

Estate planning mistakes

Lessons from Bobbi Kristina Brown and her mother Whitney Houston

By **MARIA SCHMIDLKOFER**

The recent death of Bobbi Kristina Brown, at age 22, reminds us of the importance of having a solid estate plan in place. Her mom, Whitney Houston, died just three years ago at age 48. Both of their estates would have benefited from comprehensive estate planning.

Frequently, people tell me, “I have my will done. That’s all I need.” As an attorney whose practice focuses primarily on estate planning, I am telling you: A will is not a comprehensive estate plan.

A comprehensive estate plan is two-pronged: it plans for your assets both in the event of your disability and death as well as your health care needs should you become disabled.

Using a power of attorney, will and frequently a revocable living trust: The financial side of estate planning enables you to maintain control of your assets while you are alive—despite any future disability—and ensures that you give what you have, to whom you want, when you want, in the way you want—after your death. It allows you to protect your assets and save as much possible from taxes, creditors and predators, without unnecessary cost and delay. The trust and power of attorney work together to ensure that your finances are handled by the disability trustee and agent that you name to do so. After death, the will transfers your assets to your beneficiaries through a court probate. Many individuals choose to avoid court probate and transfer their assets using a trust and beneficiary designations instead.

Using advance directives, HIPAA waivers and disability instructions: the health care side of an estate plan makes sure that your wishes are followed during disability. The advance directive names health care representatives to make health care decisions for you if you are unable to make your own. It also allows you to decide whether you would want life support at the end of your life. HIPAA waivers name individuals that you authorize to have access to your medical information and to communicate with your doctors and nurses. Many individuals also provide instructions to their loved ones regarding the type of care that they would like to have during their disability. For example, would you prefer to live at home with

in-home care, or would you like to live in a small foster care setting with a few other individuals, or would you prefer a large assisted living facility? These are all questions that you can answer in advance so that your family does not have to deal with a myriad of personal care and healthcare decisions at a time when they are already emotionally distraught from seeing you decline.

How could an estate plan have helped Bobbi Kristina Brown? She was on life support, in a medically induced coma, for about six months. Would this have been her wish if she was able to speak? We do not know. Evidently, her father Bobby Brown and her aunt Pat Houston were the guardians that were appointed to make medical decisions on her behalf. While family made medical decisions, a court-appointed attorney out of Atlanta served as Bobbi Brown’s financial conservator. This means the attorney controlled all of Bobbi Brown’s assets while she was disabled and reported distributions to the court.

Instead of using a court appointed conservator, most individuals would prefer to pick their own trusted loved ones or a professional trustee to handle their assets and keep their assets private during their disability. If you have a revocable living trust with a disability trustee named to handle your finances on your behalf if you are disabled, then you decide who handles the assets that you title in the name of your trust and the trust remains private. A general durable power of attorney is also frequently used to name an agent to handle all financial assets that the trustee cannot handle. For example, if someone needed to speak to your insurance company or to the social security administration, then you can authorize a person to do so through a Power of Attorney. Sometimes a power of attorney is the only document that a person has signed to name an agent to handle their finances. Using only a power of attorney in the event of disability can often be insufficient. If there are bank accounts titled in an individual’s own name, then it is up to the bank to decide whether it can honor the power of attorney or if it requires a court conservator to access the account. Both the revocable living trust

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and the general durable power of attorney remain private. In contrast, a court-appointed conservator gains control of your assets through a court process and your assets remain court supervised. The conservator represents the disabled person and reports all income and distributions to the court at least annually.

Where will Bobbi Brown's estate go? No evidence of a will or trust has surfaced so it is likely it will pass through "intestacy" in which the state of Georgia writes a will for her and distributes it to family members according to state law. Her mom, Whitney Houston, had a very basic 18 page will in place at the time her death. Ms. Houston gave her daughter 10 percent of her own estate at age 21 which Bobbi Brown received shortly before her coma. While 10 percent may not seem like much for a 21 year old to have outright and free of trust, when the estate easily exceeds \$20 million by most estimates, at least \$2 million dollars given outright to a reportedly troubled young adult who lost her famous mom and may have had drug-addiction issues

is not ideal. While a poor estate plan is not responsible for Bobbi Brown's death, had Whitney Houston updated her estate plan, she could have protected her estate to help her daughter, instead of hindering her. She could have addressed addiction issues and stated that if there was suspected addiction the trust could provide funds for rehabilitation and counseling, rather than pouring out millions outright to feed an addiction. A trust could have inspired Bobby Brown to gain an education or help others. It could have been structured to protect her money against predators and creditors. In a recently filed civil lawsuit, Bobbi Brown's boyfriend is now accused of stealing thousands of dollars, including an additional \$11,000 after Ms. Brown was in a coma. If a trustee handled distributions to Bobbi Brown, all of that could have been avoided.

Does your estate plan include provisions to deal with your disability and protect your loved ones after your death? If not, consider having it reviewed and spruced up.

[This information is intended only to provide information.]

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