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Celebrity Estate Planning:
Misfires of the Rich and Famous


Souvenir Edition
David Bowie
1947-2016
BY DYLAN JONES,
JANET STREET-PORTER
Shock as legend dies after secret cancer fight
..but star foretold his own death in last single
ASHES
SCOTLAND

CELEBRITY ESTATE PLANNING:

Misfires of the Rich and Famous

By Jessica Galligan Goldsmith, Shaina S. Kamen, Christiana M. Lazo, David J. Posner, and Bruce D. Steiner

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Like many ordinary individuals, celebrities often have outdated or nonexistent estate plans. Even when a celebrity has done careful estate planning and has well-drafted documents, changes in family circumstances or in the tax laws can create unexpected results. The estate plans of the celebrities discussed in this article, each selected to illustrate a different issue, offer useful lessons to estate planners and laypersons alike.

Overly Simplistic Wills: Jim Morrison

Overly simplistic wills often fail to consider what happens when the primary beneficiary subsequently dies. Jim Morrison, lead singer of the rock group The Doors, died at age 27 with a simple two-page will. At the time of Morrison's death, his financial assets were relatively modest, but he owned a 25 percent interest in The Doors.

Morrison's will declared that he was unmarried and had no children, and he bequeathed his entire estate outright to his girlfriend, Pamela Courson, if she survived him, or if not, in equal shares to his brother and sister. Morrison was estranged from his parents, and they were not mentioned. Courson inherited the entire estate, but she died intestate less than three years later, and her estate passed outright to her parents.

Morrison's parents then made a claim against their son's estate, arguing that Morrison was incompetent to make a will

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and that Morrison's common-law marriage to Courson was illegitimate. Had Morrison's parents been successful on these claims, Morrison's estate would have passed by intestacy, and his parents would have been the beneficiaries. A probate court determined that Courson and Morrison had a common-law marriage. Therefore, even if the will was held to be invalid, Courson still would have inherited everything as Morrison's surviving spouse. Courson's parents and Morrison's parents ultimately resolved their dispute, agreeing to divide Morrison's earnings equally. By this time, The Doors were more popular than when Morrison was alive, and Morrison himself had achieved a cult-like status. By several accounts, the estate was worth tens of millions of dollars, all of which was split between Morrison's parents and Courson's parents.

Instead of making an outright bequest to Courson, Morrison could have left all his assets in trust for Courson and provided that upon her subsequent death, any remaining assets would pass to his siblings. If Morrison had included a testamentary trust in his will, he could have extended his control over his assets. Doing so would have ensured that his desired beneficiaries ultimately inherited his estate.

After-Born Children: Philip Seymour Hoffman

Philip Seymour Hoffman died on February 2, 2014, leaving an estate of approximately $35 million. Hoffman was survived by his longtime companion, Marianne O'Donnell, with whom he had three children: Cooper, born in 2003, Tallulah, born in 2006, and Willa, born in 2008. Hoffman's 2004 will left his entire residuary estate to O'Donnell and created a trust under his will for Cooper if O'Donnell predeceased.

Notably, Hoffman's daughters, Tallulah and Willa, were born after Hoffman executed his will. As a threshold matter, in New York a parent is not required to give any part of his estate to his children. Hoffman's will was drafted after Cooper was born, and it was not updated

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before Hoffman's death. Therefore, Hoffman's failure to provide for his daughters was likely an oversight.

New York Estates, Powers, and Trusts Law (EPTL) § 5-3.2 states that whenever a testator has a child who is born after the execution of a will, and the testator dies, leaving the after-born child "unprovided for by any settlement," then if the child is "neither provided for nor in any way mentioned in the will," the after-born child shall receive a portion of the testator's estate equal to that received by any living child. A settlement in this context is a financial arrangement for the after-born child made by the testator and can include assets such as a Totten trust, a savings bond, or life insurance. Nonmarital children who can prove paternity are included.

