

# Private Wealth

ADVISING THE EXCEPTIONALLY AFFLUENT

## THE TAX BUSTER

Attorney Edward Renn helps wealthy families achieve tax savings through strategies that are "on the right side of the line."

**PLUS:** KNIGHT FOUNDATION SETS NEW COURSE  
THE HEDGE FUND SECTOR'S CONTACT HITTERS  
WHY CELEBRITY ESTATE PLANS OFTEN BOMB

# WOE THE WEAK-WILLED CELEBRITY

The high drama often associated with celebrity estates can be avoided with the implementation of simple estate-planning strategies. **BY ANTHONY GRECO**

**W**HENEVER high-profile celebrities die, the story is often the same: a torrent of glowing memorials and fond remembrances, followed closely by stories about their troubled estates. Public interest in how much they were worth, who is inheriting what and whether the deceased planned properly to avoid messy legal battles among heirs and tax collectors becomes fodder for gossip pages.

When vast amounts of assets and diverse holdings are at stake, a simple will, no matter how strongly constructed and clearly written, may not be enough to ensure that an individual's legacy is distributed in accordance with his or her wishes, according to estate-planning experts who work with extremely rich clients. If multiple spouses and children from various marriages and other relationships are involved, an estate may be tied up in court for years and have its value depleted by litigation costs. Minimizing that possibility requires celebrities, entertainers, professional athletes and other wealthy clients to take a proactive approach to estate planning and use all the tools and strategies available to protect and preserve what they leave behind, as well as future earnings such as royalties.

Some notable examples of celebrity estate plans gone awry include that of actor James Gandolfini, who died in 2013 at the age of 51 with a will that reportedly resulted in a whopping \$30 million tax bill on an estate worth about \$70 million. Similarly, the death of actor Philip Seymour Hoffman at the age of 46 last year sparked debate over his estate plan, which resulted in \$15 million in taxes paid on an estate worth about \$35 million.

"The number one priority is organization," says Russell J. Fishkind, an estate planning attorney at Saul Ewing



and author of *Probate Wars of the Rich & Famous*. “It’s important to get a team of advisors that includes an accountant, an estate planning attorney, a life insurance professional, a certified financial planner and a banker working together. ... Too often that step is skipped.”

Wealthy high-profile individuals and celebrities who fail to employ comprehensive planning strategies are the ones whose estates often end up in costly and prolonged litigation and diluted by taxes that could have been avoided, he notes.

“If you can have an estate plan that is harmonious and tax efficient, then you have accomplished something,” he says.

#### PROFITING FROM THE GRAVE

Benjamin Franklin famously observed that the only two certainties in life are death and taxes. The modern corollaries, at least as it applies to the ultra-wealthy, are tax audits and lawsuits.

Individual estate and trust income taxes provided the single-largest source of federal tax receipts in fiscal year 2012, accounting for about \$1.4 trillion, or 55% of total tax revenue, according to the IRS.

Moreover, the estates of ultra-high-net-worth taxpayers draw the most scrutiny. While the IRS audited 30% of the 12,582 estate tax returns filed in fiscal year 2011, estates valued at \$5 million to \$10 million were audited at a 60% rate, while estates over \$10 million were audited 100% of the time.

For entertainers and high-profile celebrities, the value of their name and likeness complicates the estate-planning process and may add to an estate’s tax liability. Their images, royalties from music publishing and revenue from a variety of licensed products may continue to generate significant income long after they have passed away. According to *Forbes*, Elvis Presley’s estate generated \$55 million of income in 2014, almost four decades after his death. The estate of Jamaican reggae legend Bob Marley, who died in 1981, accounted for \$20 million of income this year, and there’s more where that came from: His family

announced it will use the Marley name to launch a line of branded marijuana products for export to U.S. markets where pot is legal.

Failure to properly value a celebrity’s image and likeness and to plan for who will be the beneficiary of any related earnings after death, opens the door to the tax collector and the courtroom, experts say.

“Rich people have to worry about tax audits that survive their deaths, because liens will get filed, and lawsuits,” says Gary S. Wolfe, a Beverly Hills-based tax attorney.

Celebrities may avoid many of the image and likeness tax pitfalls by creating an irrevocable trust, transferring their intellectual property rights through a corporation established to receive the income from those rights, and then declaring a gift, according to Wolfe. If the gift is valued at less than \$5.43 million, it is not subject to

the claims are, they just care who the source of recovery is,” he says. “If you’re dead, that lawsuit goes against your estate assets and no distributions can be made until that lawsuit or tax lien is resolved.”

#### YOUNG, SINGLE AND NEWLY RICH

Estate-planning issues for entertainers and professional athletes who go from having nothing to vast wealth almost overnight pose a different set of challenges, says Jake Bond, senior vice president at True Capital Management in San Francisco.

