

**Estate planning**

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# Trust UPDATE



July 2017

## Being an executor is *not* fun

**Few people appreciate how complicated the job of an estate executor can be.**

**A** bit over a year after Prince died, a Minnesota probate court made its finding of who the heirs to the musician’s estate would be. The court intervention was required because Prince died without a will, and therefore his estate will pass under the laws of intestacy—the state-made will. During the year following the singer’s death, many potential heirs came forward.

Most were ruled out based upon DNA testing. Six heirs were announced by the court in May, Prince’s sister and five half-siblings.

Determining the heirs is only the beginning of the complications for this particular estate. A dispute has arisen over the ownership of Prince’s recorded and published music, as well as a trove of unpublished recordings. A sound engineer who worked for

Prince for two years attempted to publish five of his unreleased songs, so the estate sought and received a temporary injunction to stop that. The estate has been estimated to be worth from \$100 million to \$300 million, which implies that a federal estate tax of \$40 million to \$135 million soon will be due. That obligation will have to be paid in cash, as the IRS does not accept song royalties as payment. Some estate assets may have to be liquidated.

Lawyers’ fees to date reportedly have run to \$4 million. The estate is resisting the payment of some legal fees, including those of disappointed claimants to heirship. The case has been characterized as the most complex probate case in Minnesota history.

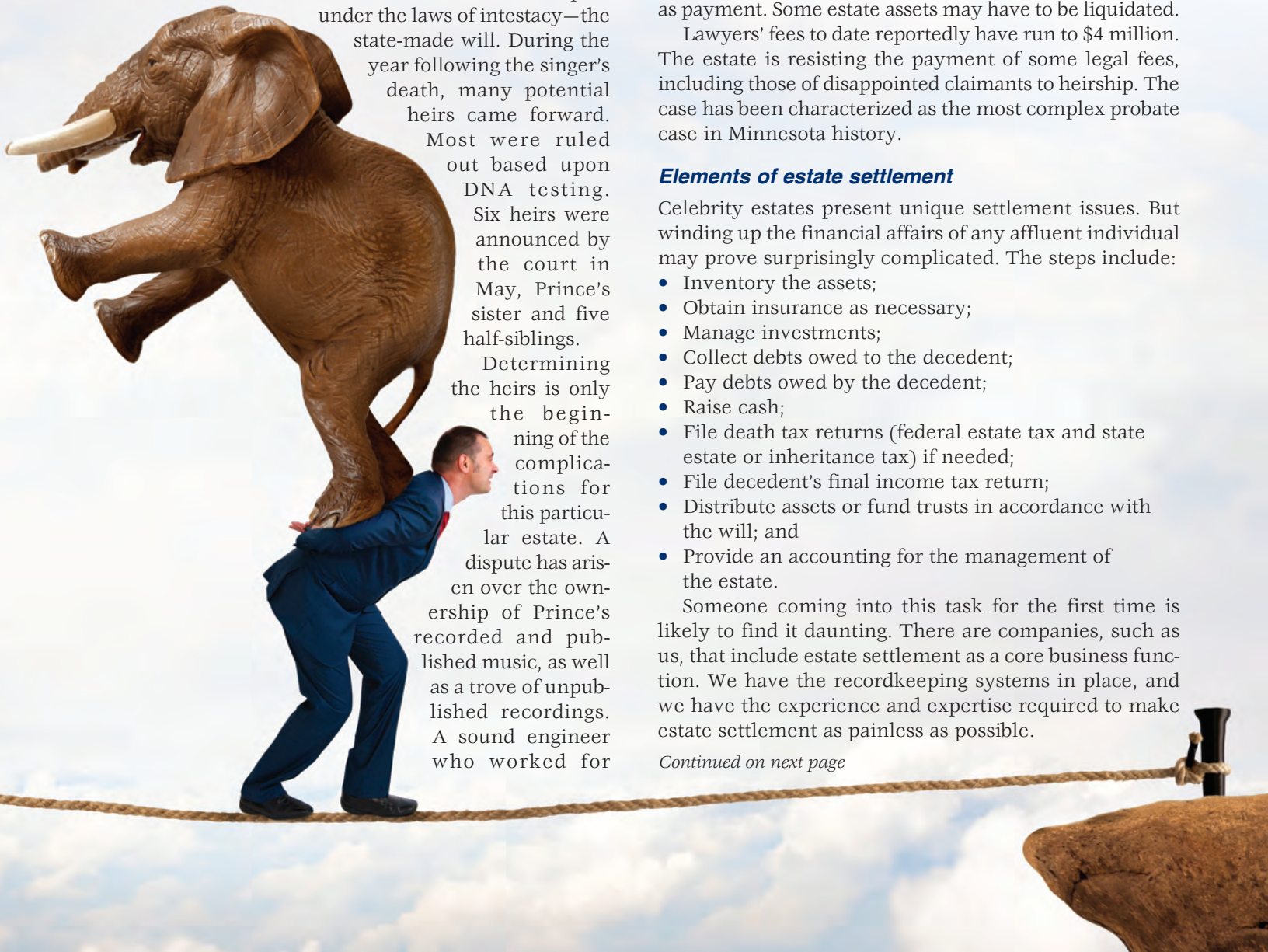
### **Elements of estate settlement**

Celebrity estates present unique settlement issues. But winding up the financial affairs of any affluent individual may prove surprisingly complicated. The steps include:

- Inventory the assets;
- Obtain insurance as necessary;
- Manage investments;
- Collect debts owed to the decedent;
- Pay debts owed by the decedent;
- Raise cash;
- File death tax returns (federal estate tax and state estate or inheritance tax) if needed;
- File decedent’s final income tax return;
- Distribute assets or fund trusts in accordance with the will; and
- Provide an accounting for the management of the estate.

Someone coming into this task for the first time is likely to find it daunting. There are companies, such as us, that include estate settlement as a core business function. We have the recordkeeping systems in place, and we have the experience and expertise required to make estate settlement as painless as possible.

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## Will substitutes

A will controls only a portion of one's property at death, the part that goes through probate. Property with named beneficiaries may pass to them automatically. Examples of such property include:

- jointly owned property, such as real estate, bank accounts, and brokerage accounts;
- pay-on-death accounts;

- life insurance;
- qualified retirement accounts, such as IRAs and 401(k)s; and
- revocable living trusts established for lifetime financial management.

Understanding the role of such assets in the composition of the estate is an essential element of will planning.

*Executor . . . continued*

### Questions to ask your executor

Here are a few key characteristics to look for as you evaluate the candidates for settling your estate:

- **Experience.** Have the individuals or organizations settled estates before? Is it part of their daily business routine? Have they been exposed to a wide range of estate settlement issues over the years?
- **Skills.** Is the executor candidate familiar with modern portfolio theory? How about the prudent man rule?

Will investment management issues be a problem, or can they be handled routinely?

- **Availability.** Will the proposed executor be ready to take on the job at any time? Is there a chance that illnesses, vacations, or career issues will interfere with the job of estate settlement?
- **Impartiality.** Does the prospective executor have a financial interest in the estate? Will all parties consider the executor fair and impartial? Can the executor play a constructive role in settling any disputes that arise among beneficiaries?

Choosing an executor is similar to hiring an employee, but the stakes are much higher.

### We are ready to serve you

Who should you choose to settle your estate? We have the skills, the experience and the knowledge to handle properly the job of estate settlement. We are available, and we are impartial. We understand the nature of fiduciary responsibilities, and we know how to discharge them.

And for all this, our fee for settling an estate is generally comparable to what an inexperienced individual would receive. In some cases our experience will help to reduce estate shrinkage, increasing the amount available for beneficiaries.

Would you like to learn more? Please call on us for more details about our estate settlement service. □

## Mistakes executors make

According to the Web site <http://erasure.com/i-am-an-executor/the-risks-associated-with-being-an-executor>, the most common reasons for a lawsuit against an executor are:

- **Favoritism.** Preferential or prejudicial treatment of certain beneficiaries, resulting in a loss to another beneficiary.
- **Loss of money or value.** Timing issues related to the sale of real property or financial instruments that result in a diminished value of the asset.

- **Conflict of interest.** An allegation of conflict of interest may be made whether or not the executor is also a beneficiary.

- **Error in value.** Failure to value the estate's assets properly.

The Web site includes several examples from actual cases. Even when a lawsuit is unsuccessful, the costs to the estate and its beneficiaries may be considerable.

# Have you had “the talk” yet?

Those who have built significant wealth are rightfully concerned about how best to use that wealth for family financial protection. As often has been noted, the wealthy want their heirs to have enough to be able to do anything, but not so much that they don't have to do something.

Trust planning comes immediately to mind when planning for a child who is a minor. The trust can provide for education funding, for getting a good financial start in life. Incentives can be built into the trust for achieving certain milestones, such as reaching a certain age or beginning a professional practice.

But what about when the children are fully grown, established in their careers and financially mature, in their 30s or even 40s? Even then, trust-based planning will be an excellent idea for many affluent families. Trusts may play an important and valuable role in asset protection, in ensuring an inheritance for multiple generations, and in providing an avenue of flexible response to future circumstances.

So, you've decided on a trust-based estate plan. What do you tell the kids, and when?

## **Communication is important**

For many families, talking about money is even more uncomfortable than discussing religion, politics, or sex. But communication in advance about an estate plan, and especially about the reasons behind the planning, goes a long way toward defusing misunderstandings and avoiding conflicts among heirs. In the words of estate planner Gerald M. Condon, “You really don't know your children—until they divide their inheritance.”