Under the statute, assuming Hoffman made no settlement during his lifetime for his daughters, each after-born daughter was entitled to receive a share equal to that of Cooper. If O'Donnell had predeceased Hoffman, Hoffman's will would have created a testamentary trust for Cooper. Under EPTL § 5-3.2, similar trusts would have been created for Hoffman's daughters since they were born after the will was written and were not specifically excluded.

Even a small settlement may be sufficient to prevent an after-born child from inheriting under a will. The testator's intent is paramount in determining whether an arrangement made during life is intended to be a settlement. The courts will consider factors such as the character and size of the provision for the after-born child, the circumstances under which such provisions were made, the value of the entire estate, and the nature of the provisions, if any, made for any other child.

Because O'Donnell inherited the entirety of Hoffman's estate outright, the settlement issue was never raised. Therefore, it is not clear what provisions, if any, Hoffman made for Cooper or either of Hoffman's daughters. As practitioners, estate planners need to help clients understand the rights of their surviving family members under applicable state law and make sure that documents are updated regularly to keep up with changing family circumstances.

Domicile: Heath Ledger

Heath Ledger's performance in *The Dark Knight* won him an Oscar posthumously. Critics acclaimed Ledger's performance as a total reinvention of the classic Batman villain. Unfortunately, Ledger's untimely death at age 28 revealed a much less stellar performance with respect to his estate plan.

In 2003, when Ledger's successful career was already established, Ledger executed a will governed by the laws of Australia. The will declared Ledger's residence to be in western Australia. It also gave his estate one-half to his siblings and one-half to his parents. Thereafter in 2004, Ledger and Michelle Williams began dating and their daughter, Matilda, was born in 2005. In June 2007, Ledger

purchased a $10 million life insurance policy for Matilda. Ledger and Williams did not marry, but they settled in Brooklyn, New York, eventually separating in September 2007. After their separation, Ledger and Williams continued to co-parent Matilda in New York.

Ledger died in New York City in 2008 without updating his will. Ledger's domicile at the time may have been unclear. Practitioners often look to statements in significant documents to establish the creator's domicile. In 2008, Ledger was co-parenting in New York with Williams and likely traveling extensively for work and pleasure. It is unclear whether Ledger continued to view Australia as his domicile or considered New York his domicile at the date of his death. An updated will could have helped answer this question.

Domicile can have significant implications for an estate. US citizens and residents are subject to federal estate tax on their worldwide assets but enjoy a large federal estate tax exemption. By comparison, nonresident aliens of the United States are generally subject to US federal estate tax on US situs assets only but benefit from a much smaller federal estate tax exemption. If Ledger was a nonresident alien at the time of his death, the proceeds of his $10 million life insurance policy and any other non-US situs assets in his estate would not have been included in his US taxable estate. If Ledger was a resident alien at the time of his death, however, then the policy proceeds and the balance of his worldwide estate would have been included in his US taxable estate, yielding vastly different estate tax results. Similarly dramatic estate tax consequences can occur when a client shifts domicile from one state to another, and estate planning documents should clearly reflect a client's intent with respect to domicile.

Domicile also can affect questions of property law, which is particularly relevant in this case for Heath's daughter Matilda. Almost all states have statutory rules that provide for children born or adopted after the execution of a parent's will and who are not provided for either in that will or otherwise in the parent's estate plan. The rules vary from state to state in how and when they provide for after-born children. The statutory default rules, however, often do not meet a client's expectations for such a child.

Matilda did not make a claim in court against Ledger's estate. Had she done so, it is not clear which state's (or country's) default statutory law would have applied. New York case law suggests that the laws of the domicile at the time of a decedent's death should apply. Ledger's domicile may have been New York but also may have been Australia or elsewhere. An updated statement of intent in Ledger's will would have helped answer this question. By comparison, the *Restatement (Second) of Conflict of Laws* suggests that the laws of the domicile at the time the decedent's will was drafted should apply. This uncertainty illustrates one of many risks for a client who relies on a default domicile statute to fix the failings of an outdated estate plan.

