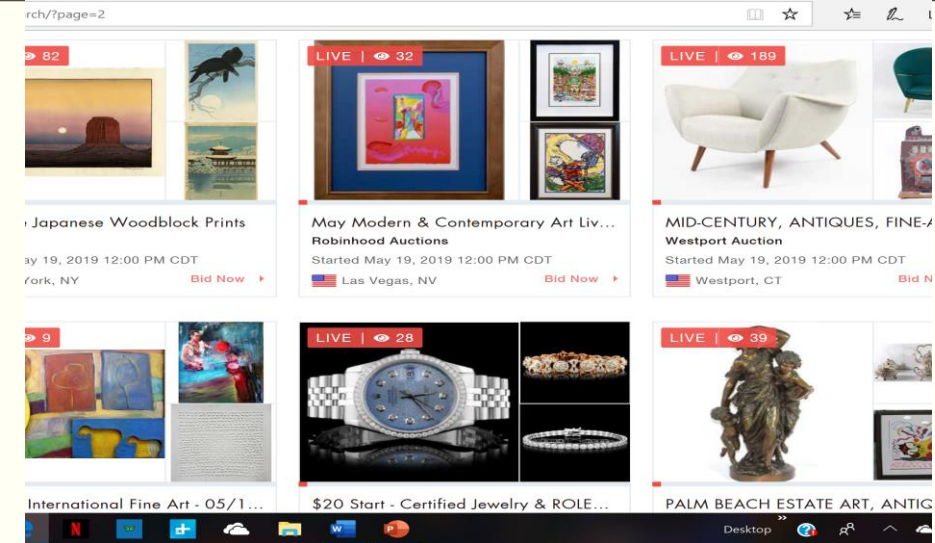




# ESTATE PLANNING FOR STRANGER THINGS

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Particular types of assets and technologies do and will present unique problems for us as planners. Many of these were science fiction when I started practicing in 1968. This is my idea of “strange”. Yours may be different.



Collections create huge problems-Art & Guns, Liquor (wine)



Animals create problems-Pets and Taxidermy Mounts



Prohibited items are problematic-controlled substances and pornography



Technology creates problems—Assisted Reproductive Technology (ART), Digital Assets, Crypto currency, Cryogenics



# Collections

- With websites like [www.liveauctioneers.com](http://www.liveauctioneers.com), ebay, & Craigslist it is too easy for us to become "collectors", to wit *Antiques Roadshow* on PBS running since 1997 in six cities per year with 5-6,500 people bringing their stash for each filming.
- *We need to know if our clients are collectors. We need to ask due to the fact that those collections may become an unwanted asset, become difficult to distribute or a tax burden at worst.*
- *So many within upcoming generations would prefer to take picture and sell the collection.*
- *What does the client want?*
- There are many types of collections. I cannot cover them all. I have just picked a few to discuss because of their interest to me. All collections have similar issues. These are illustrative.



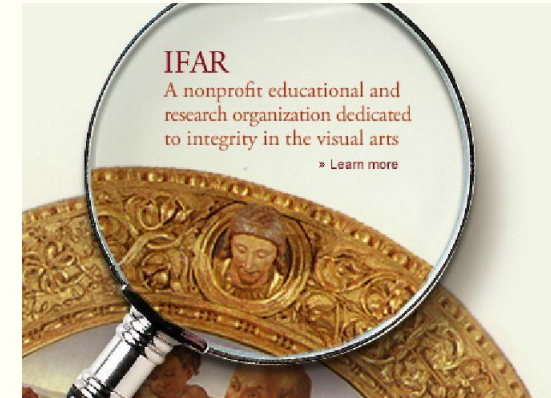


# ART COLLECTIONS

1. Estate tax return requires appraisal by a “qualified appraiser” per Treas. Reg. §20.2031-6(d).
2. Under IRC §§6662(g) and 6662(h) penalties apply (20% and 40%, respectively), for substantial valuation misstatements and gross valuation misstatements. Appraisers can be personally penalized for knowingly furnishing such an appraisal.
3. Condition, blockage, hammer price at auction including buyer’s premium, restrictions on display, authenticity and fractional interest ownership can all impact valuation.
4. Forgeries are not necessarily worthless; stolen property not returned to its owner within a reasonable period of time gets no deduction for return. It must be included.
5. “Statements of Value” can be secured from the IRS Art Advisory Panel for \$6,500 for one to three items and \$300 per add’l item submitted with the taxpayer’s appraisal-generally available for pieces \$50,000 or more. See <http://www.irs.gov/Individuals/Art-Appraisal-Services>

