

DNA and an Estate Plan

Quick-Take: While the public's interest in DNA testing continues to grow, it is not without legal consequences for estate planning, with the rise of unexpected heirs.

Background: While watching TV the other night I was amazed at the number of commercials that stressed the fun, and documenting family history value, of DNA testing. Each of the TV commercials' 'pitch' was that a DNA/ancestry kit would be an excellent Christmas gift. Kits like 23andMe are an increasingly popular tool to explore an individual's genetic history and search for more distant relatives. That is all well and good for the millions who now purchase these kits. However, the impact of these DNA test results on another individual's estate plan can be something else that is entirely different.

Problem: When a Will or Trust uses terms like *descendants*, *issue*, *heirs*, and *per stirpes*, to direct the distribution of an individual's estate or Trust, by default those terms also implicate others' potential inheritance rights, either through intestacy, or perhaps as part of a class gift, or under an 'end-of-the-line' *per stirpital* distribution formula, or a potential permissible appointee under a power of appointment. DNA test results can uncover long-lost relatives, illegitimate children, or lead to other surprises when an estate or Trust is to be distributed.

A recent *Wall Street Journal* article (November 29, 2025) described several cases of heirs who suddenly appeared, bearing DNA test results, who asserted claims that have led to million dollar lawsuits over the distribution of inheritances. Sometimes these claims are based on the assertion that the deceased 'would have named them as beneficiaries had the deceased been aware of their genetic relationship.' Other claims are based on DNA claims that they were distantly related to the deceased and therefore they are entitled to participate in the distribution of the decedent's estate. These unexpected claims can result in expensive and time-consuming litigation that consumes an estate's financial resources while placing an emotional strain on family members. In addition, other times the court must then struggle with statute of limitations questions if a trust is to be distributed long after its settlor's death to or among 'my then living heirs or issue.'

Adoption Analogy: For years now a Will or Trust will be drafted to contain a provision that addresses whether an adopted individual is to be treated as the decedent's heir or descendant. That drafting practice got even more complicated when some states started to recognize adult adoptions and a handful of other states began to accept the loose common law concept of 'equitable adoption' based on a lasting close parent-child type of relationship between the decedent and another unrelated person. We learn to draft to add clarity to the testator or settlor's intent. Now we have to deal with those who appear with DNA based claims.

DNA Drafting Response: In an attempt to mitigate these unexpected disputes based on undiscovered heirs bearing their DNA results, estate planning documents like Wills, Trusts, and powers of appointment should:

- (i) Expressly name those individuals who the testator or settlor intends to be a beneficiary and avoid, whenever possible, the vaguer *heir, issue, or descendant* terminology.
- (ii) Expressly state if biological relatives, adopted children, stepchildren, or children born out of wedlock are included in the legal terms' *descendants, heirs, or issue*.
- (iii) Use a revocable Trust, instead of a Will, to distribute an individual's assets so that the fiduciary can avoid having to send copies of the decedent's Will to his/her *heirs*.
- (iv) Require as a condition precedent to a distribution, in the fiduciary's sole discretion, that the potential beneficiary must undergo a more formal DNA testing before distributions are made from the estate or Trust. Higher level DNA tests are very accurate these days, more so than the mass-marketed DNA kits.

Drawbacks: Yet some individuals might not be so eager to disclose that they have potential children from an affair 30 years ago {I had one, who I ultimately persuaded to disclose to his children, who had been totally unaware of their unknown step-sibling for over 30 years.} Similarly, highly sophisticated DNA testing might also reveal that a presumed biological parent is not actually related to a child, and thus the child who thought that he/she was going to inherit will lose that inheritance, unless the 'parent's' estate planning document

expressly includes them as a beneficiary. Many of these disclosures will often reveal emotional or embarrassing family history events that many individuals will simply want to avoid at all costs, so while these types of inquiries need to be made during the estate planning process, there is no guarantee that there will be candor in the disclosures on which the plan will be drafted.

Conclusion: Estate planning documents may have to be revisited in the coming years as Michigan begins to add provision to EPIC to address artificial reproductive technology, such as how long to keep an estate 'open' to allow post-mortem children to be born to a deceased parent, i.e., how long must an estate be administered to allow the surviving spouse-parent to decide (after a sufficient grieving period) whether or not to use frozen embryos and sperm) to produce another child. The growing interest in DNA testing and family history is just one more reason that estate planning documents will need to be reviewed if the goal is to prevent unexpected surprise heirs showing up and claiming a part of a decedent's estate or trust.

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