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Front matter

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Introduction

Privacy and publicity raise important questions for the trust/estate community. As for privacy, the question that is particularly relevant at the moment is whether too much of it creates an opportunity to secrete wealth and therefore poses a threat to tax and law enforcement. As for the right to publicity, the question is whether it may be transferred at death and, if so, how to value it for estate tax purposes and how to plan for its post-death disposition. As is frequently the case, the principle of freedom of disposition – and the question whether such freedom should be constrained – often lurks in the background. Recognizing the importance of these issues, the Editors of the Journal sought articles for this theme issue that would provide policy and/or planning insight on these matters.

To begin, in the first article, Naomi R. Cahn considers the legal rights of donor-conceived people and what factors must be considered when determining the rights same-donor peers should have in intestacy. She explains that changes to family structures have required the law to adapt to address the needs of modern families; assisted reproductive technology has encouraged the development of the Uniform Parentage Act and the 2019 revisions to the Uniform Probate Code that attempt to resolve some of the questions that arise regarding the rights of donors and donor-conceived people. After illustrating the competing interests of donor anonymity and the rights of donor-conceived siblings to connect with each other, she highlights some of the many unresolved issues that persist in the field of trusts and estates regarding donor-conceived people and calls for further resolution of this murky area of the law.

Jeffrey L. Carson and Trace Brooks discuss the relationship between the rights of privacy and publicity. After reviewing the historical development of the law of privacy and publicity and the areas where privacy and publicity overlap and create a valuable, potentially descendible property right, they propose a planning strategy that can allow practitioners to help their clients preserve their commercially valuable publicity rights by utilizing Tennessee trust law.

Eric C. Chaffee looks at the question of transparency in the business-entity context. After exploring the use of trusts as an alternative to the corporation or other forms of business association, he turns his focus to the recently enacted Corporation Transparency Act. Under this federal legislation, disclosure of the identity of those who own an interest in an entity is required. He considers an exception important in the context of trusts implicit in the legislation: Where there is no requirement that a

document or other certificate be filed with the state in connection with the creation of an entity, there is no obligation to disclose. After indicating that the Act serves a valuable function – seeking to deter, for example, money laundering through shell entities – he argues in favor of retaining the trust exception on the rationale that the benefits of permitting certain “socially stigmatized” individuals to enjoy privacy outweigh the costs.

Tye Cressman discusses the nonprobate system and focuses on transfers of cryptocurrency. After providing a brief explanation of the privacy aspects of cryptocurrency, he considers how those who own this form of currency might effect a transfer at death outside of the probate system.

Alyssa DiRusso and Timothy McFarlin suggest that, as a policy matter, the analysis of post-death-publicity rights needs to take into account distributive implications and systemic inequities. They tell the story behind a story Mark Twain published in 1874 in the *Atlantic Monthly* and raise the question whether the portrait of a slave’s life, which Twain recounted in the piece, was appropriated without proper compensation. They conclude with this larger point: that a critical lens with a focus on race and gender serves a valuable function in evaluating the post-death publicity question – if not estate-related issues more broadly.

Glenn G. Fox, Raj A. Malviya, Michael A. Breslow, and Kevin L. Shepherd also discuss the recently enacted Corporate Transparency Act, which improves financial transparency in the United States. This legislation requires disclosures to be made by business entities so each reporting company provides information about its beneficial owners and company applicants to FinCEN in hopes of combating illicit financial transactions that are otherwise possible through the use of anonymous business entities. The authors explain that these new regulatory efforts help bring the United States more in compliance with the FATF Forty Recommendations aimed at combating money laundering and terrorist financing and begin to change the worldwide perception that the United States is a jurisdiction in which financial secrecy is permitted.

Sharon Klein and Jenna Cohn review the developing law on the post-death right of publicity. They consider legislation across the country, discussing some of the key questions, including, for example, the choice-of-law issue. They provide a helpful comparative chart that reflects the differences among the states. They also examine the estate-tax valuation issue, focusing on the Tax Court decision in the Michael Jackson estate. Turning to estate planning for celebrities in light of evolving state law on the post-death right of publicity, they discuss some tax-minimization techniques, including the possible use of charity as a benefi-

ary (as in the case of planning the celebrity Robin Williams had adopted).

Alberto B. Lopez discusses the importance of redaction in adult guardianships. He explains how an attorney's redaction failures can expose adults subject to guardianship to financial, emotional, or social harms. Next, he illustrates how attorneys who improperly redact client information may run afoul of the Rules of Professional Conduct relating to client privacy and competence. By detailing how redaction failures can harm adults subject to guardianship and can cause professional responsibility issues for attorneys, he makes a strong case for using low-tech efforts to confirm that redaction has been completed fully and properly before filing documents, especially in adult guardianship proceedings.

Alex Swanson writes about how the privacy provided by nonprobate transfers of Nazi-looted artwork complicates the efforts of the victims' families to secure restitution. He considers as a solution a constraint on the use of nonprobate transfers for artwork that is suspect. But he rejects this approach on the grounds that it would run counter to the principle of freedom of disposition. Arguing for more transparency in this context, he suggests a public recording system for transfers of what he calls "suspect artworks."

Finally, Allison Tait considers nonprobate forms of transfer from the perspectives of both high-wealth and low-income populations. In terms of the former, she explores the privacy and savings that this form of transfer can offer. In terms of the low-income population, the nonprobate form of transfer is very different. Its use may, for example, reflect the cost of doing formal estate planning.

The Editors hope that they accomplished their objectives and that the readers enjoy and find useful the contributed articles.

