BURKE, WARREN, MACKAY & SERRITELLA, P.C.

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WEALTH & SUCCESSION PLANNING

(SOMEONE'S) GONNA PARTY LIKE IT'S 1999

6 Succession Planning Lessons We Can Learn from Prince's Estate

The recent death of Prince was a shock to music lovers the world over. He singlehandedly changed the music industry. Prince wrote, produced and performed numerous hits, including, perhaps the most well-known (and toe-tapping) vision of the nuclear apocalypse, "1999."

Jonathan W. Michael

By all measures, the estate Prince left behind is very complex. His estate is comprised of an ongoing business enterprise, sophisticated intellectual property interests and an abundance of valuable collectibles, including works of art. By adding to the mix a potentially lengthy and expensive dispute over who has the right to inherit and control his empire into the future, it is very likely that Prince's estate will

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RELIGIOUS ORGANIZATIONS

JUSTICE RESTORED

The Firm's Religious Practice hosted "Justice Restored," an event that featured Stanley Wrice (below, left) and Pamela Cytrynbaum (below, right) of the Chicago Innocence Center (CIC), speaking of their respective experiences with the CIC at a luncheon in June.

Ms. Cytrynbaum shared her perspective on the challenges

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BWM&S

NEW PARTNERS BOOST FIRM'S COMMERCIAL LITIGATION, HEALTH-CARE AND M&A CAPABILITIES

Burke, Warren, MacKay & Serritella is pleased to announce the addition of three new partners: Nicholas Gowen, Joseph Hylak-Reinholtz and Elizabeth Davis.

Nick Gowen represents companies, individuals, and law firms in disputes, including those involving intellectual property, trade secrets, unfair competition, employment matters and other business litigation matters in courts and arbitration forums throughout the country. Nick counsels

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INSIDE THIS ISSUE:

NEXT ISSUE: Firm grows again and more.

Urban Farm Brings Green to Chicago's West Side

Barry Howard is a founder and principal at Firm clients LG Construction + Development, a high end residential and retail developer and general contractor, and Core Spaces, a nationally-focused student housing developer. So what's next for a successful entrepreneur— why farming of course, urban faming in particular.

Barry is behind a new venture called Herban Produce (silent 'h'– 'urban') located on Chicago's west side. This non-profit urban farm strives to provide fresh produce year-round to the nearby Garfield Park and North Lawndale communities and to some of Chicago's finest restaurants. Herban Produce goes further by providing nutritional education, employment opportunities, and hands-on experience in various aspects of self-sustaining, social enterprise.

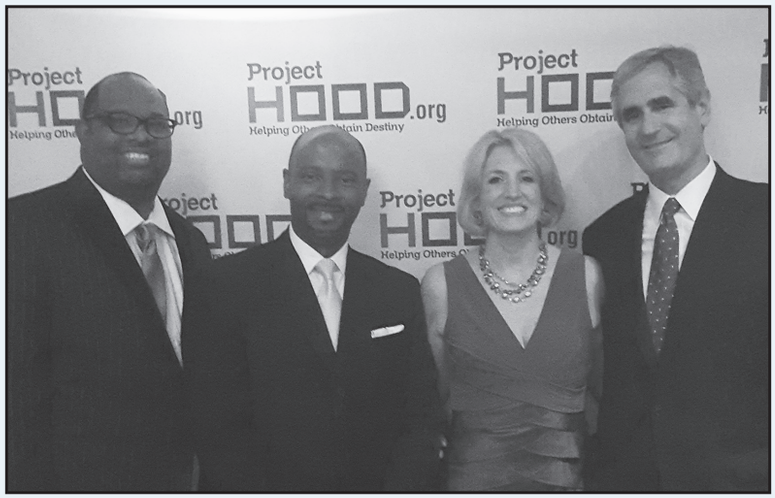
"Food deserts and a lack of basic understanding of nutrition are real problems in many Chicago neighborhoods," says Howard. "Combining our development experience with a desire to help, we think Herban Produce can make good local food available to people in underserved communities. Along the way, we will reinforce healthy eating habits and create jobs too."

An Herban Produce camp group taking a tour of the greenhouse through the outreach farm program before continuing on to the education area to learn about healthy eating.

Herban Produce, located at 2900 West Van Buren, includes a 4000 sq ft greenhouse, a farm stand, raised beds and education area. Produce includes tomatoes, carrots, cabbage, microgreens, lettuce, arugula, radish, salad mixes, herbs, beets, basil, onions, and garlic. The farm is environmentally responsible, using only 10% of the water of traditional in-ground agriculture and the produce is grown locally, taking out the high environmental cost of transporting and keeping produce chilled.

The farm's produce will be sold and distributed to Chicago's thriving culinary community, including The Signature Room on the 95th floor of the Hancock Building — the first major restaurant customer. Herban Produce's restaurant sales will make the organization financially sustainable.

