



# The Wealth Advisor

## Don't Make the Same Mistakes You've Seen in the Headlines

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Now is the time to update your existing estate plan, or proceed with implementing a comprehensive estate plan. Why? First, we now know with certainty that the federal estate tax is not going away, and thus we should establish a plan that avoids or at least minimizes this voluntary tax.

More importantly, if you don't, you just might end up like the host of celebrities who have made the headlines recently because they either had no estate planning or because the planning they did have was woefully out of date or otherwise inadequate.

From [Michael Wittick](#)

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My practice is exclusively devoted to estate planning, trust and probate law, in which I am certified as a specialist by the State Bar of California, Board of Legal Specialization. This newsletter highlights legal issues which could affect you personally and financially.

*As the recent celebrity examples demonstrate, estate planning is not just about planning to avoid estate tax. Instead, estate planning is about accomplishing what is important to you and your family, like: passing values to your children and grandchildren; passing property in a way that creates a lasting legacy; and protecting your privacy.*

### **Pending Changes to Federal Estate Tax Law: Does It Really Matter?**

As we approach year-end we continue to hear scuttlebutt from Capitol Hill that Congress will enact some estate tax legislation before January 1, 2010. As you may recall, this is "necessary" because under current law we are scheduled to have no federal estate tax for those who pass in 2010. Note, however, that in 2010 the estate tax would be replaced with a system that would tax a greater number of Americans when they sell appreciated assets (like stocks and real estate) - a system that Congress tried once before, but it failed miserably!

The consensus from Washington, D.C. is that we will see a "patch" that simply extends current law through the end of 2010. What will happen then, however, is anyone's guess. The cynics suggest that because 2010 is an election year, both Republicans and Democrats may be encouraged to do nothing. If that happens, the current law will expire, and beginning January 1, 2011 we would revert to a \$1

*Million federal estate tax exemption and maximum estate tax rate of 55%.*

*While we don't know the details, the fact that we will have an estate tax means that we should all take steps to minimize or avoid it. In addition, more and more states are enacting separate state estate taxes (usually with much lower thresholds) as a way to generate revenue, so state estate tax will ensnarl many who do not plan to avoid it.*

### **Celebrity Examples of What *Not* to Do with Your Estate Planning**

When it comes to estate planning, it seems that folks generally fall into one of three broad categories: (1) those who have done no planning; (2) those who have done some (often inadequate) planning; and (3) those who have done good planning, but who should have it reviewed and possibly updated. The recent spate of celebrity cases that have been in the news serves as a pretty telling primer on these various categories. As you consider the lives and stories of these famous people, how do you stack up? You may find that this winter is a good time to revisit your estate planning to make sure your plan is as it should be.

#### **Leaving It to Chance with No Planning**

Steve McNair seemed to have it together. A Super Bowl quarterback, 3-time Pro Bowl selection, and one of football's most prolific passers, McNair was killed at the age of 36. Surely thinking that his whole life was ahead of him, McNair did no estate planning at all, leaving his substantial wealth (nearly \$20 Million) to be argued over - publicly - in the Tennessee probate courts. His children, assuming they are given substantial shares of his estate, will not enjoy the gift their father could have given by providing a framework in which they could grow into their inheritance.

When McNair's children turn 18 - the legal age of majority in Tennessee - they will receive their inheritance outright; they will be free to do what they please with the money. Can you imagine turning an 18-year-old child loose with several million dollars?

*Even if you don't have millions, do you want your loved ones to be able to do with their inheritance as they please, knowing that you can provide them with predictability and guidance to help them protect and preserve what you leave behind?*

#### **Inadequate, or "Do-It-Yourself" Planning**

Studies indicate that nearly 70% of all Americans have done no estate planning at all. But even of those roughly 30% of people who have done *some* estate planning, many have done a very poor job, designing an estate plan that inadequately represents their wishes or worse, causes confusion, delays, and unmet expectations.

