

ADVISOR'S BULLETIN

WHAT'S IN THIS MONTH'S NEWSLETTER

DANGERS OF DO-IT-YOURSELF ESTATE PLANNING: LESSONS FROM ARETHA FRANKLIN'S ESTATE

A MESSAGE FROM MICHAEL W. LAGOS, CFP®

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Dear Strategic Advisor:

Those of us who provide life insurance and financial advice to clients understand the importance of planning for the death-time transfer of wealth. Many financial professionals find it advantageous to work closely with estate-planning attorneys and tax professionals so that our clients get the benefit of comprehensive and coordinated advice.

Not everyone is open to the idea of hiring a professional team to create an estate plan. Some are determined to do things themselves. Why? There may be several factors:

- Do-it-yourself planning is perceived as being less expensive than work done by a lawyer or a team.
- A person is perceived to have greater control over documents that are drafted personally.
- Some have an irrational fear of attorneys or are intimidated by the process of working with them.

According to probate documents filed in Michigan, in the years before her death, Aretha Franklin apparently tried to draft her own will documents. If the writings are valid, she clearly put a great deal of thought and effort into creating them. Unfortunately for her children and other potential heirs, the handwritten pages leave many important questions unanswered. It will be up to the court to interpret the terms if the family cannot agree.

An examination of Ms. Franklin's will documents and the issues surrounding them provide valuable lessons for us and for our clients, which we will touch on in this issue.

Regards,
Michael W. Lagos, CFP®

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DANGERS OF DO-IT-YOURSELF ESTATE PLANNING: LESSONS FROM ARETHA FRANKLIN'S ESTATE

ARETHA FRANKLIN AND HER ESTATE

Aretha Franklin, a musical artist often referred to as “the Queen of Soul,” died on August 16, 2018, at the age of 76. She apparently left a substantial estate and three handwritten testamentary documents, which we will discuss in this bulletin.

Background

Aretha Louise Franklin was born in Memphis in 1942. Her father, a minister, moved the family to Detroit where the young Aretha sang gospel music at his church. She signed with Atlantic Records in 1966 and with that company produced an amazing string of hit songs including “Respect,” “Chain of Fools,” “Think,” and “A Natural Woman.” Franklin had four children—Clarence Franklin, Edward Franklin, Teddy Richards, and Kecalf Cunningham. She was married and divorced twice and at the time of her death was single. For more details about Franklin’s rich life, consult the Wikipedia article about her life at https://en.wikipedia.org/wiki/Aretha_Franklin.

Death and Aftermath

On August 13, 2018, the press began to report that Aretha Franklin was gravely ill at her home in Detroit. She died three days later. On May 20, 2019, Sabrina Owens, Aretha Franklin’s niece and the appointed personal representative for the Franklin estate, filed a petition in probate court for Oakland County, Michigan. In the petition her attorneys told the court the following:

- As of the date of her death, Aretha Franklin had apparently left three handwritten documents that were intended, in part, to be directions regarding who should inherit her property.
- All of the Franklin heirs were shown the documents but were apparently unable to agree on what they meant and how they should be applied to the Franklin estate.
- Sabrina Owens and her lawyers were not able to independently determine the validity and effect of the documents either so they asked the probate court to do it.

The *Detroit Free Press*, in its online article dated May 21, 2019:

<https://www.freep.com/story/entertainment/music/2019/05/21/aretha-franklin-handwritten-wills/3753633002/>

posted a copy of the probate petition here:

<https://www.documentcloud.org/documents/6020063-TYPED-PAGES-Aretha-Franklin-Will.html>.

It also posted the following links to the handwritten documents:

- **Aretha Franklin’s handwritten note date October 20, 2010:**
<https://www.documentcloud.org/documents/6020065-Aretha-Franklin-Handwritten-Will-2.html>
- **Aretha Franklin’s handwritten will dated June 21, 2010:**
<https://www.documentcloud.org/documents/6020949-Aretha-Franklin-Handwritten-Will-1.html>
- **Aretha Franklin’s handwritten will dated March 31, 2014:**
<https://www.documentcloud.org/documents/6020977-Aretha-Franklin-Handwritten-Will-3.html>

We strongly recommend that readers examine these handwritten source materials. If valid, they add perspective to Ms. Franklin’s testamentary intentions and state of mind.