The Firm's Joe von Meier has provided legal real estate counsel to Barry and his business partners for many years. Joe has also handled the legal work in connection with the development of Herban Produce, including the purchase of various parcels. Joe's colleague Mary McWilliams helped the organization achieve its not-for-profit 501(c)(3) status. He also serves on the Herban Produce board of directors. For more information, please contact Joe at 312/840-7063 or jvonmeier@burkelaw.com or visit the Herban Produce website at http://www.herbanproduce.com/.



Project H.O.O.D. Annual Gala

(From left) Pastor Corey Brooks, the Firm's Nick Gowen, IL Comptroller Leslie Munger and her husband John Munger at the Project H.O.O.D. (Helping Others Obtain Destiny) annual Gala, held at Galleria Marchetti on May 27. Project H.O.O.D. is a 501(c)(3) organization, created by Pastor Corey Brooks, that is focused on establishing community and economic development programming for underrepresented youth in Woodlawn and Englewood. Nick Gowen is a member of the organization's board of directors and has been involved with the organization for many years. The organization has received national attention from Good Morning America, the New York Times, Daily Beast, and Huffington Post. To learn more about Project H.O.O.D. or this event, please contact Nick Gowen at 312/840-7088 or ngowen@burkelaw.com.

Litigation After Death:
Or How To Avoid A Bad Heir Day

Over the next 30 years, it is estimated that a whopping $30 trillion — yes, trillion — will pass under Wills and trusts from Baby Boomers to their children, grandchildren, and charities. For descendants who have been disinherited, or believe they have not received their fair share, this means there will be a lot of money to fight over. Before disinheriting a child or reducing their share of benefits, you should carefully consider whether you should do it at all, and if you do, whether you should explain your reasoning in your Will and trust.

Inheritance disputes are as old as the Book of Genesis (Jacob and Esau) and appear to be on the rise. So too are claims that a parent did not know what he or she was doing (lack of mental capacity) when he or she disinherited a child or reduced their benefits, or was improperly manipulated by someone and unable to exercise free will (undue influence).

There is a presumption that parents intend to provide for their children upon their deaths. Intestacy laws are founded upon that presumption. For example, in the event you die without a Will, intestacy laws provide that your assets will pass to your children and spouse, or as estate planners say, "the natural objects of your bounty." While disinheritance runs counter to the presumption that parents intend to provide for their children, every state of the Union, except Louisiana, allows you to disinherit your children, or provide different benefits among them, so long as you do so under a written Will or trust while you are competent and free of undue influence.

Disinheriting a child, or reducing their benefits, often occurs for good reason. For example, parents may have provided one child with more benefits over the years (professional school tuition or a down payment on a house) and want to reduce benefits to that child to equalize the assets among all their children. There are also parents, like Warren Buffett, who are opposed to "dynastic wealth." Buffett, for example, has pledged to give away 99% of his estate to charity and has encouraged other billionaires to follow his lead under *The Giving Pledge*. And then there are situations where the parents and child have become estranged and simply have no relationship, or where the child has a substance abuse problem which the parents are fearful of funding.

The first question to consider before disinheriting a child or reducing his or her benefits is whether you should do it at all due to the fact that there are other options. For example, if your child has a substance abuse issue, you could establish a trust under which he or she is eligible for distributions only upon successfully attending drug counseling and passing periodic drug testing. If you want distributions to your children to be based on their needs by taking their financial status into consideration, you could opt for a trust under which the trustee will make those decisions after you pass.

Gerry Ring

If you are estranged from your child, you could consider using an "in terrorem" provision, a provision used in a Will or trust in which money or other assets are given to a beneficiary, but only on the condition that the beneficiary does not sue to upset the provisions of the Will or trust. If the beneficiary challenges the Will or trust in court, then he or she forfeits the bequest. While courts carefully scrutinize "in terrorem" provisions, we have found them to be effective to dissuade a beneficiary from challenging a Will or trust so long as the amount of the bequest is large enough that a beneficiary would think twice about challenging the Will or trust to try to get more funds.

If the reason for disinheritance is that you are estranged from your child, you need to consider whether there is any hope of reconciliation. While it is true that you can always change your Will or revocable trust if reconciliation were to occur, life — and death — often gets in the way. An unexpected death, or the onset of dementia, will prevent you from undoing the disinheritance.

An American writer, Mary Beth Caschetta, had a very poor relationship with her conservative father in the 1990s. Her father was a staunch conservative and initially unable to accept the fact that his daughter was a progressive gay woman. His view changed over the years and by the time of his sudden death in 2009, he had reconciled with his daughter. Unfortunately, he never changed the Will he wrote in 2000 in which he disinherited his daughter. In his Will, Mary Beth's father adopted the same language Joan Crawford used to disinherit her daughter: "I leave no bequest to my daughter for reasons known to her."

