



## Even the Best Laid Plans Can Go Awry: The "Breakdown" of Tom Petty's Estate Plan

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Tom Petty's unexpected death on October 2, 2017 stunned fans around the world, as he and the Heartbreakers had just concluded their 40<sup>th</sup> anniversary tour. When a music artist passes away unexpectedly, often there are news stories about the artist's failure to put a proper estate plan in place. The most recent examples are Prince and Aretha Franklin, who died without estate plans. Unlike many of his music contemporaries, Tom Petty had a full estate plan in place, including a revocable trust agreement which he amended and restated several times throughout his life.

In his trust agreement, Tom named his second wife, Dana York Petty, to serve as the successor trustee after his death. One of Dana's responsibilities as the trustee is to form a California limited liability company to hold Tom's artistic property. The trust agreement gives Dana broad discretion to form the limited liability company, but states that Dana and Tom's daughters from his first marriage, Adria Robin Petty and Annakim Violette, are entitled to "participate equally" in the management of the limited liability company.

The trust agreement provides that Dana, as the trustee, has the discretion to define how the limited liability company makes decisions, such as by unanimous or majority vote and whether the limited liability company is member-managed or manager-managed.

Unfortunately, the terms of the trust agreement concerning the creation and management of the limited liability company have created a dispute between Dana and Tom's daughters. Tom's daughters have taken the position that, as the holders of the majority vote of the company, they have the power to control the company, including Tom's artistic property. Dana, on the other hand, has taken the position that Tom intended for the parties to unanimously consent to actions taken by the company.

Dana has petitioned a California court to enter an order instructing her, as the trustee under the trust agreement, to execute a limited liability company operating agreement that enables a professional manager to be responsible for the day-to-day management of the company and requires unanimous consent among the members for significant decisions of the company.

While Tom and his estate planners were careful to put an extensive 77-page trust agreement in place to hold and manage many of his extraordinary assets, in hindsight, it may have been prudent for Tom to name an independent trustee to serve as the successor trustee following his death and to require a professional manager to operate the limited liability company. An independent trustee is typically an individual or corporate entity who is not a beneficiary under the trust agreement and is not related or

subordinate to the grantor, his or her spouse, or any of the grantor's descendants within the meaning of 26 U.S. Code § 672(c). An independent trustee's ability to be objective may foster cooperation and trust among beneficiaries, especially in complicated family situations. The same is true for a professional manager.

Estate planners advise clients not to exercise too much control from the grave. Laws, business practices, and people change over time, creating problems for overly planned trust agreements. In instances where a client has extraordinary assets or a complicated family structure, however, more control may be necessary, and an independent third-party may be in the best position to exercise such control.

For further information on estate planning with extraordinary assets and complicated family structures, please feel free to contact any member of our team.

## **Related People**

- Mary Rennie Rowe ?M.R.? Litman – 804.420.6210 – mlitman@williamsmullen.com

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