

# SUSPICIOUS MINDS – LISA MARIE PRESLEY’S TRUST AMENDMENT CHALLENGED

BY: ASHTON E. M. BIZZARRI

*Who doesn't love a good celebrity  
estate planning lesson?!*

## **Heartbreak Hotel • Lisa Marie Presley’s Death and Trust Administration**

Lisa Marie Presley, the only daughter of “The King of Rock & Roll,” Elvis Presley, died on January 12, 2023, in Los Angeles County, California. Lisa Marie Presley was survived by her mother, Priscilla Presley, and children, Danielle Riley Keough (who goes by Riley and will be referred to as *Riley Keough* throughout this article), Finley Aaron Love Lockwood, and Harper Vivienne Ann Lockwood. Lisa Marie Presley’s son, Benjamin Storm Keough, predeceased her in 2020.

Lisa Marie Presley did what most of us do - she set up a revocable trust. On January 29, 1993, Lisa Marie Presley created a revocable trust, the Promenade Trust (when referenced in general, the *Promenade Trust*.) Almost exactly seventeen years later, on January 27, 2010, Lisa Marie Presley amended and restated the Promenade Trust in its entirety (the *2010 Promenade Trust*.) Subsequently, about six years later, on March 11, 2016, Lisa Marie Presley executed an amendment to the Promenade Trust (the *2016 Promenade Trust Amendment*.)

The 2016 Promenade Trust Amendment removed Priscilla Presley and Barry Siegel (Lisa Marie Presley’s then business manager) as the current Co-Trustees of the Promenade Trust, and appointed Lisa Marie Presley as the current Trustee of the Promenade Trust. Upon Lisa Marie Presley’s death, her children, Riley Keough and Benjamin Keough, were designated as Successor Co-Trustees of the Promenade Trust.

So what? 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, Riley Keough would have been around age 27 and Benjamin Keough would have been around age 24. Further, a few years later after the 2016 Promenade Trust Amendment, Lisa Marie Presley filed a lawsuit against Barry Siegel for mismanagement of her assets. The 2016 Promenade Trust Amendment seemed logical and noncontroversial . . .





## All Shook Up • Priscilla Presley's Petition

On January 26, 2023, Priscilla Presley filed a Petition for Order in the Los Angeles County Superior Court (the *Petition*) requesting an Order declaring the 2016 Promenade Trust Amendment invalid and a declaration she and Barry Siegel (whom she states has or will resign) are the current Co-Trustees of the Promenade Trust.

Pursuant to Section B, Article 1, Paragraph 1.1.1.1 of the 2010 Promenade Trust, if Barry Siegel resigns, Priscilla Presley and Riley Keough are designated to serve as Successor Co-Trustees of the Promenade Trust. Further, pursuant to Section B, Article 1, Paragraph 1.1.4 of the 2010 Promenade Trust, Riley Keough, who is currently over the age of 30, has the right to act as Co-Trustee of her own subtrusts, the Promenade Exempt Trust and the Promenade Descendants Trust. Lastly, pursuant to Section B, Article 1, Paragraph 1.1.5 of the 2010 Promenade Trust, when Riley Keough attains age 35, she has the right to act as sole Trustee over these subtrusts. Riley Keough can also accept her Trusteeship appointments by delivering her written acceptance to the then acting Trustee.

Priscilla Presley makes numerous accusations attempting to invalidate the 2016 Promenade Trust Amendment in her Petition. First, the missing number “11” from the date was filled in on the PDF version of the 2016 Promenade Trust Amendment three days later, on March 14, 2016, by “rbernte.” Second, Priscilla Presley’s name is misspelled. Third, the 2016 Promenade Trust Amendment signature page does not include any substantive provisions. Fourth, Lisa Marie Presley’s signature appears “inconsistent with her usual and customary signature.” Fifth, the 2016 Promenade Trust Amendment was neither witnessed, nor notarized. Sixth, and most importantly, the 2016 Promenade Trust Amendment was not delivered to Priscilla Presley and Barry Siegel, the then serving Co-Trustees, during Lisa Marie Presley’s lifetime, as required by the terms of the Promenade Trust.