Mary Beth was deeply disappointed and hurt over being disinherited, but she did not litigate over her disinheritance and did not harbor long-term bitterness, as demonstrated by a heartfelt article she wrote about the experience. Joan Crawford's reputation, on the other hand, did not fare as well. A couple of years after disinheriting her daughter Christina, her daughter wrote one of the first tell-all celebrity memoirs called "Mommie Dearest," where we learned that Joan was a cruel, abusive alcoholic who really did not like wire clothes hangers.

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BWM&S Chicago Lawyers Softball League Champs Once Again!

In 1978, firm lawyers won the coveted Chicago Lawyer's Softball League Championship. After a long hiatus, the Firm once again fielded a team. Burke Warren went undefeated only to tie in a weather-shortened final game to finish as 2016 Co-Champions of the League. (back row, from left) Jeff Warren (1978 team), Ed Lesniak (1978 team), Jim Murphy, Eric Bernard, Josh Cauhorn, Jake Jumbeck, Blake Roter, Juanita Sullivan, Aaron Knight, Ben Wieck, Adam Rick (front row, from left) Julie Mallen, Andrew LeMar, and Jaquan Grier pose for a photo at the Firm's softball rally after finishing the season as co-champions. Missing from the photo are Chris Manning (1978 team), Alex Vozza, Anna Kardaras, Eric Vanderploeg and Adam Jung.

RELIGIOUS ORGANIZATIONS

Geoly presents at National Diocesan Attorneys Association Annual Meeting

On May 2, 2016, Firm partner Jim Geoly presented at the annual meeting of the National Diocesan Attorneys Association, an association of attorneys who represent Catholic dioceses throughout the United States. Jim's presentation was on "Handling Risk Overlap: Dioceses and Religious Employees." Jim co-presented with Sr. Sharon Euart, RSM, JCD, a canon lawyer and Executive Director of the Resource Center for Religious Institutes. The moderator was Jeffrey Hunter Moon, Director of Legal Affairs and Solicitor of the United States Conference of Catholic Bishops.

The Firm's Jim Geoly (center) pictured with co-presenter, Sr. Sharon Euart, RSM, JCD (right), and Jeffrey Hunter Moon, Director of Legal Affairs and Solicitor of the United States Conference of Catholic Bishops (left) at National Diocesan Attorneys Association Annual Meeting.

Received a City of Chicago Ordinance Violation?

Blake Roter

Some legal issues that arise in your business seem so minor that it is reasonable to try to resolve them yourself. Resolving a City of Chicago ordinance violation, however, is not one of them. First, Illinois law requires that all corporations and limited liability companies (LLCs) be represented by an attorney in court, even in an administrative hearing to resolve an ordinance violation. Second, if you simply ignore the ticket or notice, the City of Chicago can enter a default judgment against you, assess the maximum fines available, and if they remain unpaid, can begin collection proceedings and cloud the title on your property inhibiting your ability to obtain insurance, refinance, do construction or sell. City of Chicago Ordinance Violations include, among others:

- Building Code Violations (disrepair of porches, concrete, brick, rusting, interior issues)
- Construction Violations (building without a proper permit, improper barricades, no signs)
- Streets & Sanitation Violations (uncut weeds, failure to put up a fence, care of parkway)
- Other Violations (Overweight truck, operating without a business license, snow removal)

If you receive a ticket or notice of violation, the attorneys at Burke Warren have extensive experience and can advise you on how to become compliant with the City of Chicago Codes and will represent your business at the administrative hearing to obtain a positive resolution. For more information, please contact Blake Roter at broter@burkelaw.com or 312/840-7116.

LITIGATION AFTER DEATH

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If after careful thought you want to disinherit a child, or reduce their benefits, the next question to ask is whether you should explain why in your Will and trust. On this point, many estate planners like to keep the Wills and trusts they draft silent. Several articles by estate planners advise that Wills and trusts should only state that a child has been disinherited and not explain why. They believe explaining why could be used against the parent. For example, if a parent explains the disinheritance occurred because the child failed to visit, but the facts demonstrate otherwise, the disinherited child could use the explanation to argue that the parent lacked capacity to disinherit them and seek to have the Will or trust invalidated.

My concern with that approach is that it is a hypothetical that would not likely happen in the real world. If a parent, in fact, did not know whether her children visited her, she should not be amending her estate plan, and it is doubtful that an experienced and ethical attorney would draft such an amendment. Moreover, if a parent was unaware of visits by her children, there would likely be a number of additional examples to show she lacked mental capacity.

From my perspective as a litigator, I believe that in most cases it would be quite helpful to have an explanation of why you disinherited your child or reduced his or her benefits within the Will and trust itself. First, it gives you an opportunity to essentially testify in court after you have passed, which could be very powerful. If your reasoning is sound and not against public policy, the Judge may not only have a better understanding of your intent, but perhaps be in a better position to honor it over claims made by your children.

