, get them to sign some things, get their thumb print and get on to the sale of these questionable annuity products.

Senator HUTCHINSON. So enhanced penalties, at least, might be part of what the States might do in an effort to prevent fraud and abuse.

Mr. HOFFMAN. Yes, and also, though, to make the agent as been responsible, too. What it looks like in California is that the insurance agents who actually perpetrated these sales techniques on the client were just virtually let go. They had no sanctions whatsoever.

Senator HUTCHINSON. Thank you. Ms. Canja, in your testimony, you mentioned that 18 percent of AARP's membership with less than \$25,000 in assets have a living trust, which, as you say, is usually unnecessary for individuals of that income level. Is there an ideal candidate for a living trust and who might that be?

Ms. CANJA. Well, it would be a candidate that has a complicated estate or a large estate, or perhaps there is disability in a family and they went to make sure that the care is continuing for someone. So there can be reasons for it—and if there really is a lengthy probate process. But these folks with incomes under 25,000, very often do not have the estate. They probably would never, ever even go to probate or it would be a very small process, and it is costing them more to buy one of these living trusts, which may be a very worthless piece of paper because unless they fund it, unless they have all of the proper documentation, unless they have actually put property into that trust, it is just a piece of paper. It is nothing and they paid all that money for it.

Senator HUTCHINSON. So, for millions of people, at least, there is tangible evidence of a huge abuse in that people have bought living trusts when there really is not any need for them.

Ms. CANJA. Yes, and you know, the reason for many of them—what we are hearing that they even bought the living trust was that the AARP name was used and they trust as, and they are told that we are recommending it, and that they even got the name from AARP, and so they feel, well, that has to be a good deal, and it is not a good deal.

Senator HUTCHINSON. Thank you. My time is up. Thank you, Mr. Chairman.

The CHAIRMAN. You bet. Senator Reed.

Senator REED. Thank you, Mr. Chairman.

Mr. Hoffman, you made the point repeatedly that the living trust was really a device to sell the annuity. In fact, someone giving good advice to a senior setting up a living trust, they could simply take their present assets and move that into living trusts. Is that correct.

Mr. HOFFMAN. That is correct.

Senator REED. But this was a ruse, really, simply to sell annuities.

Mr. HOFFMAN. Absolutely correct.

Senator REED. Now, the company, the AMA, which I guess it is both a play on the AARP and the American Medical Association. I do not know if they are that clever. But the AMA Insurance, Inc.,

they were buying their annuities from reputable companies presumably; is that correct?

Mr. HOFFMAN. Some of them were written by reputable companies, others were written by smaller companies that designed specific products for the AMA that paid an inordinately high commission.

Senator REED. Now, with these companies who were licensed and regulated presumably by the State of California, were they ever penalized for essentially being in cahoots with AMA?

Mr. HOFFMAN. Yes, they were included in the attorney general's lawsuit. The thing I could not understand is why the insurance commissioner himself did not bring some of these charges against these people, because it seemed like that was their jurisdiction. But the attorney general had to step in and bring the charges against them.

The insurance companies that—let's say the legitimate insurance companies that were also part of this AMA scandal—that were brought into it as people like myself were, with the idea that the sale of a living trust was simply another vehicle to increase sales of annuity products. When they found out what techniques were being used, the insurance companies that were caught is in the AMA operation actually voluntarily, by agreement with the attorney general, offered to give back all of the money that they had received plus the interest it had earned to the clients.

Senator REED. So there seem to be two categories of insurance companies, the knowledgeable, witting co-collaborators with AMA and some reputable companies that just did not take any trouble to look at the client that was selling the product. There was no examination of the fitness of this product for the senior.

Mr. HOFFMAN. That is correct.

Senator REED. This is a pretty lucrative business. How much would you make in a year or your colleagues would make in a year?

Mr. HOFFMAN. We had some of the sales people at the Alliance for Mature Americans that were writing \$1.5 million and \$2 million in annuities per month.

Senator REED. Per month.

Mr. HOFFMAN. And they were making 5 percent commissions, 6 percent commissions on these.

Senator REED. So, since you are good at mathematics, how much is that in a year?

Mr. HOFFMAN. It is a lot of money, a lot of money.

Senator REED. Ms. Canja, the AARP does a remarkable job assisting seniors and your name really and your reputation is at the heart of everything you do. How specific are you in warning seniors? Would you notify them of a specific company that you have found out is conducting these predatory activities? Would you go that far?

Ms. CANJA. I do not know if we have done that specifically, but we have taken—for example, in Florida, we sued one of the companies in Florida and I am sure you will be hearing more about that. We are asking our members to give us as much information as we can when they write in and tell us that this has happened to them,

and we are pursuing those when we have enough information to know that this is really a situation that we can enter.

Senator REED. So it is safe to say that AARP will go out and defend its reputation through legal action, if necessary.

Ms. CANJA. We have done that. We will do that.

Senator REED. And that is your policy.

Ms. CANJA. Yes, it is.

Senator REED. Mr. and Mrs. Kulinski, thank you very much for your testimony and, I am disappointed, is that your son who left? He is the youngest person to be at a meeting of the senior committee.

Ms. KULINSKI. Right.

Senator REED. What agency was most helpful to you when you had the problem with your father and father-in-law?

Ms. KULINSKI. Probably Elmer Prenzlów, Department of Consumer Affairs. He had heard of the United Senior Alliance, and I think the Waukesha County sheriff. I do not recall how I got in connection with him, but he was very helpful. David LaFond was very helpful in getting us to Elmer, and that is when—it just started, you know. That is when everyone is like: Yes, we heard of this guy. We can help you.

But I think there has to be something locally, too when this happens. There is no place a family can turn because the elderly were so high-pressure saled(sic) into signing all this stuff, there is nothing that we can do about it.

Senator REED. Well, thank you very much for your testimony today. Thank you, Mr. Chairman.

The Chairman. We are going to have to call a recess to the committee hearing. I hope that you folks will just stay there. Senator Breaux is going to come back. He went to vote. I am going to go vote now. When he comes back, he will reconvene the meeting. I would like to have Senator Breaux make a determination—I think Senator Kohl wanted to come back and ask questions, so I hope that I have got that right. Otherwise, Senator Breaux will probably go ahead and introduce the second panel. But would you folks just stay there then until we come back? [Recess.]

Senator BREAUX [presiding]. The committee will please come to order. We thank our guests and visitors, as well as our panelists, for staying with us while we had the recorded vote in the Senate.

Senator Kohl wanted to be able to come back and ask this panel some questions, and we will recognize him at this time.

Senator KOHL. Thank you very much, Senator Breaux. I am very pleased that the Kulinskis from Wisconsin made the trip here today. You have been very helpful. I would like to ask you, in your statement you mentioned that at first the police seemed unwilling or unable to help you. Do you think that local police forces need more education on consumer fraud issues such as this?

Ms. KULINSKI. Absolutely, yes. I think they have to listen to the family a little more and understand where we are coming from, yes. Legally, he did sign something willingly, but I do not think he understood what he was signing and I think the police need to understand that.

Senator KOHL. All right. Your local bank notified you that large transactions were being made because they knew your family.

Many other families might not have been so lucky. Would it be helpful if banks kept a watch on the accounts of the elderly and then notified next-of-kin if unusual things were happening?

Ms. KULINSKI. Absolutely. I commend our bank for all the help that they did for us in this whole process. I think it should be automatic. There should be some sort of a flag—informing the family if things had gotten withdrawn before their maturity date, or there should be someone there. It is really touchy. How do you do this without taking the freedom away from the elderly? But the family needs to be aware.

When a CD is due, let's say, and let's say Walter wants to withdraw it, well, I am going to immediately say why do you want to do it? But I do not want to take his freedom away. So it is so touchy. I do not know how we would handle something like that or should handle something like that.

Senator KOHL. Well, would it be helpful if, in situations like this, people like yourselves talked to your father-in-law and made him aware of the fact that he was very possibly being the target of a scam operation? I mean, isn't that the thing you would hope to see happen in virtually all cases if the information were there for you to be able to act upon it?

Ms. KULINSKI. Right. Well, I think his initial response to it was no, they would not do that; and he had a very hard time believing that these people were scamming him, and he just was so trusting that, you know: My money is here and I talked to this man. He was a nice man.

I think until I finally said you are not talking to these people anymore, that is kind of when he started believing something was going on. But he just refused to believe that these people scammed him.

Senator KOHL. OK. I would like to ask the panel would you not recommend that all States have laws requiring prior licensing of these kinds of companies, good ones and bad ones, but prior licensing before they can be allowed to operate in States or why shouldn't States have that requirement; that before a company can come in, they have to go through a process and be licensed by the insurance Commissioner?

Mr. Hoffman.

Mr. HOFFMAN. In California, before we can sell annuities as an insurance product, we have to be licensed by our insurance commissioner. What I found interesting was that these products that are the most damaging to the seniors actually were approved for sale in the State of California. At least, that is my belief. What I find is, is that in the proceeding that went against the AMA in the State of California, is that the insurance commissioner seemed to kind of exit stage left, even though they were the ones who licensed the people to sell the products, licensed the products themselves or approved the products themselves for sale in the State of California, and it was left to the attorney general's office to prosecute these people.

It would seem like it would be more efficient if the insurance companies were made aware of these living trust scams as a way of selling life insurance products, because an annuity product, per se, is not a bad product, even for a senior citizen, if it is written

with a legitimate insurance company and it is done in a manner that is integrated with their overall estate plan.

Senator KOHL. Ms. Canja.

Ms. CANJA. I think that the attorney general and the insurance commissioner have to be a part of the solution, and I think perhaps there has to be more awareness on the part of insurance commissioners of these scams, and again it is an advocacy effort that we all have to be involved in to make it an issue, to make sure that it rises to the level of a priority.

Senator KOHL. I mean, I have the impression, very strong impression, that it is the responsibility of officials within a State to see to it that scam operations are kept out of their State. Now, you cannot do it 100 percent, but if you do it 98 percent, OK. But when you have States that have almost no regulations governing the ability of companies to come in and sell these kinds of policies, then the State is really at fault almost entirely. Isn't that true? What would you think, Ms. Kulinski?

Ms. CANJA. Well, you know, I still believe that it is advocacy and it is those of us that are being scammed are those of us that are concerned about the scams that have to create the advocacy that brings it to the attention of the officials and that says what are you going to do about it.

Senator KOHL. Right.

Ms. CANJA. Otherwise, you know, there are an awful lot of things out there that demand attention and something else is going to get the attention. So every one of us that has some role—that is why I am so pleased today with this hearing, because this will be publicized and it will begin to raise the level of concern about living trusts, and that is exactly what is needed if we want more action in the States.

Senator KOHL. OK. Ms. Kulinski, do you have a comment?

Ms. KULINSKI. I think there has to be maybe more people involved in the Department of Aging in each State. I think because there are so many elderly, there are so many concerns, not just for trusts but, I mean, other things, telemarketers selling other things. I believe I did talk to someone in Milwaukee, in the Department of Aging, and they were just so overworked that this was nothing to them; this did not mean anything to them. They did not have time to look into it because they were so overworked; maybe there needs to be more people in this area, because there are more elderly adults now. People are living longer.

Get some more people involved in this situation. We have to take care of them.

Senator KOHL. OK. Thank you. Mr. Hoffman.

Mr. HOFFMAN. I think some of these issues are becoming more and more difficult to monitor, because if you look back 20 years ago, when you went to the bank, what did you go to the bank for? You went to the bank to put your money in. You opened up your checking account, your savings account. What happens now at the banks is they have life insurance products. They have annuity products. They have mutual funds. They have a whole myriad of financial services to offer these clients and many times these are not any better than the type of products that the insurance company produces for the living trust scam people.



I am not sure that putting the burden of monitoring the transfer of these funds on the bank is actually going to accomplish anything, because they themselves participate in it. When Mabel's CD comes due for \$100,000, they are trying to say: You know, Mabel, you should go over and talk to Jack over here in the corner because he can get you a lot more interest than you are getting at the bank.

And this is creating a problem, not just in the living trust scam, but throughout the entire financial planning and investment industry.

Senator KOHL. OK. Thank you very much and thank you, Senator Breaux.

Senator BREAUX. Thank you, Senator, and I want to thank the panel. I want to comment on the AARP publication that they have presented to us, which is called their product report, which talks about wills and living trusts that are available to all their members, which is a good and I think clear and precise explanation of what people should be aware of and what they need to know about all of these questions that have been raised by the hearings today and I commend them for putting it out.

The CHAIRMAN. I thank Ms. Kulinski and Mr. Hoffman for being with us and we will excuse this panel and invite up our next panel, which will consist of Mr. Elmer Prenzlów, Regional Manager of Wisconsin's Bureau of Consumer Protection; and Elaine Kolish, who is Associate Director of Enforcement for the Director of the Bureau of Consumer Protection with our Federal Trade Commission; and Mr. Paul Hancock, who is the Deputy Attorney General for the State of Florida.

Ladies and gentlemen, we welcome you and are pleased to receive your testimony.

Mr. Prenzlów, we have you listed first. If you would go ahead and begin, we would be pleased to receive your testimony.

**STATEMENT OF ELMER C. PRENZLOW, REGIONAL MANAGER,  
BUREAU OF CONSUMER PROTECTION, STATE OF WISCONSIN,  
MILWAUKEE, WI**

Mr. PRENZLOW. Good morning, Senator, ladies and gentlemen of the committee. Thank you for the opportunity to testify today about my experiences investigating the marketing and sales of living trusts to the elderly in Wisconsin.

My name is Elmer Prenzlów. I am a Consumer Protection Investigator Supervisor with the Wisconsin Department of Agriculture, Trade and Consumer Protection. We are Wisconsin's primary consumer protection agency and we are tasked with ensuring fair business practices in the marketplace, educating the public and investigating violations of Wisconsin's consumer protection laws.

I currently serve as the regional manager for the bureau in southeastern Wisconsin, where I direct our education, mediation and enforcement activities serving the metropolitan Milwaukee area. In October, 1997, we began receiving consumer complaints alleging that a company called United Seniors Alliance was soliciting sales of living trusts for prices ranging between \$900 and \$1,900.

Telemarketers from United Seniors told many potential victims that they were calling from the American Association of Retired Persons and that AARP was urging people to set up living trusts,

that AARP had field agents to help people set up these trusts, and supposedly that they were providing this at no cost to the consumer.

Many living trusts are marketed responsibly to consumers each year. However, this was definitely not the case here. In February then of 1998, a representative of United Seniors Alliance attempted to sell a living trust to the wife of one of our local chiefs of police. You saw that video earlier. During that sales presentation which was videotaped, the salesman repeatedly misrepresented that United Seniors was certified and backed by AARP and had a triple-A rating with the Better Business Bureau.

He also misrepresented during the presentation that United Seniors is not for profit. These representations were false and after we investigated, the salesman was convicted of violating State consumer protection law. Appearing earlier were family members of Walter Kulinski, who was contacted by a telemarketers for United Seniors.

This complaint was particularly interesting to us because it involved direct solicitations made by the owner of United Seniors, as well as the financial transaction executed by the owner of United Seniors and Mr. Kulinski. I will note that that owner was someone who trained previously and was a salesman with the Alliance for Mature Americans in California that you heard about earlier this morning.

But for the first time we were dealing with identifiable acts committed by the principal of this living trust company. During the course of 6 months of contact between Mr. Kulinski and United Seniors owner, the victim was first sold a living trust, and he was then pressured into purchasing annuities valued at \$224,000.

Those annuities were sold without the victim's understanding the impact on him, his informed consent or knowledge of the tax implications of his acts. United Seniors liquidated approximately \$280,000 of his assets, and this was \$56,000 more than the amount that he agreed to in the annuity sales contract.

Finally, the owner of United Seniors attempted to obtain \$326,000 more by convincing Mr. Kulinski to sign asset transfer authorizations for four other investment accounts. These transactions were halted, as you heard earlier, when a bank employee flagged those transfers until family members could be contacted. Felony theft and other related charges were filed against the owner of United Seniors as a result of our investigation.

Ultimately, Mr. Kulinski was able to obtain refunds and restitution in excess of \$290,000. United Seniors' operations in Wisconsin were shut down, as well. We found during the course of numerous victim interviews that revocable living trusts are being fraudulently marketed to our senior citizens and that the marketing takes advantage of the following concerns reported by seniors.

They are that the government is going to take a significant percentage of your assets when you die, that attorneys fees and probate costs will significantly diminish the value of any estate, that long-term medical care costs can be avoided and subsidized health care can be obtained through the transfer of assets into the trust, and finally, that delays in the probate process will freeze assets from the surviving spouse or heirs.

Our investigations highlighted several common problems associated with these revocable living trust mills. They are that the trust package documents themselves may contain legal flaws rendering them unenforceable in your State and potentially worthless. The trusts are just plain boilerplate packages, an example of which I brought with me today, generated by the hundreds and not tailored to the unique individual needs of each customer.

The trust salespersons have no ethical, fiduciary or legal responsibility to act in their customer's best interest. Trust salespersons are poorly trained and generally unregulated, unless involved in the sale of insurance products and are motivated only by the commission earned on sales.

Trust salespersons may use detailed financial information gained in the preparation of a trust to market investments, insurance or annuity products which are inappropriate for the customer's financial situation. As a result, our department embarked on an aggressive campaign—which was two-pronged—in 1998 to investigate the living trust sales practices.

We recommended prosecution for violations of State law and educated the public regard problems within the industry. Using the media, we conducted an extensive education campaign surrounding the enforcement action taken against United Seniors and its sales staff. This made the public more aware of what to look for when shopping for estate planning products and some pitfalls to avoid.

It also put trust salespersons on notice that deception and misrepresentation would have criminal consequences. As a result, complaints about living trusts, which peaked in 1998 in our State at 104, dropped to an all-time low of five last year in 1999. One example of our effort was a widely distributed fact sheet which we provided to the public online at our website and to callers at our toll-free information number and through personal appearances by staff at senior seminars throughout the State. I have attached a copy of that fact sheet to our testimony.

Unfortunately, unless those committing fraud serve substantial jail time, the con artists may merely move to another State and defraud its unknowing senior citizens. For this reason, we appreciate the committee's interest in this area. Thank you for drawing attention to this important area, Mr. Chairman, Senator.

This concludes my remarks and I would be happy to answer any questions you might have.

[The prepared statement of Mr. Prenzlów follows:]

**STATEMENT OF ELMER C. PRENZLOW  
SOUTHEAST WISCONSIN REGIONAL MANAGER  
WISCONSIN DEPARTMENT OF AGRICULTURE, TRADE  
AND CONSUMER PROTECTION  
BEFORE THE SENATE SPECIAL COMMITTEE ON AGING  
JULY 11, 2000**

Good morning Mr. Chairman and ladies and gentlemen of the committee. Thank you for the opportunity to testify today about my experiences investigating the marketing and sales of living trusts to the elderly in Wisconsin.

My name is Elmer Prenzlow and I am a Consumer Protection Investigator Supervisor with the Wisconsin Department of Agriculture, Trade and Consumer Protection. We are Wisconsin's primary consumer protection agency and are tasked with ensuring fair business practices in the marketplace, educating the public, and investigating violations of Wisconsin's consumer protection laws. I currently serve as the Regional Manager for the Bureau of Consumer Protection where I direct our agency's education, mediation and enforcement activities in southeastern Wisconsin, serving the metropolitan Milwaukee area.

In October 1997, we began receiving consumer complaints alleging that a company called United Seniors Alliance was soliciting sales of living trusts for prices ranging between \$900 and \$1900. Telemarketers from United Seniors told many potential victims that they were calling from the American Association of Retired Persons, that A.A.R.P. was urging people to set up living trusts, and that A.A.R.P. had field agents to help people to set up these trusts, supposedly at no cost to the customer. Many living trusts are marketed responsibly to consumers each year. However, that was definitely not the case here.

In February 1998, a representative of United Seniors attempted to sell a living trust to the wife of one of our local chiefs of police. During the sales presentation, which was videotaped, the salesman repeatedly misrepresented that United Seniors was "certified" and "backed" by A.A.R.P., and had a "AAA rating" by the Better Business Bureau. He also misrepresented during the presentation that United Seniors "isn't for profit". These representations were false and after we investigated, the salesman was convicted of violating state consumer protection laws.

Appearing with me today are family members of Walter Kulinski, who was contacted by a telemarketer for United Seniors Alliance. This complaint was particularly interesting because it involved direct solicitations made by the owner of United Seniors as well as financial transactions executed by the owner of United Seniors and Mr. Kulinski. For the first time we were dealing with identifiable acts committed by the principal of this trust company.

During the course of six months of contact between Mr. Kulinski and United Senior's owner, the victim was first sold a living trust. He was then pressured into purchasing annuities valued at \$224,000. These annuities were sold without the victim understanding the impact on him, his informed consent, or knowledge of the tax implications of his acts. Then, in an attempt to further shield their fraudulent activities, United Seniors failed to provide the annuity policies to the victim for detailed examination during the cancellation period.

United Seniors liquidated approximately \$280,000 of Mr. Kulinski's assets. This was \$56,000 more than the amount agreed to in the annuity sales contract. United Seniors placed these funds into an annuity with a supposed 7 1/4 % rate of return when, in fact, it was only 7 1/4 % for the first year, dropping to 3% thereafter.

Finally, the owner of United Seniors attempted to obtain over \$326,000 more by convincing Mr. Kulinski to sign asset transfer authorizations for four other investment accounts. These transactions were halted when an alert bank employee flagged the transfers until family members could be contacted. Felony theft and other related charges were filed against the owner of United Seniors as a result of our investigation and ultimately, Mr. Kulinski was able to obtain refunds and restitution in excess of \$290,000. United Seniors operations in Wisconsin were shut down as well.

In Wisconsin, dealing with the problems associated with fraudulent living trust mills provided the Bureau of Consumer Protection with several lessons learned. We hope that our experiences will be a benefit to your committee as you examine this issue.

We found during the course of numerous victim interviews that revocable living trusts are being fraudulently marketed to senior citizens and the marketing takes advantage of the following concerns reported by seniors. They are:

- that the government is going to take a significant percentage of your assets when you die,
- that attorney's fees and probate costs will significantly diminish the value of any estate,
- that long term medical care costs can be avoided and subsidized health care can be obtained through the transfer of assets into trust, and
- that delays in the probate process will freeze assets from a surviving spouse or heirs.

Our investigations highlighted several common problems associated with revocable living trust "mills":

- The trust package documents themselves may contain legal flaws rendering them unenforceable and potentially worthless.
- The trusts are plain "boilerplate" packages, generated by the hundreds, and not tailored to the unique and individual needs of each customer.
- Trust salespersons have no ethical or fiduciary responsibility to act in their customer's best interests.
- Trust salespersons are poorly trained and generally unregulated unless involved in the sale of insurance products, and are motivated only by the commission earned on sales.

- Trust presentations are often untrue and misleading, preying on the unfounded fears mentioned earlier to a target population, which is, at best, susceptible to deception and may suffer from effects of aging such as diminished capacity and comprehension.
- Trust salespersons may use the detailed financial information gained in the preparation of a trust to market investments, insurance or annuity products inappropriate for the customer's financial situation.
- Increased commissions on sales have, in the past, been paid on investments or annuities with artificially lowered rates of return.

Our department embarked on an aggressive two-pronged campaign in 1998 to investigate living trust sales practices. We recommended prosecution for violations of state law, and educated the public regarding problems within the industry. Using the media, we conducted an extensive education campaign surrounding the enforcement action taken against United Seniors and its sales staff. This made the public more aware of what to look for when shopping for estate planning products and some pitfalls to avoid. It also put trust salespersons on notice that deception and misrepresentation would have criminal consequences. As a result, complaints about living trusts, which peaked in 1998 at 104, dropped to an all-time low of 5 in 1999. One example of our effort is a widely distributed fact sheet, which we provide to the public online at our web site, to callers at our toll-free information line and through personal appearances at senior's seminars throughout the state. A copy of this fact sheet is attached to my testimony.

Unfortunately, unless those committing fraud serve substantial jail time, the con artist may merely move to another state to defraud its unknowing senior citizens. For this reason, we appreciate the committee's interest in this area.

Thank you for drawing attention to this important issue, Mr. Chairman. This concludes my remarks, and I would be happy to answer any questions you or the other committee members might have.

**BUREAU OF  
CONSUMER  
PROTECTION**

# Consumer Facts

Wisconsin Department of Agriculture, Trade and Consumer Protection • P.O. Box 8911 • Madison, WI 53708-8911 • 1-800-422-7128

## Don't believe all you hear about living trusts

Many people worry that a large portion of their life savings will go towards taxes when they die or that their assets will be tied up in probate. In the last few years, the living trust has been marketed as an estate-planning device that helps consumers avoid probate problems. While a living trust can be a valuable financial planning tool for some people, we caution consumers about misleading claims or exaggerations.

With a living trust, you designate a trustee with financial expertise to manage your assets and allow for a smooth transition of property when you die. Probate of the estate may not be required, so court costs and lengthy waiting

periods might be avoided. But a living trust can't eliminate tax liability and there is no guarantee the trust won't be legally challenged.

### Protect Yourself

Prepared forms or kits used to establish living trusts are currently being sold through magazines and door-to-door contacts. Other companies offer free seminars or workshops to lure customers. Senior citizens are particularly targeted. Consumer complaints indicate that some companies automatically send a salesperson to the home of people who return cards indicating they'd like more information. Exercise caution. Consider

the following when obtaining information:

- Company representatives may misrepresent the advantages or effectiveness of trusts in order to make a sale.
- Background material provided on living trusts may omit or misrepresent information related to probate procedures, estate taxes, marital property laws and guardianship. Make sure you get accurate information about all your concerns.
- A living trust should be customized to meet individual needs. For some people, a living trust may not be worth

the effort. Others may consider using the trust in conjunction with a will. How a particular trust is drawn up depends on the type of property being placed in the trust and the purposes for which the trust is formed. Do-it-yourself kits which contain standard forms and language may not address your individual needs.

- Mail order trusts can be just as expensive (sometimes more expensive) as trusts drafted by an attorney.
- If you are asked to make a down payment when making arrangements for a trust, be sure to

find out how long it will take for delivery of the completed documents and exactly what other fees and payments will be required.

- If you purchase a living trust from a door-to-door seller you have three days to cancel the purchase. The seller should provide two copies of a notice of cancellation.

Living trusts may be marketed by insurance agents, financial planners, accountants or attorneys. Check credentials. If not executed properly, a trust may result in costly legal fees for survivors. Trusts are legal documents and should be

developed or reviewed by someone who is highly trained. Consult a qualified attorney who can evaluate the use and legality of a trust in the context of other legal issues and your personal situation.

For more information or to file a complaint, contact the Bureau of Consumer Protection at:

**(800) 422-7128**

**FAX: (608) 224-4939**

**TTY: (608) 224-5058**

**E-MAIL:**

**[datcphotline@datcp.state.wi.us](mailto:datcphotline@datcp.state.wi.us)**

**WEBSITE:**

**<http://datcp.state.wi.us/>**

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The CHAIRMAN. Thank you, Mr. Prenzlow.  
Now, Ms. Kolish.

**STATEMENT OF ELAINE KOLISH, ASSOCIATE DIRECTOR, DIVISION OF ENFORCEMENT, BUREAU OF CONSUMER PROTECTION, U.S. FEDERAL TRADE COMMISSION, WASHINGTON, DC**

Ms. KOLISH. Good morning, Mr. Chairman, Senator Breaux. I am Elaine Kolish, Associate Director of the Division of Enforcement at the FTC. The commission would like to thank you for holding this hearing about living trust scams.

AARP's new data suggests that living trust scams may be increasing, and this, of course, is of concern to the FTC. I would like to discuss three points in my remarks; one, how these scams work; two, how increased public awareness and complaints from victims is critical; and, three, a new FTC consumer education initiative we are launching today and how we plan to get it into the hands of seniors.

First, how these scams work. As you know and we have already heard, these scams often prey on older Americans' concerns that their estates are going to be subject to long and costly probate. The reality is that many States have simplified probate for estates below a certain size, which will vary from State-to-State, and simplified probate costs less and goes more quickly.

There are also other estate planning tools that consumers can use that avoid probate, such as owning property as joint tenants with right-of-survivorship or payable-on-death accounts. Living trust scams work because of misinformation and misunderstanding about probate and other issues. Although enforcement actions, whether by Federal authorities, State AGs or bar associations have an important role to play, education is equally, if not more, important.

Two, we need greater public awareness about such scams and we need complaints from victims to help law enforcers. We believe that this hearing will draw invaluable public attention to this problem and help prevent additional seniors from being scammed. At the same time, we hope that it will lead those who may already have been victimized to report their experiences, because complaint data is critical for law enforcers.

As we noted in our prepared statement, living trust scams is an area for which the commission historically has received few complaints. The commission's consumer complaint data base, known as Consumer Sentinel, shows less than two dozen complaints about living trusts for each of the last several years. A word about Sentinel. It is an online complaint data base with over 250,000 complaints, and it is an investigatory tool that is available to more than 240 law enforcers throughout the United States and Canada.

In contrast to living trusts, Sentinel shows hundreds and thousands of complaints for other consumer issues such as telemarketing and Internet fraud, mail-order problems and credit. Although Sentinel is not the only tool the commission uses to identify trends and targets for law enforcement, it is an important tool for us and our many Sentinel partners.

Three, consumer education. To raise consumer awareness about living trust scams, the commission today is issuing a brochure to

help older Americans detect and avoid these scams, to tell them about reliable sources they can go to for more information about estate planning and how they can complain to the FTC. We take complaints through our new toll-free hotline, 1-877-FTC-HELP, through an online complaint form and through the mail.

We want to get this brochure into the hands of seniors. We hope the committee, AARP and State officials will help us. We also plan to distribute the brochure through our broad network of contacts including legal aid societies, community service organizations, State and local consumer protection agencies and thousands of media.

In addition, we have been in touch with other organizations that have frequent contact with older Americans, such as the group Children of Aging Parents, the Jewish Council for the Aging, the National Caucus and Center on Black Aging, the National Association of Retired Senior Volunteers and others. These groups have pledged to use the FTC's brochure in their newsletters, on their websites or to distribute it in other ways.

Senator Kohl also made an excellent suggestion that educating police officers would be a good idea and we will add that to our to-do list. Our brochure has many useful tips, but there are three that particularly bear mentioning. First, the brochure's most important message for other consumers is to have alarm bells go off when companies or individuals tout living trusts as a magic solution and portray probate as a necessarily protracted, hugely expensive process.

Second, there should be red flags raised if any seller claims endorsement or affiliation with AARP, because those claims are false, as we have heard today.

Third, we advise consumers to consult local attorneys experienced with estate planning to discuss what estate planning tools are right for them or to talk to a reputable financial adviser to get an idea about the cost and benefits of various options. Consulting qualified professionals is critical, because to be effective, a living trust must be properly drafted and executed.

We understand that consumers who do not already have relationships with such professionals may be leery of consulting them, but putting their trust in door-to-door salesman or other smooth-talking strangers selling high-priced panaceas for probate is perilous and it may lead to their heirs needing to hire attorneys anyway to sort out their estates and fulfill their wishes.

In conclusion, we hope that this extensive education effort will prevent additional consumers from being victimized and lead others who may have been scammed to report their experiences to the FTC or other authorities. In closing, I would like to thank you Senators very much for holding this important hearing, and I would be happy to answer any questions you might have.

[The prepared statement of Ms. Kolish follows:]

**PREPARED STATEMENT  
OF THE FEDERAL TRADE COMMISSION  
ON LIVING TRUST SCAMS**

**Before the  
SPECIAL COMMITTEE ON AGING  
UNITED STATES SENATE**

**Washington, D.C.**

**July 11, 2000**

## I. Introduction

Mr. Chairman, I am Elaine Kolish, Associate Director of the Bureau of Consumer Protection's Division of Enforcement at the Federal Trade Commission.<sup>1</sup> I am pleased to be here today to testify about scams involving living trusts. It is important to note at the outset that living trusts can be legitimate and valuable estate planning tools. However, scams involving living trusts raise serious and growing concerns. These scams often prey on older Americans' concerns that their estates will be subject to long and costly probate, and involve misrepresentations about the costs and benefits of trusts versus wills and that local attorneys will create the trust documents.

I want to thank the Committee for holding this hearing and drawing public attention to this issue. To help alert older Americans and others about these scams, we are today issuing a new Consumer Alert. We hope that with the Committee's assistance and that of our many partners such as AARP, state Attorneys General, and the Council of Better Business Bureaus, we can together raise consumer awareness about living trust scams.

## II. Background

The FTC is the federal government's primary consumer protection agency. Congress has directed the FTC, under the FTC Act,<sup>2</sup> to take action against "unfair or deceptive acts or practices" in almost all sectors of the economy and to promote vigorous competition in

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<sup>1</sup> 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.

<sup>2</sup> 15 U.S.C. §§ 41 *et seq.* The Commission also has responsibilities under more than 40 additional statutes.

the marketplace. The FTC Act authorizes the Commission to halt unfair or deceptive conduct through administrative proceedings, and to bring civil actions in federal district court for injunctive relief to halt the targeted illegal activity and for redress for victims.<sup>3</sup> Where redress is impracticable, the Commission obtains disgorgement to the U.S. Treasury of defendants' ill-gotten gains or, in certain situations, uses the money to conduct educational campaigns to prevent further fraud.

Many Commission initiatives and law enforcement actions target scams that prey on older Americans. The Commission brings a wide range of law enforcement actions against fraudulent marketing practices conducted through various media. For example, FTC and Canadian officials recently sued a Canadian telemarketing company engaged in an illegal lottery scheme that targeted elderly U.S. citizens.<sup>4</sup> The Commission also 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

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<sup>3</sup> 15 U.S.C. §§ 45(a) and 53(b).

<sup>4</sup> 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.

<sup>5</sup> 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 Skins 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 FTC Charges of Making False Health Claims," dated May 1, 2000.

