

The “Daily Plan-It™”

Davis Schilken, PC

Volume 14, Issue 23

11/17/2011

A Trust Can Save Your Client from a Court-Appointed Guardianship

It happens in even the most privileged of families. An aging parent is suffering from failing health. Unfortunately, no planning for incapacitation was ever put in place by the parent to name someone to look after his or her best interests.

A French judge recently ruled that L'Oreal heiress Liliane Bettencourt, 88, be placed under the guardianship of her daughter and two grandsons (tinyurl.com/6cr3f3d). A medical report declared that Bettencourt suffers from Alzheimer's disease.

Family Feud

The court-appointed guardians are relatives, so this should be a peaceful transition of power, right? Not in this family — and maybe not in your client's family. The reality is that Bettencourt and her daughter are estranged. They've had a series of lawsuits over the matriarch's spending.

Their fight for control over the family fortune has the daughter claiming that Mrs. Bettencourt is mentally unfit to manage her money. The aging matriarch is thought to have given a celebrity photographer about 1 billion Euros worth of gifts over two decades. There are also claims of illegal donations to President Nicolas Sarkozy's 2007 campaign.

This Could Have Been Avoided

Whether Bettencourt is fit to manage her spending isn't really the key talking point here for advisors with clients who need a planning strategy.

A Living Trust would have allowed Bettencourt to name a Trustee — or at the very least, tell a court her first choice for a Guardian or Trustee in the event of her incapacitation.

Instead, the judge named her daughter — probably the last person Bettencourt wanted to manage her life and finances — and her grandsons.

Keep the Private from Going Public

If Bettencourt had simply created a Living Trust, then

this sensitive battle within her family over her spending would likely have never been heard in a public venue.

In the absence of proper estate planning, which includes provisions for incapacitation, a court will name someone as a Guardian or Trustee. You can help clients avoid this by asking a few questions and referring them to an estate planning attorney.

Have your clients decided who they want to manage their affairs in the event they become incapacitated? Do they have any relatives who might accuse them of being unfit? Who do they really trust?

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

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