

## Frozen Fortunes: Cryonics and the Intersection with Trusts and Estates

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In 1999, the animated show *Futurama* premiered on Fox. The science fiction comedy focuses on the main character, Fry, a pizza delivery guy who finds himself revived in the year 2999 after falling into a cryogenic preservation freezer a thousand years earlier.<sup>1</sup> Being revived years, decades, or even centuries after dying sounds like something that could *only* occur in a cartoon. However, this is fact, not fiction. For decades people have been attempting to defeat death by participating in cryogenic preservation. Cryonics is the practice of deep freezing the bodies of people who have recently died with the hopes that scientific advancements will allow them to be revived in the future.<sup>2</sup> This blog will divulge more into the practice of cryonic preservation, who is participating in this practice, and briefly discuss the impact that cryonics is beginning to have on trusts and estates law.

Cryonics,<sup>3</sup> a specialized offshoot of cryogenics, which is the study of the behavior of organisms, proteins, and atoms when they are submerged in extremely cold liquified gases, began in the 1960s.<sup>4</sup> A popular urban legend is that animator and business tycoon Walt Disney was cryogenically preserved following his death in 1966, and his frozen body is hidden somewhere underneath Disneyland.<sup>5</sup> As entertaining as this sounds, unfortunately this is fiction. The first person to be cryogenically preserved was University of California professor James Bedford in 1967, a mere two months after Walt Disney's death.<sup>6</sup> The process of cryonics in theory is straightforward. A human who has been declared legally dead is frozen in liquefied gas, such as liquid nitrogen, as soon as possible after death.<sup>7</sup> The goal of the freezing process is to keep bodies from decaying so that in the future, when it is possible to resuscitate them, they can be cured of what killed them and then restored back to living.<sup>8</sup> Cryonics is essentially people attempting to buy life after death.

The Alcor Life Extension Foundation (simply known as Alcor) is one of the leading institutions for cryogenic preservation. As of 2023, the institute held the bodies or brains of 224 people in vats of liquid nitrogen.<sup>9</sup> Most people who are preserved at Alcor are from the United States,<sup>10</sup> which follows the trend of Americans more than any other nation attempting to buy life after death. As of 2023, about 500 people have been cryogenically preserved, with 300 of those

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<sup>1</sup> *Futurama*, WIKIPEDIA, <https://en.wikipedia.org/wiki/Futurama> (last visited Feb. 16, 2024).

<sup>2</sup> *Cryonics*, CAMBRIDGE DICTIONARY, <https://dictionary.cambridge.org/us/dictionary/english/cryonics> (last visited Feb. 16, 2024).

<sup>3</sup> The author will use cryonics, cryogenic preservation, and cryogenically preserved interchangeably.

<sup>4</sup> Robin McKie, *Cold Facts About Cryonics*, THE GUARDIAN (July 14, 2002, 6:27 AM), <https://www.theguardian.com/education/2002/jul/14/medicalseience.science>.

<sup>5</sup> Patrick Hicks, *Fact or Fiction: Was Walt Disney Frozen?*, TRUST & WILL, <https://trustandwill.com/learn/walt-disney-frozen> (last visited Feb. 16, 2024).

<sup>6</sup> McKie, *supra* note 4; Hicks, *supra* note 5.

<sup>7</sup> McKie, *supra* note 4.

<sup>8</sup> *Id.*

<sup>9</sup> Alia Shoaib, *Billionaire Peter Thiel is One of Thousands Due to be Cryogenically Frozen After They Die — Inside the Industry Selling Life After Death*, BUS. INSIDER (Dec. 29, 2023, 5:12 AM), <https://www.businessinsider.com/the-cryonics-companies-selling-the-dream-of-life-after-death-2023-12>.

