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In this third installment of our four-part celebrity series, we discuss a topic that no one wants to think about as it may seem to be a fate worse than death: incapacity. Find out what Jay Leno and his family can teach us about the need to be prepared, no matter what happens. Read more…

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Celebrity Estate Plans Series Part 3 of 4: Jay Leno’s Case is No Laughing Matter

For the last two weeks, we’ve discussed celebrities and how they planned (or didn’t!) for their deaths. In this third installment of our four-part celebrity series, we discuss a topic that no one wants to think about as it may seem to be a fate worse than death: incapacity. Unlike death, not everyone will become incapacitated. Yet, it’s an essential part of your future planning because if you do become incapacitated, you want to have made your choices well before that occurs. To illustrate the importance of planning for incapacity, we’ll examine the real-life court case involving Jay Leno and his wife, Mavis. I assure you, it is no laughing matter.

The Leno case highlights what happens when you or a loved one becomes incapacitated and what can happen if you have not planned in advance. From the Leno case, we can learn several lessons, including 1) What incapacity is and what it is not, 2) What a spouse can and can’t do with the other spouse’s financial affairs, and 3) How you can end up in court with all your affairs becoming public knowledge. We’ll address all three topics here, emphasizing why these matter, even for those of us who have never hosted “The Tonight Show.”

Let’s start with the basics: what do we mean when we’re talking about “incapacity”?

What Incapacity Is and What It’s Not

If you become incapacitated, you’ve lost the ability to make sound financial, medical, or legal decisions for yourself. You may even make harmful decisions or be unable to communicate at all. Incapacity can result from several circumstances, including a tragic accident, a serious, end-of-life illness, or aging-related challenges, such as dementia or Alzheimers. Like death, incapacity can strike at any time and at any age. Once it does, it’s too late to get your affairs in order, and your loved ones will be stuck with a mess.

This may seem obvious, but stay with me: It’s important to note that incapacity occurs while you’re alive. I say this because estate planning, to some degree, has much to do with timing. You can have a plan and create documents that deal with your incapacity. However, that plan and documents become null and void once you die, and another plan and set of documents are needed.

Here’s why this matters to you: If you’re like many people, you’ve heard of a document called a Power of Attorney. You may even have authority for an aging relative under a Power of Attorney. In my practice, however, I've found that most people don’t realize that the authority granted under that Power of Attorney ends as soon as the person granting the power dies. So, while you may be able to access your loved one’s checking account to pay bills while they’re alive, that ends immediately at death if your access was under a Power of Attorney. You must then get separate authority - from a court if assets are not held in a trust - to handle the remaining assets after death.

This means your incapacity planning and post-death planning must work together so the transition is handled smoothly and with as much ease for your loved ones as possible. And that brings us to the Leno case.

So, What Happened In the Leno Family? (And What It Means for You)

Mavis Leno, Jay's wife of more than 40 years, is battling dementia and has reached the point where she can no longer handle her financial affairs. So, Jay had to go to court (essentially filing a lawsuit against his own wife) to be able to manage her finances. After a few months, the court ruled and gave Jay the authority he requested.

That’s essentially the entire story. But we can’t stop there! Even from just three simple sentences above, several key takeaways exist.

Here are the highlights:

**Even though they were married, Jay did not have automatic authority to manage Mavis’s finances.** And neither will you if you’re married and your spouse has separate assets. Any assets or accounts you own are your property and your property alone. **Marital status is irrelevant. And, if you don’t have advance planning in place, your spouse could need to go to court and sue your “estate” to get appointed and be able to take control of your assets.**

**Leno had to file a lawsuit (against his wife) to gain control of his wife’s finances.** That’s the process, no matter what State you’re in. If you don’t have advance planning and you become incapacitated, someone will need to go to court to get authority, even if you have powers of attorney in place. And it will cost time (a few months in most cases) and money. While waiting for the court to rule, you won’t be able to pay your spouse’s bills using their money (or they may spend away, unaware of what they’re doing). That leaves you with two options:

You can pay the bills with your money and then get reimbursed later. This may be fine, especially if you have the financial means. But if you don’t have immediate access to cash, say your spouse paid all the bills from their account, this could mean trouble and potential loss of the asset. Or, bills simply go unpaid. Maybe you can explain the situation to the financial institution, and they will be patient while the court process plays out, but this doesn’t always happen.

The court process is set up for conflict, and the more conflict there is, the longer the process will take. In Leno’s case, he and Mavis have been married for over 40 years, and it’s their first and only marriage (relationship goals, right?). Given this fact, it’s reasonable to assume that no one challenged Jay’s request. But what if one of them had been married before and had children from the prior marriage? And what if one of those children wanted to ensure they got their inheritance and didn’t want the step-parent to have any control over the money? Sadly, this happens all the time. When it does, the case can go on and on, meaning court costs go up, and the assets in question could be at risk due to the time delay.

**Leno’s personal and family information became public knowledge, but not because he’s famous.** In most States, you must disclose your address, your family members and their addresses, and information about the financial assets. The Leno family's story is available for all of us to read, not because he’s famous, but because they had to go to court.

This can be problematic because scammers are paying attention. They tend to pay particular attention if you (or someone you love) are vulnerable, especially if you’re older. I could write books about how often older people fall prey to these scams. And they’re all terribly disturbing.

So, what have you gleaned from these insights so far? If anything concerns you, know there is a much better way this could have been handled. And this better way lies within your reach.

A Life & Legacy Plan Keeps Your Affairs Private and Your Family Out of Court and Conflict

A Life & Legacy Plan solves the problems that left Jay Leno having to sue his wife’s estate to get access to her accounts. With a Life & Legacy Plan in place, you would have a seamless, easeful transition from capacity to incapacity and then to death. There’s no time delay; assets can be immediately available when you need them. A Life & Legacy Plan can also keep you and your loved ones out of court and conflict, saving time and money and keeping all your affairs private.

When you work with me to create your Life & Legacy Plan, we’ll ensure your plan stays updated throughout your lifetime. This is critically important because if your estate plan doesn’t reflect your current life circumstances at the time you need it, then it simply won’t work. That means you end up in court, just like the Leno family. Now, for context, most attorneys do not make sure your plan stays up to date. But I’ve seen too many plans fail because of it, so together, we’ll review your plan at least every three years and make updates as necessary.

We’re Here for You Throughout All Of Life’s Changes

Incapacity planning is more crucial than ever, especially with cases of dementia on the rise. According to Alzheimer’s Disease International, over 55 million people worldwide currently have dementia, and that number is expected to increase to 78 million by 2030. Whether you’re diagnosed with dementia, another severe illness, or a terrible accident that results in your incapacity, a Life & Legacy Plan will help ensure you’re prepared, no matter what happens.

As a Personal Family Lawyer Firm, we help you create a Life & Legacy Plan so that your loved ones stay out of court and conflict and have a plan that works when you (and they) need it. Once you’ve created your plan, you can rest easy knowing your wishes will be honored, your loved ones cared for, and your personal information kept private.

Click here to schedule a complimentary 15-minute consultation to learn more:

[Insert scheduling link]

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