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A Billionaire's Free Pass

Also: Michael Jackson's Estate Revisited And Other Celebrity Estates

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Prepare yourself for crushing news: Lady Gaga has more friends on Facebook than you do. In fact, she has more Facebook friends than President Obama or any other living person, for that matter. She has surpassed the 10-million mark for Facebook friends.

"Ready? 1,2,3,4
This is it, Here I stand
I'm the light of the world
I'll feel grand
Got this love, I can feel
And I know, Yes for sure
It is real"

–Michael Jackson, from **This is It**

However, regardless of his death one year ago, Michael Jackson currently has more Facebook friends than Lady Gaga. What this means is that Michael Jackson's estate is "bad," and by "bad," we mean smashingly good, of course.

Presented With Our Compliments

One year after the King of Pop's death, his estate is in full juggernaut mode. Meanwhile, the estate of Gary Coleman has been making headlines. Anna Nicole Smith's estate was dealt a severe setback. And a Texas billionaire with good timing has transferred an immense estate without incurring any Federal estate taxes. Let's begin right there, deep in the heart of Texas.

A Well-Timed Death

Dan Duncan died in 2010 with a remarkable estate that included cars, boats, guns, jewelry, a 5,500-acre hunting ranch stocked with game, and large shares in oil-related companies. The latter included 100 million shares of Enterprise GP Holdings that closed at $43.23 per share just before Duncan died. The latter asset might have resulted in $2 billion in estate taxes had Duncan died in 2009. But the death occurred in 2010, when the Federal estate tax had been repealed. (As we go to press, those shares are up $3.65 per share, or $365,000,000.)

The death tax, like death itself, is not very popular. Given their druthers, most people wouldn't mind if death and death taxes both took a holiday. In the 1934 motion picture *Death Takes a Holiday*, Frederick March plays the part of Death,who takes human form and falls in love.

This version was critically acclaimed and was a commercial success. A 1998 remake titled *Meet Joe Black* cost $91 million to make but netted only $44 million at the domestic box office, possibly due to its three-hour running time. It did get two thumbs up from Siskel and Ebert and featured Brad Pitt with super-nice blonde hair that, frankly, put Frederick March's hair to shame. But in every version of this film, mankind suffers when Death goes on vacation.

Some have argued that the vacation taken by the death tax during 2010 has delivered a similar lesson full of negative consequences. Without submitting to the medicine of an estate tax, society loses more than just tax revenues. It loses the incentive for charitable giving and the impetus for sound generational planning. Of course, there always lurk the darker themes of human nature and jealousy—in hard times, the masses want to soak the rich, but the absence of a death tax allows the wealthy to get wealthier, or so the argument goes.

Duncan's Free Pass: Enter Dan Duncan, or more accurately, exit Dan Duncan. When an average Joe gets a lucky break, the masses cheer. When a Texas oilman gets a break, the reaction from society can be less supportive.

But Dan Duncan represents a classic American success story. He had $10,000 and two propane trucks and was able to build an empire of natural gas processing plants and pipelines.

Duncan's estate has been estimated by *Forbes* to be worth $9 billion. For those keeping track of such things, Duncan was ranked the 74th wealthiest person in the world.

If he had died in 2009 with a top estate tax rate of 45% in place, his estate might have been hit with a $4-billion estate tax. Had he not died until 2011, when a top rate of 55% might return, his estate could have experienced a $5-billion estate tax bill. But having died in 2010, his estate received a free pass. At least so far.

Uncle Sam's Follow Up: Congress may yet impose a retroactive estate tax on Duncan, and that has the potential for a worthwhile Constitutional challenge.

Consider the questions that would arise in such a legal forum. What might justify a retroactive application of a tax on people who are no longer able to come back to life and take action in response? Did Congress have ample opportunity to freeze the previous estate tax or adopt a new one, rather than allow the estate tax repeal to take effect? Did Congress have *10 years* to plan for that moment? Were bipartisan endorsements made for an interim tax plan? Congress has no reasonable answers to these questions or explanations as to what took place and would not come off looking very good in such a legal proceeding.

Another thought that tempers any reaction to the tax windfall to the Duncan heirs is that many of Duncan's assets are highly appreciated in value. Let's say, for example, that there were $8 billion in capital gains and that the assets are all sold in the future during a period of high capital gains taxes of 28%. That would result in $2.24 billion in capital gains taxes. That's a worst case scenario.

An Estate in Repose: Dan Duncan's estate isn't the only one affected by the lapse of the estate tax, of course. And the longer Congress waits to disrupt this and other estates retroactively, the less credence it will have as to the necessity of such action. Yes, estate planners could have foreseen ambivalence, procrastination, and a retroactive cop-out on the part of Congress and made some contingency plans for an executor to implement.

