

## ADVISOR'S BULLETIN

### WHAT'S IN THIS MONTH'S NEWSLETTER

#### Two Very Different Updates

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#### A MESSAGE FROM MICHAEL W. LAGOS, CFP®

Dear Strategic Advisor:

In general, each issue of The Advisor's Bulletin, it covers a single topic. This month there have been two developments of interest to financial professionals that have led us to include both in one article.

In June 2019, we wrote about the difficult process the administrators of Aretha Franklin's probate estate were facing. The Queen of Soul died on August 16, 2018, at the age of 76. She left a substantial estate along with three handwritten testamentary documents that had unclear and contradictory provisions.

Last month a Michigan probate court conducted a jury trial to determine which, if any, of the handwritten wills would control the distribution of Franklin's estate. In this article we will discuss that decision, identify some of the issues yet to be resolved, and describe the continuing lessons to be drawn from the situation.

We have also written many times in the past about the issues and uncertainties created by both versions of the SECURE Act. In June of this year, for example, we wrote about our latest understanding of the stretch rules that apply to qualified accounts where the account owner died in 2020 or later. In an article a few months earlier, we discussed the details of SECURE 2.0—including the provisions that increased the age at which RMDs from certain qualified accounts must begin.

Whenever Congress and the President get together to change the tax law, inevitably the IRS is needed to fill in some of the details of the new rules. The Service has stepped in a few times already regarding the SECURE Acts, most recently with IRS Notice 2023-54. In the second part of this issue, we will discuss the details of the Service's latest guidance and how it might affect our clients.

Please feel free to contact me to discuss further.

Regards,  
Michael W. Lagos, CFP®

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## Two Very Different Updates

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### ARETHA FRANKLIN ESTATE UPDATE

Franklin had four children—Clarence Franklin, Edward Franklin, Teddy Richards, and Kecalff Cunningham. All four children were adults at the time of Franklin's death, and Clarence had special needs. Aretha had been married and divorced twice and at the time of her death was single.

#### Review of Franklin's Estate Planning

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.

#### Handwritten Wills in General

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 LAW

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.

## ISSUES WITH HOLOGRAPHIC WILL DOCUMENTS

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.

### Ambiguities and Inconsistencies in Franklin's Documents

Three documents are referenced in the probate petition.

### HANDWRITTEN NOTE

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.

### 2010 HANDWRITTEN WILL

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, making apparent specific bequests of real estate to her children. It also seems to aim to create a testamentary trust for the benefit of Franklin's special-needs child Clarence, as well as a trust for her son Kecalif.

The 2010 document contained many incomplete ideas about dispositive intentions that would have needed a court to more fully discern in order to put together a complete map of the probate direction of Franklin's estate.

### 2014 HANDWRITTEN WILL

The personal representative said Aretha Franklin's handwritten will dated March 31, 2014, was found beneath a couch cushion. It also had detailed testamentary provisions.

Among the details and unclear provisions of the 2014 document:

- 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?
- The document seems to direct deferred recording contract monies to Aretha's children but also to Ms. Franklin's cousins. How will that be reconciled?

One excerpt from the document seems to read as follows:

My (?) to be given to my sons for the purpose of donation (?) to colleges music department or private sale or auction off.

Do the sons have the option of auctioning off that property—whatever it is—and keeping the money, or are they required to donate the property or money to charity?

The 2014 document is not as robust as the 2010 will regarding a possible trust for Clarence. The handwritten will from 2014 does not make clear whether such a trust needed to be created. If a court ultimately decides that Franklin intended to create a trust for Clarence, it is uncertain whether the 2010 document would need to be consulted regarding the trust's terms.

### Probate and Trial

Franklin's sons disagreed over which testamentary document should be honored by the probate court. Kecalp and Edward favored the 2014 version, while Teddy favored the 2010 handwritten will. The probate court scheduled a trial to decide. The Associated Press reported in July:

A Michigan jury determined on Tuesday that a handwritten document by Franklin that was found in her couch after her 2018 death was a valid will. It was a critical turn in a dispute that has turned her sons against each other. And it ended in victory for Kecalp and Edward Franklin, whose lawyers had argued that papers dated 2014 should override a 2010 will discovered in a locked cabinet at the Queen of Soul's home in suburban Detroit.

### What's Left to Do

The probate of Franklin's estate is far from over. While the issue of which testamentary document to use has been resolved, the ambiguities contained in the 2014 handwritten will still need to be sorted out. We expect that if the family continues to be unable to agree on what Aretha Franklin intended, the probate case is going to last far into the future.

### IRS NOTICE 2023-54

We have written at length about the provisions of the SECURE Act and the SECURE Act 2.0. Most recently, we published an article on inherited IRA stretch in June.

