

**PARTICIPATION BY ATTORNEY IN LIVING TRUST
MARKETING FRANCHISE**

An attorney interested in participating with a living trust marketing franchise requested an opinion from the Committee on Legal Ethics to determine if his participation would violate the Rules of Professional Conduct. Based upon the Committee's understanding of how the trusts are actually marketed, it is the Committee's opinion that an attorney who participates would be violating Rule 5.5(b) of the Rules of Professional Conduct.

Family Trust, Inc. markets living trusts. It contracts with independent agents in several states, including Illinois, Minnesota, Wisconsin, New Jersey, West Virginia and Virginia. The independent agent in West Virginia is a nonlawyer (hereinafter referred to as "the franchisee") operating under the business name Trust Financial Group. Some agents apparently operate under the name, Trust Group of America.

The first step in the marketing process is to advertise a free educational seminar on living trusts. The ads stress the advantages of a living trust as a way of avoiding probate and reducing estate taxes. No attorney speaks at the seminar. Prospective clients who attend the seminar are encouraged to make an appointment to meet one-on-one with the franchisee.

At this meeting, the franchisee advises the client that he or she should have a living trust. No attorney is present. The client pays for the living trust at that meeting without consulting an attorney. The guidelines provided to the Committee by the

franchisee, which appear to be from Trust Group of America, state that after the initial meeting with the franchisee, the client consults with an attorney who makes the final determination of the appropriateness of a living trust. In practice, this procedure is not followed in West Virginia.

After the client purchases the living trust, the franchisee gathers the information and necessary documents from the client and sends it to a regional office outside the State of West Virginia.¹ The Committee reviewed a living trust actually prepared for a West Virginia client. The living trust and ancillary documents, such as a pour-over will and power of attorney, state that they are prepared by Family Trust, Inc. of Roseville, Minnesota.

The West Virginia attorney's only function is to supervise the execution of the documents. Although the guidelines suggest otherwise, the only time that the attorney meets the client is after he or she has purchased the living trust and is ready to sign the documents. The franchisee is usually present, too. The attorney's fee is paid by the franchisee.

The Committee believes that the franchisee is engaged in the unauthorized practice of law. The franchisee charges and collects the fee for the legal document, and an entity in another state prepares the documents without consulting the client. The client

¹ In one case of which the Committee is aware, the franchisee did not request a comprehensive list of assets.

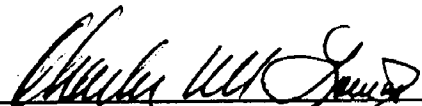
has no opportunity to consult an attorney looking out for his or her interests who will then prepare the legal document.²

The West Virginia attorney is therefore assisting a person who is not a member of The West Virginia State Bar in the performance of activity that constitutes the unauthorized practice of law, in violation of Rule 5.5(b) of the Rules of Professional Conduct.

Although the Committee on Legal Ethics has no jurisdiction over non-lawyers, it is authorized to render advisory opinions on any question of professional conduct. Article VI, § 4 of the By-Laws of The West Virginia State Bar. The Committee finds that participation by a lawyer licensed by the West Virginia State Bar in the living trust marketing program as set forth above would be unethical.

The Committee also directs the Office of Bar Counsel to refer the question of unlawful practice by nonlawyers and corporations to the Unlawful Practice Committee of The West Virginia State Bar.

Dated:



Charles M Love, III, Chairman
Committee on Legal Ethics
The West Virginia State Bar

² Bank officers, accountants or other financial planners may recommend a living trust to their clients. They must then refer the clients to an attorney for preparation of the legal document. The only trust document banks or other financial institutions should prepare are grantor funded inter vivos revocable trusts to permit the bank or institution to invest money for the grantor. Upon the grantor's death, the money is turned over to the grantor's personal representative. There is no testamentary direction in such a document.