# ART COLLECTIONS (CONT'D)

6. One can secure preliminary information as to worth from sites like Prices4Antiques, askArt, ArtPrice, FindArtInfo (includes artist signatures) based on past sales of similar items.
7. Serious collectors should instruct fiduciaries as to retention and/or sale and channels for sale, i.e., dealers, auction (local or international based upon artist).
8. Fiduciary should consider engaging an art advisor from the Association of Professional Art Advisors (APAA) [www.artadvors.org](http://www.artadvors.org).
9. Insurance of collection is an issue that a fiduciary should consider; client may not insure because considered irreplaceable. No excuse for fiduciary.
10. Security of collection is responsibility of fiduciary. Potential thieves may be family members who want to “reduce the taxable estate”.
11. Storage is another critical issue for fiduciary.



## ART COLLECTIONS (CONT'D)

12. Ownership is a critical issue often taken for granted by the owner. It is important for fiduciary to confirm. See the International Foundation for Art Research <https://www.ifar.org/authentication.php>, Art Loss Register [www.artloss.com](http://www.artloss.com) and National Stolen Art File <https://www.fbi.gov/national-stolen-art-file> to determine if piece is reported as stolen.

13. Other laws including the Holocaust Expropriated Art Recovery Act of 2016 (HEAR Act), 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Cultural Properties [www.unesco.org/cultnatlaws](http://www.unesco.org/cultnatlaws), the National Stolen Properties Act of 1934, the Archaeological Resources Protection Act and the Native American Graves Protection and Repatriation Act are all sources that may provide valuable information as to potential claimants.



# ART COLLECTIONS (CONT'D)

14. One of the reasons that ownership verification is so critical is that the auction house agreements ask for representations and warranties as to clear title. Sotheby's for example provides a 5 year warranty as to clear title and an indemnification from the seller client or fiduciary. Failure to deliver can have serious consequences.

15. Title insurance from a company like ARIS Title Insurance (Argo Group) for pending sales insuring against theft, import and export defects, liens, encumbrances, and illegal or unauthorized sales may be warranted. Defense costs are included. Premium depends upon risk analysis and value of the piece.



How to build a collection —  
expert advice from Christie's  
specialists

Now we are talking about potential jail time for ignorant fiduciary actions.

Knowledge of the regulatory framework is critical.

The Gun Control Act of 1968 (GCA) categorizes firearms as either Title I or Title II firearms.

Title I firearms, i.e., rifles, shotguns and handguns are the bulk of US firearms. See [https://en.Wikipedia.org/w/index.php?title=Gun\\_laws\\_in\\_the\\_United\\_States\\_by\\_state&oldid=840387924](https://en.Wikipedia.org/w/index.php?title=Gun_laws_in_the_United_States_by_state&oldid=840387924) for summary of all state gun regs. Title I items cannot be transferred to a “prohibited person”, i.e., one who is a convicted felon, illegal alien, adjudicated mentally deficient, committed to a mental institution, convicted of misdemeanor domestic abuse, dishonorably discharged veteran, a citizen who has renounced citizenship OR the user of any illegal drug.

4. The National Firearms Act of 1934 defines Title II firearms as short barreled rifles and shotguns, machine guns, silencers, destructive devices like rockets, grenades, bombs and “AOWs” or any other weapon. These are all NFA weapons.

