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LISA MARIE PRESLEY'S AMENDMENT TO "PROMENADE TRUST" CHALLENGED UNDER CALIFORNIA LAW—LESSONS FOR OHIO PRACTITIONERS

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The claim to the King of Rock and Roll, Elvis Presley's ("Elvis"), fame is more than just his iconic coiffed quiff. Elvis' prodigious talent led to a multimillion-dollar net worth, which has provided generational wealth for the Presley family over the past half a century and counting. However, no matter how much wealth the Jailhouse Rock singer and his family accumulated, they still could not escape a public legal inter-family dispute.

HEARTBREAK HOTEL—LISA MARIE PRESLEY'S DEATH AND TRUST ADMINISTRATION

At the young age of 54 years old, Lisa Marie Presley ("Lisa Marie"), Elvis' only daughter, died on January 12, 2023, in Los Angeles County, California.³ Lisa Marie was survived by her adult daughter, Danielle Riley Keough ("Riley"), and her minor twin daughters, Finley Aaron Love Lockwood ("Finley") and Harper Vivienne Ann Lockwood ("Harper").⁴ Lisa Marie's son, Benjamin Storm Keough ("Benjamin"), predeceased her in 2020.⁵

Wisely, during her lifetime after receiving Elvis' massive estate, Lisa Marie established her own estate plan, which included a rou-

tine revocable trust, the Promenade Trust (when referenced in general the "Promenade Trust").⁶ The Promenade Trust held title to Graceland (Elvis' home—for those of you who don't know!), all of Elvis' tangible personal property (including his clothes, cars, and musical instruments), and all of the outstanding shares in Elvis Presley Enterprises (a management company which conducts all Elvis-related business).⁷

On January 27, 2010, Lisa Marie amended and restated the Promenade Trust for the first time in its entirety (the "2010 Promenade Trust").⁸ Priscilla Presley, Lisa Marie's mother ("Priscilla"), and Barry Siegel, Lisa Marie's then acting business manager ("Barry"), were serving together as co-trustees of the 2010 Promenade Trust and executed acceptances and acknowledgments consenting to their trusteeships.⁹ About six years later, on March 11, 2016, Lisa Marie executed an amendment to the Promenade Trust (the "2016 Promenade Trust Amendment").¹⁰ The 2016 Promenade Trust Amendment removed Priscilla and Barry as the current co-trustees of the Promenade Trust, and appointed Lisa Marie as the current trustee of the Promenade Trust.¹¹ Upon Lisa Marie's death, her adult children, Riley and Benjamin, were designated as successor co-trustees of the Promenade Trust.¹²

The newly designated trustee seemed unsurprising. Customarily, a settlor is also the trustee of his or her own revocable trust. It is also common for adult children to be designated as successor trustees. In 2016, both Riley and Benjamin were in their mid to late 20s. Further, a few years later after the 2016 Promenade Trust Amendment, Lisa Marie filed a lawsuit against Barry for

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mismanagement of her assets. The 2016 Promenade Trust Amendment seemed unremarkable, logical, and non-controversial . . .

ALL SHOOK UP—THE PROMENADE TRUST CONTROVERSY

A little over two weeks after Lisa Marie's death, Priscilla filed a petition in the Los Angeles County Superior Court seeking to invalidate the 2016 Promenade Trust Amendment and a declaration she and Barry were the rightful current co-trustees of the Promenade Trust (the "Petition").¹³ Surprisingly, Priscilla did not challenge the terms or the beneficiaries of the Promenade Trust, but was only seeking to retain control of it through her trusteeship. As an aside, Priscilla also filed a concurrent petition regarding Lisa Marie's irrevocable trust, but this article is limited to discussion only relating to the Promenade Trust.¹⁴

Priscilla's Petition alleges technical irregularities of the 2016 Promenade Trust Amendment and suggests it may have been fraudulent. Priscilla's numerous accusations attempting to invalidate the 2016 Promenade Trust Amendment are outlined below.