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. Scams Involving Living Trusts**

Misinformation and misunderstanding about probate and estate taxes provide a ripe environment for scam artists to prey on older consumers’ fears that their estates will be eaten up by costs, and that distribution of their assets to loved ones will be long delayed. Some

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<sup>6</sup> In March 2000, the FTC, the Department of Justice and the Department of Housing and Urban Development announced a settlement with Delta Funding Corporation, a national subprime lender, that resolved allegations that Delta engaged in asset-based lending, in violation of the Home Owners Equity Protection Act (HOEPA) (i.e., extending loans based on the borrower’s collateral rather than considering the borrower’s current and expected income obligations, etc.) In July 1999, as part of “Operation Home Inequity,” the Commission obtained settlements with seven subprime mortgage lenders for violating HOEPA, the Truth in Lending Act and the FTC Act. See FTC Press Release, “FTC Testifies on Enforcement and Education Initiatives to Combat Predatory Lending Practices,” May 24, 2000.

unscrupulous businesses advertise seminars on living trusts or send postcards inviting consumers to call for in-home appointments, ostensibly to learn whether a living trust is right for them. A common practice is to greatly exaggerate the benefits of living trusts and falsely claim that locally-licensed attorneys will prepare the documents.<sup>7</sup> In some instances, consumers send money for living trust kits but receive nothing. In others, the offer of estate planning services is merely a ruse to gain access to consumers' financial information and to sell them other financial products, such as insurance annuities.<sup>8</sup> These practices may violate federal securities laws, as well as other laws.

Many state Attorneys General and other authorities, such as disciplinary or grievance committees of state or city bar associations, have taken enforcement actions against living trust scam artists. Some cases have been brought under state Unfair and Deceptive Acts and Practices laws. Others have been prosecuted as the unauthorized practice of law because the salespeople were not lawyers.<sup>9</sup> Even in instances where there may be some attorney review, it may be

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<sup>7</sup> Other problems include misrepresenting affiliation with or endorsement by a legitimate nonprofit organization such as AARP, and using a "cookie-cutter" approach to trust documents, which should be customized to the individual's circumstances. See "Scams in the Marketing and Sale of Living Trusts: A New Fraud for the 1990s," by Lori A. Stiegel, Lee Norrgard and Robin Talbert, *Clearinghouse Review*, Oct. 1992.

<sup>8</sup> In 1998, for example, Florida Attorney General Bob Butterworth and AARP charged Senior Estate Services Inc., a Texas-based firm with offices in Florida, and Remington Estate Services of Florida Inc., an affiliated firm, which purported to sell living trusts, with using the sales presentation to persuade consumers to liquidate their assets and purchase insurance annuities, even if the annuities paid a lower rate of return than consumers already earned. See Florida Attorney General News Release, "Firm Charged With Deceiving Seniors Into Buying Trusts, Annuities," dated June 10, 1998.

<sup>9</sup> At least nineteen states have issued ethics opinions specifically addressing the marketing of living trusts, concluding that the determination about whether a living trust is an appropriate estate planning device should be made by an attorney and that the trust documents

insufficient to render the activity legal.<sup>10</sup> The U.S. Securities and Exchange Commission also has prosecuted companies purporting to offer estate planning services, such as living trusts, for violating the securities laws through fraudulent investment schemes targeting senior citizens.<sup>11</sup>

#### 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

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should be prepared by an attorney.

<sup>10</sup> See "Fraudulent *Notarios*, Document Preparers, and Other Nonattorney Service Providers: Legal Remedies for a Growing Problem," by Deanne Loonin, Kathleen Michon, and David Kinnecome, *Clearinghouse Review* at pp. 329, 335-36 and nn. 61-62, 70-71 (Nov.-Dec. 1997). The sale of self-help kits also may violate some state Unauthorized Practice of Law statutes. *Id.*; see also *The Florida Bar Re Advisory Opinion-Nonlawyer Preparations of Living Trusts*, 613 So.2d 426 (Fla.1992).

<sup>11</sup> See SEC Press Release, "SEC Halts Fraudulent Investment Scheme Targeting Senior Citizens," dated Sept. 1, 1999. The release also notes that in 1996 a state court had enjoined some of the defendants from offering trust and estate planning services because they were engaged in the unauthorized practice of law. The SEC obtained a temporary restraining order and was seeking a permanent injunction forbidding further violations of the antifraud provisions of the federal securities laws, disgorgement of wrongfully obtained profits and penalties. The four individual defendants also were indicted on October 20, 1999 and as of June 7, 2000, three had been sentenced to terms ranging from 52 months to 20 years. SEC Press Release, "United States v. Gary Davenport, *et al.*," dated June 7, 2000.



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 a total of more than \$78,000.

**B. The Commission's Consumer Sentinel Complaint Database**

The Commission's Consumer Sentinel database does not identify living trusts as one of

the most frequently complained about consumer protection problems.<sup>12</sup> Consumer Sentinel is an online complaint database and investigatory tool available to more than 240 law enforcement agencies in the U.S. and Canada. Initially focusing on telemarketing fraud when it was first created in the late 1990s, it has expanded to include complaints about all types of consumer fraud. The Consumer Sentinel database contains more than 250,000 consumer fraud complaints that have been filed directly with the FTC through a toll-free telephone number (1-877-FTC-HELP), an online complaint form, or the mail, or added by Sentinel partners. These include other federal, state and local law enforcement agencies, such as the U.S. Postal Inspection Service, Canada's Project Phone Busters and private organizations, such as more than 100 BBBs, and the National Consumer League's National Fraud Information Center and Internet Fraud Watch projects.

Consumer Sentinel can be accessed by law enforcers in the U.S. and Canada through an encrypted Web site to identify particular targets for law enforcement, to determine whether a particular fraudulent scheme is local, national or cross-border in nature, to help spot larger trends for law enforcement action, and to monitor rapidly emerging frauds, such as telephone cramming and sophisticated hi-tech fraud, including Internet pagejacking. It features an "Alert" function that informs users whether a company, address, phone number or email that they came across during a search is of interest to another member, and an "Auto Query" function that notifies users

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<sup>12</sup> This may be because representations made in the promotion of living trusts often concern probate, a state and local issue, or because issues of validity and interpretation of living trusts are governed by state law. Thus, consumers may not direct complaints to the FTC.

when new data relating to one of their investigations is entered into the complaint database.<sup>13</sup>

Consumer Sentinel shows few complaints about living trusts in both absolute numbers and in relative ranking to complaints on other topics. Thus far this year Consumer Sentinel has recorded 14 complaints on living trusts, ranking it the 144th category out of 200 that are recorded; in 1999, there were 17 living trust complaints, with a ranking of 163. By way of contrast, there are more than 1000 complaints for each of the top 30 complaint topics, involving many credit topics (e.g., credit bureaus, debt collection, credit cards, credit information providers, mortgage lenders, credit repair, advance fee loans), travel scams, Internet auctions, telephone pay-per-call services, autos, computers, Internet access providers, mail order sales, and business opportunities, subjects that are frequent targets of FTC actions.

Although Consumer Sentinel is a powerful tool for finding new or emerging frauds, the Commission also looks to other sources of information that may suggest budding problems. On the topic of living trust scams, for example, AARP and Michigan Attorney General Jennifer Granholm recently reported new data showing a 125% increase over the last decade in the number of people aged 50 and older, with incomes of \$25,000 or less, who own living trusts, a growth that far outpaces the living trust ownership growth rate of seniors with moderate and higher incomes.<sup>14</sup> This is a cause for concern because generally, consumers of modest means are the least likely to benefit from sophisticated estate planning services. At a press conference,

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<sup>13</sup> In addition, Sentinel features include fraud trend analysis, an index of fraudulent telemarketing sales pitches available from the National Tape Library, a compilation of companies already sued for fraud and a catalog of companies currently under investigation. It also offers a contact list as well as how-to information to help agencies coordinate joint actions.

<sup>14</sup> See AARP Press Release, "AARP, Granholm Take Aim at Generic 'Living Trust' Products," dated June 14, 2000.

General Granholm also warned that older people living in Michigan were being targeted by unscrupulous sellers of costly, “cookie-cutter” trusts.

#### V. New Consumer Alert

The FTC shares AARP and General Granholm’s concern that the increase in living trust ownership among lower-income consumers may indicate a corresponding increase in living trust scams. We hope that this hearing and increased education about the dangers of one-size-fits-all trusts will raise awareness about this problem, preventing additional seniors from falling prey to these scams. To that end, the Commission today is issuing a 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 unscrupulous businesses may use marketing for estate planning services as a ruse to gain entrance to consumers’ homes and their financial data for the purpose of selling them other investments. It also notes that often living trust scam artists claim affiliation or endorsement with legitimate nonprofit organizations such as AARP or claim that they got the consumer’s name from AARP. Such claims are a red flag because AARP does not sell or endorse any living trust product, and does not partner with any company that promotes or sells such documents. AARP also never sells its members’ names or sells its services door to door. The Alert also advises consumers to check with their local BBB for a reliability report before making any major purchases of goods or services.

Consumers who are concerned about probate and other estate issues should consult a reputable local attorney experienced in wills and trusts or a trusted financial advisor. Although a living trust may be useful for some, it is not for everyone. And, unless the trust is properly

drafted and the assets properly transferred to the trust, it will not achieve its purpose. Consumers should beware of individuals or companies who portray living trusts as a panacea for all estate planning issues and probate as a necessarily protracted, hugely expensive process.

Consumers also should be aware of FTC and state laws that give them the right to cancel certain purchases. Under an FTC regulation known as the Cooling-Off Rule, consumers have a right to cancel, within three days, the purchase of goods or services, including estate planning products and services, they make in their homes or at a location that is not the seller's principal place of business (e.g., rented hotel space).<sup>15</sup> All states have similar laws or regulations.<sup>16</sup> To comply with these rules, sellers are required to advise consumers orally and in writing of their right to cancel. Although scam artists are not likely to provide such notices, consumers still have the right to cancel and should do so in writing if they have second thoughts about their purchases. No explanation for canceling need be given. Stopping payment on a check is also a good idea. If a consumer paid by credit card and the seller did not credit the consumer's account for the cancellation, the consumer should follow the dispute billing procedures provided by the Fair Credit Billing Act.<sup>17</sup> Credit card issuers generally provide information on the back of credit card statements on how to dispute charges.

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<sup>15</sup> Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, 16 C.F.R. Part 429. The purchase price must be at least \$25 for the rule to apply. See "FTC's Facts for Consumers on the Cooling Off Rule: When and How to Cancel," at <[www.ftc.gov](http://www.ftc.gov)>.

<sup>16</sup> Some state actions against living trust sellers have included charges that they failed to comply with applicable Cooling-Off rules.

<sup>17</sup> 15 U.S.C. §§ 1666-1666j. See FTC's "Facts for Consumers, The Fair Credit Billing Act," at <[www.ftc.gov](http://www.ftc.gov)>.

The Alert also advises consumers who have purchased a living trust or other financial planning services and who believe that they may be the victim of a scam to file complaints with the FTC in writing, online or by calling the FTC's new toll-free number, 1-877-FTC-HELP.

The Commission will distribute the Consumer Alert through its extensive network of contacts, including organizations for the aging, legal aid societies, community service organizations, extension home economic services, state and local consumer protection 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.

The CHAIRMAN. You might add the Area Agencies on Aging, which would be, in most States, at your senior citizen centers, maybe at least for my State.

Ms. KOLISH. Yes, sir. We will be happy to do that.

The CHAIRMAN. Mr. Hancock, and thank you for representing the attorney general of Florida here.

**STATEMENT OF PAUL F. HANCOCK, DEPUTY ATTORNEY GENERAL FOR SOUTH FLORIDA, FORT LAUDERDALE, FL**

Mr. HANCOCK. Yes. Attorney General Bob Butterworth was honored to receive an invitation to appear before this committee, and I am honored to be here on his behalf. Attorney General Butterworth has been involved in challenging living trust scams for 8 years now, together with our Florida bar. We have brought three separate lawsuits against companies that have conducted these scams in Florida.

Our bar has brought three separate actions before the Florida Supreme Court to challenge the unlicensed practice of law. I think I should start by saying—and I have submitted a written statement, Senator. I would ask that that be submitted as part of the record.

The CHAIRMAN. Yes, and I did not announce it before, but anybody that had a longer statement than what their 5 minutes allowed, the statement will be put in the record as submitted.

Mr. HANCOCK. And I would like to just summarize a few points in my statement and also try to address some of the issues that have arisen this morning. I think it is important to keep in mind that living trusts are not sold. They are not sold like automobiles. Rather, a trust is the product of an estate planning process—that might be the product of an estate planning process. It is carried out by people who are licensed to offer that advice.

In every State, to offer legal advice, you need to be licensed as a lawyer. You need to be licensed to practice law. In our State, when living trust scams have taken place, we have used both the Florida bar to bring actions to enjoin the unlicensed practice of law and our Unfair and Deceptive Trade Practices Act to enjoin unfair and deceptive trade practices. We have worked in close coordination with the Florida bar.

Now, why have we had so much activity in Florida? Well, we think the entire country can learn from Florida, because predators who want to exploit the elderly come to Florida. Almost 20 percent of the population of the State of Florida is over the age of 65. The fastest-growing segment of our population is the 85-and-over age group, and of that age group, probably up to one-half of those people suffer from some type of cognitive disability, making them susceptible to scams.

One in three of our elderly residents in Florida lives alone, and as you know in Florida, many times the elderly residents living alone, their closest family members reside in distant States, again making them more susceptible to exploitation and I suggest to you creating a situation that prior generations never had to face.

While most of our elderly residents are not rich, many of them have assets in a fairly liquid form that can be snatched pretty quickly; and unfortunately, unlike younger Americans who are em-

ployed, when our elderly residents are scammed, they often lose their sole source of support, in that they are losing assets that have to support them for the rest of their lives.

I would like to, in the time I have, summarize some of the points that I think are important for consumer education. To start with, consumers need to be aware of the names of companies. We have heard that this morning. The names that have been used are United Senior Alliance, Alliance for Mature Americans.

In our cases, the companies have used names like American Family Living Trust, American Association for Senior Citizens, American Senior Citizen Alliance, Senior Estate Services. That certainly conjures up an image of a consumer-friendly organization, a senior-friendly organization, and yet they were predators; they were scam artists who were adopting a name with an intention of deceiving consumers. People need to be careful about being misled by the name of an organization.

We have heard about how the companies try to tie themselves to reputable organizations like the AARP. In our cases, we have also seen situations where they try to tie themselves to government agencies. In one case, the solicitation for a living trust included a stamp on the envelope with an eagle, warning people about the criminal penalties for delivering the envelope to anyone other than the addressee, and it even included on the envelope a statement that said: Buy U.S. savings bonds.

I am not sure why someone selling living trusts would want someone to buy U.S. savings bonds, other than in an effort to deceive. We also need to be careful today, because of technology and the proliferation of data, it is possible now to specifically target people who scam artists believe are susceptible to these efforts. You are experiencing that in another subject that you are dealing with on predatory lending, where people who have equity in their homes can be targeted.

Today, with data that is available, you can target people by race, by national origin, by age, by wealth, by the amount of equity in their home. While that can be used for good purposes, it can also be used by predators who want to take unfair advantage of people.

Third, I think that people need to be careful about people who want to make presentations in their home. That is a very significant fact. If people—all of our cases where we have dealt with living trusts, people have tried to get in the door, and they want to get in the door because people are more relaxed in their home. They do not prepare when people come to their home. If they go to the office, they are more apt to bring a loved one or adviser, but not if the person comes to their home.

High-pressure sales tactics are remarkable. They are just remarkable. In our cases, we have learned that trust sellers are instructed to spend up to 45 minutes warming up a senior citizen, to talk about family, loved ones, so that they trust them. Every person that we have had to identify and tell they are victims of this type of scam has said: "I can't believe it. He or she was such a nice, warm person. They would not do this to me."

The scam artists are good. Also, they work to complete the sale the same day they are in the home. They do not want people to take time to think it over or talk to their loved ones. It has been



referred to in another area as completing the sale before the victim comes out from under the ether, and that is what they try to do.

In one of our cases, to explain the extreme here, when an elderly woman did not want to write a check for \$1,895 for a trust, the salesman offered to take her to the bank so she could withdraw the money in cash. An alert bank teller, and we have talked about educating bank tellers, knew the woman was frugal and questioned her about why she was withdrawing the money, and she said: "I'm buying a will," which showed she did not know the difference between a will and a trust. The bank teller alerted the police and the transaction was stopped.

These people have no regard for the needs of the elderly person. They have no regard for State law. In many situations, in virtually all of our situations, nonlawyers were advising elderly persons that their will was not any good, that their existing trust was not any good because of the change in the law, and again, they did not have the license to offer that kind of advice.

Finally, the pressure to buy annuities is particularly invidious, and in our situation, we have had elderly people who were victimized by being told that they need to buy annuities because their assets are not protected. They are told that they are too old to be driving a car and if they are ever in an accident, they are going to lose everything they have because of civil litigation. The example that was used continuously in Florida was that the sellers of annuity would cite the case of O.J. Simpson. They were told that O.J. lost most of his assets in the well-known civil litigation, but his NFL pension remained because that was an annuity.

Of course, they did not tell people to buy more car insurance or buy umbrella coverage. They suggested they sell all their assets from the rip-roaring stock market at the time and instead buy an annuity that would pay 3 percent interest. The annuities—in many cases, octogenarians were sold annuities that would not have a cash-flow for the next 15 years and in many situations, lawyers have told us that again octogenarians were advised to invest all of their IRA assets into annuities, which put them in the untenable position of being required by Federal law to take a withdrawal each year, but being precluded from taking a withdrawal without penalty by the terms of the annuity contract. In no situation is a financial transaction like that in the best interest of the consumer.

We are actively working to not only promote consumer education, but address this issue through law enforcement. We need to have a coordinated approach in law enforcement. We work regularly with other States to address these scams on a multistate basis, and as I mentioned, we also work very closely with the Florida bar to address these issues.

It remains important to educate law enforcement officials since, in Florida, in our own State, we have had situations where law enforcement has failed to pursue claims on living trust companies because they referred to it as a civil matter. We have now encouraged law enforcement to address these complaints and it would also be very effective if law enforcement could have the kind of technology, where they could notify each other of complaints like this that come in, because what appears to be an isolated instance then

could be revealed as, in fact, a pattern or practice of unlawful conduct.

Finally, I would say that we are also now beginning to use our civil rights staff to address these kind of issues. We think that these present civil rights issues. People are being targeted for exploitation because of an immutable characteristic that is very similar to race discrimination, and we believe that elderly people in our State have the civil right and the right to live with dignity without being attacked by predators.

I would be happy to answer any questions you may have.

[The prepared statement of Mr. Hancock follows:]

STATEMENT OF  
PAUL F. HANCOCK  
DEPUTY ATTORNEY GENERAL FOR SOUTH FLORIDA

BEFORE THE UNITED STATES SENATE SPECIAL COMMITTEE ON AGING

JULY 11, 2000

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MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Bob Butterworth, Attorney General of the State of Florida, sincerely appreciates the invitation from the United States Senate Special Committee on Aging to provide testimony regarding Florida's experiences in investigating, prosecuting and curtailing living trust scams. And I am honored to appear before this Committee on behalf of General Butterworth.

Attorney General Butterworth is very interested in, and supportive of, the work of this Committee. Almost 20 percent of the population of our State is 65 years of age or older. Florida has the highest concentration of senior citizens over the age of 65 among the nation's 50 states. Today, one out of every three Floridians aged 65 and older lives alone, making them prime targets for various types of exploitation and abuse.

The fastest growing segment of our population is age 85 and older. A significant percentage of this age group, perhaps up to one-half, suffer a cognitive disability, which again increases the susceptibility to exploitation.

Of course, a large percentage of our senior citizens are retirees, who have moved to Florida from all areas of our great country. In most situations, their sons, daughters and other close relatives reside in distant states. New bonds of friendship are formed in Florida, but the absence of the traditional family network creates a type of isolation that is ripe for exploitation in a manner not experienced by prior generations. The isolation, and susceptibility to exploitation, increases when a spouse dies.

Some of our elderly residents of Florida are wealthy, but most are not. Most live on fixed incomes and accumulated savings that must be available to support them for the remainder of their lives. Often the assets and wealth of our senior citizens are liquid, i.e., in the form of stocks, bonds, certificates of deposit, savings bonds and other savings accounts. This fact also increases their vulnerability to scam artists who can take the money and run. Unlike younger Americans who are employed, senior citizens who lose their assets often lose their sole source of income and continued subsistence. This wealth cannot be replaced.

It is important to analyze closely our experiences in Florida since the entire nation is "greying." For example, it is estimated that by the mid-2020's, more than 69 million Americans will be 65 and older -- a number nearly double the current population of our nation's largest state, California. By that point, elderly persons (65 and older) will comprise almost 20 percent of our national population. Florida is a "petri dish" of a greying America in the next several decades. The rest of the country can learn from our experiences. Using a metaphor that can be appreciated by Floridians, Attorney General Butterworth has labeled the issues that will accompany the

greying of America as "The Approaching Storm."<sup>1</sup>

A top priority of General Butterworth is utilizing our law enforcement authority to protect elderly persons to the maximum extent possible, and we appreciate the work of this Committee since you have identified and studied the issues which are of great importance to us. We suggest that many of the issues regarding exploitation of the elderly are interrelated, and arise because of the characteristics and vulnerabilities of our elderly population. For example, we have followed with interest the work of this Committee on the subject of predatory lending and its impact on the nation's elderly. Scam artists who attempt to steal assets through living trusts employ many of the same tactics as those who attempt to rob senior citizens of the equity in their homes.

As we address the issue before the Committee today, we should start by emphasizing that a revocable living trust is a valid estate planning device. A person establishing a revocable living trust (identified as the "settlor") passes title of her property to the trustee (who is the same person as the settlor). The trust is administered for the settlor's own benefit during her life and designates the disposition of the property upon the death of the settlor. Property passed in this manner is not subject to the probate process that is used to distribute property of persons who die with a will. Such a trust can also provide tax advantages to persons in certain financial circumstances.

My purpose today, however, is not to discuss the advantages or disadvantages of wills or revocable living trusts. The appropriateness of the estate planning device used depends on the circumstances of the individual, and that decision should be part of a planning process effectuated by knowledgeable persons who are licensed by a state to provide such advice. Today's subject concerns situations in which revocable living trusts are marketed without regard to the needs of the targeted consumers. Deceptive and unfair practices are often used to convince persons to purchase such a trust, and the marketing usually is conducted by persons who are not licensed to offer legal advice. Trusts are not designed to be "sold" like automobiles. We will show by our experiences that persons seeking to "sell" revocable living trusts with a "one-size-fits-all" trust are not advancing the best interest of the "buyer" and, in most instances, are violating the laws of our State.

I will describe our law enforcement experience in addressing living trust scams. I also will explain the readily identifiable characteristics of the exploitation. Finally, I will offer our suggestions for addressing this issue in the future.

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<sup>1</sup> See **The Approaching Storm**, A Position Paper on Elder Abuse by Florida Attorney General Robert A. Butterworth, prepared for The National Association of Attorneys General Hearing on Elder Abuse, Deerfield Beach, Florida, May 12, 1999. A copy of this Position Paper is appended as Attachment A.

## I. LAW ENFORCEMENT EXPERIENCE

### A. 1992 Opinion of The Supreme Court of Florida

Estate planning is properly a "process" to be engaged in between a lawyer and her client. On the other hand, persons seeking to "sell" a one-size-fits-all revocable living trust rather than engage a client in an estate planning process often – if not always – are nonlawyers. Thus, an issue initially arising in Florida was whether such activities by nonlawyers constituted the unlawful practice of law. To resolve this issue, the Florida Bar Standing Committee on the Unlicensed Practice of Law petitioned the Florida Supreme Court for an advisory opinion. In an opinion issued on December 24, 1992, the Supreme Court held:

[T]he assembly, drafting, execution, and funding of a living trust document constitute the practice of law. We also agree that a lawyer must make the determination as to the client's need for a living trust and identify the type of living trust most appropriate for the client. As this Court stated in *In re Joint Petition of the Florida Bar & Raymond, James & Associates, Inc.*, 215 So.2d 613, 613-14 (Fla. 1968), "[g]iving legal advice . . . concerning the application, preparation, advisability or quality of any legal instrument or document or forms thereof in connection with the disposition of property inter vivos or upon death" constitutes the practice of law and may not be carried on by nonlawyers. A living trust document involves the disposition of property at death, and consequently requires legal expertise. However, consistent with the Court's opinion in *Raymond, James*, gathering the necessary information for the living trust does not constitute the practice of law, and nonlawyers may properly perform this activity.

*The Florida Bar Re Advisory Opinion -- Nonlawyer Preparation of Living Trusts*, 613 So.2d 426, 427-428 (Fla. 1992).

### B. American Association for Senior Citizens

The involvement of lawyers, of course, does not immunize deceptive marketing practices from legal challenge. In 1994, a number of states worked together to correct the deceptive marketing of living trusts. In addition to Florida, the states involved were Arizona, Arkansas, Colorado, Connecticut, Idaho, Illinois, Kansas, Kentucky, Massachusetts, Minnesota, Missouri, New Mexico, New York, North Carolina, Ohio, Texas, Utah, Vermont, Washington and Wisconsin. The deceptive practices were being effectuated by an organization known as the American Association for Senior Citizens (AASC) and its lawyers, Pre-Paid Legal Services, Inc. (Prepaid).

AASC engaged in a door-to-door sales campaign to solicit senior citizens to become members of AASC. The primary "benefit" of membership was a living trust prepared by Prepaid. AASC told seniors that a living trust was appropriate for everyone; they also misrepresented the burdens of the probate process and the advantages of a living trust. Inasmuch as AASC had few assets,

the states directed their enforcement efforts at Pre-Paid Legal Services, Inc. Acting pursuant to the states' consumer protection laws (in Florida the consumer protection law, also known as the "Little FTC Act," is Chapter 501, Part II, Florida Statutes), the states obtained an ASSURANCE OF DISCONTINUANCE/VOLUNTARY COMPLIANCE which ended the deceptive practices and provided refund opportunities for more than 3,000 consumers. See Attachment B.

### C. American Senior Citizen Alliance:

Also in 1994, Attorney General Butterworth filed a lawsuit against another company that was deceptively marketing living trusts to elderly Floridians. American Senior Citizen Alliance (ASCA), a for-profit corporation owned and managed by nonlawyers, solicited prospective customers by mass mailings which appeared to come from a governmental-endorsed source. The solicitation envelope included an eagle stamp that read "Official Business Only." Another line on the envelope said "Buy U.S. Savings Bonds" and warned of criminal penalties that could come from giving the envelope to anyone other than the addressee. Senior citizens who responded to the solicitation were visited in their homes by a nonlawyer who utilized a high-pressure sales presentation. The sales person discussed the disadvantages of wills and the advantages of living trusts; he answered specific legal questions and gave tailored legal advice. The customers were told, however, that an attorney would prepare the legal documents.

The Attorney General received complaints from Floridians who paid money to the company but received neither the trust documents or a refund. In May, 1994, the Attorney General sued ASCA and its officers under Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes. See Attachment C. The Attorney General promptly obtained a temporary order shutting down the company. In June of 1994, the company filed a petition for bankruptcy, pursuant to Chapter 7 of the United States Bankruptcy Code. The Attorney General was unable to obtain refunds for consumers due to the bankruptcy filed by ASCA.

The Florida Bar also commenced action against the company, alleging that the company was engaged in the unlicensed practice of law. This action continued even after the cessation of business because the company officials had been involved with two other living trusts companies, and the Bar wanted an injunction that would prevent the recurrence of the unlicensed practice of law. The company contended that its sales staff was not practicing law because the Supreme Court's 1992 *Living Trusts* decision authorized "gathering the necessary information for the living trust" by nonlawyers. In ruling on the Bar's complaint, the Florida Supreme Court held:

[W]e find that ASCA's purported reliance on our language in *Living Trusts* as condoning its activities here is an unreasonable interpretation of the phrase "gathering the necessary information." Under the untenable guise of "gathering information," nonlawyer ASCA employees answered specific legal questions; determined the appropriateness of a living trust based on a customer's particular needs and circumstances; assembled, drafted and executed the documents; and

funded the living trusts in direct violation of our clear admonitions to the contrary in [prior decisions]. The particularized legal advice and services rendered by ASCA's nonlawyer employees clearly constituted the unlicensed practice of law.

*The Florida Bar v. American Senior Citizens Alliance, Inc.*, 689 So.2d 255, 259 (Fla. 1997).

#### D. Senior Estate Services

Less than eighteen months after the Florida Supreme Court's decision, Attorney General Butterworth and the Florida Bar filed coordinated but separate actions against two companies which were marketing living trusts and related documents to elderly residents of Florida. Once again, the Attorney General acted to enforce the Deceptive and Unfair Trade Practices Act and the Bar sought to enjoin the unlicensed practice of law. The American Association of Retired Persons (AARP) joined the Attorney General's action as a plaintiff. The defendant companies involved were Senior Estate Services, Inc. and Remington Estate Services of Florida, Inc. Both companies originally were incorporated in, and operated out of, Texas. A copy of the Attorney General's complaint is appended as Attachment D. The companies ceased doing business in Florida promptly upon the filing of these actions. Their business tactics, however, are worthy of description in some detail.

Senior Estate Services (SES) obtained from a marketing company the names and addresses of elderly residents of Florida. From its offices in Texas, SES mailed to elderly Floridians a card stating that an American Association of Retired Persons (AARP) report found the probate process to be outdated and costly. The mailing offered to send a new consumer guide "What Lawyers Don't Want You to Know" containing information on how to avoid probate through a living trust. Interested persons were requested to return the postage prepaid card and to include on the card their ages and phone numbers.

As intended by SES, many consumers were led to believe -- incorrectly -- that AARP endorsed the company's product. SES never intended to mail the consumer guide but rather sought the phone numbers of elderly Floridians in order to telephone them in an effort to arrange a home visit to solicit the prospective customer. The actual design of the mail solicitation was to attempt to sell to the elderly person a revocable living trust; the trust would be prepared by Remington Estate Services of Florida, Inc. which operated a trust mill in Texas. From a phone bank in Texas, elderly Floridians were called by SES staff and were told that an SES representative would be in their neighborhood "tomorrow." In truth, the representative would be in the neighborhood only if the targeted elderly resident agreed to a meeting. Every effort was made to obtain a prompt in-home meeting, and, once inside the home, a scripted sales presentation was employed.

The sales personnel, known as trust representatives were taught to spend approximately 45 minutes "warming up" the targeted customer to trust, and have confidence in, the trust representative. This might be accomplished by discussing family, children and grandchildren.



The sales pitch then centered on an effort to scare the customer about the alleged costs and burdens of the probate process, and to offer the living trust documents as a substantially less expensive alternative. Trust representatives, who were nonlawyers, were encouraged by their supervisors to bash lawyers and to explain that the company was providing information that "lawyers don't want you to know."

Trust representatives used lies and deception to convince the customer to purchase a living trust and related documents. In some instances, sales personnel would ask to examine the existing will or estate planning documents of the customer. The trust representative would then say that the documents are no longer valid because of a change in the law.

Trust representatives were taught to estimate the expected value of an elderly person's estate and also to estimate the portion of the estate that would be paid to lawyers, courts, and governmental bodies -- rather than to intended beneficiaries -- because of the probate process. Trust representatives told stories, often fictitious, of drawn-out probate processes that consumed large portions of the estates of wealthy persons. In making the sales presentation to the elderly Florida resident, trust representatives overstated the value of an expected estate. For example, the value of an elderly person's home regularly was included as an asset, but the mortgage debt was not deducted from that value. In many circumstances, the elderly person's residence would not even be a part of an estate subject to probate because of joint ownership or homestead law. Other than a three-day training conducted by nonlawyers, the trust representatives had little, if any knowledge of the process or cost of probate.

Trust representatives attempted to complete the "sale" of the trust documents on the same day as the home visit and they discouraged the targeted elderly persons from taking time to contemplate the purchase. The minimum cost of the living trust and related estate planning documents offered by the companies was \$1,895.00. Although the trust representatives would tell the targeted customer that the documents were individually tailored to his or her needs, in truth the documents were form documents and virtually identical documents (other than the names of the intended beneficiaries) were provided to all elderly persons who agreed to purchase the living trust documents.

Two Florida lawyers participated in this scheme to sell living trusts, and the documents were sent to these lawyers for review prior to delivery to the customer. The customers did not meet with the lawyers nor did they pay them a fee. The lawyers executed a form letter to the customer saying that the documents conform with current law and "meet your needs as they have been communicated to my office." The lawyers also instructed the elderly purchaser to contact them in the event that "Congress or the State legislature enact revisions to the current estate or trust tax provisions."

If the targeted elderly person agreed to purchase the living trust and related documents, a representative of Senior Estate Services other than the trust representative scheduled a visit to the elderly person's home. This person was known as a "delivery person." The stated purpose of

this home visit was to execute the trust documents, but the delivery person actually had more in mind. A primary purpose of the visit was to convince the elderly person to liquidate her assets and purchase insurance annuities offered by the defendants, who stood to make substantial monetary profit if they could convince the elderly person to buy the annuities.

The delivery person asked the targeted elderly person to show him a listing of all her assets so arrangements could be made to place assets in the name of the trust. The delivery person stated, usually falsely, that he was a trained financial consultant and would advise the elderly person if he discovered anything unusual in examining the financial assets.

One deceptive and fraudulent practice used by the delivery persons was to express surprise that the elderly person's lawyer, banker or financial planner had failed to tell the elderly person that her assets were "unprotected." This was designed to evoke a discussion of the perils of civil litigation that might result, for example, from a person continuing to drive a car at an advanced age and being involved in an accident. The intent was to scare the elderly person into believing that all of her assets could be lost quickly and could not be replaced. The elderly person was told by the delivery person that assets could be "protected" by switching to annuities, but other options -- such as increased auto insurance or umbrella coverage -- were not suggested. One example that the defendants taught the delivery persons to cite to the targeted elderly person was that of O.J. Simpson. The elderly persons were told that Mr. Simpson lost most of his assets in the well-known civil litigation but did not lose his National Football League pension, because the pension is an annuity. The delivery persons attempted to avoid discussion of factors that mitigated against liquidation of current assets, such as the requirement to pay capital gain taxes. In sum, the presentations were not designed to present unbiased factual advice, but rather were designed to scare the elderly person and convince her to buy annuities.

