

The Importance of Dispute Resolution Clauses in Celebrity Estate Planning

Lamariah Smith · April 2024

Introduction

John Doe was an international pop star, achieving a level of fame on par with celebrities like Michael Jackson. In 2022, the world was saddened by the news that Mr. Doe had passed away, leaving an impressive fortune estimated at \$2 billion. His assets included multimillion-dollar real estate and a lucrative intellectual property portfolio, encompassing a vast music collection.

Doe was survived by four children, three of whom were born out of wedlock from relationships with different women. His progeny further extended to 25 grandchildren, making his family tree both large and complex. After his passing, two individuals came forward with claims against the estate. One presented themselves as an illegitimate child of Doe, seeking recognition and a share of the inheritance. The other claimant argued that they were entitled to a substantial share of the intellectual property rights tied to Doe's extensive music catalog.

The dispute over the estate has lasted over a year, incurring millions in legal fees and inflicting damage on Doe's public image. The ongoing conflict has not only tarnished his legacy but has also led to a depreciation in the estate's value. Doe's disabled grandchild, whom he cared for, is also unable to pay for treatments because this prolonged dispute prevents the child's parent from receiving the inheritance meant for the child's care. As litigation continues, the intricacies of Doe's relationships and the ambiguity of his estate paint a complex depiction of the superstar's private life for the public.

The above case illustrates the complexities of celebrity estate disputes, which this paper explores by suggesting the benefits of dispute resolution clauses. A dispute resolution clause is a written instruction in a will or trust that requires beneficiaries to resolve their disputes through mediation or arbitration before, or instead of, going to court. In particular, this paper will consider the financial and legal burdens, the devaluation of the estate due to a loss of privacy, and the heightened risk of mismanagement. By identifying these challenges, this paper argues that incorporating dispute resolution strategies into celebrity estate plans can circumvent them.

Section I outlines the economic consequences of litigation, focusing on the legal expenses that can devalue an estate. Section II highlights how estate disputes can lead to a loss of privacy, which celebrities need in order to prevent negative media attention from eroding the estate's value. Section III addresses the possibility of mismanagement of assets in the absence of clear directives or in the presence of bad faith. Section IV explains why a well-drafted dispute resolution clause is effective at addressing the concerns covered in the prior sections. Section V applies that reasoning to a case study, the estate of Jimi Hendrix, and shows how dispute resolution measures could have improved

the outcome. Section VI reviews the limitations inherent to dispute resolution clauses in estate law. Section VII closes with strategic advice for drafting robust clauses that protect against posthumous legal conflicts.

Section I. Economic Repercussions of Litigating Celebrity Estate Disputes

In general, estate disputes are uniquely challenging to litigate due to the absence of the estate owner, who cannot clarify their intentions. This is known as the "worst evidence" problem in trust and estate litigation. Because the estate owner is unavailable to testify to their true intent, the court is in the peculiar position of interpreting the wishes of a deceased person based on the arguments brought by interested parties. This leaves the decedent's wishes open to manipulation by beneficiaries, interested parties, and trustees or executors whose goals contradict the wishes of the decedent. The complexity and size of celebrity estates further magnify these challenges, resulting in costlier and lengthier litigation involving multiple parties. The following paragraphs explore the litigation costs that arise whether or not an estate plan exists.

Before entering probate court, an interested party may contest the validity of the will, thereby increasing the estate's administrative costs. Under the Uniform Probate Code, adopted by various states, claims that the decedent lacked testamentary capacity, or was subject to undue influence, may prevent the will from entering probate. The costs associated with defending or refuting validity claims are high because there is a heightened legal standard to convince the court of the decedent's capacity or intent. These costs increase because there is often extensive discovery, research, and trial time required to persuasively present the case. Celebrity estates, which are more likely to be challenged, therefore become particularly costly to administer.

