



# Leimberg's Think About It

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## SEVEN COMMON ESTATE PLANNING MISTAKES ...AND THE CELEBRITIES WHO MADE THEM

### INTRODUCTION

Financial professionals give their clients lots of advice related to estate planning. Much of that advice centers around the proper transfer of assets at death.

Unfortunately, clients make plenty of mistakes when putting together their estate plans, including:

1. **Waiting to make plans until it's too late**
2. **Failing to work with a professional team**
3. **Forgetting to make plans for the family business**
4. **Failing to manage estate taxes**
5. **Letting documents get out of date**
6. **Failing to make proper plans for young children**
7. **Forgetting to plan for the possibility of incapacity**

An estate planning attorney can help the client navigate past these mistakes. However, the financial and life insurance professionals also play key roles in making sure the client's estate planning is effective.

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What if the critical issues haven't been addressed?

Unfortunately, there are plenty of horror stories involving famous people who made these estate planning mistakes. We have included several examples in this newsletter.

These anecdotes are helpful in helping to illustrate the importance of doing proper planning. Because clients may know some of the situations described, the information may be helpful in helping them understand why some mistakes can lead to disastrous consequences.

## **THE MISTAKES AND THE STORIES**

### ***Waiting Until It's Too Late – Peter the Great***

Peter I, known as Peter the Great, was tsar and emperor of Russia until his death in 1725.

Peter's claim to the title arose as a result of the death of his older brother Tsar Theodore III. After Theodore's death, when Peter was ten years old, Peter was named co-tsar with his half-brother Ivan. Peter's sister Sophia acted as Regent on behalf of Peter and Ivan until Peter was 17, at which time Peter took effective control of Russia.

The reign of Peter I is considered a key part of Russian history. During that time, Russia implemented major reforms of its government, economy, religious affairs, and culture.

Peter decided to mirror Western culture, creating conditions to encourage commerce and industry. He also modernized the Russian alphabet and calendar, and established the first Russian newspaper.

Peter's reform of the government included appointing an effective Senate. He also made Russia an active member of the European community of nations.

Peter acquired territory in Eastern Europe through military conquest. Through several wars with Turkey, he also secured access to southern ports in the Black Sea. In 1712, Peter established the city of St. Petersburg, and moved the capital there from its former location in Moscow. St. Petersburg became the showcase city for the new Russia.

Peter was also ruthless. He energetically suppressed internal revolts over taxes. He also ordered the arrest and torture of his son—and apparent heir—Alexis. Alexis died while he was imprisoned.

In early January 1725, Peter was suffering from a life-threatening illness. At that time, the right to Tsarist succession was an asset that could be passed by the current Tsar at death. Because of the prior death of Peter's son Alexis, the identity of the next Tsar was uncertain.

On his deathbed, Peter apparently asked for a paper and pen. He wrote: "*Leave all to....*" and shortly thereafter died without finishing his thought.

After Peter's death, a series of struggles for the throne took place which lasted for many years. Peter's wife, Catherine, first seized the throne. When she died in 1727, Peter's grandson, Peter II, was crowned Tsar. In 1730 Peter II succumbed to smallpox, and Anna, a daughter of Ivan, who had technically been co-ruler with Peter, ascended the throne. Anna was largely ineffective as Tsar until her death in 1740.

It's not clear who Peter would have chosen as the successor Tsar, or whether his choice would have been better than those who claimed power. However, he missed his opportunity to name a successor because he waited too long.

Here are a few other examples of famous people who waited until it was too late:

1. **Sonny Bono**, died in a tragic skiing accident in 1998, leaving his third wife and children from multiple relationships. He apparently failed to have any kind of will or estate plan.
2. **Steve McNair**, the former Tennessee Titan quarterback and league MVP, was killed in 2009 without having made a written plan for his wife or children from a prior relationship.
3. **Howard Hughes** passed away at age 70 with an estate worth about \$2.5 billion. Despite a court-rejected claim to the contrary by Melvin Dummar (memorialized by the 1980 film *Melvin and Howard*), Hughes died without a valid will. Hughes's estate was distributed to his cousins.

### ***Failing to Work with a Professional Team – Charles Kuralt and Doris Duke***

#### **CHARLES KURALT – DO-IT-YOURSELF WILL**

Charles Kuralt was a fixture on CBS television news for many years. His award-winning "On the Road" segments were human interest pieces, highlighting the beauty and charm of undiscovered American communities and their people.

Kuralt died in 1997, leaving a will passing his estate to his wife and two daughters. However, two years after his death, the rest of the story came to light.