By orders dated October 15, 1998, and December 16, 1999, the Supreme Court of Florida granted the petition of the Florida Bar and enjoined the Senior Estate Services officials and the Remington Estate Services officials, respectively, from engaging in the unlicensed practice of law. See Attachments E and F. A similar order prohibiting the unlicensed practice of law was entered by a Texas state court. See Attachment G.

On July 6, 2000, the Florida circuit court hearing the Attorney General's action against these companies entered a permanent injunction and final judgment in the amount of \$3,450,360.00 against Remington Estate Services, which covers restitution to consumers, civil penalties, and attorneys' fees and costs. See Attachment H. The action as to the other defendants remains pending.

## II. Characteristics of the Predatory Scheme

Our experiences reveal many common threads joining the companies that seek to exploit elderly persons by implementing living trust scams.

### A. Company Names

Each company which we have challenged in Florida has utilized a company name which suggests alliance with reputable, even if unidentifiable, senior organizations. Company names such as American Family Living Trust, American Association for Senior Citizens, American Senior Citizen Alliance, and Senior Estate Services certainly conjure an image of a senior-friendly organization. The American Senior Citizen Alliance sought further credibility by designing an envelope that appeared to come from a government agency. An effort to deceive is the only apparent explanation for a company that is engaged in the business of selling living trusts to encourage consumers to "Buy U.S. Savings Bonds."

The facts of our most recent filing against Senior Estate Services reveal a clear effort to tie the company to AARP. Of course, the company had no connection with AARP, and the company's effort to tie itself to AARP caused the organization to join the Florida Attorney General in challenging the company's deceptive practices. The company's efforts to deceive were successful. Many Florida consumers who purchased living trusts from the company told us that they did so because they believed that the trusts were endorsed by AARP; some even thought the company was an AARP affiliate.

### B. Targeting Practices

It is understandable that companies offering estate planning services would market themselves to senior citizens. We stress, however, that advances in technology have made it easier for predators to target their intended victims. Whereas in 1994, the American Association for Senior Citizens implemented a door-to-door campaign to find victims, by 1998 Senior Estate Services was able to purchase from a marketing company the names and addresses of elderly Floridians. Technology and the resulting availability of data allows businesses to target people by age, by race, by national origin, or by income level -- just as it allows predatory lenders to target elderly persons with a significant amount of equity in their homes. The data can be used for beneficial purposes to provide services to all segments of our population. But it also can be used by predators to target the groups of persons whom they believe will be most susceptible to their scam efforts.

Lawyers representing the Elder Law Section and the Real Property, Probate and Trust Law Section of The Florida Bar also report concerns regarding companies marketing living trusts by offering free "informational" seminars about revocable living trusts in areas where elderly persons reside. These seminars are advertised in local newspapers and usually are presented by persons who are not lawyers. The First Amendment protects the sharing of information and

ideas, but concern has been expressed that the seminars often cross the line toward illegality by offering specific legal advice to individual consumers regarding their estate planning needs. In fact, it is logical to suspect that the purpose of such seminars is to convince the elderly attendees to purchase a revocable living trust which is being offered by the persons presenting the seminar.

### C. Home Visits

Each of the companies described in Part I sought to make a sales presentation in the elderly person's home. This tactic is significant. Predators attempt to catch the victim off-guard, in a relaxed atmosphere. In such a setting, it is unlikely that the elderly person will prepare in advance or seek the advice of a daughter, son or lawyer. The Senior Estate Services personnel were taught to spend at least 45 minutes "warming up" the elderly person in an effort to gain her trust and confidence. With one-in-three of our elderly residents living alone, such visits are often welcomed. The tactic works. One victim summarized her experience with the sales representative in a manner virtually identical to the description offered by many others. She said: "He was the most comfortable warm person." With the elderly person in this state of mind, it is much easier to effectuate the sale.

### D. High-Pressure Sales Tactics

Even after confidence is gained, the sales representatives use high-pressure tactics to sell the product. The sales presentations are well-scripted. In fact, they have to be since the sales representatives know little, if anything, about estate planning, wills or trusts. The trust representatives working for Senior Estate Services were hired through newspaper ads and were prepared by only three days of training in sales tactics. No particular education or prior experience was required. No background check was performed. One trust representative continued to "assist" a cognitively-impaired man he had met at a home visit, and eventually stole most of the man's assets. This trust representative was arrested by local law enforcement.

Of course, none of the sales representatives have been lawyers, and yet they readily counsel that an elderly person's will or existing trust is invalid. They are taught to misrepresent facts about wills and trusts. Their objective is to sell a product and they have only one product to sell regardless of the elderly individual's needs.

### E. Complete the Sale Today

One component of the pressure sales tactics deserving special attention is the effort to complete the sale before leaving the home of the elderly person. Predators do not want the elderly person to have time to think over the proposal, or to seek advice from their children or legal counsel. In the lending context, this has been referred to as completing the deal "before the victim comes out from under the ether." These contingencies are considered in making the sales presentation. For example, in warming up the victim, the sales person might ask the elderly person if she is independent and able to make her own decisions --- she invariably says yes. If she later seeks

time to discuss the proposed living trust with her children, the sales person will remind her of her previously confirmed independence.

Our experience demonstrates the extreme to which predators will go to complete the sale on the same day as the home visit. When one elderly widow told a trust representative that she was not prepared to write a check for \$1,895.00 and that she did not want to charge that much to a credit card, he asked if she had money in the bank. He then drove her to the bank so that she could withdraw the funds. An alert bank teller knew that the withdrawal was contrary to the woman's normal banking practices and also noticed that she appeared nervous. When she questioned the woman about the reason for the withdrawal the elderly woman replied: "I'm getting a will made." The bank teller notified her manager who called the police. After the police arrived, the woman decided not to complete the transaction.

#### F. Disregard for the Elderly Person's Needs

The sales representatives generally state that the trust documents will be tailored to their individual needs and desires. At best this means that the documents will list the beneficiaries whom the individual desires to receive the property upon death. Otherwise the statements are false, since all persons receive the same form documents. An elderly couple in Florida requested that a sales representative provide trust documents that deviated from the standard forms. The company, however, provided only the standard forms. The documents subsequently were criticized by the elderly couple's lawyer (because the trust did not meet their specific needs), by the elderly couple's banker (because accounts could not be maintained as the couple desired), and by the elderly couple's stock broker (because their accounts could no longer function in the manner that the couple desired).

#### G. Lack of Regard for State Law

Often the companies marketing living trusts are acting to sell the documents in many states without regard to the differences in legal requirements among the states. For example, witness requirements for execution of various documents may differ from one state to another. When executing the living trust, the elderly Floridian also revokes a prior will or trust that they may have had. If the new document is invalid, the person simply may be left without an estate plan. This is not hypothetical. Florida attorneys experienced in wills, trusts, and estate administration have determined that the legal documents provided by Senior Estate Services and Remington Estate Services to some elderly Florida residents do not satisfy the requirements of Florida law. An elderly resident of Sarasota County, Florida who had purchased the trust documents died in 1997. The children of the deceased presented the documents to a lawyer for review. The lawyer determined that several important steps to establish an effective trust had not been taken and that the documents may not satisfy the requirements of Florida law. Since no prior will was found, the lawyer determined that the deceased had died intestate, and a full probate administration was commenced.

#### H. Pressure to Buy Annuities

The Senior Estate Services case also revealed an underlying scheme to sell annuities in the same deceptive manner that living trusts were marketed. High-pressure sales tactics were used with no regard for the needs of the elderly persons. An 83 year old resident of Palm Beach County was subjected to seven continuous hours of a sales pitch to sell her substantial stock holdings and purchase annuities. The sales person utilized the car accident and O.J. Simpson examples. The woman resisted for hours citing the sentimental value of the stock which was acquired over many years with her now-deceased husband. Finally, she gave into the pressure and agreed to sell her stock and purchase the annuities. When her financial advisor became aware of the decision, he telephoned the elderly woman and advised her that the sale would trigger a very large capital gains tax liability. The financial advisor told her that no company that had her best interests in mind would propose the transaction offered by the sales representative.

As the Senior Estate Services case gained publicity, other Florida lawyers told us of clients of the age of 80 and over who were sold annuities which would not provide a cash flow for 15 years. One attorney told of a client who was advised to purchase annuities with all of the client's IRA funds. The client was required by federal law to take an IRA distribution each year, but the annuity contract precluded a withdrawal without penalty for 15 years. Such transactions clearly are not in the best interests of our elderly residents.

### III. SUGGESTIONS FOR ADDRESSING THIS ISSUE IN THE FUTURE

As noted at the start, the various scams to exploit the elderly employ similar marketing and sales techniques and are successful because of the characteristics and vulnerabilities of our elderly population. In fact, when we successfully shut down the business of Senior Estate Services, a principal of the corporation reportedly stated that he was considering becoming a mortgage broker. Consumer education and strict, coordinated law enforcement are needed to address the problems. Our experiences in Florida teach that continued vigilance is important since the living trusts scams seem to surface periodically even after enforcement efforts which receive wide publicity are brought.

Since the marketing and sales tactics of predators do not vary much, consumer education could cover a variety of topics. For example, senior citizens should be cautioned about people who want to enter their homes to make a sales presentation, just as they have often been cautioned about telemarketing scams. If a seller is legitimate, she will always afford the senior citizen an opportunity to take time to make up her mind, and to consult with family, lawyers and advisors.

The education of elderly persons regarding living trusts scams, however, also presents challenges beyond normal education as to predatory practices. That is because many of our elderly citizens distrust lawyers, fear lawyers or have concern that a lawyer will charge too much. The predators seem to suspect this, since a standard routine is to bash lawyers during the sales presentation and to tell elderly persons that they are receiving information that lawyers don't want them to know.

Efforts to stop the marketing of living trusts by nonlawyers are sometimes criticized as an effort to protect the "turf" of lawyers. In reality, the enforcement efforts are designed to protect the elderly consumers from the damaging consequences which we have described. Regarding costs, Senior Estate Services charged a minimum of \$1,895.00 for a living trust and related documents; the immediate past chair of the Elder Law Section of The Florida Bar tells us that her estate planning that utilizes a revocable living trust and related documents usually cost the consumer about \$850.00.

The challenge for our state bars and their members is to educate elderly consumers that quality legal services are available to the average citizen at an affordable price — and that the use of such services is in the consumer's best interest. We believe that we are making some progress on this issue in Florida, since the Elder Law Section of the Florida Bar (whose members often devote their careers to meeting the special needs of individual elderly citizens) has been the fastest growing section of The Bar.

AARP can also play a valuable role in consumer education. It is clear that our senior citizens look to this organization for advice, and that they listen to what the AARP has to say. We also believe that the work and consumer education efforts of this Special Committee can be very helpful in eliminating various types of exploitation of the elderly.

Training programs regarding exploitation of the elderly also should be directed to law enforcement agencies. Unfortunately, we have experienced situations in Florida wherein law enforcement officials have failed to pursue citizen complaints regarding the deceptive marketing of living trusts. The reason given to the citizens was that complaint involved a "civil matter." Victims of these types of scams may believe it appropriate to contact law enforcement agencies in the first instance, and it is important that law enforcement pursue such complaints and make any necessary referrals to enforcement agencies. It also would be helpful if law enforcement agencies built the capacity to inform each other about the specific complaints of elderly exploitation that are received; such coordinated efforts may reveal that what appears to be an isolated incident is actually a pattern or practice of exploitation of the elderly.

Our experience in Florida confirms the benefits of coordinated law enforcement. All of our lawsuits to date have involved unlicensed practice of law issues, as well as deceptive and unfair trade practices. Enforcement efforts by The Bar and the Attorney General complement each other. Our lawsuits demonstrate that the effort is not merely to protect the turf of lawyers, but to remedy real and serious injury to consumers. And such real and serious injury confirms why it is important for our Supreme Court in Florida to enjoin the unlicensed practice of law.

We have also learned that coordination with other state Attorneys General is important. The companies that have effectuated living trust scams in Florida have performed identical scams in other states. The joint efforts among the states in the American Association for Senior Citizens matter were very effective; and our recent coordination with Texas in the Senior Estate Services matter resulted in a Texas court order enjoining the same conduct that was enjoined in Florida.

Although we recognize that the resources of the Federal Trade Commission are regularly stretched, the work of that agency may be particularly beneficial in remedying multi-state living trust scams.

In Florida, we also are using the resources of our Civil Rights staff to address the exploitation of the elderly. We have taken this step not merely to throw more resources at the problem, but rather because we believe that exploitation of the elderly presents important civil rights concerns. Like similar situations of race or national origin discrimination, elderly persons are targeted for exploitation because of an immutable characteristic. Some of our nation's civil rights laws, such as the federal Equal Credit Opportunity Act, 16 U.S.C. 1691, actually prohibit exploitation on the basis of age. But even as we use other laws, such as consumer protection laws, to achieve our objectives, we want to employ tactics, investigative techniques and strategies which are used in civil rights cases.

We must also admit the shortfalls of litigation as a means of redressing the harm caused by living trust scams. The companies effectuating such scams usually are thinly financed, and even though we also sue individual officers, it is difficult to obtain full monetary recourse for victims. The challenged conduct often leaves the estate plans of the victims in disarray. Is their trust valid? Does it meet their needs? Enforcement agencies are not well equipped to address these issues. In Florida, we have attempted to refer victims to private lawyers who can assess their individual situations. But none of us can repair the damage that is caused when the purchaser of the trust dies and, because of legal deficiencies in the trust documents, the deceased's assets are not distributed in the manner that she intended.

Notwithstanding these problems, we will continue to implement an aggressive law enforcement program that hopefully will discourage scam artists from targeting elderly residents of the State of Florida.

#### IV. CONCLUSION

On behalf of Attorney General Bob Butterworth, I thank this Committee for taking on this important issue and for conducting this hearing. As your work progresses, we are willing to assist you in any way possible. We welcome your suggestions for improving our programs to protect the elderly.



**ATTACHMENTS ACCOMPANYING THE**

STATEMENT OF

PAUL F. HANCOCK

DEPUTY ATTORNEY GENERAL FOR SOUTH FLORIDA

BEFORE THE UNITED STATES SENATE SPECIAL COMMITTEE ON AGING

JULY 11, 2000

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# ATTACHMENT A

# The Approaching Storm

A Position Paper  
On Elder Abuse  
by  
Florida Attorney General  
Robert A. Butterworth



Prepared for  
The National Association of Attorneys General  
Hearing On Elder Abuse  
Deerfield Beach, Fla.  
May 12, 1999

## **EXECUTIVE SUMMARY**

The care and protection of America's frail and elderly population is rapidly reaching critical mass.

As many as 1.8 million older Americans each year become helpless victims of some form of physical abuse, cruel neglect, or exploitation.

In the sanctity of their own homes, more than 521,000 older Americans are being abused and neglected each year – the majority of the time by family members.

But both of these estimates fail to recognize the unknown millions of victims who make up the hidden portion of a vast iceberg of elder abuse, neglect and exploitation – this because a huge majority of America's abused and neglected elderly citizens suffer in silence out of fear.

Future demographic projections indicate the number of older Americans falling victim to some form of abuse will reach epidemic proportions.

During the next several decades, the number of frail and elderly Americans 85 years and older will skyrocket four times faster than the nation's overall population. And it is this frail and elderly population that makes up the vast majority of this nation's elder abuse victims.

By the mid-2020's, more than 69 million Americans will be 65 and older – a number nearly double the current population of California, the nation's largest state.

Those concerned with the future impact of the Greying of America, can look at Florida today where 18 percent of the state's population is aged 65, or older – a percentage the rest of the nation will reach in the next few, short decades.

At the turn of the century, Florida is a "petri dish" of a Greying America in the next several decades.

Today, one out of every three Floridians aged 65 and older lives alone, making them prime targets of some form of abuse, exploitation, or economic crime.

And the fastest growing segment of Florida's elderly, are 85 and older, those most vulnerable to abuse and exploitation due to infirmity and old-old age.

In the past decade, the number of Florida residents on Medicaid grew nine times faster than the general population – while Medicaid expenditures increased 226 percent.

Today, more than 12 percent of Florida's population is on Medicaid.

Medicaid fraud costs taxpayers nearly a half-billion dollars a year and impacts more than 130,000 Medicaid clients.

Nationally, Medicaid fraud costs taxpayers more than \$15 billion a year, while cruelly impacting on the vital health care needs of some 4 million Medicaid clients.

## **America's Vulnerable Elderly - A Skyrocketing Population**

Already growing at an alarming rate, the abuse and exploitation of America's elderly will skyrocket in the first several decades of the coming century.

It's a matter of cruel demographics.

Those most vulnerable to elder abuse and exploitation represent the fastest growing segment of our nation's population.

Today, they can be your parents and grandparents, or your friends and neighbors.

Tomorrow, they can be you.

America today has more than 34.4 million senior citizens aged 65 and older -- nearly two million more people than the entire population of California, our nation's largest state.

During the first three decades of the coming century, the number of Americans 65 and older will soar to 69.3 million -- skyrocketing more than three times faster than the general population.

Demographic projections and numbers of this sort should sound alarm bells for anyone concerned with the dignity and care of our nation's senior citizens.

And they beg several frightening questions:

Are we ready to be there for our vulnerable elderly parents and grandparents when they need us?

Will someone be there for us when we reach the age of vulnerable infirmity in the first several decades of new Millennium?

The answer to both of these questions is tragically negative.

All of us are and will be vulnerable to some form of elder abuse if we live long enough.

Most forms of elder abuse, neglect and exploitation are the tragic by-products of dependent trust betrayed -- by family members, care givers, health care professionals and predatory scam artists.

Today, one out of every five senior citizens is unable to live independently.

By the year 2030, when the Baby Boomer generation is fully into its frail and dependent years, one out of every three older Americans will be incapable of independent living and thus in need of society's protection and care.

To put it another way:

Today, more than 6.7 million older Americans are unable to care for themselves due to the illness and infirmity that come with age. And these vulnerable 6.7 million older American equal the current population of Virginia.

By the year 2030, more than 13.3 million Americans will be unable to care for themselves -- a number equal the current populations of Pennsylvania and Idaho combined.

These mushrooming millions merely represent those frail elderly Americans most vulnerable to abuse, neglect and exploitation as the result of illness and age.

In truth, it is impossible to estimate the actual number of older Americans suffering the ravages of abuse, neglect and exploitation in all its forms.

But what we do know is that the number of reported cases of blatant elder abuse is raging out of control.

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Between 1986 and 1996:

- The number of elder abuse and neglect reports filed with the nation's Adult Protective Services (APS) agencies increased 150 percent.
- While the nation's elderly population increased 10 percent.

### **Known Victims of Elder Abuse - The Tip of a Vast Iceberg**

Most observers agree that America's growing tidal wave of elder abuse, neglect and exploitation has been spawned by:

- Each new "miracle" of modern medicine adding years to our life span.
- Increased mobility and the gradual breakdown of the extended family.
- The phenomenal growth of "adult" retirement communities that separate the elderly from family members and mainstream society.

- Our culture's obsession with youth and its concurrent fear of age.

- More than 551,000 elderly Americans fell victim to some form of domestic abuse and/or neglect during 1996, according to the 1998 National Elder Abuse Incidence Study prepared for the U.S. Department of Health and Human Services.

However elder abuse experts caution that the more than half-million known victims of elder abuse represent only the small tip of a vast iceberg of hidden physical and emotional suffering caused by some form of abuse, neglect, or economic exploitation.

**Why?**

The longer a person lives, the more immobile, dependent and isolated they are likely to become – thus increasing the chances of their abuse, and/or neglect going unreported.

Obviously, those most vulnerable to some form of elder abuse are the increasingly infirm aged living alone – who also are those least likely to come to the attention of caring authorities as aging victims of abuse, neglect and exploitation.

Today, there are more than 9.2 million older Americans living alone in the United States. Given this population of lonely vulnerability, the actual number of older Americans suffering abuse and neglect could easily exceed more than one million victims a year.

But this does not begin to include the unknown additional millions of elderly Americans who each year fall victim to the often devastating effects of economic exploitation at the hands of predatory hustlers pushing bogus sweepstakes, worthless products, investment scams, fraudulent medical care and price-gouging home repairs.

Even worse, most victims of elder abuse and exploitation are afraid to tell anyone of their plight.

**Why?**

In most cases, these are people terrified of losing their last slim shred of dignity and independence.

Which is why elder abuse investigators hear too often and too late: "I didn't want my children to know about the man who took my money. They would make me live with them."

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Or, even worse: "I know my son hits me sometimes. But he doesn't mean it and living in the Old Folks Home would be a lot worse."

At my age, I understand their silence and their fear.

I don't look forward to a time when I might be forced to live with my children.

Nor do I welcome the thought of having to spend the rest of my failing days in a nursing home.

The tragic bottom line to all this?

It's impossible to reckon the actual number of elderly Americans who suffer in silence from some form of abuse, neglect, or exploitation.

All we know is that these elderly victims currently number in the unknown millions – and that America's growing tidal wave of elder abuse will swell to epic proportions in the 2020's as the segment of our most vulnerable elderly population skyrockets.

The harsh reality of this is clearly seen in the following chart based on data from the U.S. Department of Health and Human Services Administration on Aging:

UNITED STATES	2000	2010	2030	% Increase
<b>All Ages</b>	<b>274 million</b>	<b>297 million</b>	<b>346 million</b>	<b>26%</b>
<b>Aged 65-74</b>	<b>18.1 million</b>	<b>21 million</b>	<b>37 million</b>	<b>104%</b>
<b>Limited Abilities</b>	<b>2.9 million</b>	<b>3.4 million</b>	<b>6.1 million</b>	
<b>Aged 75-84</b>	<b>12.3 million</b>	<b>12.6 million</b>	<b>23.5 million</b>	<b>91%</b>
<b>Limited Abilities</b>	<b>4 million</b>	<b>4.1 million</b>	<b>7.6 million</b>	
<b>Aged 85-Plus</b>	<b>4.2 million</b>	<b>5.6 million</b>	<b>8.4 million</b>	<b>100%</b>
<b>Limited abilities</b>	<b>2.6 million</b>	<b>3.5 million</b>	<b>5.3 million</b>	
<b>Total Aged 65-plus</b>	<b>34.7 million</b>	<b>39.4 million</b>	<b>69.3 million</b>	<b>100%</b>
<b>% Total Population</b>	<b>13%</b>	<b>13%</b>	<b>20%</b>	
<b>Total Aged 65-plus:</b>				
<b>Living Alone</b>	<b>9.3 million</b>	<b>10.6 million</b>	<b>20.8 million</b>	<b>123%</b>
<b>Limited Abilities</b>	<b>9.5 million</b>	<b>11 million</b>	<b>19 million</b>	<b>100%</b>
<b>Dependant Elderly</b>	<b>6.7 million</b>	<b>7 million</b>	<b>13.3 million</b>	<b>100%</b>
<b>In Nursing Homes</b>	<b>1.6 million</b>	<b>1.7 million</b>	<b>3 million</b>	<b>87%</b>

These projections clearly portend a rapidly approaching "Grey New World"

where:

- A larger segment of an increasingly vulnerable senior population will live alone, either in their own homes and apartments, or in Assisted Living Facilities.
- A smaller segment of the nation's frail and dependent elderly will live in nursing homes.
- Now senior citizens themselves, the children of the Baby Boomer generation will begin their "Golden Years" still caring for their frail and dependent parents.

### **Elder Care Trends - Spawning Grounds for Abuse**

But my greatest fears arise from the troubling trend toward managed health care provided by profit-driven corporations and conglomerates.

Based on this system, vital health care services are provided by a low bidder – and low bidder who is rarely the best.

Few of us would willingly buy the cheapest tires available for a loved one's car.

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But that's the way it usually works in today's corporate managed health care system where purchasing agents routinely solicit the lowest bulk bids for a dozen heart by-pass operations, or home health care services for the elderly by the hundreds.

Like it or not, the bottom line IS the bottom line in today's health care system.

And this frightens me.

Especially when I ponder the current and future needs of our nation's most vulnerable elderly.

Why?

Just look at the troubling numbers and demographic trends right here in my home state of Florida.

Long a Sun Belt retirement Mecca, Florida today has the highest concentration of senior citizens over 65 among the nation's 50 states.

With 18 percent of our population over 65, Florida is an alarming model of America in the 2020's.

Consider the following snapshot of what's happened in Florida during the past 10 years and based on numbers from Florida's Department of Elder Affairs

FLORIDA	1989	1998	% change
Population - All Ages	12,797,318	14,917,000	16%
Residents 65-Plus	2,253,407	2,743,098	22%
Residents 75-Plus	985,809	1,323,763	34%
Residents 85-Plus	196,385	304,353	55%
Long-Term Care Beds	109,226	145,018	33%
Hospital Beds	52,000	55,668	7%

An analysis of the preceding chart shows that during the 10 years between 1989 and 1998, the number of Florida's most vulnerable elderly (aged 85-plus) increased:

- More than 1.5 times faster than the increase in long term care term care beds.

- And nearly five times faster than the increase in hospital beds.

Thanks in no small part to the cost-cutting knives of managed care, more and more of Florida's most infirm elderly require in-home care for their day-to-day survival.

And so today in Florida, we have one out of every three elderly Floridians growing older alone -- with a significant majority of these elderly widowed and divorced women.

Clearly, this should trigger mega-alarm bells for those of us seeking to protect America's elderly from falling victim to a growing national tide of abuse, neglect and exploitation.

Why?

Both the experts and the statistics indicate the most vulnerable target of some form of cruel elder abuse are those senior citizens living alone.

#### **Our National Need to Prepare**

Just as it is impossible to gauge the actual number of today's victims of elder abuse in all its cruel and heartless forms, it is equally impossible to grasp the impact of tomorrow's "Grey New World" on America's governmental, judicial and social institutions.



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But one thing is certain.

We are faced with a growing tidal wave of frail and infirm elderly Americans increasingly vulnerable to every form of abuse, neglect and exploitation.

And there's nothing we can do to stop it.

Time moves forward inexorably.

Dependant vulnerability waits all of us – if we live long enough..

Yesterday's hero on the beaches of Normandy becomes today's confused 87-year-old bent figure shuffling around searching for his lost car in a supermarket parking lot.

The dynamic women who raised three children to full adulthood while touching the lives of countless others as a school teacher becomes today's vulnerable victim of a publisher's sweepstakes scam – spending thousands of dollars to fill her apartment with mini-mountains of magazines.

While Ronald Reagan, the once articulate and dynamic leader of the Free World, has become one of 1.6 million Americans stricken with Alzheimer's Disease today.

Sad scenarios of this sort are inevitable – and mushrooming in staggering numbers and magnitude.

Thanks be to the "miracles" of modern medicine and the passage of time.

In many ways, our current situation is similar to the dire scenario my fellow Floridians face each time a killer storm like Hurricane Andrew bears down on us.

Each year, a foolish minority ignore the latest warnings from the National Hurricane center – and too often suffer for it as the raging winds and waters destroy their homes.

Fortunately, Florida's prudent majority are wise enough to heed the storm warnings and prepare for the oncoming storm by following a detailed hurricane survival plan.

And this is what concerns me most when I consider the coming wave of aging vulnerability that our nation will face in the next few decades.

When and how will this nation begin to develop a plan for this oncoming social storm?

The choice is ours.

We can assemble our best leadership and talent to develop a truly comprehensive national plan to protect and preserve the personal well-being and dignity of the 69.3 million elderly citizens who will make up 20 percent of our nation's population three all too short decades from now..

Or we can deny the latest dire demographic warnings from the expert gerontologists at the Administration on Aging. And ignore the coming of the storm.

**SOURCES:** Administration on Aging for the U.S. Department of Health, U.S. Census Bureau, Florida Department of Elder Affairs, Florida Department of Children and Family Services, Florida Agency for Health Care Administration, the University of Florida, National Center on Elder Abuse, American Association of Retired Persons, Legal Issue Research Staff for the Florida Attorney General's Office.

**ADDENDUM: Ten Year Trends in Florida's Medicaid Program**

With 18 percent of its population aged 65-plus, Florida is a "petri dish" of a Greying America in the 2020's.

During the past decade, the number of Medicaid recipients in Florida has grown nine times faster than the general population.

In the same decade, Medicaid expenditures in Florida grew from \$1.8 million in 1989 to more than \$5.8 billion in 1998 -- an increase of 226 percent.

Clearly, Florida's explosive growth in Medicaid recipients and expenditures has spawned a vast arena for Medicaid fraud as well as the exploitation and abuse of older Medicaid clients.

Federal officials report roughly seven percent of the nation's total Medicaid bill involves some form of fraud currently costing U.S. taxpayers more than \$15 billion a year.

Here in Florida, Medicaid fraud costs taxpayers nearly a half-billion dollars a year. But taxpayers are not the only victims of Medicaid fraud.

Nationally, some four million Medicaid clients this year will be victimized by some form of Medicaid fraud, or exploitation -- with a huge segment of these victims senior citizens.

Here in Florida, the potential for Medicaid fraud and abuse involving elderly clients is staggering. Consider the explosive growth in Medicaid spending for nursing home care.

Twenty years ago, Florida taxpayers spent \$117 million in Medicaid funds for nursing home care (in 1979).

By the end of the next decade, the Medicaid cost of nursing home care in Florida alone will exceed \$8 billion a year -- several billion dollars more than the state's entire current Medicaid budget, according to a recent report from the state's Long-Term Care Commission.

The following chart illustrates the growth in Medicaid expenditures and recipients in Florida and selected urban counties with a high percentage of elderly residents.

Again, the past decade in Florida should serve as a dark forecast of where are nation is headed in the first several decades of the coming century.

