

Celebrity Estate Planning: Misfires of the Rich and Famous V

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Mistakes are often made in estate plans. Unfortunately, the consequences can be devastating. Celebrities are not immune and can be just as guilty of inattention and poor planning as regular people. When estate planning misfires occur, grieving family members can end up fighting with each other and with taxing authorities. The problems and issues discussed below involve celebrities, but the issues should be considered carefully, as they relate to everyone.

Earl Simmons, aka DMX: Intestacy, Common Law Marriage, and Nonmarital Children

Background: DMX, an American rapper, songwriter, and actor, died of a heart attack on April 9, 2021, at the age of 50. He was survived by his fiancée, Desiree Lindstorm, and a reported 15 children. After a troubled childhood, DMX started his career as a rapper in the early 90s and became the first artist to debut an album at No. 1 five times in a row on the Billboard 200 charts. He released a total of eight albums and sold over 74 million records worldwide. He was nominated for three Grammys, won the AMA award for Best Rap/Hip Hop Artist in 2000, and was nominated for a number of other awards. Despite his success, DMX's estate was estimated to be worth less than \$1 million at the time of his death. The future royalties on his master recordings and publishing will likely be the largest asset of the estate, with an estimated value of \$18 million.

Estate plan: Unfortunately, DMX did not leave a will. The New York intestacy statute provides that when a decedent is survived by a spouse *and* issue, \$50,000 plus one-half of the residue goes to the spouse, and the balance thereof to issue, by representation. However, when there is issue but no spouse, the whole estate passes to issue by representation.

Result: Lindstorm petitioned the court to be considered DMX's common-law wife, but the court ruled that she did not have standing to file. Common-law marriage was abolished in New York in 1933. Notably, if Lindstorm and DMX had a valid common-law marriage in another state, then it would likely be recognized in New York. However, as it stands, Lindstorm will not be able to inherit from DMX's estate.

Under New York law, in order for a child to inherit from a parent, there must be a legal parent-child relationship. If the mother is married when the child is born, her spouse is considered the other legal parent. If the mother is not married, the legal relationship must be established through acknowledgment of paternity or by a court Order of Filiation. DMX was married to Tashera Simmons for 11 years, and

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they had four children together, but the other 11 children were born out of wedlock. To the extent that paternity was not already established, such children would have to establish paternity by clear and convincing evidence in order to inherit from his estate. The attorney representing the estate has indicated that all of DMX's alleged children have been asked to take DNA tests to confirm paternity.

Numerous people, including DMX's fiancée and certain children, petitioned to be the administrator of DMX's estate. To date, DMX's three oldest sons have been named temporary administrators of his estate, and they will be responsible for making many decisions about DMX's legacy and the future earnings of the estate.

Lesson: It is very important to have a will. If engaged, consider including the fiancée in the estate plan, and, above all, be sure to establish paternity when a baby is born. DMX's failure to have a will is likely to have the most significant impact on his fiancée, who is also the mother of his youngest child. DMX may well have wanted to provide for Lindstorm, but she will end up receiving nothing from his estate.

Larry King: Gambling on Estate Planning

Background: Larry King was most famous for hosting *Larry King Live* on CNN, the highest-rated late night talk show for a quarter century. King had a complicated family life, marrying seven times and siring five children, including two sons that he had late in life with his last wife, Shawn Southwick. King and Southwick separated in 2019 and two of King's adult children died in 2020. King filed for divorce from Southwick, which was still pending when King died on January 23, 2021, from COVID-19.

Estate Plan: King reportedly enjoyed gambling—on romance, on his career, on horses, and, fatefully, on his estate planning. King's last gamble, in October 2019, was to execute a three-sentence holographic (handwritten) will in which he attempted to rewrite his estate plan to cut out Southwick. In relevant part it read: "In the event of my death, any day after the above date I want 100% of my funds to be divided equally among my children Andy, Chaia, Lary Jr [sic] Chance & Cannon." Allegedly, King previously had a well-drawn estate plan that named Southwick as executor of his estate.

Result: Southwick objected to the probate of the holographic will on several grounds, including testamentary capacity and undue influence. Although holographic wills are not respected or valid in many states, King died domiciled in California, and California's Probate Code does permit the probate of a holographic will under certain circumstances. While King's holographic will was witnessed, it may have been dated by one of the two witnesses instead of by King. California law requires the writer of a holographic will to date and sign the will. Notably, if King had been domiciled in New York, it would have been much harder to have the will admitted to probate, as holographic wills are generally only permitted in New York for persons serving in or with the armed forces during war or conflict, or for mariners at sea.

Lesson: Holographic wills are not recommended. Such a will is invalid in many jurisdictions and, even when valid, is inherently suspect. The lack of formality and the lack of an attorney present almost always raises concerns about due execution and testamentary capacity. In June 2021, King's estate was reportedly settled between Larry Jr. and Southwick, and it is likely that Southwick received a sizeable portion of King's estate—clearly not what the holographic will contemplated.