# GUN COLLECTIONS



U.S. Department of Justice  
Bureau of Alcohol, Tobacco, Firearms and Explosives

Application for Tax Paid Transfer and  
Registration of Firearms

OMB No. 1540-0047 (06/2010)

1. Type of Transfer: (Check one)  
☐ 1. Intrafamily Transfer  
☐ 2. Other

2. Transferor's Name and Address (Include street name, if any) (See instruction 1d)  
Name: \_\_\_\_\_ Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

3. Recipient's Name and Address (Include street name, if any) (See instruction 1d)  
Name: \_\_\_\_\_ Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

4. Description of the Firearm (Complete as a group) (See instruction 1e)  
a. Make and Model of Firearm: \_\_\_\_\_ b. Type of Firearm: (See instruction 1e) \_\_\_\_\_ c. Gauge or Caliber: \_\_\_\_\_ d. Overall Length: \_\_\_\_\_ e. Serial Number: \_\_\_\_\_

5. Additional Description or Data Regarding the Firearm (Check additional sheet if necessary)

6. Signature of Transferor (If required) (See instruction 1f)  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

7. Signature of Recipient (If required) (See instruction 1f)  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

8. Signature of Notary Public (If required) (See instruction 1f)  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

9. Signature of ATF Official (If required) (See instruction 1f)  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

U.S. Department of Justice  
Bureau of Alcohol, Tobacco, Firearms and Explosives

Application for Tax Exempt Transfer and  
Registration of Firearms

OMB No. 1540-0047 (06/2010)

1. Type of Transfer: (Check one)  
☐ 1. Intrafamily Transfer  
☐ 2. Other

2. Transferor's Name and Address (Include street name, if any) (See instruction 1d)  
Name: \_\_\_\_\_ Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

3. Recipient's Name and Address (Include street name, if any) (See instruction 1d)  
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9. Signature of ATF Official (If required) (See instruction 1f)  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_



# GUN COLLECTIONS (CONT'D)

5. The Bureau of Alcohol, Tobacco and Firearms (BATF) regulates the NFA Registry where all NFA Weapons must be registered. Possession or transfer of an unregistered NFA Weapon is a crime per 26 USC §5861(e). There is no going back and registering grandpa's full-auto AR16 that he brought back from Vietnam or the silencer he made in the garage. These are contraband items which should go to law enforcement.

6. The transfer of an NFA Weapon requires the signature of the Chief Local Enforcement Officer (CLEO) and the filing of a Form 4 with photo, fingerprints and \$200 filing fee. A fiduciary making such a transfer must file a Form 5 and is exempt from the \$200 tax. Note well that the Prohibited Person restriction applies in all events. Be aware that you MUST have your client sign a Form 2848 (Power of Attorney) in order to talk to the BATF to confirm registration of an NFA Weapon. (651)726-0220.

7. A Prohibited Person who owned NFA Weapons prior to disqualification can continue to own, but can only sell or transfer, not possess. He can give to a friend or family member who will not let him use or possess.

THE  
\_\_\_\_\_  
GUN TRUST  
Dated \_\_\_\_\_

## GUN TRUST



# GUN COLLECTIONS (CONT'D)

8. 27 CFR Part 479 provides that a executor, administrator or personal representative may hold a decedent's registered NFA weapons without such possession amounting to a transfer (during the period of probate). Further the PR may, after filing a Form 5, transfer the registered firearms to any beneficiary without paying a tax. Transfer to a non-beneficiary requires a Form 4 and tax payment.
9. Transfers of an NFA weapon to beneficiaries as well as non-beneficiaries across state lines requires BATF approval.
10. Gun Trusts are intended to avoid ownership, transfer and usage rules which would otherwise apply. A trust can name a number of trustees, all of whom may own and use the same NFA weapon if they are also among the named trust beneficiaries. See sample attached. Trustees, settlors and trust protectors must submit ATF Form 5320.23 "Responsible Person Questionnaire" with fingerprints and photo. Gun Trusts avoid the problems with dementia by appointing a successor trustee (requires Form 5320.23).
11. Gun collections need to be appraised by a licensed gun dealer (FFL). See also, Blue Book of Gun Values, S.P. Fjestad.
12. A transferee should certify to the fiduciary that they are not a Prohibited Person (list disqualifications on receipt).
13. Gun trustee must determine that a beneficiary is in legal compliance before permitting usage of or distributing an NFA weapon.