As noted above, EPTL § 5-3.2 applies "[w]henever a testator has a child born after the execution of a last will, and dies leaving the after-born child *unprovided for by any settlement*" (emphasis added). EPTL § 5-3.2 provides for nonmarital children in the same way that it does for marital children, assuming the child can satisfy proof of paternity. Ledger did provide Matilda with a settlement, namely the life insurance policy of which she was beneficiary. The existence of the life insurance policy therefore likely defeated any statutory claim Matilda might have made against Ledger's estate. Disinheriting Matilda from the balance of his estate may or may not have been Ledger's intent when he purchased the policy and named Matilda as its beneficiary. Indeed, the statutes governing the rights of after-born children often fail to fix an outdated estate plan in a manner consistent with the testator's intent.

For Matilda, her status as an after-born child who was named as a beneficiary of a life insurance policy on her father's life, but not included in her father's will, becomes more troubling, considering the circumstances surrounding Ledger's untimely death. Ledger died in January 2008 from a prescription drug overdose that ultimately was labeled accidental. The date of Ledger's death, less than one year from the date of his purchase of the policy, is significant. Because the life insurance was purchased within two years of Ledger's date of death, his death was within the "contestability period" during which an insurance company may review the insurance policy application for misstatements. Any material misrepresentation on the application, including one unrelated to the cause of death, can void the policy. In addition, a suicide during the contestability period also can

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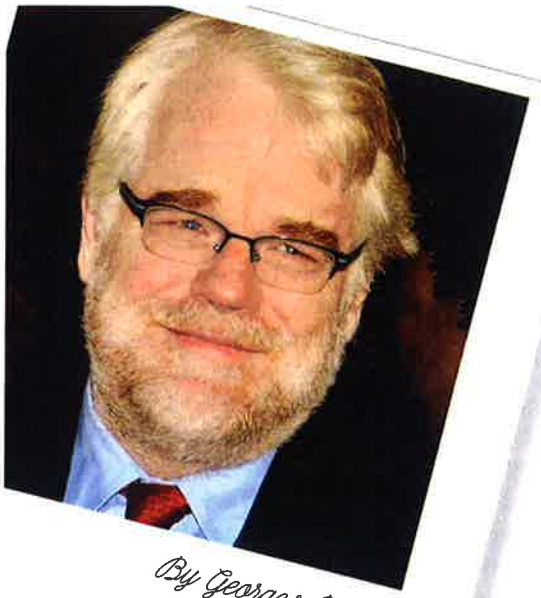

By Georges Biard

void the policy.

In Ledger's case, his insurance application may not have referenced the use of numerous prescription drugs. If so, the insurance company could have argued that the application included a material misrepresentation. Similarly, the insurance company could have argued that the death was a suicide, rather than accidental, thereby voiding the policy. In this case, the policy proceeds ultimately were paid to Matilda. The takeaway to advisors and clients alike is to complete life insurance applications carefully and to understand the extent to which a life insurance policy actually protects one or more intended beneficiaries.

Finally, one of the basic estate planning techniques used by practitioners to mitigate US estate tax exposure for clients is to purchase a life insurance policy in an irrevocable life insurance trust. When structured properly, the proceeds of a life insurance policy held by such a trust will not be included in the insured's estate. Even if Ledger considered himself a nonresident alien of the United States when he purchased the life insurance policy, it would have been advisable to purchase the policy through a life insurance trust to mitigate the risk of his later becoming resident in the United States for federal estate tax purposes.

Decanting can be a powerful tool for post-mortem estate planning and should be considered whenever testamentary trusts are created.

Second Families and Decanting: David Bowie

David Bowie died on January 10, 2016, at age 69, leaving an estate estimated to be as large as $100 million. Bowie was a singer, songwriter, and musician, as well as an actor and record producer. He was a citizen of the United Kingdom and a resident of Manhattan.

