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Legal Bytes

WHEN IT COMES TO ESTATE PLANNING EVEN BILLIONAIRES MAKE MISTAKES!

Celebrities, including wealthy billionaires, often provide important financial lessons for the rest of us. Since wealthy people usually have enough assets to overcome the losses resulting from their mistakes, avoiding the mistakes they may make is more important for the rest of us who can not absorb those losses.

The latest important lesson to be learned has come to us from the former owner of the Los Angeles Clippers NBA basketball team, Donald Sterling.

The previously low-profile Sterling received a lot of attention a few months ago, after recordings of him making racist comments were publicized. The comments were made to his girlfriend, who had recorded them. You may remember that Sterling was married.

NBA owners quickly moved to declare that Sterling no longer could own a team. Sterling just as quickly said he wouldn't sell the team and began to take legal action against the league. In the midst of this standoff, Sterling's wife, Shelly, asserted herself. Most of Sterling's assets, including the Clippers, were owned by a revocable living trust of which the Sterlings were co-trustees.

Shelly Sterling, who (not surprisingly) was estranged from Donald, declared that he was mentally incompetent, and that she had authority under the trust agreement to manage trust assets on her own. She took this action after doctors examined Donald, and concluded that he was mentally unfit to be trustee. She put the Clippers up for sale. Donald sued to stop her.

The central issue before the court was whether Shelly acted appropriately in removing her husband as co-trustee of the trust that owned the team, for reasons of mental incapacity. Two doctors had independently diagnosed Donald as being in the early stages of Alzheimer's disease, triggering a clause in the trust that allowed for Donald's removal.

On Monday, July 28, 2014, Judge Michael Levanas of the Los Angeles County Superior Court ruled in favor of Shelly, and prevented Donald from blocking the \$2 billion sale of the team to former Microsoft executive Steve Ballmer.

Here we had a billionaire who put substantial assets in what appears to be a standard revocable living trust. The trust no doubt primarily was created to avoid probate on Sterling's assets and as a will substitute. But, as in many other estates, Sterling didn't plan much for the potential of his incapacity. In fact, he put in place a plan that left him exposed if he had minor or marginal cognitive issues.

In the wake of this decision, there's been a great deal of discussion in the legal community about how to draft documents to better protect our clients from being removed in similar fashion. Without excusing Mr. Sterling's girlfriend vs. wife issues, it's easy to see why some observers would be left feeling a little queezy to see a man forcibly removed from his position as trustee by his own estranged wife, on the basis of what he and his legal advisors said was a fuzzy definition of incapacity.

No document, no matter how often and carefully it's updated, can perfectly handle every potential situation, particularly when you're dealing with an issue as volatile as incapacity. The purpose of such clauses is to remove a client from a decision-making position when his ability to make those decisions has been compromised. There's always going to be a fight when it's time to actually do the deed. In this case, arguing the relative differences between the early and late stages of Alzheimer's becomes inconsequential. Donald Sterling's capacity was compromised (regardless of the progression of the disease), and the clause kicked in and removed him. He might not be happy, but isn't that what was supposed to happen? In the case of the Sterling Trust, isn't the removal of a Trustee with Alzheimer's from control of a multi-billion dollar asset the very definition of "working as intended."

Many of you probably have very similar trusts. Even those of you without revocable living trusts need to pay attention to this case because similar clauses "kick in" in the case of durable powers of attorney for finances, property and health care.

You may elect to put in place a better, or at least different, plan for handling your affairs in the event of your incapacity than Donald Sterling had done for himself. That need for that plan applies whether you have a revocable living trust or a financial/health care power of attorney.

Take a look at articles on this topic, which are included in the estate planning materials located on our web site [www.wisclaw.com]. And if you are interested in discussing personally with us, just give us a call.

By Attorney John L. Maier, Jr.



How-to: Investigating Employee Complaints

By Alyssa S. Wilson

Whenever an employee complains, whether the complaint is about inter-office politics, issues with file handling, or something more serious, such as discrimination, it is important to take the complaint seriously and get organized quickly.

There are three main steps to handling an employee's complaint: 1) pre-investigation, 2) investigation, and 3) post-investigation.

The first step in handling an employee's complaint is known as "pre-investigation." At this stage, the employer should begin to gather as much information as possible from the employee who raised the complaint. Ask the employee to write down the specifics of her complaint, including the "who, what, where, when and why" information. After receiving the written complaint, the employer should also take steps to perform damage control. If the complaint is regarding another employee, make sure to separate the employees until the investigation is complete.

Depending on the type of complaint, the employer may consider seeking outside legal counsel during the pre-investigation stage. If, for example, the complaint is about sexual harassment, outside legal counsel may be able to assist the employer with keeping proper documentation throughout the complaint process. This will be useful if the complaint eventually turns into a lawsuit.

