



Final Indignities

AN EDITORIAL INVESTIGATION

By JEFFREY GOOD, Times staff writer
©St. Petersburg Times, published September 4, 1994

Second of four parts

You've heard the sales pitch: Living trusts are the best way to escape the "horrors of probate." Simply sign a trust and, after you die, every dime of your estate will automatically pass to chosen friends, family and charities.

Sounds wonderful, doesn't it? Too bad it's a lie.

For some people, living trusts are a [legitimate alternative to the traditional will-based estate plan](#). But promoters often frighten and mislead people into buying expensive trusts when a simple will would serve them better -- and provide more protection against exploitation.

The concept of a living trust is simple. When you die possessing worldly goods, probate court steps in to oversee the estate. By transferring substantial assets into a trust before death, you can leave the court with nothing to supervise.

Probate has its failings. But the answer to these problems is to fix them, not run away. Once it has proper safeguards and affordable fees, probate will remain the best system for carrying out most people's last wishes.

In recent years, Florida attorneys have successfully crusaded against the non-lawyers who push unsuspecting consumers into flawed or unnecessary trusts. The Bar should continue that campaign, but it should also take out its own trash. When it comes to slimy trust peddling, nobody beats a lawyer.

"READY TO DIE?"

That was the headline, big and bold, of an ad taken out in the Times by the [Palm Harbor law firm of Frank and Judy Spees](#). The ad went on: "Find out why you need a Living Trust no matter how big or small your estate is! Find out how anyone who tells you not to get a Living Trust is misinformed or profiting by your mistake!"

Truth is, it's people like Spees & Spees who are spreading the misinformation -- and pocketing the profits.

The ad touched a nerve. At a May 2 seminar sponsored by the husband-and-wife legal team, the room quickly filled with elderly people for whom death was no abstraction. One woman could only take a few steps before stopping for breath. Another man complained of the insomnia that followed his wife's passing. Most everyone worried that the money they wanted loved ones to inherit would instead disappear into some probate black hole.

Spees & Spees played on those anxieties.

Frank, tall and handsome, began by demeaning his profession. "What do you have when you have a lawyer

who's up to his neck in cement?" he joked. "Not enough cement."

Next came Judy, tall and wholesome, who assured the crowd that Spees & Spees were not typical lawyers. They left behind flashy careers in television and LA-style law to help the little people -- by selling them living trusts.

Frank and Judy Spees are not typical lawyers. They are typical hucksters: people who make money by feeding unrealistic fears of probate, while failing to disclose the perils of living trusts.

Cutting through to the facts

Here is the [sales pitch -- and the truth](#).

Probate costs swallow estates, the hucksters say. Judy Spees told her elderly audience that probate costs "will eat up 5 to 15 percent of your estate."

The Spees present these frightening figures as fact, and then open the cash register as clients line up to pay from \$450 to \$2,190 for a trust package. There's just one problem: The numbers are bogus.

Most experts say that Florida probate costs seldom exceed 5 percent of an estate. When asked to prove otherwise, Frank Spees hemmed and hawed before saying that his information came from a living trust book and an article in the Wall Street Journal. The Times examined both sources; neither backed the sky-high figures quoted by Spees.

When challenged later, the Spees backed away from their claim. Frank Spees said, "You may have pointed out something that I need to change in the seminar."

Certainly, probate can cost too much, particularly if lawyers and executors charge the outrageous fees allowed by current state law. But those same fees can be duplicated by the trustees and lawyers who administer trusts. And because trusts have little court oversight, no judge is standing by to cut excessive fees.

The Spees inflate their estimates by talking about the expense of notifying creditors, sorting out tax issues, and accounting to beneficiaries. Those expenses are no different in a properly administered trust, says Tim Flanagan, a Jacksonville trust lawyer. "The work is virtually the same."

The only automatic extra cost in probate is the court fee, the price of admission to a court system designed to protect against fraud and mismanagement. In Pinellas County, that fee is \$170 -- a fraction of the price of a Spees & Spees living trust package.

Probate takes too long, the hucksters say. At his seminar, Frank Spees claimed, "According to a recent survey of attorneys, the average probate takes two and one-half years."

When questioned after the seminar, Spees couldn't produce that "recent survey." The best he could do was point to that same newspaper article. The article -- which is 7 years old -- said, "The average probate takes two years to complete in California."

We live in Florida. Here, court officials say there are no reliable statistics on the length of probate. But lawyers in various parts of Florida say they can process most estates in three to nine months. One of those lawyers was none other than Judy Spees, who said her average probate estate requires seven months.