Bowie first married Mary Angela Barnett in 1970. He and Barnett had one child, Duncan Jones. Duncan was married and expecting a child at the time of his father's death. Bowie and Barnett were divorced in 1980. Bowie then married model and actress Iman Mohamed Abdulmagid (Iman) in 1992. Bowie and Iman also had one child, Alexandria Zahra Jones (Lexi), who was born in 2000.

Bowie left a will dated August 25, 2004, as amended by a codicil dated May 4, 2007. Bowie's will left his residuary estate 50 percent in a marital trust for Iman, 25 percent outright to Duncan, and 25 percent in trust for Lexi. Iman receives all the income from her trust during her lifetime, and the trustees also may distribute principal to Iman subject to an ascertainable standard for her health, education, maintenance, and support. Upon Iman's death, the balance of the trust, after the payment of any estate taxes, will pass 50 percent to Duncan if he survives Iman or, if not, then to Duncan's issue, and 50 percent to Lexi, in trust to age 25 if she survives Iman or, if not, then to Lexi's issue.

Bowie left Iman's share in a marital trust, ensuring that upon Iman's death, the trust property will pass to Duncan and Lexi equally. Because Iman had a child from a previous marriage, had Bowie left Iman's share to her outright, she could have left the property to her own two children and excluded Duncan. The creation of a marital trust in Bowie's will protected Duncan and his issue from the risk of being disinherited by Iman from her share of the estate.

Bowie left the rest of his residuary estate, and the remainder of Iman's trust, to Duncan and Lexi, subject to a trust for Lexi to age 25. Until Lexi reaches age 21, Lexi's trustees have discretion to distribute income and principal to Lexi, and Lexi receives all the income of the trust beginning at age 21. When Lexi reaches age 25, the trust ends, and she receives all the trust assets outright. If Lexi dies before age 25, the balance of the trust passes to Bowie's then living issue. Presumably, because Iman's trust qualified for a full marital deduction, the estate taxes on Bowie's estate were borne by the children's shares of the residuary estate.

Instead of requiring sizeable assets to be distributed outright to his children at relatively young ages, Bowie could have provided flexible lifetime trusts for both of his children and given the trustees discretion to make distributions at any time for any reason. Bowie also could have given each child a special power of appointment over the trust, exercisable in favor of his or her own issue, Bowie's issue, or a broader class of permissible appointees. Creating lifetime trusts would have protected each child from creditors for his or her entire lifetime and allowed Bowie to use his full GST exemption.

Similarly, Bowie could have provided trusts in his will for his grandchildren in case a child wished to disclaim a portion of such child's inheritance. Trusts for grandchildren also would have protected Duncan's child from the possibility that Duncan would predecease. Because Duncan's wife was pregnant at the time of Bowie's death, once Duncan's son was born alive, the grandchild would be deemed to have survived Bowie and could have benefited from a disclaimer by Duncan. Because no trusts were included for grandchildren in the will, however, had Duncan chosen to disclaim some or

all of his inheritance, the disclaimed property would have passed outright to Duncan's child, subject only to the executor's power under the will either to hold the property until the child reached age 21 or to pay to a custodian under the UTMA. It is unlikely that any parent would disclaim under these circumstances.

New York was the first state to enact a decanting statute in 1992. The statute was overhauled in 2011 and contains two sets of decanting provisions, applicable depending on whether the trustees have unlimited discretion to invade principal or instead are limited to an ascertainable standard. Because Bowie was a New York resident, his trustees could decant Bowie's testamentary trusts to obtain additional GST tax and asset protection benefits for his issue.

Lexi's trustees are given unlimited discretion to distribute the principal of Lexi's trust to her. Therefore, they have the option to decant Lexi's trust under the more flexible decanting provisions, although they cannot expand the class of remainder beneficiaries. If the trustees decant Lexi's trust, the new trust need not end when Lexi attains age 25 but instead can last until a later age or even for her lifetime. If they wish to do so, the trustees also can give Lexi a broad limited power of appointment, thereby permitting Lexi to provide in her own will that the remainder of her trust passes first to her own issue before passing to Bowie's other issue.

