Celebrity Estate Planning

Misfires of the Rich and Famous II

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In many ways, celebrities are no different from other people. Even though they often have access to the best managers, agents, and attorneys, celebrities often have non-existent or outdated estate plans. Sometimes changes in family circumstances or in the tax laws can create unexpected results, and sometimes no tax planning has been contemplated. The estate plans of the celebrities discussed in this article, which is a sequel to an article in the July/August 2018 issue, can provide useful lessons to estate planners and individuals.

Not Your Family's Business: Kurt Cobain

Kurt Cobain, lead singer of the music group Nirvana, died without a will at the age of 27 from a self-inflicted gunshot wound. Cobain was survived by his wife, Courtney Love, who reportedly suffered for years from drug addiction, and his minor child, Frances Bean Cobain.

Following Cobain's death, Love formed a limited liability company with Cobain's former bandmates to control all the ongoing projects related to Nirvana. As part of the LLC agreement, Love reportedly retained full control

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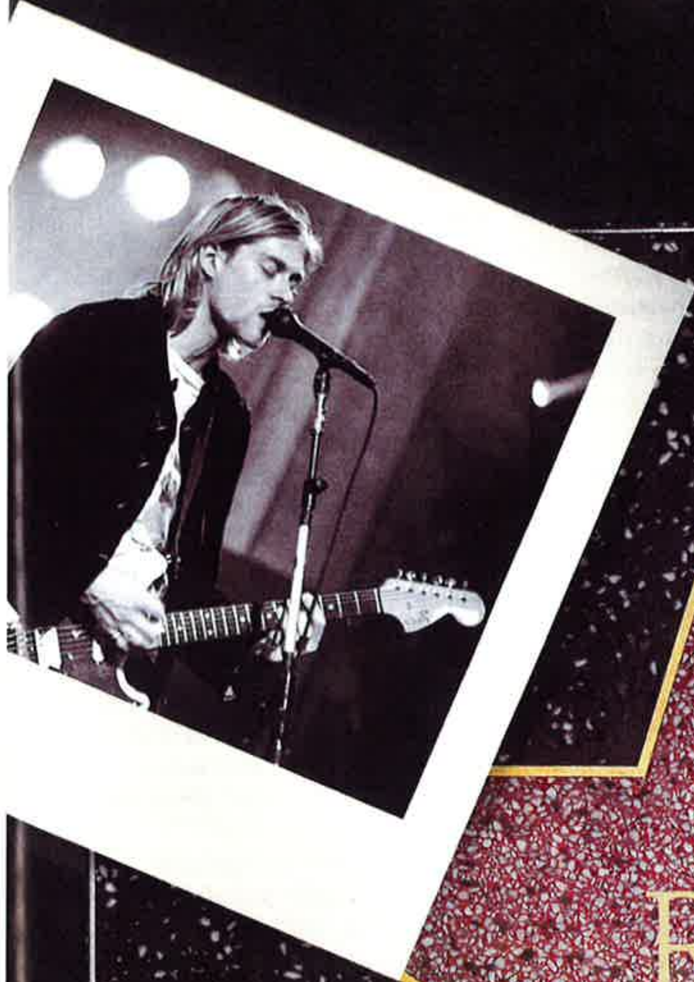

R.I.P.

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over Cobain's publishing share and the use of his image and name.

Years later, Love sued to dissolve the LLC. The parties eventually settled the lawsuit, and in later years Love reportedly relinquished her rights to Cobain's name and likeness. Twenty years after Cobain's death, Cobain's estate continues to be big business. Nirvana has been inducted into the Rock and Roll Hall of Fame, albums have been released posthumously, and its music continues to be licensed for use in movies and commercials.

Instead of dying intestate, Cobain could have executed a will naming professional advisors as the fiduciaries of his estate and safeguarded his property through the use of trusts and, because Cobain and Love resided in a community property state, a property status agreement (separate property agreement). In conjunction with his estate planning, Cobain could have put a team of skilled professionals in place with particular expertise in the music industry to manage and maximize his interest in Nirvana after his death. Because Cobain died without a will and without a separate property agreement, Cobain lost a crucial opportunity to name fiduciaries and other professionals to manage his property. Because he failed to plan, Love had priority to serve as his fiduciary and to manage his interest in Nirvana after his death.

