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before reaching a settlement in August 2022 on how to divide his \$156 million estate. Charities he supported during his life lost out.

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*Kiplinger Consumer News Service via TNS.*

When James Brown died in 2006, his will left most of his estimated \$100 million estate in a charitable trust that would fund scholarships for disadvantaged children.

But because the estate became mired in litigation, no scholarships would be

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will found in her couch reflected her final wishes.

When Cars frontman Ric Ocasek died in 2019, he was in the midst of a divorce from Czech supermodel Paulina Porizkova. He left instructions in his will that she not be provided for because, he said, she had abandoned him. Ultimately, however, Porizkova settled with the estate, implying in an interview that she had received a third of its multi-million-dollar value.

Lawyers say anyone can take lessons from the failure of these musicians and others to adequately plan their estates, avoiding years of court battles and bad feelings among their heirs.

## Prepare for death

“I think, in general, there is some hesitancy about estate planning because people don’t like to contemplate their own deaths,” says New York attorney Samuel F. Thomas, who prepared a presentation about the James Brown case for the New York City Bar as part of an ongoing series called “Misfires of the Rich and Famous.” He called James Brown “a negative example of what can happen if you don’t sit down and come up with a plan, because it led to years of fighting and family strife and legal fees.”

Indeed, more than a dozen lawsuits flowed from the handling of Brown’s estate. There was even a two-month legal battle over what to do with his remains. While that was fought, his body sat in a gold casket inside a funeral home’s cold storage.

The South Carolina Supreme Court, ruling in one of the many cases, observed in May that “Brown’s estate faced a mountain of challenges. One witness said it was the most complicated estate he had ever reviewed. The issues included omitted heirs, people included in the will who were not heirs, a questionable claim to be Brown’s

surviving spouse, the fact that Brown was already in other litigation when he died,

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Brown's companion, Tomi Rae Hynie, 36, and their five-year-old son, James Brown Jr., were not in the will. Claiming she and Brown were married about a year after Brown signed his will, Hynie filed a petition in probate court seeking a third of his probate estate. Ultimately, 14 years later, the state Supreme Court denied her claim, ruling there had not been a legal marriage.

Five of Brown's adult children sued in 2008 saying the estate trustees had exerted undue influence to persuade him to create the charitable trust, from which the trustees would profit. The courts appointed two special administrators to oversee the trustees. Ultimately the advisors said they had uncovered financial wrongdoing, and the trustees were replaced by the administrators.

Thomas, who was not involved in the Brown case, says the legal struggle offers several lessons.

## Charity before death pays benefits

"It's possible to do charitable planning during your life," Thomas says, "and there is an added tax benefit to doing so in that you get an income tax deduction for lifetime charitable gifts that you don't get for charitable gifts after your death." Thomas adds that you can exercise oversight by, for example, setting up a charitable foundation during your life or establishing a donor advised fund. That way, he says, "you can get enjoyment and charitable recognition of your benevolence." In addition, your relatives may be less likely to contest your charitable plan after you're gone

## Update your estate

Another takeaway, Thomas says, is that you should update your estate documents whenever you have a significant life event, such as a marriage, divorce or the birth of a child. Hynie and James Brown Jr. apparently got nothing from Brown's estate, but

there's no way to know if that was his intent. "He could have provided for her, but he

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## Get help picking trustees

Thomas also recommended getting guidance from an experienced estate attorney in how to select trustees and to help ensure the trustees are capable of handling all the duties. Brown's trustees "may have been people he trusted very much and they still ended up being less-than-ideal choices," Thomas says. Most people, even lawyers, he added, don't know the duties of a trustee and what skills are required. "An attorney who has that experience can explain the playing field and talk about how these kinds of things actually play out in practice," he says

## Respecting Aretha's final wishes

Aretha Franklin died of pancreatic cancer in 2018. She left behind four sons and two wills. She may have been able to avert litigation that pitted one son against another, if she had announced that she had written a new will.

To help prevent confusion and potential disputes, consider how to handle updates to your will. While no one has an obligation to divulge the details of their will, there are many good reasons to consider doing so. Your final intentions surrounding the disposition of your property could fall by the wayside.