	1989	1998	% Change
<b>FLORIDA</b>			
Total Population	12,979,318	15,000,475	15%
Elderly	2,253,407	2,743,098	22%
Medicaid Recipients	798,044	1,882,096	136%
Expenditures	\$1,804,683,797	\$5,883,505,117	226%
<b>BREVARD</b>			
Total Population	403,500	465,825	15%
Elderly	61,277	85,027	39%
Medicaid Recipients	15,482	44,771	189%
Expenditures	\$28,608,259	\$124,798,338	336%
<b>BROWARD</b>			
Total Population	1,242,448	1,460,850	17%
Elderly	254,988	272,403	7%
Medicaid Recipients	50,018	132,854	165%
Expenditures	\$117,095,830	\$410,545,121	250%

**Page Two - Medicaid Addendum**

	<b>1989</b>	<b>1998</b>	<b>% change</b>
<b>DADE</b>			
Total Population	1,873,075	2,090,314	11%
Elderly	277,859	284,794	2%
Medicaid Recipients	193,950	406,391	109%
Expenditures	\$453,361,999	\$1,442,502,524	218%
<b>PALM BEACH</b>			
Total Population	865,507	1,020,521	18%
Elderly	193,963	239,190	23%
Medicaid Recipients	31,458	89,875	186%
Expenditures	\$78,629,745	\$299,894,102	281%
<b>HILLSBOROUGH</b>			
Total Population	840,970	942,322	12%
Elderly	98,621	123,852	25%
Medicaid Recipients	56,909	135,386	138%
Expenditures	\$111,403,136	\$357,748,835	221%
<b>LEE</b>			
Total Population	324,520	405,637	25%
Elderly	74,686	99,029	32%
Medicaid Recipients	12,980	36,591	182%
Expenditures	\$39,803,124	\$131,651,839	230%
<b>MANATEE</b>			
Total Population	196,723	247,028	26%
Elderly	50,863	66,172	30%
Medicaid Recipients	8,326	25,083	201%
Expenditures	\$17,300,455	\$68,779,957	297%
<b>PASCO</b>			
Total Population	272,422	321,074	18%
Elderly	96,168	102,504	6%
Medicaid Recipients	12,552	36,790	193%
Expenditures	\$23,954,608	\$112,408,194	369%
<b>POLK</b>			
Total Population	410,863	465,858	14%
Elderly	67,077	95,691	42%
Medicaid Recipients	21,691	74,957	246%
Expenditures	\$42,173,867	\$178,214,597	325%
<b>PINELLAS</b>			
Total Population	855,427	892,178	4%
Elderly	207,237	219,773	6%
Medicaid Recipients	41,666	87,566	110%
Expenditures	\$109,179,847	\$358,944,812	228%
<b>ORANGE</b>			
Total Population	653,982	824,095	26%
Elderly	68,204	88,882	30%
Medicaid Recipients	37,382	103,999	178%
Expenditures	\$81,073,695	\$295,577,393	264%

**Page Three - Medicaid Addendum**

	<u>1989</u>	<u>1998</u>	<u>% change</u>
<b><u>SARASOTA</u></b>			
Total Population	259,905	316,023	21%
Elderly	83,512	102,286	22%
Medicaid Recipients	7,046	19,593	178%
Expenditures	\$22,580,234	\$82,684,232	266%
<b><u>VOLUSIA</u></b>			
Total Population	360,049	420,431	18%
Elderly	80,021	94,146	18%
Medicaid Recipients	17,219	49,922	190%
Expenditures	\$35,247,641	\$161,607,596	358%

**SOURCE: Florida Agency for Health Care Administration, Florida Department of Elder Affairs**

**Trends in Florida Medicaid Caseloads and Expenditures  
For Certain Selected Programs**

	1988-89	1997-98	% change
<b>State Population</b>			
All ages	12,797,318	15,000,475	17%
Aged 65-plus	2,253,407	2,743,098	22%
<b>Total Medicaid</b>			
Caseload - month avg.	655,742	1,451,475	121%
Expenditures	\$1,946,681,608	\$6,586,226,720	283%
<b>Physician Services</b>			
Caseload	610,866	1,063,542	74%
Expenditures	\$127,576,190	\$397,467,030	211%
<b>Hospital Inpatient Services</b>			
Caseload	1,061,359	1,527,607	44%
Expenditures	\$625,314,212	\$1,188,766,918	70%
<b>Hospital Outpatient Services</b>			
Caseload	570,114	1,063,542	86%
Expenditures	\$87,570,363	\$389,158,232	344%
<b>Nursing Home Care</b>			
Caseload	31,698	46,459	46%
Expenditures	\$967,360,647	\$2,241,375,056	132%
<b>Home Health Services</b>			
Caseload	610,855	1,137,506	86%
Expenditures	\$7,722,602	\$101,230,529	1,211%
<b>Medicaid Services - Aging</b>			
Caseload	29,067	179,350	517%
Expenditures	\$7,334,190	\$48,245,967	558%
<b>Prescribed Medicine</b>			
Caseload	561,708	1,063,542	89%
Expenditures	\$130,286,623	\$837,183,623	542%
<b>Private Duty Nursing Services</b>			
Caseload	0	530,594	XX%
Expenditures	00.00	\$59,524,956	XX%

## Page Two - Florida Medicaid Trends

	1988-89	1997-88	% change
<b>Nurse Practitioner Services</b>			
Caseload	1,248,660	1,785,674	43%
Expenditures	\$1,195,007	\$5,841,066	389%
<b>Personal Care Services</b>			
Caseload	0	530,594	XX%
Expenditures	00.00	\$13,175,579	XX%
<b>Patient Transportation</b>			
Caseload	610,866	1,365,228	123%
Expenditures	\$16,468,690	\$75,647,040	359%
<b>Community Mental Health Services</b>			
Caseload	68,688	183,577	167%
Expenditures	\$31,974,358	\$63,364,003	98%
<b>Medicaid Services/ Developmental Disabled</b>			
Caseload	29,067	179,360	517%
Expenditures	\$19,576,284	\$48,245,967	146%
<b>Dental Services - Children</b>			
Caseload	297,511	530,594	78%
Expenditures	\$12,158,071	\$56,907,220	368%
<b>Prepaid Health Plans</b>			
Caseload	64,330	441,596	586%
Expenditures	\$69,698,610	\$645,212,269	826%
<b>Medicare Supplemental Medical Insurance (SMI)</b>			
Caseload	655,742	1,451,266	121%
Expenditures	\$56,512,749	\$325,001,951	475%

**FLORIDA**

1998

Total all ages	14,917,606	100%
Medicaid eligible	1,417,854	10%
Medicaid eligible 65+	255,173	18% of all Medicaid eligible
Age 60+	3,434,929	23.0%
Age 65+	2,743,098	18.4%
Age 75+	1,323,763	8.8%
Age 85+	304,353	2.4%
Male	1,471,705	42.8% of those 60+
Female	1,963,224	57.2% of those 60+
Live Alone	850,144	24.7% of those 60+
Live in Nursing Home	64,172	1.8% of those 60+
Limited Mobility	183,474	5.3% of those 60+
Alzheimers cases	367,020	10.6% of those 60+
Low income	438,332	12.7% of those 60+
White	3,171,690	92.3% of those 60+
Black	235,049	6.8% of those 60+
Hispanic	314,855	9.1% of those 60+
Nursing Homes	687	
Adult Living Facilities	2,135	

SOURCES: Florida Agency for Health Care Administration, Florida Department of Elder Affairs, University of Florida - Bureau of Economic and Business Research

**BREVARD**

1998

Total all ages	463,884	100%
Medicaid eligible	33,023	7%
Medicaid eligible 65+	4,661	14% of all Medicaid eligible
Age 60+	108,449	23.3%
Age 65+	85,027	18.2%
Age 75+	37,484	8.1%
Age 85+	7,049	1.5%
Male 60+	47,921	54.2% of those 60+
Female 60+	60,528	55.8% of those 60+
Live Alone	24,602	22.6% of those 60+
Live in Nursing Home	2,047	1.8% of those 60+
Limited Mobility	4,792	4.4% of those 60+
Alzheimers cases	10,020	9.2% of those 60+
Low income	10,367	9.5% of those 60+
White	102,696	94.7% of those 60+
Black	4,669	4.3% of those 60+
Hispanic	2,514	2.3% of those 60+
Nursing Homes	19	
Adult Living Facilities	6	

**BROWARD**

1998

Total all ages	1,441,588	100%
Medicaid eligible	94,295	6.5%
Medicaid eligible 65+	15,430	16% of all Medicaid eligible
Age 60+	331,415	22.9%
Age 65+	272,403	18.9%
Age 75+	148,199	10.2%
Age 85+	38,079	2.6%
Male	137,517	41.5% of those 60+
Female	193,898	58.5% of those 60+
Live Alone	96,497	29.1% of those 60+
Live in Nursing Home	3,584	1.1% of those 60+
Limited Mobility	18,739	5.6% of those 60+
Alzheimers cases	39,942	12% of those 60+
Low income	39,498	11.9% of those 60+
White	312,152	94.1% of those 60+
Black	16,770	5.0% of those 60+
Hispanic	15,462	4.7% of those 60+
Nursing Homes	37	
Adult Living Facilities	183	



**DADE**

1998

Total all ages	2,089,818	100%
Medicaid eligible	331,080	15.8%
Medicaid eligible 65+	91,725	27.7% of all Medicaid eligible
Age 60+	373,654	17.8%
Age 65+	284,794	13.6%
Age 75+	135,375	6.4%
Age 85+	36,446	1.7%
Male	157,199	41.5% of those 60+
Female	216,455	58.5% of those 60+
Live Alone	95,972	25.6% of those 60+
Live in Nursing Home	7,036	1.8% of those 60+
Limited Mobility	27,744	7.4% of those 60+
Alzheimers cases	41,042	10.9% of those 60+
Low income	78,691	21% of those 60+
White	333,353	69.2% of those 60+
Black	36,470	9.7% of those 60+
Hispanic	206,154	55.1% of those 60+
Nursing Homes	60	
Adult Living Facilities	461	

**HILLSBOROUGH**

1998

Total all ages	939,702	100%
Medicaid eligible	101,714	10.8%
Medicaid eligible 65+	13,620	13.3% of all Medicaid eligible
Age 60+	160,853	17.1%
Age 65+	123,852	13.1%
Age 75+	57,383	6.1%
Age 85+	13,351	1.4%
Male	69,279	43.1% of those 60+
Female	91,574	56.9% of those 60+
Live Alone	41,588	25.8% of those 60+
Live in Nursing Home	2,871	1.8% of those 60+
Limited Mobility	9,756	6% of those 60+
Alzheimers cases	15,303	9.5% of those 60+
Low income	24,886	15.5% of those 60+
White	144,203	89.6% of those 60+
Black	14,871	9.2% of those 60+
Hispanic	25,543	15.8% of those 60+
Nursing Homes	34	
Adult Living Facilities	109	

**LEE****1998**

Total all ages	401,398	100%
Medicaid eligible	26,027	6.4%
Medicaid eligible 65+	3,778	14.5% of all Medicaid eligible
Age 60+	122,908	30.6%
Age 65+	99,029	24.6%
Age 75+	45,071	11.2%
Age 85+	8,824	2.2%
Male	53,932	43.9% of those 60+
Female	68,976	56.1% of those 60+
Live Alone	25,259	20.5% of those 60+
Live in Nursing Home	1,399	1.1% of those 60+
Limited Mobility	4,756	3.8% of those 60+
Alzheimers cases	12,355	10.0% of those 60+
Low income	10,123	8.2% of those 60+
White	119,652	97.3% of those 60+
Black	2,791	2.2% of those 60+
Hispanic	2,303	1.8% of those 60+
Nursing Homes	15	
Adult Living Facilities	39	

**MANATEE****1998**

Total all ages	245,060	100%
Medicaid eligible	17,692	7.2%
Medicaid eligible 65+	2,359	13.3% of all Medicaid eligible
Age 60+	79,501	32.4%
Age 65+	66,172	27%
Age 75+	33,948	13.8%
Age 85+	8,307	3.4%
Male	33,514	42.2% of those 60+
Female	45,987	57.8% of those 60+
Live Alone	19,467	24.4% of those 60+
Live in Nursing Home	1,050	1.3% of those 60+
Limited Mobility	3,148	3.9% of those 60+
Alzheimers cases	9,260	11.6% of those 60+
Low income	7,399	9.3% of those 60+
White	76,965	96.8% of those 60+
Black	2,290	2.9% of those 60+
Hispanic	984	12% of those 60+
Nursing Homes	12	
Adult Living Facilities	53	

**ORANGE**

1998

Total all ages	817,651	100%
Medicaid eligible	76,219	9.3%
Medicaid eligible 65+	10,095	13.2% of all Medicaid eligible
Age 60+	117,640	14.3%
Age 65+	88,882	10.8%
Age 75+	39,463	4.8%
Age 85+	8,476	1.0%
Male	50,563	43.0% of those 60+
Female	67,077	57.0% of those 60+
Live Alone	29,058	24.7% of those 60+
Live in Nursing Home	2,997	2.5% of those 60+
Limited Mobility	6,648	5.6% of those 60+
Alzheimers cases	12,257	10.4% of those 60+
Low income	14,838	12.6% of those 60+
White	102,752	87.3% of those 60+
Black	12,828	10.9% of those 60+
Hispanic	9,388	7.9% of those 60+
Nursing Homes	32	
Adult Living Facilities	79	

**PALM BEACH**

1998

Total all ages	1,020,172	100%
Medicaid eligible	67,198	6.5%
Medicaid eligible 65+	10,630	15.8% of all Medicaid eligible
Age 60+	288,814	28.3%
Age 65+	239,190	23.4%
Age 75+	123,613	12.1%
Age 85+	28,046	2.7%
Male	122,290	42.4% of those 60+
Female	166,524	57.6% of those 60+
Live Alone	72,385	25% of those 60+
Live in Nursing Home	5,027	1.7% of those 60+
Limited Mobility	12,497	5.3% of those 60+
Alzheimers cases	33,707	11.6% of those 60+
Low income	26,689	9.2% of those 60+
White	274,583	95.% of those 60+
Black	12,739	4.4% of those 60+
Hispanic	10,089	3.4% of those 60+
Nursing Homes	48	
Adult Living Facilities	102	

**PASCO**

1998

Total all ages	320,263	100%
Medicaid eligible	27,306	8.5%
Medicaid eligible 65+	4,102	15% of all Medicaid eligible
Age 60+	121,399	37.9%
Age 65+	102,504	32.%
Age 75+	52,796	16.5%
Age 85+	10,590	3.3%
Male	52,021	42.9% of those 60+
Female	69,378	57.1% of those 60+
Live Alone	26,835	22% of those 60+
Live in Nursing Home	1,652	1.3% of those 60+
Limited Mobility	5,666	4.6% of those 60+
Alzheimers cases	13,958	11.4% of those 60+
Low income	13,066	10.7% of those 60+
White	119,839	99.7.% of those 60+
Black	1,062	0.8% of those 60+
Hispanic	2,091	1.7% of those 60+
Nursing Homes	18	
Adult Living Facilities	50	

**PINELLAS**

1998

Total all ages	893,643	100%
Medicaid eligible	66,643	7.5%
Medicaid eligible 65+	12,610	18.9% of all Medicaid eligible
Age 60+	265,635	29.7%
Age 65+	219,773	24.5%
Age 75+	117,025	13.1%
Age 85+	31,355	3.5%
Male	109,755	41.4% of those 60+
Female	155,880	58.6% of those 60+
Live Alone	77,734	29.2% of those 60+
Live in Nursing Home	7,079	0.7% of those 60+
Limited Mobility	12,405	4.6% of those 60+
Alzheimers cases	33,643	12.6% of those 60+
Low income	26,663	10.% of those 60+
White	255,837	96.3.% of those 60+
Black	8,355	3.1% of those 60+
Hispanic	4,299	1.6% of those 60+
Nursing Homes	85	
Adult Living Facilities	280	

**POLK**

1998

Total all ages	463,884	100%
Medicaid eligible	54,396	11.7%
Medicaid eligible 65+	6,930	12.7% of all Medicaid eligible
Age 60+	118,613	25.5%
Age 65+	95,691	20.6%
Age 75+	44,986	9.7%
Age 85+	10,362	2.2%
Male	51,515	43.5% of those 60+
Female	67,098	56.5% of those 60+
Live Alone	27,120	22.8% of those 60+
Live in Nursing Home	2,331	1.9% of those 60+
Limited Mobility	6,450	5.4% of those 60+
Alzheimers cases	10,740	9% of those 60+
Low income	15,862	13.3% of those 60+
White	108,797	91.7% of those 60+
Black	9,215	7.7% of those 60+
Hispanic	2,276	1.9% of those 60+
Nursing Homes	20	
Adult Living Facilities	37	

**SARASOTA**

1998

Total all ages	315,065	100%
Medicaid eligible	14,332	4.5%
Medicaid eligible 65+	3,308	23.% of all Medicaid eligible
Age 60+	122,873	39.%
Age 65+	102,286	32.4%
Age 75+	52,385	16.6%
Age 85+	12,247	3.9%
Male	52,037	42.4% of those 60+
Female	70,836	57.6% of those 60+
Live Alone	28,541	23.2% of those 60+
Live in Nursing Home	2,331	1.9% of those 60+
Limited Mobility	5,133	4.1% of those 60+
Alzheimers cases	13,779	11.2% of those 60+
Low income	9,133	7.4% of those 60+
White	113,233	92.1% of those 60+
Black	8,954	7.2% of those 60+
Hispanic	3,031	2.4% of those 60+
Nursing Homes	10	
Adult Living Facilities	79	

**VOLUSIA**

1998

Total all ages	419,660	100%
Medicaid eligible	37,097	8.8%
Medicaid eligible 65+	5,476	14.7% of all Medicaid eligible
Age 60+	116,119	27.6%
Age 65+	94,146	22.4%
Age 75+	45,631	10.8%
Age 85+	10,457	2.4%
Male	49,709	42.8% of those 60+
Female	66,490	57.2% of those 60+
Live Alone	29,041	25% of those 60+
Live in Nursing Home	2,559	2.2% of those 60+
Limited Mobility	5,924	5.1% of those 60+
Alzheimers cases	13,458	11.5% of those 60+
Low income	13,017	11.2% of those 60+
White	110,049	94.7% of those 60+
Black	5,500	4.7% of those 60+
Hispanic	2,939	2.5% of those 60+
Nursing Homes	29	
Adult Living Facilities	104	

**FLORIDA MEDICAID DATA - 1998****With Major Counties by Rank of Medicaid Expenditures**

<b>Florida</b>	<b>1998</b>	<b>Increase in Past 10 Years</b>	<b>% of State Total</b>
Total population	14,917,606	15%	100%
Medicaid Recipients	1,882,096	136%	100%
Medicaid Expenditures	\$5,883,505,117	226%	100%
<b>Dade</b>			
Total population	2,090,314	11%	14.%
Medicaid Recipients	406,391	109%	21.5%
Medicaid Expenditures	\$1,442,502,524	218%	24.5%
<b>Broward</b>			
Total population	1,460,850	17%	9.7%
Medicaid Recipients	132,854	165%	7%
Medicaid Expenditures	\$410,545,121	250%	6.9%
<b>Pinellas</b>			
Total population	892,178	4%	5.9%
Medicaid Recipients	87,566	100%	4.6%
Medicaid Expenditures	\$358,944,812	228%	6%
<b>Hillsborough</b>			
Total population	942,322	12%	6.3%
Medicaid Recipients	135,386	138%	7.1%
Medicaid Expenditures	\$357,748,835	221%	6.%
<b>Palm Beach</b>			
Total population	1,020,521	18%	6.8%
Medicaid Recipients	89,875	186%	4.7%
Medicaid Expenditures	\$299,894,102	281%	6%
<b>Orange</b>			
Total population	824,095	26%	5.5%
Medicaid Recipients	103,998	178%	5.5%
Medicaid Expenditures	\$295,577,393	264%	5%
<b>Polk</b>			
Total population	465,858	14%	3.1%
Medicaid Recipients	74,957	246%	3.9%
Medicaid Expenditures	\$178,214,597	325%	3.%
<b>Lee</b>			
Total population	405,637	25%	2.7%
Medicaid Recipients	36,591	182%	1.9%
Medicaid Expenditures	\$131,651,839	230%	2.2%

# ATTACHMENT B



**BOB BUTTERWORTH**  
**ATTORNEY GENERAL**

# **News Release**

Office of Attorney General, The Capitol, Tallahassee, Florida 32399-1050

September 8, 1994

Contact: Joe Bizzaro  
 (904) 487-0984

FOR IMMEDIATE RELEASE

## **PURCHASERS OF LIVING TRUSTS ELIGIBLE FOR REFUNDS**

**TALLAHASSEE --** More than 3,000 consumers in Florida and 20 other states who were allegedly deceived into buying living trusts are eligible for refunds of between \$300 and \$500 each under a settlement announced today by Attorney General Bob Butterworth.

Pre-Paid Legal Services Inc. of Ada, Oklahoma, will offer the refunds in settlement of allegations that deception and high pressure tactics were used to sell the living trusts. The company also will pay \$105,000 in investigative costs.

Pre-Paid Legal Services provided the trusts as part of a membership package sold by the American Association of Senior Citizens (ASC), a Texas company that stopped operating in the summer of 1992. In Florida, 151 consumers purchased the trusts through ASC at an average cost of \$321.

"ASC misrepresented the benefits of living trusts over standard wills," Butterworth said. "The company preyed on elderly consumers' fears about estate planning and probate to market its product."

Butterworth said that although living trusts can be a viable estate planning device, they are usually not necessary for consumers with modest estates. He added that while wills must go through probate, that process is neither complex nor costly.

Consumers who have not already received refunds from ASC will be eligible for refunds under the agreement with Pre-Paid Legal Services. An administrator selected by the states and the Oklahoma company will contact eligible consumers.

In addition to Florida, states entering the agreement with Pre-Paid Legal Services were Arizona, Arkansas, Colorado, Connecticut, Idaho, Illinois, Kansas, Kentucky, Massachusetts, Minnesota, Missouri, New Mexico, New York, North Carolina, Ohio, Texas, Utah, Vermont, Washington and Wisconsin.

The case was handled for Florida by Assistant Attorney General Jack Norris.

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In the Matter of

PRE-PAID LEGAL SERVICES, INC.,

Respondent

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ASSURANCE OF DISCONTINUANCE/  
VOLUNTARY COMPLIANCE

Pursuant to the provisions of their respective state laws,<sup>1</sup> the Attorneys General of Arizona, Arkansas, Colorado, Connecticut, Florida, Idaho, Illinois, Kansas, Kentucky, Massachusetts, Minnesota, Missouri, New Mexico, New York, North Carolina, Ohio, Texas, Utah, Vermont, Washington and Wisconsin have caused an inquiry to be made into certain practices of the American Association for Senior Citizens ("AASC"), which was to provide certain benefits in exchange for a membership fee. One of these benefits was living trust services, and certain other legal benefits, to be provided by Pre-Paid Legal Services, Inc. ("Pre-Paid").

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<sup>1</sup> Arizona Revised Statutes § 44-1521 *et seq.*; Arkansas Code Ann. § 4-88-101 *et seq.*; Colorado Rev. Stat. §§ 6-1-107 and 6-1-108; Conn. Gen. Stat. § 42-110b(a); Florida Statutes §§ 501.204(a) and 501.2075; Idaho Code § 48-601 *et seq.*; Illinois Consumer Fraud and Deceptive Business Practices Act (815 ILCS 505 (1992)); Kansas Consumer Protection Act, K.S.A. § 50-623 *et seq.*; Kentucky KRS 367.110 *et seq.*; M.G.L.C. 93A and M.G.L.C. 176H; Minn. Stat. §§ 325 F.67 and 325 F.69, sub. 1 (1992); Missouri Merchandising Practices Act, Section 407, RSMo (1986); Section 57-12-1 *et seq.* NMSA 1978; New York Executive Law § 63(12) and General Business Law §§ 349 and 350; N.C.G.S. § 75-1.1; Ohio Consumer Sales Practices Act; R.C. § 1345.01 *et seq.*; TEX. BUS. & COMM. CODE ANN. § 17.41 *et seq.* (Vernon 1987); Utah Code Ann. §§ 13-11-1 *et seq.*; Vermont Consumer Fraud Act, Vt. Stat. Ann. Title 9, ch. 63; Revised Code of Washington, chapter 19.86 RCW; Wisconsin Statutes sec. 100.18(1).

1. Pre-Paid is an Oklahoma corporation with its principal place of business at 321 East Main Street, Ada, Oklahoma 74820. At the time in question Pre-Paid was engaged in the design of prepaid legal services contracts, including living trust services.

2. This Assurance does not constitute an admission by Pre-Paid, for any purpose, of (1) any of the allegations made herein by the Attorneys General or (2) a violation of any State or federal law. Pre-Paid enters into this Assurance without admitting any wrongdoing, for settlement purposes only, and to avoid further expense.

### The Allegations of the Attorneys General

#### Sale of Living Trusts

3. The Attorneys General contend that in 1991, Pre-Paid entered into an agreement with AASC, a for-profit District of Columbia corporation, to provide living trusts and other legal benefits to AASC members.

4. The Attorneys General contend that from some time in 1991 until some time in 1992, AASC engaged in a door-to-door sales campaign nationwide, including in each of the respective states, to solicit senior citizens to become members of AASC. Membership packages were allegedly typically sold for either \$1,995 or \$2,995, with some consumers paying as much as \$6,000. Of the amount paid by each consumer, \$300-\$500 went to Pre-Paid for the provision of the living trust. Although membership in AASC entitled consumers to certain non-legal benefits, such as prescription drug and travel discounts, the Attorneys General contend that the centerpiece of the membership package was the living trust prepared by Pre-Paid and that AASC prominently

featured the living trust in both its sales presentation and materials. Between 1991 and the summer of 1992, when AASC stopped doing business, the Attorneys General contend that AASC sold nearly 3,000 membership packages that included living trusts nationwide.

5. The Attorneys General further contend that AASC sold the living trusts through non-attorneys who misrepresented the advantages of living trusts over wills. In particular, the AASC salespersons allegedly misrepresented, orally or through promotional materials, that (a) the use of a living trust avoids all probate and administrative costs; (b) probate is typically a complex, lengthy and extremely costly procedure; (c) living trusts allow assets to be distributed immediately or within days while with a will assets are often not distributed for two years or more; (d) only a will can be contested while a living trust cannot be; (e) a living trust could reduce or eliminate taxes and offered protection against catastrophic medical costs; (f) funding a living trust was a simple clerical matter that could be done easily by the consumer; and (g) a living trust was appropriate for everyone.

6. The Attorneys General also contend that many of the living trusts provided by Pre-Paid for AASC members were drafted by an attorney, Richard Clark, who was retained by Pre-Paid. Clark was admitted to practice law only in the States of Arizona and New York and had his place of business in Arizona. The Attorneys General contend that Clark did not meet with consumers in advance of drafting their trusts.

7. The Attorneys General contend that, as a result of the foregoing, AASC and, therefore, Pre-Paid has engaged in conduct in violation of the States' respective laws cited above.

**Other Pre-Paid Services**

8. The Attorneys General further contend that in addition to providing living trusts to AASC members, Pre-Paid also marketed other legal services and programs, including a basic legal services program, which provided a "trial defense fund," and a pay-per-call attorney referral service, called Justice 900.

9. The Attorneys General contend that Pre-Paid failed clearly and conspicuously to disclose material facts about the nature, benefits and costs of certain of these services.

**Pre-Paid's Response To The Allegations  
Of The Attorneys General**

10. Pre-Paid contends that Pre-Paid did not make any misrepresentations concerning the benefits of living trusts or any other legal services or programs. Pre-Paid further asserts that it did not hire, train or exercise any control over AASC sales people and it is, therefore, not liable for any alleged misrepresentations made by such persons. Pre-Paid further contends that (a) the use of a living trust does avoid probate and attendant administrative costs; (b) probate is frequently a complex, lengthy and costly procedure; (c) living trusts do allow assets to be distributed more quickly than assets distributed pursuant to a will; (d) only a will can be subject to a will contest; (e) a living trust can reduce or eliminate taxes and can offer protection against catastrophic medical costs; (f) the funding of a trust is essentially a clerical matter, and, finally, (g) a living trust is an appropriate estate planning option for everyone.

**Relief**

11. Subject to paragraphs 2 and 14, Pre-Paid agrees that it (a) will not misrepresent the advantages, risks or consequences of living trusts; (b) will provide full and accurate disclosure of its legal programs, the benefits provided and their costs; (c) will not make comparisons regarding fees that it cannot substantiate; (d) will not provide directly or through others, including all attorneys associated with Pre-Paid, any services in which Pre-Paid or the product has not been approved by the above States' insurance departments or other agencies to the extent required by law; (e) will investigate fully any company or entity with which it engages in a joint venture in the future; (f) will not rely on non-attorneys to advise individuals on the advantages of a living trust and to determine whether individuals are in need of a living trust; and (g) will not provide a will or living trust to an individual unless such individual has an opportunity for a face-to-face consultation with an attorney.

12. The following restitutionary plan will be administered by a third party (referred to as the "Administrator") agreed upon by the parties to this Assurance; all costs and fees of this Administrator will be paid by Pre-Paid.

- (a) Within fourteen (14) days of the execution of this Assurance, Pre-Paid will provide the Administrator with an accounting, indicating (a) the names and addresses of all members of the American Association for Senior Citizens ("AASC") for whom Pre-Paid provided living trusts and/or for whom Pre-Paid received payments for such service from AASC; (b) the amount so received for such service with respect to each AASC member; (c) the

AASC members as to which Pre-Paid has made refunds to AASC (or the member directly) prior to the execution of this Assurance; and (d) the amount of the refund made to each such member. Pre-Paid shall also provide to the Administrator verification of payment of these refunds. The information provided by Pre-Paid to the Administrator shall be referred to as "Pre-Paid's list."

- (b) Within fourteen (14) days of the execution of this Assurance, each Attorney General will provide the Administrator with the names and addresses of all members of AASC who filed a complaint with the Attorney General, together with the amount of payment made by each person, if known, and evidence of payment to or membership in AASC, if any, which the person may have submitted to the Attorney General, including cancelled checks to AASC or correspondence received by such person from AASC or Pre-Paid, that would indicate that he or she was a member of AASC who was entitled to a living trust provided by Pre-Paid. The information provided by each Attorney General to the Administrator shall be referred to as the "Attorneys' General list."
- (c) Based on the information contained in Pre-Paid's and the Attorneys' General lists, the Administrator shall, within thirty (30) days of receipt of both such lists, compile a comprehensive list, referred to as the "master list," which identifies all known AASC members eligible for refunds under

this Assurance and the amount of the refund for which each member is eligible.

- (d) Pre-Paid will mail by first class mail, postage paid, a notice, copy of which is attached as Exhibit 1, a refund claim form, a copy of which is attached as Exhibit A, and affidavits, copies of which are attached as Exhibits B and C, to all persons on the master list who have not previously received a full refund. The notice, to be signed by the Administrator, will advise such persons of their eligibility for a refund of the amount Pre-Paid received or should have received for the living trust, unless Pre-Paid has previously paid a partial refund in which event the notice will reflect the amount of the refund for which they are eligible. The notice will also recommend that such persons seek the advice of an attorney to review the living trust drafted by Pre-Paid's attorney(s) and will ask each person to verify his or her address on the claim form and return the form to the Administrator. In order to receive a refund, the AASC member must submit to the Administrator, within ten (10) days of receiving it, an Affidavit stating that the member does not intend to rely upon the living trust received from Pre-Paid. For any AASC member who is incompetent and is on the master list, the refund claim form will provide for the beneficiary, next-of-kin or other representative of such AASC member to submit to the Administrator, within ten (10) days of receiving it, both a refund claim form and an affidavit, a copy of which is attached as Exhibit B, on behalf of the AASC



member in order to receive restitution on behalf of such member, if the member's estate will not be distributed pursuant to the living trust received from Pre-Paid. For any AASC member on the master list who is deceased, the refund claim form will provide for the beneficiary, next-of-kin or other representative of the deceased AASC member to submit to the Administrator, within ten (10) days of receiving it, both a refund claim form and an affidavit, a copy of which is attached as Exhibit C, on behalf of the AASC member in order to receive restitution on behalf of such member's estate, if the member's estate has not been, or will not be, distributed pursuant to the living trust received from Pre-Paid.

- (e) Within sixty (60) days of receipt from the Administrator of a completed refund claim form from an AASC member or such member's beneficiary, next-of-kin, or other representative, Pre-Paid shall make a refund (i) to the AASC member if that member does not intend to rely upon the living trust received from Pre-Paid in the distribution of that member's assets or (ii) to his or her beneficiary, next-of-kin or other representative, if the member is incompetent or deceased, as specified in paragraph (d) above, and if that member's estate has not been or will not be distributed pursuant to the terms of the living trust received from Pre-Paid, of the amount Pre-Paid received or should have received from AASC on behalf of that member for the provision of a living trust, less any partial refund already made by Pre-Paid to or on behalf of that member.

- (f) Pre-Paid shall also make restitution, as described above, to any person who does not appear on the master list but who comes forward within six (6) months of the execution of this Assurance with evidence of an AASC membership which included the provision of a living trust to be furnished by Pre-Paid. Proof of membership shall include a cancelled check to AASC or correspondence received by such person from AASC or Pre-Paid, or similar proof, that would indicate that he or she was a member of AASC who was entitled to a living trust provided by Pre-Paid. In the absence of proof of membership of the type described, the person shall not be entitled to a refund.
- (g) Within thirty (30) days of making restitution to an AASC member, Pre-Paid will verify to the Administrator that the appropriate restitution has been provided by submitting to the Administrator a cancelled check and/or other document that reflects that the required payment has been made to such member.
- (h) Nine (9) months after the execution of this Assurance the Administrator will submit affidavits to each Attorney General stating that the notices described in paragraph 12(d) above have been sent to the AASC members in his or her State, who are either identified on the master list or who have come forward pursuant to paragraph 12(f) of this Assurance, and that appropriate restitution has been paid to all such members. Such affidavit

shall also state the number of AASC members in that State to whom restitution has been made and the total amount of such restitution.

- (i) The parties will attempt in good faith to resolve any disputes that may arise as to an AASC member's entitlement to a refund and the amount of the refund. If the amount of payment Pre-Paid received or should have received from AASC on behalf of a member for the provision of a living trust is unknown, or in any other circumstances where Pre-Paid cannot identify the amount of such payment, or where the parties cannot reach agreement with respect to a claim for refund, the Administrator shall be the final arbiter of the amount of the refund. Under no circumstances will the amount exceed the amount that was to have been paid to Pre-Paid by AASC for the preparation of a living trust.

13. Pre-Paid shall pay by certified check, at the time of execution of this Assurance, \$2,500 to each of the signatory States. At the time of the submission of the Administrator's affidavits referenced in Paragraph 12(h) above, the additional sum of \$2,500, will be paid to each of the signatory States. Such sums shall be placed in or applied to the consumer education, litigation or local consumer aid account or fund or revolving fund of any of the above States, or used to defray the States' costs of investigations including reasonable attorneys' fees, as permitted under the laws of the respective States, at the discretion of the Attorney General of that State.

14. The parties stipulate that this Assurance shall never, at any time or place, be construed as an admission of liability by Pre-Paid for any purpose.

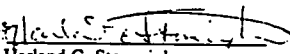
15. The signatory States shall not institute any further proceedings or take any further action against Pre-Paid under the States' above-cited consumer protection statutes for any claims which were or could have been challenged by the signatory States with respect to any of Pre-Paid's programs in existence prior to the execution date of this Assurance, so long as Pre-Paid is in compliance with the terms of this Assurance.

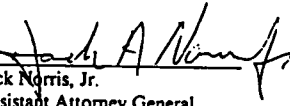
Dated: 9/8, 1994

Dated: 9/8, 1994

PRE-PAID LEGAL SERVICES, INC.

ROBERT A. BUTTERWORTH  
Attorney General  
State of Florida

By:   
Harland C. Stonecipher  
President  
329 East Main Street  
Ada, OK 74820  
(405) 436-7409

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Assistant Attorney General  
4000 Hollywood Blvd.  
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Hollywood, FL 33021  
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# ATTACHMENT C

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY, FLORIDACASE NO.: CF 94-3334STATE OF FLORIDA,  
OFFICE OF THE ATTORNEY GENERAL.

Plaintiff,

vs.

AMERICAN SENIOR CITIZENS ALLIANCE, INC.,  
a Florida corporation; SENIOR ESTATE PLANNING  
SERVICES, INC., a Florida corporation;  
and D. CHRISTOPHER RUSSELL, individually  
and as President and Director of  
AMERICAN SENIOR CITIZENS ALLIANCE, INC.,Defendants.  

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## COMPLAINT

Plaintiff, STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, hereby sues the AMERICAN SENIOR CITIZENS ALLIANCE, INC., a Florida corporation; SENIOR ESTATE PLANNING SERVICES, INC., a Florida corporation; and D. CHRISTOPHER RUSSELL, individually and as president, director and registered agent of the AMERICAN SENIOR CITIZENS ALLIANCE (hereinafter collectively referred to as "Defendants"), and alleges:

1. This is an action for injunctive and other statutory relief, brought pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (1993), commonly referred to as the "Little FTC Act," and §§ 812.012-.035, Florida Statutes, the "Florida Anti-Fencing Act" (1993).

2. This Court has jurisdiction pursuant to the provisions of these statutes.

3. Plaintiff is the enforcing authority of Florida's Deceptive and Unfair Trade Practices Act and is authorized to seek damages, injunctive and other statutory relief pursuant to FLA. STAT. § 501.207. Plaintiff also has authority to institute civil proceedings under FLA. STAT. § 812.035(5).

4. The statutory violations alleged herein occurred in and affect more than one judicial circuit in the State of Florida, including Orange County.

5. Defendant AMERICAN SENIOR CITIZENS ALLIANCE currently maintains its offices at 140 South Court Avenue, Suite 400, Orlando, Florida 32801. The company previously maintained its offices at 3452 Lake Lynda Drive, Suite 280, Orlando, Florida 32817.

6. Defendant D. CHRISTOPHER RUSSELL does business in and from 140 South Court Avenue, Suite 400, Orlando, Florida 32801.

7. Defendant SENIOR ESTATE PLANNING SERVICES, INC., maintains its offices at 140 South Court Avenue, Orlando, Florida 32801.

8. Plaintiff has conducted an investigation and Attorney General Robert A. Butterworth has determined that an enforcement action serves the public interest.

9. At all times material hereto, the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES engaged in trade or commerce within the definitions of FLA. STAT. § 501.203(7), (8).

10. At all times material hereto, the AMERICAN SENIOR CITIZENS ALLIANCE used a contract which includes a provision for consumer services to be rendered in the future, within the definitions of FLA. ADMIN. CODE r. 2-18.001.