# WINE (LIQUOR) COLLECTIONS

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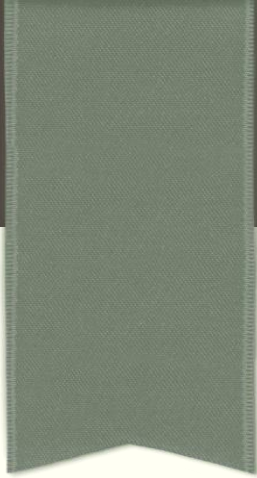
- Large quantities of wine and liquor create a problem for a fiduciary who must liquidate in order to ultimately make distributions. An alternative would have been to bequeath the collection in whole or part to beneficiaries, if the planner knows about the collection.
- As we know, it is illegal to sell wine or liquor without a license. You cannot sell over the web without being licensed in your state.
- A fiduciary needs to sell a collection to a licensed dealer (after receiving proof of licensing) or to an wine auction house.
- Small quantities can be destroyed.
- A fiduciary should petition the court for instructions if beneficiaries have objections to a proposed sale.





# TAXIDERMY COLLECTIONS

1. The transport or sale of any part of an endangered species is a violation of the Minnesota Endangered Species Statute and associated Rules. Minn. Stat. §§84.0894-84.09; Minnesota Rules Chapter 6134 and Minnesota Rules, Parts 6212.1800 to 6212.2300. Despite compliance with federal law, contacting the DNR is a must.
2. Federal laws that apply to taxidermy include the Migratory Bird Treaty Act, the Bald Eagle and Golden Eagle Protection Act, the Endangered Species Act, (ESA). The ESA provides for protection to certain plant and animal species worldwide that are federally listed as "endangered" or "threatened". Mounts of these species (including ivory) cannot be sold at estate sales or auctions unless the fiduciary can prove that they are "antiques". Misdemeanor convictions carry up to \$500 fines and six months in prison or both. Felony convictions carry up to \$2,000 fines and two years in prison or both. All advertised sales must note that permits are required.
3. To qualify for an ESA "antiques" exemption it must be shown that the item is 100+ years old, it is composed in whole or part of an ESA listed species, it has not been repaired or modified with such species after 12/27/73, it came in through an "endangered species antique port" (pre 9/22/82 exceptions apply). Sale in interstate and foreign commerce is permitted, however, one must still comply with CITES which requires permits for cross border sales. A "worked antiques" exemption applies to items acquired pre June 1947 and worked into jewelry.
4. Other "killer" penalties apply under the Marine Mammal Protection Act, e.g., polar bears---\$100,000 fine, 1 yr jail.
5. Probate Court cannot authorize sales which would violate any of these acts.



# PETS AND PET TRUSTS



1. Leona Helmsley disinherited two grandchildren and left \$12,000,000 to her Maltese “Trouble” in a Pet Trust—court reduced funding to \$2,000,000.
2. Pet Trusts recognized in MN. Minn. Stat. §501C.0408. All states have pet trust laws. MN was last to adopt. Trust ends upon the death of last remaining pet alive at decedent’s death.
3. The trust can be set up as a testamentary trust, part of a rev tr or a stand-alone trust. It usually has a trustee who manages the funds and a care provider. There is no cap on the amount in the trust, just not “excessive” for the number of animals, otherwise court adjusts. The trust can provide for any number of animals, all of whom must be living at the time of the decedent’s death. The trust cannot last more than 90 years notwithstanding the lifespan of pet tortoise’s, eels and some macaws. Designate remainder or goes to heirs at law.
4. No tax deduction for distributions for benefit of pet/beneficiaries



## CONTROLLED SUBSTANCES

1. The presence of controlled substances is a problem, particularly if in large amounts combined with large amounts of cash.
2. Minn. Stat. §609.5314 provides for administrative forfeiture of certain property seized in connection with a controlled substance seizure. This includes the seizure of money, jewelry, firearms. An administrative hearing is provided for.
3. The owner, in this case the fiduciary must sue in conciliation court or district court to set aside the forfeiture and be prepared to rebut the presumption that the cash was the product of illicit sales and, hence, forfeitable.
4. Fiduciary should immediately petition court for instructions upon discovering such assets.

