LEGAL EASE

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Estate planning for yourself, others

We recently lost another icon of the music industry, Aretha Franklin, the Queen of Soul. In the days following her death, many were surprised to learn that Ms. Franklin never executed a Will. Now her extensive estate will be distributed by the laws of intestacy (how an estate is handled when no Will is in place) in her home state, instead of how she might have wanted her fortune to be distributed. There can be many unintended consequences of failing to state in a document how you want your estate to be handled after you pass, even if you are not nearly as wealthy as Aretha Franklin or Prince. Their estates will take years to administer and be costly to do so.

I have written before on why a Will is necessary even if you think that you do not "have anything," or if you have made arrangements to distribute your estate through beneficiary designations. You might have an intended heir with special needs or who is receiving disability payments. You might have minor children for whom you need to provide guardians and trustees. You might have charitable organizations that you wish to remember at your passing. You might have children or other close relatives that you do not wish to name in your Will. The list can go on, and only meeting with an experienced estate planning attorney can insure that you are "covering all your bases." Equally important are Power of Attorney documents to make sure that your "life planning" needs are met.

You may ask why someone else didn't prepare a Will for Aretha Franklin or Prince or others who never seemed to get around to executing such a document. The answer is that only the "testator" (the person for who is the subject of the Will) can actually prepare and sign a Will. An attorney can meet with a person and prepare the document, but it must be signed by that individual. It must be what that individual wants to have happen following their passing, not what others think should happen. It cannot be executed by a spouse, a child, or another relative or friend. It cannot be done by the person who has been previously been designated the Agent under a Power of Attorney either. A Will must be executed by the testator, and in Pennsylvania, be signed by two independent witnesses, and ideally, notarized by a third person. The testator must be competent, understand the extent of his or her estate, and not be unduly influenced by another. The responsibility of determining how one's estate is to be distributed lies solely with the testator and no one else.

In addition to fielding requests to prepare a Will on behalf of another, I am often challenged by family members who wish to be present in the same room as the testator and who are refused entry. Other than one's spouse in most cases, no one else should be in the same room when someone is discussing the terms of their Will. Only independent witnesses and a notary should be present when the Will is signed. The American Bar Association publishes a pamphlet entitled "Why am I left in the waiting room? Understanding the Four C's of Elder Law Ethics." The Four C's include: client identification (the actual person to whom the lawyer has the professional duties of competence, diligence, loyalty, and confidentiality); conflicts of interest (a lawyer can only represent one individual); confidentiality (lawyers have an obligation to keep all information and communication confidential); and competency (lawyers must be sure that the individual has ability to understand and communicate what he or she wants).

At the end of the brochure it states "We do not want our clients' choices, and the documents they sign, to be undone one day in the future because we allowed family members to be too involved in the matter." Contact an estate planning lawyer at OWM Law for assistance in making sure that your estate planning is done with your best interest in mind.