At the moment, assuming there is enough respect for the deceased to allow the estate of Dan Duncan to remain in a state of repose, the existing tax laws would mean that the sale in 2010 of those assets inherited from the Duncan estate would result in a 15% capital gains tax. The more likely outcome is that such assets will remain in the family for generations and may be transferred in the future at a time when we return to a stepped-up basis approach. These appreciated assets may also be used in making charitable gifts. Duncan gave more than $250 million in charitable gifts during his lifetime.

Nevertheless, such discussions and speculations don't change the fact that a billionaire who died at just the right time was able to transfer his entire estate without any Federal estate tax, while an average Joe who dies in 2011, a few months down the road, with a little more than $1 million and no spouse and no planning, could end up paying more in taxes than a Texas tycoon.

Gary Coleman's Estate

He was a child star who eventually came to hate saying his tag line of "Whachu talkin' 'bout, Willis?" even though it was key to his successful television run on *Diff'rent Strokes* between 1978 and 1986.

Gary Coleman was paid as much as $100,000 per episode but had financial difficulties later in life. After funds went to his parents, agents, lawyers, and taxes, only a quarter of his earnings may have reached him. In 1989, Coleman successfully sued his adoptive parents for violating their duties regarding his trust funds. But in 1990, Coleman was forced to declare bankruptcy.

"I've done over 150 different things since *Diff'rent Strokes*," said Coleman, "but that role will always be prevalent in people's minds because I haven't done anything to overshadow it yet."

It was an accurate assessment. Coleman made appearances, married and divorced, attempted suicide, had multiple kidney transplants, worked as a security guard, was arrested for punching a woman at a mall who was mocking him, collected model trains, and ran for Governor of California in 2003. (He placed 8th in a field of 135.)

Three people are vying to be the special administrator of Coleman's estate. One is his ex-wife, another is his former girlfriend, and a third is his former manager. Manager Dion Mial relies on a 1999 will that names him as executor. Former girlfriend Anna Gray relies on a 2005 will. Ex-wife and alleged surviving common law spouse, Shannon Price, filed a 2007 note that purports to amend prior wills. She is also hoping to locate a subsequent will naming her as executor.

Logically, the 2005 will would revoke the 1999 will. A handwritten note from 2007 would not automatically have legal effect as a new will, unless it was executed with will formalities, such as witnesses and notaries. But it could be utilized to show an intent to revoke the 2005 will and could be accepted as a holographic will under Utah law, if signed and if material provisions are in Coleman's handwriting. Getting married in 2007 could also have served to cast doubt on earlier wills. Utah may apply the doctrine that a subsequent marriage automatically revokes portions of a prior will.

A will executed during Coleman's marriage to Shannon Price may revoke all the prior wills and notes, but if he was then divorced after the fourth will and after the 2007 holographic will, that would negate any inheritance to Price under those wills, as well as her serving as the executor. So her basis for any inheritance or rights as a fiduciary depends on her forming a new relationship with Coleman after they were divorced. Court documents indicate that the two lived together, shared bank accounts, and held themselves out to the world as married, even after the divorce. Price was also Coleman's agent in his advanced health care directive, and she gave the order to take Coleman off of life support.

If Coleman died intestate with no spouse or children, it is possible that his long-estranged parents could benefit, against his clear directions to the contrary. Coleman's estranged parents sought to bury his body but were thwarted by the 1999 will at the time of his death. Dion Mial was informally appointed as administrator based on that will, but he then stepped aside when the 2005 will surfaced. The court then appointed an attorney to oversee the estate and Coleman's cremation.

Is this an estate worth fighting over? The answer may depend on future earnings and the marketing, which is speculative, of book deals, movie rights, and sales of memorabilia. He also had a home worth $315,000, a pension (which former co-star Todd Bridges indicated was worth millions), and residual rights. At the time of his death, Coleman was living with his ex-wife, Shannon Price, and his death certificate indicates that he was married at the time of his death.

Price is reported to have hired a production company to photograph Coleman on his death bed and then to have sold the photos. Though divorced from Coleman in 2008, she claims to be the surviving spouse. Utah does recognize common law marriages, but a court would have to determine if such a marriage had arisen after Price and Coleman resumed cohabitation after their divorce.

Michael Jackson's Estate

One year after his death, Michael Jackson's estate has taken on a life of its own. Notable developments took place throughout the year.

The estate expected to take in $90 million in revenues by the end of 2009.

