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Estate Planning Focus

TRUSTS & ESTATES NEWSLETTER SUMMER 2016

Prince's Death: A Lesson on the Importance of Estate Planning

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"We could all die any day."

—PRINCE, "1999"

In the months since Prince's death on April 21, the court handling his estate administration has received numerous claims from individuals alleging to be his heirs, all hoping to share in his estimated $300 million estate. Prince's failure to create an estate plan has been well-publicized, and because the disposition of his estate will be based on Minnesota inheritance laws, an individual's ability to establish a blood relationship with Prince could result in that person's receipt of tens of millions of dollars.

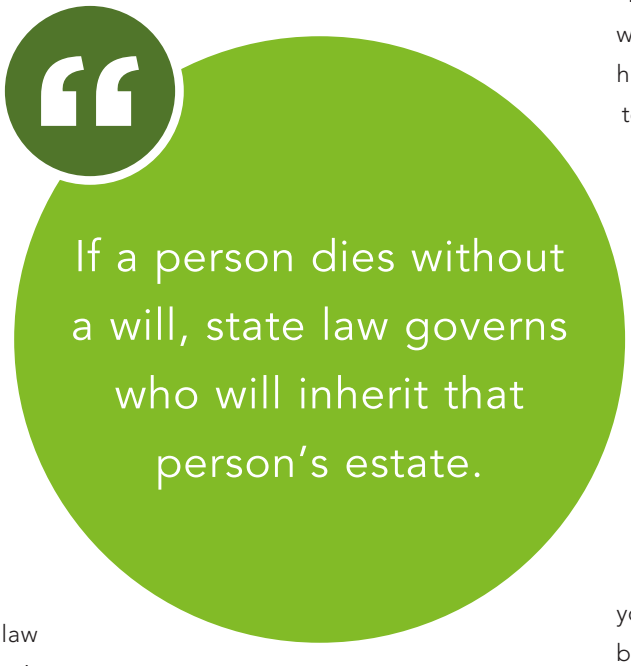
In initial court filings, Prince's sister identified herself and five half-siblings as Prince's heirs. Since that time, four more people have contacted the court claiming to have blood relationships with Prince.

These individuals include a woman claiming to be the daughter of Prince's half-sister, the daughter and granddaughter of a man who claimed during his lifetime to have been Prince's half-brother and Carlin Q. Williams, an inmate in federal prison claiming to be Prince's son. The court has established a protocol requiring anyone claiming to be a blood relative to complete a rigorous questionnaire under oath, potentially followed by DNA testing. This procedure will establish Prince's heirs at law and, ultimately, the beneficiaries of his estate.

WHAT HAPPENS WHEN A PERSON DIES WITHOUT A WILL?

If a person dies without a will, state law governs who will inherit that person's estate. Under Minnesota law, because Prince's parents are deceased and he has no spouse, his estate would first pass to any surviving child. If Williams can prove that he is Prince's son, he will inherit the full estate. If Williams' claim fails, the estate will be divided among Prince's full and half-siblings and the daughter and granddaughter of Prince's deceased half-brother. Depending on the results of the heir determination process, significant portions of Prince's estate could pass to individuals with whom he had no personal relationship or, in the case of Williams, potentially never even knew existed.

What's more is that Prince's estate will have to pay a hefty tax. The current federal estate tax is calculated at a rate of 40 percent and Minnesota imposes a top death tax rate of 16 percent. That has the potential to reduce Prince's $300 million estate to $162 million.



With some planning, Prince could have taken steps to reduce this enormous tax bill. Before his death, Prince donated generously to various charities. By failing to have an estate plan in place that continues these charitable gifts, not only will Prince's estate lose out on tremendous tax savings (since charitable gifts are a deduction for estate tax purposes), but the government, rather than charities, will benefit financially.

Finally, the lack of a proper estate plan means that Prince's estate will be complicated by costly legal fees and uncertainty, and the estate proceedings will be open to the public.

SO WHAT CAN WE LEARN?

While the lack of a proper estate plan may seem more problematic for a mega-million-dollar celebrity, the truth is that these same issues affect everyone.