Probate Process

IN GENERAL

Probate is the court supervision of the transfer of assets at the owner's death. On its face, that seems OK. In particular, where the family members don't get along, the idea of having a probate judge act as referee seems like a good idea.

While each state has its own rules about how probate works, those rules are similar with regard to the drawbacks of the probate process:

- **It's public.** Since probate is a court procedure, the records are available to anyone who asks. With public information available online, privacy for probated estates can disappear easily. For example, information about Elvis Presley's will, Michael Jackson's, and those of other celebrities can be found with a Google search.
- **It's structured, and it takes a while to finish.** Since probate is a court procedure, there are rules and forms for everything. Also, in most jurisdictions for most estates, the process takes months to run from start to finish. Sometimes heirs will have to wait a year or more before they get their complete inheritance.
- **It can be expensive.** Since probate involves going to court, most personal representatives opt to hire a lawyer to guide them through the process. The probate courts charge fees for paperwork filings. Under certain circumstances the personal representative may need bonding in order to act on behalf of an estate. The costs vary widely depending on the jurisdiction, how well the heirs get along, and the complexity of the estate.

The probate court is meant to serve as an objective, disinterested party that oversees and safeguards the interests of the beneficiaries. Many probate courts require a full accounting of fees charged by lawyers and personal representatives and often cut back what are considered exorbitant legal, accounting, or personal representative's fees—even if there are no objections by any beneficiary. Second, probate consolidates the process of settling the decedent's estate so that conflicting claims can be sorted out and resolved in an orderly manner, including

- disputes among heirs,
- conflicts between the decedent's family and business associates, or
- claims of creditors.

Those who feel they have claim on the decedent's assets file their claims with the probate court. The probate court will decide among the conflicting claims, and the executor or administrator will be able to distribute estate assets accordingly without fear of incurring personal liabilities for his or her actions. Another purpose of probate is to protect the interests of creditors and make sure estate assets cannot be distributed to beneficiaries unless lawful debts (including death taxes) of the decedent have been paid.

Probate is not always necessary for all assets owned by a decedent. As life insurance and financial professionals know, with many assets—such as qualified plans, annuities, and life insurance—the owner can name a beneficiary. The beneficiary designation controls who is entitled to the account at the death of the owner. The owner's will, or state rules of intestacy, will be trumped by the beneficiary designation. Likewise, certain kinds of assets may allow the account owner to create pay on death (POD) or transfer on death (TOD) designations. Where such designations are available and where the decedent named a designee, transfer at death would bypass probate.

It is possible for the ownership titling of an asset to allow it to avoid probate. For example, an asset titled jointly with right of survivorship will be reallocated to the surviving owners when one of them dies. Also, an asset that is titled leaving a life estate to the decedent will automatically transfer to the owner of the remainder interest at the life tenant's death. These kinds of transfers generally avoid probate.

Finally, many estate planning attorneys help their clients create living trusts to own assets during their lifetime. The trust ownership designation persists after death, so probate is not generally needed.

WILLS

The person appointed by the probate court to manage the settlement of a decedent's estate is usually referred to as the *personal representative*.

One of the jobs of the personal representative is to figure out whether the decedent left a will and whether the will is valid under relevant state law. Nearly all states have strict requirements about the form of a decedent's will, including rules for proper signature by the testator and the process for valid witnessing. In general, those rules must be satisfied for a probate court to give effect to a will document. However, more than half of the states have some special rules that recognize the validity of *holographic wills*. A holographic will is one that has been written by the testator and signed in her own handwriting. Each state has its own requirements that must be satisfied before a holographic will is accepted as a valid record of the decedent's testamentary intentions.

