

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the matter of)
)

THE ADMINISTRATIVE COMPANY,)
a Texas Corporation,)

MICHAEL P. MCINTYRE, individually)
and as an officer and director of)
The Administrative Company, and)

PRE-PAID LEGAL SERVICES, INC.,)
an Oklahoma Corporation.)

File No. 932 3019

**AGREEMENT CONTAINING
CONSENT ORDER TO
CEASE AND DESIST
REGARDING PRE-PAID
LEGAL SERVICES, INC.**

The Federal Trade Commission having initiated an investigation of certain acts and practices of Pre-Paid Legal Services, Inc. ("Pre-Paid"), a corporation, (hereinafter sometimes referred to as proposed respondent), and it now appearing that proposed respondent is willing to enter into an agreement containing an Order to cease and desist from the use of the acts and practices being investigated,

IT IS HEREBY AGREED by and between Pre-Paid Legal Services, Inc., by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Pre-Paid Legal Services, Inc., is an Oklahoma corporation, with its office and principal place of business at 321 E. Main Street, Ada, Oklahoma 74820.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent of facts, other than jurisdictional facts, or of violations of law as alleged in the draft complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent: (1) issue its complaint corresponding in form and substance with the draft complaint here attached and its decision containing the following Order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

DEFINITIONS

For purposes of this Order:

- a. "Living trust" means a trust into which an individual can place all of his or her assets during his or her lifetime and, by transferring ownership of the assets to the name of the trust, thereby remove the assets from the individual's estate.
- b. "Probate" is the legal process that validates a will, the legal document that contains instructions to the court on how assets and liabilities are to be divided and distributed at death.

ORDER

I.

IT IS ORDERED that respondent, Pre-Paid Legal Services, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, including through any individual or entity with whom or which respondent has contracted to provide pre-paid legal services, in connection with the advertising, promoting, offering for sale, or sale of living trusts, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, orally or in writing, that:

- A. The use of a living trust avoids all probate and administrative costs.
- B. At death, a living trust allows assets to be distributed immediately or almost immediately.
- C. A living trust cannot be challenged.
- D. Living trusts are prepared by local attorneys.

- E. A living trust protects against catastrophic medical costs.
- F. A living trust is the appropriate estate planning device for every consumer.
- G. There are no disadvantages to a living trust.

II.

IT IS FURTHER ORDERED that respondent Pre-Paid Legal Services, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, including through any individual or entity with whom or which respondent has contracted to provide pre-paid legal services, in connection with the offering for sale or sale of living trusts, do forthwith cease and desist from failing to disclose, clearly and conspicuously, in writing, and prior to the consummation of the sale, the following information:

- A. Living trusts may be challenged on similar grounds as wills.
- B. Living trusts may not be appropriate in all instances, and all estate planning options should be examined before determining which estate plan best suits a particular individual's needs and wishes.

III.

IT IS FURTHER ORDERED that respondent Pre-Paid Legal Services, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, including through any individual or entity with whom or which respondent has contracted to provide pre-paid legal services, in connection with the offering for sale or sale of living trusts, do forthwith cease and desist from failing to disclose, clearly and conspicuously, in writing, and prior to the consummation of the sale, the following information, if true:

- A. The availability of informal probate under this state's statutes allows minimal or no contact with the courts and reduces the time required to probate a will.
- B. The transfer of an individual's assets into the living trust is not included in the price of creating the living trust.
- C. It is the sole responsibility of the purchaser of the living trust to transfer assets into the trust.
- D. Creditors have a longer period of time to file a claim against a living trust than against a probated estate.

IV.

IT IS FURTHER ORDERED that respondent Pre-Paid Legal Services, Inc., a corporation, its successors and assigns, and its officers, and respondent's agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promoting, offering for sale, or sale of living trusts by any individual or entity with whom or which respondent has contracted to provide pre-paid legal services, do forthwith cease and desist from failing to take reasonable steps sufficient to determine, commencing with the beginning of such a contractual relationship and continuing throughout the relationship, whether the promotion or sale involves any acts or practices prohibited by Paragraphs I, II and III of this Order. Such steps shall include, but are not limited to, evaluating, on a basis independent of the individual or entity with whom or which respondent has contracted to provide pre-paid legal services, the terms or conditions of sale, the adequacy of any disclosures, the representations made and the truthfulness of these representations (for the purposes herein, evaluating may, but need not, include reviewing advertisements, sales scripts and sales manuals, interviewing officers and employees, ascertaining the number and nature of consumer complaints and blind testing of oral representations).

V.

IT IS FURTHER ORDERED that respondent Pre-Paid and its successors and assigns shall, in accordance with the provisions of this Part, offer a refund in the amount of one hundred sixty-five dollars (\$165.00) to every purchaser of a living trust, except for (1) those purchasers residing in states with which Pre-Paid has previously settled, and (2) all other purchasers who have previously received refunds from either Pre-Paid or the American Association for Senior Citizens ("AASC").

