

# ***The “Daily Plan-It”™***

*HELLMUTH & JOHNSON, PLLC*

Volume 14, Issue 9

5/5/2011

## ***Living Trusts provide Divorce Protections to Your Client’s Kids***

We have all had the question from clients: “My son is in a bad marriage. What happens if we die and he gets divorced? Does that mean his ex-wife gets some of our estate?”

This question can be solved by sharing one of the major, and often most overlooked, benefits of using a Living Trust — asset protection for the beneficiaries.

### **“Traditional” Living Trust Planning**

The most common benefit of the Living Trust is to avoid the time delay and reduce the legal fees of after-death probate proceedings. The time and dollar savings are significant. In our experience, these benefits are “no brainer” benefits that should be enough to get any family to adopt the Living Trust as their estate planning strategy.

Interestingly enough, this is where a lot of planners stop in their design of an estate plan. Once they are confident that the plan avoids probate, they call it a day and they’re done. It works, but what if there was a bigger benefit beyond savings?

### **Protection from a Bad Marriage**

The power of this benefit is often overlooked in traditional Living Trust planning. If drafted properly, a Living Trust can provide *divorce* protection to the after-death beneficiaries.

In our case, Mom and Dad are worried that their child is in a bad marriage and they don’t want to have what took a lifetime to build to go to his future ex-wife. Their son is trying to make it work but it looks rocky. Mom and Dad are losing sleep. What can they do?

You, the clever advisor, recommend structuring their Living Trust so that if they die, their son can receive his inheritance; but since it’s kept in Mom and Dad’s trust, he never takes ownership of the assets. The son can be in control of the money. He can receive the income and, if necessary, access the principal; but if he gets divorced, his destined ex-wife can’t put a claim on his inheritance. The power of this idea is astounding. The ability to not only transfer wealth but do so in a manner that protects the assets for the next

generation is a strategy that most families should strongly explore in their planning.

### **The “After-Death Pre-Nuptial”**

The use of the Living Trust in this example allows Mom and Dad to sleep better at night. They can provide their son with his inheritance and know that their Living Trust is providing the legal effectiveness of a pre-nuptial in that rocky marriage.

The flipside of this is if the son is in a good marriage. Is this strategy still relevant? Our answer: absolutely. Relationships change; they can go from good to bad quickly. Your clients can feel secure in knowing that you have helped them protect their children and their assets.

I hope this article has helped you and your clients. As always, if you have a specific case or concern, please contact our office.

This complimentary publication is provided courtesy of:

**TIMOTHY O. DAVIS**

Phone: 952-746-2104

Email: [tdavis@hjlawfirm.com](mailto:tdavis@hjlawfirm.com)

**SUSAN L. ANDERSON**

Phone: 952-746-2123

E-mail: [sanderson@hjlawfirm.com](mailto:sanderson@hjlawfirm.com)

Tim is a partner in the firm with 27 years of experience.

Susan brings over 15 years experience. Both Tim and Susan specialize in Estate and Business Planning, Probate and Trust Law, and related Tax matters. They assist clients in creating estate plans that provide for the control, maintenance, and disposition of their assets in a manner consistent with their objectives.

**Hellmuth & Johnson, PLLC** has 38 attorneys and is a full service firm offering legal services to individuals and businesses, with a heavy concentration in real estate, real estate construction and litigation matters.

**HELLMUTH & JOHNSON PLLC**  
ATTORNEYS AT LAW

10400 Viking Drive, Suite 500

Eden Prairie, MN 55344

Phone: (952) 941-4005

Fax: (952) 941-2337

Web: <http://www.hjlawfirm.com>