Live Long AND Prosper

By Reg P. Wydeven
December 15, 2007

My dad practiced law for over 40 years, and the last half of his career he focused on elder law. After meeting with thousands of seniors about their estate plans, he claims that elderly folks invented two new commandments: Thou shalt not invade principal and Thou shalt not pay taxes.

He came to this conclusion after seeing so many of his clients strive to have just enough income so they don't have to dip into their investments, but not so much that they had to pay taxes on their social security.

Knowing this goal, many unscrupulous advisors have taken advantage of seniors by selling them investments promising guaranteed high returns with deferred taxes. The California investment firm D.W. Heath & Associates is one such advisor.

Founder Daniel Heath, along with his father, John Heath, and colleague, Denis O'Brien, were recently arrested and charged with over 500 combined counts, including securities fraud and grand theft, and they are each being held on a staggering $144 million bond. If convicted, the advisors are faced with decades of prison time.

The trio is accused of bilking more than 1,500 clients, mostly seniors, out of nearly $190 million. The charges came as a result of an investigation into D.W. Heath that the state of California began in 1994. In 1998, the firm was ordered to stop taking investments. The company kept taking investments and was finally ordered to shut down in April of 2004.

D.W. Heath allegedly lured seniors into investing in the firm by promising airtight real estate investments, luxurious free trips to the properties and extravagant parties and meals. Investors were informed that their funds were used to make secured loans to businesses and guaranteed an annual return rate of 5.5 to 8%. Investors even claimed that Daniel Heath would lay his hand on the Bible as he promised their money was safe with him.

The Securities and Exchange Commission recently investigated the recent trend of what are dubbed "free-lunch seminars," which advisors promote as "educational seminars" where "nothing will be sold." The SEC concluded that virtually all of these seminars are sales pitches, with 50% containing exaggerated or misleading claims and more than 10% being outright fraudulent.

According to the SEC, 30% of all fraud victims are senior citizens even though they only constitute 15% of the American population. The North American Securities Administrators Association, an investor watchdog group, determined that almost half of all investor complaints to state securities regulators today come from seniors, compared to 28% in 2005.

While regulatory agencies assess violators with stiff fines, many times they aren't steep enough to deter advisors from perpetuating these frauds.

Seniors, many of whom learned to be frugal from living through the Great Depression, are targeted as they control more than $14 trillion in assets. They are the demographic who can least afford to be scammed, as they aren't skilled or healthy enough to reenter the workforce and their investment horizon is limited.

So everyone, but especially seniors, should do their homework before investing with a firm. Ask to see their long-term investing track record, ask for professional referrals, and talk to other investors to be sure they have had positive experiences. Investors should use their common sense, trust their instincts, remember the money they are investing is theirs and never forget my 13th commandment: There is no such thing as a free lunch.

This article originally appeared in the Appleton Post-Crescent newspaper and is reprinted with the permission of Gannett Co., Inc.