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LEGAL BRIEFING: TRUST & ESTATES LAW
Dying without a Will – New York Laws of Intestacy

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August 22, 2018

I-N-T-E-S-T-A-T-E, Find Out What It Could Mean For You!

Aretha Franklin, with an approximate net worth of \$80 million, passed away at 76 years of age at her home in Detroit, Michigan—reportedly without a Will. As if this was not surprising enough, Aretha had a special needs son (Clarence) who will need financial and other forms of support his entire life. According to Michigan law, Aretha's four children will receive their inheritance outright (not in trust) in equal shares. This could have a drastic impact on any benefits he is receiving now or in the future. So, how could this have been avoided and what would happen if this took place in New York? This article will discuss how assets will be distributed (in New York) if an individual never executed a Will. Furthermore, this article addresses who has the legal right (i.e. legal standing) to commence an estate proceeding and act as estate representative.

When a person dies without a Last Will and Testament (“Will”), it is said that the individual (“Decedent”) died “Intestate”. That Decedent’s estate assets are then distributed according to the laws of intestacy pursuant to New York Estates, Powers and Trusts Law (“EPTL”) § 4-1.1. The determination of who ultimately inherits the Decedent’s assets depends on who the living relatives are and their relationship to the deceased. The family members entitled to a share of the Decedent’s estate are known as “distributees”.

Decedent has the following relatives:	Estate assets pass as follows:
A Spouse but no Children	Spouse inherits everything outright.
Children* but no Spouse	Children inherit everything outright equally.
Spouse and Children*	Spouse inherits the first \$50,000 plus half of the balance. The Children* inherit the balance outright in equal shares.
Parent/s but no Spouse and no Children*	Parent/s inherit everything outright.
Siblings but no Spouse, Children* or Parents	Siblings inherit everything outright.
Grandparent but no Spouse, Children*, Parents or Siblings	One-half to living maternal grandparents & one-half to paternal grandparents living; if no maternal living, all to paternal and vice versa.
Aunts or Uncles but no Spouse, Children*, Parents, Siblings or Grandparents	One-half to living maternal aunts/uncles and one-half to paternal living aunts/uncles; if no maternal living, all to paternal and vice versa

*If a child dies before the Decedent leaving children of their own (i.e. grandchildren), the grandchildren would step into the deceased child's place and inherit the share of the deceased child.

In order for a child to inherit from his or her parent, there must be a legally recognized parent-child relationship. A biological child or legally adopted child, will inherit from their parent under the intestacy laws. However, foster children and step-children will not inherit if they were

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not legally adopted. Children born outside of marriage (a/k/a non-marital children) will inherit from their birth parent. If a male has a non-marital child and passes away, the Surrogate's Court will require that paternity be established. If a Decedent has no family at all, then the property will escheat to (i.e. revert to) the State.

In addition, if a Decedent has no Will, then New York EPTL outlines who is eligible to act as the estate representative (i.e. the Administrator). This hierarchy provides for the following order: (1) Surviving spouse, (2) Adult children, (3) Adult grandchildren, (4) Father or Mother, (5) Siblings and so on. If an individual is not married and has children, then all children have an equal right to act as Co-Administrators. As you can imagine, this can cause conflict if the children do not get along well with each other.

The benefits of creating a Will to expressly reflect your wishes are far reaching. In Aretha Franklin's case, a properly structured Will could have saved millions of dollars in estate taxes and created an appropriate trust (Supplemental Needs Trust) for the inheritance her son Clarence is to receive. Additionally, having a Will would have allowed Aretha to appoint an estate representative of her choosing—not the Court's. A Will can save time and money on legal fees and court costs in the future, especially if potential conflicts exist.

If you have any questions about this Legal Briefing, please contact any attorney of our Firm at 585-730-4773.

This Legal Briefing is intended for general informational and educational purposes only and should not be considered legal advice or counsel. The substance of this Legal Briefing is not intended to cover all legal issues or developments regarding the matter. Please consult with an attorney to ascertain how these new developments may relate to you or your business.

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