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The Lessons of Anna Nicole Smith

In death as in life, Anna Nicole Smith provides estate planners with “real life” lessons. When in 1994, at the age of 26, she married J. Howard Marshall, who was then 89 years old, we learned about the spousal right of election, the legal right of one spouse to inherit from the estate of the other, and about the importance of utilizing pre-nuptial agreements to protect assets for one’s children when one remarries later in life. When Marshall died, a mere 14 months later, and his estate was immediately encumbered with the highly public battle between Smith and Marshall’s son, we learned about the public nature of the probate proceeding and the expense and delay that is often attributable to such proceedings.

Now Anna Nicole Smith has passed away, five (5) months after the birth of her daughter Danielynn and the death of her 20 year old son Daniel. Not surprisingly, within days the newspapers had access to a copy of her Last Will and Testament, a document that was executed in 2001. At that time, she was unmarried and had only one child. The Will directs that, at her death, all of her assets be held, in trust, for her son Daniel and that the principal be paid to him in three installments, when he reached the ages of 25, 30 and 35.

Smith’s desire to provide for her only child should come as no surprise to anyone. But Smith’s Will does not stop there. In it she *intentionally* declines to provide for future spouses and future children, living, afterborn or adopted.

Perhaps at the time this Will was prepared, and in an effort to protect her entire estate for Daniel’s benefit, it made sense to Smith to exclude children later born. However, her Will utterly fails to provide for the possibility that Daniel would die before her. As difficult as it is for any parent to consider that a child may predecease them, estate planning must be “contingency planning.” When one is preparing a Will, or other estate planning documents, one must always be asking, “What if . . . ?”

Moreover, Smith's Will illustrates the importance of periodic review. We strongly encourage our clients to contact us when important life events occur, such as the birth or death of a loved one, in order to review the existing plan to ensure that it is still reflective of their wishes in light of the new circumstances. Indeed, we usually devote the lead article in the Spring issue of **A Step Ahead** to this theme.

Smith had three opportunities to reconsider the terms of her Will: when she learned she was pregnant, when she gave birth to Dannielynn, and when Daniel died. Either of the first two events should have been reason enough to reevaluate and revise. Perhaps she would have wanted Dannielynn to have the same protections that were spelled out for Daniel, a trust with three age distribution milestones. Without doubt, Smith's failure to address her failed estate plan now creates confusion where there should be certainty. And for this reason, Smith's estate will likely be played out in the tabloids over the months and years to come.

Let's take a lesson from Anna Nicole Smith. Let's make sure that our estate planning documents contain contingency planning - just in case the unthinkable happens - and let's make time to review. After all, you have only one estate plan, the one that is in effect now. Let's learn from Anna Nicole Smith that we have only one chance to get it right, so there is no excuse to delay meeting with your advisor.

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