Stretch rules for qualified accounts were changed as part of the original SECURE Act, which became effective in 2020. The SECURE Act 2.0, passed late last year, changed the year in which RMDs must begin for most account owners who were born in 1951 or later.

### The Need for the Notice

The IRS published Notice 2023-54 on July 14. It creates special relief with respect to two issues.

The first issue has to do with the uncertainty over interpretation of the ten-year rule associated with inherited IRA accounts. Many industry experts originally believed the ten-year rule allowed a nonspouse beneficiary to always choose to liquidate an inherited qualified account at any time during the ten-year period following the death of the account owner. Then the IRS published proposed new RMD regulations in February 2022, which imposed an annual RMD obligation if the account owner had reached the required beginning date.

Plan custodians, professional advisors, and beneficiaries of qualified accounts were arguably unable to react in time to the Service's interpretation of the SECURE Act's inherited account provisions. As a result, the IRS granted special relief in Notice 2022-53. That document provided that the federal government would not try to collect the penalty tax for any failure to take a 2021 or 2022 RMD from a post-SECURE inherited qualified account.

The second issue is connected to the SECURE Act 2.0's increase in the RMD age for certain taxpayers. While the change is a gift to older taxpayers who do not need to take money out of their qualified accounts, custodians have struggled to update their systems to accommodate the new rules.

### Special Relief

The IRS Notice provides special temporary relief regarding both the lingering uncertainty over post-SECURE inherited accounts RMDs and the increase in RMD age.

### INHERITED ACCOUNTS

As it did in Notice 2022-53, the IRS extended its waiver of the penalty tax where certain beneficiaries failed to take RMDs from inherited qualified accounts to include calendar year 2023. The Service specifically singled out the following two types of situations that qualify for the special 2023 relief from the penalty tax:

- A designated beneficiary of an employee under the plan (or IRA owner) if the employee (or IRA owner) died in 2020, 2021, or 2022, and on or after the employee's (or IRA owner's) required beginning date and is not an eligible designated beneficiary (EDB).
- A successor beneficiary of an EDB if the EDB died in 2020, 2021, or 2022, and that eligible designated beneficiary was using the lifetime or life expectancy payments exception.

### INCREASE IN RMD AGE

The IRS recognized that plan custodians had only a short time to implement procedures consistent with the SECURE Act 2.0's changes:

Following enactment of the SECURE 2.0 Act, plan administrators and other payors indicated that automated payment systems would need to be updated to reflect the change in the required beginning date under § 401(a)(9)(C) pursuant to § 107 of the SECURE 2.0 Act. They expressed concern that these revisions could take some time to implement and, as a result, plan participants and IRA owners who would have been required to begin receiving RMDs for calendar year 2023 but for § 107 of the SECURE 2.0 Act (i.e., those who will attain age 72 in 2023) and who receive distributions in 2023 could have had those distributions mischaracterized as RMDs (and therefore ineligible for rollover).

Notice 2023-54 grants rollover relief relating to distributions made during 2023 to individuals that were characterized as RMDs but were not actually RMDs as a result of the enactment of SECURE 2.0. For example, if an IRA owner turned 72 in 2023 and was mistakenly sent a distribution thought to be an RMD by the account custodian, that taxpayer is eligible to take advantage of the special relief.

The Service has extended the 60-day rollover deadline for distributions of the type described by the Notice to September 30, 2023. If a taxpayer was mistakenly sent a distribution in 2023 because of the changes of SECURE 2.0 and redeposits the distribution in an eligible qualified account on or before the end of September, that transaction will be considered to be a valid indirect rollover.

## CONCLUSIONS

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. The Aretha Franklin estate illustrates some of the things that can go wrong when clients try to become their own estate planning experts.

Here is a short list of the things the Franklin estate saga should remind us of:

- Most people should work with an attorney to create testamentary documents.
- Consider a revocable trust and other probate-avoiding transfers—especially if privacy is a goal.
- 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.
- Find trusted advisors who can work together as a team.

Aretha Franklin's heirs are likely to remain in court for years as they continue to 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.

The IRS created new opportunities for financial service professionals and some of their clients when it published Notice 2023-54.

Where someone who turned 72 in 2023 was mistakenly sent an RMD from a qualified account earlier this year, the Service has provided an extended 60-day rollover deadline until the end of September.

Many nonspouse beneficiaries of post-SECURE inherited qualified accounts now have the option of skipping a 2023 RMD that may have been due thanks to the IRS's proposed regulations connected with the original SECURE Act.

Both the Franklin estate update and the IRS Notice create good reasons to touch base with our clients during the dog days of summer.



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#### ***Building Protecting and Perpetuating Family Wealth***

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