Apparently, Kuralt had a long-time secret companion at the time of his death. Shortly before his death, Kuralt wrote his companion, Patricia Shannon, a letter. In his letter Kuralt expressed the intention to leave his 90 acre parcel of Montana property to Shannon.

Kuralt did not get around to having a lawyer formalize his intention prior to his death. His properly drafted will was admitted to probate in New York, and his widow was named executor. When the widow sought to make the Montana property part of the probate estate subject to the will, Shannon brought suit in Montana. The subsequent publicity both tarnished Kuralt's image, and created difficulties for his family.

The Supreme Court of Montana ultimately decided that Kuralt's letter to Shannon was a valid codicil to his original will. As a result, it ruled that Shannon was entitled to the Montana property.

To make matters worse from the perspectives of Kuralt's widow and daughters, the Court ruled that the settlement costs associated with the Montana property had to be paid out of Kuralt's remainder estate. That meant that not only did Shannon get the Montana property, but that Kuralt's family had to pay the costs of transferring it to her. See *In Re Estate of Kuralt*, 315 Mont. 177; 68 P.3d 662 (2003).

If Charles Kuralt had drafted and funded a new living trust instead of creating a codicil by letter, his family may have been spared the humiliating publicity associated with this case. Because the New York and Montana probates were public, the details came out. Proper living trust planning would have given the family the option to avoid a visible fight.

And while it seems likely that Kuralt intended for the Montana property to pass to Shannon, it's less probable that he wanted his widow and daughters to pay the costs of the transfer. If he had had the proper legal documents prepared, the costs associated with the transfer of the Montana property could have been imposed on Shannon.

What's the moral of the story? Make sure that a client's estate planning intentions have been properly documented, and that all the documents—including wills, codicils, trusts and beneficiary designations—work well together.

#### DORIS DUKE – NAMING THE WRONG FIDUCIARY

Doris Duke was the only child of Buck Duke, a wealthy tobacco magnate and the namesake for Duke University. Upon Buck's death, the 12 year old Doris inherited about \$100 million.

During her life, Doris engaged in a number of charitable activities. She was also considered to be quite eccentric. For example, at the age of 75, she adopted 35-year-old Hare Krishna follower. Duke and her adopted son later had a falling out. Duke successfully negated the adoption in return for a sizable settlement.

Duke married twice and had one daughter, who died as an infant. At the time of her death in 1993, Doris was single and childless.

Duke died at home in the presence of her butler, Bernard Lafferty. In her last will, she left most of her \$1.2 billion estate to the Doris Duke Charitable Foundation. She named Lafferty as sole executor of her estate.

Lafferty, with little practical education or experience in acting as a fiduciary, successfully petitioned to have U.S. Trust named as corporate co-executor.

Almost immediately, Lafferty became the target of attacks from others with a potential interest in Duke's wealth. There were allegations of foul play in Duke's death, alcoholism, misuse of Duke's money and incompetence. One New York court decided that Lafferty was squandering estate money and U.S. Trust wasn't doing anything to stop him, and ruled that both should be removed.

The New York Supreme Court overturned the removal of the fiduciaries on appeal, and that encouraged all involved to settle the case. A settlement was negotiated, and the vast majority of Doris Duke's \$1.2-billion estate was directed to charity. Lafferty was removed as a fiduciary in exchange for a lump sum executor's fee and a \$500,000 annual bequest paid from the estate.

When Doris Duke named Bernard Lafferty her executor, was it a mistake? Probably. There seemed to be little in Lafferty's background that prepared him for the fiduciary obligations associated with being an executor of a billion dollar estate. Lafferty himself seemed to be relieved when financial terms for his removal as executor were negotiated.

What's the lesson from Doris Duke's estate? Choose fiduciaries with the skills suited to the job they're being asked to do.

### ***Forgetting To Make Plans for the Family Business and Failing to Manage Estate Taxes – Joe Robbie***

In November, 1989, Joe Robbie was the owner of the Miami Dolphins and the football stadium that bore his name. He was motivated to make plans to keep the Dolphins in the Robbie family. He established a trust and funded it with two partnership interests that together held an 88% stake in the Dolphins.

Robbie died in early 1990, with an estate worth more than \$100 million. According to court documents, most of Robbie's estate was earmarked to pass to his surviving spouse Elizabeth in a QTIP-type trust. If that came about, and if proper tax elections were made, the biggest portion of any estate tax would have been deferred until Elizabeth's death.

After his death, just three of Robbie's nine children—Janet, Tim and Dan—became trustees of the trust. Robbie was also survived by his wife Elizabeth, who was also the mother of his children.

