A RISK GREATER THAN THE SPORTS BET ITSELF: DEATH BEFORE COLLECTION OF WINNINGS

Allyson Sieck *

I. INTRODUCTION

In 2022, Jim “Mattress Mack” McIngvale, a Texas furniture storeowner, placed at least five futures bets, totaling over $25 million, on various sporting events throughout the year.1 In total, Mattress Mack collected over $124 million in winnings from those futures bets.2 A futures bet is a long-term bet that “generally plays out across several days, weeks, or months of competition and pays out in the future.”3 The long-term nature of futures bets allows for any number of events affecting the bet to happen between the time the bet is placed and when the outcome of the bet is determined. Given his success, Mattress Mack will likely continue placing futures bets throughout 2023 and for years to come. With all that money on the line, however, Mattress Mack runs an unexpected risk: dying before he can collect the winnings from a bet. Mattress Mack is not alone in taking this risk, as millions of others are expected to place bets in 2023.4

As the law in the United States currently stands, no established process dictates what happens to a bettor’s outstanding bets when the bettor dies before the outcome of their bet is determined. However, an analysis of the terms of service of the most popular sportsbooks shows that the rights of third parties, such as a deceased bettor’s estate, to access and control a bettor’s account are

---

* J.D. Candidate, May 2024, William S. Boyd School of Law, University of Nevada, Las Vegas, Staff Editor, UNLV Gaming Law Journal. I would like to thank my family for their love and support. I would also like to thank Professor Brian Wall for his continued guidance on this note.


2 Id.


severely limited. Given these restrictions on third-party access to accounts, sportsbooks would likely prohibit a deceased bettor’s estate from collecting the bettor’s winnings. If a sportsbook prohibits a deceased bettor’s estate from collecting the winnings, the winnings will remain in the bettor’s account until it is drained by administrative fees and ultimately paid back to the sportsbook, unless the deceased bettor’s estate sues the sportsbook to collect the winnings.

Sportsbooks could choose to litigate or arbitrate every claim by deceased bettors’ estates for the collection of bet winnings. However, this note argues that sportsbooks would simply be delaying a court awarding the deceased bettor’s winnings to their estate, the probable outcome under the established principles of estate law. The major principles of estate law support distributing a deceased bettor’s winnings to the bettor’s beneficiaries or heirs, rather than back to the sportsbook, because that would be the intent of the average bettor. Additionally, assets that a person had a right to before their death but did not collect are commonly included in estates. This includes income derived from property that the decedent owned at death, like the winnings earned from an outstanding bet.

Under these principles, a court would probably allow a deceased bettor’s estate to collect the winnings from a deceased bettor’s outstanding bets. Therefore, sportsbooks should protect themselves from costly litigation and unfavorable precedent by adopting terms of service provisions that allow a deceased bettor’s estate to collect winnings earned from bets outstanding at the time of the bettor’s death. Sportsbooks should adopt these provisions soon, as the increasing number of bets placed each year, coupled with the number of deaths each year, makes this issue prevalent.

6 See FanDuel Terms of Use, supra note 5.
7 See, e.g., id.
9 Restatement (Third) of Prop.: Wills and Donative Transfers § 1.1 cmt. c (Am. L. Inst. 1999) [hereinafter 1999 Restatement].
10 Id.
11 See generally Americans’ 2022 NFL Betting Plans, AM. GAMING ASS’N (Sept. 7, 2022), https://www.americangaming.org/resources/americans-2022-nfl-betting-plans/ [hereinafter 2022 NFL Betting Plans] (reporting that forty-seven million Americans plan to place at least one sports bet on the 2022 NFL season, a more than 40 percent growth over the number of bettors in 2020).
12 See generally Mike Stobbe, U.S. Deaths Fell This Year, but Not to Pre-COVID Levels, ASSOCIATED PRESS NEWS (Dec. 14, 2022, 11:27 AM), https://apnews.com/
The remainder of this note consists of four parts. Part II will discuss futures bets, including their history, types of futures bets, how futures bets are made, and regulations governing futures bets. Part III will discuss four of the most popular sportsbooks’ terms of service provisions regarding third-party use of betting accounts. Part IV will explain the major principles of estate law, through an analysis of how a deceased bettor’s outstanding bets would be distributed under intestacy, a will, and a trust. Lastly, Part V will argue that it would be prudent for sportsbooks to avoid costly litigation or arbitration by introducing terms of service provisions that allow a deceased bettor’s estate to collect winnings earned from bets outstanding at the time of the bettor’s death.

II. FUTURE BETS

A. The Evolution of Future Betting: From Political Wagers in the 1500s to a Governor’s Wager on the 2019 Stanley Cup Champion

Futures betting was first reported in the early 1500s. In its original form, futures betting allowed bettors to wager on politics and religion. In the United States, futures betting began with people placing bets on politics: “[i]n presidential races such as 1896, 1900, 1904, 1916, and 1924, the New York Times, Sun, and World provided nearly daily price quotations [for bets on presidential elections] from early October until Election Day.” During the late 1800s, sports betting was also gaining popularity in America when Americans began “placing bets amongst themselves in the stands of amateur, collegiate, and eventually professional games.”

Due to match-fixing scandals, “by the early 1920s, a movement similar to that which pushed for the prohibition of alcohol succeeded in pushing out nearly all legal [wagering on] horse racing while many other gambling activities continued to persist illegally.” This prohibition was ultimately short-lived, and numerous states began allowing football pool betting and pari-mutuel betting on

---

15 Id.
18 Id. at 397.
horse races in the 1930s. During the 1940s, sports betting continued to grow in popularity, leading Nevada bookmakers to begin accepting wagers on professional sports. Nevada was the only state that accepted “legal wagers on professional sporting events until Delaware began accepting parlay-style wagers on National Football League (NFL) games in 1976.”

From 1950 to 1990, the United States experienced certain adverse effects from sports gambling, including match-fixing scandals and money being generated for organized crime through sports gambling. To counteract these adverse effects, Congress passed the Professional and Amateur Sports Protection Act (PASPA) in 1992. Under PASPA, only Nevada, Delaware, Montana, and Oregon were permitted to continue accepting bets on sporting events, because they had conducted sports betting or casino gaming before the ratification of PASPA. PASPA was upheld until 2018 when the United States Supreme Court ruled in favor of “allowing states to legalize and regulate sports betting for the first time in more than twenty-five years.” As a result of the Supreme Court’s decision, sports betting began to flourish in the United States. In New Jersey, the first legal sports bets were futures bets, placed by Governor Phil Murphy: “two $20-dollar futures bets, one on Germany to win the 2018 World Cup, and the other on the New Jersey Devils to win the 2018–19 Stanley Cup.”

Today, sports betting continues to grow in the United States. Nearly forty-seven million Americans plan to place at least one bet on the 2022 NFL season. This number of bettors has increased “more than [forty] percent since 2020.” This expansion reflects the legalization of sports betting in thirty-two states in 2022, up from only nineteen states in 2020. For the 2022 NFL season, the “majority of NFL bettors [sixty-eight percent] will place traditional sports

\[\begin{align*}
19 & \text{Id.} \\
20 & \text{Id. at 398.} \\
21 & \text{Id.} \\
22 & \text{Harris & Holden, supra note 17, at 400–01.} \\
23 & \text{Id. at 402.} \\
25 & \text{Harris & Holden, supra note 17, at 406–07.} \\
26 & \text{See Kevin W. Morrissey, Jr., \textit{Untangling the Confusing Web of Sports Gambling Regulation in the Wake of Murphy v. NCAA}, 39 REV. BANKING & FIN. L. 1171, 1201–02 (2019).} \\
27 & \text{Id.} \\
28 & \text{2022 NFL Betting Plans, supra note 11.} \\
29 & \text{Id.} \\
30 & \text{Id.}
\end{align*}\]
bets either at a physical casino, online, or with a bookie.\textsuperscript{31} Today, futures betting is one of the most popular types of sports betting.\textsuperscript{32}