11. The AMERICAN SENIOR CITIZENS ALLIANCE is an active Florida for-profit corporation registered with the Florida Secretary of State under Charter No. S-96604.

12. SENIOR ESTATE PLANNING SERVICES, INC., is an active Florida for-profit corporation registered with the Florida Secretary of State.

13. D. CHRISTOPHER RUSSELL is listed in the Secretary of State's records as the president, a director and the registered agent of the AMERICAN SENIOR CITIZENS ALLIANCE. He also is the owner and/or manager of SENIOR ESTATE PLANNING SERVICES.

14. At all times material hereto, D. CHRISTOPHER RUSSELL directed and controlled the corporate policies of the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES and also directed and controlled the acts and practices of the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES.

15. SENIOR ESTATE PLANNING SERVICES is one and the same as the AMERICAN SENIOR CITIZENS ALLIANCE, both corporations having the same ownership and management, operating concurrently from the same address, with many of the same employees and clients, and performing the same "services" in substantially the same manner.

**THE COURSE AND CONDUCT OF THE BUSINESS  
OF THE AMERICAN SENIOR CITIZENS ALLIANCE  
AND SENIOR ESTATE PLANNING SERVICES**

16. The AMERICAN SENIOR CITIZENS ALLIANCE has engaged and continues to engage in the business of selling, marketing and preparing revocable living trusts, primarily to senior citizens, at all times during its period of operation to the present. SENIOR ESTATE PLANNING SERVICES has recently begun to engage in these same activities.



17. The AMERICAN SENIOR CITIZENS ALLIANCE sends a solicitation piece through the United States mail to citizens of the State of Florida. Some solicitation pieces also were distributed through newspapers or other publications targeted at senior citizens. SENIOR ESTATE PLANNING SERVICES has placed advertising, using identical language and promotional methods, in newspapers. This advertising offers a free living will and asks several questions about the individual's knowledge of estate planning and living trusts.

18. When an individual returns the solicitation piece, an employee or representative of the AMERICAN SENIOR CITIZENS ALLIANCE or SENIOR ESTATE PLANNING SERVICES contacts the individual by telephone to schedule an appointment for a salesperson to meet with the individual.

19. The salesperson, known within the AMERICAN SENIOR CITIZENS ALLIANCE as a "benefits analyst," meets with the individual in his or her home and makes numerous representations regarding the need for and benefits of a living trust as well as the services provided by the AMERICAN SENIOR CITIZENS ALLIANCE and/or SENIOR ESTATE PLANNING SERVICES.

20. The representations made by the salespersons and included within the materials distributed by the salespersons include assertions as to:

a. The need for and benefits of a living trust and the advantages of a living trust over a will, including but not limited to representations that the probate of a will is a lengthy, expensive and complex legal process which can be "psychologically destructive" to the heirs of an estate.

b. The attention of a staff attorney of the AMERICAN SENIOR CITIZENS ALLIANCE and/or SENIOR ESTATE PLANNING SERVICES that consumers will receive during the preparation of their living trust.

c. The superiority of a living trust in providing protection for the maker of the trust if he or she becomes incapacitated, regardless of the size of an individual's estate or an individual's circumstances.

d. The services provided by the AMERICAN SENIOR CITIZENS ALLIANCE and/or SENIOR ESTATE PLANNING SERVICES in taking care of all of the tasks involved in preparing, executing and funding a living trust.

e. A 90-day period in which changes to the documents prepared by the AMERICAN SENIOR CITIZENS ALLIANCE will be performed for no additional charge.

21. The AMERICAN SENIOR CITIZENS ALLIANCE and/or SENIOR ESTATE PLANNING SERVICES, through their employees or representatives, during the course of a meeting with the consumer in his or her home; required that consumers sign a contract. A copy of the contract required by The AMERICAN SENIOR CITIZENS ALLIANCE is attached hereto as Exhibit "A" and made a part hereof.

22. The AMERICAN SENIOR CITIZENS ALLIANCE, through its employees or representatives, present the contract in such a way as to prevent consumers from having adequate time or opportunity to consider the consumers' decision to enter the contract, and the consequences of such a decision.

23. The AMERICAN SENIOR CITIZENS ALLIANCE contract includes the following provision: "In the event I/we change my/our mind, I/we will be entitled to a refund of the

original fee for up to three days from the signature date of purchase below by notifying ASCA in writing of my/our intentions." This statement, which is in a regular typeface, is contained within Item No. 2 of a 12-point list and is not in the immediate proximity of the space reserved for the signature of the buyer.

24. The AMERICAN SENIOR CITIZENS ALLIANCE contract includes the following provision: "... all the information I provide to the ASCA attorney is confidential and shall be used exclusively for the preparation of my/our living trust and accompanying legal documents."

25. The AMERICAN SENIOR CITIZENS ALLIANCE contract includes a provision promising delivery within a specified time.

26. Among the products offered by the AMERICAN SENIOR CITIZENS ALLIANCE is a package called the "Gold Plus Plan," which costs \$1295, a sum which is \$300 more than the "Gold Plan." In addition to the goods and services promised to purchasers of the "Gold Plan," purchasers of the "Gold Plus Plan" were promised a long-term health care planning report.

27. Based upon the representations set forth in Paragraphs 17, 20, 21, 22 and 23 herein, and in reasonable reliance thereon, consumers agreed to pay sums ranging from \$995.00 to \$1495.00.

28. Neither the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES nor D. CHRISTOPHER RUSSELL has been, at any time material hereto, has been a member of The Florida Bar and, therefore, was not licensed to practice law in the State of Florida. The Defendants' employees and representatives who make the threshold determination of whether an individual needs a living trust, gather the information necessary for preparation of the trust, assemble the living trust documents and fund the trust have not been, at

any time material hereto, members of The Florida Bar and, therefore, are not licensed to practice law in the State of Florida.

29. In truth and fact, the representations of the AMERICAN SENIOR CITIZENS ALLIANCE and/or SENIOR ESTATE PLANNING SERVICES, through their employees or representatives, set forth in Paragraph 20 herein are false, deceptive and misleading in that:

a. The costs of probate and the time needed for probate are greatly exaggerated, and the potential disadvantages of a living trust are minimized or omitted altogether.

b. The majority of consumers who purchased a living trust from the AMERICAN SENIOR CITIZENS ALLIANCE had no contact whatsoever with an attorney on the company's staff.

c. Living trusts were sold to consumers whose needs and assets were such that a trust was unnecessary and, in some cases, detrimental to those consumers' interests.

d. Consumers were not fully advised as to tasks they would have to perform themselves to complete the funding of the trust or as to the costs involved, nor were they fully advised as to the need for continual maintenance of the trust.

e. Changes to the documents prepared by the AMERICAN SENIOR CITIZENS ALLIANCE which were requested by consumers within the 90-day period for revisions at no additional charge were not made.

30. In truth and fact, the representations of the AMERICAN SENIOR CITIZENS ALLIANCE set forth in Paragraphs 23, 24 and 25 herein are false, deceptive and misleading in that:

a. The AMERICAN SENIOR CITIZENS ALLIANCE failed to deliver trusts to consumers within the time period specified in the contract.

b. Information about consumers' financial affairs was disclosed by the AMERICAN SENIOR CITIZENS ALLIANCE to SENIOR ESTATE PLANNING SERVICES, which originally sold annuities and other products and services to consumers before it began to engage in the sales of living trusts.

c. The AMERICAN SENIOR CITIZENS ALLIANCE has failed and refused to provide refunds to consumers who have advised the company within three business days of the date of signing the contract of their desire to cancel the contract and obtain a refund.

d. The AMERICAN SENIOR CITIZENS ALLIANCE has failed and refused to provide refunds to consumers who fail to receive the trust and have attempted to cancel the contract and obtain a refund.

31. In truth and fact, the representations of the AMERICAN SENIOR CITIZENS ALLIANCE and/or SENIOR ESTATE PLANNING SERVICES set forth in Paragraphs 20, 23, 24, 25 and 26 herein are false, deceptive and misleading in that the AMERICAN SENIOR CITIZENS ALLIANCE failed to disclose material facts regarding:

a. The new Florida laws which took effect January 1, 1994, regarding the administration of trusts.

b. The potential tax consequences to the maker of a living trust.

- c. The vulnerability of a trust to contest on the same grounds as a will.
- d. Other ways of handling guardianship which are simpler, less expensive and equally effective.
- e. The potential consequences as to Medicaid eligibility to persons who have established a living trust.
- f. The need for continual maintenance of a living trust.

32. In truth and fact, the representations of the AMERICAN SENIOR CITIZENS ALLIANCE set forth in Paragraph 26 herein are false, deceptive and misleading in that no long-term health care planning report was furnished to purchasers of the "Gold Plus Plan."

33. During January, February and March 1994, the AMERICAN SENIOR CITIZENS ALLIANCE deducted funds from employees' paychecks for dependent insurance coverage but failed to provide dependent insurance coverage to those employees.

**COUNT I  
DECEPTIVE AND UNFAIR TRADE PRACTICES  
VIOLATIONS OF FLA. ADMIN. CODE CH. 2-9  
(MISLEADING REPRESENTATIONS)**

34. Plaintiff adopts, incorporates herein and realleges Paragraphs 1 through 30, as if fully set forth below.

35. It is an unfair and deceptive act or practice to misrepresent the nature, characteristics, standard ingredients, uses, benefits, warranties, guarantees, quantities or qualities of goods or services. FLA. ADMIN. CODE r. 2-9.002(5).

36. It is an unfair and deceptive act or practice to advertise goods or services with intent not to sell them as advertised. FLA. ADMIN. CODE r. 2-9.002(8).

37. It is an unfair and deceptive act or practice to deliver an advertised product which is defective, unusable or impractical for the purpose represented in the advertisement. FLA. ADMIN. CODE r. 2-9.004(1)(g).

38. As set forth in Paragraphs 20, 23, 24, 25, 26 and 31 herein, the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES misrepresented, continue to misrepresent, the nature, characteristics, standard ingredients, uses, benefits, warranties, guarantees, quantities or qualities of the living trusts they market and prepared, in violation of FLA. ADMIN. CODE r. 2-9.002(5).

39. As set forth in Paragraphs 20, 23, 24, 25, 26 and 31 herein, the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES advertised, and continue to advertise, goods or services with intent not to sell them as advertised.

40. As set forth in Paragraphs 20, 23, 24, 25, 26 and 31 herein, the AMERICAN SENIOR CITIZENS ALLIANCE delivered a product which was defective, unusable or impractical for the purpose represented by the company and its representatives.

41. The violations of the aforesaid rules by the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL are unfair or deceptive acts and practices in violation of FLA. STAT. § 501.204.

42. Based upon the foregoing, the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES have made, and continue to make, representations or omissions as to material facts or engaged in acts and practices which (1) are likely to mislead consumers acting reasonably under the circumstances; or (2) have caused substantial injury to consumers. Therefore, the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE

PLANNING SERVICES and D. CHRISTOPHER RUSSELL have engaged in, and continue to engage in, unfair and deceptive trade practices in violation of FLA. STAT. § 501.204.

43. The acts and practices of the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES, as hereinabove alleged, have injured and continue to injure and prejudice the public.

44. The AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL engaged in, and continue to engage in, the acts and practices complained of herein with actual knowledge or knowledge fairly implied on the basis of objective circumstances that said acts and practices were unfair or deceptive or prohibited by rule.

45. Unless the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL are enjoined from engaging further in the acts and practices alleged herein, the continued activities of the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL will result in irreparable injury to the public, for which there is no adequate remedy at law.

**COUNT II  
DECEPTIVE AND UNFAIR TRADE PRACTICES  
VIOLATIONS OF FLA. ADMIN. R. 2-18.008(1)(f)  
(MISLEADING REPRESENTATIONS OF ASSISTANCE)**

46. Plaintiff adopts, incorporates herein and realleges Paragraphs 1 through 33, as if fully set forth below.

47. It is an unfair and deceptive act or practice for the seller of future services to misrepresent the nature and extent of any personal services, guidance, assistance or other



attention the business will provide for consumers either during or after completion of the services.  
FLA. ADMIN. CODE r. 2-18.008(1)(i).

48. As set forth in Paragraphs 20, 23, 24, 25, 26 and 31 herein, the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES misrepresented, and continue to misrepresent, the nature of the services and assistance offered to consumers in violation of FLA. ADMIN. CODE r. 2-18.008(1)(i).

49. The violations of the aforesaid rules by the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL are unfair or deceptive acts and practices in violation of FLA. STAT. § 501.204.

50. Based upon the foregoing, the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES have made, and continue to make, representations or omissions as to material facts or engaged in acts and practices which (1) are likely to mislead consumers acting reasonably under the circumstances; or (2) have caused substantial injury to consumers. Therefore, the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL have engaged in, and continue to engage in, unfair and deceptive trade practices in violation of FLA. STAT. § 501.204.

51. The acts and practices of the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES, as hereinabove alleged, have injured and continue to injure and prejudice the public.

52. The AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL engaged in, and continue to engage in, the acts and practices complained of herein with actual knowledge or knowledge fairly

implied on the basis of objective circumstances that said acts and practices were unfair or deceptive or prohibited by rule.

53. Unless the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL are enjoined from engaging further in the acts and practices alleged herein, the continued activities of the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL will result in irreparable injury to the public, for which there is no adequate remedy at law.

**COUNT III  
DECEPTIVE AND UNFAIR TRADE PRACTICES  
(FAILURE TO DISCLOSE MATERIAL FACTS)**

54. Plaintiff adopts, incorporates herein and realleges Paragraphs 1 through 33, as if fully set forth below.

55. The failure to disclose material facts, as described in Paragraph 31, is an unfair or deceptive act or practice in violation of FLA. STAT. § 501.204.

56. The acts and practices of the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES, as hereinabove alleged, have injured and continue to injure and prejudice the public.

57. The AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL engaged in, and continue to engage in, the acts and practices complained of herein with actual knowledge or knowledge fairly implied on the basis of objective circumstances that said acts and practices were unfair or deceptive or prohibited by rule.

58. Unless the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL are enjoined from engaging further in the acts and practices alleged herein, the continued activities of the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL will result in irreparable injury to the public, for which there is no adequate remedy at law.

**COUNT IV  
DECEPTIVE AND UNFAIR TRADE PRACTICES  
VIOLATIONS OF FLA. ADMIN. CODE CH. 2-18  
(CANCELLATION RIGHTS)**

59. Plaintiff adopts, incorporates herein and realleges Paragraphs 1 through 33, as if fully set forth below.

60. It is an unfair and deceptive act or practice, pursuant to FLA. ADMIN. CODE r. 2-18.002(1), for a seller of future consumer services to fail to make the following statement to consumers at the time of execution of the sale:

**YOU MAY CANCEL THIS CONTRACT WITHOUT ANY PENALTY OR OBLIGATION WITHIN 3 BUSINESS DAYS FROM THE ABOVE DATE.**

**YOU MAY ALSO CANCEL THIS CONTRACT IF UPON A DOCTOR'S ORDER YOU CANNOT PHYSICALLY RECEIVE THE SERVICES, OR YOU MAY CANCEL THE CONTRACT IF THE SERVICES CEASE TO BE OFFERED AS STATED IN THE CONTRACT. IF YOU CANCEL THE CONTRACT FOR EITHER OF THESE REASONS, THE SELLER (NAME OF SELLER), MAY KEEP ONLY A PORTION OF THE TUITION OR CONTRACT PRICE.**

**YOU MAY NOTIFY THE SELLER OF YOUR INTENT TO CANCEL BY NOTICE TO (NAME OF SELLER) AT (SELLER'S ADDRESS).**

The statement must be in boldface type of a 10-point size and in the immediate proximity of the space reserved for the signature of the buyer. FLA. ADMIN. CODE r. 2-18.003.

61. It is an unfair and deceptive act or practice to misrepresent in any manner the buyer's right to cancel. FLA. ADMIN. CODE r. 2-18.005.

62. The standard contract of the AMERICAN SENIOR CITIZENS ALLIANCE contains the provision set forth in Paragraph 23 above.

63. The AMERICAN SENIOR CITIZENS ALLIANCE has placed a disclosure in its contract which does not comply with the disclosure required by FLA. ADMIN. CODE r. 2-18.003 and is thus in violation of said rule.

64. It is an unfair and deceptive act or practice to fail or refuse to honor a buyer's request to cancel a contract if such request is made within three business days of the date of the contract. FLA. ADMIN. CODE r. 2-18.003.

65. It is an unfair and deceptive act or practice to fail to refund all payments under a contract within 20 days after receipt of notice of cancellation made within the three-day provision. FLA. ADMIN. CODE r. 2-18.004.

66. The AMERICAN SENIOR CITIZENS ALLIANCE has failed and refused to make full refunds to consumers who have properly cancelled their contracts within three business days of signing, in violation of FLA. ADMIN. CODE r. 2-18.003, 2-18.004.

67. The violations by the AMERICAN SENIOR CITIZENS ALLIANCE of the aforesaid rules are unfair or deceptive acts and practices in violation of FLA. STAT. § 501.204.

68. The acts and practices of the AMERICAN SENIOR CITIZENS ALLIANCE, as hereinabove alleged, have injured and continue to injure and prejudice the public.

69. The AMERICAN SENIOR CITIZENS ALLIANCE and D. CHRISTOPHER RUSSELL engaged in the acts and practices complained of herein with actual knowledge or knowledge fairly implied on the basis of objective circumstances that said acts and practices were unfair or deceptive or prohibited by rule.

70. Unless the AMERICAN SENIOR CITIZENS ALLIANCE and D. CHRISTOPHER RUSSELL are enjoined from engaging further in the acts and practices alleged herein, the continued activities of the AMERICAN SENIOR CITIZENS ALLIANCE and D. CHRISTOPHER RUSSELL will result in irreparable injury to the public, for which there is no adequate remedy at law.

**COUNT V  
DECEPTIVE AND UNFAIR TRADE PRACTICES  
VIOLATION OF FLA. ADMIN. CODE R. 2-18.010(2)  
(FALSE INDUCEMENT TO ENTER CONTRACT)**

71. Plaintiff adopts, incorporates herein and realleges Paragraphs 1 through 33, as if fully set forth below.

72. It is an unfair or deceptive act or practice for a seller of future consumer services to induce a consumer to enter into a contract in reliance upon any false, fraudulent, or misleading information, representation or notice of the seller. FLA. ADMIN. CODE r. 2-18.010(2).

73. As set forth in Paragraphs 20, 23, 24, 25, 26 and 31 herein, the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES made and continue to make false, deceptive and misleading representation and omissions to consumers, orally, through their employees or representatives, and in writing, in order to induce consumers to enter into contracts for the preparation of living trusts.

74. Based upon the foregoing, the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES have violated FLA. ADMIN. CODE r. 2-18.010(2).

75. The violations of the aforesaid rule by the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES are unfair or deceptive acts and practices in violation of FLA. STAT. § 501.204.

76. Based upon the foregoing, the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES have made, and continue to make, material representations or omissions as to material facts or engaged in acts and practices which (1) are likely to mislead consumers acting reasonably under the circumstances; or (2) have caused substantial injury to consumers. Therefore, the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES have engaged in, and continue to engage in, unfair and deceptive trade practices in violation of FLA. STAT. § 501.204.

77. The acts and practices of the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES, as hereinabove alleged, have injured and continue to injure and prejudice the public.

78. The AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL engaged in, and continue to engage in, the acts and practices complained of herein with actual knowledge or knowledge fairly implied on the basis of objective circumstances that said acts and practices were unfair or deceptive or prohibited by rule.

79. Unless the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL are enjoined from engaging further

in the acts and practices alleged herein, the continued activities of the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL will result in irreparable injury to the public, for which there is no adequate remedy at law.

**COUNT VI  
DECEPTIVE AND UNFAIR TRADE PRACTICES  
(THE UNLICENSED PRACTICE OF LAW)**

80. Plaintiff adopts, incorporates herein and realleges Paragraphs 1 through 33, as if fully set forth below.

81. A violation of Chapter 501, Part II, "may be based upon ... [a]ny law, statute, rule, regulation or ordinance which proscribes unfair methods of competition, or unfair, deceptive or unconscionable acts or practices." FLA. STAT. § 501.203(3). The unlicensed practice of law is proscribed by FLA. STAT. § 454.23 (1993).

82. The AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES have engaged in, and continue to engage in, the unlicensed practice of law by its practice of having non-lawyers provide legal services to consumers, as set forth in Paragraph 28.

83. The unlicensed practice of law by the Defendants constitutes unfair or deceptive acts and practices in violation of FLA. STAT. § 501.204.

84. The acts and practices of the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES, as hereinabove alleged, have injured and continue to injure and prejudice the public.

85. The AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL engaged in, and continue to engage in, the acts and practices complained of herein with actual knowledge or knowledge fairly implied on the basis of objective circumstances that said acts and practices were unfair or deceptive or prohibited by rule.

86. Unless the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL are enjoined from engaging further in the acts and practices alleged herein, the continued activities of the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL will result in irreparable injury to the public, for which there is no adequate remedy at law.

**COUNT VII  
VICTIMIZATION OF SENIOR CITIZENS  
IN VIOLATION OF FLA. STAT. § 501.2077**

87. Plaintiff adopts, incorporates herein and realleges Paragraphs 1 through 33, as if fully set forth below.

88. It is unlawful for any person to engage in any method, act or practice which victimizes, or attempts to victimize, persons who are 60 years of age or older when that person knew or should have known that the conduct was unfair or deceptive. FLA. STAT. § 501.2077(2).

89. As set forth in Paragraphs 16 through 33, the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL engaged in, and continue to engage in, methods, acts or practices which victimize, or attempt to victimize, persons who are 60 years of age or older.



90. At the time said methods, acts or practices were used, the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL knew that their conduct was unfair or deceptive.

91. The acts and practices of the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES, as hereinabove alleged, have injured and continue to injure and prejudice the public.

92. The AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL engaged in, and continue to engage in, the acts and practices complained of herein with actual knowledge or knowledge fairly implied on the basis of objective circumstances that said acts and practices were unfair or deceptive or prohibited by rule.

93. Unless the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL are enjoined from engaging further in the acts and practices alleged herein, the continued activities of the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL will result in irreparable injury to the public, for which there is no adequate remedy at law.

**COUNT VIII  
MISLEADING ADVERTISING IN VIOLATION OF FLA. STAT. §§ 817.41**

94. Plaintiff adopts, incorporates herein and realleges Paragraphs 1 through 33, as if fully set forth below.

95. It is unlawful for any person to make or disseminate or cause to be made or disseminated before the general public, or any portion thereof, any misleading advertisement. FLA.

STAT. § 817.41 (1993). Misleading advertising is defined to include any statements made, or disseminated, in oral, written or printed form or otherwise, to or before the public, or any portion thereof, which are known, or through the exercise of reasonable care or investigation could or might have been ascertained to be untrue or misleading, and which are or were so made or disseminated with the intent or purpose, either directly or indirectly, of selling services of any nature whatsoever or to induce the public to enter into any obligation relating to such services.

96. As set forth in Paragraphs 20, 23, 24, 25, 26 and 31 herein, the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES have made or disseminated or caused to be made or disseminated before the general public, or some portion thereof, misleading advertisements, and continue to do so.

97. A violation of FLA. STAT. § 817.41 is a *per se* unfair and deceptive business practice pursuant to the Federal Trade Commission's standards for unfairness and deception and, as such, violates FLA. STAT. § 501.204.

98. The acts and practices of the AMERICAN SENIOR CITIZENS ALLIANCE and SENIOR ESTATE PLANNING SERVICES, as hereinabove alleged, have injured and continue to injure and prejudice the public.

99. The AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL engaged in, and continue to engage in, the acts and practices complained of herein with actual knowledge or knowledge fairly implied on the basis of objective circumstances that said acts and practices were unfair or deceptive or prohibited by rule.

100. Unless the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL are enjoined from engaging further in the acts and practices alleged herein, the continued activities of the AMERICAN SENIOR CITIZENS ALLIANCE, SENIOR ESTATE PLANNING SERVICES and D. CHRISTOPHER RUSSELL will result in irreparable injury to the public, for which there is no adequate remedy at law.

**COUNT IX  
CIVIL THEFT IN VIOLATION OF FLA. STAT. §§ 812.012-035**

101. Plaintiff adopts, incorporates herein and realleges Paragraphs 1 through 33, as if fully set forth below.

102. The AMERICAN SENIOR CITIZENS ALLIANCE and D. CHRISTOPHER RUSSELL did unlawfully and knowingly obtain or use, or endeavor to obtain or use, by fraud, willful misrepresentation of a future act, false promise, false pretense or deception, the property of consumers as set forth in Paragraphs 16 through 32 above.

103. The AMERICAN SENIOR CITIZENS ALLIANCE and D. CHRISTOPHER RUSSELL knowingly obtained funds by misrepresenting future acts and making false promises. Thus, Defendants intended to, either temporarily or permanently, deprive consumers of the right or beneficial use of their funds, and intended to appropriate the property to their own use, or to another person not entitled to use these funds, by any deceptive means necessary to continue to achieve this goal. The amount of funds so acquired exceeds the threshold of a felony amount.

104. Consumers have been and continue to be damaged as a result of the misrepresentations of the Defendants and their retention of funds and their refusal to provide refunds.

105. Based upon the foregoing, the AMERICAN SENIOR CITIZENS ALLIANCE and D. CHRISTOPHER RUSSELL have engaged in theft in violation of FLA. STAT. § 812.014(1).

106. The violations of FLA. STAT. §§ 812.014(1) by the AMERICAN SENIOR CITIZENS ALLIANCE are unfair and deceptive acts and practices in violation of FLA. STAT. § 501.204.

107. The acts and practices of the AMERICAN SENIOR CITIZENS ALLIANCE, as hereinabove alleged, have injured and continue to injure and prejudice the public.

108. The AMERICAN SENIOR CITIZENS ALLIANCE and D. CHRISTOPHER RUSSELL engaged in the acts and practices complained of herein with actual knowledge or knowledge fairly implied on the basis of objective circumstances that said acts and practices were unfair or deceptive or prohibited by rule.

109. Unless the AMERICAN SENIOR CITIZENS ALLIANCE and D. CHRISTOPHER RUSSELL are enjoined from engaging further in the acts and practices alleged herein, the continued activities of the AMERICAN SENIOR CITIZENS ALLIANCE and D. CHRISTOPHER RUSSELL will result in irreparable injury to the public, for which there is no adequate remedy at law.

**COUNT X  
CIVIL THEFT IN VIOLATION OF FLA. STAT. §§ 812.012-.035**

110. Plaintiff adopts, incorporates herein and realleges Paragraphs 1 through 33, as if fully set forth below.

111. The AMERICAN SENIOR CITIZENS ALLIANCE and D. CHRISTOPHER RUSSELL did unlawfully and knowingly obtain or use, or endeavor to obtain or use, by fraud, willful misrepresentation of a future act, false promise, false pretense or deception, the property of others, as set forth in Paragraph 33 above.

112. The AMERICAN SENIOR CITIZENS ALLIANCE and D. CHRISTOPHER RUSSELL knowingly obtained funds by misrepresenting future acts and making false promises. Thus, Defendants intended to, either temporarily or permanently, deprive the employees of the AMERICAN SENIOR CITIZENS ALLIANCE of the right or beneficial use of their funds, and intended to appropriate the property to their own use, or to another person not entitled to use these funds, by any deceptive means necessary to continue to achieve this goal. The amount of funds so acquired exceeds the threshold of a felony amount.

113. Citizens have been and continue to be damaged as a result of the misrepresentations of the Defendants and their retention of funds and their refusal to provide refunds.

114. Based upon the foregoing, the AMERICAN SENIOR CITIZENS ALLIANCE and D. CHRISTOPHER RUSSELL have engaged in theft in violation of FLA. STAT. § 812.014(1).

115. The violations of FLA. STAT. §§ 812.014(1) by the AMERICAN SENIOR CITIZENS ALLIANCE are unfair and deceptive acts and practices in violation of FLA. STAT. § 501.204.

116. The acts and practices of the AMERICAN SENIOR CITIZENS ALLIANCE, as hereinabove alleged, have injured and continue to injure and prejudice the public.

117. The AMERICAN SENIOR CITIZENS ALLIANCE and D. CHRISTOPHER RUSSELL engaged in the acts and practices complained of herein with actual knowledge or

knowledge fairly implied on the basis of objective circumstances that said acts and practices were unfair or deceptive or prohibited by rule.

118. Unless the AMERICAN SENIOR CITIZENS ALLIANCE and D. CHRISTOPHER RUSSELL are enjoined from engaging further in the acts and practices alleged herein, the continued activities of the AMERICAN SENIOR CITIZENS ALLIANCE and D. CHRISTOPHER RUSSELL will result in irreparable injury to the public, for which there is no adequate remedy at law.

**DEMAND FOR JURY TRIAL**

Plaintiff, STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, demands a trial by jury in the above-entitled action.

WHEREFORE, Plaintiff, STATE OF FLORIDA, OFFICE OF THE ATTORNEY GENERAL, requests this Court to enter the following orders:

1. GRANT temporary and permanent injunctions against the AMERICAN SENIOR CITIZENS ALLIANCE, INC., SENIOR ESTATE PLANNING SERVICES, INC., and D. CHRISTOPHER RUSSELL, their officers, agents, servants, employees, attorneys and those persons in active concert or participation with them who receive actual notice of the injunction, prohibiting all such persons from:

- a. Operating any business in Florida which is involved in the sales, marketing or preparation of living trusts, wills or any estate planning services;
- b. Violating the provisions of Florida Statutes, Chapter 501, Part II (1993).


- c. Violating the rules promulgated under the authority of Florida Statutes, Chapter 501, Part II (1993).
  - d. Engaging in the unlicensed practice of law.
  - e. Violating the provisions of FLA. STAT. § 817.41.
  - f. Violating the provisions of FLA. STAT. § 812.012 *et seq.*
2. **AWARD** actual damages to all consumers who are shown to have been injured in this action, pursuant to FLA. STAT. § 501.206(1)(c) and § 501.2077(3).
  3. **ASSESS** against the AMERICAN SENIOR CITIZENS ALLIANCE, INC., SENIOR ESTATE PLANNING SERVICES, INC., and D. CHRISTOPHER RUSSELL a civil penalty of \$15,000 for each violation of FLA. STAT. § 501.2077(3).
  4. **ASSESS** against the AMERICAN SENIOR CITIZENS ALLIANCE, INC., SENIOR ESTATE PLANNING SERVICES, INC., and D. CHRISTOPHER RUSSELL a civil penalty of \$10,000 for each violation of FLA. STAT. ch. 501, Part II, or of the Rules of the Department of Legal Affairs, pursuant to FLA. STAT. § 501.2075 (1993).
  5. **WAIVE** the posting of a bond by Plaintiff in this action.
  6. **AWARD** reasonable attorneys' fees and costs to Plaintiff, pursuant to FLA. STAT. § 501.2105.
  7. **IMPOSE** restrictions upon the future activities or investments of D. CHRISTOPHER RUSSELL.
  8. **ORDER** the dissolution of the AMERICAN SENIOR CITIZENS ALLIANCE, INC., and SENIOR ESTATE PLANNING SERVICES, INC.

9. ORDER the forfeiture of the corporate charters of the AMERICAN SENIOR CITIZENS ALLIANCE, INC., and SENIOR ESTATE PLANNING SERVICES, INC.

10. FORFEIT to the State all property, real or personal, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of FLA. STAT. §§ 812.012-037.

11. GRANT such other and further relief as this Court deems just and proper.

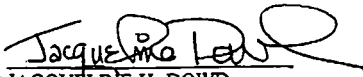
ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL

  
JACQUELINE H. DOWD  
ASSISTANT ATTORNEY GENERAL  
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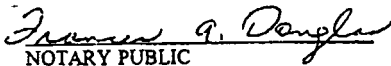


**VERIFICATION**

Under penalties of perjury, I, Assistant Attorney General Jacqueline H. Dowd, have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

  
JACQUELINE H. DOWD  
ASSISTANT ATTORNEY GENERAL  
Florida Bar No. 7714410

Sworn and subscribed before me  
this 11th day of May, 1994,  
by Jacqueline H. Dowd, who is  
personally known to me.

  
NOTARY PUBLIC

FRANCES A. DOUGLAS  
(Print, type or stamp commissioned name of Notary Public)

NOTARY PUBLIC, STATE OF FLORIDA  
MY COMMISSION EXPIRES NOV. 14, 1995  
BONDED TRAY NOTARY PUBLIC UNDER 6107.04

# ATTACHMENT D

CACE

IN THE CIRCUIT COURT OF  
THE 17TH JUDICIAL CIRCUIT  
IN AND FOR BROWARD  
COUNTY, FLORIDA

STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,  
OFFICE OF THE ATTORNEY GENERAL,

CASE NO. 98 09267

Plaintiff,

13

AMERICAN ASSOCIATION OF RETIRED PERSONS,

Plaintiff,

v.

SENIOR ESTATE SERVICES,  
INC., a Florida corporation;  
CHARLES M. HUECHTKER,  
individually and in his capacity as Chief  
Executive Officer and Director of Senior  
Estate Services, Inc.; JASON C.  
HUECHTKER, individually and in his  
capacity as vice-president of the Trust Division  
and as Director of Senior Estate Services, Inc.;  
and REMINGTON ESTATE SERVICES  
OF FLORIDA, INC, a Florida corporation,

COMPLAINT FOR  
INJUNCTIVE RELIEF,  
DAMAGES, CIVIL PENALTIES,  
AND OTHER STATUTORY RELIEF

JUN 1-0 1998

A TRUE COPY  
Circuit Court Seal

Defendants.