If a party's challenge to a will is unsuccessful and the probate court proceeds with administration, alternative methods remain available for seeking remedies, such as civil litigation. A successful civil suit can prevent the distribution of assets as outlined in the will or according to intestate succession laws, because claimants can receive restitution. Civil litigation typically centers on claims of wrongful interference with an expected inheritance due to the actions or manipulations of other parties involved in the estate. Establishing a basis for these claims requires a detailed legal strategy, involving the gathering of substantial evidence to prove the interference occurred and to persuade the court to overturn the original provisions of the will or set aside intestate succession. These complexities contribute to the rise in legal costs for all parties involved.

Moreover, a celebrity estate might choose to settle with an opposing party to avoid the complexities and high costs of litigation, including court and administrative fees. Disputes in probate court decrease the estate's value, as the estate often bears the cost of administration and legal fees. Given the high-profile nature of celebrity estates, these costs can be substantial, and the publicity surrounding these disputes may encourage challengers to seek a settlement, exploiting the beneficiaries' desire to protect and preserve the estate's assets. Heirs and executors may decide that the legal fees to contest these claims could exceed the cost of settlement. Consequently, the potential

cost of litigation can be used as leverage against the proponents of a will, forcing them to settle in order to preserve more of the estate's value.

The economic repercussions of estate disputes include the freezing of assets by the court while litigation is ongoing. This can be consequential for beneficiaries who depend on the estate for their living expenses. Freezing the assets may nonetheless be crucial to ensure there are funds or assets to cover any changes in the distribution of the estate and to prevent unjust enrichment. Specifically, the assets held by a celebrity are typically shares in entertainment business ventures or intellectual property rights, and changing the distribution can require complex valuations that trigger expensive tax consequences. The estate is then required to pay those additional taxes and may have to liquidate a portion of its assets to cover the cost.

Additionally, the costs associated with freezing assets during ongoing litigation are higher for a celebrity estate because such actions can significantly disrupt business operations and ventures. Beneficiaries and executors are aware of this increased risk, making it a necessity to invest in highly skilled attorneys familiar with the complexities of celebrity estates. This awareness reinforces the tendency for such estates to opt for settlement, recognizing the risk posed by asset freezes and the potential impact on the revenue generated for beneficiaries.

Section II. Privacy Concerns

Litigation as a dispute resolution method lacks the privacy needed to manage a celebrity estate discreetly and effectively. Litigation and probate records, which are public, detail all assets to be distributed and the claims brought against the estate. This exposure is amplified through the formal probate process, because the executor must notify all interested parties, including creditors and individuals who may have legal judgments against the estate. This increased exposure can lead celebrities and beneficiaries to seek ways to shield estate assets, especially when threatened by claims subject to public scrutiny. For these reasons, probate and litigation do not provide an ideal forum for privately resolving an estate dispute, because they create privacy risk and harm to the estate.

The cost of that exposure is easiest to see when there is no plan at all. When Prince died in 2016 without a will, his estate passed into open probate in Minnesota, where the size of his holdings, the identity of his heirs, and the competing claims against the estate all became part of the public record. The proceedings stretched on for years before the estate was finally settled. A confidential mediation or arbitration would have kept those details out of public view. Instead, the absence of any private resolution mechanism turned a family matter into a prolonged public spectacle, which is the outcome a celebrity estate has the most reason to avoid.

Celebrities should prioritize confidentiality during transfers at death, as public exposure of their personal affairs could tarnish their public image and reduce their estate's value. This is especially critical if the celebrity intended to support their family through posthumous income from estate assets. There are also limited remedies for reputational damage done to the estate, because the estate

does not have a legal right to privacy or a defamation claim after the individual has died. A dispute resolution plan involving mediation and arbitration can safeguard a celebrity estate, however, because these proceedings are confidential. This can prevent potentially false or damaging claims from becoming public and harming a celebrity's image and estate.