<sup>10</sup> Elizabeth Day, *Dying Is the Last Thing Anyone Wants to Do – So Keep Cool and Carry On*, THE GUARDIAN (Oct. 11, 2015, 7:09 PM), <https://www.theguardian.com/science/2015/oct/11/cryonics-booms-in-us>.

people being in the United States.<sup>11</sup> Globally there are 4,000 people who have placed themselves on some sort of waitlist in preparation of being frozen after death.<sup>12</sup>

By no means is cryogenic preservation cheap. Typically, the process costs several thousand dollars. One cryonics institute in Michigan charges a \$28,000 down payment, which increases based on the urgency of the situation.<sup>13</sup> Alcor requires their clients to have a life insurance policy with Alcor named as the beneficiary. Brain freezing requires a policy of at least \$80,000, and full body freezing requires a policy with a minimum of \$200,000.<sup>14</sup> It is clear that based on the price, cryonics is currently only accessible to the wealthy or the extremely desperate, such as a 23 year old woman with terminal cancer who raised funds through online donations to preserve her brain after death.<sup>15</sup> Most people on the waitlist are on celebrities or tech giants, such as Paris Hilton, Simon Cowell, and Elon Musk.<sup>16</sup> Larry King had expressed wanting to be frozen after death, however, it is unclear if after his death he was preserved.<sup>17</sup> Most recently, PayPal co-founder, staunch anti-ageist, and billionaire, Peter Thiel, has announced that he will be cryogenically preserved following his death. He does not believe it will work but has signed up as “an ideological statement.”<sup>18</sup> If life after death is possible, only the wealthy will have that opportunity.

Proponents of cryonics (called cryonauts) believe that eventually reanimating and restoring function to humans is possible because other living creatures and human samples of tissues and brain have displayed functioning life after being unthawed.<sup>19</sup> However, full intact humans, have yet to be “thawed...back to life.”<sup>20</sup> Cryonauts’ beliefs are rooted in other groundbreaking medical advances, such as DNA mapping, stem cell research, and therapeutic cloning.<sup>21</sup> To them this indicates that eventually we will be able to have life after death. “A hundred years ago, if a person’s heart stopped, they were dead. Today, we bring those people back to life with a defibrillator. What changed? Science, Medicine.,” says the president of the Cryonics Institute, Dennis Kowalski.<sup>22</sup> The biggest hurdle that cryonauts are facing is that the medical science has not advanced enough yet to the point where the dead can be reanimated.

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<sup>11</sup> *Cryogenics Statistics and Facts: 2022-2023*, VITALITYPRO, <https://vitality-pro.com/statistics-trends/cryogenics-worldwide/> (last visited Feb. 16, 2024).

<sup>12</sup> *Id.*

<sup>13</sup> McKie, *supra* note 4.

<sup>14</sup> *Membership*, ALCOR, <https://www.alcor.org/membership/#toggle-id-6> (last visited Feb. 16, 2024).

<sup>15</sup> Day, *supra* note 10; Amy Harmon, *A Dying Young Woman’s Hope in Cryonics and a Future*, N.Y. TIMES (Sept. 12, 2015), <https://www.nytimes.com/2015/09/13/us/cancer-immortality-cryogenics.html>.

<sup>16</sup> *Cryogenics Statistics and Facts: 2022-2023*, *supra* note 11.

<sup>17</sup> See generally Francesca Gariano, *Larry King Was Open About His Wish 'to Be Frozen' After His Death*, TODAY (Jan. 23, 2021, 2:51 PM), <https://www.today.com/popculture/larry-king-was-open-about-his-wish-be-frozen-after-t206786> (discusses Larry King’s history with publicly acknowledging the fact that he wanted to be cryogenically preserved following his death).

<sup>18</sup> Matthew Loh, *Billionaire Peter Thiel Says He’s Signed Up to Be Frozen and Preserved When He Dies So People Can Revive Him In the Future — If The Tech Even Works*, BUS. INSIDER (May 5, 2023, 4:31 AM), <https://www.businessinsider.com/peter-thiel-cryogenically-preserved-but-doubts-the-tech-works-2023-5>.

<sup>19</sup> McKie, *supra* note 4.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Day, *supra* note 10.