COMES NOW the Plaintiff, STATE OF FLORIDA, DEPARTMENT OF LEGAL  
AFFAIRS, OFFICE OF THE ATTORNEY GENERAL (hereinafter referred to as Attorney  
General) and the AMERICAN ASSOCIATION OF RETIRED PERSONS (hereinafter  
referred to as AARP) and sue the following Defendants: SENIOR ESTATE SERVICES, INC.,  
a Florida Corporation; CHARLES M. HUECHTKER, individually and in his capacity as Chief

Executive Officer and Director of Senior Estate Services; JASON C. HUECHTKER, individually and in his capacity as vice-president of the Trust Division and as Director of Senior Estate Services, Inc.; and, REMINGTON ESTATE SERVICES OF FLORIDA, INC., a Florida corporation, (hereinafter collectively referred to as "Defendants"). The Attorney General alleges:

### **FACTUAL ALLEGATIONS**

1. The Attorney General and AARP bring this lawsuit to protect the civil rights of Florida's elderly residents by seeking a remedy for a widespread pattern of exploitation being perpetuated by Defendants. Defendants have implemented a scheme, targeted exclusively at Florida's elderly residents, using unfair, fraudulent and deceptive practices, and scare tactics, to convince Florida's elderly residents to purchase living trusts and related estate planning documents offered by Defendants, regardless of whether such documents are appropriate for the targeted elderly person. The Defendants utilize similar unlawful practices and tactics to convince such elderly persons to liquidate their assets and purchase insurance products offered by Defendants. In carrying out the scheme, Defendants have utilized non-lawyers to provide legal advice or opinions to elderly victims of the scheme. The legal advice or opinion offered to at least some of the targeted elderly persons was patently false and the legal documents provided to some elderly persons did not satisfy the requirements of Florida law. The Florida Bar is filing an action before the Supreme Court of Florida seeking to enjoin the Defendants from engaging in the unauthorized practice of law in the process of selling the living trusts and related documents. This action seeks injunctive relief, civil monetary penalties, and monetary damages as authorized by the Florida Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes

(1997).

2. This Court has subject matter jurisdiction pursuant to the provisions of said Act and has personal jurisdiction under Section 48.193, Florida Statutes (1997).

3. The Attorney General is the enforcing authority of Florida's Deceptive and Unfair Trade Practices Act as defined in Chapter 501, Part II, Florida Statutes (1997) and is authorized to bring this action on behalf of the State of Florida and on behalf of elderly residents of Florida who have suffered actual damages caused by the unlawful conduct of Defendants. The Attorney General is authorized to seek injunctive relief, monetary damages on behalf of injured elderly persons, civil monetary penalties against each Defendant of up to \$15,000.00 for each violation of the Act, as well as other statutory relief.

4. AARP is a not-for-profit social welfare membership association serving more than 30 million members age 50 and older, approximately 2.3 million of whom live in the State of Florida. AARP serves its members' needs through information and education, advocacy, and community services which are provided by a network of local chapters and experienced volunteers throughout the country. AARP is incorporated and headquartered in Washington, D.C., and maintains state offices in Miami and St. Petersburg, Florida. AARP is authorized to bring this action as a "consumer," as defined in Section 501.203, Florida Statutes (1997), and to seek declaratory and injunctive relief under Section 501.211, Florida Statutes (1997), as well as other statutory relief.

5. The amount in controversy exceeds the jurisdictional limits of this court.

6. The acts and practices alleged herein occurred in and affect numerous judicial circuits, including Broward County.

7. Defendant **SENIOR ESTATE SERVICES, INC.** is a Florida corporation, operating out of offices located in Boca Raton and Tampa.

8. Defendant **CHARLES M. HUECHTKER** is the Chief Executive Officer and a Director of Senior Estate Services, Inc. and has formulated, controlled, directed, and implemented the various acts and practices of Senior Estate Services, Inc., as described in this Complaint. Defendant Charles M. Huechtker has represented to the Florida Secretary of State that he is a resident of the State of Florida.

9. Defendant **JASON C. HUECHTKER**, a Texas resident, is the vice-president of the Trust Division and a Director of Senior Estate Services, Inc. and has formulated, controlled, directed, and implemented the various acts and practices of Senior Estate Services, Inc., as described in this Complaint.

10. Defendant **REMINGTON ESTATES SERVICES OF FLORIDA, INC.** is a Florida corporation whose work is intertwined with that of Defendant Senior Estate Services and Defendants Charles M. Huechtker and Jason C. Huechtker. Remington uses the same Tampa headquarters as Senior Estate Services, and representatives of Senior Estate Services market products that are provided to the elderly consumers by Remington Estate Services. Remington's main offices are located in the State of Texas.

11. The Attorney General, Robert A. Butterworth, has determined that this enforcement action serves the public interest (a copy of the Determination of Public Interest is attached as Exhibit "A").

12. Since at least March 1997, Defendants have engaged in "trade or commerce" by advertising, soliciting, offering or distributing a good or service in Florida, within the definition

of Section 501.203(8), Florida Statutes (1997).

13. Defendants Charles M. Huechtker, Jason C. Huechtker and Senior Estate Services operate in Florida through agents known as "trust representatives" and "delivery persons" working out of offices located in Boca Raton and Tampa. These agents market living trusts and related estate planning documents that are provided by Defendant Remington Estate Services. A substantial portion of the Florida business of all Defendants is directed from the main offices of Senior Estate Services and Remington Estate Services which are located in the State of Texas.

14. Senior Estate Services obtains from marketing companies the names and addresses of elderly residents of the State of Florida. Each of the persons that Senior Estate Services desires to contact is a "senior citizen," as that term is defined in the Deceptive and Unfair Trade Practices Act, Section 501.2077(1), Florida Statutes (1997). From its offices in Texas, Senior Estate Services mails to elderly residents of Florida a card stating that an American Association of Retired Persons (AARP) report found the probate process to be outdated and costly. The mailing offers to send to the elderly person a new consumer guide "What Lawyers Don't Want You To Know" containing information on how to avoid probate through a living trust. Interested persons are requested to return the postage paid card and to list their ages and phone numbers.

15. The reference to an AARP report is designed to create the impression that AARP somehow is connected to Defendants' business and promotion, despite the fact that AARP does not sell living trusts, work with any company that sells living trusts, or endorse any such company or product. Defendants' use of AARP's name constitutes a deceptive practice inasmuch as AARP has received complaints from members living in Florida who received

Defendants' promotional card and thought they were working with AARP.

16. The mailing creates the impression that additional information will be sent to the elderly person by mail, but the design is to obtain the telephone number of the elderly person in order to attempt to get a representative of Defendants into the home of the elderly person. Senior Estate Services places telephone calls from the Texas office to the homes of the elderly persons in Florida who request additional information about living trusts. The elderly Florida resident is told that a company trust representative will be in her neighborhood the following day, and the company attempts to convince the elderly resident to allow the trust representative to visit the home at a pre-set time. The elderly person is told that the visit will occupy no more than one hour of her time. The regular business practice of the Defendants is to attempt to arrange the home visit for the day following the phone call; this practice is implemented to minimize the chance that the elderly person will change her mind about allowing the visit or forget about the visit. Defendants' trust representatives travel substantial distances from the offices located in Tampa and Boca Raton to reach elderly residents of diverse areas of Florida.

17. In truth, the trust representative will be in the neighborhood of the elderly person on the day following the phone call only if such elderly person agrees to the home visit; and the company teaches its representatives to spend a period of time with the elderly person that exceeds one hour by a substantial amount.

18. Persons serving as trust representatives to market products on behalf of Defendants, are recruited by advertisements placed in Florida newspapers. The trust representatives are not lawyers. No minimal educational qualifications are required for the positions, nor is it necessary that any applicant have knowledge of estate planning or financial



planning. Virtually every applicant who is willing to complete the three-day training program offered by Defendants is permitted to represent the Defendants as a trust representative. Many of these trust representatives were personally trained in Florida by both Charles M. and Jason C. Huechtker. Both of these Defendants periodically travel to the Florida office and conduct sales meetings.

19. During the training program the prospective trust representatives are instructed to admit to targeted elderly persons that they are not lawyers. The prospective trust representatives also are given a copy of the Florida Supreme Court's decision in The Florida Bar Re Advisory Opinion- Nonlawyer Preparation of Living Trusts, 613 So.2d 426 (Fla. 1992). Yet, at the same time, Defendants Charles M. and Jason C. Huechtker and Senior Estate Service teach the prospective trust representatives various methods of convincing targeted elderly persons that their present estate plans may be invalid or inadequate, and said Defendants also teach methods for convincing the elderly persons to alter their current estate plans. In the course of such presentations, the trust representatives offer legal advice or opinions.

20. The trust representatives are taught by Defendants Charles M. and Jason C. Huechtker and Senior Estate Services to make a sales presentation within the home of the elderly person that lasts approximately two hours. Approximately the first 45 minutes are devoted to "warming up" the elderly person to trust, and have confidence in, the trust representative. As an example, this might be accomplished by discussing the elderly person's family, children or grandchildren; or by talking about the parents or grandparents of the trust representative.

21. At the next stage of the home meeting, the trust representative seeks to convince the elderly person to purchase a living trust and related estate planning documents which are to

be provided by Remington Estate Services. The sales presentation that is taught to the trust representatives by Defendants Charles M. and Jason C. Huechtker and Senior Estate Services centers on efforts to scare elderly persons about the alleged costs and burdens of the probate process, and to offer the living trust documents as a substantially less expensive alternative. The trust representatives are encouraged by said Defendants to bash lawyers during the home visit and to explain to the elderly person that the Defendants are providing information that "lawyers don't want you to know."

22. Trust representatives are taught to estimate the expected value of an elderly person's estate and also to estimate the portion of the estate that will be paid to lawyers, courts, and governmental bodies -- rather than to intended beneficiaries -- because of the probate process. Trust representatives tell stories, often fictitious, of drawn-out probate processes that consumed large portions of the estates of wealthy persons. In making the sales presentation to the Florida elderly resident, trust representatives overstate the value of an expected estate. For example, the value of the elderly person's home regularly is included as an asset, but mortgage debt is not deducted from that value. In many circumstances, the elderly person's residence would not be a part of an estate because of joint ownership or homestead law. Other than a three-day training conducted by non-lawyers, the trust representatives have little, if any, knowledge of the process or cost of probate. The purpose of this portion of the sales presentation is to convince the elderly person to purchase the living trust and related documents because such documents allegedly will permit a greater portion of their assets to be transferred to the intended beneficiaries upon death. On information and belief, most of Defendants' trust representatives are unaware of whether the representations that they are making to the elderly person regarding

the comparative costs of probate and trust administration are true or false.

23. Trust representatives also make other misrepresentations of law or fact as necessary to convince the elderly person to purchase the living trust. Trust representatives will ask the targeted elderly person to permit the trust representative to examine her present estate planning documents and will raise issues about the validity of such documents in an effort to scare the elderly person to quickly purchase the documents to be offered by Defendants. For example, a trust representative of Defendants examined the will of a 76 year old widow residing in Broward County and told her that the will was out-of-date because some laws have changed. The trust representative also acted to scare the elderly woman by seriously over-estimating the portion of her assets that would be subject to probate if she were to die with or without a will. In truth, her will satisfied all requirements of Florida law. An 83 year old widow residing in Palm Beach County was told that her current trust may no longer be valid because of change in Florida law; in truth, her then-current trust remained valid under the laws of the State of Florida and was appropriate for her needs.

24. The minimum cost of the living trust and related estate planning documents offered by Defendants is \$1,895.00. Because of the nature of their expected estates, a substantial portion of the targeted elderly persons could, if a living trust was appropriate to their needs, obtain such a trust at a substantially lower price from a person licensed to practice law in Florida.

25. Trust representatives attempt to complete that sale of the trust documents on the same day as the home visit. If the elderly person has questions, the trust representative might put her on the phone with a representative of Defendant Remington Estate Services in Texas for an immediate answer. Trust representatives discourage the targeted elderly person from taking time

to contemplate the purchase. For example, if the targeted elderly person states that she wants a few days to consult with a daughter or son, the trust representative might recount that the person earlier had said that she makes her own estate plans. Defendants Charles M. Huechtker, Jason C. Huechtker and Senior Estate Services teach trust representatives "closing" presentations designed to close the sale on the same day as the visit. If the targeted elderly person requests a period of days for thought, the trust representative rarely calls back because he or she believes that it is unlikely that the sale will be completed.

26. The Brovvard County widow described above told the trust representative that she never wrote checks for the amount of money charged by the Defendants. In an effort to complete the sale the same day, the trust representative drove her to her bank and told her to withdraw the \$1,895.00 in cash to purchase the documents. A bank teller questioned the apparently nervous woman about the uncustomarily large withdrawal, and the woman said "I'm getting a will made." The woman also said that she was being pressured by the Defendants' trust representative who was waiting outside the bank. The teller notified her manager and he called the police. After the police arrived, the woman decided not to complete the purchase.

27. The Defendants' trust representatives tell the targeted elderly persons that the living trust and related documents offered by Defendants will be tailored to the individual needs of the elderly person. In truth, however, the living trusts and related documents are form documents, and virtually identical documents (other than the names of the intended beneficiaries) are provided to all elderly persons who agree to purchase living trust documents from Defendants. An elderly couple residing in Lee County requested that the Defendants provide trust documents that deviated from the standard forms. The Defendants, however, provided only

the standard forms. The documents provided by the Defendants subsequently were criticized by the elderly couples' lawyer (because the trust did not meet their specific needs), by the elderly couples' banker (because accounts could not be maintained as the couple desired), and by the elderly couples' stock brokers (because their accounts could no longer function in the manner that the couple desired).

28. One Florida lawyer, David R. McCallister of Wesley Chapel Florida, participates in the Defendants' scheme to sell living trusts to Florida's elderly residents. Defendants' documents are sent to Mr. McCallister's office before the documents are provided to the elderly purchaser. Elderly persons who purchase living trusts from Defendants do not meet personally with Mr. McCallister nor do they pay him a fee. Mr. McCallister, or a representative of his office, may telephone an elderly person who has purchased a living trust for a brief conversation that primarily confirms the names of the intended beneficiaries. Mr. McCallister also executes a form letter which accompanies each living trust delivered to elderly persons in Florida. The letter states Mr. McCallister's opinion that the documents conform with current law and "meet your needs as they have been communicated to my office." Mr. McCallister also instructs the elderly purchaser to contact him in the event that "Congress or the State Legislature enact revisions to the current estate or trust tax provisions."

29: By executing the living trust and related estate planning documents sold by Defendants, Florida's elderly residents revoke prior estate plans. Florida attorneys experienced in wills, trusts, and estate administration have determined that the legal documents provided by Defendants to some elderly Florida residents do not satisfy the requirements of Florida law. Thus, even if the elderly resident did not revoke a prior will, the purchase of legally invalid

documents causes disarray in an area of grave importance to elderly persons, and their families. For example, an elderly resident of Sarasota County who had purchased a living trust and related estate planning documents from Defendants died in August, 1997. The children of the deceased presented the Defendants' documents to a Florida lawyer for review. The lawyer determined that several important steps to establish an effective trust had not been taken and that the documents may not satisfy the requirements of Florida law. Since no prior will was found, the lawyer determined that the deceased had died intestate, and a full formal probate administration was commenced.

30. If the targeted elderly person agrees to purchase the living trust and related documents, a representative of Defendants other than the trust representative schedules a visit to the elderly person's home. This person is known as a "delivery person." The stated purpose of the delivery person's visit is to execute the documents, but Defendants Charles M., Jason C. Huechtker and Senior Estate Services actually intend to accomplish much more than execution of the documents. A primary purpose of the visit is to attempt to convince the elderly person to liquidate her assets and purchase insurance annuities offered by said Defendants, who stand to make substantial monetary profit if they can convince the targeted elderly person to buy the annuities. Defendants Charles M. Huechtker and Jason C. Huechtker have acted as delivery persons to Florida consumers and have attempted to sell them insurance annuities in this fashion. This phase is such an important part of the overall scheme that at least one trust representative was instructed by Charles Huechtker to avoid selling trust documents to elderly persons with smaller estates, since such elderly persons were not good targets for the later effort to sell annuities. Trust representatives, however, are paid a set amount of money for each trust that they

sell, and thus many trust representatives sold trusts to elderly persons notwithstanding the size of the expected estate.

31. In delivering the trust documents for execution, the delivery person asks the targeted elderly person to show him a listing of all her assets so that arrangements can be made to place assets in the name of the trust. The delivery person states, usually falsely, that he is a trained financial consultant and will advise the elderly person if he discovers anything unusual in examining the financial assets. Particularly if the targeted elderly person has a substantial amount of assets, the delivery person attempts to convince the person to liquidate the assets and buy insurance annuities offered by the delivery person. Defendants Charles M., Jason C. Huechtker and Senior Estate Services have taught the delivery persons to utilize unfair, deceptive and fraudulent practices in an effort to convince the targeted elderly person to purchase the annuities.

32. One unfair, deceptive and fraudulent practice that said Defendants have taught the delivery persons to use is to express surprise that the elderly person's lawyer, banker, or financial advisor has failed to tell the elderly person that her assets are "unprotected." This is designed to evoke discussion of the perils of civil litigation that might result, for example, from a person continuing to drive a car at an advanced age and being involved in an accident. The discussion is designed to scare the elderly person into believing that all assets could be lost quickly and could not be replaced. The elderly person is told by the delivery person that assets could be "protected" by switching to annuities, but other options -- such as increased auto insurance or umbrella coverage -- are not discussed. One example that said Defendants teach the delivery persons to cite to the targeted elderly person is the example of O.J. Simpson. The elderly persons

are told that Mr. Simpson lost most of his assets in the well-known civil litigation but did not lose his National Football League pension, because the pension is an annuity.

33. Elderly persons with substantial investments in the stock market often are told that they are too old to have so much money invested in the stock market. Defendants Charles M. Huechtker, Jason C. Huechtker and Senior Estate Services teach the delivery persons to make presentations emphasizing the cyclical nature of the stock market, and to present statistics that indicate that a major downswing is imminent. These presentations are not designed to present unbiased factual advice, but rather are designed to scare the elderly person and convince her to purchase annuities. The annuities often offer a rate of return (approximately five percent) that is substantially less than the return that the elderly person currently is receiving.

34. The delivery person attempts to avoid discussion of factors that mitigate against liquidation of current assets, such as the requirement to pay capital gain taxes. If such a factor is raised, the delivery person suggests that an extra percent interest offered for the first year of the annuity will cover the capital gain tax. In truth, the delivery person has little if any knowledge of the tax liability that will be incurred by an elderly person who agrees to liquidate assets. Delivery persons also are taught by Defendants Charles M. Huechtker, Jason C. Huechtker and Senior Estate Services to advise the targeted elderly person that her lawyer, banker, stock broker or financial advisor may object to the decision to liquidate assets, and to tell the elderly person to refer the lawyer, banker, stock broker or financial advisor to the Defendants who will answer any questions.

35. As one example of the pressure which delivery persons apply to elderly persons, Defendant Jason C. Huechtker, acting as a delivery person delivering trust documents to an 83



year old widow in Palm Beach County, spent seven hours attempting to convince the widow to liquidate her substantial stock holdings and purchase annuities. He utilized the scare tactics described in paragraphs 32, 33 and 34 in an effort to convince the elderly woman that she was at risk to lose everything she had. The woman resisted for hours citing the sentimental value of the stock since it was acquired over many years with her now-deceased husband. Finally, she gave in to the pressure and agreed to sell her stock and purchase the annuities. When her financial advisor became aware of the decision, he telephoned the elderly woman and advised her that the sale would trigger a very large capital gains tax liability. The elderly woman then decided to void the transaction. The financial advisor told her that no company that had her best interests in mind would propose the transaction offered by Defendant Jason C. Huechtker.

36. Defendants have implemented a policy of providing a full refund for the cost of the trust documents to any elderly person who expresses dissatisfaction. This policy serves to minimize the possibility that dissatisfied elderly persons will complain to legal authorities.

37. Defendants have been perpetuating the above-described scheme in Florida for more than a year. At this time, the office of the Attorney General does not know how many elderly residents of Florida have been victims of the scheme. However, it is estimated that between 8 and 30 trust representatives have been working out of each of the two Florida offices at any point in time, and each trust representative visits up to three elderly persons per day. One trust representative estimates that he visited hundreds of prospective customers and sold approximately 80-90 trusts during his nine month tenure with the Defendants.

38. The scheme described above has caused actual damage to elderly residents of Florida, and the scheme has caused, and is continuing to cause, irreparable injury to many

targeted elderly persons.

39. In devising and implementing the above-described scheme Defendants have acted with an intent to take advantage of persons because of their age, and with knowledge of the unfair, deceptive and fraudulent nature of the activities. Defendants have acted with disregard for the civil rights and dignity of Florida's elderly residents.

**VIOLATIONS OF CHAPTER 501, PART II FLORIDA STATUTES**

40. Section 501.204, Florida Statutes (1997), declares unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce to be unlawful.

41. Defendants' acts and practices described above constitute unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade or commerce in violation of Section 501.204, Florida Statutes (1997).

42. The acts and practices of Defendants were and are still being employed to the injury and prejudice of members of the consuming public and have and continue to violate Section 501.204, Florida Statutes (1997). Said acts and practices also constitute unfair methods of competition within the meaning and intent of the Federal Trade Commission Act, Section 5(a), 15 U.S.C. Section 45(a).

43. Unless Defendants are enjoined from engaging further in the acts and practices herein complained, the continued activities of said Defendants will result in irreparable injury to elderly residents of Florida.

**PRAYER FOR RELIEF**

**WHEREFORE** Plaintiff, **STATE OF FLORIDA, DEPARTMENT OF LEGAL AFFAIRS, OFFICE OF THE ATTORNEY GENERAL** and Plaintiff, **AMERICAN ASSOCIATION OF RETIRED PERSONS** request the Court to order the following relief:

1. **DECLARE** that the challenged acts and practices constitute violations of Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II Florida Statutes (1977), and a violation of the Federal Trade Commission Act.

2. **ENJOIN** the Defendants, their officers, agents, employees, or any other persons who act under, by, through or on behalf of Defendants, from continuing to offer living trusts and other estate planning documents, or insurance annuities, to residents of Florida, unless and until this Court approves a plan developed by Defendants which demonstrates that the business practices of Defendants will satisfy all requirements of Florida law.

3. **ENJOIN** the Defendants, their officers, agents, employees, or any other persons who act under, by, through or on behalf of Defendants, from continuing to make any reference to AARP in their written marketing, sales, and promotional materials, and in any oral representations to customers or potential customers.

4. **GRANT** monetary damages to each resident of Florida who has suffered an actual injury on account of the Defendants' unlawful acts and practices.

5. **ASSESS** civil monetary penalties against each Defendant in an amount not to exceed \$15,000.00 for each violation of the Deceptive and Unfair Trade Practices Act.

6. **WAIVE** the posting of a bond in this action.

7. **AWARD** reasonable attorney's fees and costs to Plaintiffs herein.

8. GRANT such other relief as this Court deems just and proper.

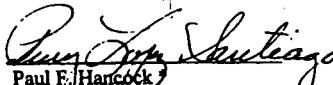
RESPECTFULLY SUBMITTED,

ROBERT A. BUTTERWORTH  
ATTORNEY GENERAL  
STATE OF FLORIDA

AMERICAN ASSOCIATION  
of RETIRED PERSONS



Deborah M. Zuckerman\*\*  
Staff Attorney  
AARP Foundation-Litigation  
601 E Street N.W.  
Washington, D.C. 20049  
202-434-2060



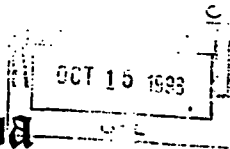
Paul F. Hancock\*  
Pury Lopez Santiago (F.B. 838070)  
Assistant Attorneys General  
110 S.E. 6th Street  
10th Floor  
Fort Lauderdale, Florida 33301  
954-712-4600

\* Paul F. Hancock was sworn in as a member of the Florida Bar on May 26, 1998. He does not yet have a Florida bar number.

\*\* Ms. Zuckerman is registered in Washington, D.C. (D.C.B. 335166) and is filing a Motion Pro Hac Vice which accompanies this Complaint.

DATED: June/0, 1998

# ATTACHMENT E



# Supreme Court of Florida

THURSDAY, OCTOBER 15, 1998

THE FLORIDA BAR,

Petitioner,

v.

CASE NO. 93,199

SENIOR ESTATE SERVICES, INC.,  
a Florida corporation; SENIOR  
ESTATE SERVICES, INC., a Texas  
corporation; CHARLES  
HUECHTKER, etc., and JASON  
HUECHTKER, etc.

Respondents.

\*\*\*\*\*

The Motion to Approve Stipulation is Granted, the Stipulation is approved and respondents are permanently enjoined from engaging in the unlicensed practice of law in the State of Florida as specified in the stipulation.

Judgment for costs in the amount of \$730.81 is entered against the respondents for which sum let execution issue.

Not final until time expires to file motion for rehearing and, if filed, determined.

A True Copy

TEST:



Sid J. White  
Clerk, Supreme Court

KBB

cc: Ms. Loretta Comiskey O'Keeffe  
Mr. James E. McDonald  
Ms. Lori S. Holcomb  
Ms. Mary Ellen Bateman  
Mr. John Anthony Boggs  
Mr. Peter Antonacci  
Mr. Benedict P. Kuehne

## IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v.

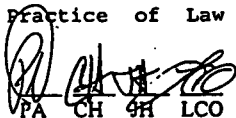
CASE NO. 93,199

REMINGTON ESTATE SERVICES OF FLORIDA, INC., a Florida corporation; REMINGTON ESTATE SERVICES, INC., a Texas corporation; SENIOR ESTATE SERVICES, INC., a Florida corporation; SENIOR ESTATE SERVICES, INC., a Texas corporation; DONALD T. SMITH, Individually and as Director of Remington Estate Services of Florida, Inc., a Florida corporation, and President of Remington Estate Services, Inc., a Texas corporation; THOMAS E. SMITH, Individually and as Vice President and General Manager of Remington Estate Services of Florida Inc., a Florida corporation, and Remington Estate Services, Inc., a Texas corporation; CHARLES HUECHTKER, Individually and as Director of Senior Estate Services, Inc., a Florida corporation, and Senior Estate Services, Inc., a Texas corporation; and JASON HUECHTKER, Individually and as Director of Senior Estate Services, Inc., a Florida corporation, and Senior Estate Services, Inc., a Texas corporation.

Respondents.

STIPULATION FOR PERMANENT INJUNCTION

WHEREAS, Petitioner, The Florida Bar, on June 10 1998, filed a Petition Against The Unlicensed Practice of Law against

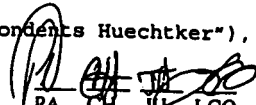


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REMINGTON ESTATE SERVICES OF FLORIDA, INC., a Florida corporation, REMINGTON ESTATE SERVICES, INC., a Texas corporation, SENIOR ESTATE SERVICES, INC., a Florida corporation, SENIOR ESTATE SERVICES, INC., a Texas corporation, DONALD T. SMITH, individually and as director of Remington Estate Services of Florida Inc., a Florida corporation, and president of Remington Estate Services, Inc., a Texas corporation, THOMAS E. SMITH, individually and as vice-president and general manager of Remington Estate Services of Florida, Inc., a Florida corporation, and Remington Estate Services, a Texas corporation, CHARLES HUECHTKER, individually and as director of Senior Estate Services, Inc., a Florida corporation, and Senior Estate Services, Inc., a Texas corporation and JASON HUECHTKER, individually and director of Senior Estate Services, Inc., a Florida corporation, and Senior Estate Services, a Texas corporation, Respondents, charging that certain activities of Respondents constituted the unlicensed practice of law; and

WHEREAS, Senior Estate Services, Inc., a Florida corporation, Senior Estate Services, a Texas corporation, Charles Huechtker and Jason Huechtker (hereinafter referred to as "Respondents Senior Estate" and "Respondents Huechtker"), by and

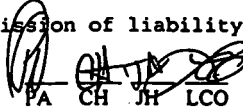
  
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through their undersigned counsel, agree to submit to the jurisdiction of the Supreme Court of Florida and are willing to settle and conclude this matter if the Supreme Court of Florida will agree to the settlement and enter the injunction set forth below, The Florida Bar and Respondents Senior Estate and Respondents Huechtker jointly stipulate and agree as follows:

1. That Respondents Senior Estate and Respondents Huechtker at all times material herein, were not and are not members of The Florida Bar, and were not licensed to engage in the practice of law in the State of Florida.

2. That Respondents Senior Estate are for-profit corporations owned and managed exclusively by nonlawyers engaged in Florida in the business of the marketing, sale, funding and execution of estate planning documents including living trusts, wills, durable powers of attorney and other related documents to residents of Florida.

3. That this Stipulation For Permanent Injunction is entered into as a compromise of disputed claims incident to the above-styled proceedings and Respondents Senior Estate and Respondents Huechtker's action in agreeing to this Stipulation For Permanent Injunction is not an admission of liability. It is

  
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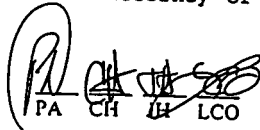
understood that Respondents Senior Estate and Respondents Huechtker deny all allegations made against Respondents Senior Estate and Respondents Huechtker with respect to the above-styled proceedings and intend to avoid further litigation regarding the above-styled proceedings.

4. All parties agree to that an injunction shall issue permanently and perpetually enjoining Respondents Senior Estate and Respondents Huechtker and employees or those acting in concert with them from engaging in the unlicensed practice of law in Florida by:

a. advising another person as to the need for a will or living trust and related documents and/or identify the type of will or living trust and related documents most appropriate for another person;

b. assembling and/or drafting a will, living trust, deed, durable power of attorney or related documents for another person;

c. executing and/or advising on the execution of a will, living trust, deed, durable power of attorney or related documents for another person;

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d. funding and/or advising on the funding of a living trust for another person;

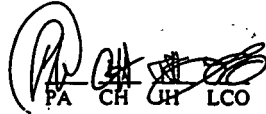
e. giving legal advice concerning the application, preparation, advisability or quality of any legal instrument or document or forms thereof in connection with the disposition of property inter vivos or upon death including, but not limited to, wills, living trusts, deeds and related documents;

f. initiating and controlling a lawyer-client relationship, setting fees and paying an attorney to do work for a third party, advertising to the general public that they can and will provide legal services, and causing a customer to place reliance on them to properly prepare and handle their cases;

g. advising individuals of their rights, duties, and responsibilities under Florida or Federal law;

h. construing and interpreting the legal effect of Florida or Federal laws and statutes for third parties;

i. allowing members of the public to rely on Respondents Senior Estate and Respondents Huechtker to properly prepare legal documents affecting an individual's legal rights;



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j. advising and/or explaining legal remedies and options to individuals that affect their procedural and substantive legal rights, duties and privileges;

k. advertising to the public either through the media, by telephone, by facsimile or other direct solicitation that Respondents Senior Estate and Respondents Huechtker, or any agents or employees thereof, are qualified and able to provide legal services, including, but not limited to the assembly, drafting, funding and execution of estate planning documents including living trusts, wills, durable powers of attorney and other related documents to residents of Florida;

l. giving advice and making decisions on behalf of others that require legal skill and knowledge of the law greater than that possessed by the average citizen; and

m. Otherwise directly or indirectly through other persons engaging in the practice of law.

5. The parties acknowledge that the issue of refunds to customers of Respondents Senior Estate is an issue pending in the case of State of Florida, Department of Legal Affairs, Office of the Attorney General, and American Association of Retired Persons

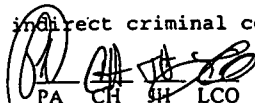
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v. Senior Estate Services, Inc., et al., Broward Circuit Court Case No. 98-09267 CACE (13). Respondents Senior Estate and Respondents Huechtker agree that they will comply with any directive or order issued by the court in said circuit court case with respect to refunds and/or restitution.

6. Respondents Senior Estate and Respondents Huechtker agree to pay costs incurred by The Florida Bar in the investigation and prosecution of this manner in the amount of \$730.81.

7. Respondents Senior Estate and Respondents Huechtker acknowledge and agree that The Florida Bar is a governmental unit, that the costs imposed against them herein are sufficiently, for the purpose of bankruptcy law, in the nature of a fine, forfeiture or penalty and, therefore, are not dischargeable.

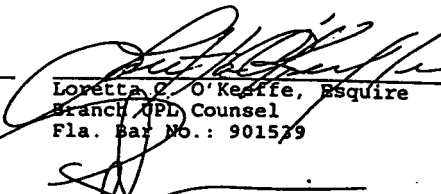
WHEREFORE Respondents Senior Estate and Respondents Huechtker hereby agree to be permanently enjoined from engaging in the unlicensed practice of law in accordance with the terms of the foregoing stipulation and, in the event that Respondents Senior Estate and Respondents Huechtker engage in any conduct enjoined herein, they may be found in indirect criminal contempt

  
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of the Supreme Court of the State of Florida for the unlicensed practice of law in this state. This stipulation shall apply to Respondents Senior Estate and Respondents Huechtker and any other business or businesses that Respondent Charles Huechtker and Respondent Jason Huechtker open or operate.

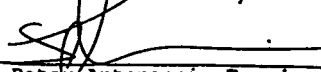
9-30-98

DATE

  
Loretta C. O'Keefe, Esquire  
Branch OPL Counsel  
Fla. Bar No.: 901579

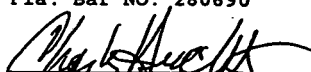
DATE

9/24/98

  
Peter Antonacci, Esquire  
Counsel for Respondents Senior  
Estate and Respondents Huechtker  
Fla. Bar No. 280690

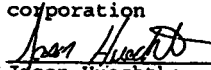
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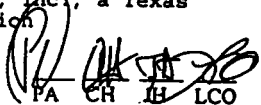
DATE

  
Charles Huechtker, Individually  
and as Director of Senior Estate  
Services Inc., a Florida  
corporation and Senior Estate  
Services, Inc., a Texas  
corporation

9/21/98

DATE

  
Jason Huechtker, Individually  
and as a former Director of Senior  
Estate Services, Inc., a Florida  
corporation and Senior Estate  
Services, Inc., a Texas  
corporation

  
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# ATTACHMENT F



# Supreme Court of Florida

THURSDAY, DECEMBER 16, 1999

THE FLORIDA BAR, \*

Petitioner, \*

vs. \*

CASE NO. 93,199 \*

REMINGTON ESTATE SERVICES \*  
 OF FLORIDA, INC., a Florida \*  
 corporation; REMINGTON ESTATE \*  
 SERVICES, INC., a Texas \*  
 corporation; SENIOR ESTATE \*  
 SERVICES, INC., a Florida \*  
 corporation; SENIOR ESTATE \*  
 SERVICES, INC., a Texas \*  
 corporation; DONALD T. SMITH, \*  
 Individually and as Director of \*  
 Remington Estate Services of Florida, \*  
 Inc., a Florida corporation, and \*  
 President of Remington Estate \*  
 Services, Inc., a Texas corporation; \*  
 THOMAS E. SMITH, individually \*  
 and as Vice President and General \*  
 Manager of Remington Estate \*  
 Services of Florida Inc., a Florida \*  
 corporation, and Remington Estate \*  
 Services, Inc., a Texas corporation; \*  
 CHARLES HUECHTKER, \*  
 individually and as Director of Senior \*  
 Estate Services, Inc., a Florida \*  
 corporation, and Senior Estate \*  
 Services, Inc., a Texas corporation; \*  
 and JASON HUECHTKER, \*  
 Individually and as Director of Senior \*

Estate Services, Inc., a Florida corporation, and a Texas corporation, \*

Respondents. \*

\*\*\*\*\* \*

The uncontested report of the referee is approved and Respondents Remington Estate Services of Florida, Inc., Remington Estate Services, Inc., Donald T. Smith, Thomas E. Smith, and any employees or persons acting in concert with Respondents are permanently and perpetually enjoined from engaging in the unlicensed practice of law in the State of Florida as set forth in the Stipulation for Permanent Injunction.

