Senior Citizens Alert:
Financial Product Marketers Want You!

by Charles W. Stopp and
Judy Hoffman, Estate Paralegal

Recently many have become aware of organized and intense sales-related efforts directed towards the elderly population. Targeted are those who may be on a fixed income and would invite suggestions as to how to make their limited funds work better for them and to help ease their financial burdens. Often and predictably they have their curiosity peaked by the offer of a "Living Trust Packet" to "save" death taxes and expenses. The program, often is said to be a cure all for everything from death taxes to psoriasis. The uninitiated are not aware (nor do the sales folks make them aware) that while Living Trusts can be very beneficial in appropriate circumstances, there are often more effective [1] and less costly [2] alternatives for all but a small percentage of situations.

The reason for mentioning the Living Trust marketing activities is that often the consumer perceives himself to be benefited by a Living Trust Packet (the cost of which appears to range from between $1,500 to $3,000) is then approached and asked to consider an "annuity" product. Annuities like Living Trusts are very worthwhile estate and financial planning tools when used in the appropriate circumstances, for example (Annuities are ideal for those during working years who desire to invest more assets for retirement than permitted by qualified Retirement plans like IRAs).

A well-rehearsed "sale pitch" for annuities mentions these assets remain out of probate. While annuities may not be probate assets and thus will pass to a named beneficiary (as do other assets rarely mentioned by annuity promoters such as joint accounts and Pay on Death accounts), the asset itself is fully inheritance taxable The probate fee in Lehigh County is for a $100,000.00 annuity is $70.00. The inheritance tax can range between 4.55 to 15% depending on the named beneficiary.

The authors have recently encountered frequent situations when, after the fact (after the purchase of the annuity product) the consumer becomes dismayed and disappointed.

For example, the following is a summary of an actual case, which appears to be all too common:

1. An elderly individual (in this case, 75 years of age) succumbs to finely honed sales practices pertaining to a Living trust, often marketed by a person unknown, and whose reputation is unknown to the consumer.

2. An annuity product is then offered. the offer involves the suggestion of a higher-than-market interest rate; recently a rate in excess of 7% was mentioned.

3. What is <u>not</u> mentioned is that "then high rate of interest" is only what the industry calls a "teaser" rate. When the contract is examined the high interest rate typically only applies for the first year of the contract. During that first year the annuity typically carries a high, ordinarily a 12% surrender charge. The surrender charge is a fee paid by the annuitant on any withdrawal of funds made during the specified period. The surrender charges continue at a high level for perhaps 10 to 12 years before the surrender charge is no longer applicable.

4. Immediately upon the payment of the "premium" for the annuity, the contract value immediately drops by what appears to be the commission for the sale of the product. In an actual case, senior citizen, likely upon suggestion of the annuity marketer, removed nearly $60,000 from the senior citizen's IRA in one year to fund the annuity. The contribution of the $60,000 to the annuity immediately resulted in a reduction in the cash value to $56,000 (the $4,000 difference appears to be the marketer's commission for selling the product) not even considering the 12% surrender charge that applied for the first two years. To make matters worse, when such a large amount of cash is withdrawn from the IRA, the senior citizen will likely incur a high income tax liability brought about by the large withdrawal of funds from the IRA.[3] Note, the senior citizen was then unable, without a large surrender charge, to remove funds from the annuity to pay the large income tax liability caused by the large withdrawal from the IRA!

5. When examining the annuity contract, it was also clear that the annuity did not mature (that is did not call for the making of regular monthly payments to the consumer) until the consumer reached age 95 (more than 20 years after the purchase), and in the case of another annuity product sale, until the consumer reached the age of 105. In the actual case, the consumer was 75 years of age, when the annuity was contracted, and died less than three years later, unknowingly leaving the surviving spouse to face both the surrender charges in order to receive needed funds and the income tax liability.

What might be the moral of the story? Many would suggest that there are several morals; namely;

1. When approached by those who have been previously unknown to a consumer, the consumer should ask to receive and review further written information on the products offered including a financial prospectus. The consumer should then take an opportunity to consult with other family members and/or with qualified professionals to review the offered product as well as alternatives considering all relevant circumstances to the consumer such as the consumer's financial income needs, the consumer's income tax planning, and the consumer's estate and financial planning goals. The consumer would be wise to consult with with his local insurance or financial planning professional who has vested interest in serving his community with integrity.

2. Additionally before paying a large amount of money for these sorts of products, the consumer would be well advised to consult with a fee-for-service advisor (that is, not an advisor compensated by commissions with respect to the sale of a financial product). The list of advisors could certainly include a licensed independent financial advisor, a

licensed certified public accountant and/or an attorney who practices in the estate-planning arena.

The consumer need not be pressured into an immediate decision to purchase.

The authors of this article have sadly encountered consumers, well after consumers have parted with substantial dollars without having received a clear financial benefit, and often having received a considerable financial detriment.

Footnotes: 1. One example of a more cost-effective alternative involves joint ownership by survivorship and/or Pay On Death (POD) designations which typically can be thoroughly explained during as brief as a one hour office conference with a knowledgeable attorney. Space does not permit a more detailed discussion on the canned "Living Trust Packages" in this article.

2. As an example, a typical customized Living Trust prepared by a knowledgeable attorney costs less than half of the cost of a "Living Trust Package' which typically has little, if any, professionally trained attorney's direct involvement.

3. Unless the annuity was handled so as to qualify under the Rollover exemption.

(Charles W. Stopp is a partner of the law firm of Steckel and Stopp which has served the Lehigh, Northampton, and Carbon County areas for an excess of fifty years. This article was co-authored by Judy Hoffman, an estate paralegal who has been with the firm for thirteen years. The firm has a law concentration in the areas of estate planning, elder law and estate administration.)