Legal Matters®

Estate Planning
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Learn from celebrities' estate planning blunders

There are many lessons to be learned about estate planning from the bad experiences of some of the world's most famous people. The AARP recently gathered their stories, and here are the highlights:

Florence Griffith Joyner: Before her death in 1998, Olympic gold medalist Florence Griffith Joyner never told anyone the location of her will. Without the original document, it took four years to close her probate estate due to a long battle among her relatives.

Lesson learned: Don't keep the location of your will a secret.

Prince: When Prince died in 2016 he left no will. Now a Minnesota judge will oversee the distribution of the singer's estimated $300 million estate among six siblings. However, other potential heirs have surfaced, including a federal inmate claiming to be Prince's son. If there is proof he is in fact Prince's son, then he may inherit the estate under the intestacy statute.

Lesson learned: Have a will.

Whitney Houston: Songstress Whitney Houston had a will when she drowned in 2012, but it was drawn up a month before the 1993 birth of her only child and never revised. Per the terms of the outdated will, Houston's daughter Bobbi Kristina (who was 18 when her mother died) was to receive 10 percent of the estate — $2 million — when she turned 21 and the rest later. But Houston failed to consider whether her daughter was mature enough to handle millions of dollars. Ultimately Bobbi Kristina got the $2 million but not the rest of her inheritance. She died in 2015, also as a result of drowning and drug intoxication.

Lesson learned: Review and update your will regularly.

James Gandolfini: 'Sopranos' actor James Gandolfini was report-

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Protect your power of attorney from legislative changes

Medical and financial powers of attorney are a critical aspect of effective estate planning, but did you know they must be kept up to date? It is recommended to have them reviewed every 2-3 years.

Several legislative changes over the years have given financial institutions and healthcare providers reasons to reject powers of attorney. As new laws are enacted, necessary provisions must be incorporated into your power of attorney, as failing to including certain language could mean your documents will not be accepted.

Notable issues include:

- **Your medical power of attorney was executed prior to your state adopting the Uniform Health Care Decisions Act.** In 1993, this federal law was approved to expand and solidify the authority of a medical power of attorney. It has since been enacted state by state. Key changes include decision-making power surrounding life-prolonging procedures, authorization for organ donation and approval for admission to health care facilities for treatment.
- **Your medical power of attorney does not include Health Insurance Portability and Accountability Act (HIPAA) language**. If your power of attorney was drafted prior to adoption of HIPAA laws, it will not include the necessary language authorizing access to your personal medical information.
- **Your financial power of attorney does not include certain provisions adopted by the Uniform Power of Attorney Act**. Financial institutions, particularly banks, often reject powers of attorney if they believe, in good faith, that the document may no longer be valid. Certain types of authority (including the ability for the holder of your power of attorney to amend trust documents, make gifts on your behalf, and designate or change beneficiaries) will only be accepted if they are clearly written into your document.

Major life events or changes in your situation are good trigger points for reviewing your documents. It is important that the people you designate to act on your behalf continue to be in line with your wishes over the years. Reasons to make a change could include separation or divorce from your spouse, or death, distance or incapacity of the person you have named.

In addition, be sure to consider naming a backup person who can take over if the currently named agent in your power of attorney is unable or unwilling to serve.

As your tastes, desires and wishes change with time, it is important to make sure your power of attorney reflects that and remains consistent with your goals and wishes. An estate planning lawyer can help ensure your documents are up to date and reflect your concerns.

Password sharing presents risks for family and fiduciaries

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Keeping careful records of the usernames and passwords for your online accounts and sharing them with a trusted family member or agent may seem like the start of a responsible estate plan. But you need to be aware of the risks for those you empower with the information.

Even with your permission, fiduciaries (executors, trustees, conservators), agents and family members who manage assets as part of your estate plan could be committing a federal crime by accessing your online account with your password.

That's because most terms of service agreements governing websites or online accounts specify that passwords not be shared and that third parties not be allowed to access a user's account. So even if you provide the person with the log-in information for your account, he or she could still be violating the terms of service by using it to access your account.

Violating a computer owner's term of service agreement violates federal and state anti-hacking laws, called Computer Fraud and Abuse Acts (CFAAs). These laws both criminalize and provide civil penalties for unauthorized access to computers and data.

While most related court decisions involve cases where the issue went beyond a simple violation of a terms of service agreement and involved additional unethical or bad behavior, there are some instances where a simple violation of an agreement was found to violate the CFAA, making it a federal crime.

That means relying on password sharing is risky both for family members and fiduciaries. Until the federal courts sort out their views on the issue, the possibility of civil or criminal prosecution remains.