Eleanor Close Barzin (Daughter of Marjorie Merriweather Post): Failure to Coordinate an Overall Estate Plan

Background: Eleanor Close Barzin was the half-sister of actress Dina Merrill and the granddaughter of C.W. Post, the cereal magnate who founded Post Consumer Brands, the third-largest breakfast cereal

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company in the United States. Her mother, Marjorie Merriweather Post, was frequently referred to in the press as “the wealthiest woman in the world” and was one of the first women to sit on the board of a major American company. Marjorie was known for her fabulous parties, her quiet but substantial philanthropy, and her magnificent homes and yachts, most notably including Mar-a-Lago.

Estate Plan: Born in Greenwich, Connecticut, Barzin lived outside of the United States for the majority of her life. When she died in 2006 at her home in Paris, she left behind a \$65 million family trust, a \$74 million estate consisting of real and personal property in France and Switzerland, and a substantial securities account located in Baltimore. Barzin disposed of her European assets under a 2001 Swiss will and two French codicils, and her US assets under a 2004 US revocable trust agreement. Under these documents, Barzin left the greater portion of her European assets to her son, Antal de Bekessy, and the greater portion of her US assets to her granddaughter, Laetitia Allen Vere. Her revocable trust agreement directed her trustees to pay US and foreign death taxes, while her amended Swiss will provided that Barzin’s French inheritance taxes should be paid by her estate.

Result: The inconsistent tax provisions in the various documents governing Barzin’s domestic and foreign assets pitted de Bekessy against his own daughter as well as 17 other individuals and charitable organizations. What ensued was dueling probate proceedings, dueling estate tax returns, a fight over a \$10 million federal tax refund check sent to de Bekessy as ancillary executor instead of to the trustees of the revocable trust, and actions in multiple courts seeking to determine which assets should pay the various wealth transfer taxes. After a six-day trial, a Maryland circuit court issued a 147-page opinion in which the court reformed the revocable trust agreement and removed the portion of the tax allocation clause that called for the payment of foreign taxes. The court concluded that this language was mistakenly included and was inconsistent with Barzin’s intent. The court’s decision was subsequently affirmed by the Maryland Court of Appeals.

Lesson: Lack of absolute clarity in central provisions of estate planning documents creates a substantial risk of costly disputes in estate and trust administration. When an estate plan is set forth in multiple instruments (or effectuated by various means), proper coordination is crucial. The drafter of each document must consider that assets and facts can change. Specific bequests should be included with great caution. Drafters need to be aware that tax apportionment clauses, whether contained in the governing documents or simply applied under default law, can inadvertently override dispositive provisions. If an estate plan has ties to multiple jurisdictions, a careful analysis of applicable procedural, tax, and other local rules must be performed, and local counsel must be retained, in order to ensure that the wishes of the testator are ultimately met.

Kobe Bryant: Failure to Include Youngest Child in Estate Plan

Background: Kobe Bryant was a professional basketball player who spent his entire 20-year career with the Los Angeles Lakers, winning five NBA championships. Bryant was an 18-time All-Star, a 15-time member of the All-NBA Team, and the 2008 NBA’s most valuable player. Bryant married Vanessa Laine in 2001, and together they had four daughters, with the youngest born in 2019. Bryant was killed together with his daughter Gianna and seven others in a helicopter crash in 2020 at age 41. His career earnings of \$680 million were the most ever by a professional athlete, and Bryant reportedly left behind an estate estimated at more than \$600 million.

Estate Plan: Bryant created a revocable trust on April 9, 2003, which was restated on December 30, 2011, and amended on July 28, 2017 (collectively, the “Trust”). The Trust identified and limited the beneficiaries to Bryant’s wife; daughters Natalia, Gianna, and Bianka; and their descendants. Bryant’s fourth daughter, Capri, was born on June 20, 2019. When Bryant died in the helicopter crash on January 26, 2020, the

Trust did not include Capri as a beneficiary.

Result: Following Bryant's death, the co-trustees of the Trust petitioned the Los Angeles County Superior Court, with the support of the Guardian ad Litem for the minor daughters, to modify the Trust to include Capri and her descendants (1) in the "family information" section, (2) as a beneficiary of any trust for Vanessa of which Capri's sisters were beneficiaries, (3) as permissible appointees of Vanessa's power of appointment, and (4) as remainder beneficiaries of any trust. The court granted the petition and, as a result, Capri was added as a beneficiary of the Trust in the same manner as her sisters.

Lesson: Bryant's Trust illustrates why drafters should not identify a class of beneficiaries using individual names. By identifying each class member by name, Bryant inadvertently disinherited his youngest child. To avoid this issue, the intended class itself should be used instead. If class members are named, language should be added to take into account future members of that class. For example, Bryant's Trust could have said, "Natalia, Gianna, Bianka, and any other child born of my marriage to Vanessa." Using this approach would limit the class to the intended beneficiaries but prevent the unintentional disinheritance of a future class member.