The second step in handling an employee complaint is "the investigation." Throughout this step, keep in mind that the goal is to be as thorough as possible and to keep an open mind. Once all of the initial information has been gathered regarding the complaint, the employer should map out a plan. The employer should create a list of people to interview based on the substance of the complaint and outline questions to ask during the interview. During the interviews, the employer should take thorough written notes of the interviewee's answers.

Following the interviews, the employer should obtain any additional documentation that was discussed or identified during the interviews. The employer should re-review all of the interview notes and documentation and consider whether any additional information needs to be gathered.

The final step in handling an employee complaint is the "post-investigation." The purpose of this step is to report, discipline and advise. Once the investigation is completed, the employer should prepare a report of the investigation. If the employer finds that the complaint is founded, the employer may have to discipline the offending party. That discipline can range from a verbal warning to termination, based on the employer's employment handbook policies. If the employer finds that the complaint is unfounded, the employer should notify the employee of that outcome.

Regardless of the outcome, founded or unfounded, the employer should periodically check in with the employee to confirm that there are no additional complaints. This will not only maintain employee morale, but may also help prevent additional complaints.

Handling employee complaints is often a difficult and time-consuming task, especially if the employer does not have a human resources department. Therefore, if you need any assistance in handling an employee complaint, please do not hesitate to contact our office. Proper investigations and documentation are not only good business practices, but may be key to preventing and/or defending against potential legal claims.



Estate Planning Seminar

April 14 Sweet & Maier will be presenting an estate planning seminar to the Elkhorn Women's Club . Members will enjoy refreshments and dinner as well as learning whether their Estate Plan "measures up"!

Do You Need a Speaker? Do you have a group you would like to schedule a speaker for? A church group, club, or a work group? We would be happy to speak on various topics including estate planning, real estate purchases and sales, general business matters, condominiums or employment related issues.

Just give us a call at: **262-723-5480** or email John Maier at: jmaier@wisclaw.com to inquire about a topic you'd like to hear about, and to schedule a speaker.



"You know, just *once* I'd like to be interrupted by applause!"

April 16 Proclaimed “Healthcare Decisions Day” in Wisconsin

Governor Walker has officially proclaimed April 16 as Healthcare Decisions Day in Wisconsin. In his gubernatorial proclamation, Gov. Scott Walker encourages all residents to take the time to have those important personal conversations with family, friends, and health care providers, to prepare for eventual end-of-life care and treatment options, and to complete reliable advance directives, including health care powers of attorney so that your loved ones can take care of you.

Under Wisconsin law, competent adults have the right to accept or refuse medical treatment, the right to be an organ and tissue donor, and the right to name a health care agent to act for you if you can not do that for yourself. But even so, an estimated 80 percent (80%) of Wisconsin residents, including fifty percent (50%) of those with severe or terminal illnesses, have not completed an advance directive documenting their preferences about issues surrounding end-of-life decisions.

Those who would serve as a medical decision maker for you must have a sense of who you are, and what your wishes are, in order to make decisions on your behalf. If you haven't named someone in a health care power of attorney document, and you become incapacitated or incompetent, then it's likely that a court proceeding will be needed to appoint an agent for you. But the court process can be avoided in most cases **if you do advance care planning**.

So don't wait until it's too late. Check out the material we have on our web site (www.wisclaw.com) related to durable powers of attorney and other estate planning documents, and call to make an appointment when you are ready to talk.

Great Truths About Life that Adults Have Learned

-Spring is when you feel like whistling even with a shoe full of slush.

-Spring is the time of the year, when it is summer in the sun and winter in the shade.

-The nice thing about being senile is you can hide your own Easter eggs.

-All that glitters is not gold, but if there's chocolate inside the foil, who cares?

-It's time for everyone's favorite spring game: guess how deep that pot hole really is.

Spring Fever

Four high school boys afflicted with spring fever skipped morning classes. After lunch they reported to the teacher that they had a flat tire.

Much to their relief she smiled and said, "Well, you missed a test today so take seats apart from one another and take out a piece of paper."

Still smiling, she waited for them to sit down. Then she said: "First Question: Which tire was flat?"

- A jury of your peeps.



Do I Need An Employee Handbook?

If you are the owner of a small business, have you ever wondered if you needed an employee handbook or asked yourself what is the point? The answer is yes if you have more than two or three employees, it is a good idea to create an employee handbook. An employee handbook sets company policies, explains expectations, and helps ensure that employees are treated consistently.

Employee handbooks are not required by law, but they are beneficial to both employees and employers for several reasons:

- Allows employers to set expectations and clear understanding on how employee can meet those expectations.
- Gets employees to act and behave in compliance with the company policies.
- Creates a base for employers to treat its employees consistently.
- Provides an opportunity for the employer to “sell” the benefits of employment with your company.
- May prove helpful in defending against unemployment claims and lawsuits.

Creating an employee handbook will allow you to communicate with your new employees and set clear expectations from the beginning. However, please keep in mind that your employee handbook needs to comply with applicable laws, including but not limited to discrimination laws and OSHA regulations. Please let me know if you need any help drafting your employee handbook, or have any additional questions.