Legal Matters®

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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 Per the terms of the outdated will, Houston's daughter Bobbi Kristina (who was 18 when her mother died) was to receive 10 percent of the estate — $2 million — when she turned 21 and the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 reportedly worth $70 million when he died in 2013 of a heart attack in

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Mishandling terminations can lead to headaches

If you're an employer and you're reading this, chances are you've had to fire an employee for one reason or another. It could have been for cause or for economic reasons. Maybe the worker was simply not a good fit. In most situations, the employee probably left peacefully, although perhaps a bit angry or hurt.

But some workers don't leave quietly and instead come back at their employers with lawsuits, even if there were legally valid reasons for the firing. In those cases, it's often how the employer fired the worker and not the job loss itself that triggered the employee's response. However, a little bit of smart strategy can defuse some of the tension in an emotionally fraught situation and potentially head off a lawsuit that could be costly, distracting and stressful, even if you win.

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So how do you keep a legally justifiable termination from backfiring? By handling the termination in a manner that doesn't come across as callous and disrespectful.

One way to accomplish this is through a "fairness-dignity checklist" of factors that should be considered in conducting a termination.

For example, such a checklist would address the amount and type of notice you've given the employee regarding the performance deficiency that's now cost him his job. Was there any previous discipline or counseling, and was it thoughtful and calm? Did you provide notice of the employee's deficiencies in writing? Did you describe the problem, the actions needed to correct it and the potential consequences for failure to do so in a specific manner? Was the employee really given a fair shot to address it? If the answer to any of these questions is "No," you should think hard about whether this is the right time to follow through with the termination.

If it is the right time to proceed, the checklist should address the worker's relationship with the supervisor or key decision-maker who will actually be carrying out the firing. Do they have a good relationship, or at least a neutral one? Do the employee and others in the organization perceive this person as fair? If they don't, might there someone else better equipped to handle the situation?

The checklist should also address how the actual meeting will be handled. For example, can the person running the meeting avoid personal criticisms and loaded terms like "insubordination" and "incompetence?" Can he or she avoid embarrassing the employee through such actions as making her clean out her desk during the workday before being escorted out by security in front of all her co-workers?

Finally, is it possible to minimize hardship to the employee? For instance, do you plan on challenging his or her claim for unemployment benefits? If so, you'd better be able to definitively prove misconduct, which includes showing that any misconduct wasn't justifiable as a result of poor working conditions. Could the employee perhaps be given an opportunity to resign instead of getting fired? Could she receive some salary or benefits as severance?

It all really boils down to this: If it was you or a loved one being terminated in the manner you have in mind, would you be OK with it?

If you're doing things right, you should be answering most of these questions with a "Yes." In addition to potentially heading off a lawsuit, this approach can promote morale in your workplace, because in the age of social media your other employees will inevitably learn the circumstances of the firing. But this is a complicated area and these tips are just a start, so talk to an employment lawyer to learn more.

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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.

Must websites accommodate blind users?

Just because the Department of Justice does not yet have new website accessibility rules for places of public accommodation doesn't mean businesses hosting websites aren't already at risk.

Blind or visually impaired plaintiffs have been filing federal lawsuits against companies over the accessibility of their websites, although they're meeting with different results.

A federal judge in Florida recently handed down a verdict in the case of *Gil v. Winn-Dixie Stores, Inc.*, finding that Winn-Dixie had violated Title III of the Americans with Disabilities Act by having a website that could not be used by the blind plaintiff.

A week later, a federal court judge in California ruled that blind plaintiff Sean Gorecki could continue his lawsuit against retailer Hobby Lobby about the accessibility of its website. Hobby Lobby had asked the court to dismiss the case on various grounds, all of which were rejected by the judge.

In the Winn-Dixie case, Judge Robert Scola ruled on three issues:

- Whether Winn-Dixie's website was subject to the ADA;
- Whether the plaintiff was denied the full and equal enjoyment of Winn-Dixie's goods and services because of his disability; and
- Whether the requested modifications to Winn-Dixie's website were reasonable and readily achievable.

The judge concluded that Winn-Dixie's website was subject to the ADA, noting that it operates as a gateway to the physical stores.

The court also determined that Winn-Dixie's website was inaccessible to visually impaired individuals who must use screen reader software and therefore violated the ADA. Even though third parties operated parts of the website, the court still held Winn-Dixie responsible for the lack of accessibility.

Lastly, the court ruled that the $250,000 cost of making the website accessible was not an undue burden as the cost was small compared to the millions Winn-Dixie had spent to launch and later remake the site.

The ruling directly contradicts two wins for retailers in this arena from earlier this year.

In a Florida case, a federal court judge dismissed a lawsuit because the plaintiff failed to allege that his ability to use Bang & Olufsen's retail website prevented him from accessing its stores. Explicitly rejecting the argument that the ADA requires a website to provide the same online shopping experience as it does for non-disabled people, the court held that the statute only requires that "if a retailer chooses to have a website, the website cannot impede a disabled person's full use and enjoyment of the brick-and-mortar store."

In a California case, a federal court dismissed a lawsuit by a blind plaintiff who claimed that he could not use his screen reader to order a pizza from Domino's Pizza. While rejecting the argument that the ADA did not cover websites, the court ruled that Domino's had met its obligations under the law by providing access to its services by phone, and that requiring Domino's to have an accessible website at this time, when neither the law nor the regulations require websites to be accessible, would violate the company's constitutional rights.

Despite the mix of opinions being handed down by courts, the rise in these types of cases is noteworthy, and could inspire others to file lawsuits and issue pre-litigation demand letters against retailers asserting website accessibility claims. Businesses should consult with a legal professional to determine if there is a need to craft a strategy for preemptively dealing with these issues.

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Spat between parents may constitute 'change in circumstances'

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It's never easy for a kid to be shuttled back and forth between two divorced parents who cannot communicate constructively. But it can get even worse for a child as he or she gets older and becomes more aware of the hostility between his or her parents. If a recent decision out of North Carolina is any indication, this growing awareness of the parents' hatred toward one another may even be grounds for modifying a custody order.

In that case, a couple divorced in 2012 and a judge awarded the father primary physical care and custody of the couple's young daughter "Reagan." The judge apparently made this decision based on the couple's "utter inability" to work together for their daughter's benefit as well as the mother's repeated, unsubstantiated allegations that the father was abusing Reagan.

Two years later the mother asked the court to modify the custody order, claiming that the father's new girlfriend was acting as Reagan's primary caregiver. A trial judge granted the motion, citing "changed circumstances" and giving the mother primary custody. Specifically, the judge found that the parents still couldn't communicate effectively and that Reagan, who was getting older and becoming more aware of the situation, was experiencing increasingly higher anxiety as a result. He also noted that the father and his girlfriend were keeping Reagan away from other family members and that the mother was no longer making false abuse allegations.

The father appealed, arguing that his differences with his ex-wife were not grounds to modify custody based on a change in circumstances, since they hadn't gotten along from the beginning.

But the North Carolina Court of Appeals disagreed, finding it "entirely foreseeable" that communication problems between parents would affect a child more as she grows older, becomes involved in more activities that require her parents to cooperate, and becomes more aware of and sensitive to conflict between her parents.

The law may differ from state to state, so check with a family lawyer to find out how these situations are handled where you live.