Kenny Rogers: Five Wives, Five Children, No Prenuptial Agreements

Background: Kenny Rogers was a country music legend most famous for his classic hit "The Gambler." He was inducted into the Country Music Hall of Fame in 2013, but notably, Rogers was also one of the most successful crossover artists of all time. He had more than 120 hit singles, topped the pop and country album charts for more than 200 total weeks, and sold more than 100 million records worldwide. In addition to his storied music career, Rogers was also an actor, producer, and entrepreneur who earned an estimated \$250 million during his lifetime. Rogers married five times between 1958 and 1997 and had five children with four of his wives. Rogers was married to his surviving spouse, Wanda Miller, for 22 years before his death on March 20, 2020, at the age of 81. At that time, Rogers's oldest child was 60 years old, Miller was 50, and his youngest twins were only 16.

Estate Plan: Rogers is believed to have left most of his estate to Miller, including control over his image, musical rights, and social media. In 2020, Rogers's estate sued to block the release of a DVD of his final concert, alleging that the filming was only for "personal use" and that Rogers had denied the filmmaker the right to use the content commercially. It has been theorized that Rogers's estate intends to produce its own DVD of the final concert with a full retrospective of Rogers's life. However, Rogers's musical and publicity rights are likely to have substantial value. It is assumed that Miller will have control over these assets during her lifetime.

Result: Rogers never executed a prenuptial agreement with any of his wives, and lost much of his wealth to divorce. Rogers's fourth wife, the actress Marianne Gordon, was married to Rogers for 16 years and received a \$60 million settlement (half of Rogers's assets) when they divorced in 1993. She had one son, Christopher, with Rogers, and Christopher will likely inherit some or all of his mother's assets (now worth \$119 million, adjusted for inflation). Miller is the mother of Rogers's two youngest children, Justin and Jordan, and it is likely that Miller will leave any assets she has at the time of her death to her own children. Rogers's two oldest children, born to his first and third wives respectively, are older than Rogers' surviving spouse and may not inherit anything from their stepmother.

Lesson: When a blended family exists, thoughtful estate planning, including the use of a marital trust, can help create more equitable results. Rogers could have left some or all of his estate in trust for Miller rather than outright. A marital trust would still have delayed the imposition of estate tax until Miller's death and supported her during her lifetime; however, Rogers could have provided that the marital trust remainder

passed equally to his five children (or their descendants) upon Miller's subsequent death. In addition, more robust lifetime planning, including the use of prenuptial agreements, could have helped ensure each child's inheritance. Although Rogers's first three divorces occurred early in his career, his divorce agreements could have required that his children from those marriages receive a percentage of his estate on his death. Likewise, Rogers could have funded trusts for his children earlier in his life or maintained life insurance policies providing tax-free death benefits to each child.

Chadwick Boseman: Planning with a Terminal Illness

Background: In his relatively brief film career, *Black Panther* star Chadwick Boseman became one of Hollywood's most sought-after leading men. At age 35, Boseman earned his first starring role, playing Jackie Robinson in the biopic *42*, and also played famous figures such as James Brown and Thurgood Marshall. Boseman was diagnosed with stage III colon cancer at age 39. *Black Panther* was shot in 2017 after his diagnosis. It was the first major superhero movie with an African protagonist and a majority Black cast and earned more than \$1.3 billion worldwide. After starring in *Black Panther*, Boseman reprised the role in two more films, *Avengers: Infinity War* (2018) and *Avengers: Endgame* (2019). Filming in between a number of surgeries and while undergoing chemotherapy, Boseman ultimately died of the disease in August 2020 at the age of 43.

Estate Plan: Surprisingly, despite his cancer diagnosis, Boseman died without a will, leaving approximately \$3.5 million to pass under the intestacy laws of the state of California. His estate is therefore subject to court-ordered disposition, which has involved appraisers, referees, creditor claims, and status reports.

Result: At the time of his death, Boseman was married to Taylor Simone Ledward, did not have any children, and was survived by both of his parents, Leroy and Carolyn Boseman, and two older brothers. Under California's intestacy laws, Ledward inherited all of his community property and half of his separate property, and his parents inherited the other half of his separate property. One wonders if this is the testamentary arrangement that Boseman would have wanted. Notably, the judge in charge of Boseman's estate administration recently denied a request for his estate to pay the expenses of burial plots for his parents adjacent to his final resting place. Ledward subsequently bought the adjacent crypts for the Bosemans.

Lesson: As Boseman's story illustrates, even a superhero needs a well-thought-out estate plan. Planners can help ease a terminally ill client's concerns about how to provide for the client's loved ones. Clients who are seriously ill may not want to think about death. However, by ensuring that the client's legal and financial affairs are in order, and helping the client examine opportunities for tax-advantaged transfers, an estate planning attorney can assist the client in leaving a lasting legacy for the client's family.

Conclusion

The celebrities highlighted above each had an estate misfire. Some had no estate plan at all, and some had plans that suffered from poor drafting or poor planning. Given today's increasingly varied and complex families, everyone, including but not limited to wealthy celebrities, should protect assets and loved ones by hiring competent estate planning counsel and devising thoughtful and comprehensive estate plans.