Section III. Mismanagement of Assets

Due to the complex nature of their estates, celebrities face the potential challenge of underestimating the scope and value of their estate, causing gaps and mismanagement after they are deceased. This is especially true for musical artists whose commercial success continues posthumously, where albums and musical pieces are released after death and the estate must decide the pertinent details of each transaction. The potential to generate significant economic activity after death limits a celebrity's ability to leave an estate plan with clear instructions for managing future income. Including a dispute resolution clause may address the unforeseeable conflicts surrounding mismanagement and the commercialization of a legacy after death.

Moreover, the potential for significant posthumous economic activity places celebrity estates at a higher risk of fraud or mismanagement by estate managers. Neil Caulkins notes that managing a celebrity legacy is, in effect, an investment that requires strategic approaches. He discusses how this can lead to tension between stakeholders' views on the best way to leverage the celebrity's legacy, giving the example of the estate of Marilyn Monroe, where those controlling the estate disagreed over how aggressively to license and commercialize her image and how to balance protecting her legacy against maximizing returns. Decades after her death, Monroe's likeness remained one of the most valuable assets tied to any celebrity estate, which raised the stakes of every decision about how it was used. Usually, such claims are directed at executors or trustees, accusing them of mismanagement and breach of fiduciary duties. Consequently, wills should incorporate dispute resolution clauses that guide estate managers in resolving asset-management disputes in line with the decedent's wishes.

Another concern of mismanagement is the unauthorized commercial exploitation of a deceased celebrity's personality. This stems from the exclusive nature of publicity rights, which prevent unauthorized access. Celebrities may seek to control and protect their image post-mortem, ensuring designated individuals hold the rights to benefit from their publicity. Enacted in 1998 and significantly expanded by 2008 amendments, the Washington Personality Rights Act (WPRA) grants celebrities enhanced rights to protect their image after death. This reform was passed in response to the recognition of the extensive and prolonged litigation challenges faced by celebrity estates. Dispute resolution clauses, in conjunction with laws protecting publicity rights, can therefore significantly reduce litigation related to the management of a celebrity's commercial identity and persona.

Section IV. The Effectiveness of Dispute Resolution Plans

Dispute resolution clauses are strong alternatives for parties seeking to resolve trust and estate disputes without the constraints of legal hurdles. Martin L. Fried discusses the multiple ways people can seek relief outside of probate court, by filing for tort damages and constructive trust. However, these suits depend on the claimant's ability to demonstrate that the estate's actions undercut the decedent's intended wishes or involve some form of wrongdoing. Typically, parties argue lack of mental capacity or undue influence, yet proving such claims is challenging due to the higher burden of proof and the absence of the testator. Dispute resolution plans provide a means to address grievances that are otherwise unresolvable in court due to stringent legal requirements.

Another legal hurdle is the statute of limitations for filing a claim, which can be problematic when wrongdoing is discovered only after probate and estate closure. Implementing a dispute resolution plan would offer more flexibility for parties to address disputes sensibly, especially when there are emotional sensitivities regarding the loss of a family member. Additionally, a dispute resolution clause would allow individuals who lack legal standing to voice their concerns. Typically, probate courts have decided that only persons with a direct economic or financial interest in the denial or setting aside of probate will have standing to contest a will. Dispute resolution clauses would allow people without standing to use alternative means to seek redress.

Complex family dynamics are prevalent among celebrities, especially when unknown children emerge with claims to their estates. This is mainly a concern when the celebrity did not know of or provide any assets for the child. In those cases, the court is likely to decide in favor of the child and grant them a share in the estate, leading to familial disputes and aggressive litigation given the high stakes involved. To mitigate these issues, incorporating a dispute resolution clause that directs the parties to mediation or arbitration may prevent the exorbitant litigation costs driven by discontented parties.

Additionally, alternative dispute resolution plans increase the chances of the testator's wishes being honored after death. This is important for testators with unconventional estate plans that diverge from typical patterns of wealth succession. A court resolving a conflict or ambiguity for an unconventional estate is likely to apply what the average individual may have intended, regardless of the atypical succession plan. By contrast, if mediation or arbitration clauses are followed, the decedent can select a decision-maker who might adhere more closely to their specific estate plan than a judge or jury following majority rules. Given the lifestyle of celebrities and the varying interests in their estates, they may have unique plans that should be protected from bias or from the customs embedded in the laws of succession.

