

Celebrity Estate Planning: Misfires of the Rich and Famous IV

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Many people idolize celebrities and often consider them to be role models. However, the truth is that celebrities are just people. Like many of us, celebrities often ignore estate planning altogether or fail to update outdated estate plans. Others take the time to think through their estate plans carefully and benefit from the assistance of competent counsel. The problems and issues discussed in this article may involve celebrities, but they create useful lessons for everyone.

Whitney Houston: The Perils of Short-Term Trusts

Background: Whitney Houston, the legendary songstress and accomplished actress, led a tumultuous life, struggled with addiction, and had a failed marriage to singer Bobby Brown. Sadly, she drowned in a hotel bathtub in 2012 on the eve of the Grammy Awards, leaving a 19-year-old daughter from the marriage, Bobbi Kristina.

Estate Plan: Houston left her entire estate to a trust for her daughter that provided for mandatory payments of principal beginning at age 21 and paid out completely to her daughter at age 30. It has been reported that the trust contained more than \$20 million, with substantial ongoing royalty income expected. Tragically, Houston's daughter was also found unconscious in a bathtub and died at age 22 after spending six months in a coma.

Result: At the time of her death, Bobbi Kristina was domiciled in Georgia and had already received approximately \$2 million from her trust. As a result, the disposition of the assets held in Bobbi Kristina's own name was governed by the laws of intestacy in Georgia and not by Houston's will. It was also unclear whether Bobbi Kristina legally married her fiancé Nick Gordon, who had been raised by Houston as a son. In the absence of a spouse, Bobbi Kristina's father, Bobby Brown, was her presumptive heir. Because Gordon never proved his claim that the couple was married and was eventually found civilly liable for Bobbi Kristina's death, Houston's ex-husband became the sole beneficiary of the trust funds that had been distributed to her daughter. This was certainly not the result that Houston intended.

Lesson: The foregoing result could all have been avoided if Houston's plan had included a lifetime trust for her daughter rather than a trust that required mandatory distributions at a very young age. A lifetime trust can serve as a shield, protecting a beneficiary from predators, unfortunate circumstances, and negative behavior. In addition, by keeping property in trust for a beneficiary's lifetime, one can also "hardwire" the destiny of any remaining funds at the beneficiary's death, preventing the diversion of

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assets to undesirable recipients. Given Bobbi Kristina's troubles, her trustees also could have considered certain options before the first mandatory payment date. For example, the trustees could have tried to persuade Bobbi Kristina to roll her mandatory distribution into a self-settled trust for her continuing benefit under ongoing trustee control and, if unsuccessful, could have explored decanting the trust assets to eliminate the mandatory distributions. Clients should revisit their estate plans routinely to ensure that their objectives and the evolving needs of their beneficiaries continue to be met.

Kirk Douglas: Significant Charitable Goals

Background: Kirk Douglas, the famed star of classic films like *Spartacus* and *Gunfight at the OK Corral*, died in 2020 at the age of 103. Douglas had an impoverished childhood with immigrant parents and six sisters. However, Douglas was an innovator who began his career at the tail end of the studio system. As he gained star power, Douglas pushed to gain profits interests and other benefits that had not traditionally been granted to actors. Douglas was one of the first actors to have his own production company, and that company retained the rights to many of his films, including *Spartacus*. Douglas barely survived a helicopter crash in 1991 and then suffered a significant stroke in 1996.

Estate Plan: In 2012, Kirk and his wife, Anne, both of whom were charitably minded, formed the Douglas Family Foundation. As of 2018, it remained an unfunded vehicle set to receive future charitable gifts, including a large portion of Douglas's estate. Douglas and Anne also together set up a family trust. Over time, they transferred a majority of their assets, including Douglas's film and image rights, to the trust, minimizing their gift and estate tax burden along the way. In 2015, it was reported that the trust held approximately \$80 million.