Michigan Process

Michigan, the state in which Aretha Franklin died, explicitly recognizes holographic wills under Michigan Revised statutes Section 700.2502:

A will . . . is valid as a holographic will, whether or not witnessed, if it is dated, and if the testator's signature and the document's material portions are in the testator's handwriting. . . . Intent that the document constitutes a testator's will can be established by extrinsic evidence, including, for a holographic will, portions of the document that are not in the testator's handwriting.

General Issues with Holographic Will Documents

Why do some states recognize the validity of a relatively simple holographic will while normally requiring a much more robust process for a legal will? The law recognizes that sometimes in emergency situations, such as an unexpected end-of-life circumstance, creating a formal document is not possible. Furthermore, where a document is in the decedent's own handwriting and clearly intends a testamentary disposition, public policy would seem to argue in favor of its validity. On the other hand, holographic wills can have natural drawbacks compared to more formal documents. The most obvious of these drawbacks are:

- The testator may not include language to cover all the necessary testamentary actions.
- The language included by a layperson may be legally ambiguous.
- The testator's lack of understanding about the probate process may lead her to attempt to accomplish things in a holographic will that are not legally possible.
- Without a professional's involvement in the process, the testator may forget to address important testamentary issues.

SPECIFIC ISSUES WITH ARETHA FRANKLIN'S ALLEGED WILL DOCUMENTS

We have to start our specific analysis with some observations:

- We do not know for a fact that the three documents linked earlier in this article are valid copies of the documents found at Aretha Franklin's residence.
- We do not know whether the documents, if valid, are in Ms. Franklin's handwriting.
- We do not know whether Ms. Franklin was legally competent to make a will at the time the documents were created.
- While we did our best to read the handwriting in the documents and interpret what was written, we are not sure we got everything right. We apologize in advance for any mistakes that might have been made. Our intent is to use the documents as a learning tool—not to create a false narrative.

These are the three documents referred to in the probate petition:

1. Aretha Franklin's handwritten note dated October 20, 2010, according to the probate court petition, was found inside a locked cabinet. This note's apparent purpose was to explicitly revoke any prior will documents completed or signed by Ms. Franklin.
2. Aretha Franklin's handwritten will dated June 21, 2010, was apparently found inside the same locked cabinet as the October 20, 2010, note. It has the most detailed testamentary instructions of the three documents.
3. The personal representative said Aretha Franklin's handwritten will dated March 31, 2014, was found beneath a couch cushion. It also has detailed testamentary provisions.

THE 2010 WILL

Assuming that Aretha Franklin's 2010 will is recognized as valid and in effect at the time of her death, the court will have to decide how to interpret its language. The following is our best translation of the dispositive provisions, apparently written in Ms. Franklin's handwriting.

My wishes are, or would be in the event of my demise that all of my property:

1. Turtle Lake
2. 4585 Redstone Bend (3 1/3 acres)
3. 1400 Scenic Court
4. But not 2074 Wickford Court
5. Would-be property of Teddy (?)

2074 Wickford Court will remain in the custody ownership of my son Kecalf and it is paid for negotiated by Scott Steinhoff and the taxes be paid by my bank, the bank of American Long Lake and Telegraph branch or whatever bank I am using and a monthly allowance to my son Kecalf to cover all related utility bills, monthly upkeep, maintenance and weekly grocery, taxes and allowance to be determined by him and any emergency money up to \$10,000 a month and another \$1,000 on 15th of month out of the Crown or Aretha accounts or Springtime or any of my bank accounts that has sufficient funds monthly.

My remaining royalties, masters deferred. Royalties at Atlantic Records (now Warners) since Ahmet Ertagon demise (the parent co.) 75 Rockefeller Plaza, because of Ahmet Ertegün's demise, my account is at Warner Records now; but statement is still in the name of Atlantic but royalties are Atlantic close for Royalty be paid out of Warners Royalty dept. at the rate of \$100,000 annually. The balance in account 6/21/2010 is \$1.6 million and some odd \$. Statement (one point six million dollars) see current.

My jewelry (personal to my will), furs, fine furnishings, music, art, copyright would belong to my estate or to be divided equally to my children.