B. A Chance for Casual Bettors to Hit It Big

As futures betting has grown, sportsbooks have started offering bettors a variety of futures bets to wager on.\textsuperscript{33} The most common futures bets are placed on a team winning their sports’ championship title.\textsuperscript{34} Futures bets can be placed on teams, such as which team will win the “Super Bowl, World Series, NBA Championship, Stanley Cup, or College Football Playoff.”\textsuperscript{35} They can also be placed on individual players, like on which player will win a Most Valuable Player award, score the most points during a season, or have the most home runs during a season.\textsuperscript{36} Futures bets can even be placed on coaches, like NFL Coach of the Year,\textsuperscript{37} or the first NFL head coach to be fired during the season.\textsuperscript{38} Futures betting allows those who bet on a championship title favorite halfway through the season to double or triple their money if the team goes on to win the title.\textsuperscript{39}

Considering the time that passes between a bettor placing a futures bet and the bet winning or losing, along with the possibility of error, futures bets are incredibly difficult to predict.\textsuperscript{40} As a result of the difficulty of placing a successful bet, futures bets tend to “offer the best odds for a causal bettor to hit

\textsuperscript{31} Id.
\textsuperscript{36} Id.
\textsuperscript{38} See Kade Kimble, NFL Coach Fired First Odds: Which Head Coach Will Be Fired First?, YARDBARKER, https://www.yardbarker.com/nfl/articles/nfl_first_coach_fired_odds_which_head_coach_will_be_fired_first/s1_17080_37895544 (Sept. 19, 2022).
\textsuperscript{40} See Santaromita, supra note 35.
it big. In recent years, there have been a few notable instances of futures bettors having success placing these difficult-to-predict bets and collecting substantial winnings. In 2015, Vegas Dave won $2.5 million when he placed a futures bet on the Kansas City Royals to win the World Series at 30–1 odds during the first week of the 2015 MLB season. Also in 2015, a soccer fan placed a wager of only €5 and walked away with €20,600 (about $30,000) when Leicester City pulled off one of the biggest upsets in the history of sports by winning the Premier League. In 2019, a bettor won $1.19 million after placing an $85,000 futures bet on Tiger Woods to win the Masters at 14–1 odds. As evidenced by these winners, futures bets have the potential to be very lucrative if a bettor happens to choose the right outcome out of tens or hundreds of options.

Perhaps the best example of a bettor who is taking advantage of the massive winnings that futures bets provide is Jim “Mattress Mack” McIngvale. Mattress Mack recently won the largest payout in history on a futures bet when he placed a $10 million bet on the Houston Astros to win the 2022 World Series. The bet paid out when the Houston Astros defeated the Philadelphia Phillies in Game 6, and Mattress Mack won around $75 million. This is not the only substantial futures bet that Mattress Mack has placed in the last few years. In January 2022, Mattress Mack placed a $2 million bet on the New England Patriots to cover the spread against the Kansas City Chiefs in the AFC Championship Game. Mattress Mack also placed a $4.5 million bet on the Cincinnati Bengals to win the Super Bowl, which paid off when the Bengals defeated the Kansas City Chiefs. These wins have made Mattress Mack one of the most successful bettors in the world.

---

41 See id.
47 Id.
48 Id.
Patriots to win Super Bowl LVI, though he lost the bet when the Buffalo Bills defeated the Patriots in the first round of the playoffs.\textsuperscript{50} In 2019, Mattress Mack placed a $3.5 million futures bet on the Houston Astros to win the World Series, which he lost when the Astros were defeated by the Washington Nationals.\textsuperscript{51} Although Mattress Mack is not successful on every bet he places, he gives other bettors a good look at the substantial winnings that can be collected using futures bets.

The increasing popularity of futures betting makes sense given the success that the aforementioned bettors and other casual bettors have had placing futures bets. This success, coupled with the wide variety of futures bets that sportsbooks allow bettors to place, gives bettors vast opportunities to win money. With the chance to win big, casual bettors have become increasingly more willing to risk copious amounts of money on the slim chance that their favorite team or player may just pull out the title.\textsuperscript{52}

C. How to Get in the Game: Placing Futures Bets

Futures bets are typically placed before a season begins but can be placed at any time throughout the season.\textsuperscript{53} Bets placed at the beginning of a season will pay out at a higher rate, incentivizing bettors to place their wagers early on.\textsuperscript{54} “As a specific game or award deadline draws near, odds on certain wagers will get longer or shorter depending on different factors,” such as a team’s or player’s performance throughout the season.\textsuperscript{55} Bets that are unlikely to be successful when the bet is placed tend to payout at a higher rate.\textsuperscript{56} For example, during the seventh week of the 2022–2023 seventeen-week NFL regular season, the Buffalo Bills were favored to win Super Bowl LVII, with the money line sitting at +275.\textsuperscript{57} Thus, a bettor who placed a $10 bet on the Buffalo Bills to win the Super Bowl would win $37.50 if the Bills secured the title.\textsuperscript{58} Meanwhile, the Houston Texans’ money line sat at +50000, meaning that a bettor

\textsuperscript{50} Id.
\textsuperscript{52} See Santaromita, supra note 35.
\textsuperscript{53} Boynton, supra note 32.
\textsuperscript{54} Id.
\textsuperscript{56} See Super Bowl Futures Odds as of Oct. 22, 2022, supra note 39.
\textsuperscript{57} Id.
\textsuperscript{58} Id.
who placed a $10 bet on the Houston Texans to win the Super Bowl would win $5,010 if the Texans happened to make a run for the title.\textsuperscript{59}

Futures bets can be placed at both traditional sportsbooks and online sportsbooks.\textsuperscript{60} When betting in person, a bettor will place their bet with the sportsbook cashier and the cashier will issue the bettor a betting slip.\textsuperscript{61} Like any other in-person sports bet, a futures bettor must keep their betting slip until the bet is either won or lost.\textsuperscript{62} If a bet wins, a bettor can take the betting slip back to the sportsbook to collect their winnings, or mail in their betting slip and be mailed their winnings.\textsuperscript{63} Unlike online sportsbooks, bettors do not typically have to complete an application, provide their social security card, nor verify their location to place a bet or collect a bet’s winnings.\textsuperscript{64}

To place a futures bet through an online sportsbook, the bettor must create an online account.\textsuperscript{65} Some online sportsbooks require potential bettors to complete an application and provide their social security card and driver’s license before they can begin placing bets.\textsuperscript{66} Additionally, online bettors must verify their identity and location before betting, to confirm that they are in a state where sports betting is legal.\textsuperscript{67} The bettor will then choose a bet to wager on and fund the bet by placing money into their account.\textsuperscript{68} Throughout the life of the bet, the bettor can track the status of their bet online.\textsuperscript{69} If the bettor wins, their winnings

\textsuperscript{59} Id.


\textsuperscript{61} Appelbaum, supra note 60.

\textsuperscript{62} Id.

\textsuperscript{63} Id.

\textsuperscript{64} See id.

\textsuperscript{65} Thompson, supra note 60.


\textsuperscript{68} Thompson, supra note 60.