The future success of a valuable enduring business should not be left to chance. Attorneys should make sure that their clients' wishes are carefully spelled out in wills or business succession plans setting forth a roadmap for the future continuity and management of the business.

Reducing the Risk of Post-Mortem Litigation: Jimi Hendrix

Jimi Hendrix, the guitarist, died from an accidental drug overdose. Like Kurt Cobain, he was 27 years old. Hendrix left a small liquid estate and a lot of valuable rights to his music but had no will or other structure to manage his prolific body of work. More than 48 years after his death, his estate is worth an estimated $175 million and is perhaps the most litigated estate in the history of entertainment.

Although Hendrix died in 1970, litigation began in 1993 when Hendrix's father, Al, sued the estate's attorney to win back Hendrix's image and music rights. Al won his suit and formed two companies to manage Hendrix's estate. Al passed away in 2002, leaving both a will and several business entities in place to allow for uninterrupted management of Hendrix's estate. Al's will left sole control to Al's adopted daughter, Janie.

In 2004, Hendrix's brother Leon challenged Al's will. The will was upheld, but in 2009, a six-year legal battle between Janie and Leon and their respective companies began over copyright infringement. In 2017, Janie sued Leon again for trademark violations, and Leon counterclaimed, alleging defamation and the blocking of various licensing deals.

Hendrix could have avoided decades of litigation with a proper estate plan. The state law governing Hendrix's estate provided that when a decedent dies without a will and is survived by a parent but no spouse or children, the parent inherits the estate. Because Hendrix died without a will and his mother predeceased him, his father was his sole intestate heir. Although Leon claims he was close to Hendrix, Hendrix did not make any provision for Leon in a will or trust. Al was left in charge of Hendrix's estate by default, and Al's adopted daughter Janie, rather than Hendrix's brother Leon, inherited control of Hendrix's estate from Al. It is impossible to know whether this is the result that Hendrix would have wanted.

Practitioners should warn clients that disinheriting one or more children creates a significant risk of estate litigation. All states other than Louisiana allow parents to disinherit an adult child, but parents who wish to do so should act defensively. Al could have reduced Leon's economic and emotional pain by speaking with Leon about his estate plan, making some provision for Leon, or selecting a decision maker other than Janie, preferably a neutral third party, to handle Hendrix's estate after Al's death.

Al could also have incorporated an *in terrorem*, or no contest, clause in his estate planning documents. An *in terrorem* clause provides that a beneficiary who objects to the estate plan will forfeit what the beneficiary would otherwise receive under the will. An *in terrorem* clause, coupled with a meaningful bequest to an otherwise disinherited child, may dissuade the child from objecting to a will. Even if a parent wishes to disinherit a child, making a significant bequest to such child is likely to be less expensive for the parent's estate than years of protracted litigation.

Jurisdictions differ as to whether or not such a clause will be upheld. The determination often rests on whether or not the challenge was made in good faith or based on probable cause. Some states require good faith or probable cause and some states require both. Thirteen states, including New York, generally enforce all *in terrorem* clauses without regard to probable cause or good faith, and Florida is the only remaining state that refuses to enforce these kinds of clauses. Practitioners who wish to utilize an *in terrorem* clause should always review relevant state law.

Finally, Hendrix also could have

significantly reduced the overall cost to his family with appropriate tax planning. His death predated the imposition of the GST tax, and if Hendrix had left his estate in a properly drafted irrevocable trust, the family would have saved future transfer taxes on Al's subsequent death. Although trusts created today are not automatically grandfathered from the GST tax, the current GST exemption is quite significant, and careful tax planning with skilled advisors is always recommended.

The Superstitious Client: Pablo Picasso

Younger celebrities are not the only ones to die without a will. Pablo Picasso, one of the most significant artists in history, died intestate in 1973 at age 91 as a resident of France. Picasso's estate, including 45,000 works of art, was estimated to be worth as much as $1 billion ($5.66 billion in today's dollars). Given the numerous issues that plagued his estate, it is ironic that Picasso is quoted as saying: "The meaning of life is to find your gift. The purpose of life is to give it away."