Those individuals often come into their wealth in their early to mid-20s and may aggregate the majority of their assets over a relatively short time. Very few, because of their age and sudden acquisition of wealth, have thought about how their wealth may impact future generations or how they would like to see it passed down. Many

**Failure to properly value a celebrity’s image and likeness and to plan for who will be the beneficiary of any related earnings after death, opens the door to the tax collector and the courtroom, experts say.**

current federal estate or gift tax, and any appreciation in the value will be free of federal estate and gift taxes and shielded from creditors as part of an irrevocable trust. When structured properly, the image and likeness royalties can pay for the sale of other estate assets and deliver a significant income and estate and gift tax savings.

The primary concern is protecting assets from both taxes and litigation, says Wolfe, who noted that almost 100,000 lawsuits are filed every month in California alone.

“If you’re rich, you can get sued, and plaintiffs’ lawyers look for deep-pocketed defendants. They don’t care what

also struggle with whom they can trust to manage their estates. If a client does not have someone in his or her life appropriate for the role, True Capital recommends that the client select an independent party as trustee.

Revocable trusts offer the most flexibility for young clients such as these, Bond says.

“It doesn’t make sense to lock them into something that’s not revocable,” he says. “They don’t know what the following year is going to look like, they’ve got several more chapters to write in their lives, and their lives are going to change a ton, so definitely some kind of revocable trust.”

Another important estate-planning tool that is often overlooked because of the negative connotations attached to it is a prenuptial or postnuptial agreement. They “are not only applicable to

the demise of the relationship through a divorce, but also because of death, so it very much is an estate-planning tool,” Bond says.

For example, if a prenuptial or

postnuptial agreement specifies that 60% of all marital assets go to the male and 40% to the female upon dissolution of the marriage, and the male dies leaving an estate valued at \$10 million, the spouse would automatically receive \$4 million. The remaining \$6 million would fall into the trust of the deceased spouse and that document would determine how the balance is managed and distributed.

Such an arrangement simply lays out “a clear plan as to how assets will be valued and divided if the partnership is dissolved, no matter the cause,” Bond says.

#### PLAN EARLY, REVISE ANNUALLY

Regularly updating an estate plan is just as important as having one, attorneys say.

No matter the age, the head of a wealthy family has responsibility to ensure a smooth succession, Bond says. That means taking into account not just how estate assets are managed and to whom they will go, but also planning for enough available liquidity to ensure a smooth transition from one generation to the next. While an estate’s assets may be valued at tens of millions of dollars, it may not have \$10 million in cash on hand to settle a tax bill. That may require selling off assets, possibly in a buyer’s market, to cover the payment.

“Most of the time, estates are tied up in assets that are very valuable but not necessarily liquid,” Bond says. “Even if someone has most of his net worth tied up in real estate, if you’ve bought or sold a house you know [the sale] doesn’t happen overnight.”

Reviewing an estate plan annually with a team of advisors will yield the best results for wealthy families and their future generations, Fishkind says.

“Compared with lack of planning and follow-up and paying unnecessary amounts of money in the form of estate taxes or litigation fees, the choice of which route you want to take is easy,” he says. “It’s just a matter of looking at the different paths and choosing the right one.” *PW*

## Celebrity Client Checklist

Celebrities, entertainers, athletes and other ultra-high-net-worth individuals and their advisors should take the following precautions when planning high-value estates, according to attorney Russell J. Fishkind, a partner at Saul Ewing.

- 1. Consider a revocable trust and a pour-over will instead of a straight will.** “That will secure the element of privacy so the details of the estate are not available for public consumption,” Fishkind says.
- 2. Secure intellectual property rights and royalties and post-death interests and income.** “You want to make sure you have specifically devised or bequeathed your intellectual property rights, which could include royalties long after the decedent’s death,” he says. “Many estates of famous musicians and celebrities earn more money than the individual did during life. So you want to take a look at the intellectual property rights and royalty agreements and determine who the agent for those IP rights is going to be and make sure you are either distributing them through the residuary clause of a will or, alternatively, creating a specific bequest for the IP rights.
- 3. Protect assets from creditors.** “Use a family limited partnership or limited liability company to insulate assets from claims of creditors,” Fishkind says. “Those also may serve as a springboard for other estate and gift tax planning techniques. Celebrities are lightning bolts for litigation.” In some extreme cases, he adds, offshore entities might have to be considered to protect celebrity assets.
- 4. Take advantage of the client-friendly estate-planning climate.** With the federal gift tax exemption at more than \$5 million per spouse, advisors have a lot of flexibility in how they structure estate plans for clients who are well above the exemption threshold, Fishkind says. “The low-interest environment with applicable federal rates can be beneficial,” he says. “Selling limited partnership interests to trusts for the benefit of children is economically viable because the interest rate is so affordable. You can sell all or a percentage of those interests into trusts for the benefit of children utilizing a note, and because the applicable federal rate is so attractive it enables the buyer—the children’s trusts—to have much greater purchasing power.”
- 5. Choose the right fiduciaries.** “If you look at all the celebrity estates that are in litigation, one of the common threads you often find is that the fiduciary, the executor or the trustee is conflicted,” Fishkind says. “Find competent independent fiduciaries that the client is comfortable with.”