\textsuperscript{69} See, e.g., What Happens If I Leave a State That Permits Sports Gambling After I Have Placed a Bet That Has Not Yet Resulted?, DRAFTKINGS SPORTSBOOK, https://help.draftkings.com/he/en-us/articles/360004110914-What-happens-if-I-leave-a-state-that-permits-sports-gambling-after-I-have-placed-a-bet-that-has-not-
will be credited to their sportsbook account and can then be transferred to the bettor’s bank account.\footnote{70} Most sportsbooks have provisions that regulate bet winnings that are never collected by bettors.\footnote{71} If a bettor does not transfer their winnings into a bank account, most online sportsbooks will eventually drain the winnings from their account.\footnote{72} These provisions were seemingly created to allow online sportsbooks to collect funds that otherwise would be sitting dormant in a bettor’s account. For instance, BetMGM, a top-rated sportsbook among bettors in the United States,\footnote{73} provides that if an account is inactive for one year, the account is considered dormant, and any funds remaining in the account may be forfeited or remitted.\footnote{74} Likewise, FanDuel Sportsbook, the most popular online sportsbook in 2023,\footnote{75} charges inactive accounts administrative fees each month until the account has been drained.\footnote{76} If an account has enough money to survive the administrative fees being deducted each month until it is considered “abandoned” by applicable state law, FanDuel will “remit the abandoned funds to the appropriate state agency as unclaimed property.”\footnote{77} While laws vary from state to state, many states consider an account dormant once it remains inactive for a certain period, usually between thirty-six and sixty months.\footnote{78} This policy is similar to traditional sportsbooks’ policies for bettors who do not cash out winning bet tickets: the sportsbook keeps the money unless and until the bettor comes to collect, and after a period of time (typically one year), the money officially belongs to the sportsbook.\footnote{79} Restrictions on placing bets and withdrawing funds are just the beginning of the heavy regulations enforced in the sports betting context. These

\footnote{71} See generally \textit{BetMGM Terms of Service}, supra note 5, § 11; \textit{FanDuel Terms of Use}, supra note 5, § 18.6 (describing terms of use regarding uncollected bet winnings).
\footnote{72} See \textit{BetMGM Terms of Service}, supra note 5, § 11; \textit{FanDuel Terms of Use}, supra note 5, § 18.6.
\footnote{73} Ferreira, supra note 13.
\footnote{74} \textit{BetMGM Terms of Service}, supra note 5, § 11.
\footnote{75} Ferreira, supra note 13.
\footnote{76} \textit{FanDuel Terms of Use}, supra note 5, § 18.6.
\footnote{77} See, e.g., id.
\footnote{78} See, e.g., id.
restrictions not only regulate sports bettors in placing their bets, but also regulate sportsbooks in running their organizations.

D. The Possibility of Substantial Winnings from Sports Bets Means Heavy Regulations for Bettors and Sportsbooks Alike

Sports betting is heavily regulated through the enforcement of state and federal gambling laws. These laws place regulations on both sportsbooks and bettors. For sportsbooks, the regulations are enforced through licensing requirements. For example, every jurisdiction in the United States “with legal sports betting … requires licensing of operators of retail sportsbooks or online betting sites.” States with legal sports betting also mandate licensing requirements for key suppliers to the sports betting operator, like the manufacturers of sports betting systems.

Additionally, all sports gaming operators must follow rules implemented by state gambling regulators. For instance, in Nevada, gaming licensees must follow strict audit and accounting requirements. To comply with these audit requirements, Nevada’s sports betting systems document information “relating to all aspects of sports wagering activity including required information for each wager received, every win paid out, results of events … [and] large wagers and large payouts.” Licensed gaming operators are also typically required “to ensure that all bettors have attained the minimum legal age (usually [twenty-one]) before placing any bet.” Lastly, all jurisdictions in the United States with legal sports betting prohibit wagers on high school events, and some jurisdictions allow wagering on only “sporting” or “athletic” events, prohibiting wagering on certain other events like sports awards or e-sports.

For bettors, regulations are enforced through requirements that bettors must satisfy before placing a bet. To place a sports bet, a bettor must live in or be visiting a state where sports gambling is legal. Even for online sportsbooks,

---

82 Id.
83 Id. at 42.
84 Id.
85 See Holden & Edelman, supra note 80, at 940–41.
86 See Becky Harris, Regulated Sports Betting: A Nevada Perspective, 10 UNLV GAMING L.J. 75, 80 (2020).
87 Id.
88 Id.
89 See Holden & Edelman, supra note 80, at 948–49.
90 Scherer & Thevenot, supra note 81, at 45.
91 See id.
only individuals physically present in the state where the sportsbook is located are permitted to place bets. These regulations force those who live in states that have yet to legalize sports gambling to travel to place their futures bets. Licensed gaming operators also typically require that all bettors “provide a copy of their driver’s license or some equivalent form of government identification” before placing a bet. Additionally, “all jurisdictions prohibit wagering by athletes, coaches, and referees participating in a particular sporting event,” and most jurisdictions also prohibit “others who may have influence over a particular team, competitor, or event, including manager, athletic trainers, and medical professionals.”

Online sportsbooks also commonly prohibit bettors from placing bets on behalf of third parties, or proxy betting. For instance, FanDuel prohibits customers “from wagering on behalf of a third party and/or allowing other individuals access to their account.” This prohibition includes sharing accounts with family. FanDuel threatens “permanent suspension” from using their service for users who violate their prohibition on third-party use. Similarly, BetMGM’s Terms of Service state that it is illegal for a person to place a bet for another person, even using BetMGM’s online sportsbook.

Most online sportsbooks have standards for verifying that a user who places a bet is the person who collects the winnings. For instance, BetMGM requires users to submit a photo ID for their first online payout to verify that the person receiving the payout is the person who placed the bet. Likewise, 

---

92 Id.
93 Id. at 949.
94 Scherer & Thevenot, supra note 81, at 45.
96 Id.
97 Id.
98 Id.
101 BetMGM, supra note 100.
DraftKings, a close second to FanDuel for the title of most popular online sportsbook in 2023,\(^\text{102}\) randomly selects some bettors to complete an “affidavit of eligibility and a liability/publicity release … and [provide] forms of identification including but not limited to a driver’s license, proof of residence, and/or any information relating to payment accounts,” to withdraw winnings.\(^\text{103}\) According to DraftKings, failure to comply with this term may result in the disqualification of a user and forfeiture of any prizes won.\(^\text{104}\)

While all sportsbooks are subject to regulations, each sportsbook enforces these regulations differently. Each sportsbook’s method of enforcement is outlined in terms of service provisions, allowing sportsbooks to ensure that they comply with both state and federal regulations and that bettors do the same when using their service.

III. A GOAL OF SPORTSBOOKS’ TERMS OF SERVICE: RESTRICTING THIRD-PARTY ACCESS TO BETTORS ONLINE ACCOUNTS

All major sportsbooks have lengthy terms of service filled with terms that protect the sportsbooks, such as provisions that mandate arbitration and limit the sportsbooks’ liability in class-action lawsuits.\(^\text{105}\) However, major sportsbooks do not have specific provisions in their terms of service for what happens when a bettor dies with outstanding bets.\(^\text{106}\) Instead, sportsbooks commonly provide for this possibility in blanket provisions that prohibit third parties from accessing a bettor’s online sportsbook account.\(^\text{107}\) Each of the four online sportsbooks discussed in this note has terms of service provisions that limit third-party use of accounts, and each of the sportsbook’s provisions looks slightly different.\(^\text{108}\)

A. BetMGM

Like most sportsbooks, BetMGM does not have a specific provision for what happens to the winnings of bettors who die with outstanding bets.\(^\text{109}\) However, its Terms of Service have multiple provisions that would make it difficult for an estate to collect the winnings of a deceased bettor. BetMGM provides that, by agreeing to their Terms of Service, a user declares “to the best of [their] knowledge and belief, the name, address, and social security number

\(^{102}\) Ferreira, supra note 13.
\(^{103}\) DraftKings Terms of Use, supra note 100.
\(^{104}\) Id.
\(^{105}\) See, e.g., FanDuel Terms of Use, supra note 5, § 15.
\(^{106}\) See, e.g., id.
\(^{107}\) See, e.g., id. § 13.
\(^{108}\) See generally BetMGM Terms of Service, supra note 5; FanDuel Terms of Use, supra note 5; DraftKings Terms of Use, supra note 100 (each having provisions limiting third-party use of services).
\(^{109}\) See generally BetMGM Terms of Service, supra note 5.
that [the user] provided correctly ident[i]es [the user] as the recipient of any… payments from identical wagers, and that no other person is entitled to any part of these payments.”