Picasso left five heirs under French law, including two non-marital children who sued the estate to be included as his heirs. Picasso's attorney, Armand Antebi, was quoted as saying that Picasso never made a will because he was superstitious and felt that avoiding estate planning was a way "of avoiding death." Clearly, this approach was not successful.

After six years and $30 million in legal fees, the estate was settled. Picasso's son, Claude, was appointed as the administrator of the estate. Neither Claude nor any of the other members of Picasso's family, however, had any training regarding the handling of valuable art. Picasso would have done better to have named an independent special art executor. Although his heirs ultimately became knowledgeable operators in the art world, they have been roundly criticized for their artistic and commercial decisions.

Picasso was very charitably inclined during his lifetime, donating more than 800 of his earlier works to the city of Barcelona. Had he made a will, Picasso could have provided for many more specific charitable bequests. Because Picasso died without a will, he did not effect any charitable planning he may have had for his artwork. This lack of charitable planning also had significant estate tax consequences, as French estate taxes required the estate to transfer a number of very valuable pieces by both Picasso and other famous artists to the French government as payment in lieu of estate tax. Fortunately, the government did not sell these pieces at auction, and they are now located at the Picasso Museum in Paris.

Short-Lived Trusts: James Gandolfini

Some celebrities do have wills but have not planned as effectively as they could for future generations. James Gandolfini, an actor most famous for playing Tony Soprano, died on June 19, 2013, at age 51, a resident of Manhattan.

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Gandolfini was survived by his second wife, Deborah Lin, and their daughter, Liliana, who was eight months old. He also had a son, Michael, age 13, from his first marriage.

Gandolfini left a will dated December 19, 2012. He also created a trust for Michael with $7 million of life insurance and gave the trust the option to purchase his New York apartment and parking space at fair market value. Gandolfini left his home in Italy to his children in trust until they both reached age 25, and he left his residuary estate 30 percent to his sister Leta Gandolfini, 30 percent to his sister Johanna Antonacci, 20 percent to Deborah, and 20 percent in trust for Liliana to age 21.

Gandolfini had the option to provide for Deborah in a marital trust rather than outright. Doing so would have protected Deborah's share against potential creditors and future spouses. He could also have added Liliana's share to a trust for Deborah eligible for the marital deduction rather than leaving it to Liliana outright at age 21. Finally, Gandolfini could have provided for his sisters in separate trusts for their benefit rather than outright shares, protected against their respective creditors and spouses, and potentially avoided transfer taxes on their subsequent deaths.

Long-term trusts do not necessarily hamper a beneficiary. Gandolfini could have allowed each sister to effectively control her own trust by naming the sister as a trustee and by giving the sister the power to remove and replace her co-trustee(s) with anyone other than a close relative or employee. Each sister could also have had the broadest possible special power of appointment over her trust, exercisable both during her lifetime and by will.

Gandolfini's will doesn't say what happens to a child's share of the trust for the Italian property if the child dies before age 25. The will should have specified whether the property would then pass to the deceased child's issue or to Gandolfini's other surviving child. In addition, Liliana will receive her 20 percent of the residuary estate outright upon reaching age 21. Even if Gandolfini didn't want to combine Liliana's share with Deborah's share, Gandolfini could have given Liliana a lifetime trust that Liliana could effectively control after attaining a certain age.

Since Gandolfini included his baby Liliana in his will, he clearly considered his planning to be up to date. That being said, the trusts for his children end at very early ages, and Gandolfini's GST exemption will presumably be lost. Once again, careful tax planning with skilled advisors would have been beneficial for the family.

The Rogue Client: Charles Kuralt

Sometimes, despite capable estate planning, celebrities have unexpected beneficiaries. Charles Kuralt, journalist and host of CBS News Sunday Morning, died with a 1994 will that left his residuary estate to his wife Suzanna Kuralt (known as Petie) and a credit shelter trust to his daughters from a prior marriage. Kuralt was a New York resident, but he also owned significant property in Montana. When Kuralt was dying, he wrote a deathbed letter to his mistress, Patricia Shannon, that was a surprise to his family and formed the basis for protracted litigation:

> Dear Pat—Something is terribly wrong with me and they can't figure out what...I'll have the lawyer visit the hospital to be sure you inherit the rest of [my property in Montana], if it comes to that.... Love, C.