Not final until time expires to file motion for rehearing and, if filed, determined.

A True Copy

TEST:

*Debbie Causseaux*

Debbie Causseaux  
Acting Clerk, Supreme Court

KBB

cc: Sheriff Fred Taylor;  
(for service)

- Hon. Deborah White-Labora, Referee
- Ms. Mary Ellen Bateman
- Ms. Loretta C. O'Keeffe
- Mr. Billy Jack Hendrix
- Mr. Peter Antonacci
- Mr. Benedict P. Kuehne

## IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v.

CASE NO. 93,199

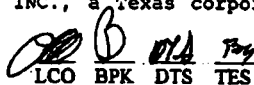
REMINGTON ESTATE SERVICES OF FLORIDA, INC., a Florida corporation; REMINGTON ESTATE SERVICES, INC., a Texas corporation; SENIOR ESTATE SERVICES, INC., a Florida corporation; SENIOR ESTATE SERVICES, INC., a Texas corporation; DONALD T. SMITH, Individually and as Director of Remington Estate Services of Florida, Inc., a Florida corporation, and President of Remington Estate Services, Inc., a Texas corporation; THOMAS E. SMITH, Individually and as Vice President and General Manager of Remington Estate Services of Florida Inc., a Florida corporation, and Remington Estate Services, Inc., a Texas corporation; CHARLES HUECHTKER, Individually and as Director of Senior Estate Services, Inc., a Florida corporation, and Senior Estate Services, Inc., a Texas corporation; and JASON HUECHTKER, Individually and as Director of Senior Estate Services, Inc., a Florida corporation, and Senior Estate Services, Inc., a Texas corporation.

Respondents.

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STIPULATION FOR PERMANENT INJUNCTION

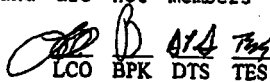
WHEREAS, Petitioner, The Florida Bar, on June 10 1998, filed a Petition Against The Unlicensed Practice of Law against REMINGTON ESTATE SERVICES OF FLORIDA, INC., a Florida corporation, REMINGTON ESTATE SERVICES, INC., a Texas corporation, SENIOR ESTATE SERVICES, INC., a Florida corporation, SENIOR ESTATE SERVICES, INC., a Texas corporation,

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DONALD T. SMITH, individually and as director of Remington Estate Services of Florida Inc., a Florida corporation, and president of Remington Estate Services, Inc., a Texas corporation, THOMAS E. SMITH, individually and as vice president and general manager of Remington Estate Services of Florida, Inc., a Florida corporation, and Remington Estate Services, a Texas corporation, CHARLES HUECHTKER, individually and as director of Senior Estate Services, Inc., a Florida corporation, and Senior Estate Services, Inc., a Texas corporation and JASON HUECHTKER, individually and director of Senior Estate Services, Inc., a Florida corporation, and Senior Estate Services, a Texas corporation, Respondents, charging that certain activities of Respondents constituted the unlicensed practice of law; and

WHEREAS, Remington Estate Services of Florida, Inc., a Florida corporation, Remington Estate Services, Inc., a Texas corporation, Donald T. Smith and Thomas E. Smith (hereinafter referred to as "Respondents Remington" and "Respondents Smith"), by and through their undersigned counsel, agree to submit to the jurisdiction of the Supreme Court of Florida and are willing to settle and conclude this matter if the Supreme Court of Florida will agree to the settlement and enter the injunction set forth below, The Florida Bar and Respondents Remington and Respondents Smith jointly stipulate and agree as follows:

1. That Respondents Remington and Respondents Smith at all times material herein, were not and are not members of the

  
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Florida Bar, and were not licensed to engage in the practice of law in the State of Florida.

2. That Respondents Remington are for-profit corporations owned and managed exclusively by individuals who are not licensed to practice law in Florida. Respondents Remington allege that they utilized the services of a Florida attorney. Respondents Remington and Respondents Smith were previously engaged in Florida in the business of the sale, assembly, drafting, execution and funding of estate planning documents including living trusts, wills, durable powers of attorney and other related documents to residents of Florida. Respondents Remington and Respondents Smith no longer conduct business in Florida.

3. Respondent Donald T. Smith is a lawyer licensed to practice law in the State of Texas. Respondent Donald T. Smith entered into an Agreed Permanent Injunction and Final Judgment in the matter of the Unauthorized Practice of Law Committee for the Supreme Court of Texas, District Court Case No. 98-37698 (Harris County, Texas).

4. Respondent Donald T. Smith is the only officer and director of Respondents Remington. Respondent Thomas E. Smith is the general manager of Respondents Remington. Respondent Thomas E. Smith is not now the Vice President of Respondents Remington.

5. That this Stipulation For Permanent Injunction is entered into as a compromise of disputed claims incident to the above-styled proceedings. Respondents Remington and Respondents

  
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Smith enter into this Stipulation For Permanent Injunction without admitting any liability. It is understood that Respondents Remington and Respondents Smith deny all allegations made against Respondents Remington and Respondents Smith with respect to the above-styled proceedings and enter into this stipulation to avoid further litigation regarding the above-styled proceedings.

6. All parties agree that an injunction shall issue permanently and perpetually enjoining Respondents Remington and Respondents Smith and their employees, agents and those acting in concert with them from engaging in the unlicensed practice of law in Florida by:

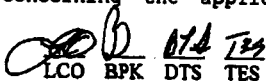
a. advising another person as to the need for a will or living trust and related documents and/or identifying the type of will or living trust and related documents most appropriate for another person;

b. assembling and/or drafting a will, living trust, deed, durable power of attorney or related documents for another person;

c. executing and/or advising on the execution of a will, living trust, deed, durable power of attorney or related documents for another person;

d. funding and/or advising on the funding of a living trust for another person;

e. giving legal advice concerning the application,

  
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preparation, advisability or quality of any legal instrument or document or forms thereof in connection with the disposition of property inter vivos or upon death including, but not limited to, wills, living trusts, deeds and related documents;

f. initiating and controlling a lawyer-client relationship, setting fees and paying an attorney to do work for a third party, advertising to the general public that they can and will provide legal services, and causing a customer to place reliance on them to properly prepare and handle their cases;


g. advising individuals of their rights, duties, and responsibilities under Florida or Federal law;

h. construing and interpreting the legal effect of Florida or Federal laws and statutes for third parties;

i. allowing members of the public to rely on Respondents Remington and Respondents Smith to properly prepare legal documents affecting an individual's legal rights;

j. advising and/or explaining legal remedies and options to individuals that affect their procedural and substantive legal rights, duties and privileges;

k. advertising to the public either through the media, by telephone, by facsimile or other direct solicitation that Respondents Remington and Respondents Smith, or any agents or employees thereof, are qualified and able to provide legal services in Florida or relating to Florida law, including, but not limited to the assembly, drafting, funding and execution of

  
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estate planning documents including living trusts, wills, durable powers of attorney and other related documents to residents of Florida;

l. giving advice and making decisions on behalf of others that require legal skill and knowledge of the law greater than that possessed by the average citizen; and

m. otherwise directly or indirectly through other persons engaging in the practice of law in Florida or relating to Florida law unless and until Respondents are licensed to practice law in Florida.

7. The parties acknowledge that the issue of refunds to customers of Respondents Remington is an issue pending in the case of State of Florida, Department of Legal Affairs, Office of the Attorney General, and American Association of Retired Persons v. Senior Estate Services, Inc., et al., Broward Circuit Court Case No. 98-09267 CACE (13). Respondents Remington and Respondents Smith agree that they will comply with any directive or order issued by the court in said circuit court case with respect to refunds and/or restitution.

8. The parties further agree that nothing herein shall prevent Respondent Donald T. Smith from providing legal advice or legal services as authorized by his license to practice law in the State of Texas.

WHEREFORE Respondents Remington and Respondents Smith hereby agree to be permanently enjoined from engaging in the unlicensed

  
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practice of law in accordance with the terms of the foregoing stipulation and, in the event that Respondents Remington and Respondents Smith engage in any conduct enjoined herein, they may be found in indirect criminal contempt of the Supreme Court of the State of Florida for the unlicensed practice of law in this state. This stipulation shall apply to Respondents Remington and Respondents Smith and any other business or businesses that Respondent Donald T. Smith and Respondent Thomas E. Smith open or operate in Florida.

September 7, 1999  
DATE

*Loretta G. O'Keefe*  
Loretta G. O'Keefe, Esquire  
The Florida Bar  
Branch UPL Counsel  
Fla. Bar No. 901539

September 1, 1999  
DATE

*Benedict P. Kuehne*  
Benedict P. Kuehne, Esquire  
Counsel for Respondents Remington  
and Respondents Smith  
Fla. Bar No. 233293

8-31-99  
DATE

*Donald T. Smith*  
Donald T. Smith, Individually  
and as Director of Remington Estate  
Services of Florida, Inc., a Florida  
corporation, and President of  
Remington Estate Services, Inc., a  
Texas corporation

8-31-99  
DATE

*Thomas E. Smith*  
Thomas E. Smith, Individually  
and as General Manager of Remington  
Estate Services of Florida, Inc., a  
Florida corporation, and Remington  
Estate Services, Inc., a Texas  
corporation

*B DTS TES*  
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# ATTACHMENT G

NO. 98-37698

UNAUTHORIZED PRACTICE OF	§	IN THE DISTRICT COURT OF
LAW COMMITTEE FOR THE	§	
SUPREME COURT OF TEXAS	§	
	§	HARRIS COUNTY, TEXAS
V.	§	
	§	
DONALD T. SMITH, ET AL.	§	129 <sup>TH</sup> JUDICIAL DISTRICT

**AGREED PERMANENT INJUNCTION AND FINAL JUDGMENT**

On this date, the Unauthorized Practice of Law Committee for the Supreme Court of Texas and Defendants Charles Huechtler, Senior Estate Services, Inc., Remington Estate Services, Inc., Thomas E. Smith, and Donald T. Smith announced to the Court that they had reached an agreement as to the terms of an Agreed Permanent Injunction to be entered in favor of the Unauthorized Practice of Law Committee for the Supreme Court of Texas, and against the Defendants. After reviewing the proposed order, the Court is of the opinion that this Agreed Permanent Injunction should be entered.

For the purposes of this judgment, the phrase "person, for-profit corporation or entity" means an individual not licensed to practice law by the Supreme Court of Texas or a corporation or entity that is not a professional corporation or a limited liability company owned solely by one or more individuals who is/are licensed to practice law by the Supreme Court of Texas.

It is therefore ORDERED that the Defendants Charles Huechtler and Senior Estate Services, Inc., Remington Estate Services, Inc. and Thomas E. Smith, their agents or employees and anyone acting in concert with them, or any of them herein should be and they are hereby commanded forthwith to desist and refrain from offering any legal services or representation to any "new

clients,"; from giving any legal advice in the home, office or any other location of a citizen of the State of Texas; from preparing or assisting to prepare any legal documents for other persons, unless the preparation or assistance is under the direct supervision of a qualified, licensed attorney; from calling any citizen of the state of Texas for the purposes of setting up an appointment for the presentation of trust and/or will and/or power of attorney packages; from interpreting any legal documents for any other person or entity; from giving legal advice as to legal rights and legal procedures of estate planning; and from giving legal advice, promoting, selling, accepting checks or money for the purpose of preparing any will, trust, power of attorney or similar legal instrument which does or purports to effect retirement, probate, legal rights or estate matters of any citizen of the state of Texas. For purposes of this Order, "new clients" means any person or business solicited or contracted with after the date of the signing of this order.

It is further ORDERED that Defendant Donald T. Smith is enjoined from providing legal services to or receiving consideration from any "new client" of any person, for-profit corporation, or entity which prepares will and trust packages for a fee to be sold to members of the public, when such packages include wills, trusts, powers of attorney, and/or documents which are or represent to be a revocable living trust agreement, a pour-over will, a living will, a durable general power of attorney or a durable power of attorney for health care, when such documents are prepared and/or sold as a result of an in-home presentation or from a seminar or public gathering conducted by a person, for-profit corporation or entity.

It is further ORDERED that Defendant Donald T. Smith is enjoined from permitting his name and status as a licensed attorney to be used by any other person, for-profit corporation or entity

in such a way that such other persons, for-profit corporations or entities establish an attorney client relationship for Donald T. Smith or establish the amount of the legal fees that will be charged by Donald T. Smith for all or part of legal services provided by such other person, for-profit corporation or entity.

All of the parties waive the right to any appeal of this agreed order.

This Agreed Permanent Injunction and Final Judgment shall not constitute an admission of liability or guilt by any party hereto.

All relief requested in this lawsuit and not expressly granted herein is denied with prejudice.

All costs of court are taxed against the party incurring same.

SIGNED this \_\_\_\_\_ day of February, 1999.

---

JUDGE PRESIDING

APPROVED AS TO FORM AND SUBSTANCE:

LEHMANN & ASSOCIATES

By: \_\_\_\_\_

Jeffrey A. Lehmann

State Bar No. 12173500

2916 West T. C. Jester Blvd., Suite 107

Houston, Texas 77018

(713) 957-2800 / (713) 957-4178 (FAX)

Attorneys for the Plaintiff,

Unauthorized Practice of Law Committee

For The Supreme Court of Texas

APPROVED AS TO FORM ONLY:

HAINES AND BOONE, L.L.P.

By: J. Dale Weirwright  
J. Dale Weirwright  
State Bar No. 20667100

1000 Louisiana St, Suite 4300  
Houston, Texas 77002-5212  
(713) 547-2000  
(713) 547-2600 (FAX)

Attorneys for the Defendants  
Charles Huechler and  
Senior Estate Services, Inc

APPROVED AS TO FORM ONLY:

BINION & LINDLEY, P.C.

By: J. Robin Lindley  
J. Robin Lindley  
State Bar No. 12366100

2727 Allen Parkway, Suite 850  
Houston, Texas 77019-2113  
(713) :26-9555  
(713) :26-9583 (FAX)

Attorney For Defendants,  
Thomas E. Smith, Donald T. Smith, And  
Remington Estate Services, Inc.

# ATTACHMENT H

IN THE CIRCUIT COURT OF  
THE 17TH JUDICIAL CIRCUIT  
IN AND FOR BROWARD  
COUNTY, FLORIDA

**STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,  
OFFICE OF THE ATTORNEY GENERAL,**

CASE NO. 98-09267 CACE (13)

Plaintiff,

**AMERICAN ASSOCIATION OF RETIRED PERSONS,**

Plaintiff,

v.

**SENIOR ESTATE SERVICES,  
INC.,** a Florida corporation;  
**CHARLES M. HUECHTKER,**  
individually and in his capacity as Chief  
Executive Officer and Director of Senior  
Estate Services, Inc.; **JASON C.  
HUECHTKER,** individually and in his  
capacity as vice-president of the Trust Division  
and as Director of Senior Estate Services, Inc.;  
and **REMINGTON ESTATE SERVICES  
OF FLORIDA, INC,** a Florida corporation,

**AGREED PERMANENT INIUNCTION  
AND FINAL JUDGMENT AS IT  
RELATES TO DEFENDANT  
REMINGTON ESTATE SERVICES OF  
FLORIDA, INC.**

Defendants.

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THIS CAUSE came on for entry of an Agreed Permanent Injunction and Final Judgment As It Relates to Defendant Remington Estate Services of Florida, Inc., upon the Stipulated Settlement Agreement executed between the Parties, the Office of the Attorney General, Department of Legal Affairs, State of Florida, and American Association of Retired Persons, hereinafter referred to as "Plaintiffs", and Remington Estate Services of Florida, Inc., hereinafter referred to as "Defendant," said Stipulated Settlement Agreement being attached hereto and made a part hereof, and the Court



having considered the Stipulated Settlement Agreement and being otherwise fully advised in the premises, this Court finds that:

1. This Court has jurisdiction over the Parties to this action and the subject matter herein.

2. The Defendant Remington Estate Services of Florida, Inc. waives any and all defenses and consents to the entry of this Agreed Permanent Injunction and Final Judgment as it Relates to Defendant Remington Estate Services of Florida, Inc. approving the settlement agreement, which is attached hereto and made a part hereof.

**IT IS THEREFORE ORDERED AND ADJUDGED** that the Stipulated Settlement Agreement executed by the Parties and attached hereto and made a part hereof is approved and confirmed in all respects, a permanent injunction is entered against the Defendant Remington Estate Services of Florida, Inc. as set forth in the Stipulated Settlement Agreement, and the Parties who executed the Stipulated Settlement Agreement are ordered to comply with the terms and conditions thereof. The Court shall retain jurisdiction to ensure compliance by all Parties.

**IT IS FURTHER ORDERED AND ADJUDGED** that a Final Judgment is hereby entered against Defendant Remington Estate Services of Florida, Inc. in favor of the Plaintiffs in the amount of \$3,450,360.00, based on the following computation: (i) the amount of \$1,675,180.00 to represent the actual damages caused to consumers, pursuant to section 501.207(1)(c), Florida Statutes (based on: [a] the average document purchase cost \$1,895.00 per purchase; [b] 1248 consumers in Florida purchased a revocable living trust and related documents from the Defendants; [c] 364 consumers in Florida either canceled prior to the filing of the instant matter and received refunds of monies

Case No. 98-09267 CACE (13)

forwarded to Defendants, or, canceled after the filing of the instant matter and received refunds of monies forwarded to Defendants); (ii) the amount of \$1,675,180.00 to represent the amount of civil penalties to be imposed pursuant to section 501.2077 (2), Florida Statutes; and (iii) the amount of \$100,000.00 to represent costs and attorney's fees, pursuant to section 501.2105, Florida Statutes, for which sum let execution issue.

**IT IS FURTHER ORDERED AND ADJUDGED** that this Agreed Permanent Injunction and Final Judgment as it Relates to Defendant Remington Estate Services of Florida, Inc. is final and non-appealable.

**IT IS FURTHER ORDERED AND ADJUDGED** that this Court shall retain jurisdiction over the Parties and this matter to: (i) enforce compliance with the terms and conditions of the Stipulated Settlement Agreement and this Agreed Permanent Injunction and Final Judgment; and (ii) hear contempt proceedings, be they civil or criminal, if necessary, whether they be related to the Parties or others.

**DONE AND ORDERED** in Chambers in Broward County, Florida, this 6<sup>th</sup> day of July, 2000.

**LEROY H. MOE**

JUDGE LEROY H. MOE JUL 06 2000  
CIRCUIT COURT JUDGE TRUE COPY

copies furnished to:  
Daniel J. Stermer, Assistant Attorney General  
Deborah Zuckerman, Esq.  
Benedict Kuehne, Esq.  
Pete Antonacci, Esq.

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IN THE CIRCUIT COURT OF  
THE 17TH JUDICIAL CIRCUIT  
IN AND FOR BROWARD  
COUNTY, FLORIDA

STATE OF FLORIDA,  
DEPARTMENT OF LEGAL AFFAIRS,  
OFFICE OF THE ATTORNEY GENERAL,

CASE NO. 98-09267 CACE (13)

Plaintiff,

AMERICAN ASSOCIATION OF RETIRED PERSONS,

Plaintiff,

v.

STIPULATED SETTLEMENT  
AGREEMENT BETWEEN  
PLAINTIFFS AND DEFENDANT  
REMINGTON ESTATE SERVICES  
OF FLORIDA, INC.

SENIOR ESTATE SERVICES,  
INC., a Florida corporation;  
CHARLES M. HUECHTKER,  
individually and in his capacity as Chief  
Executive Officer and Director of Senior  
Estate Services, Inc.; JASON C.  
HUECHTKER, individually and in his  
capacity as vice-president of the Trust Division  
and as Director of Senior Estate Services, Inc.;  
and REMINGTON ESTATE SERVICES  
OF FLORIDA, INC, a Florida corporation,

Defendants.

\_\_\_\_\_ /  
THIS STIPULATED SETTLEMENT AGREEMENT, hereinafter referred to as the  
"Agreement", is entered into on this \_\_\_\_ day of January, 2000, between the Plaintiffs, State of  
Florida, Department of Legal Affairs, Office of the Attorney General, and American Association of  
Retired Persons, (the "Plaintiffs"), and Defendant Remington Estate Services of Florida, Inc., a  
Florida corporation, hereinafter referred to as the "Defendant", and/or by a specifically named  
Defendant where appropriate.

Case No. 98-09167 CACE (13)

WHEREAS, the Plaintiffs commenced an investigation and caused a legal action to be filed on June 10, 1998, styled Office of the Attorney General. et al. v. Senior Estate Services, Inc., et al., Case No. 98-09267, which was assigned to the Honorable Leroy H. Moe<sup>1</sup>; and

WHEREAS, the Complaint filed by the Plaintiffs alleges violations of Chapter 501, Part II, Florida Statutes (1997), Florida's Deceptive and Unfair Trade Practices Act, premised upon the nature, conduct, practices, and procedures of the business(es) of the Defendants; and

WHEREAS, Defendant Remington Estate Services of Florida, Inc., has had the benefit of the advice of counsel of its own choosing and the Defendant represents and warrants that it fully understands the terms of this Agreement; and

WHEREAS, Defendant Remington Estate Services of Florida, Inc., denies any and all of the allegations contained in the Complaint in this matter, denies any wrongdoing or improper conduct and/or liability with respect to the nature of and the alleged business practices of Remington Estate Services of Florida, Inc., and expressly believes that its conduct was lawful; and

WHEREAS, the Plaintiffs and Defendant Remington Estate Services of Florida, Inc., have agreed to all of the terms of this Agreement through extensive, arms-length negotiations; and

WHEREAS, the Plaintiffs and the Defendant Remington Estate Services of Florida, Inc., wish to resolve and settle the disputes and claims between them as framed in this litigation to date and in their mutual respective interests.

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<sup>1</sup>No other person or entity, including any officer, owner, stockholder, director, or employee of Defendant Remington Estate Services of Florida, Inc., make averments as to the Complaint because they have not been named in this matter and are not Parties to this matter or this Agreement.

Case No. 98-09167 CACE (13)

NOW THEREFORE, in consideration of the mutual promises, agreements, covenants and releases contained herein, and for other good, adequate, and valuable consideration, the receipt of which is hereby acknowledged and admitted by the Parties, the Office of the Attorney General, American Association of Retired Persons, and Remington Estate Services of Florida, Inc., stipulate and agree as follows:

1. That Defendant Remington Estate Services of Florida, Inc., at all material times herein, was not and is not a member of the Florida Bar, and was not/is not licensed to engage in the practice of law in the State of Florida.

2. That Defendant Remington Estate Services of Florida, Inc., is a for-profit corporation owned and managed exclusively by non-lawyers and/or lawyers who are not admitted to practice in the State of Florida who engaged in the business of the marketing, sale, funding, and execution of estate planning documents including living trusts, wills, durable powers of attorneys, and other related documents to residents of Florida. Defendant Remington Estate Services of Florida, Inc., has ceased doing business.

3. Defendant Remington Estate Services of Florida, Inc., agrees<sup>2</sup> to the entry of a Final Judgment in favor of the Plaintiffs in the amount of \$3,450,360.00<sup>3</sup>, based on the following

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<sup>2</sup>The Parties understand and agree that the amounts set forth in paragraph 3 herein are the responsibility of Defendant Remington Estate Services of Florida, Inc. However, should judgments be entered against Senior Estate Services, Inc., Charles M. Huechtiker, and/or Jason C. Huechtiker, then the amount set forth in paragraph 3 herein shall be the joint and several responsibility of any and all Defendants against whom judgments have been entered. However, should judgments in amounts above those set forth in paragraph 3 herein be entered against Senior Estate Services, Inc., Charles M. Huechtiker, and/or Jason C. Huechtiker, then Defendant Remington Estate Services of Florida, Inc., shall be jointly and severally responsible only for those amounts as set forth in paragraph 3 herein.

<sup>3</sup>Defendant Remington Estate Service of Florida, Inc., has filed an affidavit with Plaintiffs which sets forth Defendant Remington Estate Services of Florida, Inc.'s current financial status.

computation: (i) the amount of \$1,675,180.00 to represent the actual damages caused to consumers, pursuant to section 501.207(1)(c), Florida Statutes (based on: [a] the average document purchase cost \$1,895.00 per purchase; [b] 1248 consumers in Florida purchased a revocable living trust and related documents from the Defendants; [c] 364 consumers in Florida either canceled prior to the filing of the instant matter and received refunds of monies forwarded to Defendants, or, canceled after the filing of the instant matter and received refunds of monies forwarded to Defendants); (ii) the amount of \$1,675,180.00 to represent the amount of civil penalties to be imposed pursuant to section 501.2077 (2), Florida Statutes; and (iii) the amount of \$100,000.00 to represent costs and attorney's fees, pursuant to section 501.2105, Florida Statutes. See Exhibit 1; list containing the name and address of Florida consumers who have not received refunds from Defendants.

4. Defendant Remington Estate Services of Florida, Inc., from the effective date of this Agreement and forever thereafter, in such names or through any alias or other fictitious name, individually and/or acting through any corporation, partnership or other business entity, in which Defendant Remington Estate Services of Florida, Inc., has or might acquire an ownership or other proprietary interest or in which Defendant Remington Estate Services of Florida, Inc., acts as an officer, director, board member, consultant, agent, manager, advisor, stockholder or in any other manner, whether incorporated in the State of Florida or incorporated outside the State of Florida but doing business in the State of Florida, whether directly or indirectly, including but not limited to the Defendant corporation named herein, together with the agents, employees, successors, assigns, affiliated business entities, and all other persons acting in concert or participation with Defendant Remington Estate Services of Florida, Inc., shall be enjoined from:

- a. engaging in Florida in any and all of the business practices identified in the Complaint filed in the present cause;
- b. violating the provisions of Chapter 501, Part II, Florida Statutes, Florida's Deceptive and Unfair Trade Practices Act;
- c. advising another person in Florida as to the need for a will, living trust and related documents, or annuity and/or identify the type of will, living trust and related documents, or annuity most appropriate for another person;
- d. assembling and/or drafting in Florida or for Florida residents a will, living trust, deed, durable power of attorney or related documents, or application for an annuity for another person;
- e. executing and/or advising in Florida on the execution of a will, living trust, deed, durable power of attorney or related documents, or application for an annuity for another person;
- f. funding and/or advising in Florida on the funding of a living trust or an annuity for another person;
- g. giving legal advice in Florida, concerning the application, preparation, advisability or quality of any legal instrument or document or forms thereof in connection with the disposition of property inter vivos or upon the death including, but not limited to, wills, living trusts, deeds and related documents, or annuities;

Case No. 98-09167 CACE (13)

- h. initiating and controlling a lawyer-client relationship, setting fees and paying an attorney to do work for a third party, advertising to the general public that they can and will provide services, whether legal or otherwise, related to wills, living trusts, deeds and related documents, or annuities and causing a customer to place reliance on them to properly prepare and handle their cases;
- i. advising individuals in Florida of their rights, duties, and responsibilities under Florida, federal, and/or another jurisdiction's law;
- j. construing and interpreting in Florida the legal effect of Florida, federal, and/or another jurisdiction's laws and statutes for a third party;
- k. allowing members of the public in Florida to rely on Defendant Remington Estate Services of Florida, Inc. to properly prepare legal documents affecting an individual's legal rights in Florida;
- l. advising and/or explaining in Florida legal remedies and options to individuals that affect their Florida procedural and substantive legal rights, duties and privileges;
- m. advertising to the public in Florida either through the media, by telephone, by facsimile or other direct solicitation that Defendant Remington Estate Services of Florida, Inc., or any agents or employees thereof, are qualified and able to provide legal services, including but not limited to the assembly, drafting, funding and execution of estate planning documents including living



- trusts, wills, durable powers of attorney and other related documents, or annuities to residents of the State of Florida;
- n. giving advice and making decisions on behalf of others in Florida that require legal skill and knowledge of the law greater than that possessed by the average citizen;
  - o. representing or making reference in Florida, either directly or by implication, that a product or service that is marketed and/or sold by Defendant is endorsed, preferred, or promoted by AARP; and,
  - p. representing or making reference in Florida, either directly or by implication, that a product or service that is marketed and/or sold by Defendant is endorsed, preferred, or promoted by any organization, whether for or not-for-profit, corporation, company, organization, and/or entity, unless that product or service is specifically authorized to be marketed or sold by that organization, corporation, company, organization, and/or entity; and,
  - q. otherwise directly or indirectly through other persons engaging in the practice of law in Florida or relating to Florida law unless and until said Defendant(s) are licensed to practice law in Florida;
5. It is expressly Stipulated and Agreed between the Parties that this Agreement is not, and shall not be interpreted or construed:

- a. as an admission by the Defendant of wrongdoing and/or liability with regard to any of the allegations contained in the Complaint filed by the Plaintiffs in this matter; and/or,
- b. as an acknowledgment by the Defendant of the validity of the allegations contained in the Complaint filed by the Plaintiffs in this matter.

6. The Parties Stipulate and Agree that Defendant Remington Estate Services of Florida, Inc., agrees to fully, voluntarily, and truthfully cooperate with any and all subpoenas that may be issued by the Office of the Attorney General.

7. The Parties Stipulate and Agree that nothing herein shall prevent Donald T. Smith, a lawyer licensed to practice law in the State of Texas, from providing legal advice or legal services as authorized by his license to practice law in the State of Texas or any other admitted state.

8. The Parties Stipulate and Agree that the Court shall retain jurisdiction over the Parties to: (i) enforce compliance with the terms and conditions of this Agreement and the Order that flows therefrom; and (ii) hear contempt proceedings, be they civil or criminal, if necessary.

9. The Parties Stipulate and Agree that the Order related to the Agreement that is entered by the Court in this matter shall be final and non-appealable.

10. The Parties Agree and Acknowledge the existence of a Stipulation For Permanent Injunction between The Florida Bar and Remington Estate Services of Florida, Inc., Remington Estate Services, Inc., a Texas corporation, Donald T. Smith, and Thomas E. Smith, in Florida

Supreme Court Case No.: 93,199. The facts underlying that Stipulation incorporate and encompass the very same conduct alleged in the present matter<sup>4</sup>.

11. This Agreement shall be binding upon and inure to the benefit of the Parties, and their respective successors and assigns.

12. The recitals contained in this Agreement are expressly incorporated herein and made a part hereof.

13. This Agreement constitutes the entire Agreement as it relates to the issues contained herein between the Plaintiffs and Defendant Remington Estate Services of Florida, Inc., with regard to the subject matter contained herein; and, all prior negotiations and understandings between the Parties with regard to the issues contained herein shall be deemed merged into this Agreement.

14. No representations, warranties, or inducements have been made to the Parties concerning this Agreement, other than those representations, warranties, and covenants contained in this Agreement.

15. No waiver, modification, or amendment to the terms of this Agreement shall be valid or binding unless made in writing, signed by the Party to be charged and then only to the extent set forth in such written waiver, modification, or amendment.

16. Any failure by any Party to this Agreement to insist on strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the

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<sup>4</sup>The Parties also acknowledge an Agreed Permanent Injunction and Final Judgment between the Unauthorized Practice of Law Committee for the Supreme Court of Texas and Remington Estate Services, Inc., a Texas corporation, Donald T. Smith, and Thomas E. Smith, in District Court of Harris County, Texas, Case No.: 98-37698. The facts underlying that Stipulation incorporate and encompass the very same conduct alleged in the present matter

provisions of this Agreement; and such Party, notwithstanding such failure, shall have the right thereafter to insist on specific performance of any and all of the provisions of this Agreement.

17. If any clause, provision or section of this Agreement shall for any reason be held illegal, invalid, or unenforceable, the Parties agree that: (i) such illegality, invalidity, or enforceability shall not affect any other clause, provision, or section of this Agreement; and (ii) this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section or other provision had not been contained herein.

18. This Stipulated Agreement was executed after arm's length negotiations between counsel for the Plaintiffs and the Defendant Remington Estate Services of Florida, Inc., and reflects the independent conclusion of each of the Parties that this Agreement is in their best interests.


19. Each of the Parties participated jointly in the drafting of this Stipulated Settlement Agreement. Accordingly, the terms of this Stipulated Settlement Agreement are not intended to be construed against any of the Parties by virtue of draftsmanship.

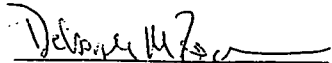
20. This Stipulated Settlement Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Florida.


IN WITNESS WHEREOF, the Parties, and their respective counsel have caused this

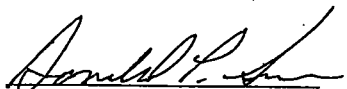
Stipulated Settlement Agreement to be executed as a true act and deed, this \_\_\_ day of January,

2000.


  
DANIEL J. STERMER  
Assistant Attorney General  
State of Florida  
Counsel for Plaintiffs

  
DEBORAH M. ZUCKERMAN  
AARP Foundation  
Counsel for AARP

  
BENEDICT P. KUEHNE, ESQ.  
Attorney for Remington Estate Services of  
Florida, Inc. (as to form only)

  
REMINGTON ESTATE SERVICES  
OF FLORIDA, INC., by Donald T. Smith,  
as President of Remington Estate  
Services of Florida, Inc., with authority  
to sign and bind Remington Estate  
Services of Florida, Inc.