Additionally, BetMGM states that a user agrees to keep their “account name and password confidential and not to allow anyone else to use it.” Finally, BetMGM expressly disclaims liability to any third party for any loss connected with a bettor’s use of BetMGM. All of these precautions limit third-party rights and ensure that the person collecting the winnings from a bet is the person who placed the bet. While it may be possible for an estate to collect the winnings of a bettor who passes away through the use of the judicial system or arbitration, BetMGM’s Terms of Service are clearly written to discourage this from happening.

B. FanDuel

FanDuel has specific provisions in its Terms of Use that limit third parties from benefitting from a FanDuel user’s winnings. FanDuel’s Terms of Use state that, in registering for a FanDuel account, “[a user] will not attempt to sell or otherwise transfer the benefit of [their] account to any third party, nor will [a user] acquire or attempt to acquire an account which has been opened in the name of a third party.” Under these provisions, no third party would be able to assume the rights that a deceased bettor had against FanDuel. This prohibition against third-party access would likely prohibit an estate from accessing a FanDuel user’s account to collect their winnings without the help of the judicial system. FanDuel’s Terms of Use also disclaim liability to any third party for modification to, suspension, or discontinuance of FanDuel’s services. Overall, FanDuel’s Terms of Use seek to limit third-party access to accounts and would make collecting a deceased bettor’s winnings more difficult for an estate.

C. DraftKings

DraftKings also limits third-party rights under their Terms of Use, by providing that their provisions do not “create or confer any rights or other benefits in favor of any third parties.” Additionally, DraftKings states that when a user participates in DraftKings services, the user agrees to “protect, defend, and hold harmless DraftKings … against any and all third-party

110 Id. § 10.4.
111 Id. § 13.
112 Id. § 24.3.
114 Id.
115 See id. § 26.4.
116 DraftKings Terms of Use, supra note 100.
Under these Terms of Use, an estate would be prohibited from assuming the rights that a deceased bettor had against DraftKings, including any right that the deceased bettor had to sue DraftKings to recover uncollected winnings.\footnote{Id.}

D. Caesars Sportsbook

Caesars Sportsbook, a top-rated sportsbook among United States bettors,\footnote{See id.} does not directly provide for what happens to a deceased bettor’s winnings in its Terms and Conditions.\footnote{Ferreira, supra note 13.} However, its Terms and Conditions again make it clear that Caesars Sportsbook prohibits third parties from collecting winnings on behalf of a deceased bettor.\footnote{See Terms and Conditions, CAESARS SPORTSBOOK (Apr. 4, 2022), https://caesars.com/sportsbook-and-casino/on/support/terms-and-conditions-privacy/ [hereinafter Caesars Sportsbook Terms and Conditions].} Similar to BetMGM, Caesars Sportsbook expressly prohibits users from allowing third parties to access their accounts, stating that users are “responsible for maintaining the confidentiality of [their] email address and password and for restricting access to [their] remote wagering account.”\footnote{Id.} Additionally, Caesars Sportsbook’s Terms and Conditions provide that “a person who is not a party to [the agreement formed between a bettor and Caesars Sportsbook] has no right under local law or statute to rely upon or enforce any term of [Caesars Sportsbook’s Terms and Conditions].”\footnote{Id. at § 32.1.} Again, it is clear that Caesars Sportsbook’s blanket provisions against third-party use of accounts and exercise of rights limit an estate’s ability to collect a deceased bettor’s winnings without using judicial proceedings.

In referencing sportsbooks’ provisions regarding third-party use of bettors’ accounts, it is clear that a deceased bettor’s estate would likely be prohibited from collecting a deceased bettor’s winnings. While the motivation behind limiting third-party rights and use of another’s account may not be to prohibit an estate from collecting a deceased bettor’s winnings, the provisions nevertheless have this effect. These provisions force a deceased bettor’s estate to turn to arbitration or judicial proceedings to resolve the issue of whether the bettor’s winnings should be awarded to the bettor’s estate or returned to the sportsbook. A case brought by a deceased bettor’s estate to recover the bettor’s winnings from a sportsbook would be a case of first impression in any United States court. In the United Kingdom, however, sportsbooks have much clearer
provisions regarding third-party rights to collect winnings on behalf of a deceased bettor.\textsuperscript{124}

E. A Look at a Better System: Third-Party Rights to Collect Deceased Bettors’ Winnings in the United Kingdom

In the United Kingdom, the method for collecting a deceased bettor’s winnings depends on what stage the bet is in when the bettor dies.\textsuperscript{125} If the deceased bettor has existing winnings or a balance in their account, the process is straightforward. The estate has to “inform the betting company of the death, send in a death certificate and prove [that the executor of the estate has] the power to manage the estate.”\textsuperscript{126} Then, the winnings will be awarded to the estate.\textsuperscript{127} If the outcome of the futures bet has not been determined when a bettor passes away, the outcome is dependent on the terms and conditions that the sportsbook maintains.\textsuperscript{128} In the United Kingdom, “[m]ost betting companies will have a default position of saying that the contract allows such a wager to be passed on to another person as part of the deceased’s will.”\textsuperscript{129} This means that if a deceased bettor’s bet happens to win, the estate can collect the winnings. Some sportsbooks exercise their discretion to “declare [that] all contracts are terminated in the event of [a bettor’s] death.”\textsuperscript{130} Under this provision, the bet is canceled when the bettor dies, the wager is declared void, and the wager is returned to the bettor’s account.\textsuperscript{131}

In physical sportsbooks in the United Kingdom, in most cases, a person who collects the winnings of a physical bet does not technically have to be the person who places the physical bet.\textsuperscript{132} However, to legally collect winnings from a physical bet, a deceased bettor’s estate will need to send “betting slips [to the sportsbook], along with a copy of the death certificate, in order for the company to be willing to pay the winnings to someone other than the person who placed the wager.”\textsuperscript{133}

The United Kingdom establishes protections for a bettor who dies before the outcome of their bet is determined, allowing their estate to collect their winnings. The United Kingdom also makes this process simple, by having

\textsuperscript{125} Id.
\textsuperscript{126} Caesars Sportsbook Terms and Conditions, supra note 120.
\textsuperscript{127} Id.
\textsuperscript{128} Id.
\textsuperscript{129} How to Claim Bets, supra note 124.
\textsuperscript{130} Id.
\textsuperscript{131} Id.
\textsuperscript{132} Id.
\textsuperscript{133} Id.
processes laid out through which a bettor’s estate is instructed on exactly how to legally collect the bettor’s winnings. In contrast, the process in the United States is confusing and complex. As such, the United States needs laws and processes in place to regulate the collection of winning bets after a bettor dies.

IV. THE ESTATE PLANNING PROCESS AND BETTING

To fully analyze the options under which a deceased bettor’s estate can collect the bettor’s winnings, it is useful to begin with a brief introduction to the major principles of estate law. This discussion highlights the need for sportsbooks to adopt terms of service provisions that allow a deceased bettor’s estate to collect the bettor’s winnings after they die.

“Property owners have the nearly unrestricted right to dispose of their property as they please.”134 When a person dies, they leave behind an estate.135 A decedent’s estate “can be comprised of anything that a person owns, including real property, bank accounts, stocks, bonds, and various securities, life insurance policies, as well as personal property including automobiles, jewelry, and works of art.”136 Upon placing a traditional bet or an online bet, a bettor receives a bet slip, which shows the potential returns, cost, and a receipt of the bet.137 After a bet is placed, the bet itself can be considered the bettor’s property,138 represented by a bet slip, until the outcome of the bet is determined. Any winnings earned from a bet outstanding at the time of a bettor’s death should be considered an asset that is acquired after death.139

Assets that are acquired after a person’s death are commonly included in estates.140 These assets include “property to which the decedent had a right to at death, such as income derived from property that the decedent owned at death or payments under contracts that the decedent entered into before death.”141 For example, stocks, dividends, bonds, interest earned by the bonds, commercial real estate, and any rent collected from the real estate are all permitted to be included in an estate.142 For an estate to be “closed” and for the estate’s assets to be divided between the decedent’s heirs or devisees, all pending litigation must be settled.

