

Celebrity Estate Planning: Misfires of the Rich and Famous III

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Many people idolize celebrities and often consider them to be role models. But the truth is that celebrities are just people. Although famous people may have teams of attorneys working on their business matters, celebrities often ignore estate planning or fail to update outdated estate plans. The problems and issues in the estate plans of the celebrities discussed in this article can serve as useful lessons to estate planners and individuals alike.

Cher Papa and Instagram Moments: Johnny Hallyday

Johnny Hallyday (born Jean-Philippe Smet) was dubbed the “French Elvis.” Hallyday dominated the French rock scene for six decades and sold over 100 million records. His death, like his life, juxtaposed two jurisdictions—the United States and France. Hallyday died of lung cancer in December 2017 at the age of 74, survived by his fourth wife, Laeticia, his two minor adopted children with Laeticia, and his two adult natural born children from prior marriages: Laura Smet and David Hallyday.

Hallyday, Laeticia, and their minor children split their time between Los Angeles and St. Barths, a French Caribbean Island. Hallyday died with estate planning documents executed in California and subject to its governing law. The estate plan reportedly left Hallyday’s entire estate to Laeticia and, at her subsequent death, to their two children. Hallyday’s adult children from his prior marriages, Laura and David, received nothing. The laws of California, like those of most states in the United States, allow one to disinherit one’s children, although the laws of France, which govern St. Barths, do not.

In February 2018, Hallyday’s adult children contested his estate plan in French court. They argued that French law, with its concept of forced heirship, should apply to his estate. If forced heirship applied, his children would be required to receive a minimum fixed percentage of Hallyday’s estate. In May 2019, a French court agreed with Hallyday’s adult children and ruled that French law should apply.

Many clients, multinational and domestic, wish to choose their domicile. Practitioners working with these clients should take note of the Hallyday case. In reaching its conclusion, the French court focused on Laeticia’s almost daily Instagram posts documenting the family’s travels. These posts provided evidence

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to the court that France was Hallyday's "true home." Although clients often make statements of domicile in legal documents (like a will and revocable trust), clients must also pay attention to other facts and circumstances, including social media posts, credit card and telephone statements, and travel records. These documents provide real-time data on a client's location if a claimed domicile is challenged. When working with multinational clients, practitioners also should consider whether an election under the EU Succession Regulation, No. 650/2012 (known as Brussels IV), could help create certainty as to which jurisdiction's laws should apply.

Not many clients wish to disinherit their children. If a domestic client does wish to disinherit a child, however, attorneys should consider adding an *in terrorem*, or no contest, clause to the client's estate planning documents. An *in terrorem* clause provides that any beneficiary objecting to the will or other estate planning document forfeits whatever such beneficiary might otherwise have received. For this reason, an *in terrorem* clause is most effective when the child receives something that such child would not want to forfeit through litigation.

Hallyday's daughter, Laura, complained to the press that she received nothing—not a guitar, a motorbike, or even a signed copy of the song "Laura," which Hallyday wrote for her when she was a child. Practitioners should prepare clients for the emotionally and financially draining battles that can ensue if they disinherit a child and should encourage clients to leave each child at least a token amount to ease the emotional pain of disinheritance and reduce the risk of litigation.

On the Road to Divorce: Anthony Bourdain

Anthony Bourdain, celebrity chef, was best known for his role in the CNN travel and food documentary series, *Parts Unknown*. Bourdain died on June 8, 2018, at the age of 61 of an apparent suicide. He was survived by his second wife, Ottavia Busia, and their 11-year old daughter, Ariane Bourdain. At the time of his death, Bourdain and his wife were separated, and he was in a relationship with Italian actress Asia Argento.

Bourdain revised his will in 2016 and left his residuary estate to his daughter Ariane in trust until age 35. He named Ottavia to serve as executor and trustee and also designated Ottavia as guardian of Ariane. Bourdain's will did not provide anything for Ottavia, even though she was his surviving spouse. It is unclear whether Bourdain and Ottavia had a prenuptial agreement or a separation agreement in which Ottavia gave up her elective share rights as the surviving spouse. Without such an agreement, Ottavia would have been free to elect against the will and disrupt Bourdain's estate plan.

Subject to certain exceptions, under New York Estates, Powers, and Trusts Law (EPTL) section 5-1.1-A, a surviving spouse has a statutory right to elect against the decedent's estate to take outright an amount equal to the greater of (i) \$50,000 or (ii) one-third of the net estate. The net estate is reduced by debts, administration expenses, and reasonable funeral expenses. The share of the estate to which the surviving spouse is entitled is augmented by testamentary substitutes, including but not limited to, joint property, gifts made within one year of death, revocable trust property, and retirement assets. Finally, the surviving spouse's one-third share is reduced by all property other than life insurance that passes to the spouse through probate or otherwise.

