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Legal News

When it comes to seniors protecting their life savings and planning for their later years, it's essential to get the help of a local expert—not a salesperson.

That was just one nugget of essential advice that several hundred participants heard at “Seniors: Protect Your Investment and Yourself” at Jackson Community College recently.

The seminar featured several elder law specialists from around the state along with Jackson's own Amy Tripp of the law firm of Chalgian and Tripp.

The seminar focused on the increasing number of so-called “living trust seminars” that inevitably lead to in-home sales pitches for the preparation of a trust.

“Estate planning seminars market one document fits all,” said Anita Salustro of the Michigan branch of the AARP to begin.

“Typically, legal documents that are offered at seminars can cost two or three times more than what you would pay if you sought out an attorney in your community. Further, these products are not designed to your needs,” Salustro noted.

She added that seminar salespeople often approach seniors at a vulnerable time in their lives.

“It is devastating when you have to put someone in a nursing home and someone is telling you to buy this legal document from them or else the state will take your house and money and you'll have to live on dog food,” she said.

“It's one of the most difficult times that families struggle through and if you are being asked to commit to something

immediately, it's probably inappropriate.

“Never sign anything at the time it's presented. Before signing, get more information. You can call us at AARP here in Michigan if you have questions or want to see if there have been any complaints against a particular seminar. Don't allow yourself to be pressured,” Salustro said.

Amy Tripp and Josh Ard of the Cooley 60+ Law Clinic, discussed what seniors are not told at living trust seminars.

“Living trusts can be useful for some families and they have their advantages,” Tripp said “But it does not prevent ‘paperwork’ or administration after your passing.

“Your successor trustee will need the guidance of an attorney. Yes, trust administration sometimes can mean less paperwork than a probate administration, but often trusts are not properly funded especially if you've set one up through a seminar.

“Often property was not transferred into the trust, forms were not executed. This can mean having to go to Probate Court so trusts can be funded,” she said.

Tripp added that seminars never tell consumers how to transfer property into the trust and without that crucial step, the trust is of no value.

Ard added that “a lot of people want to do things themselves. They hate attorneys and want only their families involved. But an elderly spouse or an adult child may not be up to the task of administering a trust which is more complicated in some respects than administering a will.

You can't be good at everything. Would you know how to build your own house?” he asked.

Ard added that when married couples transfer their residence into a trust, they can lose some protection from creditors since creditors can only pursue a couple's home if they have a claim against both husband and wife.

But once the home is “owned” by the trust, then creditors of either the husband or wife can attempt to attach a lien to the property to secure payment of the debt.

He stated that “you are not protecting your property from creditors when you create a living trust and in the case of a married couple, you've probably increased your exposure,” Ard said.

Tripp added that she has her clients fill out a 15-page questionnaire before making decisions about property transfers and trust creation.

“Any qualified expert needs that kind of information before deciding whether it's appropriate to put a house in a trust or to create a trust at all,” she said.

Tripp concluded that living trusts are not subject to probate fees but are still subject to creditor claims; a trust does not eliminate paperwork after the trust creator's death; and that there are other methods to keep a married couple's property out of probate but are far less costly and perhaps more appropriate for a married couple than a living trust.

Regan Johnson, who is with Michigan's Office of Financial and Insurance Services, explained that the spokespeople at seminars often are insurance salespeople, not licensed attorneys.

“Often they will claim that they are trust advisers or senior estate planners,” Johnson said. “Once they get some information about your

finances, you may be told by them that your investments are unsuitable and you should move them to make more profit.

“But the main purpose for these insurance salespeople to meet with you is to sell you an insurance product, often an annuity.”

Johnson explained that annuities are contracts between the investor and an insurance company designed to provide income back plus earnings. She said there were many different types that vary with what the investor must pay and how he or she gets the money back.

Annuities can be a good option, she said, especially if people need fairly sophisticated tax planning due to the amount of their resources.

“But if earning interest on what you have is not causing negative tax consequences, then annuities might not be appropriate. Just because they are appropriate for a neighbor or family friend, that doesn’t mean it’s right for you,” she said.

“If you are setting up a trust, you should be meeting with a qualified attorney, not an annuity salesman. You should not feel the need to purchase anything ‘right now’ and there is not reason you can’t have someone with you when you attend a sales presentation or any meeting for that matter.”

She noted that any consumer can call her office to check on particular companies or individuals.

Johnson emphasized that if a salesperson is trying to get someone to switch their investments to another company, there can be severe penalties as part of the product they are already invested in.

“Beware of surrender penalties. We get many complaints from consumers

who say they were talked into switching into an annuity that supposedly paid more. But then they discovered they were charged a very high penalty for the change and the newer high rate was only an introductory rate for a short period of time,” she said.

“Make sure you deal with a licensed attorney who specializes in elder law. They will know what you need and don’t need. Our office can provide you with lots of information to help you in your decision-making.”

Kathy Fitzgerald of the Office of the Attorney General, Consumer Protection Division, summarized the inappropriate sales practices that often are used by those pitching living trusts.

“You might get a postcard asking for you to fill it out to receive free information. Some even incorrectly state that they are AARP approved. You expect information but you end up getting a telemarketing call trying to get you to allow someone to come into your house,” she said.

Another tactic used to get into consumers’ home is the free informational seminar.

“The theme is to close a sale and the first tactic used is to frighten. They will say your will is no good, that you will lose your privacy with a will in probate, that at your death your home is locked up and the court takes control.

“We also have heard of salespeople claiming that the home and estate will be lost to taxes, attorney fees, and court costs.

“After that, they claim that the living trust is the only answer,” she noted.

Fitzgerald said that if AARP is mentioned, that is a red flag. “Don’t accept anything they say

at face value and call the AARP to tell them they are being mentioned.

“Be skeptical of sales agents who say a living trust is always right and you are foolish I you don’t get one from them.

“Be especially wary if they are selling insurance and financial products along with living trusts,” she said.

Katherine O’Connell of the State Bar of Michigan told the audience that anyone can call the State Bar Association to get lawyer referral or to check and see if someone is truly a lawyer.

“Talk to people you know and trust about the lawyer they use. Talk to an accountant for a recommendation,” she said.

“You should be able to ask questions and they should be willing to answer them. If they are giving legal advice, ask for their Bar Registration Number or call the State Bar and we can confirm if they are a member.

“Wills and trusts should be drafted by an attorney. You want someone who is qualified of course but also someone who is regulated. You have some recourse if you feel you haven’t been treated correctly,” she said.