134 RESTATEMENT (THIRD) OF PROP.: WILLS AND DONATIVE TRANSFERS § 10.1 cmt. a (AM. L. INST. 2003).
136 Id.
138 See generally Perrone, supra note 135, at 187 (defining assets as items that are owned and have value).
139 See 1999 RESTATEMENT, supra note 9, at § 1.1 cmt. c.
140 Id.
141 Id.
142 Id.
and all money or other property that is owed to the estate must be collected.\textsuperscript{143} Thus, when an asset that is acquired after a person’s death is included in an estate, the estate must remain open until the estate collects any money that is owed to the estate from that asset.\textsuperscript{144} A bet outstanding at the time of a bettor’s death and any winnings earned from the bet should be considered part of a deceased bettor’s estate, similar to other income derived from property that the decedent owned at death. Given these principles, a bettor should be able to dispose of an outstanding bet upon their death, and the bettor’s estate should remain open until the outcome of the bet is determined and any winnings earned from the bet are collected.

An additional argument for allowing a deceased bettor’s estate to collect the bettor’s winnings is that this process would comport with the fundamental objectives of intestacy. One of the fundamental objectives of intestacy is to dispose of a deceased person’s estate “in the manner most likely to reflect the decedent’s wishes.”\textsuperscript{145} In compliance with this objective, intestacy laws attempt to determine “what the average decedent in the situation would have intended.”\textsuperscript{146} Thus, intestacy principles would favor disposing of a deceased bettor’s winnings upon their death in a way that the deceased bettor would have intended. The intent of the average bettor would likely be to dispose of their bet earnings to their heirs,\textsuperscript{147} rather than allow the sportsbook to keep the money. For these reasons, a United States court would likely conclude that a bet is an asset that a deceased bettor can dispose of upon their death.

A. The Distribution of Bets Under Different Estate Plans

When a person dies, certain circumstances affect how their property is distributed after their death. The first circumstance is whether the individual died with or without a will, which is “a legal instrument detailing how a decedent's estate should be distributed.”\textsuperscript{148} A person who dies with a will is said to have died testate, and a person who dies without a will is said to have died intestate.\textsuperscript{149} The second circumstance is whether the decedent’s property will be classified as


\textsuperscript{144} Id.

\textsuperscript{145} Id. at 1793.

\textsuperscript{146} Id. at 1793–94.

\textsuperscript{147} See id. at 1794 (reporting that, in every state, the law assumes that the decedent’s probable intent was to transfer property to the most proximate members of their family).

\textsuperscript{148} Kristina Sherry, What Happens to Our Facebook Accounts When We Die?: Probate Versus Policy and the Fate of Social-Media Assets Postmortem, 40 PEPP. L. REV. 185, 207 (2012).

\textsuperscript{149} Id.
probate property or non-probate property. Probate property is property that “passes through probate under the decedent’s will or by intestacy.” Probate is the legal process of administering the estate of a deceased person, which may require a court proceeding depending on the jurisdiction. Non-probate property “passes outside the probate system under an instrument other than a will,” such as a trust. An analysis of how a sports bet would likely pass when a bettor dies intestate, with a valid will, and with a trust shows that each method of distribution would be made simpler if sportsbooks adopt terms of service provisions that allow the deceased bettor’s estate to collect the bets’ winnings.

1. Intestacy: Passing a Bet to a Bettor’s Heirs

The first option discussed by this note is for a bettor to allow their outstanding bets to pass to their heirs through intestacy. “Empirical studies show that many Americans die intestate,” especially those with small or modest estates. If a person dies intestate, their property will be distributed under the default laws of intestacy, reflected in intestacy statutes which vary from state to state.

Intestacy laws attempt to determine “what the average decedent in the situation would have intended,” to comply with the fundamental objective of intestacy of disposing of a deceased person’s estate in a way that is most likely to comport with the decedent’s wishes. This determination is made based on the tendencies of individuals who die with a will, which is “to leave their estates to spouses and lineal descendants.” Therefore, “in every state, the law assumes that the decedent’s probable intent was to transfer property to the most proximate members of their family.” For example, Nevada’s intestacy statutes provide that when a person dies intestate, their assets must be distributed first to their surviving spouse and children, then to their surviving parents, then surviving siblings, then surviving grandchildren, and finally to any other surviving ancestor of the decedent.

If a bettor with an outstanding bet dies intestate, the bet will be considered probate property, as it will pass through probate by intestacy. The

150 See id. at 205.
151 Id. at 206.
152 Id. at 205–06.
153 Sherry, supra note 148, at 206.
155 See Sherry, supra note 148, at 207.
156 Ratliff, supra note 8, at 1793–94.
157 Id. at 1794.
158 Id.
160 See generally Sherry, supra note 148, at 206 (stating that probate property is property that passes through probate under the decedent’s will or by intestacy).
bet would likely be treated like other assets that are acquired after the bettor’s death. Therefore, the bettor’s estate would likely be permitted to wait for the outcome of the bet to be determined and collect any winnings earned from the bet. Then, any winnings from the bet would be distributed to the decedent’s heirs during probate along with the rest of the decedent’s probate property, under the applicable jurisdiction’s intestacy laws.

If, as suggested by this note, sportsbooks alter their terms of service provisions to permit a deceased bettor’s estate to collect the bettor’s winnings after their death, the collection process would be relatively simple. The bettor’s estate would simply wait for the outcome of the bet to be determined and collect any winnings from the sportsbook, just as the bettor would have if they were alive. However, if sportsbooks do not alter their terms of service, an intestate bettor’s estate would likely have to bring a lawsuit to collect the bettor’s winnings. This would ultimately delay the closing of the estate and the distribution of the decedent’s property. Therefore, under sportsbooks’ current terms of service provisions, distributing a deceased bettor’s winnings by intestacy would be a difficult process.

2. Providing for an Outstanding Bet Using a Will

The second option discussed in this note is for a bettor to create a provision for their bets in a will. A person who dies testate, or a testator, provides their express wishes for how their estate will be distributed, typically in a will. Each state in the United States has a “Wills Act,” which prescribes the rules for making a valid will in that state.

---

161 See generally 1999 RESTATEMENT, supra note 9, at § 1.1 cmt. c (stating that a decedent’s probate estate may contain property acquired after the decedent’s death, such as income derived from property that the decedent owned at death).

162 See generally Lee, supra note 143 (explaining that an estate cannot be closed if money or other property due to the estate is uncollected).

163 See generally id. (explaining that after money owed to the estate is collected and the court grants the personal representatives’ petition for final distribution, the personal representative must timely distribute the assets of the estate); see also Sherry, supra note 148, at 206 (stating that during probate, the decedent’s property is distributed in accordance with the jurisdiction’s requirements).

164 See David Horton, In Partial Defense of Probate: Evidence from Alameda County, California, 103 GEO. L.J. 605, 648, 656 (a study finding that the average time needed to close an estate in Alameda County was 507 days, but, in four cases where an estate brought a petition to recover probate property, the average time needed to close an estate was 819 days).

165 See Sherry, supra note 148, at 207; see also 1999 RESTATEMENT, supra note 9, at § 3.1 cmt. c (stating that a testator is a person who dies with a valid will).