Aretha's niece, who served as her executor, discovered two separate handwritten wills at her home in Detroit, MI. Dated June 2010, the older will was safely locked in a drawer with other important documents. This will evenly distributed her assets and included a requirement that her sons, Kecalf and Edward, "must take business classes and get a certificate or a degree" in order to inherit from her estate. The more recent version, dated March 2014, was found in a spiral bound notebook that was stuffed in her couch and divided her royalties and bank accounts evenly, but gave her son Kecalf ownership of her \$1.2 million home.

Generally speaking, a new will supersedes an older one; probate laws, however, vary

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## Know how divorce affects your estate

In the Ocasek case, attorney John Kiely said Porizkova was entitled, under New York law, to a portion of Ocasek's estate because the divorce had not been finalized—even though he included a statement in his will that he did not wish to provide for her.

One exception allows a surviving spouse to be barred from receiving what's known as the elective share of the estate if the surviving spouse abandoned the deceased spouse. Ocasek wrote that his wife had abandoned him, but Kiely noted the abandonment exception is limited and difficult to prove. And Ocasek's statement in his will would be given little weight under New York law.

Porizkova told People magazine that she and her estranged husband had continued to share a townhouse and that she had brought him cookies the night before his death. She found his body the next day. While Kiely was not involved in the case, he says if the court knew these facts, they would weigh against a finding of the abandonment exception.

Kiely says he would recommend divorcing clients in similar circumstances provide that their spouse receive the elective share of the estate unless the divorce has become final. If the client insists on not providing for their spouse, he said they should be told to include an affidavit describing the facts that support a finding of abandonment. And the client should be warned that "excluding the spouse may trigger an expensive fool's errand."

## Protect your legacy

The experience with Prince's estate carries perhaps the most basic lesson — have a will. According to the Associated Press, "More than 45 people came forward in the



wake of Prince's death, claiming to be his wife, children, siblings or other relatives.

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Not having a will causes unnecessary spending on the part of the estate. Without a will, Abdo said, "When you have competing interests that are foisted on the estate because there is no direction given by the deceased, then it becomes [the Dickens novel] Bleak House or [the HBO series] Succession — discombobulation and skullduggery. There is every incentive for people to look after their own interests... These people who claim to be a child or claim they co wrote songs with Prince.

At the same time, people and causes that were important to you can be cast aside. Abdo said Prince quietly supported charities when he was alive. Now, with no will providing for them, they have no claim to any of Prince's estate and are effectively abandoned.

"It's an issue of control, but it's really about the elimination of your legacy," Abdo says.

## Consider selling your property while alive

In general, Abdo says, the big issues in estate planning are estate tax, federal and state taxes; and valuation of the assets. With artists such as musicians, "It's difficult to value the assets because it's such unique property. How do you value a copyright?" It depends, he adds, on how big the song was, how big the brand was or is: "It often becomes the battle of the expert opinions."

One option to avoid these issues for your beneficiaries, is to sell these rights while you're still alive. This saves your heirs the complications of managing your intellectual property, allowing you to leave them lump sums of money, rather than companies or copyrights. They may not be qualified to work in your business or may not agree with each other on important decisions.

It also allows you to sell the rights to a company you are comfortable will handle

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permanent relationships.

Prince, Abdo says, “was provocative, but not really promiscuous. He had no children.” But for those who do have children, “It makes it a lot easier to have those children identified and dealt with”—to either provide for them or specifically disinherit them.

One estate Abdo worked on involved band members. One died several years ago, leaving a minor daughter. She was taken in by another band member, who treated her as his own. When that musician died, the daughter was provided for, just as his biological children were. The biological children treated her like a sister and did not contest the will.

“If there are people you want to take care of,” says Abdo, “that’s an opportunity lost if there isn’t a will.

*Note: This item first appeared in Kiplinger Retirement Report, our popular monthly periodical that covers key concerns of affluent older Americans who are retired or preparing for retirement. Subscribe for retirement advice that’s right on the money.*

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