It is also possible that Ottavia either waived her right of election under EPTL section 5-1.1-A(e) or was disqualified as a surviving spouse under EPTL section 5-1.2. Waivers are most commonly effected through prenuptial or postnuptial agreements but can also be done with a written instrument, signed and acknowledged pursuant to EPTL section 5-1.1A(e). In addition, a surviving spouse may also be ineligible for the right of election if the surviving spouse is deemed to have abandoned the decedent without

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consent. In Bourdain's case, it is not publicly known whether Ottavia (i) waived her right of election, (ii) was disqualified under EPTL section 5-1.2, (iii) received sufficient non-probate assets to reduce her right of election to zero, or (iv) simply elected not to exercise her right of election because the property was otherwise passing in trust for her daughter.

Divorces and spousal separations require careful analysis in the estate planning arena. A decedent's estate plan can be affected by a surviving spouse even though the spouse has been separated from the decedent for many years. Further, when a client has had multiple marriages, it is important to analyze whether a prior spouse has any rights under a divorce settlement that could frustrate a client's plan or impair a surviving spouse's inheritance or right of election.

Elder Abuse: Stan Lee's Tragic Last Story

Stan Lee was one of the creative geniuses behind Marvel's comic book characters and superheroes like Spider-Man, Iron Man, the Incredible Hulk, the X-Men, and the Fantastic Four. Lee helped lead Marvel Comics for more than 50 years and became a true American cultural icon. Unfortunately, not even Lee, one of the most iconic and powerful figures of all time in the world of comics, could avoid the kind of predators who seek to take advantage of the elderly.

Lee died at the age of 95 in November 2018, predeceased a year earlier by his beloved wife Joanie and survived by only his daughter. Lee's estate was estimated at \$80 million. When Joanie died, Lee found himself without the stability, care, and security that his wife of 67 years had provided. Unfortunately, Lee almost immediately found himself in the middle of a contested care situation centering around his alleged spendthrift daughter and unscrupulous individuals who had wormed their way into Lee's life.

In the months that followed Joanie's death, Lee issued a public cry for help in an affidavit that described how his daughter was attempting to emotionally manipulate him for money. In addition, Lee alleged that there were three men who were trying to take over his estate. Almost immediately, Lee recanted the affidavit in a Twitter video that was taped by Keya Morgan, one of the three men Lee had warned against. Lee then filed a restraining order against Morgan, alleging that Morgan was attempting to take over Lee's financial affairs. Amidst all the rumors and finger pointing, Lee passed away at the age of 95. After an investigation by the Los Angeles police, Morgan was arrested on charges of felony theft, embezzlement, fraud against an elder adult, and false imprisonment of an elder adult.

"Elder abuse" can be described as one or more negligent or intentional acts by an individual that cause harm or serious risk of harm to vulnerable adults who are age 65 or older. Although this harm can be physical, often the abuse is financial and thus is invisible to the casual observer. According to an AARP study, financial elder abuse results in more than \$36 billion in losses each year, and yet only one out of every 24 cases is reported to law enforcement. More than 95 percent of financial elder abuse cases are never reported by the victims.

Fortunately, there are effective tools to help prevent elder abuse. Powers of attorney and revocable trusts can bind agents to act solely in the best interests of the principal. In addition, principals can create checks and balances within their own financial management team. Finally, in cases where the principals cannot care for themselves, court-monitored guardianships should be considered.

If Marvel's Ant Man could have traveled to the Quantum Realm to warn Lee and Joanie of the dangers of elder abuse, what could they have done differently? While still fully competent, the Lees could have reviewed, vetted, and hired a team of professionals to protect them in their declining years. They could also have included protectors in their documents whose sole job was to monitor the Lees' fiduciaries in

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order to prevent negligent and fraudulent behavior.

Lee was able to spin compelling stories by relating comic book superheroes to regular people. Lee's last remaining months should be a cautionary tale to everyone who has parents or loved ones who may eventually require protection. Elder abuse is an incredibly serious and growing problem. Proper planning, with a responsible team of advisers, can help defeat potential bad actors who will seek to harm the elderly when they are unable to protect themselves.

Powers of Appointment: Lauren Bacall

Hollywood film and Broadway show actress Lauren Bacall died on August 12, 2014, at age 89, a resident of Manhattan. Bacall's estate was estimated to be worth \$26.6 million. In addition, she held a general testamentary power of appointment over the marital trust created by her first husband, actor Humphrey Bogart.

Bacall had three children, Stephen Humphrey Bogart, Leslie Bogart, and Samuel Prideaux Robards. Stephen and Leslie were the children of her first marriage to Humphrey Bogart, and Sam was the child of her second marriage to actor Jason Robards. Bacall left her entire residuary estate to her children equally. She also exercised her general power of appointment over the marital trust and appointed the trust assets outright to her children.

