

TESTIMONY OF ESTHER "TESS" CANJA  
President of AARP

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 properly-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.