1. Kecalf
2. Eddie (Edward) monthly allowance of \$2,000 a month
3. Teddy
4. Clarence

Special provisions for an allowance should be given to Clarence of \$750 weekly for his care and special needs and buy seasonal clothing, but annually he must stay in Detroit and his location must always be known to Eddie, Kecalf and Teddy to receive his weekly allowance. His clothing costs should be paid out of the Aretha acct. Crown or any of my Accts. From whatever bank I am banking with but not 1st Independence (Detroit, Michigan). Ms. McKuen handles my mortgage accts. (Redacted) is the name on Acct. Transfer Clarence's guardianship to Sabrina.

All Clarence has to do or his legal guardian or Teddy, Kecalf or Eddie submit his personal statement of needs. Medical or clothing or food weekly, dollars to be approved by Kecalf and Teddy for his needs to the bank I am banking with: Notosha (?) or Hotz (?) or Bank of America, Long Lake Branch as of 6/21/2010. Kecalf and Edward must take business administration classes and get a certificate or degree to receive the aforementioned things and present to my executor (co-executors Teddy and Sabrina) of living(?) trust estate to be paid for out of the Crown or Aretha Acct....

Cars and Thunderbird Limousine could be sold and divided equally and a bank account must be opened for Clarence called the The Clarence Special Needs Account funded by Crown Account or Aretha or any of my accounts up to \$2,000 a month and monthly (?corrected to \$2,500?). Statement of any expenditure on his behalf must be given to my attorney to execute. His father Edward Jordan Sr. should never receive or handle any money or property belonging to Clarence or that Clarence receives.

Among other issues, the document does not address the following:

- What happens if the assets are no longer personally owned by Ms. Franklin at the time of her death?
- What effect does Ms. Franklin's wishes about requiring Kecalp and Edward to take business administration classes have on their inheritances?

The document is also ambiguous on the following points (among others):

- Does Kecalp's apparent heirship of the Wickford Court, property preclude him from inheriting partial interests in the other pieces of real estate?
- Does the will create a valid trust for the benefit of Clarence? Will the trust interfere with any needs-based benefits Clarence might otherwise qualify for? Who is the trustee of the trust?
- Does the will create trusts for Kecalp and for Eddie? If so, what are the terms, and who will act as trustee?
- Does the living trust apparently referred to in the next-to-last paragraph of the excerpt above exist? If so, where is the copy? What are its terms?

In addition to the dispositive excerpts transcribed above, the will also provided fairly detailed information about Ms. Franklin's then-current health, her opinions about certain members of her advisory team, feelings about extended family members, and her bills. While some of this information may ultimately be helpful in interpreting her intent, much of it could have been left private.

THE 2010 LETTER

The October 2010 letter was found with the June 21, 2010 will. Its primary purpose was apparently to revoke a prior will apparently drafted in the early 1970s and to disavow a will draft done with her lawyer later. Even though the letter was prepared months after the will draft, it seems to confirm that the June 2010 will was the only one she wanted to be considered.

THE 2014 WILL

Assuming Aretha Franklin's 2014 will is recognized as valid and in effect at the time of her death, the court will have to decide how to interpret its language. The following is our best translation of the dispositive provisions.

Will document dated 3/31/14

To whom it may concern and being of sound mind, I write my will and testimony.

All furnishings of the homes and cars I own (??). My residence to my son Kecalp at the time of demise for him and my grandchildren, and Wickford Court be given to Edward Franklin to live in or sell.

My home in Palmer Woods will go to my son Teddy, 18261 Hamilton, to live in and own or sell.

To be equally distributed (??) to my granddaughters (??) my recording accounts with Atlantic Records/Warner Music Group handled by Mr. Age. Motose (LA) and (?) (NY). As of 3/31/14 (?) \$400,000 in 2014). (See Record contract with Atlantic, old and new 3 contracts 1967-68 and more see statement sent to David Bennett) for deferred monies.

