

## Living Trust: Protection in Case of Incapacity

A properly drafted living trust can provide a welcome alternative to the appointment of a guardian  
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Revocable living trusts serve several important functions in estate planning. In our brief series on the powers of a living trust, we've already discussed how this powerful tool can help your estate avoid probate court (saving time and money and avoiding stress) and provide divorce protection for your adult children.

Another way a living trust can protect you is in the event you are no longer physically or mentally capable of handling your own affairs. What are the chances this will happen? Nobody knows. Life brings unexpected changes – illness, injury and other crises – and if you take time to plan for these events, you can spare your loved ones some of the stress and problems that accompany your incapacity.

The Perils of Guardianship. We recently saw this quote: “Doing nothing is easy, and anyone can do it.” Don't do it. There are serious consequences that arise from having made no arrangements for tough life situations such as incapacity.

If you own property in your name and you become incapacitated without having made proper arrangements for your decision making, a court will set up a guardianship. This situation is fraught with peril: First, the guardian will be named by the court, not by you. Second, many guardians draw a fee for their services, paid from your estate. Third, family members might vie for this position, possibly creating discord among them. Any contact that the court-appointed guardian has with the court creates additional expenses, which further siphons away your 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 many families are unwittingly forced to air their dirty laundry publicly. Living Trusts Save Money. A significant amount of legal fees and costs can be avoided if you have created a living trust that names someone specifically to assume the role of “successor trustee” in the event of your incapacity. Through a living trust, you (a) avoid having a court-appointed guardian oversee your assets, (b) stop the unnecessary depletion of your estate through unnecessary legal fees, and (c) decide how much to compensate your successor trustee.

Powers of Attorney. When drafting a living trust, you should also create a Durable Financial Power of Attorney and a Health Care Power of Attorney. You can select the

same person to hold all three positions, or you 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, you can name a trusted person to handle your affairs and be assured that your wishes will be carried out and your best interests protected. A living trust allows the successor trustee to assume the administration of the trust when you become incapacitated, avoiding a costly guardianship and a lot of family distress.