Second, in the event you have not discussed the details of your estate plan with your children, explaining why you made the decisions in your Will and trust could possibly persuade them not to litigate over it. That appears to be the approach taken by the late Henry Fonda. He disinherited his daughter Jane and son Peter because he felt they were financially secure and did not need his money, but he did include a bequest for his then wife and third child, Amy. In a short paragraph Henry Fonda explained his reasoning as follows:

> THIRD: I am providing primarily for my wife Shirlee and my daughter Amy because they are dependent upon me for their support. I have made no provision in this Will for Jane or Peter, or their families, solely because in my opinion they are financially independent, and my decision is not in any sense a measure of my deep affection for them.

Neither Jane Fonda, nor her brother Peter, challenged their disinheritance. While there is no guarantee that including an explanation in your Will and trust will prevent litigation after your death, I believe that an elegant explanation as to why you chose to disinherit or reduce benefits is preferred to providing no explanation at all.

For more information on this topic, please contact Gerry Ring at gring@burkelaw.com or 312/840-7014.

NEW PARTNERS

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Nick Gowen

businesses on ways to avoid litigation and resolve disputes using alternative measures and has authored articles on various business litigation topics.

Nick's extensive litigation experience ranges from representing entrepreneurs to *Fortune* 100 companies in pre-suit investigations through discovery, trial, and appeal in a multitude of commercial litigation and employment matters including restrictive covenants, trade secret misappropriation, and unfair competition. He also has considerable experience defending *Am Law* 100 and boutique law firms in professional liability matters.

Nick earned his B.A., with *honors*, Phi Beta Kappa, from University of Illinois at Chicago and his J.D., *cum laude*, from University of Illinois College of Law. He was previously a partner at Honigman Miller Schwartz and Cohn LLP (formerly Schopf & Weiss LLP). Please contact Nick at ngowen@burkelaw.com or 312/840-7088.

New healthcare and corporate partner Joseph Hylak-Reinholtz advises healthcare entrepreneurs and providers on business formation, joint ventures, sales, and mergers and acquisitions. He also provides regulatory counsel concerning certificate of need (CON), licensure, HIPAA, and fraud and abuse laws. Joe's experience includes more than a decade working within Illinois government focusing on healthcare, regulatory and complex budgetary issues.

Joe helps healthcare entrepreneurs and providers achieve their business objectives by negotiating and closing transactions while ensuring compliance with ever-changing federal and state healthcare regulations. His clients include hospitals, dialysis facilities, ambulatory surgery centers, nursing homes, assisted living facilities, independent diagnostic testing facilities, and substance abuse treatment providers.

Joe Hylak-Reinholtz

Prior to studying law, Joe served as a senior policy advisor in the Office of the Director of the Illinois Department of Healthcare & Family Services and as a research/appropriations analyst in the Office of Michael Madigan, Speaker of the Illinois House of Representatives. He earned his B.A. from University of Illinois and his J.D., *cum laude*, from Northern Illinois University College of Law. Joe was a partner at Much Shelist before joining the Firm. Contact Joe at jhylakreinholtz@burkelaw.com or 312/840-7122.

Liz Davis

New to the Firm's corporate group, Elizabeth Davis provides merger and acquisition, corporate governance and general business counseling services to a wide range of clients, including private equity funds, strategic investors, board members and startups. She actively partners with buyers and sellers of businesses to learn about their companies in order to help them achieve their individual business goals. Liz brings important industry expertise to the Firm that includes logistics, insurance, food and beverage, manufacturing and healthcare.

Liz serves as outside general counsel to domestic and international companies with respect to all aspects of their commercial needs. In both her M&A and general counsel roles, Liz advises boards of directors and other decision makers on corporate compliance, fiduciary responsibilities and transaction structure.

Before joining the Firm, Liz was a corporate partner in the Chicago office of Nixon Peabody. She received her undergraduate degree (*English*) and her JD (*with distinction*) from the University of Iowa. Liz is a member of the board of the Association for Corporate Growth (ACG) where she also serves as a member of ACG's Chicago Women's Network. Liz can be reached at edavis@burkelaw.com or 312/843-5830.

Firm Attorneys at Have Mercy Event

The Firm was a sponsor of Mercy Home's 10th Annual Have Mercy Event on April 30 at the Trump Tower. The event brings together leading young professionals for a night of dining, dancing, and entertainment to support the boys and girls of Mercy Home. Attendees from the Firm included associates (from left) Alex Vozza, Steve Schuster, Liz Pall, Josh Cauhorn, Julie Mallen, Jim Murphy, Kara Bufalino, and Blake Roter. Mercy Home works with young people, mostly between the ages of 11-18, who have grown up in troubled homes and neighborhoods and provides them with a safe place to grow up and develop beyond the realm of where they came from by focusing on school, building healthy relationships, holding a job, etc. Josh Cauhorn is on the associate board of the organization and active member of the Firm's litigation group. For more information on Mercy Home or this event, please contact Josh at 312/840-7055 or jcauhorn@burkelaw.com.