Accepted this 8<sup>th</sup> day of Mar, 2000

  
RICHARD E. DORAN  
DEPUTY ATTORNEY GENERAL  
State of Florida  
The Capitol  
Tallahassee, Florida 32399-1050  
850-487-1963

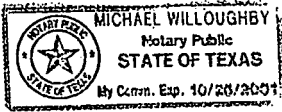
Signed, sealed and delivered in the presence of:

Jerry Mills  
Carolyn Buck Moore

BY: Donald T. Smith (Seal)

STATE OF TEXAS )  
: SS.  
COUNTY OF )

The foregoing instrument was acknowledged before me on this 23rd day of February, 2000, by Donald T. Smith, as President of Remington Estate Services of Florida, Inc., with authority to sign and bind Remington Estate Services of Florida, Inc.



Michael Willoughby :  
NOTARY PUBLIC, State of Texas at Large.  
Michael Willoughby  
(Print Name of Notary Public)

Commission No.: \_\_\_\_\_

Personally Known  OR Produced Identification   
Did Take Oath  OR Did Not Take Oath   
Type of Identification Produced: \_\_\_\_\_

The CHAIRMAN. Well, we thank all of you, all of you experts in the area of helping not only prosecute, but bring to the public's attention the scams that we are investigating today. By the way, I want to thank you very much for your agency's efforts to educate the public with that brochure that you are going to widely disseminate.

I am going to start with Mr. Hancock, and this is that AARP report that living trust scams targeted at low-income seniors are on the rise. Are the States seeing the same trend?

Mr. HANCOCK. We have seen in our cases, Senator, people being sold living trusts without regard to their financial status, yes, and many people who bought living trusts were of very modest means. In our State, for example, many people, their largest asset was their home, and that is not subject to probate anyhow because of homestead laws in Florida. So, yes, we had many situations where modest income, modest wealth people were sold living trusts.

I do not have any percentages to give you, and I was certainly surprised. That is an alarming figure about the increase in that number over time.

The CHAIRMAN. Do the majority of these companies tend to work within one State or do they run interstate operations?

Mr. HANCOCK. We have, in one case, brought a legal action against a company that was operating in some 20 States. In other situations—in the most recent case, the company that we sued, Senior Estate Services and Remington Estate Services, was a Texas corporation that was operating in Texas, in Florida and had just opened an office in Arizona.

We shut them down in Florida. Last week, we obtained a judgment in court against one of the companies for \$3.5 million dollars. We coordinated with the Texas attorney general's office and eventually an order was entered in Texas enjoining the unauthorized practice of law, and I think the company went out of business in Arizona. It is important, as you suggest, to coordinate among the States in prosecuting these kinds of actions.

The CHAIRMAN. Mr. Prenzlów, I want to go back to that video that we showed at the beginning. Give us a little background of the undercover videotape, like what prompted Wisconsin to make it and how was it used?

Mr. PRENZLOW. The videotape was obtained, Senator, from one of our local television stations. We have a fairly active consumer reporting staff in our area at a number of stations. In this particular case, this TV station made this video with the wife of the chief of police. We were then contacted to review the videotape. We followed that up with additional videotapes that were made by law enforcement personnel at a number of different sales solicitations around the State.

Our goal there was to pass along a message to the sales person, the trust sales solicitors, that they would never know when they were going to be videotaped and that we were out there and that we were aggressively not only taping these presentations, but then using those tapes in subsequent criminal prosecutions.

The CHAIRMAN. Ms. Kolish, since much of the litigation on living trust scams seems to be handled by the States, what would have to happen in order to trigger more attention from the FTC on this

issue? And that is not criticism. It is just for you to tell us when you would trigger what would trigger a major investigation by your organization?

Ms. KOLISH. A couple of things would be helpful; one, getting more consumer complaints into Sentinel would allow us to identify where these frauds are happening and who is being affected. The advantage of having complaints in Sentinel is the data is also available to our many law enforcement partners around the U.S. and Canada, and it gives us the opportunity to coordinate with them to see whether they are perhaps already investigating someone criminally or civilly. We do not want to step on their toes by any means, but if there is an opportunity to coordinate and cooperate with them, we would be happy to do that.

The other thing that would be useful is—and we think the education is really important to this—is for consumers who may have had dubious experiences to report them, if not to us, to State authorities, so that someone is aware of where the problems are happening.

The CHAIRMAN. Thank you. Mr. Prenzlow, in the case of Walter Kulinski, was anyone criminally prosecuted and convicted in his case, and what happened to this person that we know as Mr. Scott Kann?

Mr. PRENZLOW. Mr. Kann was charged with felony theft as a result of his business dealings with Mr. Kulinski. As a result of the difficulty of getting Mr. Kulinski to trial to testify because of his age and his current cognitive capacity, the district attorney determined that it was in the state's best interest to obtain restitution for as much as could be obtained, to return that money to Mr. Kulinski.

The insurance company that the annuity was purchased from returned the annuity to Mr. Kulinski less a 10 percent surrender charge. Mr. Kann made up the difference of that, which was his sales commission on this. Mr. Kann also suffered some pretty severe medical consequences as a result of that. He has since left the State of Wisconsin and I believe is now residing in Arizona. I do not think anything can fully recompense the Kulinskis for what they went through.

I would like to see more vigorous criminal penalties available in these types of cases, and I think that would have been helpful. But given the age of Mr. Kulinski and the problems we would have had at trial, I think that was the best possible resolution.

The CHAIRMAN. Does a principal officer or director like Mr. Kann have to register in Wisconsin or provide any background information before conducting business in the State?

Mr. PRENZLOW. Yes, the business was registered at the time with our secretary of state as a corporation. The insurance annuity salespersons were also registered with our commissioner of insurance. The problem that we saw was in the delivery of trust sales, and the reason that we prosecuted these people under home solicitation selling law violations was because when the trust was delivered, a second person accompanied the trust salesman, ostensibly as a notary public, to witness the delivery of the trust and the activation of the trust, and then that person who was the notary also



attempted to sell the insurance annuities. That was their entree to be able to make that sales presentation.

That is deceptive under our law. When you come into Wisconsin and you make a home solicitation sale, you have to disclose who you are, what company you represent, and what you are there to do. They did not do this, and that is why they were held accountable under those laws.

The CHAIRMAN. Thank you. Senator Breaux.

Senator BREAUX. Thank you very much, Mr. Chairman. Thank you, members of the panel. It seems like what we have here is a revolving scam on wheels, in the sense that you prosecute them and convict them in California. They move to Arizona. They get run out of Arizona. They land in Louisiana. They operate in Louisiana, pick up a couple of million dollars and they head to Florida. So the good work that is being done in one State does not prohibit the same characters from moving out of the State and opening up in some other State.

Ms. Kolish or anybody, is there not some type of a need for a national system that records these bad operators so that we can track them down, that the attorney generals in all of the States can have a list of people who have been run out of California to make sure they do not land in Louisiana? Do you understand the problem I am trying to talk about, because it is a scam on wheels? They just keep moving and taking advantage. If they get run out of one State, they show up in another State.

Ms. KOLISH. That is precisely why the commission founded Consumer Sentinel in the late 1990's.

Senator BREAUX. Founded what?

Ms. KOLISH. Consumer Sentinel, which is our secure, web-based, online complaint data base and investigatory tool. We started it in the late 1990's to address telemarketing fraud, but it has been expanded now to include all types of fraud. Recently, all 50 States signed on to enter their data, as well as more than 100 BBB's. The U.S. Postal Inspection Service participates, the FBI, Phone Busters in Canada, and through this device, law enforcers can share data in a secure way and in an easy-to-use web interface with other law enforcers.

Senator BREAUX. Mr. Hancock, does that help or not?

Mr. HANCOCK. Well, I think the problem is that most victims of these types of scams do not file complaints. They do not know their victims. We have to tell people they are victims. They think they got a good deal. It would be very helpful, as you suggest, to have knowledge of where these scam artists have been before.

I can give you an example of what happened in Florida, was that in one of our cases, even though the company went out of business, the bar continued to prosecute a case against the principals of the company because they had been involved twice before in living trust companies, and we eventually got an injunction from the Florida Supreme Court enjoining them from practicing law.

I also think that we need to keep in mind, and it has not been mentioned yet, is that a real challenge in consumer education here is that most of these people, I think, who buy living trusts, particularly those of modest means, have a great distrust for the legal pro-

fession. They don't trust lawyers and the predators take advantage of that.

I mean, in their brochures, they generally say we are going to tell you something that lawyers do not want you to know. So that is very difficult to—and in reality, at least in Florida, the company that we sued recently was charging close to \$2,000 for this living trust. I talked, before coming before this committee, to the woman who was the chair of the elder law section of the Florida bar to see what she charges when she provides estate planning that includes a living trust, and she told me her normal fee is \$850.

So we need to educate people that legal services are available, that lawyers can be trusted and that their legal services are available at a reasonable fee. We have to address that issue if we are ever going to stop these types of scams.

Senator BREAUX. One of the things I'm concerned about, this scam on wheels, is the fact that someone run out of California who may not be sent to the penitentiary, but have their business closed up, could come to Florida or come to Louisiana and present a whole set of new credentials and start over again doing the same thing that they had gotten run out of California for.

So I am really trying to figure out what needs to be done in order to prevent that or at least to provide that information. Information and knowledge is the key to all of this, and in that capacity, Ms. Kolish, I noted that you all have this FTC facts, living trust offers.

Ms. KOLISH. Yes, sir.

Senator BREAUX. What is the purpose of this?

Ms. KOLISH. The purpose of this is twofold, one to help prevent additional seniors from being scammed and to let consumers who may have already purchased these products perhaps revisit those purchases and consider whether they might have been scammed, and if so, to report their experiences.

Senator BREAUX. When did this come out?

Ms. KOLISH. Today. It was launched today, to be timed with this hearing.

Senator BREAUX. So before we had this hearing, there was nothing like this out there?

Ms. KOLISH. We already had information existing on our website. We have a senior series on our website that links to material produced by AARP including their material about living trusts and wills. But it is the first specialized piece that we have done in this area, because as I said, it has not been a matter that has reached us much in the past.

Although I was going to add about Consumer Sentinel that one of its features is that if States do bring an action, that can be recorded in Sentinel; so that if another law enforcer in another State sees that an action has been brought, you know, a red alarm bell should go off and they might think about coordinating with a group of States or with the FTC or the Postal Inspection Service or the SEC to find the best strategy to keep that scam from moving around the country.

Senator BREAUX. I am just about to the point of really having it, Mr. Chairman, with the telemarketers. I mean, we have got to get a handle on this and I think it may be something that we have to do on a national level, because it crosses State boundaries. I mean,

just this weekend I picked up my phone and there is a voice on the other phone that says: Do you know that you are being overcharged on your telephone bill?

And, you know, middle of the afternoon, I am really not interested in that information. But, I mean, obviously the person, you know, he is trying to sell another service. I mean, whatever service you have, you are being overcharged and I have got a better deal for you. But the initial impact of that call to a person who is not able to follow some of these issues would scare you to death.

I mean, they made it look like I was being robbed by somebody because I was being overcharged on my phone bills, and I can easily see how easy it would have been if I had listened to him, other than hanging up, how easy it would have been to buy whatever he was selling, because it was going to be a better deal.

Do any of the States, do you know, require when you set up a telemarketing operation in a State that they have to post bond before they do it, that they have to have preapproval of the scripts that they are going to use or any way of regulating what these jokers do on the telephone? Do you have to register to do telemarketing?

Mr. HANCOCK. I must say I am not sure, Senator. I am not sure.

Senator BREAUX. Do you know anything about the requirements to get these people that prey on innocent victims sometimes? I am sure there are some telemarketers—I will probably get 1,000 letters from telemarketers saying that they sell wonderful things that are absolutely necessary and I am sure there are some, but I guarantee you there are probably a lot more that are trying to confuse the caller who receives the call and scare the daylights out of them into signing up for something or other.

I mean, do you know of any kind of requirements we have in that area?

Ms. KOLISH. Yes. Well, there are at least two requirements. At the Federal level, pursuant to a congressional directive, the commission issued the telemarketing sales rule, which does require telemarketers when they phone to promptly tell you that it is a sales call, to tell you what they are selling and all the material terms and conditions, and you also have the right to say put me on your do not call list if you do not want to hear from them again, and it is a violation if they do call you again. We bring a tremendous number of actions every single year to enforce that rule. We have seen more of living trust scams in the door-to-door context so far, but it does not surprise me that living trusts are moving to telemarketing, as well. At the State level, I believe a number of States, and I know California in particular has one, a telephonic registration statute which requires telemarketers to register, post a bond of at least \$100,000 and to register their scripts.

The value of that to us is that it helps us get corporate information about boiler rooms and we get to see where they are going. We see the scripts they purport to use. We can use that in court when we say: Here is what they told the State they were going to use. Here is what we found out they are really using from the scripts we take when we do raids, taking down boiler rooms, or from consumers who say, "Well, they never made that disclosure to me."

We have also used the bond registration as an additional source of refunds for consumers, because we then go and make a plea to the State to release the bond to us to remedy victims.

Senator BREAUX. I mean, I know all of this is probably not as exciting as prosecuting drug dealers in Florida or anywhere else in the country, but, I mean, from the standpoint of the victims that we have here, it really is incredibly important and it is very difficult, I mean, to find out what they are saying over the telephones or what they are saying in those private meetings unless you have the rare occasion like you all did, to your credit, and actually videotaped it to show what they were doing illegally.

So it is a very hard thing to police. I am not sure we need more laws or just need more resources to enforce it, but I think you have been very helpful in giving us good information. Now we have got to decide what to do with it. Thank you very much.

The CHAIRMAN. Are you done, because I have three more questions?

Senator BREAUX. I am done, done. Take me off your list. [Laughter.]

The CHAIRMAN. We are almost done, just three short questions. First of all, Mr. Prenzlów, it is my understanding that you have a living trust document. I would like to have you hold that up for senior citizens so that it can be seen by the camera so that people around the country will know what one of these are like, and also maybe you would give any advice to senior citizens in regard to living trust sales.

Mr. PRENZLOW. My recommendation would be to contact a qualified estate planning attorney who has a legal and ethical responsibility to act in the customer's best interest; second, to check with the Better Business Bureau and with your State consumer protection agency or attorney general's office to find out if any complaints have been filed against the trust company that you would be dealing with, or to check with the State bar association to see who is qualified to provide those types of services.

The CHAIRMAN. Is everything in that binder called the living trust document, or just part of that binder?

Mr. PRENZLOW. Senator, this package is a sample package which was delivered. It is identical to all of the trusts which were sold in Wisconsin. The only things that changed on this were the names, addresses and the assets that were placed into the trust. It contains a number of different documents. In addition to the revocable living trust, there is a durable power of attorney, a medical power of attorney and some other documents that go with that, so there are a number of different documents that comprise this entire package.

The CHAIRMAN. Do you suspect that the document itself is fairly large and that, in and of itself, is meant to be intimidating, to have more trust in the salesperson?

Mr. PRENZLOW. The problem with this document that we had reviewed by attorneys within our State is that the document itself is faulty under Wisconsin law. It is not registerable as a useful legal document in our State. It was brought from California by a trust company that produces them out there. I believe it was the same

company that produced trusts for Alliance for Mature Americans and it has very little utility for our citizens.

The CHAIRMAN. One last question for Mr. Hancock. Are the States coordinating their efforts to target unscrupulous interstate operations or to stop companies that were closed down in one State from opening doors in another State?

Mr. HANCOCK. Yes, we are, Senator. We work regularly within an interstate group with the National Association of Attorneys General.

The CHAIRMAN. OK.

Mr. HANCOCK. If I may just comment also on the trust document that you just saw, you asked about whether it is legally complex, and I think that one of the scams, one of the steps of the scam here, is to show that people get a very nice document, usually in a leather binder and usually containing words that they do not understand, so that must think it is good lawyering if they do not understand what it says. In reality, there should be a very simple explanation to people as to what they are doing, and the documents are overly complex in many cases.

Again, a one-size-fits-all trust is a scam. If you have one trust that is marketed to everyone, it is a scam.

The CHAIRMAN. Thank you. Now, my last question is to Ms. Kolish. With regard to the Consumer Sentinel complaint data base, has the FTC tracked how many law enforcement bodies access the data base and what kind of actions are being taken based upon the data base information?

Ms. KOLISH. I think we have that data. I personally do not know how many. I know that many, many of our partners use the data, not just in the United States, but in Canada. We recently received a letter from Canadian law officials thanking us for the data, because it led to the criminal prosecution of a number of telemarketers who, operating out of Canada, were preying on U.S. citizens.

The CHAIRMAN. Thank you. I want to thank this panel. Obviously, the previous panel that had a victim and other experts in this area, we thank them, as well. Both panels have helped educate the American public about living trusts. Maybe we should say, more accurately, start to educate the American public about living trusts, although many of you have been in that business for a long, long time, but our committee wants to bring attention to this and I think you have helped us do that.

Your testimony will help this committee determine how best to approach solutions to marketing and sales of living trusts to lower- and middle-income senior citizens, an area that seems to be ripe for fraud. As we have seen today, this is a field that often skirts the edge of the law and is open season for unscrupulous salespeople.

The States have the bulk of responsibility with regard to prosecuting living trust scam artists. At the Federal level, the Federal Trade Commission and the SEC have brought limited suits against unscrupulous companies that came to their attention. However, the individual citizens of this country need to be further educated on how to avoid the scams.

Now, exactly how to do that, I suppose, is multiple in listing, but I just want to say a couple of things that I think this committee and I can do to be proactive in approaching the education of senior advocate groups and communities about living trust scams. I want to encourage community education centers and sessions on this issue and materials on the issue. It is my hope that the media will make every effort to acquaint senior citizens with living trust scams, as well.

State attorneys general have made strides in addressing this problem and should continue to alert the aging network to these problems; and Mr. Hancock has pointed out how they work with attorneys general of other States, as well, and so we appreciate that ongoing effort.

I want to encourage advocates to strengthen relationships with bar associations, consumer fraud agencies, the State attorneys general and Federal agencies, to alert senior citizens to be wary of unscrupulous living trust salespeople. For my own State of Iowa, I am going to communicate to the Governor of Iowa about the findings of today's hearing. I also plan to ask the attorney general of my State and the State insurance commissioner to look into these problems.

By the way, we are going to leave open for 2 weeks the record to receive any additional statements or information. That could include you folks, if you want to submit something else, as well. I also might suggest to you, as well as the previous panel, that members who were here or more members who weren't here could send some questions for answering in writing, and we would appreciate your cooperation in responding to those questions.

I thank you all very much for being here, and the meeting is adjourned. Thank you very much.

[Whereupon, at 11:58 a.m., the committee was adjourned.]

# A P P E N D I X

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## Senator Chuck Grassley's

### Ten Things to Remember when Selecting Living Trusts and other Financial Planning Services

1. CHOOSE your financial planning advisor CAREFULLY.
2. ASK FIRST for a *written* list of credentials. Qualified, capable attorneys, insurance agents and financial planners will provide a list of states in which they are licensed, along with the name address and phone number of their employer, firm or company. To check on attorney licenses, call your local state bar association; to check on insurance licenses call the state insurance bureau or commissioner; to check other licenses or certifications, call your state's consumer agency. For general questions, call the state's office on aging services.
3. CALL REFERENCES. Ask for the names and phone numbers of other clients who have received similar services.
4. TALK to SEVERAL EXPERIENCED estate planning ATTORNEYS who are licensed in your state about
  - 1) the anticipated costs of drafting a will, living trust and other estate planning documents
  - 2) how much probate in your state would cost and how much time it would take
5. Don't do business with someone if their attitude or answers to your inquiries about their credentials, experience or background make you uncomfortable. Look for another financial planner.
6. BEFORE creating a living trust:
  - o Review the amount and type of your assets.
  - o Decide how you want your assets distributed.
7. COMPARE the PRICES of products of door-to-door sales people with those of experienced estate planning attorneys.
8. TAKE YOUR TIME to decide what are the best financial planning tools for your circumstances. Don't let the urgency to grab a "special limited-time offer" prevent you from carefully reviewing your options.
9. You must FUND a living trust by transferring money or property to the trust to make the document effective. These continue to be counted as YOUR ASSETS. Be aware of extra costs you may incur and certifications you may require if you need to sell property after you put it into a revocable trust, for example, to pay for extended nursing home care or other health needs.
10. Be aware of the PERSONAL LIABILITIES that may be imposed on the trustee when distributing the trust assets after your death to your creditors and beneficiaries, including paying federal estate taxes and state inheritance taxes.



## Scams in the Marketing and Sale of Living Trusts: A New Fraud for the 1990s

by *Lori A. Stiegel, Lee Norrgard, and Robin Talbert\**

### I. The Problem

**A**n elderly couple in Connecticut paid \$7,000 to a door-to-door salesman for preparation of a living trust after he convinced them that this was the way to avoid probate. They later realized that the lawyer who allegedly prepared the trust was in Arizona and virtually inaccessible. They also discovered that there were mistakes in the document, that they still needed to transfer their property into the trust, and that they had paid more than they would have been charged by a local lawyer.<sup>1</sup> This couple learned the hard way that a technique that seems appealing as a means of avoiding probate or guardianship can involve high-pressure sales tactics, misleading or incorrect information, exorbitant prices, and a document that may prove ineffective.

A living trust is an estate planning tool or an alternative to guardianship that may be useful to some individuals in some situations. It is a complicated document that may affect an individual's tax liability or eligibility for public benefits, including Medicaid payment of nursing facility care. A living trust is created when an individual (known as the "grantor," "settlor," "creator," or "trustor") transfers real or personal property into a trust for management by a "trustee." The trustee may be an individual (including, in most states, the grantor), an institution, or a corporation. A living trust may be revocable or

irrevocable; a hybrid document may be drafted so that the trust remains revocable until a certain event (e.g., incapacity) triggers a change to irrevocability. The trust may be funded at creation or left unfunded until the grantor's incapacity or death. Upon the grantor's incapacity or death, the trustee (or successor) manages or distributes the trust assets, avoiding guardianship or probate.

Many older people are unfamiliar with or fearful about probate and guardianship; the marketing and sale of living trusts to these people is an area ripe for fraud and abuse. Recently, a number of national and state-based companies have been using nonattorney, door-to-door salespersons in a marketing campaign directed at the older population. Other companies have sponsored seminars advertised to the public and often conducted by nonlawyers. Many of these businesses have adopted names similar to legitimate nonprofit organizations and providers of aging services, causing confusion to consumers.<sup>2</sup> These businesses



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<sup>1</sup> Interview conducted by Robin Talbert with the Connecticut couple (Apr. 30, 1992).

<sup>2</sup> E.g., the "Association for Senior Citizens" or "American Association of Retired Citizens" might be confused with the legitimate "American Association of Retired Persons." Other companies with questionable names include "Golden Age Services" in North Dakota (which was sued by the state attorney general's office) and "Senior Citizens Information Center" in Michigan (which was the subject of a notice of intended action and cease and desist order issued by the Michigan Department of Attorney General).



often present themselves as membership organizations offering a variety of benefits including prepaid legal services, but the living trusts seem to be their profitmaking hook.<sup>3</sup>

Problems associated with these companies include (1) high-pressure sales tactics; (2) excessive prices; (3) misrepresentation of a connection or endorsement by a legitimate nonprofit organization; (4) overstatement of the cost difference between probate or guardianship and living trusts; (5) misrepresentation of the tax advantages of living trusts; (6) provision of inadequate or misleading written information about the benefits of "membership" in the organization; (7) a "cookie cutter" approach to drafting the trust documents that is often ineffective due to errors or noncompliance with state law;<sup>4</sup> (8) sellers naming themselves as trustees; (9) sellers creating the trust, but failing either to transfer property into it or to advise the client that transfer must occur; (10) sellers failing to inform consumers of their right to cancel the transaction within three working days; (11) improper completion of forms and documents; (12) sellers using financial data gleaned from creating the trust to sell annuities and other financial products; (13) misrepresentation about the privacy of living trusts when distribution of assets is made public under inheritance and estate tax laws; and (14) fraudulent claims that the company has been approved by the attorney general.

State attorneys general and consumer protection officials, aging advocates, and bar associations are collaborating to identify problems and players, to educate consumers and advocates, and to develop a unified plan for further action. This article will discuss (1) legal actions brought by state attorneys general against compa-

nies selling living trusts; (2) attempts by state courts and bar associations to determine whether the sale of living trusts by nonlawyers constitutes the unauthorized practice of law; and (3) the roles that legal services and other senior citizens' advocates can perform to address this new scam.

## II. Actions by State Attorneys General

A number of attorneys general, as their states' highest consumer protection officials, have conducted investigations, issued consumer advisories, and filed both civil and criminal lawsuits against companies and individuals selling living trusts. These measures have led to some success in limiting the deceptive marketing and sale of living trusts to the elderly.

Sales activities by the American Association for Senior Citizens (AASC) are under investigation in many states. Maine's Attorney General filed suit against AASC in April, seeking an injunction and damages for violation of the state's Unfair and Deceptive Acts and Practices (UDAP) law and its Consumer Solicitations Sales Act.<sup>5</sup> The state alleges that AASC sales agents distorted the costs and complexities of probate, misrepresented themselves as related to the American Association of Retired Persons, and failed to provide consumers with notice of the right to cancel within three business days. An investigation by the Massachusetts Attorney General resulted in AASC's signing an assurance that it would discontinue sales in that state, cancel all contracts with Massachusetts consumers, and refund all monies.<sup>6</sup> AASC was also the subject of a consumer advisory by Michigan's Attorney General,<sup>7</sup> who, on the same day, filed a notice of intended action



<sup>3</sup> Cover memorandum from Jeff Joseph and Bruce Piazza of the American Association of Retired Citizens (AARC) to Illinois insurance agents (Jan. 21, 1992) (promoting AARC living trust sales).

<sup>4</sup> Examples range from the almost funny, such as instructions to record the trust in county records, used in states that have no county government, to the truly egregious, such as the use of trusts based on community property laws in states that do not have community property, and vice versa.

<sup>5</sup> *Maine v. American Ass'n for Senior Citizens*, No. CV-92-161 (Me. Super. Ct., Kennebec County, filed Apr. 14, 1992) (Clearinghouse No. 48,276).

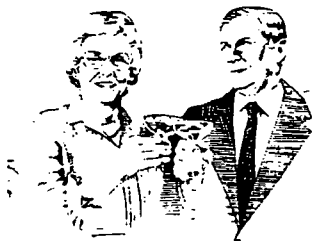
<sup>6</sup> *In re American Ass'n for Senior Citizens*, No. 92-3391 (Mass. Super. Ct. June 3, 1992) (assurance of discontinuance) (Clearinghouse No. 48,274).

<sup>7</sup> Press release issued by Mich. Att'y Gen. Frank J. Kelley (May 12, 1992).

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against the company, pursuant to Michigan's Consumer Protection Act, ordering it to cease and desist from certain unfair trade practices.<sup>8</sup>

But AASC is not the only group selling living trusts door-to-door. Within the past year, at least eight suits have been filed against other companies by attorneys general in several states.<sup>9</sup> Two of these actions are criminal prosecutions, charging that the company and two of its agents practiced law without a license and failed to provide customers with notice of their right to cancel.<sup>10</sup> The other lawsuits are civil complaints, alleging that the defendant companies violated UDAP and other consumer protection statutes. Many of the complaints raise other allegations, including that (1) sales agents fraudulently claimed that their level of skill in preparing trusts exceeded that of attorneys; (2) agents failed to disclose the drawbacks of trusts; (3) agents gave inaccurate advice regarding state law or failed to give pertinent advice; (4) drafters of the documents were not licensed to practice law in the state; and (5) agents failed to disclose that they were not lawyers and thus not authorized to practice law.



Each of the civil complaints seeks an injunction against continued sales activity in the state, restitution or damages to consumers, penalties, and attorney fees and expenses. Iowa's attorney general sought additional damages under that state's Elderly Victim Fund law.<sup>11</sup> Under this law, defendants charged with selling to a vulnerable consumer population (those over 65) are required to pay an additional civil penalty. This sum is deposited in the Elderly Victim Fund to be used for investigations and consumer education activities.<sup>12</sup>

### III. Unauthorized Practice of Law

**A**t least two state supreme courts have acted on the issue of whether the sale and preparation of living trusts by nonlawyers constitutes the unauthorized practice of law.

In 1990, Iowa's Supreme Court established a formal Commission on Unauthorized Practice of Law. Using its injunctive relief powers, the commission has sued three living trust companies. It has won one case, settled another, and is awaiting decision on the third. It also has obtained assurances from other companies.<sup>13</sup>

The Florida bar, through its Standing Committee on the Unlicensed Practice of Law, conducted hearings after being asked

[w]hether it constitutes the unlicensed practice of law for a corporation or other nonlawyer to draft living trust and related documents for another where the information to be included in the living trust is gathered by nonlawyer agents of the corporation or by the nonlawyer and the completed documents are reviewed by a member of The Florida Bar prior to execution?

The committee concluded in its advisory opinion that lawyers, whether members of the Florida bar or not, actually played no part in the preparation of these living trusts, and that attorney review as proposed was not sufficient "to remove the activity from the unlicensed

<sup>8</sup> *In re American Ass'n for Senior Citizens*, Notice of Intended Action issued by Mich. Att'y Gen. (May 11, 1992).

<sup>9</sup> See *Iowa v. Christensen*, Equity No. 28723 (Tex. Dist. Ct., Dallas County, filed Apr. 6, 1992) (Clearinghouse No. 48,268); *North Dakota v. Golden Age Servs. Corp.*, No. 92-K-1753 (N.D. Super. Ct., Burleigh County, filed May 27, 1992); *North Dakota v. Golden Age Servs. Corp.*, No. 92-M-0860 (N.D. Super. Ct., Ward County, filed June 26, 1992); *Wisconsin v. Mid-America Living Trust*, No. 91-CV-780 (Wis. Cir. Ct., Walworth County, filed Dec. 2, 1991) (Clearinghouse No. 48,273); *Nebraska v. Kraus*, Docket 479, Page 82 (Neb. Dist. Ct., Lancaster County, filed Mar. 16, 1992) (Clearinghouse No. 48,269); *Kansas v.*

*Sams*, No. 92C21 (Kan. Dist. Ct., Dickinson County, filed Feb. 7, 1992) (Clearinghouse No. 48,281); *Kansas v. Hanna*, No. 92CV12 (Kan. Dist. Ct., Kingman County, filed May 12, 1992) (Clearinghouse No. 48,272); *Minnesota v. Senior Fin. Servs.*, No. 92-0009870 (Minn. Dist. Ct. filed May 21, 1992) (Clearinghouse No. 48,277).

<sup>10</sup> *Golden Age Servs. Corp.*, No. 92-K-1753, and *Golden Age Servs. Corp.*, No. 92-M-0860.

<sup>11</sup> *Christensen*, Equity No. 28723.

<sup>12</sup> IWA CODE § 714.16A (1991).

<sup>13</sup> Memorandum from Pamela Griebel, Iowa Assis. Att'y Gen. (May 18, 1992).

practice of law."<sup>14</sup> The Florida Supreme Court heard oral argument on the proposed advisory opinion on March 3, 1992, and a decision is pending.

#### IV. Role for Senior Citizens' Advocates

Senior citizens' advocates can take both proactive and reactive steps to address the living trust scam. Programs can provide community education sessions and materials on the issue, with emphasis on senior centers where these companies often target their marketing efforts. Consumer advisories and public service announcements developed by the state's attorney general may prove useful. Advocates can alert the aging network to these problems, educating service providers to make appropriate client referrals and to avoid unwitting promotion of these companies. They also can incorporate information about living trusts and these companies into their intake and counseling paradigms. Advocates can also forge or strengthen relationships with bar associations, consumer fraud agencies, and the state attorney general's office by working together to alleviate this problem. And, of course, advocates can bring litigation on behalf of their clients.

#### V. Conclusion

Lower- and middle-income older persons may be particularly vulnerable to living trust scams because of their lack of knowledge or fear of probate and guardianship and the expenses associated with those matters. They also are easy prey because of their inability or reluctance to hire an attorney for advice about and assistance with living trusts. Thus, scams in the marketing and sale of living trusts are an important issue for low-income seniors' advocates. □



<sup>14</sup> Nonlawyer Preparation of Living Trusts, Proposed Op. Fla. Att'y Gen. 91001 (Aug. 1, 1991).

► This material was posted in electronic form in the LegalAid/Net forum, on the HandsNet information and communications network, on September 3, 1992.



#### What Does the New World Order Mean for Legal Services?

*Using International Human Rights Law in a Legal Services Practice* will be the subject of a workshop offered at the upcoming Annual Conference of the National Legal Aid and Defender Association (NLADA) in Toronto, Canada, on November 12 from 9:00 a.m. to noon. As it enters its eighth decade, NLADA's theme this year is *A Continental Quest: Justice for All*. The gathering will draw together lawyers from the United States, Canada, and Latin America.

Nationally and internationally known practitioners, community activists, and scholars of human rights law will form the panel of speakers at this session, which will be held at the Westin Harbour Castle. Among those scheduled to participate are Ralph Santiago Abascal, Anne Bayefsky, Connie de la Vega, Paul Hoffman, Alan Houseman, Bert Lockwood, Col Owens, Deborah Perluss, Bruce Porter, Steve Rosenbaum, and Rick Wilson.

Those with (optional) reading time are encouraged to review Connie de la Vega, "Using International Human Rights Law in Legal Services Cases," 22 *Clearinghouse Rev.* 1242 (Mar. 1989); Stephen Rosenbaum, "Pro Bono Publico Meets *Droits de l'Homme*: Speaking a New Legal Language," 13 *Loy. L.A. Int'l & Comp. L.J.* 499 (1991); Burke, Coliver, del la Vega, & Rosenbaum, "Application of International Human Rights Law in State and Federal Courts," 18 *Tex. Int'l L.J.* 291 (1983); and Hoffman, "The Application of International Human Rights Law in State Courts: A View from California," 15 *Int'l Law.* 59 (1984).

For more details on the workshop, contact workshop coordinators Steve Rosenbaum, California Rural Legal Assistance, (415) 864-3405, or Deborah Perluss, Evergreen Legal Services, (206) 464-5933.