## PORNOGRAPHY



- 1. Pornography, whether in digital form on a computer, hard copy, or an animate object such as the exotic antique Japanese carved ivory Netsuke is a serious problem for the fiduciary.
- 2. It may have considerable value, but its possession may be illegal; selling, attempting to sell, giving it away or distributing it may subject the fiduciary to criminal prosecution under Minn. Stat. §617.241.
- 3. Culture changes and so does the perception of what is pornographic; great works of what was considered pornographic art have now become acceptable and carry considerable value. Anyone who has seen the erotic temple carvings in Khajuraho, India knows that "I knows it when I sees it" changes. There may be great value at hand.
- 4. The fiduciary should petition the court for instructions in the event that there is any doubt as to how the material should be handled. Valuation is going to be a real dilemma, particularly inasmuch as that may dictate whether the items should be retained. I don't know any pornography appraisers.







# TECHNOLOGY CREATED CHALLENGES

Not to be ignored.



# DIGITAL ASSETS

1. Minnesota's Revised Uniform Fiduciary Access to Digital Assets Act, Minn. Stat. §§521A.01 et seq. places the responsibility for properly planning for digital property upon knowledgeable estate planning professionals. The Act does not give fiduciaries access to accounts even if blanket authority is included in estate planning documents.
2. Digital assets include travel reward programs, social and professional networks and financial accounts (including cryptocurrency). These can become unmanaged and subject to loss.
3. The MN act extends the traditional power of a fiduciary to manage tangible property to include management of a person's digital assets. The act allows fiduciaries to manage digital property like computer files, web domains, and virtual currency, but restricts a fiduciary's access to electronic communications such as email, text messages, and social media accounts unless the original user consented in a will, trust, power of attorney, or other record.



# DIGITAL ASSETS (CONT'D)

5. RUFADAA establishes a 3-tier structure for fiduciary access.
  - a. If internet provider has established an online tool such as Facebook's Legacy Contract or Google's Inactive Account Manager for fiduciary access, that tool trumps everything else.
  - b. No online tools? Then will, trust, POA or other record overrides a general direction in the internet service provider's terms of service agreement.
  - c. if neither of the above apply, then internet service provider's terms of service rule; if fiduciary access not addressed, then default rules of RUFADAA apply.
6. Fiduciary commits a crime by accessing without authority.
7. Identify digital assets and passwords; determine what client wants done; appoint digital fiduciary; (revise statutory short-form POA to give specific authority under statute); discuss privacy concerns; obtain and use password manager and digital asset manager. These programs will continue to develop and improve.
8. Determine if client has any cryptocurrency accounts at Bitcoin, Ethereum or Litecoin and secure access to same.





# ASSISTED REPRODUCTIVE TECHNOLOGIES (ART)

Minn. Stat. §524.2-120. Subd. 10 provides as follows: “Exclusion of posthumously conceived children”. Notwithstanding any other provision of this section and subject to section 524.2-108 (providing that a fetus in gestation at the time of decedent’s death must survive for 120 hours to be deemed to have survived), a parent-child relationship does not exist between a child of assisted reproduction and another person unless the child is in gestation prior to the death of such person,” Minnesota is one of 4 states to so exclude children conceived posthumously,



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## ART (CONT'D)

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- 1. Frozen gametes, i.e., eggs and sperm are almost without exception considered to be personal property.
- 2. The laws regarding posthumous conception vary greatly throughout the country. Planning for a Minnesota resident should take into consideration the fact that a couple using ART may move to a state where the law would permit posthumous conception.
- 3. If you become aware that client is using ART, one must review the agreement with the facility to insure that they have properly considered options after death. At least two cases resulted in destruction of frozen sperm because the donor checked the “destroy” box rather than the “I leave it to my spouse” box.. Consent is a key issue.
- 4. Will such property become the subject of sale in the future? What would samples from great athletes, singers, even great lawyers be worth on the market? Would these be items for contribution (like undeveloped IP) to an irrevocable trust for the benefit of children and grandchildren?
- 5. 25 states have enacted statutes addressing the question of whether posthumously conceived children are heirs. 20 say “yes” under certain conditions.