Result: When he died in 2020, Douglas left his entire estate—rumored to be \$60–80 million—tax-free to charity, with nothing to his wife of 66 years, Anne, or any of his four children. On its face, this seems like the story of a star who disinherited his entire family. However, given Douglas's lifetime estate planning, it turns out that the opposite was true. Douglas's estate plan gave his family a significant portion of his wealth during his lifetime and left a simple, nontaxable estate to charity.

Lesson: Douglas was careful to provide very well for his family during his lifetime, while making sure that he maintained his own lifestyle and paid minimum estate taxes. Douglas's estate utilized charitable planning and lifetime gift planning to minimize estate taxes and is an example of how proper estate planning works well when a client articulates clear goals, sets the plan in motion during the client's lifetime, and continues to implement the estate plan over time.

Robert Indiana: From LOVE to Acrimony

Background: Robert Indiana was an icon of the 20th century art world. His image of LOVE in stacked, stenciled letters in vivid color expressed the zeitgeist of the 1960s and 70s. Wildly successful and immediately recognizable, the image was eventually turned into one of the most beloved US stamps of all time and made Indiana's reputation as an exemplar of Pop Art. The mass commercial success of LOVE, however, contributed to Indiana's being snubbed by the New York art establishment. In response, Indiana abandoned the city and decamped permanently to the small island of Vinalhaven off the coast of Maine, where he settled in a Victorian Odd Fellows Hall that he called the Star of Hope. There, Indiana continued to produce art. Late in life, Indiana employed a local man named Jamie Thomas as a studio assistant. Over time, Thomas's duties increased, and eventually he became Indiana's personal and financial gatekeeper, and, according to some, increasingly isolated Indiana from Indiana's long-time friends and colleagues and his art agent, the Morgan Art Foundation.

Estate Plan: Allegedly, at Thomas's urging, Indiana fired his long-time New York attorney and hired a

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local practitioner to prepare a new 3½-page will leaving the entirety of his estate, including his artworks, archives, and residence, to a private operating foundation formed and overseen by the new attorney and Thomas. Thomas was named as the attorney-in-fact with full control over Indiana's financial and personal affairs, and the new attorney was also named as personal representative under the will. As attorney-in-fact, Thomas allegedly entered into arrangements to produce and market new or derivative works of art by Indiana, including works that Indiana had previously authorized his art agent to market exclusively. Questions were raised about whether Indiana was in fact the creative force behind the new works, or whether he even signed his name to them, and critics began to worry that his artistic legacy was in jeopardy.

Result: Just before his death, lawsuits to determine control over Indiana's estate, estimated at \$100 million, were initiated. Indiana's art agent alleged copyright and trademark infringement, breach of contract, tortious interference of contract, unfair competition, and defamation. Following his death, Indiana's estate counterclaimed that the art agent had not paid Indiana his rightful royalties and that the agency agreements terminated on death. To fund litigation expenses exceeding \$4 million, the attorney-fiduciary sold important works of art that had been intended for the Star of Hope Foundation. The attorney-fiduciary later sued Thomas, alleging misappropriation of funds and elder abuse, and detailing how, during the period when Thomas was acting as his caretaker, Indiana lived in squalor at the Star of Hope amid his valuable art collection, but surrounded by vermin and animal waste, with the building itself falling into disrepair. The court records are voluminous and littered with acrimonious assertions lobbed by various warring parties. Nevertheless, certain patterns faced by many elderly clients appear in the record.

Indiana's death in 2018 exposed issues faced not only by the rich and famous, but also by many older clients—namely the lack of competent advisors and increased exposure to elder abuse. Eventually, Thomas was removed from all control of the Star of Hope Foundation. Although the attorney-fiduciary has to date refused to settle, late in 2020 the art agent and the Star of Hope Foundation agreed to join forces to preserve Indiana's legacy and to restore his home in Vinalhaven by opening it as a museum with an artist-in-residence program. The expensive litigation has not escaped the eye of the Maine Attorney General's office, which in April 2021 filed a demand seeking the recoupment to the estate of nearly \$3.7 million in legal fees paid out by the attorney-fiduciary to the seven law firms involved in the litigation.