**Unequal treatment.** Heirs have a way of confusing the degree of love during life with the size of an eventual inheritance. Thus, if the shares of siblings will be unequal, the potential for conflict and hurt feelings rises. Unequal shares of an estate may be appropriate for many reasons. Some children may have been provided with more during life, almost as an advance on their inheritance. Some children may have achieved such a degree of financial success that the family will be better served by directing resources to others less well off. Other family members may have demonstrated an incapacity for sound financial management, making special arrangements for their inheritance necessary.

An airing of the motivations behind the plan will usually promote family harmony. But at the same time, heirs need to understand that estate planning isn't a family-wide project, and the plan itself isn't being put to a vote.

**Setting realistic expectations.** Some children are hoping for a larger inheritance than they are likely to receive. Others may expect too little. Either misconception can lead to unwise planning choices by the heirs in their personal financial management. A reality check is another benefit of the family conference on inheritance.

**Bringing up the subject.** A parent can arrange for a family meeting to go over the details of the plan. It may

## Signals

Serious family communication in the financial area is overdue if:

### Parents

- Worry that their kids will grow up feeling entitled.
- Believe that their children already are spoiled, or that their kids have no idea what hard work is.
- Have never discussed an estate plan with their children.

### Children

- Are only somewhat aware of the family's long-term wealth plans.
- Don't seek advice from financial advisors.
- Believe that disagreement among family members is a bigger threat to family wealth than death taxes.



be wise to have the family lawyer or trust officer present to handle questions as they come up. When a trust will be involved in the plan, heirs should meet and become comfortable with the trustee.

An adult child who wants to take the initiative might break the ice by asking a parent, “I've been seeing a lawyer about my estate planning, and I'd like to be able to coordinate my plan with yours.”

## **A family tradition of philanthropy**

Very often parents are as concerned about passing their values to their children as they are about financial security. Family philanthropy can be an excellent mechanism for sharing those values. Many strategies are available, from private foundations to charitable trusts to donor-advised funds.

## **How to handle the nonfinancial assets**

Sometimes the nastiest fights among heirs are those over items that have more sentimental than financial value. These problems often can be defused by asking the heirs for their choices and making gifts of specific items during life. But if everyone wants the same things, a plan for rotating choices may be needed. When all else fails, it may be necessary to sell the items and split the proceeds.

## **May we be of service to you?**

Estate settlement and inheritance management are core parts of our daily business. Because we are neutral professionals, we normally can command the respect of all the heirs for the decisions that we make in the course of estate settlement. Over the years, we have worked closely with many successful families on the implementation of their estate plans. □



## Adult adoptions

**Case one.** Marrion's will left her residuary estate to "my children," Russell and Marcia. The will was executed in 2006. In 2007 Russell was adopted as an adult by his paternal aunt for the express purpose of avoiding Iowa's inheritance tax. Unlike an estate tax, which only has deductions for surviving spouses and charities, an inheritance tax may depend upon the relationship of the heir to the deceased.

After Marrion died in 2014, Marcia challenged her brother's right to inherit under their mother's will. As a result of the adoption, Marcia argued, he was now Marrion's nephew, not her child in the eyes of the law. The result would be consistent with Iowa's public policy of severing the relationship of an adopted-out child with his or her biological parents for purposes of intestate succession and inheritance tax.

The Iowa probate court disagreed, and the Iowa Supreme Court has affirmed that decision. Russell was identified by name in his mother's will; he received his inheritance based upon that fact, not by being a member of a class of persons ("my children"). Allowing a testamentary gift to a child who has been adopted by another does not violate any public policy.

**Case two.** Greg's parents divorced when he was three years old. He lived primarily with his mother, but he saw his father regularly. When Greg was six, his father began living with Betty, and the couple married five years later. Beginning at age 15, Greg began living with his father and stepmother.

Betty's parents created family trusts, of which Betty was a contingent income beneficiary and her children and grandchildren were remainder beneficiaries. Betty's mother died in 1989, and her will was admitted to probate. In 1990 Betty adopted Greg when he was 22 years old. Greg's biological mother was not told about the adoption so as to avoid strife.

Betty's father executed his final will in 1996, specifically excluding Greg from inheriting. It did allow for inheritance by grandchildren adopted before they reached age 18. Betty died in 2005, and her trust income did not go to Greg.

The family trusts terminated in 2012. At that point Greg asserted his inheritance rights, a portion of the remainder of the family trusts. He explained: "Betty came to me around that time [when he was 22] and said that she would really like to adopt me for estate reasons, and you know, Betty really loved me. I mean, you know, we shared a great I guess mother-son relationship the whole time, you know, I was growing up."

The rest of the family opposed Greg's inheritance, arguing that the adoption was a subterfuge. The probate court upheld his claim, and the Iowa Supreme Court agrees. "We find the record fails to demonstrate Greg's adoption occurred solely for the purpose of taking under the trusts." □

*Have you named a friend or family member as executor?*



Estate settlement is the worst time for on-the-job learning. Ask us about how we can ease estate settlement for your family.



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