More specifically, a mediation clause may help parties avoid the drawbacks of handling disputes through the court system, because the process is better at preserving family relationships than litigation. Estate planners can take a proactive approach that encourages families to follow a drafted mediation plan before commencing litigation. Ideally, the family will be able to create a durable agreement that satisfies all parties and does not need to be enforced by the law.

Mediation can prevent the court from misinterpreting a will or imposing a legal disposition that might be contrary to the needs of the family. The cost and complexity of litigating against a large estate may disadvantage parties with fewer resources, because the court may not consider those barriers and may render a decision solely on the evidence presented and the applicable law. This could lead to unfair outcomes. Mediation therefore offers a more equitable approach, allowing all parties, regardless of economic power, to foster more creative and collaborative alternatives in estate planning without the constraints of formal court procedure.

Section V. A Case Study: The Estate of Jimi Hendrix

This section applies the reasoning above to the estate of Jimi Hendrix, recognized as one of the most litigated estates in entertainment history. Hendrix died intestate in 1970 with a small liquid estate but valuable rights to his music and image. These assets passed under intestate law to his father, Al Hendrix, who then established two companies to manage them. Upon Al's death, control passed to Janie Hendrix, Al's adopted daughter and Jimi's step-sister, while Jimi's biological brother, Leon, was left out entirely. From 2004 to 2017, Leon and the estate were locked in a series of legal battles over the use of intellectual property, licensing, and trademark deals. Ultimately, the courts ruled in favor of Janie, granting her control over the lucrative earnings from Jimi Hendrix's legacy.

Three critical issues in Hendrix's estate demonstrate the need for a dispute resolution plan. First, Hendrix's lack of a will or trust left his large estate with no clear directives. Second, that lack of guidance created an ongoing conflict over the management of his legacy and music for commercial use. Third, a dispute resolution plan may have mitigated the unfair legal outcome of the case and provided a more equitable resolution for Jimi's brother.

Given that Jimi Hendrix was an international superstar, it was crucial for his financial advisors and managers, under their fiduciary duties, to establish methods of safeguarding his wealth. As prudent fiduciaries, they should have advised him on the value of his assets and the legal considerations tied to contracts, endorsements, and other business ventures. For example, while negotiating business deals and contracts, his managers and lawyers could have recommended that the income be received by a separate entity, facilitating an easier transfer to surviving family members. This would also have been an opportune moment to set up a dispute resolution plan, outlining a course of action for resolving any disagreements related to the management, transfer, and control of his property.

Hendrix's family filed numerous claims and counterclaims regarding the commercialization of his intellectual property and image. Leon sought to actively profit by creating products that leveraged Hendrix's legacy, while Janie managed the estate more passively through the two companies. Requiring the Hendrix family to mediate or arbitrate their differing investment strategies would have saved the estate and Leon millions of dollars in litigation costs. Additionally, because Hendrix did not leave an estate plan, the court was required to apply intestate law, which likely did not reflect his actual intentions for the distribution of his estate. Under intestacy law, Jimi's estate passed to his father, Al, whose own will later left control to Janie and disinherited Leon. A dispute

resolution plan could have facilitated a more equitable succession strategy, potentially preventing the complete disinheritance of Hendrix's biological lineage.

Section VI. Limitations of Dispute Resolution Clauses

In theory, dispute resolution clauses are a strong alternative to litigation, given how common estate disputes are and how costly they are to litigate. However, enforceability issues may arise in certain jurisdictions due to legal complexities. Some scholars suggest that by accepting assets transferred under a testamentary instrument, parties also agree to adhere to its arbitration clause. Conversely, there is debate over whether Congress intended the Federal Arbitration Act to apply only to contractual arbitration clauses, and it is unclear whether testamentary documents pass the test for contractual validity. This is especially challenging when parties not mentioned in the estate instrument bring a claim. Courts are split on whether the Act even reaches a will or trust, since neither is a contract in the ordinary sense, and a beneficiary who never signed anything generally cannot be forced to arbitrate. Either way, the clause can end up unenforceable, and litigation proceeds anyway, undermining the estate plan.