JUSTICE RESTORED

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and rewards of working for criminal justice reform and Mr. Wrice shared his perspectives as, first, a beneficiary of and, now, an activist in this important work.

Founded in 2011, the Chicago Innocence Center has grown from a local nonprofit into a national center that investigates, exposes, and reforms wrongful convictions and the system in which they occur. They investigate cases in which prisoners may have been convicted of crimes they did not commit, giving priority to murder convictions that resulted in sentences of death or life without parole. The center involves college students, community residents, private investigators and journalists in the reporting process, with the fundamental goal of exposing and remedying wrongdoing in the criminal justice system.

Stanley Wrice was released after serving 31 years in prison, when the CIC successfully demonstrated to the courts that he had been falsely charged, convicted and sentenced (100 years) for a crime he did not commit. Stanley now works as the Chicago Innocence Center's Outreach Coordinator, speaking regularly to groups about how hope and optimism sustained him during his time behind bars — and about how critical the CIC's efforts were in obtaining the overturn of his conviction and his resultant return to freedom.

With her background as a journalist and an instructor in journalism, specializing in investigative reporting, Pamela guides the Center's exemplary team of interns from around the country in employing investigative journalism techniques to explore and expose cases of possible wrongful convictions. Together with the CIC's President/Founder David Protess and a team of interns, the Outreach Coordinator, Program Assistant, and Program Associate work tirelessly to achieve the CIC's goal, as they reach out to witnesses, track down family members, and scrutinize court records. Pamela also performs a great deal of outreach and public education, including regularly speaking publicly about the intersection of journalism and criminal justice and the causes and solutions related to wrongful convictions.

Prior to joining the Chicago Innocence Center as executive director, Pam taught multimedia journalism at Northwestern University's Medill School of Journalism where she won the student-voted top teaching award in 2012. She was also a professor at Brandeis University from 2005-2007 where she taught American Studies, served as the associate director of the Schuster Institute for Investigative Journalism, and the director of the Justice Brandeis Innocence Project.

On July 20, the Chicago Innocence Center celebrated the double exoneration and release of two wrongfully convicted men who spent 23 years in prison. The CIC has contributed to the exoneration of six innocent people since 2011. Find out more about the Chicago Innocence Center at www.chicagoinnocencecenter.org.

Firm Sponsors Tables At National Day Of Prayer Breakfast

(From left in the back row) Glenn Weiss from The Northern Trust Company, Linda Vander Weele from Opportunity International, the Firm's Jim Geoly and Barbara Mill from Koinonia House Ministries, (from left in the front row) the Firm's Mary McWilliams and Jocelyn Flood from Thomas More Society at the National Day of Prayer Breakfast on May 5 at the Union League Club in Chicago. The breakfast includes prayers for Chicago's leaders, education, judiciary government, and media as well as the need for peace. This is the 6th year that the Firm has sponsored a table.

(From left) Lori Mason from the Learning Connection, Kathryn Tack from The John Maxwell Company, the Firm's Mary McWilliams and Janet A. Stiven of Moody Bible Institute at the National Day of Prayer Breakfast

LIKE IT'S 1999

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be tied up in the courts for the next decade or longer.

Despite his immense musical talent and business acumen, Prince's failure to execute an estate plan providing for the distribution of an estate estimated to exceed $300 million will likely be a permanent footnote to his musical and philanthropic legacy.

Ironically, by not having an estate plan, Prince left something to all of us - six valuable lessons that should motivate business owners and family leaders to avoid the mess that results from failing to plan.

You Don't Have to Be Rich…

While only time will tell what happens with Prince's empire, it is clear that he will have no input as to who receives what, when they receive it and under what terms or conditions the inherited property may be used. The courts will control what eventually happens to his estate.

Succession will occur for all businesses. Whether it happens because the owner retires, dies, or becomes disabled, there will eventually come a time when the ownership and management of the company have to be transitioned to the next generation of leaders.

One of the biggest misconceptions about succession planning is that only individuals with taxable estates need to put any planning into place. Nothing could be further from the truth. The typical business owner pours an immeasurable amount of blood, sweat, and tears into building a company, and succession planning is essential to preserving the value of those efforts for the owner's family. If the plan is to pass ownership of the company on to family members, the use of trusts, discounting mechanisms, and other estate-planning techniques can significantly reduce the amount of associated estate and income taxes and maximize the preservation of the owner's wealth. If, however, the plan is to sell to a third party, the succession planning process will help owners identify and address any financial or business issues at an early stage that could undermine the value of the company in the eyes of potential buyers or even be obstacles to completing the sale.