A. Within thirty (30) days of the date that this Order becomes final, respondent shall compile and submit to the Commission a current mailing list containing the names and last known addresses of all AASC members for whom living trusts were prepared by Pre-Paid and who reside in states with which Pre-Paid has not previously settled. Respondent shall also compile and submit to the Commission a list of all AASC members to whom respondent has paid refunds, indicating the amount of each refund and the date the refund was issued. In compiling these lists, respondent shall search all relevant records in the possession, custody, or control of the respondent, including but not limited

to its unincorporated divisions, joint ventures, partnerships, operations under other names, affiliates, and all directors, officers, partners, employees, agents, consultants, franchisees, and any other person or entity, including independent contractors, working for or on behalf of any of the foregoing.

B. The Commission shall compile and maintain a list of consumers potentially eligible to receive refunds based on the information respondent is required to produce pursuant to V.A, above, and supplemented by such further relevant information in the Commission's possession or that comes to the Commission's attention.

C. The Commission or its designated agent shall mail a notification letter substantially in the form set out in Appendix 1 to all persons the Commission has reason to believe are eligible consumers, to advise each of: (a) the settlement with Pre-Paid, and (b) the consumer's right to receive a refund.

D. The Commission shall enclose with each notification letter described in V.C, above, a claim form substantially in the form set out in Appendix 2. Refund eligibility shall be based on submission of such form, which has been signed by either the AASC member or the beneficiary, next-of-kin or other representative of the member, if the member is deceased.

E. Any potentially eligible consumer who does not submit a completed and executed claim form in response to the Commission's notification letter by the date specified in the notification letter shall not be eligible to participate in the distribution; provided, that the Commission may in its discretion accept and process an untimely response to the notification letter.

F. The funds from any returned checks, and checks not cashed within 60 days after the distribution date, shall be redeposited into the redress fund for possible redistribution.

VI.

IT IS FURTHER ORDERED that the consumer redress fund shall be established, administered, distributed and terminated under the direction and control of the Commission and/or its designated agent. Respondent shall be notified, upon request, as to how the consumer refunds are distributed, but shall have no right to contest the manner of distribution chosen by the Commission. Within 30 days of completing the distribution of refunds pursuant to Part V of this Order, the Commission or its designated staff will provide written notification to the escrow agent specified in the Escrow Agreement attached as Appendix 3 to return to the

Commission for transmittal to Pre-Paid any funds remaining in the escrow account that were not paid to consumers or to cover administrative costs of the escrow account. Nothing in this provision shall be construed to limit Pre-Paid's obligation under Parts V and VI of this Order to provide consumer refunds.

VII.

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of issuance of this Order, respondent, and its successors and assigns, shall maintain and upon request make available to a representative of the Federal Trade Commission for inspection and copying all documents relating to the advertising, promoting, offering for sale, or sale of living trusts that are developed, written, reviewed, authorized, or used by respondent, its successors and assigns, its officers, and its agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, or by any individual or entity with whom or which respondent has contracted to provide pre-paid legal services.

VIII.

IT IS FURTHER ORDERED that respondent shall notify the Federal Trade Commission, through its Denver Regional Office unless otherwise directed, at least thirty (30) days prior to any proposed change in the respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of new corporations, subsidiaries or affiliates of the respondent, the planned filing of a bankruptcy petition, or any other corporate change that may affect compliance obligations arising out of this Order.

IX.

IT IS FURTHER ORDERED that respondent shall:

- A. Within thirty (30) days of service of this Order upon it, provide a copy of this Order to each of respondent's current principals, officers, directors and managers and to all personnel, agents and representatives who are or have been participating or engaging in any manner in respondent's sales activities relating to living trusts.
- B. For a period of three (3) years from the date of issuance of this Order, provide a copy of this Order to each of respondent's principals, officers, directors and managers, and to all personnel, agents and representatives who are participating or engaging in any manner in respondent's sales activities relating to living trusts within three (3) days after the person assumes his or her position.

X.

IT IS FURTHER ORDERED that this Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

- A. Any paragraph in this Order that terminates in less than twenty years;
- B. This Order's application to any respondent that is not named as a defendant in such complaint; and
- C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

XI.

IT IS FURTHER ORDERED that respondent shall, within sixty (60) days of service of this Order upon it, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Signed this _____ day of _____, 1996.

Pre-Paid Legal Services, Inc.,
a corporation

By: _____
321 E. Main Street
Ada, Oklahoma 74820

Margaret Feinstein, Esq.
Dickstein, Shapiro &
Morin, L.L.P
Attorney for Pre-Paid Legal
Services, Inc.