By contrast, Iman's trustees are bound by an ascertainable standard and do not have unlimited discretion to distribute the principal of Iman's trust. The trustees still could decant Iman's trust, however, so long as the remainder beneficiaries remain the same. Thus, the trustees could decant Iman's trust to provide that, after Iman's death, the balance of the trust will be divided into separate lifetime trusts for Duncan and Lexi and that the trustees have complete discretion to distribute principal to the children from the new continuing trusts. The trustees could give each child a broad limited power of appointment, thereby protecting each child from creditors while giving each child effective control over his or her trust.

Finally, if the decanting had taken place before Bowie's estate tax return was filed, then his executors also could have made a reverse QTIP election and allocated Bowie's remaining GST exemption to Iman's trust. Doing so could have ensured that each child's family would benefit equally from Bowie's remaining GST exemption. Decanting can be a powerful tool for post-mortem estate planning and should be considered whenever testamentary trusts are created.

Promises, Promises: Anna Nicole Smith

Anna Nicole Smith (Anna Nicole) and the estate of her late husband, J. Howard Marshall II, were embroiled in endless litigation. Marshall died in 1995 at age 90, only 14 months after marrying his much younger wife, then age 27. Upon his death, Marshall's will poured his probate estate into a Louisiana revocable trust, which named his son Pierce as the sole beneficiary. Anna Nicole received nothing, and Marshall's son Marshall III also was disinherited.

Subsequently, Anna Nicole, Marshall III, and Pierce all vied for a piece of Marshall's $1.6 billion estate. Anna Nicole claimed that Marshall had promised to give her one-half of his income earned during their marriage and had instructed his attorneys to prepare documents to that effect. Marshall III claimed that his father had contracted to leave him an amount equal to Pierce's inheritance. The various litigations that commenced upon Marshall's death were so protracted that they ultimately survived both Anna Nicole and Pierce.

Before Marshall died, all of his assets were transferred to the revocable trust. In August of 1995, Marshall's will and codicil were probated in Louisiana, and an application was made in the Texas Probate Court to settle claims on behalf of Marshall's estate. Both Anna Nicole and Marshall III filed objections to the probate, challenging both the validity of the will and Pierce's use of a power of attorney.

In 1996, Anna Nicole filed for bankruptcy in California. Pierce filed a claim for defamation against Anna Nicole in the California bankruptcy court, and Anna Nicole counterclaimed, alleging that Pierce had interfered with Marshall's promised gift to her. The California court awarded Anna Nicole approximately $450 million in damages against Pierce, and this award subsequently was reduced to $88 million by the California district court. Shortly thereafter, the Texas Probate Court ruled in favor of Pierce, determining that there was no agreement for Marshall to give one-half of his estate to Anna Nicole.

The conflict between the rulings in California and Texas resulted in numerous appeals, including two appeals to the United States Supreme Court. After years of litigation and massive legal fees, the United States Supreme Court ruled that the California bankruptcy court lacked the authority to enter judgment on a state law claim. In the end, Anna Nicole's estate received nothing either from Pierce or from Marshall's estate.

Ultimately, oral promises are not the same as written contacts, especially in family matters. Attorneys should make sure that their clients' wishes are carefully spelled out in prenuptial agreements, wills, revocable trusts, or deeds of gift. In addition, it is important to make sure to follow proper court procedure in each relevant state when litigating estate matters.

In each of the estate plans discussed above, one or more simple updates or revisions could have made a substantial difference for the beneficiaries. Although each of the celebrities discussed likely had agents, managers, and attorneys heavily involved in their careers, none of them had an ideal estate plan. Given the ever-changing tax laws, the vast differences in state estate taxes, and the complexities often inherent in today's families, everyone—famous or not—needs to take time to protect his or her loved ones with a complete, updated estate plan. ■