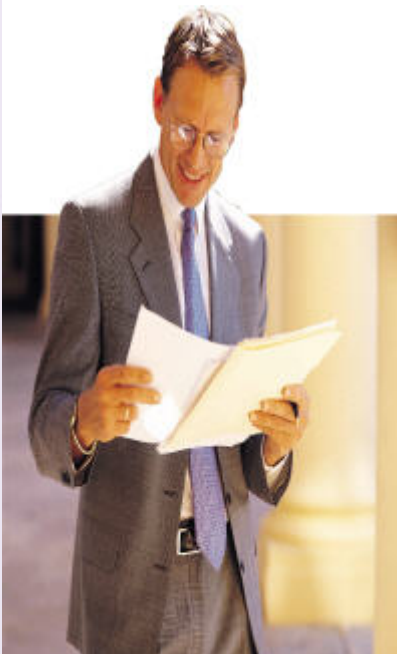


# ESTATE PLANNING NEWS



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## Inheritance Rights of the Posthumously Conceived Child

Anthropology professor, Robert Netting, and his wife, Rhonda Gillett-Netting, were trying to get pregnant. Two years and two miscarriages later, Robert was diagnosed with cancer. Fearing that chemotherapy might render him sterile, Robert deposited his sperm for future in vitro fertilization, hoping he and Rhonda could still have children.

Although cancer took Robert's life within just three months, he made clear his intention that Rhonda could use his sperm to conceive. She did. Now Rhonda is the proud mother of twins – a boy named Piers and a girl named Juliet.

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Law Office of Nicole A. Davidson

1092 Gardenia Ln., Concord, CA 94520-4485

Tel/Fax: 925-689-6890 • Cell: 510-919-8389

E-mail: [nicoledavidsonlaw@gmail.com](mailto:nicoledavidsonlaw@gmail.com)

Website: [nicoledavidsonlaw.com](http://nicoledavidsonlaw.com)

# Estate Planning News

## Announcements

### Charitable Trusts

The Department of Justice, Attorney General's Office, is not requiring charitable remainder trusts to register with or report to the Attorney General's office until after the death of the last trustee donor/beneficiary. At that time, the trust must register and submit its final accounting.

### Corporate Scam Alert!

Many corporate clients have received a solicitation from the Corporate Compliance Recorder in Los Angeles. The solicitation appears to be an invoice from a governmental agency, requesting a \$125 fee and disclosure of meeting minutes.



## Tip of the Month

### **Beneficiary Designations for Minor Children**

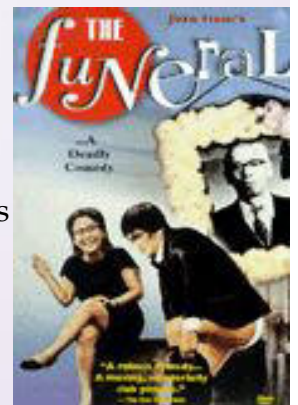
Have you designated minor children as beneficiaries under life insurance policies or retirement accounts? If so, verify that you appointed a custodian to manage benefits paid before the child's 18th birthday. Failure to name a custodian may result in the account being frozen and unavailable for intended use!



## Entertainment

### **The Funeral (1984)**

Director Juzo Itami shows the separation between traditional Japanese values and the younger generation. When her father unexpectedly dies, modern wife Chizuko and her husband, Wabisuke, must plan a 3-day Buddhist funeral involving complex rituals and exorbitant expenses. The motley crew of mourners includes a gaggle of relatives - and Wabisuke's mistress!



# Estate Planning News



If you have built castles in the air,  
your work need not be lost;  
that is where they should be.  
Now put the foundations under them.

-- HENRY DAVID THOREAU

## Inheritance Rights

(Continued from page 1)

Rhonda stepped into the legal spotlight when she challenged the Social Security Administration's denial of survivor benefits to the twins. Insurance benefits are generally paid to the surviving spouse who cares for a decedent's dependent child(ren). The term "child" is defined under the intestate succession laws (i.e., laws governing the passing of property when someone dies without a will) of the state where the decedent resided.

If the twins had been conceived before Robert died, they would be considered his children under the intestate succession laws of most states. However, few states have kept up with the advances in reproductive technology, and as a result the status of posthumously conceived children remains uncertain.

### **California's New Law**

In September 2005, the California legislature passed a bill which amends Sections 249.5, 249.6 and 249.8 of the California Probate Code. These sections relate to the inheritance rights of children conceived and born after the decedent's death.

Under the new law, a posthumously conceived child may inherit from his or her deceased California-resident parent if the

posthumously conceived child (or his or her representative) proves by clear and convincing evidence that all of the following conditions are satisfied:

- (1) the decedent left a signed and dated written consent to posthumous conception;
- (2) written notice that the decedent's genetic material is available for posthumous conception was provided to the trustee or personal representative within 4 months after the decedent's death; and
- (3) the child was in utero within 2 years of the decedent's death.

A trustee or personal representative who receives a timely notice, or has actual knowledge, is prohibited from distributing the decedent's property unless the birth of the posthumously conceived child(ren) will not effect any of the following:

- (1) the proposed property distribution;
- (2) the payment of death benefits;
- (3) the determination of property rights; and
- (4) the right to claim a probate homestead or family allowance.

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# Estate Planning News

## Inheritance Rights

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If the decedent's property was distributed, a posthumously conceived child with a superior claim may hold the recipient personally liable for the value of the property – up to its fair market value on the date of receipt. If property is fraudulently secured, the penalty increases to three times fair market value.

### **Practical Impact**

Rather than relying on state legislatures to keep pace with technology, people who have stored or plan to store genetic material should specifically address the question of posthumous conception in their trusts and wills. Key terms, including “child,” “issue,” and “descendant” can be defined to include or exclude children conceived after death.

The rights of posthumously conceived children must then be weighed against the interests of spouses, living children, and other intended beneficiaries. For example, a thoughtfully drafted estate plan would provide for the creation of at least two trusts: one trust that is immediately available for living beneficiaries and another trust that is set aside for posthumously conceived children. If genetic material does not produce offspring within a reasonable time, the second trust identifies alternate beneficiaries. This arrangement plans for

dependent beneficiaries, eases administration, and provides closure.

Family dynamics are important, especially considering the perverse incentives that may arise in adversarial estate situations. In the case of Robert and Rhonda, who were 59 and 38-years-old respectively, let's assume that Robert had two adult children, Billy and Cindy, from a prior marriage, and that Robert's estate plan left 50% of his estate to Rhonda and 50% of his estate to his children. Should Billy and Cindy be forced to split their inheritance with Piers and Juliet? Should Rhonda be permitted to use Robert's genetic material to conceive additional children, further diluting her step-children's inheritance from their father?

### **Summary**

In many ways, the legal field is slow to account for changes in societal norms and advances in technology. Regardless of whether you plan to conceive naturally or through the assistance of reproductive technology, your estate plan should be carefully structured to benefit the right people and ease administrative burdens. The Law Office of Nicole A. Davidson has the experience and foresight to identify your unique circumstances and create legal documents that withstand the test of time.

Law Office of Nicole A. Davidson  
1092 Gardenia Ln., Concord, CA 94520-4485  
Tel/Fax: 925-689-6890 • Cell: 510-919-8389  
E-mail: [nicoledavidsonlaw@gmail.com](mailto:nicoledavidsonlaw@gmail.com)  
Website: [nicoledavidsonlaw.com](http://nicoledavidsonlaw.com)