Lesson: This unfortunate chain of events shows that the competence of professional advisors matters. A client with an illiquid multimillion-dollar estate, especially a world-recognized artist whose reputation depends upon proper cataloguing, preservation, marketing, and disposition, and who has specific charitable goals in mind, needs more than a basic will. Indiana replaced his former team of advisors, who had deep experience in representing artists and artist-endowed foundations, with an attorney who did not appear to have the same necessary skills, thereby putting his artistic legacy at risk.

Additionally, elder abuse—be it financial misappropriation or physical abuse—is real and is more common than one might think. Planners should be aware of, and react to, possible signs of abuse. It has been reported that two-thirds of elder financial crime is committed by family members, friends, or other trusted persons. Attorneys should be on the lookout for elder abuse, and should not discount potential abuse by family members or close friends.

Indiana's Maine attorney was prevented by Thomas from seeing Indiana between 2016, when Indiana signed his will, and Indiana's death. Attorneys should not accept being directed by family members or friends. Attorney-client relationships are between the attorney and the client, not with the client's managers, advisors, or family members. Oftentimes, attorneys accept dealing with advisors or staff, being

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told that the clients are too busy or too unwell to meet. Leaving aside the possible ethical violations inherent in sharing client confidences with nonclients, estate planners should never forget that their duty is to the client alone. Attorneys and other advisors should also reach out periodically to ensure that no evidence of elder abuse exists. For planners, the saga of a Pop Art icon's later years, and the fractured details of the litigation surrounding his estate, provide sobering counsel that should be heeded carefully when representing clients.

Aretha Franklin: The Horrors of Holographic Wills

Background: Aretha Franklin, American singer-songwriter and “Queen of Soul,” died of pancreatic cancer on August 16, 2018, at the age of 76. She was survived by her four sons and four grandchildren. During her lifetime, Franklin recorded 112 charted singles, including 17 top-ten pop singles and 20 number-one R&B singles, and won 18 Grammy awards. Franklin was also the first female performer inducted into the Rock and Roll Hall of Fame. At the time of her death, Franklin's estate reported assets of \$17 million, although many have estimated the total value to be closer to \$80 million and growing because of royalties on her music catalog and other pending business deals, such as a biopic of her life.

Estate Plan: Franklin was initially believed to have died without a will, which meant that under Michigan's intestacy statute, Franklin's estate would be split equally among her four children. Her children seemed amenable to this outcome, but any family harmony was lost nine months later when three handwritten wills, dated between June 2010 and March 2014, were discovered in Franklin's Michigan home. Each of the documents was illegible in some places, containing various strikethroughs and edits, and none had been executed with appropriate formalities. An expert confirmed that the documents were in Franklin's writing, but given their state, it was unclear whether they were rough drafts or actually expressed Franklin's final intentions. Each of the documents contained varying provisions regarding beneficial interests and fiduciary appointments, and two of Franklin's sons objected to the handwritten wills.

Since then, the in-fighting has continued, and the legal costs have mounted. In March 2021, yet another “draft will” was filed with the court. The latest unsigned will was reportedly created by Aretha in 2018 using the law firm Dickinson Wright. According to the court filing, Aretha hired attorney Henry Grix to assist her with estate planning. The court filing includes correspondence between Franklin and her attorney that relates to Franklin's estate plan and dates back to 2017.

Result: Almost three years later, Franklin's beneficiaries still haven't received any distributions. Although the fourth will was not signed by Aretha, it leaves specific assets to certain relatives, creates a trust for her disabled son Clarence, and splits the balance of Franklin's estate equally among her other three sons. In his petition, Clarence's court-appointed attorney asks the court to recognize the draft of the will and its accompanying notes as Aretha's final wishes. The attorney's petition cites a Michigan law that allows a deceased person's “intent to be recognized even if the documents are defective in execution.” In light of the new will, the judge scheduled a trial for August 2021 to determine whether any of the documents that have been found can be deemed a valid will.