Elizabeth M. Palmquist
Counsel for the
Federal Trade Commission

APPROVED:

Claude C. Wild III
Director
Denver Regional Office

[Appendices 1-3 attached to paper copies, but not available in
electronic form.]

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of)
)
THE ADMINISTRATIVE COMPANY,)
a Texas Corporation,)
)
MICHAEL P. MCINTYRE, individually)
and as an officer and director of) DOCKET NO.
The Administrative Company, and)
)
PRE-PAID LEGAL SERVICES, INC.,)
an Oklahoma Corporation.)

COMPLAINT

The Federal Trade Commission, having reason to believe that The Administrative Company, a corporation, Michael P. McIntyre, individually and as an officer and director of The Administrative Company, and Pre-Paid Legal Services, Inc. ("Pre-Paid"), a corporation (collectively, "respondents"), have violated the provisions of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH ONE: Respondent Michael P. McIntyre's current address is 4328 Hollow Oak, Dallas, Texas 75287.

Respondent The Administrative Company has ceased doing business. Its address is the same as that of Michael P. McIntyre.

Respondent Pre-Paid Legal Services, Inc., is an Oklahoma corporation, with its principal office or place of business at 321 E. Main Street, Ada, Oklahoma 74820.

PARAGRAPH TWO: Respondents, at all times relevant to this complaint, have advertised, promoted, offered for sale, and sold living trusts to consumers. A living trust is a trust into which an individual can place all of his or her assets during his or her lifetime and, by transferring ownership of the assets to the name of the trust, thereby remove the assets from the individual's estate.

PARAGRAPH THREE: The acts and practices of respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PARAGRAPH FOUR: In the course of marketing their products to the public, respondents, directly or through commissioned sales agents, have caused to be disseminated sales literature concerning living trusts, including, but not necessarily limited to, the attached Exhibits 1 and 2. This literature contains the following statements:

- (a) It is your legal right as a UNITED STATES Tax Payer to establish a Living Trust. By establishing a Living Trust, at your death your estate avoids PROBATING YOUR WILL which can COST SEVERAL THOUSANDS of dollars in legal and executor fees and TAKE SEVERAL YEARS before being transferred to your family and loved ones. YOU RETAIN FULL CONTROL OF ALL ASSETS!

YOU COULD SAVE THOUSANDS
OF HARD EARNED DOLLARS!

Exh. 1.

- (b) **A LIVING TRUST** eliminates ALL PROBATE FEES and COST. . . . With a LIVING TRUST, your family will not have to go through probate, and can avoid paying expensive probate fees and costs. Exh. 2, p. 18.
- (c) **A LIVING TRUST** allows a quick DISTRIBUTION to your heirs. Assets in probate court are often frozen two years or more, even with a WILL. A LIVING TRUST allows these same assets to be distributed within days to your loved ones, since a LIVING TRUST avoids Probate Court. Exh. 2, p. 17.
- (d) Total assets [pass through a] living trust [to] spouse or heirs [in] 1-3 days. Exh. 2, p. 24.
- (e) **A LIVING TRUST** prevents a WILL CONTEST. . . . Through a LIVING TRUST your wishes will be carried out without interference. Exh. 2, p. 17.
- (f) Membership entitles you to:
 - 1. FREE LEGAL SERVICES FOR PREPARATION OF A REVOCABLE LIVING TRUST BY A QUALIFIED ATTORNEY IN YOUR STATE AND A FREE "POUR-OVER" WILL. Exh. 2, p. 8.

- (g) **AN A-B LIVING TRUST** protects against catastrophic MEDICAL COSTS. . . . With an A-B LIVING TRUST, if you become seriously ill, your trustee can make gifts of your property to your heirs, and three years

thereafter, can seek government benefits for your care, so that the bulk of your estate will go to your heirs. Exh. 2, p. 19.

- (h) Is There Anything Bad About a Living Trust? No. There is nothing bad about a Living Trust. Exh. 2, p. 20.

PARAGRAPH FIVE: Through the use of the statements contained in the sales literature referred to in PARAGRAPH FOUR, including, but not necessarily limited to, the sales literature attached as Exhibits 1 and 2, respondents have represented, directly or by implication, that:

- (a) The use of a living trust avoids all probate and administrative costs.
- (b) At death, a living trust allows assets to be distributed immediately or almost immediately.
- (c) A living trust cannot be challenged.
- (d) Living trusts are prepared by local attorneys.
- (e) A living trust protects against catastrophic medical costs.
- (f) A living trust is the appropriate estate planning device for every consumer.
- (g) There are no disadvantages to a living trust.

