

The "Daily Plan-It"™

HELLMUTH & JOHNSON, PLLC

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Living Trusts Provide Protection for Your Client's Potential Incapacity

Revocable Living Trusts serve several important functions in estate planning.

In our ongoing series on the powers of a Living Trust, we've already discussed how this powerful tool can help a client's estate avoid probate court (saving time, money and anguish) and how they can provide divorce protection for your client's children.

Another way a Living Trust can protect your client is in the event he is no longer physically or mentally capable of handling his own affairs.

What are the chances this will happen? Nobody knows. Life brings unexpected changes (i.e., car accidents, diseases and other crises). But if we take time to plan for these potential events, we can save clients from the inevitable stress and problems that accompany declaring them legally incapacitated.

Don't Let Your Client Do Nothing

There are serious consequences that arise from having made no arrangements for such a situation.

If your client owns property in his name and becomes incapacitated, a court will set up a guardianship. The guardian will be named by the court, not your client. Many guardians draw a fee for their services from your client's estate. Family members might vie for this position, possibly creating discord amongst them.

Any contact that the court-appointed guardian has with the court creates additional expenses, which further siphons away your client's resources. Guardians must file annual accountings and reports with the court, requiring even more additional expenses.

Judicial proceedings are also generally a matter of public record, and your client's family might be forced to air its dirty laundry publicly.

Living Trusts Save Money

Those extra legal fees could have been avoided if your client had created a Living Trust that named someone specifically to assume the role of Successor Trustee in the event of his incapacity.

Through a Living Trust, your client avoids having a court-appointed guardian oversee his assets, stops the unnecessary depletion of his estate by legal fees, and he decides how much to compensate his Successor Trustee.

Create Power of Attorney Documents

When drafting a Living Trust, we advise clients to also create a Durable Financial Power of Attorney and a Health Care Power of Attorney. The same person can be selected by your client to hold all three positions, or your client can choose different people to hold each of these powers.

Court appointed guardians do not have the broader powers of administration that are granted by law to Successor Trustees. By planning ahead, your client can name a trusted person to handle his affairs and be assured that his wishes will be carried out and his best interests protected. A Living Trust allows the Successor Trustee to assume the administration of the trust when your client becomes incapacitated, avoiding a costly guardianship and a lot of family distress.

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

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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.

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