I Get Delirious

Although the events surrounding Prince's death are not yet fully known, the autopsy results revealed that he overdosed from the prescription painkiller Fentanyl. Following his death, many asked what might have occurred if someone had intervened on his behalf. Because Prince never signed any testamentary estate planning documents, it is likely that he never signed Powers of Attorney for Health Care or other documents designating a legal fiduciary to take actions on his behalf in the event of his incapacity.

One of the most overlooked, yet vital, components of a succession plan is the fiduciary. The fiduciary may be the Executor of a Will, Trustee of a Trust or agent under a Power of Attorney for Property or Health Care.

During a business owner's lifetime, a fiduciary can be authorized to make property or health related decisions for the business owner either on an immediate basis or only upon a physician's certification that the business owner does not have sufficient capacity to make his or her own decisions. It is common that a fiduciary's powers will terminate once the business owner regains sufficient capacity to manage his or her own affairs.

At death, the fiduciary is charged with fulfilling the owner's testamentary wishes, which may include overseeing the operation of the company and, or, preparing the company for sale.

If, like in Prince's case, no written authority exists for the appointment of a fiduciary, then it is up to the court to decide who should act in that capacity. As you might imagine, this could set the stage for the first of many legal battles if the beneficiaries have competing interests.

When Doves Cry

Prince's significant philanthropic activities came to light after his death. Prince made many large gifts during his lifetime to many charities, including his church and other civic and social causes important to him. In keeping with his private nature, his charitable giving was typically made on an anonymous basis.

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Chicago River Clean-Up

(From left) Margaret Frisbie, Executive Director of Friends of the Chicago River, Victoria Collado, Rich Lieberman, Andrew LeMar, Luis Collado, Craig McCrohon, Chris Manning, Marty Ryan, and Ben Wieck braved unseasonably cold temperatures and wind to lend a hand as part of Chicago River Day on Saturday, May 14 where they were joined by nearly 3000 people helping to clean up and improve the banks of the Chicago River at 65 sites in the city of Chicago and the suburbs. The Firm group focused its efforts on the banks site near the Bridgeport Art Center. Firm colleague, 11th Ward Alderman Patrick Thompson, joined us later in the day as well.

Although we will never know what portion of his estate Prince would have wanted his favorite charities to receive, as a matter of law a charity does not have a legal right to participate in a decedent's estate unless the charity is specifically designated in the decedent's estate plan or the decedent executed a binding pledge agreement with the charity during his or her lifetime. Because he had no estate plan, and thus made no provisions for charitable gifts, Prince's estate will bear the full brunt of the federal and state estate tax liability on that portion of his estate valued in excess of the currently available "applicable exclusion amount" of $5.45 million. Assuming the combined federal and state estate and inheritance tax rates are 50%, Prince's estate will be looking at an estate tax bill of nearly $150 million. That's enough to make doves skip the crying and seek immediate medical attention!

Let's Go Crazy, Let's Get Nuts

Prince appears to have been survived by a sister and five half-siblings, each of whom may be entitled to a share of Prince's estate. The estate has also been contacted by at least one person who, from the confines of his jail cell, insists he is Prince's son and seven other individuals who claim to have a right to a share of the estate as the children of Prince's predeceased half-sibling.

Unfortunately, legal confusion begets attorneys, and attorneys beget litigation. In light of the fact that many of Prince's family members have hired counsel, at this point the only thing that seems to be certain is that litigation will soon commence and it will be protracted and expensive.

It's easy to see how intrigue about "which child will be picked to run the company" or "who in the family will inherit what" can be such an enormous source of turmoil, and can actually cause delay in the owner coming to terms with planning decisions. To avoid the myriad of potential lawsuits and discontent now swirling around Prince's estate, it is vital for business owners to put their wishes down in writing. While spouses, children, and other family members may not always like the answers, it is important to make sure the family understands the plan. Proactively addressing these questions and communicating the plan goes a long way in minimizing hurt feelings and preventing painful—both emotionally and financially—infighting that can occur after the business owner is gone. The business owner's failure to put his or her testamentary wishes in writing makes the administration of the owner's estate a hundred times more complex and likely results in the exclusion of one or more individuals or charities the business owner intended to benefit. It also leads to the erosion, through protracted legal proceedings, of the very assets the owner intended to distribute to the owner's family, friends and favorite charities.

Party Like It's 1999!

Without any written guidance from Prince, it remains to be seen who will be considered "members of Prince's family" and which members of Prince's family will receive a portion of his estate. And once those questions are decided, the beneficiaries will be free to spend (or invest) their share of the estate in whatever manner they desire without any legal controls. In light of the dollars at stake, this may give new meaning to partying like it's 1999!

Business owners often express their concerns about creating a sense of entitlement in their children. Specifically, they are concerned that an inheritance might inhibit a child's work ethic or, worse yet, lead the child to develop destructive behaviors. In short, they fear their children "blowing" their inheritance and hurting themselves in the process.