PARAGRAPH SIX: In truth and in fact:

- (a) A living trust does not always avoid probate and administrative costs.
- (b) The use of a living trust does not necessarily result in immediate distribution of assets since creditors may file claims against the trust instrument.
- (c) A living trust is not immune from challenge.
- (d) Most living trusts prepared for AASC members were not prepared by local attorneys. Instead, of the 3,064 living trusts prepared for AASC members in 43 states, approximately 3,000 were prepared by an Arizona attorney licensed to practice law solely in Arizona and New York.

- (e) A living trust does not protect against catastrophic medical costs.
- (f) A living trust is not appropriate for everyone. The determination of whether a living trust is appropriate for a particular consumer requires an examination of the assets that compose the consumer's estate, the potential tax consequences of the estate plan, and the objectives of the consumer.
- (g) There are disadvantages to a living trust. For example, while probate law imposes a statutory deadline beyond which creditors can no longer file claims against a will, in some states, there is no law limiting the time that creditors may file claims against a trust instrument.

Therefore, the representations set forth in PARAGRAPH FIVE were, and are, false and misleading.

PARAGRAPH SEVEN: Through the use of the statements contained in the sales literature referred to in PARAGRAPH FOUR, including, but not necessarily limited to, the sales literature attached as Exhibits 1 and 2, respondents have represented, directly or by implication, that at the time they made the representations set forth in PARAGRAPH FIVE, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PARAGRAPH EIGHT: In truth and in fact, at the time they made the representations set forth in PARAGRAPH FIVE, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in PARAGRAPH SEVEN was, and is, false and misleading.

PARAGRAPH NINE: In their advertising, promoting, offering for sale, and sale of living trusts, respondents have failed to disclose that the transfer of an individual's assets into the living trust was not included in the price paid for creating the living trust and that it would be the responsibility of the individual purchaser to transfer assets into the trust, once created, or to arrange for another individual or entity to do so. This fact would be material to consumers in deciding whether to purchase a living trust and from whom to purchase a living trust. The failure to disclose this fact was, and is, a deceptive act or practice.

PARAGRAPH TEN: The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

THEREFORE, the Federal Trade Commission, on this _____ day
of _____, issues this complaint against said respondents.

By the Commission.

SEAL

Donald S. Clark
Secretary

[Exhibits 1 and 2 attached to paper copies of complaint, but not
available in electronic form]

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has agreed to accept, subject to final approval, a proposed consent order settling charges that Pre-Paid Legal Services, Inc., violated Section 5 of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns the sale of living trusts to senior citizens through membership in the American Association for Senior Citizens ("AASC"). The respondent covered by the proposed order is Pre-Paid Legal Services, Inc., the company responsible for furnishing to and preparing the living trusts for AASC.

The complaint alleges that the respondent violated Section 5 of the Federal Trade Commission Act by making numerous misrepresentations about the advantages of living trusts over other forms of estate planning. Specifically, the complaint alleges that respondent has misrepresented that (1) the use of a living trust avoids all administrative costs; (2) at death, a living trust ensures that assets are distributed immediately or almost immediately; (3) a living trust cannot be challenged; (4) living trusts are prepared by local attorneys; (5) a living trust protects against catastrophic medical costs; (6) a living trust is the appropriate estate planning device for every consumer; and (7) there are no disadvantages to a living trust.

The proposed consent order contains provisions which are designed to remedy the alleged violations and to prevent the respondent from engaging in similar acts and practices in the future. The proposed order would prohibit the respondent from making the misrepresentations alleged in the complaint and set forth above. Additionally, the order would require the respondent to disclose to prospective purchasers that living trusts may be challenged on similar grounds as wills and that they may not be appropriate in all instances.

Under the order, the respondent also would be required to provide four affirmative disclosures in situations where the statements would be true. 1) Some states have created a mechanism for "informal probate" of an estate if the estate meets certain criteria, which significantly reduces the time involved in probate. This disclosure would be required in states where informal probate is available. 2) If the transfer of an

individual's assets into the living trust is not included in the price of creating the living trust, that fact must be disclosed.

3) If it is the sole responsibility of the purchaser of the living trust to transfer assets into the trust, that fact must be disclosed. 4) In some states, but not in others, creditors have a longer period of time to file claims against a living trust than against a probated estate. This fact would have to be disclosed in such states.

The proposed order would require the respondent to distribute the proposed order to its officers, agents, and all personnel who participate in any way with respondent's sales activities relating to living trusts. Additionally, the order would require the respondent to notify the Commission of any changes in its corporate structure and to retain for three years all materials that it relies upon in making representations covered by the order. Finally, the respondent is required to file one or more compliance reports detailing its compliance with the order.

The proposed order also requires the respondent to offer partial refunds to any AASC member who has not previously received a refund from either the respondent or AASC.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, nor to modify in any way their terms. The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the respondent that the law has been violated as alleged in the complaint.