- If you have specific loved ones you want to inherit your estate, you have minor children or you want to specify who will be in charge of and administer your estate, you need a will.
    - If you prefer privacy, a trust allows you to specify who will receive and administer your estate without the publicity or cost of probate proceedings.
- If you are over 18, you should have a patient advocate designation allowing another to make your medical care decisions if you become disabled.
- If you own property of any type, you should have a durable power of attorney allowing another to manage that property on your incapacity.

Is now the time to create an estate plan? The answer is yes. Death can often come unexpectedly and you don't need to be wealthy to benefit from estate planning. By planning now you can make things easier for, and better protect, the people you care most about.

Finish Your Estate Plan: Ensuring Consistency with Your Property Ownership and Your Plan

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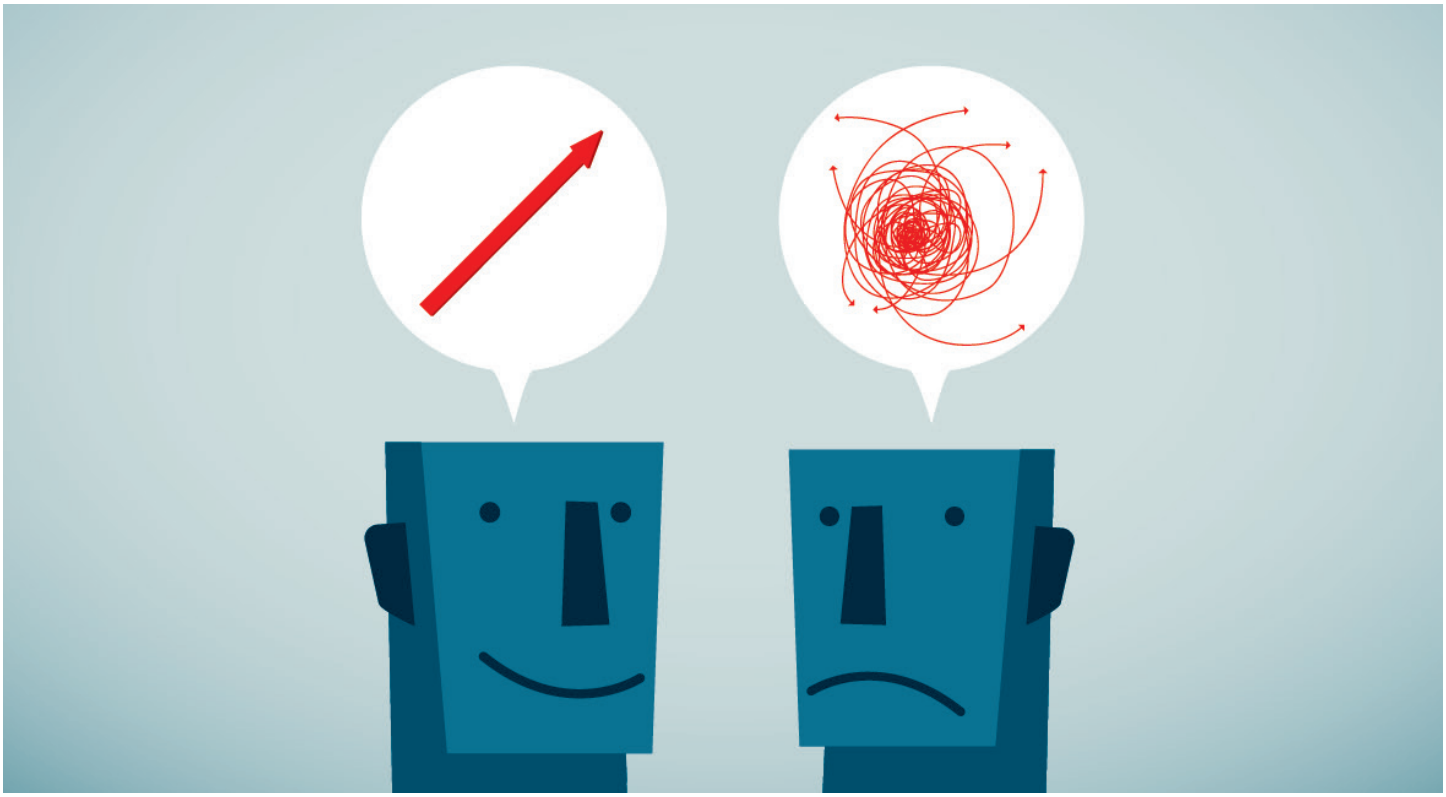
You just left your estate-planning attorney's office, carrying a binder that contains copies of your newly completed estate-planning documents. You feel a sense of accomplishment that you've finally accomplished this task. Now you can put the binder someplace safe and know that your intentions will be fully and effectively carried out at your death. Your work is finished, right?

