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THE E.P. EXPRESS

FOS's Estate Planning Newsletter

An ounce of prevention. . . .

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AN ESTATE PLANNING TOOL WE'D RATHER NOT USE

This newsletter often emphasizes the benefits of powers of attorney to designate individuals to act on your behalf if you are unable to do so. *(*See article on page 3, "A Director Who Failed to Direct His Own Life.")

What happens, though, if a mentally or physically impaired person *should not be* making financial or other decisions, has no power of attorney, and refuses help offered from responsible family members or friends?

How do you stop a treacherous path of reckless spending, or even physically threatening acts? In varying degrees, we all know of a family which is or has been in the thick of this problem.

This situation calls for a guardianship - an estate planning vehicle which may, if appropriate, minimize potential future harm.

In a guardianship proceeding, the court determines whether a person is legally incompetent. If so, the court appoints a "guardian" to make decisions and act on behalf of the "ward."

Incompetency is difficult to prove, for good reason. One is not incompetent just because he or she makes poor decisions.

Incompetency requires extreme disabilities preventing one from managing his or her affairs.

Take Britney Spears, who has been under California's version of a guardianship for over a decade.

Her father had long acted as her guardian, making financial and other decisions on her behalf, as she resurrected her singing career and personal life.

The court has monitored the guardianship as recently as early September, when Spears' father temporarily resigned as guardian for health reasons, and was replaced by Spears' care manager.

Medical expert testimony is may be required to prove incompetency and the need for a guardian.

A guardianship may be temporary, for example during medical treatment, or permanent.

To ensure that the guardian is acting responsibly, the appointing court supervises the guardianship, including through the review of annual financial and/or physical condition reports filed by the guardian.

Source: www.rollingstone.com/music/music-news/britney-spears-court-hearing-conservatorship-834334/

"EQUAL PARTICIPATION" –EQUAL TO WHAT?

Singer Tom Petty, who died in October, 2017, was as careful with the lyrics to his songs as he was with the music.

Had Petty's trust been as carefully crafted as Petty's lyrics, his estate would not be stuck in litigation almost two years after his death.

At issue is how much control Petty's two daughters have over the management of his extensive and profitable music catalogue.

Petty's estate planning documents include a trust, which names as trustee Petty's widow (who is not the mother of Petty's daughters).

Commonly, a trustee is given authority to manage a trust's assets which, in Petty's trust, include his music catalogue.

This authority can give a trustee substantial power, so long as the authority is reasonably exercised.

In Petty's trust, for example, this authority likely includes the power to repackage, reissue, license and/or even sell rights to Petty's music. Petty's trust, however, did not give his widow trustee sole management power.

It provided that his daughters have "equal participation" in the catalogue's management.

Petty's daughters interpret "equal participation" to mean one third by each daughter and one third by the trustee.

To Petty's widow, "equal participation" means one-half by the trustee, and one-half by both daughters as a unit.

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WE FOUND THE WILL….AND ANOTHER ONE…..AND ANOTHER!

Maybe Aretha Franklin needed a better housekeeper.

Recently, over a million dollars in uncashed checks were located in Aretha's home.

The Fall, 2018 edition of this newsletter recounted public statements that the singer did not have a will when she died in August, 2018. (See "R-E-S-P-E-C-T YOUR ESTATE PLAN").

As it turns out, Aretha had made out a will. And a second one. And a third.

Three handwritten wills were belatedly found in the singer's home.

Two, from 2010, in a locked cabinet after its key was found.

The most recent, from 2014, in a spiral notebook under living room cushions.

All three documents were filed with the probate court in May, 2019.

By law, the most recent valid will would govern the disposition of Franklin's assets. These documents' discovery caused the existing probate proceeding to spiral almost out of control.

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Equal Participation, continued from page 1

Petty's daughters then would not have veto power over the trustee's decisions and could not mandate action themselves.

Even so, if a disagreement arose between the trustee, on the one hand, and the daughters, on the other hand, the court would resolve the issue.

Petty's trust highlights the importance of clear language in legal documents, especially estate planning documents.

A deceased grantor cannot explain what he or she intended to mean by disputed or ambiguous language.

Careful drafting could have prevented the Petty family litigation.

The trust, for example, could have said "My two daughters and the trustee shall each have a one-third vote in the management of the trust assets."

Or the trust could have said "The trustee shall have one-half vote, and each of my two daughters shall have a one-fourth vote, in the management of the trust assets."

FOS's estate planning attorneys have the drafting expertise and techniques to ensure that your will, trust or other estate planning document means what it says, says what it means, and unambiguously expresses your intent.

Source://www.forbes.com/sites/russespinoza/2019/05/16/tom-pettys-daughters-sue-artists-widow-for-control-of-estate-and-damages/#776b06462447

FOS's ESTATE PLANNING ATTORNEYS

FOS shareholder

Allan T. Young

A Certified Public Accountant (CPA), Al worked at the Big 8 Arthur Andersen accounting firm before joining FOS.

Al is a member of the Greater Milwaukee Foundation's Herbert J. Mueller Society.

He is a past Chair of the Wisconsin Bar Association's Taxation Section.

Al is a former Chair of the Milwaukee Bar Association's Taxation Section.

Al is a member of WICPA's State Tax Committee and the Waukesha County Estate Planning Council.