Bringing a person back to life raises a whole host of medical, ethical, and legal concerns. Ethical issues alone could take up its own blog post.<sup>23</sup> One novel legal concern is centered around the question of whether people would have a claim to goods and assets that have passed on to their heirs after their first “death.” An attorney was faced with this issue about a decade ago. Mark House began developing a body of law surrounding “cryonic suspension trusts” after working on a contested estate of man who had himself cryogenically preserved.<sup>24</sup> He realized, after speaking to staff at Alcor, that the wealthy people who were “patients” were curious if they could be their own heir because they “don’t wanna come back poor.”<sup>25</sup> Cryonic suspension trusts, also called revival trusts, personal revival trusts, or future income trusts, set aside assets of the revived individual and keep them available in the event of a scientific breakthrough.<sup>26</sup>

There is a lot of uncertainty that attorneys who specialize in this deal with. For example, it is unclear if the IRS (assuming it still exists by the time the medical science that can revive people is achieved), would treat a revived person as a new taxpayer, or if they would simply be the same person they were before.<sup>27</sup> House assumes that revived people would be treated as a new person, but that might trigger a hefty generation-skipping inheritance tax.<sup>28</sup> Another issue with cryonic suspension trusts is that in theory grantors are legally required to name an ascertainable beneficiary before the trust vests. Most U.S. states had a rule against perpetuities that prevent dead hand control by capping trusts at 90 years.<sup>29</sup> However, in 2008, Arizona, where Alcor and House are located, changed that law to allow trust to last up to 500 years (which could be potentially unconstitutional).<sup>30</sup>

Cryonics trusts have yet to be tested in court, therefore, there is no caselaw on them nor a standard. It has been a very delicate dance for lawyers drawing up these trusts to navigate between the living and dead in a way that still complies with the law. It has been recommended that for those considering cryogenic preservation to either do an accumulation trust that is funded by life insurance policies or, for the extremely wealthy, a modified dynasty trust that stipulates that the assets might one day revert to the revived person.<sup>31</sup> Attorneys have also recommend allowing a family member (or future ancestor) to have the ability to terminate the trust if needed or create a termination date and have an established financial institution hold the trust document.<sup>32</sup>

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<sup>23</sup> See generally David Shaw, *Cryoethics: Seeking Life After Death*, 23 *BIOETHICS*, 515, 515—521 (2009) (discusses the ethics of cryonics); Philippa Roxby, *What Are the Ethics of Cryonic Preservation?*, *BBC NEWS* (Nov. 18, 2016), <https://www.bbc.com/news/health-38031428> (shorter discussion on the ethics of cryonics).

<sup>24</sup> Kalena Thomhave, *These Billionaires Want to Disrupt Death—and Keep Their Fortunes Forever*, *MOTHER JONES* (Jan. 2024), <https://www.motherjones.com/politics/2024/01/alcor-cryonics-peter-thiel-billionaires-dynasty-trusts-aging-disease-death-immortality/>.

<sup>25</sup> *Id.*

<sup>26</sup> Ted Knutson, *Need Money When You Are Revived After Being Scientifically Frozen? Lawyers Have Just The Thing*, *FORBES* (Feb. 5, 2019, 11:11 AM), <https://www.forbes.com/sites/tedknutson/2019/02/05/need-money-when-you-are-revived-after-being-scientifically-frozen-lawyers-have-just-the-thing/?sh=681c46ac2aef>; Chill, *We Have a Trust For Cryonics*, *THE L. OFF. OF ODELIA GOLDBERG: BLOG*, <https://ogoldberglaw.com/trusts/chill-we-have-a-trust-for-cryonics/> (last visited Feb. 16, 2024).

<sup>27</sup> Chill, *We Have a Trust For Cryonics*, *supra* note 26.

<sup>28</sup> Thomhave, *supra* note 24.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Knutson, *supra* note 26; Chill, *We Have a Trust For Cryonics*, *supra* note 26.

There are only two guarantees in life – death and taxes. Death is one of the most natural things in life and it's inevitable. Cryonics is an attempt to defeat death and have a second go around at life, but there are so many unknown variables associated with the practice. Who's to say if medical science will advance to the point where revival will be possible? If that ever occurs, will these cryonic institutions even be around still? Where will we get the bodies to transfer the brains of people who only opted for brain preservation? Cryonics feel like a scientific answer to a common fear that most people have – a fear of death. Alcor and other cryogenic institutions are capitalizing on this fear and selling this idea of life after death to the wealthy and fearful. Cryogenic suspension trusts highlight another fear of American society, the fear of being poor. Attempting to set up elaborate trusts to be as wealthy as you were the first go around feels gross and is another more extreme form of wealth hoarding. Interest in cryogenics is slowly increasing and, with it, the interest in cryogenic suspension trusts. Hopefully one day cryogenics suspension trusts will be taken up in a court and a precedent will be established.