Priscilla's main argument to invalidate the 2016 Promenade Trust Amendment centers on Lisa Marie's failure to deliver a copy of the 2016 Promenade Trust Amendment to her and Barry, as the then serving co-trustees of the Promenade Trust.¹⁵ Article 1 of the Promenade Trust sets forth the exclusive method of amending and revoking the Promenade Trust:

By a written instrument (other than a Will) that expressly refers to this trust and is signed by me and delivered to the Trustee during my lifetime, I may revoke the trust in whole or in part, may amend any of its

provisions, and may cancel any amendment. **The foregoing method shall be the exclusive method by which this trust may be revoked or amended, or any amendment cancelled.** (emphasis added).¹⁶

Under California law, if the trust instrument "explicitly makes the method of revocation provided in the trust instrument the exclusive method of revocation," the sole method stated in the trust instrument is the only means to revoke a trust instrument, whether in whole or in part.¹⁷ While the 2016 Promenade Trust Amendment is a writing other than a will, which references the Promenade Trust, and bears the signature of Lisa Marie, Lisa Marie failed to notify the then serving co-trustees, Priscilla and Barry, of the 2016 Promenade Trust Amendment. Further, Priscilla claims she never officially resigned as co-trustee of the Promenade Trust.¹⁸

Priscilla also alleges the 2016 Promenade Trust Amendment includes an atypical signature from Lisa Marie.¹⁹ Priscilla calls attention to the fact the 2016 Promenade Trust Amendment was neither witnessed, nor notarized.²⁰ Suspiciously, Priscilla states the 2016 Promenade Trust Amendment's date was missing number "11," and it was filled in on the PDF version three days later, on March 14, 2016, by "rbernste."²¹ Further, the 2016 Promenade Trust Amendment signature page did not include any substantive provisions.²² Somewhat convincingly, Priscilla argues an original of the 2016 Promenade Trust Amendment was never located and therefore, was presumed to be destroyed.²³ Lastly and probably offensively, Priscilla's name was misspelled.²⁴

On June 12, 2023, a petition for approval of a settlement agreement (the "Settlement Agreement Petition") between Priscilla, Riley, Finley, and Harper was filed.²⁵ The

next hearing and motion for approval is scheduled for August 4, 2023.²⁶ Some of the key terms of the unseemly under toned Settlement Agreement Petition are stated below:

First and most importantly, Priscilla confirmed she is not the current trustee of the Promenade Trust.²⁷ Riley is the sole trustee of the Promenade Trust.²⁸ However, Riley did agree to retain Priscilla as a “special consultant” for the Promenade Trust (que an eye roll), but Riley can remove Priscilla with or without cause at any time.²⁹ Priscilla’s compensation for her special consultant role will be an undisclosed annual amount for 10 years, or until her death, whichever occurs first.³⁰ Interestingly, there was an implication Priscilla imprudently invested the Promenade Trust assets, along with Lisa Marie’s other assets, and Priscilla’s investment strategy was “influenced by her [Priscilla’s] desires” and not in the best interest of the beneficiaries.³¹ Riley agreed to pay Priscilla an undisclosed lump-sum payment from Lisa Marie’s other assets, along with up to \$400,000 to cover Priscilla’s legal fees related to the Petition.³² Lastly, Priscilla has the right to be buried at Graceland.³³

DON’T—LESSONS FROM THE PRESLEYS

EXECUTION, AMENDMENT, AND REVOCATION REQUIREMENTS

Technically under Ohio law, a trust instrument is not required to be in writing.³⁴ Further, a trust instrument (if in writing) is not required to be witnessed or notarized.³⁵ Obviously, it is best practice to have a written trust instrument, which is signed by the settlor and trustee, and either witnessed or notarized, or better yet—both.