Bogart died in 1957 before qualified terminable interest property trusts were permitted. At the time, in order for a trust to qualify for a marital deduction, the surviving spouse had to be entitled to all of the income and also had to have a general power of appointment, or else the remainder of the trust had to be payable to the spouse's estate. Planners should always ask whether a client holds a power of appointment and, if so, whether it makes sense to exercise it, making sure to comply with any requirements in the will or trust agreement that creates the power. In particular, if a predeceased spouse died before 1982, estate planners should always check to see whether the surviving spouse holds a general power of appointment over a marital trust.

Reducing the Risk of Post-Mortem Litigation: Howard Hughes

Howard Hughes, legendary businessman, film producer, aviator, philanthropist and, eventually, recluse, died in 1976 in an airplane on route to the United States from Acapulco, Mexico. Though often remembered for his extraordinary wealth and crippling mental health issues, the most enduring element of Hughes's legacy was the establishment of the Howard Hughes Medical Institute. The Medical Institute, funded by Hughes in 1954 with his shares in Hughes Aircraft Company and now one of the largest organizations devoted to medical research, was assumed by many to be the eventual beneficiary of his estate. Such largesse never came to fruition, however, because of Hughes's failure to leave a valid will.

Though several instruments purporting to be the Last Will and Testament of Howard Hughes were offered for probate (most notably a holographic will leaving a substantial legacy to the Mormon Church, with which Hughes had no formal affiliation), Hughes was eventually deemed to have died intestate. After several proceedings in various jurisdictions due to Hughes's contested domicile, Hughes's substantial estate eventually passed to remote relatives. Over 90 lawyers were reportedly involved in the Hughes estate, and it was estimated that approximately 100 people other than the lawyers eventually received some benefits. In the end, it took 34 years to close the estate.

Hughes could have avoided this disastrous situation by engaging appropriate advisors to oversee his estate planning. Trusted advisors could have acted in his best interests even after he became ill, safeguarding any will, assuring proper execution, and providing critical oversight of the individuals controlling his welfare.

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They also could have advised Hughes to declare a domicile in order to avoid the jurisdictional issues that plagued the various attempts at probate.

Hughes's failure to formulate a proper testamentary plan not only benefitted individuals for whom Hughes reportedly had no affection but also generated an estate tax that would have been avoided had his estate passed to his presumptive charitable heir, the Medical Institute. Indeed, such failure presumably robbed the Medical Institute of funding that could have led to medical breakthroughs, an opportunity cost far greater than any estate tax.

Charitable Planning, but No Residuary: Jacqueline Kennedy Onassis

Jacqueline Kennedy Onassis was one of the most famous people of the 20th century, and there was an enormous amount of interest in her will when she died. The press heralded the will as a model of a thoughtful and creative estate plan, especially due to its use of a Charitable Lead Annuity Trust (CLAT).

In her will, Onassis made specific bequests of tangible personal property, real property, and cash to family, friends, and other individuals, including to her children, Caroline and John. Onassis directed that her residuary estate, the property remaining after payment of the specific bequests, taxes, and expenses, be paid to what was referred to in the will as the "C & J Foundation," which was actually a CLAT.

A CLAT pays an annuity (a set dollar amount) to one or more charitable beneficiaries for a period of time, after which the CLAT terminates and any remaining amounts pass to non-charitable beneficiaries. A CLAT can be created by an individual during life (in which case there will be a gift tax deduction under 26 U.S.C. § 2522) or upon death (in which case there will be an estate tax deduction under 26 U.S.C. § 2055). The charitable deduction is equal to the present value of the annuity payments, using the relevant IRS 7520 rate. It is common for a CLAT to be "zeroed out," or to have a charitable deduction that is equal to the full value of the property transferred, and CLATs work well in low interest-rate environments. To the extent the investment return in the CLAT exceeds the 7520 rate, such excess passes to the non-charitable beneficiaries free of estate and gift tax (although subject to generation-skipping transfer tax). Unlike a private foundation or a public charity, a CLAT is not exempt from income tax.

The C & J Foundation provided for an annuity passing to charity equal to 8 percent of the initial fair market value of the property funding the Foundation for 24 years, after which the remainder passed to Onassis's grandchildren. Notwithstanding the careful crafting of Onassis's Will, *the New York Times* reported in 1996 that due to the number and value of the specific bequests, as well as the estate taxes and administration expenses charged to Onassis's residuary, none of Onassis's residuary estate was left to pass to the CLAT—a surprising development given how carefully drafted the Onassis will initially appeared to be.

None of the celebrities highlighted above left behind an ideal estate plan. Their respective family situations included disinherited children, divorce, and elder abuse, and in many cases their estates had unexpected developments, suffered long drawn-out litigation, or paid unnecessary estate taxes. Families today are complex and diverse, and both celebrities and ordinary people need to protect their loved ones with complete, updated, and comprehensive estate plans.