This Is It, a movie, was assembled from footage of rehearsals for Jackson's concert that was almost ready at the time of his death. Sony purchased distribution rights for $60 million, and the movie grossed $252 million worldwide, setting a record for a concert film. Five million copies of the *This Is It* DVD were sold. Overall, the estate netted $100 million from *This Is It,* song sales, and merchandise. This and the other revenues are going a long way to paying off the singer's $398 million in debt.

31 million albums of Jackson's prior work were sold worldwide since his death.

Jackson continues to own half of a song catalogue that includes works by The Beatles, Bob Dylan, and Elvis Presley. This catalogue may be worth up to $2 billion.

In March, the estate reached a deal worth up to $250 million for 10 projects with Sony over the next seven years. These include a two-disc album of *This Is It,* a DVD of previous music videos, a re-release of the 1979 album *Off The Wall,* and a video game.

A lawsuit seeking $300 million from the estate because Jackson did not perform at a Jackson family picnic prior to launching his London concert was dealt a setback when a judge dismissed claims for fraud and tortuous interference. The remaining claim is for breach of contract. The estate maintains that the deal was with Jackson's former manager, who had no authority to enter into the deal.

Joe Jackson, the estranged father of Michael Jackson, dropped his attempt to obtain $15,000 a month from the estate. However, Joe Jackson has filed a wrongful death action against Dr. Conrad Murray, getting in under the one-year statute of limitations.

Dr. Murray was charged with felony involuntary manslaughter in California; however, the state declined to strip him of his license.

Anna Nicole Smith Estate

Anna Nicole Smith's estate was dealt a severe setback by the 9th Circuit Court of Appeals. If that ruling stands, the estate would not be entitled to $300 million from the $1.6 billion estate of her late husband, J. Howard Marshall. This ruling reinstates a 2001 decision by a Texas jury that had ruled in favor of Marshall's son, E. Pierce Marshall, who is now deceased as well. A Bankruptcy court had awarded Smith $474.75 million. This amount was later reduced to $89.5 million. Another appeal has been filed at the 9th Circuit level based on a similar case from the 9th Circuit that the Supreme Court reversed.

Meanwhile, Larry Seidlin, the charismatic judge who presided over the hearing to determine where Anna Nicole Smith's body would be buried, released *The Killing of Anna Nicole Smith*. In the book, he calls for the punishment of her "enablers," such as Howard K. Stern, who was Smith's companion and attorney. Stern continues to fight felony charges involving the supply of drugs to Smith. Meanwhile, he and other parties are suing journalist Rita Cosby for $60 million over claims made in Cosby's book.

The Posner Curse

Who's a lucky Chihuahua? Who's a good dog? Who wants a nice doggie treat? For a shot at a life of luxury, most Americans would choose to be reincarnated as a Chihuahua belonging to Gail Posner. But, beware, this fortune has been mired in controversy for a long time. Ms. Posner was to be the primary beneficiary of her father's $200-million estate, but shortly before his death, he changed his will to benefit his former girlfriend, Brenda Nestor, a *Redbook* model.

It was a famous fortune that had been forged by Victor Posner, who dropped out of school at age 13, went into real estate, became a millionaire in his twenties, was building 1,100 homes per year by his thirties, originated the leveraged buyout and junk bonds, and was once thought to be worth between $200 million and $1 billion. Legal battles with one son led to a $100-million settlement in 1995, and the son forfeited any additional claims on the estate. The remaining children each reached various settlements with Posner's estate and Nestor.

Gail Posner, like her father before her, is accused of changing her will shortly before her death. Once again, accusations of undue influence have been brought forth. Gail Posner's estate plan, as amended, provided Conchita, her Chihuahua, the right to live in her $8.3-million mansion with maintenance financed by a $3-million trust. Ms. Posner's staff of bodyguards and housekeepers was provided a $26-million fund and rights to the house as well. Ms. Posner's only surviving son, who was left $1 million, has filed a lawsuit.

Final Thoughts

Sound estate planning can involve very sophisticated plans that protect assets from creditors, avoid unnecessary taxation, and build assets over generations. But there is also a simple function in an estate plan that is easily accomplished. A simple will that names executors and distributes wealth can avoid years of litigation and strife in a family.

If Gary Coleman had updated his will when he resumed cohabitation with his ex-wife, there would be no question as to his intentions. If J. Howard Marshall had made some provision for Anna Nicole Smith and left her $50 million, i.e., one year's worth of interest on his estate, she'd have been set for life, and his son would not have spent the remainder of his life in litigation. If Gail Posner set up lifetime trusts, documented her sanity, and explained why she was cutting her son out of most of her estate, she could have accomplished such objectives.

Michael Jackson may have accumulated debts and dysfunction and bizarre idiosyncrasies during his lifetime, but his leaving a clear will has created a blueprint that will enable his estate to flourish for many years to come.