Alternatively, Eddie, Kecalp and Teddy must check on my son Clarence once a week and report to my executor. My gowns could be auctioned at Sotheby's Auction house N.Y. or other on go to Smithsonian Museum Washington D.C. or wherever they choose. Eddie Kecalp and Teddy must also be appointed with his guardian and legal responsibility of his condition and oversee his needs. My deferred money to be split evenly between Edward, Kecalp and Teddy.

As of 3/14, there is a balance of (?) on (?). The executor of my estate I name Kecalp. My Royalty account to be monitored and got copies from BMI Harry Fox NY and my boys to be split evenly between Edward Kecalp Teddy. From my bank accts—2 banks, Aretha personal Fifth Third, Springtime, Chase-Long Lake (?). Balance in acct to be split evenly between my children Eddie Kecalp and Teddy.

My cousins Brenda Conlette and Sarina given \$200,000 each deferred monies and/or recording contract balances. Carol Ellen (?) in Memphis TN \$50,000 to my half sister as we have different mothers and no other claim to my estate or monies. My piano, record CDs books, etc. to be given to my sons and grandchildren.

My (?) to be given to my sons for the purpose of donation (?) to colleges music department or private sale or auction off. Shoes, clothing, (?) to be given to my sons. (Summary of balances due to several professionals) My awards to my sons—gold records—evenly distributed. (Description of balances due on real estate) Scenic CT was sold to Joe Dumar. (Description of who has record of sale)

Among other issues the probate court will likely have to decide on the following:

- Is the 2014 will valid? Does the fact that it was found in a separate place from the 2010 will and letter make a difference?
- Was the 2010 will revoked by the 2014 document? Or is the 2014 will merely a supplement, as it does not explicitly revoke the 2010 document?
- How are the pianos and CDs going to be sorted out among children and grandchildren?
- The document seems to direct the deferred recording monies to children and also to Ms. Franklin's cousins. How will that be reconciled?
- Do the sons have the option of auctioning off some property and keeping the money, or are they required to donate it?
- The 2014 document is not as robust as the 2010 will regarding a possible trust for Clarence. Does such a trust need to be created? If so, would the 2010 document need to be consulted regarding the trust's terms?

CONCLUSION

Aretha Franklin decided, for her own reasons, to create a will by herself—without using an attorney to draft one. In part because of that decision, her family will spend time and money in probate court figuring out her testamentary wishes. Our own clients may be tempted to draft their own wills—whether with fill-in-the-blank forms, computer software, or handwritten instructions in a spiral notebook. Is a do-it-yourself document always going to create problems? Not necessarily. However, as with most tasks, employing an experienced craftsman to do the work generally maximizes the chances things will be done right.

What are the biggest lessons for our clients so far from the Aretha Franklin estate planning saga?

Most people should work with an attorney to create testamentary documents. Ms. Franklin was a legendary singer. Based on the text of the documents, she was not a terrific estate-planning attorney. That's hardly surprising as she didn't have a lifetime of experience in drafting wills. She would likely have been better served to explain her intentions to a competent lawyer who could have helped remove the ambiguity created by the documents currently being probated in Michigan. Would using an attorney have guaranteed avoiding a fight in probate court? No, but it seems the odds would have been better for a peaceful outcome.

Consider a revocable trust and other probate-avoiding transfers—especially if privacy is a goal. While the public probate record is helpful to us to better understand the wealth transfer process, the Franklin family might have preferred to keep their financial affairs more private.

Be explicit about intentions regarding special needs beneficiaries. Trust planning is important to protect certain kinds of beneficiaries. A layperson is unlikely to understand how to draft the right language in a trust—so doing this kind of planning correctly almost always requires getting a lawyer involved.

Testamentary transfer intentions—whether expressed through a will, trust, or beneficiary designation—must be drafted carefully and in compliance with relevant law.

Find trusted advisors who can work together as a team.

Aretha Franklin's heirs are likely to be in court for a significant period of time—perhaps years—as they try to sort out how to manage and distribute her estate. With better planning on the front end, perhaps some of the pain, uncertainty, and expense could have been avoided.



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Building Protecting and Perpetuating Family Wealth

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