Under Ohio law, a settlor can revoke or

amend a trust by substantial compliance with a method provided by the governing trust instrument.³⁶ If the trust instrument is silent, the settlor may use any method illustrating clear and convincing evidence of a settlor’s intent.³⁷ In contrast to the California law, Ohio’s statute does not include the “exclusive method” language for amending or revoking a trust. Therefore, Ohio’s approach to amending or revoking a trust is more consistent with honoring the settlor’s intentions, rather than strictly complying with the trust instrument’s stated amendment or revocation requirements.³⁸

A best practice when amending or revoking a trust instrument is to review the current governing trust instrument for the amendment or revocation requirements and then precisely complying with any requirements. Further, if the trust instrument requires actual delivery of a trust amendment or revocation to the trustee, the trust amendment or revocation should include an acknowledgement provision, signed by the trustee, proving the delivery to and receipt by the trustee.

The 2016 Promenade Trust Amendment challenge was preventable. If the 2016 Promenade Trust Amendment was witnessed and/or notarized, this would have eliminated one of Priscilla’s invalidity arguments. More importantly, if Lisa Marie delivered the 2016 Promenade Trust Amendment to the then serving co-trustees, as required by the terms of the Promenade Trust, Priscilla’s central invalidity argument would have been absent.

STATUTE OF LIMITATIONS

Under Ohio law, generally, an action to contest the validity of a trust or trust amendment, must be commenced upon the earlier of: (A) Two years from the settlor’s date of death; or (B) Six months from the date the

trustee sends a trust notice alerting the potential contestant of the two years statute of limitations.³⁹ However, if a trust or trust amendment was declared valid by a court during the settlor's lifetime, no one may contest the validity of the trust or trust amendment.⁴⁰

If a client is creating, amending, or revoking his or her revocable trust in a way which is likely to create controversy, there are a few avenues which will eliminate, or at the very least, limit a potential trust contest action. First, if the settlor is still living, it may be beneficial to seek a declaration of validity of the trust instrument.⁴¹ This declaration will eliminate any validity contests after the settlor's death.⁴² If this option is unavailable, the trustee can substantially limit the statute of limitations for a trust contest, from two years to six months, by including in the trust notice a provision informing the potential contestant of the two years statute of limitations to commence a trust contest.⁴³ Please note, if the potential contestant is not a current beneficiary of the trust who is required to receive a trust notice under Ohio law, this option is impractical. In this case, Priscilla wasted no time after Lisa Marie's death, only 17 days later, to contest the 2016 Promenade Trust Amendment, eliminating any statute of limitations defense.

OTHER PROACTIVE BEST PRACTICES TO AVOID A TRUST CONTEST

As with everything in the legal field, documentation is crucial. Taking detailed notes documenting a client's intentions and all client communications can provide a solid record. A lack of any record, or worse—a vague record, could support future claims of undue influence, testamentary capacity, and/or forgery. Further, if feasible, a client

should openly discuss his or her testamentary wishes with family and/or other expecting beneficiaries. Lastly, a client routinely reviewing his or her estate plan every five years, absent changed intentions, major life events, and/or new tax and legal developments, will ensure your client's intentions are accomplished. When Benjamin passed away in 2020, Lisa Marie never updated her estate plan. Had she done so, she may have corrected any deficiencies in the 2016 Promenade Trust Amendment. But hindsight is always 20/20!

In addition to listening to Elvis' great music, let's also listen to (and learn from) the Presley's trust contest action: (1) Always review the governing trust instrument before amending, restating, or revoking a trust instrument; (2) Eliminate or limit a potential trust contest, when possible; and (3) Document!

ENDNOTES:

³Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 3; l. 3, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

⁴Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 8; l. 27, at 9; l. 1-2, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893). To order copies of materials pertinent to The Promenade Trust dated January 29, 1993 (Case No. 23STPB00893), call Westlaw Court Express at 1-877-DOC-RETR (1-877-362-7387) (additional charges apply).