Robbie and his family also owned Miami Sports Corp. That company at the time of Joe's death owned the remaining 12% of the Dolphins and 100% of the stadium. Janet, Tim and Dan were named to Miami Sports's advisory board along with two non-family members.

After their father's death, the trustees negotiated to sell part of the team and the stadium to Wayne Huizenga, the then-CEO of Blockbuster. Joe Robbie had earlier discussed with him a partial sale to help pay down \$90 million in construction debt, but talks had broken off.

Dan, Tim, and Janet negotiated a deal under which Huizenga would buy 50% of the stadium and 15% of the Dolphins. The rest of the family argued against consummating the deal just a few months after the elder Robbie's death. However, the trustees went ahead with the deal. Huizenga paid \$12 million for the Dolphins stake and \$5 million for half the stadium.

To compound the family friction, just six months after their father's death, Tim, Dan, and Janet dismissed their older brother from his post as Dolphins executive vice-president. Their mother was apparently incensed.

A few months later Elizabeth Robbie moved to protect her own interests in Joe's estate. Rather than accepting a QTIP trust under the control of Janet, Tim and Dan, Elizabeth elected to claim 30% of her husband's \$70 million estate probate estate. She was entitled to this choice under Florida law.

While the 30% estate share claimed by Elizabeth was entitled to the unlimited marital estate tax deduction, the other \$50 million of the probate estate was not. That meant that an additional—and unexpected—estate tax liability of about \$25 million. To raise the money, the trustees were forced to sell additional interests in the stadium and Dolphins to Huizenga.

What are the lessons from the Robbie estate?

First, the plan to continue the family business was flawed. The interests of the surviving spouse and the children were not all perfectly aligned. And because the family members didn't each see things the same way, the business failed to stay in the family.

Second, the possibility of estate taxes was not properly planned for. Even though most of the estate was designed to qualify for the unlimited marital deduction, circumstances accelerated the bill. Since there was inadequate liquidity in the estate to cover the taxes, the team and the stadium had to be sold.

And that's why the former Joe Robbie Stadium is now known as Sun Life Stadium.

### ***Letting Documents Get Out of Date – Anna Nicole Smith and Heath Ledger***

#### **ANNA NICOLE SMITH**

Anna Nicole Smith rose to fame as a model for Guess jeans and for *Playboy* magazine. In her later years, she starred in her own reality TV show.

Smith's personal life was chaotic. She married Billy Smith when she was only 17 years old. The couple had a son named Daniel in the mid-1980s, but the marriage later ended.

While working at a strip club in Houston, Smith met Texas oil tycoon, J. Howard Marshall II. They married in 1994. At the time, Smith was 26 and Marshall was 89. Marshall died the following year.

Smith spent years fighting her late husband's son, E. Pierce Marshall, in court over her husband's estate. In late 2000, a bankruptcy court awarded Smith \$474.75 million from Marshall's estate. A federal district court judge later reduced that amount to \$89.5 million in 2002. Still later, a federal appeals court rejected Smith's claim against the estate entirely. The litigation from that case is still ongoing.

While her professional life appeared to be on the rise, Anna Nicole Smith experienced both joy and tragedy in her personal life. She gave birth to a daughter, Dannielyn on September 7, 2006, at a hospital in Nassau, Bahamas. A few days later, her 20-year-old son Daniel died from an apparent drug overdose. Smith herself died less than five months later.

Smith's will, drawn up in April 2001, named her son Daniel as the sole beneficiary of her estate, specifically excluded other children from sharing in her estate, and named her attorney and companion Howard K. Stern as the executor. The will apparently made no provisions for any contingent heirs.

Smith left the following questions unanswered at the time of her death:

1. Who did she intend to be the guardian of Dannielyn?
2. Did she plan to leave her estate to others besides Dannielyn?
3. What trust provisions did she want to make for her daughter?
4. Who did she want to act as trustee for Dannielyn?

If she had left a current will, or other updated estate planning documents, Smith might have been able to avoid some of the uncertainty, legal expenses and media circus that followed her death.



## HEATH LEDGER

Heath Ledger was a highly successful young actor, with critically-acclaimed roles in *Brokeback Mountain*, *A Knight's Tale* and *The Dark Knight*. He died of an apparent accidental overdose of prescription medicine in 2008. He was 28 years old.

Ledger left a will from 2003 leaving his estate to his parent and siblings. Subsequent to the execution of that will, daughter Matilda Rose was born in 2005 to Ledger and partner Michelle Williams.