When Petie submitted Kuralt's will (which did not mention Shannon) for ancillary probate of his Montana property, Shannon filed a petition arguing that the deathbed letter was a holographic codicil which left the property to her. Section 72-2-522(2) of the Montana Code Annotated provides that a holographic will can be valid, whether or not witnessed, if the signature and material portions are in the testator's handwriting. A series of decisions from the Montana District Court and the Montana Supreme Court ultimately held the deathbed letter was a valid holographic codicil.

Kuralt's daughters, who became his personal representatives after Petie's death but before resolution of the Montana proceedings, were in for another surprise during a second round of litigation. Shannon cited the tax clause in Kuralt's will providing that all estate tax other than estate tax on insurance and retirement assets was payable from the residuary estate. The parties stipulated the Montana court had jurisdiction and that New York law governed interpretation of the tax clause.

The New York estate tax apportionment statute, EPTL 2-1.8(c), provides that absent a contrary direction in a will, estate taxes should be apportioned among the beneficiaries based on their shares. Had Kuralt's will been silent regarding estate taxes, Shannon would have had to pay the estate taxes on the Montana property. The personal representatives argued that payment from the residuary of the estate taxes on the Montana property was not intended because Kuralt wanted to maximize the federal estate tax marital deduction. They also argued that the deathbed letter made the tax clause in Kuralt's will ambiguous and that any ambiguity should be resolved by statutory apportionment. The Montana courts were unpersuaded and ultimately found for Shannon.

It is unlikely that the attorney who

drafted Kuralt's will could have prevented the litigation that took place because the attorney could not have predicted the existence of the deathbed letter. However, the result in Kuralt's case is a reminder that tax clauses can have significant dispositive implications. They should always be drafted thoughtfully to reflect a client's intent.

The Win-Win Scenario: Bill Davidson

Can an estate planning technique be fool-proof? William Davidson, the billionaire owner of the Detroit Pistons, worked with very sophisticated estate planners in the months leading up to his death in 2009. The "win-win" technique the attorneys recommended was a self-cancelling installment note (SCIN). In general, SCINs arise in the context of intra-family sales, where the buyer's outstanding balance on the SCIN is cancelled if the seller dies before the note matures. SCINs contain a higher sale price, a higher interest rate, or both, to account for the risk of partial or complete cancellation.

Davidson agreed to use SCINs in the sale of family business stock to his children. A few months later, Davidson passed away, and the notes self-cancelled. If Davidson's estate planners were correct, almost a billion dollars in closely held stock should have passed tax-free to the children. Not surprisingly, the IRS disagreed. In early 2013, the estate received a Notice of Deficiency for more than $2.8 billion in gift and estate taxes, interest, and underpayment penalties.

The IRS challenged the estate's characterization of the intra-family sales as being bona fide. In Chief Counsel Advice Memorandum 201330033 (July 26, 2013), the IRS concluded that the SCINs' terms were not made in good faith, pointing to the IRS's medical expert, who found that Davidson had less than a 20 percent chance of surviving beyond the maturity date of the SCINs. In addition, the IRS argued that the SCINs used the wrong mortality tables to determine the premiums and the maturity dates. In 2015, the parties settled for an estimated $388 million, a tiny fraction of the $2.8 billion originally demanded by the IRS. The executors did not view the settlement as a win however, ultimately filing a $500 million negligence lawsuit against the estate planners.

The lessons of the Davidson case are important. First, the law surrounding SCINs is not settled, given the Tax Court cases and regulations on point. Second, if and when SCINs are contemplated, planners should consider using the conservative methodology outlined in CCA 201330033. Lastly, planners must always consider how intra-family sales will be considered from a bona fide transaction standpoint in order to mitigate a direct gift and estate tax attack by the IRS.

None of the celebrities whose estates are outlined above had an ideal estate plan. In many cases their estates suffered through long drawn-out litigation or paid significant unnecessary estate taxes. Given the ever-changing federal tax laws, the differences between and among federal and state estate and trust laws, and the complexities of today's modern families, celebrities as well as ordinary people need to protect their loved ones with a complete, updated, and well-thought-through estate plan. ■