

## Estate Planning Lessons From Michael Jackson's Death

By Abbe I. Herbst

**A**s we all know, Michael Jackson died this past summer. Although the stories of his unusual lifestyle and abuses have flooded the media, it appears that his estate plan was rather conventional. Whether he was physically and financially self-destructive is not for me to judge, but there are some important lessons to be learned from his estate planning documents.

### *Have a Last Will and Testament*

Michael Jackson's will, consisting of five pages and dated July 7, 2002, is a public document. Most likely in an attempt to quash rumors that he knew would ensue after his death, the first provision of his will recites that he was not married as of the date of the will and that his marriage to Deborah Jean Rowe Jackson had been dissolved. He wisely sets forth the names of his three children, adding, "I have no other children, living or deceased." Such a careful enumeration of his children could go a long way in discouraging any others from alleging paternity and seeking a share of the singer's estate.

### *Choose the Guardian of Minor Children*

Mr. Jackson, in his will, nominates his mother, Katherine Jackson (now age 79), as guardian of the persons and of the property of his minor children. Although he could have separated the functions of guardian of the persons (responsible for the rearing of the children) and guardian of the property (responsible for overseeing the financial interests of the children), he chose the same individual for both roles. Thus far, the California court having jurisdiction over the Jackson estate has ratified the choice, and Mrs. Jackson is acting as guardian, although a special law guardian has been appointed because Mrs. Jackson's financial interests may conflict with those of her three grandchildren.

I have no doubt that Katherine Jackson is a smart, loving and devoted grandmother, but it troubles me that someone 79 years of age was selected to raise children ranging in ages from 7 to 12. I assume that Mrs. Jackson is quite wealthy in her own right, and can enlist the services of any number of others to assist her in her role as the new caregiver for her grandchildren. My concern is the emotional toll on those children if she were to die in the next several years, and they would then be placed to live with yet another person (whether singer Diana Ross, as the will provides, or someone else).

.....  
***"For those ... in need of privacy, a trust that can be changed at any time, managed by the client as trustee or as co-trustee during life, and remain confidential at death may be very attractive."***  
.....

In advising clients on the selection of guardians of their children following their deaths, my advice is always, whenever possible, to choose individuals who are contemporaries of the clients, or even younger. The children will have already been through the trauma of losing their parents, and I would not want them to experience it yet again when, as minors, they may lose their grandparent-guardian.

### *Consider Using a Revocable Trust*

Michael Jackson's will directs that all his assets be given over to and disposed of in accordance with the revocable trust that he created on March 22, 2002, known as the Michael Jackson Family Trust, as it may have been amended from time to time from its creation until his death. It has been surmised that the trust agreement provides for forty percent to



## who's who

**Abbe I. Herbst** is a shareholder in the New York office of Anderson Kill &

Olick, P.C. and editor of Anderson Kill's Estate Planning & Tax Advisor. Ms. Herbst is admitted to practice in New York and New Jersey, and has broad experience in the areas of estate and tax planning and trust and estate administration. She is a member of numerous Bar Associations and the Financial Women's Association of New York. (212) 278-1781  
[aherbst@andersonkill.com](mailto:aherbst@andersonkill.com)

The information appearing in this newsletter does not constitute legal advice or opinion. Such advice and opinion are provided by the firm only upon engagement with respect to specific factual situations. We invite you to contact the editor, Abbe Herbst, at (212) 278-1781 or [aherbst@andersonkill.com](mailto:aherbst@andersonkill.com), with your questions and/or concerns.

The firm has offices in New York, NY; Greenwich, CT; Newark, NJ; Philadelphia, PA; Ventura, CA and Washington, DC.

© Copyright 2009 Anderson Kill & Olick, P.C.

To subscribe to this or any of the Anderson Kill Newsletters and Alerts, visit:  
[www.andersonkill.com/publication\\_subscribe.asp](http://www.andersonkill.com/publication_subscribe.asp)

To unsubscribe, please email:  
[unsubscribe@andersonkill.com](mailto:unsubscribe@andersonkill.com)

pass to Mr. Jackson's mother, forty percent to his children (probably in further trust) and twenty percent to be distributed to charities to be selected by the trustees. In order to confirm this, I have been trying to obtain a copy of the trust agreement since the will became public, but the trust agreement has not been made public.

The fact that the trust agreement is not a public document is a very powerful reason for the popularity of revocable trusts. Although a will must be filed in court and is a public record, a trust agreement bypasses the probate process and so, in most courts, its contents can be kept confidential. For those in the public eye or others in need of privacy, a trust that can be changed at any time, managed by the client as trustee or as co-trustee during life, and remain confidential at death may be very attractive. It is possible to transfer all assets to the trust during life, including tangible personal property and real property located in different states, but there will almost always be some assets remaining in the client's name at death, requiring the will to be probated in court. Even if a will that distributes its assets to a revocable trust must go through the probate process (which means that the will must be proved as the *last* will and testament of the client), the will can divulge as little information as Mr. Jackson's.

A revocable trust is often recommended as a property management device during life, so that if the client becomes incompetent or simply no longer wishes to attend to financial affairs, the co-trustee or successor trustee can step in and handle things. A revocable trust is sometimes indicated in other situations as well, such as when a probate contest is expected (which would delay the appointment of estate representatives under the will), or when the client has no known heirs, which could also delay the probate process. Some of the benefits of a revocable trust can be accomplished without a trust agreement, through the use of durable general powers of attorney, so that the agent can take control of financial assets, but the confidential nature of a trust agreement is unique.

### Select Executors Carefully

The executors of Michael Jackson's will are one of his attorneys and a music industry executive. These two people appear to have the background and judgment to make the difficult decisions that lie ahead. It is not known who are the successor trustees of the Michael Jackson Family Trust. For a discussion of the duties of an executor, see "You've Been Appointed Executor: What Do You Do Now?," in the Spring 2008 issue of *AKO Estate Planning & Tax Advisor*. ▲

IRS Circular 230 Disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any transaction or matter addressed herein.