Beyond enforceability issues, scholars have noted that arbitration clauses in estate disputes may not offer the same benefits as those in commercial and employment contracts. Jessica Beess und Chrostin contends that disputes over the validity of a will or trust rely on circumstantial evidence, which erodes the typical advantages of arbitration. Additionally, arbitration does not preclude beneficiaries from exercising their right to litigate an administrative dispute in court. If a beneficiary believes a trustee is acting against the purpose of the estate, they have a legal right to bring their claim to court. In that case, statutory rights would supersede the testator's wishes, potentially nullifying the dispute resolution clause.

Section VII. Recommendations for Drafting

To prevent a dispute resolution clause from being unenforceable, there are drafting strategies that can make those provisions more effective. Estate planners and testators should first consider using model clauses from reputable arbitral institutions like the American Arbitration Association (AAA) and the International Chamber of Commerce (ICC). The AAA publishes Wills and Trusts Arbitration Rules with a model clause written specifically for testamentary instruments, which gives such provisions more legitimacy in the view of the court, because those clauses have been well tested and deemed acceptable under the law. Another approach is to draft an arbitration clause incorporated into the trust as a contract-like document. The court is more likely to enforce the dispute clause if it is framed such that the beneficiaries of the instrument consented to out-of-court resolution, because the court would not then allow them to breach the testamentary contract. Lastly, an *in terrorem* clause may make parties more likely to follow a mediation and arbitration plan. Under an *in terrorem* clause, the testator can threaten to disinherit a party that does not follow the instructions of the will. The proposed instruction can be that beneficiaries must seek out-of-court resolution before litigation, or they will not inherit under the instrument. Enforceability varies by

state, though. Some states, including Florida, refuse to enforce these clauses, and many others will not enforce them against a beneficiary who challenged the instrument in good faith, so a drafter should confirm the governing jurisdiction's rule before relying on this tool.

Moreover, the law is evolving to encourage alternative methods of resolving estate disputes. In 2007, Florida became the first state to enact a statute expressly authorizing binding arbitration provisions in wills and trusts, and other states have since followed, creating a shift toward accepting arbitration in trust and estate disputes. Estate planners should consider alternative dispute plans based on their risk assessment of claims being brought against the celebrity's estate, and should draft a dispute resolution plan that guides parties on a course of action to redetermine the estate plan given its complexity.

Conclusion

Return to John Doe. A single, well-drafted dispute resolution clause would not have erased every disagreement among his heirs, but it would have changed the terrain on which those disagreements played out. The three harms this paper has traced all share the same root: a celebrity estate left to fight in court.

The financial harm comes from litigation that drains the estate through fees, settlements, and frozen assets. A clause that channels disputes into mediation or arbitration contains that cost. The privacy harm comes from public probate that exposes a celebrity's holdings and family to the world. Confidential proceedings keep those details private. The mismanagement harm comes from the absence of clear direction over a legacy that keeps earning after death. A clause that names how disputes are resolved gives executors and heirs a path that follows the decedent's wishes rather than a judge's best guess.

None of this is automatic, and dispute resolution clauses carry the real limits described in Section VI. But for a person whose estate is large, public, and likely to be contested, the question is not whether disputes will arise. It is whether they will be resolved on the decedent's terms or someone else's. A dispute resolution clause is how an estate plan answers that question in advance.