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Gregory J. Ricci

Greg worked at the Big 8 Arthur Andersen accounting firm before joining FOS. He is a CPA.

Greg served on the Board of the Wisconsin Bar Association's Taxation Section.

He also served on the American Bar Association's Fiduciary Income Tax Committee.

Greg is a member of the Greater Milwaukee Foundation's Herbert J. Mueller Society.

He is also a member of the Milwaukee Estate Planning Forum.

A DIRECTOR WHO FAILED TO DIRECT HIS OWN LIFE

Over this thirty-year career, Oscar-nominated director John Singleton dictated how life appeared on screen, from his early film "Boyz N the Hood," through his later work on the TV shows "Empire," and "Billions."

Unfortunately, the 51-year-old Singleton failed to direct his own life. He had neither a complete nor a current estate plan.

When Singleton lapsed into a coma from a stroke earlier this year, he had neither a Health Care Power of Attorney nor a Durable (financial) Power of Attorney.

A Health Care Power of Attorney designates an agent to make medical decisions on behalf of one who cannot do so on his or her own.

A Durable Power of Attorney designates an agent to take financial actions, including bill payment, income collections, asset investments and asset sales, on behalf of the grantor.

Without these documents Singleton, who was divorced, had no legally-designated agent to make decisions and act on his behalf as to his health emergency.

Moreover, Singleton had no legally-designated agent to act for him regarding a "lucrative" financial settlement which was scheduled to close shortly after he became ill.

Sadly, Singleton died a few days after his stroke.

Unfortunately, while Singleton had a will (it is not known whether he had a trust), the will was 26 years old, left everything to his one then-living child, and did not account for his six subsequently-born children.

As often happens in times of crises, when no or outdated estate planning documents exist, Singleton's family members ended up angry and fractured.

Before his death, some members asked the court to appoint them to handle Singleton's affairs while he was ill.

The court ended up appointing a third-party conservator.

Since Singleton's death, it has been reported that the six children born after his will are "gearing up for a fight" over his assets, in or out of court.

Had Singleton updated and completed his estate plan while he was still healthy, his family could have come together to support Singleton, and each other, instead of splitting apart.

Learn from Singleton's mistake. Direct your own life. Call your FOS estate planning attorney to create or review your estate plan.

Sources:

www.nytimes.com/2019/04/29/arts/john-singleton-life-support.html

www.tmz.com/2019/05/07/john-singleton-will-children-fight-lawsuit-mother/

Aretha, continued from page 3

The court, believing that no will existed, had already appointed as personal representative of the estate a person different than named in any of these documents.

In addition, persons supposedly receiving assets from Franklin under the wills raised claims in the estate.

They filed claims because they would not necessarily receive any assets under the law without a will.

At an August 7, 2019 hearing, the court placed Franklin's estate under court supervision.

It also allowed a handwriting expert to examine the couch specimens for authenticity.

So, aside from a possible reboot of "Lifestyles of the Rich, Famous and Messy," did the great Aretha's mishap teach us anything?

Of course it did. It taught us to work with an attorney to create a will meeting all legal requirements.

If you die, the attorney will know that a will exists and, if it's been modified, which is the most recent version.

And don't keep your will under your couch cushion, no matter how lovely your couch may be.

Keep a copy with your attorney and the original in a safe file (tell your attorney where it is kept) which is easily accessible upon your death.

Don't keep it in a safety deposit box if you are the only authorized user. If you die, a court may have to appoint a personal representative to legally access the box.

After you've taken care of these basics, put on some music. Maybe a little "Respect."

Sources:

pagesix.com/2019/08/07/handwriting-expert-to-examine-wills-found-in-aretha-franklins-couch-cushions/

www.nytimes.com/2019/08/21/arts/music/aretha-franklin-estate-wills-fight.html?rref=collection%2Fsectioncollection%2Farts&action=click&contentCollection=arts&region=rank&module=package&version=highlights&contentPlacement=1&pgtype=sectionfront

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IN THIS ISSUE

THEY'VE TURNED 18, BUT THEY STILL NEED YOU

The house is quiet. The kids have gone back to school.

Including those college "kids."

You know, those "kids" you schlepped to campus and haven't heard from since (except when their food accounts run low).

When your first grader gets sick, you're called from school to bring him home.

When your high-schooler is injured in a car accident, the police or hospital will call you (although your son won't speak to you for a month).

But what about your 18-year old?

What if he or she ends up in the hospital?

Because your "child" is technically an adult, the hospital won't automatically contact you, and likely will not provide information on their condition.

You might not even know your child has been admitted.

And what if that child needs surgery, or is in a coma or otherwise can't make decisions for himself?

That's where a Health Care Power of Attorney is critical.

Every young adult needs a health care power of attorney. It is the best 18th birthday present a parent can and should give.

A health care power of attorney gives a third person (here, usually a parent) the authority to act for the signer if the signer cannot act for himself.

Without it, you may not be informed of an accident or other health care issue.

Even if you are, you may have no say in your child's treatment.

A Health Care Power of Attorney will also let your adult child state one of more of his or her wishes if certain circumstances arise.

These include whether to use a feeding tube, whether he or she wants to be fully treated if at all possible, or would prefer to be labeled "Do Not Resuscitate."

So make sure that your adult child properly executes an appropriate health care power of attorney.

Make sure that you keep a copy in a secure location.

And then go replenish that food account.