After Ledger's death, the Williams family hired attorneys to keep Matilda Rose from being excluded from her father's estate. In the early stages of the settlement of Ledger's estate, it seemed as if litigation would be inevitable. However, from the beginning, Ledger's father Kim maintained that Heath's daughter would be the primary beneficiary of the estate.

In 2008, Kim told a reporter that the family had agreed to leave Ledger's \$16.3 million fortune to Matilda.

Did Heath Ledger intend for his daughter to inherit all his estate? Did he intend to leave a bequest directly for his child's mother, Michelle Williams? What kind of trust provisions did he have in mind for Matilda Rose's benefit? We'll never know.

### ***Failing to Make Proper Plans for Young Children – Kurt Cobain***

Nirvana lead singer Kurt Cobain died in 1994 without a will, leaving his wife, Courtney Love, and baby daughter, Frances Bean Cobain as his intestate heirs. A few years after his death, the family created a trust, and funded it with the share of the Cobain estate intended for Frances.

Frances is the trust's sole beneficiary. Love has a responsibility to review expenses and disbursements before they are paid out by the trustee. She also apparently has the right to review financial statements and to act as an adviser regarding the management of the trust. Laird Norton Tyee Trust Company (LNTTC) was named primary trustee of the trust.

In the years following Cobain's death, LNTTC and Love have traded insinuations about who is responsible for millions of dollars that were either lost or wasted during the management of the trust. LNTTC asked Love to prove that money distributed to her by the trust was actually used for Frances's benefits. Love, for her part, wanted LNTTC to explain why \$8 million apparently disappeared from the trust.



It's not much of a stretch to describe Courtney Love as a mess. Her battles with drug dependency, unstable relationships and the legal system are well-documented. In December 2009, she lost legal custody of her daughter, in favor of a co-guardianship by Kurt Cobain's mother and his sister.

As further evidence of the estrangement of mother and daughter, Frances has apparently expressed concern that her mother's actions were depleting the trust, and asked LNTTC not to share trust information with Love. Frances has recently reached the age of majority. She will be in a position to decide on her own behalf whether to pursue legal action against LNTTC, her mother, or both.

Kurt Cobain died without leaving a will, and without leaving specific direction for the estate his daughter inherited. Would he have given his surviving spouse a major role in the administration of a trust for Frances's benefit? We'll never know.

### ***Forgetting to Plan for the Possibility of Incapacity – Bettie Page***

Bettie Page was born in Nashville, Tennessee in 1923, and was considered to be the classic American pinup model. Page was one of *Playboy* magazine's first Playmates of the Month.

Later in her life, Page battled mental illness. Beginning in July 2007, Page began a year-long hospital stay at California state hospitals, where she continued to receive medical treatment until she died.

Celebrity lawyer Mark Roesler filed a petition for a temporary conservatorship over Page's estate while she was being hospitalized. In his petition, the lawyer requested authorization from a California court judge to transfer money from an account controlled by Page personally to a trust.

After Page's subsequent death, the California court that had approved the conservatorship ruled that Roesler had failed in his obligation to use the funds from the account to care for Page.

*Transferring those assets to the trust did not mean that they were used for her benefit, care and support. In fact, the temporary conservator has stated the assets were distributed to charities and then to himself as beneficiaries within a few days of Ms. Page's death.*

Roesler asserted that the court approving the conservatorship had no jurisdiction over the funds *after* they were transferred to the trust. But the judge said the celebrity lawyer was incorrect and ordered \$145,000 returned to Page's estate.

Much of the money returned to the estate was likely be used to help pay a \$272,000 reimbursement to the state hospitals from which Page received treatment.

What are the lessons from this case?

1. A conservatorship is a court proceeding designed to name someone to act on an impaired person's financial behalf. The need for such a court proceeding, which can be expensive and uncertain, can be avoided with a simple power of attorney—or a more complex fully funded living trust.
2. The attorney may not have been Bettie's favored choice to exercise control over her own finances. However, in the absence of documentation, we'll never know.

## CONCLUSION

We are reminded constantly that famous people are not always good role models. The news is filled with stories about how many make bad choices with regard to relationships, money, and lifestyle.

Unfortunately, celebrities also make tragic mistakes with regard to their estate planning. For many, because of great wealth and complex family relationships, the consequences of failing to plan are dire.

The famous people described in this newsletter each failed in some aspect of their estate planning. The failures resulted in lost businesses, lost wealth, unexpected distributions of estates and failures to fully protect family members. Perhaps the clients of financial professionals can learn from celebrities' example to avoid similar mistakes in their own situations.



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