Sources

- Jesse Dukeminier, Robert H. Sitkoff & James Lindgren, *Wills, Trusts, and Estates* 3, 325 (8th ed. 2009).
- Unif. Probate Code §§ 2-101, 2-103, 2-501, 3-401, 3-407, 3-803 (amended 2010); Unif. Trust Code § 804 (amended 1996).
- 755 ILCS 5/8-1 (West 2023); Probate Act of 1975, 755 ILCS 5/.
- John C.P. Goldberg & Robert H. Sitkoff, *Torts and Estates: Remediating Wrongful Interference with Inheritance*, 65 Stan. L. Rev. 335, 371 (2013).
- Martin L. Fried, *The Disappointed Heir: Going Beyond the Probate Process to Remedy Wrongdoing or Rectify Mistake*, 39 Real Prop. Prob. & Tr. J. 357, 361 (2004).

- Daniel B. Kelly, *Strategic Spillovers*, 111 Colum. L. Rev. 1641, 1685–86 (2011).
- Neil Caulkins, *A Trustee's Duties When a Celebrity Persona Is the Asset*, 83 J. Pat. & Trademark Off. Soc'y 31, 45 (2001).
- Aubrie Hicks, *Right to Publicity After Death: Postmortem Personality Rights in Washington in the Wake of Experience Hendrix v. HendrixLicensing.com*, 36 Seattle U. L. Rev. 275 (2012).
- H.B. 2727, 60th Leg., Reg. Sess. (Wash. 2008).
- Kirsten Rabe Smolensky, *Rights of the Dead*, 37 Hofstra L. Rev. 763 (2009).
- Deborah A. DeMott, *Breach of Fiduciary Duty: On Justifiable Expectations of Loyalty and Their Consequences*, 48 Ariz. L. Rev. 925, 926 (2006).
- Stanard T. Klinefelter & Sandra P. Gohn, *Alternative Dispute Resolution: Its Value to Estate Planners*, 22 Est. Plan. 147, 147 (1995).
- Lela P. Love & Stewart E. Sterk, *Leaving More Than Money: Mediation Clauses in Estate Planning*, 65 Wash. & Lee L. Rev. 539 (2008).
- Andrew Stimmel, *Mediating Will Disputes: A Proposal to Add a Discretionary Mediation Clause to the Uniform Probate Code*, 18 Ohio St. J. on Disp. Resol. 197 (2002).
- E. Gary Spitko, *Gone but Not Conforming: Protecting the Abhorrent Testator from Majoritarian Cultural Norms Through Minority-Culture Arbitration*, 49 Case W. Res. L. Rev. 275, 280 (1999).
- Bridget A. Logstrom, *Arbitration in Estate and Trust Disputes: Friend or Foe?*, 30 ACTEC L.J. 266, 267 (2005).
- Jessica Beess und Chrostin, *Mandatory Arbitration Clauses in Donative Instruments: A Taxonomy of Disputes and Type-Differentiated Analysis*, 49 Real Prop. Tr. & Est. L.J. 317, 405, 412 (2014).
- S.I. Strong, *Empowering Settlers: How Proper Language Can Increase the Enforceability of a Mandatory Arbitration Provision in a Trust*, 47 Real Prop. Tr. & Est. L.J. 272, 282, 298 (2012).
- David Horton, *The Federal Arbitration Act and Testamentary Instruments*, 90 N.C. L. Rev. 1027 (2012).
- Jessica Galligan Goldsmith et al., *Celebrity Estate Planning: Misfires of the Rich and Famous II*, 33 Prob. & Prop. 50 (2019).
- Tim Matson & Scott Nelson, *Last Will of the Testament: Estate Planning for the Athlete*, 29 Ent. & Sports Law. 24, 25 (2011).
- Charlotte Boyce & Danielle Dove, *Death and Celebrity: Introduction*, 13 Celebrity Stud. 485 (2022).
- Leon Jaworski, *The Will Contest*, 10 Baylor L. Rev. 87, 88 (1958); Lewis M. Simes, *Function of Will Contests*, 44 Mich. L. Rev. 503, 504 (1946).
- Ariz. Rev. Stat. Ann. § 14-10205 (2009); Fla. Stat. Ann. § 731.401 (West Supp. 2014).

General commentary, not legal advice. Reading this creates no attorney-client relationship. Laws vary by state.