## ART (CONT'D)

How do we address some of these issues as planners:

- Determine whether client has any frozen genetic material or is considering same.
- Discuss posthumous conception wishes and who can make that decision. Include in will and trust.
- Do not rely upon omitted heir statute for inclusion; be specific about whether posthumously conceived child should be included as an heir. Sample language proposed in Estate Planning for the Modern Family by Goff, Kamil and Leimberg”

*“a person shall be deemed to be living at a designated point in time if such person then is in utero and is born alive. In addition a person who inherits the genes of a parent who was deceased before such persons gestation shall be considered the child of the deceased parent deemed to be living at such parent’s death if (1) the deceased parent evidenced his or her intention in writing to permit his or her spouse (or other authorized person) to use such parents genetic material to produce a child to raise as the spouse’s own child, (2) the deceased parent’s spouse provides notice of an intention to utilize such genetic material to the trustee with 6 months of the deceased parent’s death, and (3) that person is born before the later of two years after the death of the deceased parent or three years after the birth of another person who is considered the child of the deceased parent for purposes of this instrument”*

None of this of course will help today in Minnesota with its current statutory definitions. Times may change.





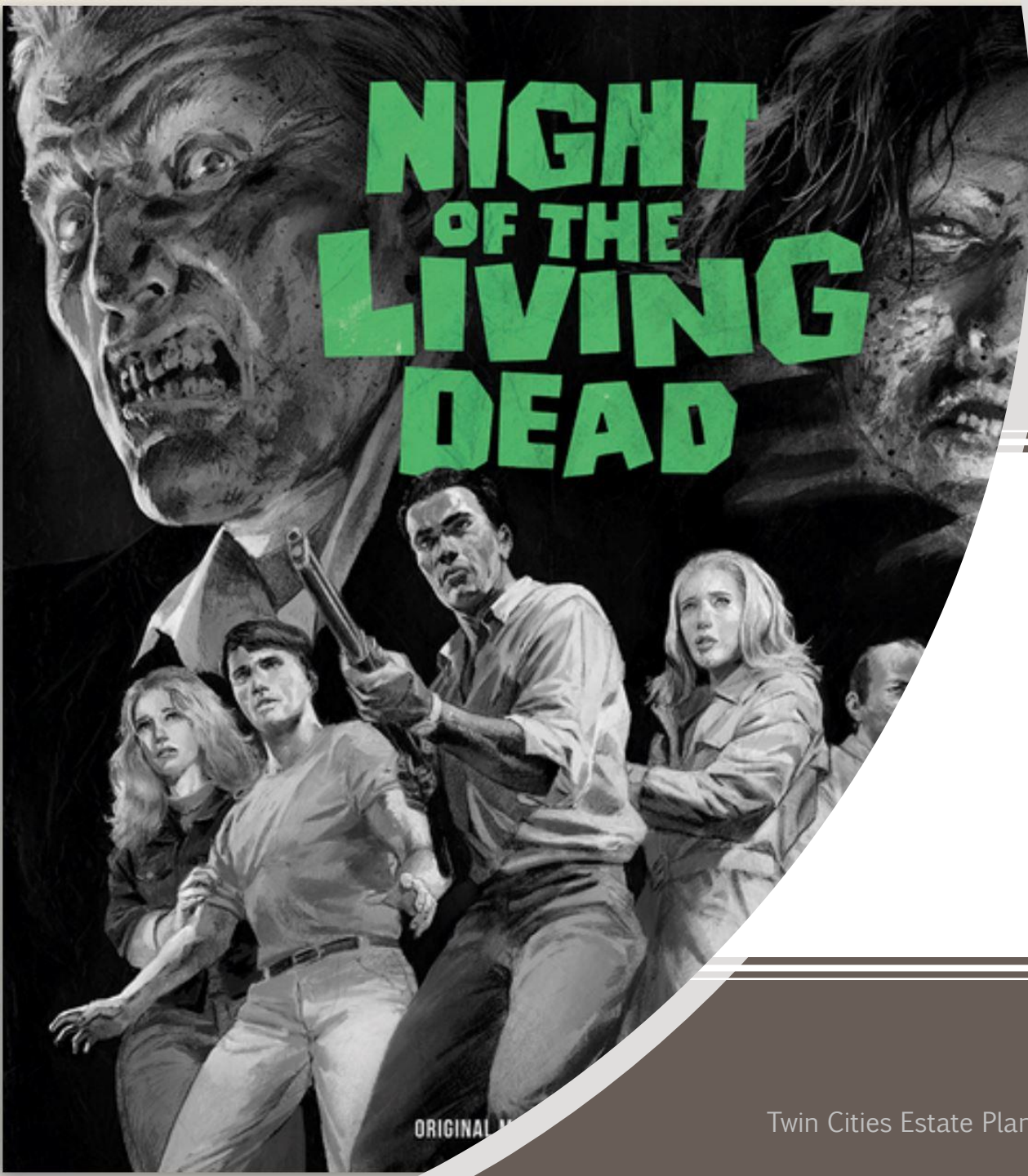
## ART (CONT'D)