Probate court backlogs can account for a few days or weeks of that delay. Beyond that, however, living trusts take just as long.

Florida law requires probate estates and revocable living trusts to give creditors three months to submit bills for medical care, funeral services and other unpaid debts. Other delays are caused by factors unrelated to the legal form of estate: tax returns, trouble selling property -- and foot-dragging by trustees, executors, lawyers and heirs.

Here's something the hucksters won't tell you: Living trusts can take longer.

Florida law sets a 3-month deadline for contesting a will, but there is no such time limit on people trying to break a trust. And because living trusts lack probate's clear procedures for settling disputes, feuds can drag on for months and even years.

"For married couples," say the Spees, "Living trusts can save up to \$235,000 in estate taxes."

Here's what they didn't say: A will-based estate plan can do the same thing. The key to saving on taxes is to properly organize assets before death, a goal that can be reached through a will or a living trust.

When confronted, Frank Spees acknowledged this point and said he may disclose it at future seminars. He said, "It's important not to misrepresent."

"There are very few people who don't need a living trust," said Judy Spees.

The fact is, there are very few people who do need a living trust. It can be useful for people who own property in many states, because it reduces the need for opening probate files in different places. It can also appeal to celebrities like Buc owner Hugh Culverhouse, who would rather keep their finances out of a public court file.

But for most people, a trust is too much money, too much trouble, and an invitation to abuse.

Money: While offering few benefits, a revocable living trust costs two to four times as much as a will-based estate plan. For people on limited incomes, the difference between a \$300 will and a \$1,000 trust can mean a lot of groceries.

Trouble: A living trust is worthless unless its creators legally transfer bank accounts, stocks and other assets to the trust. For younger people, that can mean decades of title changes and inconvenience. And if you forget one asset, guess what? That part of your estate is headed for probate.

If a trust is improperly written, it could unravel your estate plan after you die, leading to costly litigation or a distribution decided by the court.

Abuse: Responsible lawyers say living trusts are most useful not after death, but during the waning days of a person's life. When someone becomes too frail to manage his or her own finances, a trustee (a reliable relative, friend or professional) can step in without having to become a court-supervised guardian. After death, the trustee would pay remaining bills and settle the estate without court involvement.

But that flexibility holds a risk: Without judicial oversight, the trustee could waste or steal money. "If you name a bad trustee, you're doing yourself more harm than good," says Charles Ian Nash, co-chairman of the Bar's probate and trust consumer protection committee. "It's no better than having somebody rob you on the street." ([See related story](#))

On the positive side

Spees & Spees deserve some credit. They warn clients against a common mistake: buying a trust but not activating it with a transfer of assets. They do a good job of translating legal terms into understandable

English. And they say their trusts are carefully written to meet clients' needs.

Even if their trusts are first-rate, though, their sales pitch is inexcusable. At best, Spees & Spees are badly misinformed. At worst, they are deliberately misleading elderly citizens into trusts they may not need. Whichever is true, the Spees are profiting.

Funny thing about Spees & Spees: When you ask about the ethics of their sales pitch, they talk a lot about themselves. How clever their ad is. How they want to be seen as "good guys." How negative publicity might cut the income that allows them to live and work half the year in Florida, and half in Lake Tahoe.

We hate to break it to the Spees, but the issue here is not their smarts, image or Lake Tahoe lifestyle. It is their moral duty to elderly clients who toil a lifetime and then come seeking honest guidance -- not hucksterism.

While acknowledging the gaping holes in his living trust sales pitch, Frank Spees insists that trusts are the best alternative to the "big, lumbering bureaucracy" of probate. He said, "There are no negatives to the living trust, only positives."

The Spees certainly have a right to believe that. But when they are placing newspaper ads and holding seminars to "inform" the public, they also have a responsibility to tell the truth, the whole truth.

Spees & Spees are not alone. Other opportunistic attorneys, non-lawyer trust mills, financial advisers and mail-order outfits do the same thing. They win people over with half truths -- and then reach into their pockets.

What an affront to the dignity of elderly Floridians. [What a betrayal of trust.](#)

Series at a glance

This series was based on information gathered from court records, Florida Bar proceedings, and interviews with judges, lawyers and the citizens affected by their work. It was researched and written by editorial writer [Jeffrey Good](#), who has worked for the Times since 1983 and written extensively about the probate court's impact on elderly Floridians.

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