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edly worth $70 million when he died in 2013 of a heart attack in Rome. His will provided for his widow, daughter and two sisters, but did not factor in proper tax planning as it was drawn up hastily before a vacation. As a result, the estate ended up paying federal and state estate taxes at a hefty rate of 40 percent.

Lesson learned: Be sure to consider the impact of estate taxes on your plans.

Marlon Brando: Actor Marlon Brando had a written estate plan for his $100 million fortune when he died in 2004, but it did not include promises he allegedly made orally to his long-term housekeeper, Angela Borlaza. She claimed Brando gave her his house as a gift, but the actor never completed the paperwork to transfer the deed to give her legal ownership. In court, she sought $627,000 — the market value of the house — plus $2 million in punitive damages. The case settled for $125,000.

Lesson learned: Avoid oral promises.

What millennials need to know about estate planning

A recent survey by senior-living focused website Caring.com, quoted in USA Today, revealed that 78 percent of Americans under the age of 36 don't have a will or trust in place. But even with youth on their side, the millennial generation needs to be planning for the unforeseen. If most would consider the following three issues, they'd be off to a good start:

- **Incapacitation provisions:** No one expects to be incapacitated, but there are at least two documents needed in the event that occurs. The first is a durable power of attorney that identifies who will make financial decisions on your behalf if you are unable to do so. The second is a health care advance directive (including a living will) that outlines preferences for medical care if you are unable to state these for yourself.
- **Death documents:** These include a last will and testament and possibly the establishment of a trust, either revocable or testamentary.
- **Beneficiary designations:** Keep these up to date for things including life insurance and 401(k) programs.

Many millennials assume they don't have assets worth protecting yet, but are actually unaware of the range of assets that need to be addressed for a proper estate plan. These include:

- Retirement accounts
- Life insurance policies (personally owned policies as well as policies purchased by or through an employer)
- Real estate, vehicles, boats, jewelry, electronics and home furnishings
- Family memorabilia. These are often quite important items, although they may not have a high degree of monetary value
- Pets
- Digital assets, including a complete list of accounts and passwords

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What if you don't have the proper estate-planning documents in place? What are the risks? Typically, default rules may apply.

For issues that are covered by durable powers of attorney and health care advance directives, the default for a minor is that a parent (or parents) makes decisions on their behalf. But past the age of 18, it will be necessary for parents to get a court order appointing them as guardians if such documents aren't in place prior to the onset of incapacitation.

In many states, if unmarried individuals with no children die without a will, regardless of their age, the estate reverts to parents. If you are an unmarried individual without a spouse or children and want to select siblings or a significant other rather than your parents, you should specify that choice in the appropriate documents.

Are LLCs your best option for asset protection? Know the risks

Limited liability companies can offer better asset protection than ordinary stock corporations, but there are potential adverse economic and tax results if investors are not alert.

Investors increasingly use LLCs to operate a trade or business, to hold real estate or to hold other investment assets, as opposed to state law corporations. But when investors transfer LLC interests to a spouse, children, trust or others, as opposed to ordinary corporate stock, they can risk losing control of the business or decreasing the basis for heirs — with a corresponding increase in the beneficiary's income tax.

An LLC owner or "member" has two types of rights: economic and management. Economic rights allow them to receive property from the LLC both during existence and upon liquidation, along with tax attributes and profits/losses. Management rights allow them the right to vote, participate in management or the conduct of company affairs and have access to company reports, records and accountings.

It is the latter category that can cause problems when transferring LLC interests by gift or at death, and the division of these two bundles of rights are important in distinguishing LLCs from ordinary stock (although S corporations may have voting/non-voting shares and C corporations may have preferred stock).

Problems occur when an LLC member transfers a portion of his or her ownership interest in the LLC to another person, either during his or her lifetime or at death. Unlike when you transfer corporation stock and get the same rights as the previous owner, if an LLC member transfers the transferee may become a mere assignee of the LLC interest, and not a full substitute member. Under the laws of most states, unless the operating agreement provides or parties otherwise agree, an assignee only receives the transferor's economic rights in the LLC, not the management rights.

Laws governing this were enacted to protect business owners from unwillingly becoming partners with someone they never intended to be partners with. But they can wreak havoc on your business and tax planning if you are not careful.

To protect yourself against these hazards, work with a legal professional to arrange for certain transferees or assignees — such as a guardian/conservator, spouse, children or trust — to be full substitute members while keeping other transferees — such as creditors or ex-spouses — as mere assignees with no management rights. This can be set forth in the LLC's written operating agreement.

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