Under the Wills Acts of most states, a formal will must be (1) in writing in a reasonably permanent form, (2) signed by the testator or in the testator’s presence and under the testator’s direction, and (3) witnessed and signed by two or more disinterested witnesses in the presence of the testator.\textsuperscript{167} When drafting a new formal will, a testator must comply with these requirements for their will to be valid and enforceable at the time of their death.\textsuperscript{168}

After executing a will, a testator’s wishes for what will happen to their property after their death may change.\textsuperscript{169} A testator does not have to execute a new will every time they want to alter their existing will.\textsuperscript{170} Instead, a testator can execute a codicil to their existing will.\textsuperscript{171} A codicil is “an instrument that modifies an existing will by adding to or qualifying the original document.”\textsuperscript{172} A codicil allows a testator to avoid executing a new will, but a codicil must still “be executed with all the testamentary formality required in the execution of a will.”\textsuperscript{173} This means that a valid codicil must also be in writing, signed, and witnessed.\textsuperscript{174} Executing a valid formal will or codicil typically requires legal assistance, which can be costly.\textsuperscript{175}

To avoid the cost of obtaining the legal assistance typically required to draft a formal will, a testator can draft a holographic will.\textsuperscript{176} A holographic will is a will that is written and signed in the testator’s handwriting but does not need to be formally witnessed.\textsuperscript{177} However, holographic wills are only valid in about half of the states in the United States.\textsuperscript{178} Additionally, some believe “that holographic wills breed litigation and invite a will dispute because of a holographic will’s informal language.”\textsuperscript{179} Therefore, although holographic wills are a less expensive alternative to a formal will for testators, they have their challenges.

\textsuperscript{167} Id. at 552.
\textsuperscript{168} Id.
\textsuperscript{170} See MICHAEL ALLAN WOLF, 15 POWELL ON REAL PROPERTY § 85.05[8] (LexisNexis Matthew Bender 2023).
\textsuperscript{171} See id.
\textsuperscript{172} Id.
\textsuperscript{173} Id.
\textsuperscript{174} See id.; see also Banta, supra note 166, at 552 (stating that under the laws of most states, a formal will must be in writing, signed, and witnessed).
\textsuperscript{175} Kevin Bennardo & Mark Glover, The Location of Holographic Wills, 97 N.C. L. REV. 1625, 1628 (2019).
\textsuperscript{176} Id.
\textsuperscript{177} Id.
\textsuperscript{178} Banta, supra note 166, at 561.
\textsuperscript{179} Id.
In both formal and holographic wills, a testator includes bequests (or devises), which are dispositions of property. A bequest is made to a devisee, or a person named in a will who receives the testator’s assets upon the testator’s death. There are four classifications of bequests of property that a testator can make: general, specific, demonstrative, and residuary. When a bettor creates a will, they can dispose of an outstanding bet using any of these four bequests.

The first option for a bettor to dispose of their outstanding bets is using a general bequest. A general bequest is a gift of a specific value, which can be satisfied through the disposition of money or property. For example, a general bequest that reads “$5,000 to my daughter, Jane” can be satisfied through a piece of property worth $5,000 or $5,000 cash. A bettor cannot technically make a “general bequest” of an outstanding bet because it is not a gift of a specific monetary value. Therefore, creating a general bequest in reliance upon funding from an outstanding bet is not the best method for a bettor to dispose of an outstanding bet upon their death.

A bettor can also use a specific bequest to dispose of an outstanding bet. A specific bequest is a gift of an identifiable item in an estate. For example, a specific bequest of an outstanding bet may provide: “To my daughter Jane, my bet on the Vegas Golden Knights to win the 2023 Stanley Cup and any winnings therefrom.” Another example is a specific bequest that provides: “To my daughter Jane, any bets outstanding at the time of my death.” The practicability of using a specific bequest to dispose of an outstanding bet depends on whether a bettor simply wants to dispose of all outstanding bets at the time of their death to a single devisee or wants to dispose of each of their outstanding bets to a different devisee. If the bettor chooses to dispose of all of their outstanding bets to a single devisee and any outstanding bets exist at the time of the bettor’s death, the bequest will be fulfilled, and the bet will be passed on to the bettor’s devisee. If no such bet exists at the time of the bettor’s death, the specific bequest will be extinguished and the devisee takes nothing in place of

180 1999 RESTATEMENT, supra note 9, at § 3.1 cmt. d.
181 Id.
183 See id. at 1391.
184 Id.
185 1999 RESTATEMENT, supra note 9, at § 5.1 cmt. c.
186 See generally id. (defining a general bequest as a testamentary disposition of a specified amount of money or quantity of property).
187 See Storrow, supra note 182, at 1391.
188 Id.
189 See 1999 RESTATEMENT, supra note 9, at § 5.1 cmt. b.
190 See id.
191 See id. § 5.2 cmt. a (stating that if specifically devised property is in the testator’s estate at death, the devisee is entitled to the specifically devised property).
the missing bet. Given the simplicity of this process, it would likely be efficient and practicable for a bettor to use a specific bequest to dispose of all outstanding bets at the time of their death to a single devisee.

In contrast, if the bettor chooses to dispose of each of their bets to a different devisee, the bettor would have to execute a new formal or holographic will or codicil every time they place a new bet that they want to pass to a specific devisee. For a bettor with a formal will, this process would likely require legal assistance, which could become costly. For a bettor with a holographic will, executing multiple wills or codicils would be time-consuming and may create doubt as to the bettor’s intent for which will should control upon their death. Ultimately, executing a new formal or holographic will or codicil every time a new bet is placed is likely not the best practice for the average bettor. For these reasons, providing for each outstanding bet in a specific bequest is not the most workable option for a bettor to use when drafting a will.

Another option for a bettor to dispose of an outstanding bet is to use a demonstrative bequest. A demonstrative bequest is a gift of value that a testator directs to be satisfied from a specific source. For example, a demonstrative bequest of an outstanding bet may provide: “To my daughter Jane, the sum of $5,000 to be paid from the winnings of any bet outstanding at the time of my death.” If no bet exists at the time of the bettor’s death, or if the winnings from the bettor’s outstanding bets are insufficient to satisfy the demonstrative bequest, the money to fulfill the bequest will be taken from the estate and paid as a general bequest. Therefore, a demonstrative bequest is a workable option for a bettor to dispose of their outstanding bets, as long as the bettor does not mind that other funds from the estate will be used to satisfy the bequest if the bet does not provide sufficient funds to do so.

Lastly, a bettor can dispose of an outstanding bet by including a residuary clause in their will. A residuary clause provides for “gifts of all
assets] that remain [in an estate] after general, specific, and demonstrative bequests have been satisfied."

If a bettor’s will contains a residuary clause and an outstanding bet is not otherwise provided for in the will, any winnings from the bet would be considered a residuary gift and would be distributed to the residuary beneficiaries of the estate. By allowing an outstanding bet to fall under a residuary clause in a will, a bettor would not have to alter their will every time they place a new bet and would not have to worry about a bequest becoming void if an outstanding bet loses. Therefore, allowing an outstanding bet to be passed under a residuary clause is likely the most workable option for a bettor to provide for their outstanding bets using a will.

Under any of the above-described wills or bequests, a deceased bettor’s estate would likely face difficulty collecting winnings from a deceased bettor’s outstanding bets due to major sportsbooks’ terms of service provisions. If sportsbooks maintain their current restrictions on third-party access to bet winnings, the estate of a bettor who provided for an outstanding bet using a will would likely have to bring a lawsuit to assert their right to collect the bet winnings. However, if sportsbooks alter their terms of service provisions to allow deceased bettors’ estates to access bettors’ accounts and collect bettors’ winnings, the process would be simpler and more effective, and deceased bettors’ estates would be able to uphold bettors’ express testamentary wishes.

3. Placing an Outstanding Bet in Trust: Will Sportsbooks Allow It?

The final option discussed by this note is for a bettor to place their bets in trust. To create a trust, a person establishing a trust, called a settlor, “conveys property to a trustee to hold as a fiduciary for one or more beneficiaries.” Once a trust is established, the “trustee takes legal title to the trust property, which allows the trustee to deal with third parties as the owner of the property.”