Not necessarily. A common mistake in estate-planning is the failure to title property so that it is actually governed by the terms of your estate-planning documents. Suppose you execute a will and a trust agreement. Your trust agreement only operates on assets owned by the trust (more precisely, by the trustee of your trust). You need to ensure that your property is owned by or payable to your trust, otherwise your trust agreement has no effect upon assets not owned by your trust. Putting your property in trust ownership is referred to as funding your trust.

Ownership is typically determined by how an asset is titled. A bank account titled in the name of Ulysses S. Grant is owned by President Grant individually—not his trust. This type of account would NOT be governed by the terms of President Grant's trust. A bank account titled in the name of Ulysses S. Grant as trustee of the Ulysses S. Grant Revocable Trust is owned by President Grant's trust. This type of account WOULD be governed by the terms of President Grant's trust.



In general, there are two ways for assets to become trust property.

1. Re-title the asset in the name of the trust; or

2. Make the trust beneficiary of certain assets during your lifetime.

In fact, your attorney probably sent you off with written instructions for how to do this task. For example, President Grant could fund his trust with his bank account by visiting the bank and executing paperwork to change ownership of the account to himself as trustee of his trust.

Otherwise, if you are the sole owner of an asset at your death, and if you leave a will that "pours over" your sole-ownership assets to your trust, then those assets will ultimately pass to your trust after death. This second approach is risky because there are many types of ownership where the property is not subject to your will—and if the property is not subject to your will, then your will cannot "pour over" the asset to your trust.

WHAT TYPES OF PROPERTY OWNERSHIP ARE NOT SUBJECT TO YOUR WILL?

Beneficiary Designations: It is common for the owner of an IRA, 401(k), life insurance policy or brokerage account to be asked to designate the beneficiary of the account, who will automatically receive the account at the death of the owner. Property in an account that is subject to a beneficiary designation will not pass under your will or trust unless your estate or your trust is the beneficiary.

Joint with Survivorship Property: Property that is owned jointly by you and another owner, with the "right of survivorship," will pass automatically to the surviving owner, if you die first. This is a common form of ownership for real property and bank accounts. Property that is jointly owned with right of survivorship will not pass under your will or your trust.

If you have an estate plan, then you should carefully review how your property is titled and whether any property is subject to a right of survivorship or a beneficiary designation. Property should be re-titled in the name of your trust or your trust should be designated as beneficiary, if applicable. Beneficiary designations can be revoked, if they are contrary to your intentions as set forth in your estate-planning documents. Reviewing and changing how your property is titled is absolutely necessary to make sure your intentions are fully carried out.

Attorney Spotlight: Laura E. Morris, Inheritance Dispute Attorney

1. What kind of work do you do and what's a hot topic for clients right now?

I am a trial attorney who specializes in disputes involving inheritances and elder financial abuse. The hot topic in the industry is identifying and preventing elder financial abuse. One out of every six adults over the age of 65 has been a victim of elder financial abuse and women are twice as likely as men to be victims.[1] I represent family members who are trying to protect an elderly individual. I also speak on this topic and help individuals identify abusive behaviors and patterns.

2. Tell me about your background and how you decided to become an attorney.

Growing up in a military family meant moving from state to state. I learned to be flexible and adapt to change easily. I was attending undergrad at Michigan State University (MSU) when 9/11 happened. That horrific event made me reflect on what makes the United States special and unique, and one of those things is our legal system. So I decided to attend law school.