Lesson: Sadly, it seems clear that Franklin's true testamentary wishes will likely never be known or effected. Franklin's failure to complete and sign a formal will has resulted in acrimony among her children and inefficiencies in the management of her estate and postmortem business endeavors. Franklin was also well known for her desire for privacy. Ironically, Franklin's lack of estate planning has provided the public with myriad details about her family, her history, and the value, nature, and potential distribution of her estate. Although Franklin's estate may eventually be split equally among her four children based on the intestate succession laws in Michigan, it is not at all clear whether this is the result that Franklin

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intended. In an intestacy, each child's inheritance would be outright, and at least one of her children is known to have significant disabilities. Had Franklin created continuing trusts for all of her children, her personal affairs could have been sheltered from prying eyes, her assets could have been protected from the children's creditors, and she could have utilized her generation-skipping exemption, thereby avoiding substantial estate and generation-skipping transfer taxes when any remaining assets ultimately pass to the next generation.

Philip and Helen Wrigley: Tax Planning and Estate Liquidity Issues

Background: Philip K. (P.K.) Wrigley was the son of William Wrigley Jr., the chewing gum manufacturer who founded the Wm. Wrigley Jr. Company and built one of the most famous fortunes in the country. Wrigley came to own a substantial share of his father's chewing gum company and, in 1932, he also inherited his father's controlling interest in the Chicago Cubs. Wrigley Field, the Cubs ballpark, was built in 1914 and remains their beloved home stadium. In 1933, Wrigley told the *Daily News*: "The club and the park stand as memorials to my father . . . I will never dispose of my holdings in the club as long as the chewing gum business remains profitable enough for me to retain them."

Estate Plan: Wrigley stayed true to his word and did not dispose of his interests in the Cubs during his lifetime. At the time of his death in 1977, Wrigley's fortune included significant interests in the chewing gum company; the Chicago Cubs and Wrigley Field; the Wrigley Building in downtown Chicago; substantial real estate holdings in downtown Phoenix, Arizona; and most of Catalina Island off the coast of Southern California. However, when Wrigley and his wife, Helen, passed away only two months apart from each other that year, they had limited liquid assets. The estates owed more than \$40 million in federal and state estate taxes, and were tens of millions of dollars short of the liquid funds needed to settle the various estate tax liabilities. It does not appear that the attorneys for the Wrigleys helped them forge an estate plan during life to account for these tax and liquidity issues in their estates.

Result: After Wrigley died, his son William III became president of the Cubs. In 1981, on the heels of federal and state estate tax audits and saddled with huge estate tax burdens, William III, as executor of his parents' estates, approved a sale of the Cubs and Wrigley Field in a deal that valued the franchise and its related assets at \$20.5 million, ending more than 60 years of the Wrigley family's association with the team. The sale proceeds went directly to the IRS and various state tax authorities. As of March 2021, various sources value the team and its related assets at \$3–4 billion.

Lesson: The Wrigley situation is a prime example of how taxes can override the dispositive provisions of an estate plan. With careful planning to address the tax crunch in the estates of Wrigley and his wife, Helen, it is possible that the Wrigleys could have retained their controlling interest in the Cubs and perhaps even still own the team and its iconic Wrigley Field today. Prospective planning, for example, employing intrafamily gifts, sales, or loans, can often substantially reduce overall wealth transfer taxes. In many instances, even simple gift strategies such as making present interest gifts up to the federal gift tax annual exclusion amount (\$15,000 per donee in 2021; \$30,000 if the gift is split with a consenting spouse) and direct tuition payments can ultimately result in significant estate tax savings. Life insurance held in trust or owned by family members can also be utilized to create liquidity necessary to pay estate taxes. In addition, postmortem intrafamily sales and loans can often help to mitigate estate liquidity issues before interest and penalties on unpaid taxes accrue. Where a shortfall of liquid funds remains, federal and state payment extension provisions, such as I.R.C. § 6166 and N.Y. Tax Law § 997, both applicable to estates consisting of certain closely held business interests, can often help to avoid the sale of assets at an inopportune time.