A properly constructed succession plan will be designed to take optimal advantage of the current gift and estate tax laws and can be prepared to ensure that appropriate safeguards are put into place to protect the beneficiaries from the taxing authorities, their creditors and themselves. A properly constructed succession plan will also serve to achieve the owner's legacy, which may include benefitting future generations of the family and the company's current and future non-family employees.

Act Your Age Not Your Shoe Size

In succession planning, as in most things in life, it is never too early to start thinking about the future. From a strategic standpoint, more time means more options for deciding how to best structure the transition. From a financial standpoint, starting early provides more opportunity to leverage the currently available gift, estate and income tax benefits, by, among other things, transferring appreciating assets out of the owner's estate to family members.

Preparation is often the difference between success and failure in business. With a strong business succession plan in place, business owners can prepare their companies, families, and employees for a successful future. If you have a succession plan in place and have not reviewed it within the last three years, we suggest that you do so. What was appropriate years ago may no longer make sense. For example, it may be the case that you had school age children when you last reviewed your succession plan and were focused on who would serve as their guardians. Today, those children may be grown up and perhaps good candidates to be designated as successor fiduciaries in your estate and succession plan.

To be sure, Prince's death will be a loss to music lovers all over the world. That said, it is difficult to imagine the additional pain (and expense) imposed on those closest to him by his failure to execute a succession plan clearly identifying the individuals and charities he wished to benefit upon his death.

Jonathan W. Michael is a partner in the Wealth & Succession Planning practice at Burke, Warren, MacKay & Serritella and the primary focus of his practice is business succession planning and estate planning. For more information please contact Jonathan at 312/840-7049 or jmichael@burkelaw.com.

HUD Issues New Guidance on Criminal Background Checks

On April 14, 2016, the United States Department of Housing and Urban Development ("HUD") issued new guidance for interpreting the Fair Housing Act (the "Act") for landlords and property managers who perform criminal background checks in connection with residential rental applications.

The Act, which applies nationwide, prohibits discrimination in rental housing based on race, color, religion, sex, disability, familial status, or national origin. Although a convicted criminal is not a protected class under the Act, courts have held that it is illegal for a landlord to use a criminal conviction as a pretext to discriminate based on race or national origin. An example of this would be a landlord who refuses to rent to an African-American with a criminal conviction; although the criminal conviction is stated as the basis for this denial, the landlord later rents to a Caucasian person with a similar or more serious criminal record.

Brad Ader

Arising from recent court cases, the new HUD guidance expands this rule to provide that even if a landlord has no intent to discriminate, a policy that denies all applicants with a criminal history will likely be a violation of the Act. The new HUD guidance warns that where application of a criminal background check policy results in a disparate impact on entire classes of individuals protected under the Act, the policy is likely unlawful. This means that if a landlord's criminal history-based restrictions apply more often to renters of one race or national origin than another, without justification, such criminal history checks likely violate the Act. Because African-American and Hispanic populations in the United States are subject to significantly higher rates of conviction, a blanket policy of denying rental applications of all persons with criminal convictions may subject the landlord to a disparate impact claim under the Act, even if the landlord had no intent to discriminate, due to the adverse impact such a policy will have on the African-American and Hispanic community.

When courts evaluate disparate impact claims, a burden-shifting process is employed that may be challenging when applied to landlords. First the plaintiff must establish that a landlord's criminal history policy has a discriminatory effect on a protected class of individuals. If the plaintiff can establish this, the landlord must then demonstrate to the court that such a policy is necessary to achieve a substantial, legitimate, and nondiscriminatory purpose. Courts have held that a criminal background check may be a legitimate method to provide for the security and safety of building residents. If the landlord is able to establish that use of criminal history is needed to satisfy a substantial, legitimate, nondiscriminatory interest of the landlord, the burden then shifts back to the plaintiff to establish that the landlord could achieve its goals using another practice that has a less discriminatory effect. If the plaintiff can argue a plausible alternative, then the landlord can be found to be discriminating against a protected class.

In light of these cases and the new HUD guidance, we recommend that landlords and property managers carefully consider how criminal background checks are used as part of the application process — given the potential risk under the Fair Housing Act of a disparate impact claim, as well as the possibility of a claim by an existing tenant against the landlord for failure to properly screen new tenants with criminal convictions.

There is an exception to this rule — landlords can deny applicants who have been convicted of crimes relating to the manufacture or distribution of certain controlled substances, without exposing themselves to charges of undue discrimination. However, this exception does not apply to convictions for possession of controlled substances or arrests without conviction. The HUD guidance warns that denial of a rental application merely due to an arrest without a conviction will not satisfy the landlord's burden of proof described above.

In light of these cases and the new HUD guidance, we recommend that landlords and property managers carefully consider how criminal background checks are used as part of the application process — given the potential risk under the Fair Housing Act of a disparate impact claim, as well as the possibility of a claim by an existing tenant against the landlord for failure to properly screen new tenants with criminal convictions. We recommend that the landlord maintain and implement written policies and procedures designed to mitigate risk under the Fair Housing Act, while still providing a safe and secure environment for all tenants in the building.