3. When did you join Warner Norcross and why did you decide to work here?

I accepted a position with Warner Norcross after my internship and while still in law school. I had opportunities to practice at other law firms, but as soon as I interviewed with Warner Norcross, everything clicked. I liked the culture, had heard only good things about the firm and my intuition told me that Warner Norcross was the right place. So, I cancelled my other remaining interviews and accepted the firm's offer. I also fell in love with Grand Rapids. I love practicing at Warner Norcross and I met my husband two weeks after I moved to Grand Rapids, so I am glad I trusted my gut.

4. What do you enjoy most about your work?

Family disputes can be legally complex and stressful for clients. I love problem solving and helping clients get to a better place by working with me.

5. What do you think people would be surprised to learn about you?

I am a closet science fiction nerd. I love Star Wars, Star Trek and everything related to space.

6. What are your hobbies and interests?

I played soccer throughout high school and at MSU. I now enjoy running, scrapbooking and painting. I also just love spending time with my family.

7. Anything else readers might find interesting?

My father-in-law is Jack Morris, the famous former pitcher for the Detroit Tigers and the Minnesota Twins.

1) "Financial Abuse of Elders", By Kristen M. Lewis, *Probate & Property*

New Law Provides Greater Flexibility and Certainty in Your Funeral Arrangements

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A new Michigan law (effective June 27, 2016) allows you to appoint a representative to make decisions about your funeral arrangements, the handling and disposition of your bodily remains and your final resting place.

While this may seem insignificant, under prior law, only your spouse, children or close relatives (in that order) had the legal authority to make those decisions. The law did not allow you to specifically name a person from among those individuals to make your arrangements, nor could you name someone outside of those individuals. Decisions made by a group often created tension among family members if they could not agree on post-death arrangements.

WHO CAN BE A FUNERAL REPRESENTATIVE?

The new law allows you to name anyone over the age of 18 to serve as your funeral representative (with certain restrictions) to make post-death decisions regarding your funeral and burial arrangements. This designation is not limited to family members, which means that you can name anyone, such as a close friend, significant other or pastor to carry out your final wishes. This is especially important if you do not have immediate family, if you are concerned with disagreement among family members or if you are worried your family might not carry out your wishes. The law also allows you to name a successor funeral representative in the event that the initial funeral representative is unable or unwilling to act.

HOW DO YOU DESIGNATE A FUNERAL REPRESENTATIVE?

Funeral representative designations must be made in writing and must be signed and dated in the presence of two witnesses or before a notary public. The designation can be made in your will, a patient advocate designation or in a separate document. Although the law allows a funeral representative designation to be made in a will, a separate document is preferred because it will be reviewed by a funeral home or crematory, and there is no need to have your entire will made public to those establishments. Further, your funeral representative may not have easy access to your will.

It is unclear whether your funeral representative will be required to follow your wishes concerning funeral arrangements as contained in the designating document. Nonetheless, having clear written instructions will assist in having your wishes carried out.

At present, it is unclear whether your funeral representative will be required to follow your wishes concerning funeral arrangements as contained in the designating document. Nonetheless, having clear written instructions will assist in having your wishes carried out.

What You Need to Know About Adding a Child to Your Bank Account

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If you or someone you know is widowed and has more than one child, reading this article could help prevent an inheritance dispute. It is not uncommon for a parent to add one child to a bank account to help pay bills. But legally, this tells the world that the parent wants only that one child to get the account balance when he or she dies, rather than have that money split equally between all of the children. Maybe that was the intention all along or maybe not.

Most people are surprised to learn that a person's will does not control who ultimately receives funds in a joint bank account, even if the will states something like "I want everything split equally between my children."

If the parent does not document his or her intentions by adding one child to the bank account, the parent is unknowingly setting the table for a post-death dispute between the one child named on the account versus the other children.

Disputes over who should receive the joint account balance are increasingly common even for families that historically got along.

How can this be avoided? The parent must make his or her intentions clear in writing (e.g. letter or written instructions). The parent's writing must identify the bank account and indicate the parent's intent for the one child to receive the funds or for the account to be split equally between all children.

The writing should also be signed and dated. Then, the parent should provide a copy of this writing to his or her attorney for safekeeping and retain a copy with his or her estate plan.

This writing can prevent a dispute. If you would like assistance making your intentions clear to avoid a dispute in your family, please contact your Warner Norcross & Judd attorney.

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