Priscilla Presley’s main argument to invalidate the 2016 Promenade Trust Amendment centers on the failure of Lisa Marie Presley to deliver a copy of the 2016 Promenade Trust Amendment to her and Barry Siegel, as the then serving Co-Trustees of the Promenade Trust. Pursuant to Section A, Article 1 of 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 canceled.*” (emphasis added.)

California Probate Code Section §15401 outlines the methods for trust revocation in whole or in part. California Probate Code Section §15401(a)(1) requires compliance with any method of revocation explicit in the trust instrument. The second revocation method in California Probate Code Section §15401(a)(2) requires a written instrument (other than a will), signed by the settlor, and delivered to the trustee during the settlor’s lifetime. Further, California Probate Code Section §15401(a)(2) eliminates the application of Paragraph (a)(2) if the trust instrument “explicitly makes the method of revocation provided in the trust instrument the exclusive method of revocation,” the trust may not be revoked pursuant to California Probate Code Section §15401(a)(2).

Since the terms of the Promenade Trust stated the exclusive method of revocation and Lisa Marie Presley did not comply with these requirements, Priscilla Presley alleges the 2016 Promenade Trust Amendment is invalid. Therefore, it follows if the 2016 Trust Amendment is invalid, the 2010 Promenade Trust is the governing document and Priscilla Presley and Barry Siegel are the current Co-Trustees of the Promenade Trust.





## *Don't* • Lessons from Lisa Marie Presley's 2016 Promenade Trust Amendment

### **Statute of Limitations**

Every law analysis starts with the 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. Ohio Revised Code §5806.04(A)(1) and (2). 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. Ohio Revised Code §5806.04(E).

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 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 pursuant to Ohio Revised Code Section §5817.10(B)(1). According to Ohio Revised Code §5806.04(E), this will eliminate any validity contests after the settlor's death. If this option is unavailable, the trustee can limit the statute of limitations of a trust contest from two years to six months by including in the trust notices a provision informing the potential contestant of the two years statute of limitations to commence a contest under Ohio Revised Code §5806.04(A). Please note, if the potential contestant is not a current beneficiary required to receive a trust notice under Ohio law, this option is impractical.

Priscilla Presley wasted no time after Lisa Marie Presley's death, 17 days later, to contest the 2016 Promenade Trust Amendment, eliminating any statute of limitations defense.

### **Execution, Amendment, and Revocation Requirements**

Technically under Ohio law, a trust instrument is not required to be in writing. Ohio Revised Code §5804.07. Further, a trust instrument (if in writing) is not required to be witnessed or notarized. Ohio Revised Code §5804.02. Obviously, it is best practice to have a written trust instrument, which is signed by the settlor and trustee, and either witnessed and/or notarized.

Under Ohio law, a settlor can revoke or amend a trust by substantial compliance with a method provided by the governing trust instrument. Ohio Revised Code §5806.02(C). If the trust instrument is silent, the settlor may use any method illustrating clear and convincing evidence of a settlor's intent. Ohio Revised Code §5806.02(C).

In contrast to the California law, Ohio's statute does not include the "exclusive method" language for amending or revoking a trust. 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 revocation or amendment requirements.

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 comply with these 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 Presley's invalidity arguments. Further, if Lisa Marie Presley delivered the 2016 Promenade Trust Amendment to the then serving Co-Trustees, as required by the terms of the Promenade Trust, Priscilla Presley's central invalidity argument would be non-existent.

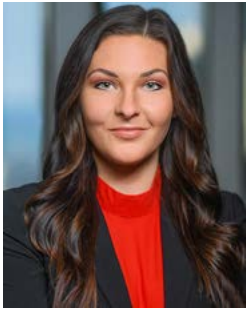




## *That's Alright Mama* • Developments in the Lisa Marie Presley 2016 Promenade Trust Amendment Challenge

According to the Los Angeles County Superior Court docket, a hearing is set for April 13, 2023 on the Petition.

*Stay tuned!*



**Ashton E. M. Bizzarri**  
Associate Attorney

(216) 696-4200  
[abizzarri@sssb-law.com](mailto:abizzarri@sssb-law.com)

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