For assistance in formulating a criminal background check policy that complies with the Fair Housing Act, please contact Brad Ader at 312/840-7137 or bader@burkelaw.com.

What You Need To Know About Chicago's New Paid Leave Ordinance

On June 22, 2016, the Chicago City Council passed a "Paid Sick Leave Ordinance," joining twenty municipalities nationwide, including New York City, San Francisco, and Seattle, requiring employers within their jurisdictions to provide paid sick leave to employees.

Chicago's Ordinance, which goes into effect on July 1, 2017, will require all employers that (1) employ at least one eligible employee (*i.e.* someone who works at least 80 hours in any 120-day period) and (2) maintain a business facility within the Chicago city limits, to provide at least 1 hour of paid sick leave for every 40 hours worked, up to a maximum of 40 hours per 12-month period. Employees can carry over up to half (20 hours) of their accrued paid sick leave from one year to the next. For employers covered by the Family and Medical Leave Act, each covered employee may also carry over up to 40 additional hours of unused accrued paid sick leave to use for FMLA eligible purposes. Employers must pay covered employees for paid sick leave at the same rate and with the same benefits that the employee regularly earns during hours worked.

Alex Marks

Under the Ordinance, if an employer has a paid time off policy that already meets the requirements of the Ordinance, then the employer is not required to provide additional paid leave. Further, absent any contractual agreement providing otherwise, an employer is not required to provide financial compensation for unused paid sick leave at the time of an employee's termination or other separation.

The Ordinance provides that a covered employee may use paid sick leave when: (1) he or she is injured, or for the purpose of receiving medical care, treatment, diagnosis, or preventative medical care; (2) a member of his or her family (broadly defined) is ill or injured, or to care for a family member receiving medical care, treatment, diagnosis, or preventative medical care; (3) he or she is the victim of domestic violence; or (4) the employee's place of business or the employee's child's school has closed because of a public health emergency. An employer must allow a covered employee to begin using paid sick leave no later than the 180th calendar day following the commencement of his or her employment.

If paid sick leave is reasonably foreseeable, an employer may require up to seven days' notice before leave is taken. If not reasonably foreseeable, notice must be given as soon as practicable. When an employee is absent for more than three consecutive work days, an employer may require certification that the paid sick leave meets the Ordinance's criteria.

Under the Ordinance, an employer may take disciplinary action against an employee, up to and including termination, who uses paid sick leave for purposes other than those set forth in the Ordinance. Conversely, if an employer violates the Ordinance, the affected employee may recover damages in a civil action equal to three times the full amount of any unpaid sick time denied or lost by reason of the violation, together with costs and attorneys' fees.

The Ordinance requires that employers post notices advising employees of the right to paid sick leave, while also providing notice to new employees with their first paycheck.

The Civil Consulting Alliance, a public-private sector collaboration, has estimated that the Ordinance will lead to less than a 0.7-1.5% increase in labor costs for most employers, while providing projected benefits of $116 million annually.

Employers should begin preparing now for the Ordinance, including reviewing their sick leave or paid time off policies, ensuring mechanisms are in place to track employee leave accrued and used, and updating employee handbooks.

Employers should begin preparing now for the Ordinance, including reviewing their sick leave or paid time off policies, ensuring mechanisms are in place to track employee leave accrued and used, and updating employee handbooks.

For more information about the Ordinance, please contact Alex Marks at 312/740-7022 or amarks@burkelaw.com.

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FIRM WELCOMES NEW ASSOCIATE

Jim Murphy

Burke, Warren, MacKay & Serritella welcomes James (Jim) Murphy, a new associate in the Firm's Real Estate and Real Estate Tax groups. Jim's work includes serving Firm clients in matters such as assistance with the sale of a downtown class A office building, purchase and sale of industrial properties, retail leasing, and review of real estate investment operating agreements. Jim also prepares property tax appeals for industrial, office, retail, and residential properties and provides property tax estimate services for budgeting, leasing, and purchasing purposes. Prior to studying law, Jim was an Illinois licensed commercial real estate broker where he represented both landlords and tenants, and also assisted in the property management of various commercial properties. Jim previously practiced law at a boutique law firm specializing in *ad valorem* property tax appeals, property tax incentives, and eminent domain before joining Burke Warren in April.

Jim was born and raised in La Grange, Illinois. He earned his Bachelor of Science degree in Finance from Miami University (Ohio) in 2009 and his J.D. from Loyola University Chicago-School of Law, where he also received a Certificate in Tax Law and competed as a member of the ABA Negotiation Team. While in law school, Jim was a member of the Loyola Community Law Center where he represented indigent clients in legal matters and was appointed by the court to represent two minors in response to their mother filing a petition to discharge their guardian.

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