



## Protecting Your Estate – Why a Will is just as important for you as it is for Pop Royalty

According to multiple media reports, Aretha Franklin, the Queen of Soul, died without a Will and without explicit testamentary intentions. The Rolling Stone have valued Aretha Franklin's estate as worth approximately \$80 million<sup>1</sup>, and due to her lack of Will, her assets are likely to be contested in court similarly to the way in which Prince's estate was contested; a process which according to Forbes has meant that his heirs are yet to receive any inheritance from his estate<sup>2</sup> – over two years after his death.

So what happens to an estate if no testamentary instructions have been left? Your assets are distributed across your next of kin based on a specific formula. If you don't have a legally recognised partner or children, the order of priority is usually your parents, your siblings (or their children), grandparents, aunts and uncles then first cousins. However, if you pass away without a Will (or you "die intestate"), it also means that it may be easier for the Estate to be challenged. For example, if you regularly volunteered at or regularly donated to a charity, they may be able to petition the court for a portion of your estate. Having the estate challenged often leads to a significant administrative burden for the Executors, not to mention a lengthy and expensive legal process.

### Why you should write a Will

You probably have a good idea of who you'd like to give your hard-earned assets when you're gone. Making a Will can ensure your assets are distributed the way you want.

People usually don't consider putting a Will in place until they have dependents, as often people's motivating factor to organising their estate is based on protecting the future of their children. But what if that isn't your life? What if you are single, or if you are in a relationship that may not be classified as de facto or a spouse relationship? Do you still need a Will and what should it look like?

### Where there's a Will, there's a way

A Will is a legal document setting out your wishes for distribution of your assets after you die and who you would like to be responsible for carrying out your wishes. Typically, it needs to be a written document which you've signed, had

witnessed by two people and you need to be aged over 18 years old and considered to have the mental capacity to understand what you are doing for it to be considered valid. You should check whether your state or territory has any specific additional requirements to be valid.

You can write a Will yourself using a kit – you can find a range online varying in price – or use a solicitor. Bear in mind, just because you've written a Will and had it witnessed doesn't guarantee it will be considered a valid document if it doesn't meet legal requirements. Given the complexities, speaking to a solicitor may be helpful to ensure that your Will meets the necessary criteria to be considered valid and that you've accounted for everything you need to.

### 3 reasons to write a Will

There are a number of reasons to write a Will.

#### 1. Choose where your assets go and who executes your Will

Maybe you wanted your best friend to have your collection of art or your furniture go to a particular charity. Or you were happy to have your assets divided amongst family but wanted a cousin to inherit the bulk to help with their medical bills. If you leave it to the legal process, it's less likely that any of these wishes will come to light unless your family specifically know of them and are happy to forgo their legally allocated shares to make it happen.



<sup>1</sup><https://www.rollingstone.com/music/music-news/aretha-franklin-Will-what-happens-718930/>

<sup>2</sup><https://www.forbes.com/sites/markeghrari/2018/04/18/two-years-later-princes-heirs-have-still-not-received-a-penny-of-his-estate/#1fbbb3553ab2>

Dying intestate also means your estate will be assigned a court-appointed administrator for your assets and organising your funeral. When you have a legally binding Will, you can make sure the person organising your funeral and distributing your assets is someone you trust to carry out what you wanted. Where this can be important is in situations where there is a strained family relationship. Or you might feel a particular member is better suited to the pressure of managing grief and organising your estate than the person a court might choose to appoint. Not having a Will at very least can delay the distribution of your estate, which could be difficult depending on costs that may be incurred from your death - such as the funeral.

## 2. A clear picture of your assets

This is something that can actually be useful to you right now. Taking the time to write a Will can help you get across all your assets and debts – ranging from finances and investments to physical possessions. Understanding the complete picture can help you plan ahead for your own life (not just your death) and also manage any areas which might be a concern for you through a strategy.

Part of this might also include considering how any debts you've accrued would be paid in the event of your death. Usually, your assets are used first to pay any debts before being distributed to your beneficiaries.

Depending on your debts, there might be proceeds left for your loved ones – or not. Any remaining debt after

your assets have been used to cover debt does not pass onto your beneficiaries unless the debt is a joint one (in which case, the joint partner to the debt would have to manage it). A financial adviser can help you evaluate this and whether there are strategies, like life insurance, you could consider to manage your debts and keep your assets for beneficiaries.

## 3. Lessen the stress for your loved ones

A court process is stressful but combine that with the pressures of grief. Making a legally binding Will can take some strain off your loved ones in a very difficult time for them – losing you. And it might give you the opportunity to offer some comfort beyond the grave where you've chosen to make certain bequests.

However you choose to approach writing a Will, make sure it meets your hopes for distributing your assets and remember it's okay to change your mind at any stage and many times through your life and write a new Will. As part of this, don't forget your superannuation might not always fall under your legally written Will, so you might need to nominate any beneficiaries directly with your superannuation provider.

Organising your estate can be a lengthy process, especially if you're looking to optimise the benefit for those who inherit your estate. If you have any questions about setting up your estate, please contact one of our financial advisers.

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