5. Be careful about statements that beneficiary status is determined by a genetic test and a DNA test. Determine client's intent regarding designer babies wherein replacement of some of the mother's mitochondrial DNA has occurred. The child may have genetic material from more than two people. This procedure was performed in New Jersey on more than 30 women before it was barred by the FDA in 2001.

7. Determine the client's intent! Include hypotheticals in questionnaire to illicit intent.

8. Consider using broad powers of appointment to solve questions as to whether an individual is a "descendant" without regard to the trust definition of same.

9. Advise clients as to how definitions of descendants in old documents, e.g., "legitimately born". What can be done if this is not the client's intention? Decanting?



# CRYONICS— (PERSONAL REVIVAL TRUSTS)

ORIGINAL



# PERSONAL REVIVAL TRUSTS

- 1. Cryonics is an experimental procedure that has the goal of preserving a human body (or at least the brain) for decades or centuries until that time when medicine and tech can restore the subject to a version of life. It is, incidentally unproven.
- 2. There are currently 400 “subjects” in the tank, including Ted Williams and Walt Disney. Cryonics companies include Alcor in Arizona (\$200,000), Cryogenics Institute in Michigan (\$22,000 cost) and KrioRus in Russia. Frozen frogs and insects have been brought back to life. Some think this might be a scam. Dehydrated body in -328 nitrogen. First “cryopatient” was preserved in 1967.
- 3. The point of a PRT is to insure that the client has sufficient funds when they are revived. The PRT names the client as grantor and beneficiary. Rule of Perpetuities can be a problem. Draftsman should include cloning provisions to permit cloning of the subject as an alternative. IRS won’t commit to permitting use of previous social security number. They won’t answer the question of “new person?”
- 4. Be sure to anticipate lawsuit from disgruntled disinherited heirs. In terrorem clause, if enforceable, is probably a good idea. Put a termination date on the trust and engage a trust company that’s been around for awhile. Provide for cloning using cryofrozen DNA.

More promising idea.





CONCLUSIONS---  
Change your  
questionnaire to elicit  
“stranger”  
information



1. Provide indemnification for fiduciaries.



2. Consider inclusion of decanting provisions and trust protector provisions for making changes to address future which we cannot see now.



3. Consider *in terrorem* clauses where enforceable.



4. Consider “Quiet Trust” provisions to avoid stirring the pot.