The Legal Intelligencer

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EXPERT OPINION

Simultaneous Death, Survivorship Clauses and Contingencies

The tragic case surrounding the death of the late Gene Hackman and his beloved wife shows the importance of understanding that while simultaneous deaths are rare, they can happen.

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5 minute read

Trusts and Estates

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When the world learned of the death of late actor, Gene Hackman, and his wife, Betsy Arakawa-Hackman, this past February, figuring out the initial mystery of their causes of death was vital in answering the question of who died first. The tragedy of their nearly simultaneous deaths was heartbreaking, but the question of who actually died first was key to understanding who may inherit their fortune. It has been reported that Gene's will named Betsy as sole outright beneficiary of his estate, so that if she survived him and inherited his estate, that would have meant that Betsy's will would ultimately control the entire fortune (his net worth was reported to be around $80 million). However, if Betsy died first, then Gene's separate assets would pass to the contingent beneficiaries named under his estate plan (although the will is public record, his will poured over into his living trust, which trust document is not of public record and remains a mystery). It should be noted that Betsy's will had a 90-day survivorship clause, leaving her estate to charity if Gene didn't survive her (this would have included Gene's entire estate as well if Betsy survived Gene). The medical report ultimately determined that Betsy died first, having predeceased Gene.

It may be some time until we learn what Gene Hackman's living trust provided and who was named as contingent beneficiary to his late wife.

He was survived by three children from a previous marriage, but it appears that they were estranged.
The tragic case surrounding the death of the late Gene Hackman and his beloved wife shows the importance of understanding that while simultaneous deaths are rare, they can happen. There are stories of couples dying minutes apart of one another from “heartbreak.” In the movie, "The Notebook," starring Ryan Gosling and Rachel McAdams, based on the novel by Nicholas Sparks, the couple died together, holding hands. And, of course, there are times when couples are involved in a fatal accident and die at the same time. It can and does happen. From an estate planning perspective, we have to think about how to plan for such a scenario.

The Pennsylvania Simultaneous Death Act, 20 Pa.C.S. 8501-8505, provides that in the event of a simultaneous death, each person’s property would be disposed of as if he or she had survived, with a few exceptions. Jointly owned property would be distributed one-half as if one owner had survived and one-half as if the other owner had survived. With respect to insurance policies, where the insured and the beneficiary have died at the same time, the proceeds of the policy would be distributed as if the beneficiary died first. One important item to note is that the Pennsylvania Simultaneous Death Act specifically states that the act does not apply in the case of wills, living trusts, deeds or contracts of insurance if there is a provision stating otherwise.

When drafting an estate plan, it is always important to consider a provision clarifying the order of deaths, modifying the default provision contained in the Pennsylvania Simultaneous Death Act, or including an additional survivorship period clause. For second marriages, particularly where there are children and stepchildren involved, while it is generally recommended that assets be left in trust for the surviving spouse (rather than outright), in certain circumstances where an outright distribution is contemplated (often referred to as “I love you wills”), we typically go a

step further than a simultaneous death clause and include a clause with a required survivorship period. For example, when leaving funds to a spouse, the will can provide that the spouse will only inherit the estate if he or she survives by a period of 90 days (or some other period of time, not exceeding six months, which is the longest permissible survival period to avoid not qualifying for the marital deduction under Internal Revenue Code Section 2056). Apparently, Betsy Arakawa-Hackman's will had such a 90-day survivorship clause. The reason for this survivorship clause is because the goal is to provide for the spouse during his or her lifetime, but not leave funds to a spouse only to have him or her distribute those funds to his or her own heirs (possibly children from a prior marriage) days after the first spouse's death.
Sometimes there are other tax reasons to build in simultaneous death clauses. For estate tax purposes, oftentimes it may make sense to fund a trust for a surviving spouse (even for a day) to be able to fully utilize federal estate tax exemptions or generation skipping transfer tax exemptions. This may be important if one of the spouses is the "poorer" spouse, in which case we may want that spouse to be deemed to have survived (which is different than the Pennsylvania Simultaneous Death Act) to be able to take advantage of federal tax exemptions, and, in some situations, the credit for tax on prior transfers.

After considering survivorship clauses, the next step is to carefully build in contingencies if a spouse predeceases or, perhaps due to a survivorship clause, is deemed to have predeceased. An estate plan isn't something that most people revisit too often, so having tiers of contingent beneficiaries built in is important in case one's intended beneficiaries have predeceased (and tiers of fiduciaries are important for the same reason). If the back-up plan in the will does not cover it, then it is possible that a decedent's estate would pass to intestate heirs as if there were no will. This could very well mean that estranged heirs (whether estranged children, in the case of Gene Hackman, or other more remote heirs) could have a windfall, which was never intended.

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