Planning with Publicity Rights: Robin Williams

Background: Robin Williams was a beloved comedian and Oscar-winning actor. He was well known for his off-beat characters and improvisational skills and is often regarded as one of the best comedians of all time. Williams began performing stand-up comedy in California in the mid-1970s and is best known for playing the alien Mork in the sitcom *Mork & Mindy*. In 2014, Williams committed suicide at his home in Paradise Cay, California, at the age of 63. Medical experts attributed his suicide to Williams's struggle with Lewy body disease.

Estate Plan: Prior to Williams's death, he and his advisors paid special attention to his postmortem publicity rights. Such rights allow public figures to control the commercial use of their name, visual and vocal likeness, or other personal characteristics, and are akin to a property interest in one's unique identity. Publicity rights can be assigned, licensed, and inherited in some jurisdictions, including California, which affords celebrities postmortem publicity rights that last until 70 years after death. During his life, Williams transferred his postmortem publicity rights to his private charitable foundation, subject to the restriction that the rights not be exploited for 25 years following his death. After voicing the Genie character in the hit 1992 film *Aladdin*, Williams had taken issue with the fact that Disney had, in his mind, used his voice without his permission in advertisements promoting toys and other products related to the film.

The 25-year restriction was not the maximum 70 years under California's publicity rights statute, but perhaps Williams was trying to strike a balance between the concern that his image would be misused after his death and the benefit that his postmortem publicity rights would eventually bring to his charitable foundation. Because most of Williams's remaining estate passed to his children, Williams may also have been concerned about a massive estate tax burden. In the past, the IRS has taken note of the income that can be generated from postmortem publicity rights. In 2018, the IRS settled Whitney Houston's estate after contending that her executors had undervalued her publicity rights by more than \$11.5 million. Notably, the IRS recently lost a Tax Court case against Michael Jackson's estate, in which the Tax Court held that the IRS had overvalued the publicity rights and prospective income stream in Jackson's estate by hundreds of millions of dollars.

As an aside, celebrities domiciled in New York State at the time of their deaths will now have a transferable postmortem right of publicity. On December 1, 2020, New York's Civil Rights Law was amended and expanded to add two new sections: (1) one section recognizes rights of publicity for deceased performers and deceased personalities and (2) another section allows individuals to seek redress for use of their images in digitally manipulated sexual content without their consent. Under New York law, the new postmortem rights of publicity extend for 40 years after death and apply only to decedents dying on or after May 29, 2021.

Result: It is not clear whether the 25-year restriction on the use of his publicity rights would have reduced the estate tax value of such rights if the valuation were ever challenged by the IRS. Under basic principles, a decedent's gross estate is determined without regard to any restrictions imposed in the decedent's testamentary instrument. However, the amount of the estate tax charitable deduction is generally equal to the value of what passes to charity, and in this case, what actually passed to charity were publicity rights encumbered by a 25-year restriction. Somewhat counterintuitively, the combination of the 25-year restriction and the charitable bequest could arguably have resulted in full inclusion of the value of Williams's publicity rights in his gross estate for estate tax purposes with only a partially offsetting charitable deduction.

Lesson: As Williams's estate plan illustrates, making testamentary arrangements regarding publicity rights

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requires thoughtful business and tax planning. Public figures—including authors, artists, celebrities, athletes, and political leaders—and their advisors may want to consider choosing a domicile where publicity rights are protected. In addition, it is important for advisers to discuss the client's preferences regarding when and if heirs should benefit financially from these rights, as well as how the rights should or should not be used. Clients should also name a team of people, including an experienced entertainment lawyer and business manager, to manage any postmortem publicity rights, and should consider providing for estate tax liquidity needs with life insurance. Reportedly, Williams's restriction prevented Disney from using outtakes from his *Aladdin* recording sessions to stitch together a sequel featuring his voice after he died. After years of delighting audiences with his humor, perhaps it was Williams who had the last laugh.

Conclusion

The celebrities highlighted above show the importance of well-designed estate plans. Some did not appropriately consider providing for damaged children or reflected elder abuse. Others saved estate taxes and benefitted families and charities. In today's complex society, ordinary people, as well as celebrities, need to protect themselves and their loved ones with competent counsel and complete, comprehensive, and carefully thought-out estate plans.