Trustees control trusts for the benefit of the trust beneficiaries, who are typically

---

202 Id.
203 See id.
204 See generally BetMGM Terms of Service, supra note 5, § 24.3; FanDuel Sportsbook, supra note 113, § 4.3.4; Caesars Sportsbook Terms and Conditions, supra note 120, § 32.1; DraftKings Terms of Use, supra note 100 (each sportsbook adopting terms of use restricting third party access to betting accounts and limiting their rights to third parties).
205 See generally BetMGM Terms of Service, supra note 5, § 24.3; FanDuel Sportsbook, supra note 113, § 4.3.4; Caesars Sportsbook Terms and Conditions, supra note 120, § 32.1; DraftKings Terms of Use, supra note 100 (each sportsbook adopting terms of use restricting third party access to betting accounts and limiting their rights to third parties); see also Horton, supra note 164, at 634 (discussing estates that filed petitions to recover probate property).
207 Id.
entitled to distributions from the trust. This section analyzes how an outstanding bet would pass upon a bettor’s death if the bet was placed into two types of trusts: testamentary trusts and living trusts.

A testamentary trust is created by a will and does not come into existence until a testator dies. A testator creating a testamentary trust must have the capacity and intent to create a testamentary trust and must identify the trust property, the purpose of the trust, the trustee or trustees of the trust, and the beneficiary or beneficiaries of the trust. In addition to complying with these requirements, the will that creates the testamentary trust must also comply with “the formalities required to create a will or codicil within the particular state where the will is probated.” Thus, to place an outstanding bet in a testamentary trust, a bettor would first need to execute a valid formal or holographic will that complies with the laws of the state where the will is probated. The bettor would need to include in their will the intent to create a testamentary trust and identify the trust property, which, in this case, would be any outstanding bets existing at the time of their death. The bettor would also have to include the purpose of the trust, like providing support to the beneficiaries of the trust. Finally, the bettor would have to identify the beneficiary or beneficiaries of the trust.

Upon the death of a bettor with a testamentary trust, the bettor’s estate would first need to establish the validity of the will creating the testamentary trust. If the will is deemed valid, the personal representative of the estate would distribute the bettor’s outstanding bets to the trustee, and the outstanding bets would become trust property. Placing a bet in a testamentary trust would not allow a bettor’s estate to avoid probate, nor the expense or delay associated with it. Therefore, placing an outstanding bet in a testamentary trust would not be faster nor more affordable than providing for an outstanding bet in a will or allowing an outstanding bet to pass by intestacy. For these reasons, placing outstanding bets in a testamentary trust is not the best method for most bettors to use to pass their outstanding bets upon their death.

208 Id.
210 Id.
211 Id. § 7.02[3].
212 See id.
213 See id. § 7.02[1].
214 MURPHY, supra note 209 § 7.02[1].
215 See id.
216 See id. § 7.02[6].
217 See id.
218 See id. (stating that a testamentary trust cannot come into existence until the decedent’s estate is administered and closed under applicable state law).
219 Grayson M.P. McCouch, Revocable Trusts and Fiduciary Accountability, 26 Elder L.J. 1, 1 (2020).
A living trust is created during a settlor’s lifetime and works as a will substitute.\textsuperscript{220} If a [living] trust is validly created and funded before [the settlor’s] death, the trust property passes outside the probate system to the beneficiaries designated in the trust.\textsuperscript{221} Placing property in a living trust allows an estate to avoid probate and the expense, delay, and procedural complexity typically associated with probate.\textsuperscript{222} A living trust can be irrevocable or revocable.\textsuperscript{223}

An irrevocable living trust is a trust that cannot be amended, modified, or revoked, meaning that once a settlor puts assets into an irrevocable trust, they no longer control the assets.\textsuperscript{224} Instead, once an irrevocable living trust is established, the trustee controls the trust assets.\textsuperscript{225} “This means personal-use assets, like a house or car, that the settlor still intends to use are not supposed to be put into an irrevocable trust.”\textsuperscript{226} If a bettor places an outstanding bet in an irrevocable living trust, it would become trust property and the trustee would maintain control over any winnings earned from the bet for the benefit of the beneficiaries.\textsuperscript{227} The bettor-settlor of an irrevocable living trust would not be able to access any bet winnings that are earned while they are still living.\textsuperscript{228} For this reason, placing an outstanding bet in an irrevocable living trust is not the best option for bettors who want to retain control over their outstanding bets during their lifetime while simultaneously planning for the disposition of those bets upon their death.

By contrast, the settlor of a revocable living trust is the original trustee and retains control over trust assets during their lifetime.\textsuperscript{229} The settlor typically names successor trustees, who maintain control of the trust assets after the settlor’s death,\textsuperscript{230} as well as beneficiaries, who receive the trust property after the settlor’s death.\textsuperscript{231} A revocable trust allows a settlor “to distribute property at death to designated beneficiaries outside the probate system,” while simultaneously providing “a standby arrangement for managing property during the settlor’s lifetime.”\textsuperscript{232} If a bettor places an outstanding bet in a revocable living

\begin{footnotes}
\footnote{220}{Id.}
\footnote{221}{Id. at 4–5.}
\footnote{222}{Id. at 1.}
\footnote{224}{Patrick K. Kenney, \textit{A Changing World Calls for Iowa to Apply the Alter Ego Doctrine to Irrevocable Trusts}, 106 IOWA L. REV. 1477, 1483 (2021).}
\footnote{225}{Id.}
\footnote{226}{Id.}
\footnote{227}{See id.}
\footnote{228}{See id.}
\footnote{229}{Feder & Sitkoff, supra note 223, at 3, 11.}
\footnote{230}{Id. at 31.}
\footnote{231}{McCouch, supra note 219, at 1.}
\footnote{232}{Id. at 33.}
\end{footnotes}
trust, the bettor would retain control over the trust and, therefore, the bet as trust property during their lifetime.\footnote{233}{See Feder & Sitkoff, supra note 223, at 3, 11.}

Upon the bettor’s death, the successor trustees would gain control of the trust and any outstanding bets that were placed in the trust.\footnote{234}{See id. at 31.} If an outstanding bet placed in a revocable living trust wins, the settlor-trustee or, if the settlor-trustee is deceased, the successor trustee, would collect the bet’s winnings on behalf of the trust and place the winnings into a trust account.\footnote{235}{See generally id. at 11, 31 (stating that a trustee, whether it be the original settlor-trustee or a successor trustee, maintains control over trust assets).} Thereafter, the winnings would remain in trust until they are ultimately distributed to the trust’s beneficiaries.\footnote{236}{See generally McCouch, supra note 219, at 1 (stating that beneficiaries receive trust property after the settlor of the trust’s death).} This process is relatively simple compared to passing a bet by intestacy, will, or testamentary trust because it allows a bettor’s estate to collect the bet without interference from a probate court.\footnote{237}{See id.} Additionally, placing an outstanding bet in a revocable living trust allows the bettor-settlor of the trust to plan for the distribution of their outstanding bets at their death while simultaneously allowing the bettor to manage the bets during their lifetime.\footnote{238}{See id. at 33.}

For these reasons, placing outstanding bets in a revocable living trust is the simplest and most cost-effective option for a bettor to provide for their outstanding bets upon their death.

Although trusts provide bettors with an effective way to dispose of their outstanding bets upon their death, it is unlikely that trustees would be able to collect bet winnings under sportsbooks’ current terms of service provisions which require bettors to verify their identity before they can collect their winnings.\footnote{239}{See generally BetMGM, supra note 100; DraftKings Terms of Use, supra note 100 (each requiring users to complete verification forms before withdrawing winnings).} Sportsbooks should alter their terms of service provisions to permit trustees to collect bets on behalf of a trust. In determining whether to alter their terms of service provisions, sportsbooks should look to the process permitted by banks. Banks permit living trusts to own bank accounts and allow trustees to make withdrawals and deposit funds into the bank accounts until the funds are ultimately distributed to the trust’s beneficiaries.\footnote{240}{Should Your Bank Accounts Be in Your Trust?, KEN R. ASHWORTH & ASSOC. (Sept. 12, 2022), https://www.ashworthlaw.com/blog/should-your-bank-accounts-be-in-your-trust/#:~:text=Checking%20accounts%2C%20for%20example%2C%20can,that%20may%20be%20more%20manageable.} If sportsbooks adopt the process established by banks, they might face difficulty complying with state regulations that require bets to be placed and collected by an ascertainable bettor.
whose identity has been verified, because trusts can have multiple trustees who are permitted to act on behalf of the trust. Thus, allowing a bettor to place a bet on behalf of a trust would require sportsbooks to implement additional mechanisms of enforcement and alter some of their current practices.