⁵Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing

the Trustee; (3) Disapproving Modification of the Trust, at 9; l. 6, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

⁶Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 2; l. 19, at 4; l. 19-20, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

⁷Riley Keough's Petition for Approval of Settlement Agreement [Filed Conditionally Under Seal], at 2; l. 2, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jun. 12, 2023), (No. 23STPB00893).

⁸Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 2; l. 19-20, at 4; l. 20-21, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

⁹Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 2; l. 22-27, at 4; l. 21-23, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

¹⁰Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 3; l. 4-6, at 6; l. 9-12, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

¹¹Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 3; l. 6-7, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No.

23STPB00893).

¹²Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 3; l. 7-10, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

¹³Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 2; l. 1-5, at 3; l. 21-25, at 9; l. 13-22, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

¹⁴Riley Keough's Petition for Approval of Settlement Agreement [Filed Conditionally Under Seal], at 2; l. 5-6, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jun. 12, 2023), (No. 23STPB00893).

¹⁵Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 3; l. 11-14, at 7; l. 19, at 8; l. 15-16, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

¹⁶Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 6; l. 20-28, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

¹⁷Cal. Prob. Code § 15401(a)(2).

¹⁸Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 3; l. 19-20, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

¹⁹Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of

the Trust, at 3; l. 16-17, at 6; l. 16-17, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

²⁰Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 3; l. 17-18, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

²¹Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 3; l. 14, at 6; l. 12-14, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

²²Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 3; l. 16, at 6; l. 14-15, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

²³Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 6; l. 17-19, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

²⁴Petition for Order: (1) Determining the Validity of a Trust Provision; (2) Instructing the Trustee; (3) Disapproving Modification of the Trust, at 3; l. 14-15, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jan. 26, 2023), (No. 23STPB00893).

²⁵Riley Keough's Petition for Approval of Settlement Agreement [Filed Conditionally Under Seal], In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jun. 12, 2023), (No. 23STPB00893).

²⁶ <https://people.com/music/priscilla-presl>

[ey-riley-keough-reach-settlement-over-lisa-marie-trust/](https://people.com/music/priscilla-presl).

²⁷Riley Keough's Petition for Approval of Settlement Agreement [Filed Conditionally Under Seal], at 3; l. 3-4, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jun. 12, 2023), (No. 23STPB00893).

²⁸Riley Keough's Petition for Approval of Settlement Agreement [Filed Conditionally Under Seal], at 4; l. 3-4, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jun. 12, 2023), (No. 23STPB00893).

²⁹Riley Keough's Petition for Approval of Settlement Agreement [Filed Conditionally Under Seal], at 3; l. 9-12, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jun. 12, 2023), (No. 23STPB00893).

³⁰Riley Keough's Petition for Approval of Settlement Agreement [Filed Conditionally Under Seal], at 3; l. 8-10, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jun. 12, 2023), (No. 23STPB00893).

³¹Riley Keough's Petition for Approval of Settlement Agreement [Filed Conditionally Under Seal], at 4; l. 9-11, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jun. 12, 2023), (No. 23STPB00893).

³²Riley Keough's Petition for Approval of Settlement Agreement [Filed Conditionally Under Seal], at 2; l. 25-28, at 3; l. 5-7, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jun. 12, 2023), (No. 23STPB00893).

³³Riley Keough's Petition for Approval of Settlement Agreement [Filed Conditionally Under Seal], at 3; l. 15-16, In re The Promenade Trust dated Jan. 29, 1993, as amended & completed restated on Jan. 27, 2010, Cal. Super. Ct. (Jun. 12, 2023), (No. 23STPB00893).

³⁴R.C. 5804.07.

³⁵R.C. 5804.02.

³⁶R.C. 5806.02(c).

³⁷R.C. 5806.02(c).

³⁸R.C. 5806.02(c).

³⁹R.C. 5806.04(A)(1) and (2).

⁴⁰R.C. 5806.04(E).

⁴¹R.C. 5817.10(B)(1).

⁴²R.C. 5806.04(E).

⁴³R.C. 5806.04(A).



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