Heath Ledger had a will. It was a simple, three-page document created before he made his mark in the film industry and made his millions with his Oscar-nominated performance in the movie *Brokeback Mountain*. When he died at age

28, his estate and his family had far outgrown his inadequate estate plan. His will provided that his estate should be divided equally among Ledger's parents and his siblings, and failed to provide anything for his infant daughter. Although she will surely ultimately be provided for, by relying on a will (and a very deficient one), Ledger assured his family a legacy of confusion, frustration, and public litigation.

The worst offenders feeding this category are those who sell "one size fits none" form estate planning documents, either online or in stores. These folks sell documents to well-intentioned individuals who are proactive and motivated enough to do something about their estate plan. But the key to this mistake is that it approaches estate planning as a document transaction. Sure you get a "will" or a "trust" and some other documents, but do they really represent your goals? Will they properly instruct your family when they need to? As in Heath Ledger's case we may have only one chance to get estate planning right. Printing and signing documents without thoughtful legal help is a disaster waiting to happen.

*Imagine that your child is getting married and you need a new suit. Will you go to the corner discount retailer and pull something off the sale rack? After all, they advertise "always the low price." You'll have a jacket, pants, the whole ensemble. But is that really the right solution for you on this special occasion? Isn't it more appropriate to see an expert who can learn about your tastes, your needs, your best features, and deliver what you really need, something you can be proud of?*

*By the same measure, buying documents - from a retailer or from an attorney - is not estate planning. Although estate planning requires documents to make a plan legally effective, the art of effective estate planning comes through professional, comprehensive advice that only focused and dedicated estate planning professionals can provide.*

## **Outgrown Estate Plans**

*Now some time has passed since you bought that new suit for the special occasion. One grandchild, maybe two are born and things have changed. Maybe you've lost a few pounds (or, heaven forbid, gained a few!). What has happened to that nice suit? Sure it's a little musty, but never the worse for wear. But no matter how hard you try, it just doesn't fit like it used to.*

Just like a finely tailored suit, an estate plan can get outgrown, too. The estate plan that you spent time, effort, and money to get just right will not automatically evolve as your life changes. Even when you have a great estate plan in place you must remain vigilant. The current battle over Michael Crichton's estate illustrates this point precisely.

Crichton was the creator of movie hits like *Jurassic Park* and the television series *ER*. Understanding the importance of sound estate planning to preserve peace of mind for his family, Crichton apparently had a robust estate plan in place. And

then life changed.

Michael Crichton had prepared carefully, incorporating a premarital agreement with his fifth (and surviving) wife to make sure that he fully provided for his child from a previous marriage. However, Crichton and his wife were expecting a new baby when Crichton died unexpectedly late last year. Though he had apparently gone to great lengths in earlier planning, the fact that he failed to provide for his unborn child has cast a cloud of uncertainty over Crichton's estate. It appears that despite his earlier efforts, Michael Crichton is bound to leave a legacy of distress, uncertainty, and litigation for his family.

*Unlike Heath Ledger and Michael Crichton, you may be certain that you will not have children later in life. But do you know with certainty that your loved ones will not become a spendthrift, develop a creditor problem (50% of marriages end in divorce), or receive government benefits such that an outright inheritance would result in disqualification of those benefits?*

### **Where Do YOU Stand?**

Although none of us likes to embrace our mortality, as responsible adults we have to prepare ourselves and our families for the inevitable. Whether you're a millionaire or of more modest means, you want to leave a lasting legacy of family harmony, good memories, and caring protection for those you love. Estate planning can be challenging, and should never be done alone. Take the time to discuss your needs with a team of well-trained, attentive estate planning professionals now.

*To comply with the U.S. Treasury regulations, we must inform you that (i) any U.S. federal tax advice contained in this newsletter was not intended or written to be used, and cannot be used, by any person for the purpose of avoiding U.S. federal tax penalties that may be imposed on such person and (ii) each taxpayer should seek advice from their tax advisor based on the taxpayer's particular circumstances.*

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You have received this newsletter because I believe you will find its content valuable. Please feel free to [contact me](#) if you have any questions about this or any matters relating to estate planning.

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