Sportsbooks could comply with state regulations by requiring trustees of a living trust to provide documentation from the original bettor certifying that the bet has been placed in trust and documentation that the person attempting to collect the bet is a trustee of that trust. After this verification is complete, trustees would be able to maintain control over outstanding bets and withdraw any winnings earned from the bets. This process would allow sportsbooks to maintain an identification and verification process similar to their current verification process, while also allowing bettors to provide for their outstanding bets upon their death. Thus, while establishing a new process for bettors to place their bets in trust would require sportsbooks to alter some of their current practices, it is a workable option for sportsbooks. Additionally, establishing this new process would ultimately be simpler and more cost-effective for sportsbooks than the alternative: litigation.

V. SPORTSBKOUS SHOULD CHOOSE TO AVOID LITIGATION BY ADOPTING TERMS OF SERVICE PROVISIONS THAT ALLOW DECEASED BETTERS’ ESTATES TO COLLECT THEIR WINNINGS

A bettor’s outstanding bets would likely be considered property that a bettor can dispose of upon their death, no matter which estate plan the bettor uses. Thus, a deceased bettor’s estate would likely be permitted by a court to collect any winnings earned from a deceased bettor’s outstanding bets. Therefore, the only remaining issue is whether sportsbooks should make this process simple for themselves and bettors’ estates alike by introducing terms of service provisions that allow deceased bettors’ estates to collect the bettors’ winnings, or allow claims those claims to be resolved through litigation.

Even if sportsbooks have the assets to survive litigation brought by deceased bettors’ estates to collect the bettors’ winnings, litigation is still not the best option. If sportsbooks choose to litigate the claims brought by bettors’ estates and one estate prevails, a precedent in favor of deceased bettors’ estates would be set. This means that sportsbooks may find themselves constantly litigating this issue and losing money in legal fees, while still having to ultimately pay out deceased bettors’ winnings. Some sportsbooks may have an arbitration clause in their terms of service, which forces all disputes between the sportsbook

---

241 See generally BetMGM, supra note 100; DraftKings Terms of Use, supra note 100 (each requiring users to complete verification forms before withdrawing winnings).

242 Michael Allan Wolf, 6 Powell on Real Property § 42.03[5] (LexisNexis Matthew Bender 2023).
and their customers to go through arbitration rather than litigation. However, arbitration is still costly and time-consuming. If sportsbooks choose to let the claims by deceased bettors’ estates go through arbitration or litigation, sportsbooks would spend both time and money to ultimately only delay the probable outcome of deceased bettors’ estates being permitted to collect deceased bettors’ winnings.

A counterargument in favor of sportsbooks resolving claims through litigation is that most deceased bettors’ estates are unlikely to bring a lawsuit to recover what may ultimately be an insubstantial amount of money. To recover a deceased bettor’s winnings, a deceased bettor’s estate would have to bring litigation to recover the estate property, and would be forced to hire counsel and pay attorney’s fees for the entirety of the litigation, which could take multiple years. Ultimately, the estate could spend years involved in litigation and completely drain the estate funds to end up potentially recovering an insubstantial amount of money. However, for some bettors’ estates, the time and money spent litigating the matter may be necessary.

Take, for example, Mattress Mack, who stands to win hundreds of millions of dollars on futures bets multiple times a year. With each futures bet that he places, Mattress Mack takes the risk that he may win the bet but not be alive to see it vest. If Mattress Mack dies leaving behind an outstanding bet that wins after his death, the bet’s winnings would be kept by the sportsbook with

---

243 See generally BetMGM Terms of Service, supra note 5, § 28.5; FanDuel Terms of Use, supra note 5, § 15 (each containing an arbitration clause binding users to settle disputes using arbitration).


245 See D.C. Code § 20-702 (1981) (the District of Columbia allowing a personal representative of an estate to petition the court to maintain an action to recover possession of any property of an estate); see also 755 Ill. Comp. Stat. Ann. 5/16-1(a) (Illinois allowing a personal representative of an estate to file a citation petition on behalf of the estate to recover estate property); see also Cal. Prob. Code § 850(a)(2) (California permitting the personal representative of an estate to petition the superior court for an order to recover property where a decedent died having a claim to real or personal property); see also Tex. Est. Code § 351.151 (Texas requiring the personal representative of an estate to use ordinary diligence to recover possession of all property to which the estate has claim or title).

246 See Horton, supra note 164, at 655–56 (a study finding that in four cases where an estate brought a petition to recover probate property, attorney fees and personal representative fees were 4.3% of the estate value, which was 1.8% more than the fee awards in probate cases that did not involve disputes); see also How Long Does a Civil Lawsuit Take?, BREMER WHYTE (July 16, 2018), https://bremerwhyte.com/news-thought-leadership/how-long-does-a-civil-lawsuit-take-bremer-whyte/.

247 See Purdum, supra note 46.
which he placed the bet until his estate sued to recover the winnings. In the case of a $75 million payout, Mattress Mack’s estate would probably bring a lawsuit to recover the winnings. This is especially probable given that Mattress Mack leverages his bets against his furniture stores’ promotions, such as his recent promotion offering a “refund [to] any customer who spent at least $3,000 on furniture double their money back if the Astros won the [2022] World Series.”

In high-stakes cases like this, an estate would likely spend the time and money required to litigate the matter. The cost of litigating or arbitrating the high-stakes cases alone, coupled with the precedent that these cases would set, should deter sportsbooks from attempting to litigate or arbitrate these claims and encourage sportsbooks to seek an alternative.

The best alternative is for sportsbooks to modify their terms of service to allow a deceased bettor’s estate to collect the bettor’s winnings. A death-after-bet terms of service provision would provide a clear-cut, workable procedure for sportsbooks and estates to follow after a bettor dies. Thus, sportsbooks would avoid the cost associated with litigation or arbitration and would be able to effectively handle claims from deceased bettors’ estates. Additionally, in altering their terms of service provisions, sportsbooks would comport with the major principles of estate law and would preempt the outcome that would likely be determined by a United States court based on those principles.

VI. CONCLUSION

Given the considerable number of sports bets expected to be placed in 2023, the issue of what will happen to a deceased bettor’s outstanding bets when the bettor dies is pressing. The major principles of estate law support distributing a deceased bettor’s bet winnings to the bettor’s beneficiaries or heirs, rather than back to the sportsbook, because that would be the intent of the average bettor. Additionally, assets that a person had a right to before their death but did not collect are commonly included in estates, like the winnings earned from an outstanding bet. Under these principles, a court would likely allow a deceased bettor’s estate to collect the winnings from a bet outstanding at the time of the bettor’s death. Therefore, if sportsbooks choose to allow claims by bettors’ estates to be resolved through litigation or arbitration, they would simply be delaying the probable outcome of courts awarding a deceased bettor’s winnings to their estates.

Sportsbooks can protect themselves from costly litigation and unfavorable precedent by adopting terms of service provisions that provide a

---

248 Id.
249 See generally Wagering Estimates, supra note 4 (reporting that 50.4 million American adults were expected to place bets on Super Bowl LVII alone).
250 See generally Ratliff, supra note 8, at 1793 (explaining that a fundamental objective of intestacy is disposing of a deceased person’s estate in the manner most likely to reflect the decedent’s wishes).
251 1999 RESTATEMENT, supra note 9, at § 1.1 cmt. c.
clear-cut, workable process for estates to follow in collecting a deceased bettor’s winnings. This process is cost-effective and equitable and follows the well-settled practices of estate law. For these reasons, it would be prudent for sportsbooks to promptly adopt terms of service provisions that allow deceased bettors’ estates to collect any winnings earned from bets outstanding at the time of bettors’ deaths.