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Estate Planning: *Frequently Asked Questions*

- **What is a Last Will and Testament and what does it do?**
- **How should I choose my Executor/Executrix (the person to administer my Estate)?**
- **I have children under 18 years old. How do I leave them money?**
- **Who will take care of my minor children?**
- **Can I leave a specific amount of money to a family member or charity?**
- **What is a Trust and how are they used?**
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- **How do I plan for needing Medicaid?**
- **What is a Durable Power of Attorney and what does it do?**
- **How should I choose the person to act as my Power of Attorney?**
- **What is a Living Will and Health Care Proxy and what does it do?**
- **How should I choose my Health Care Agent?**

What is a Last Will and Testament and what does it do?

Your Last Will and Testament is an extremely personal document which sets forth the manner in which you wish your estate (any assets you may possess at the time of your death) to be distributed to your family, friends, or charitable organizations. When properly executed, this document is legally binding and it is the responsibility of the individual(s) you name as your Executor/Executrix to make sure that your wishes are carried out. Your Will can designate specific bequests to individuals or organizations, who is to care for your minor children, and other aspects specific to administering your wishes.

How should I choose my Executor/Executrix (the person to administer my Estate)?

You should select as your Executor/Executrix (and any alternates) people you trust who are going to be comfortable making what might be hard decisions on your behalf.

I have children under 18 years old. How do I leave them money?

Without making specific provision in your Will, money or things of value given to children will be subject to further oversight by the Surrogate's Court until that child reaches age 18, at which time the money or asset would be released to the child, free of Court or other oversight. If the amounts involved are relatively small, your Will may provide that the Executor may distribute money or other assets to a parent or guardian or by means of a Uniform Gift to Minors Act account. You should discuss these matters with the attorney at your consultation.

In the event the amounts which might pass to a child are significant, you may wish to consider a Trust within your Will or estate plan, frequently called a Testamentary Trust. The Trustee, whom you would designate, would hold or administer these assets for the child until he/she attains the age of majority or any other age that you designate within the Trust.

Who will take care of my minor children?

If you have minor children at the time of your demise and your spouse has not survived you (or in certain other specific circumstances), you will need to designate Guardian(s) in your Will for the person and property of any children under the age of majority. The Guardian(s) for the person of your children (i.e., with whom they live and who takes care of their day-to-day needs) may be the same as the Trustee of their property (i.e., who takes care of any assets left to them in Trust). You can choose an older sibling, a family member or friend and can appoint a single individual or couple, as you choose.

Can I leave a specific amount of money to a family member or charity?

Leaving a specific amount of money to a family member, charity or other individual is known as creating a "specific bequest". Specific bequests are listed in your Will and would contain to whom you wish to leave the bequest and the specific amount you wish to leave and a specific purpose for the gift, if you so desire. Once your Estate is probated, these bequests would be paid as you had directed.

What is a Trust and how are they used?

A Trust is an agreement between the Trustor/Settlor, Trustee and a Beneficiary. The Trustor/Settlor is the creator of the Trust who will appoint a Trustee to administer the assets held IN TRUST on behalf of the Beneficiary. The Trustee has the legal authority to make disbursements of these assets to or for the benefit of the beneficiary as set forth specifically in the Trust document. There are many types of Trusts and we will be happy to discuss them with you, along with their place in your estate plan.

Will there be taxes due on the money I leave my family?

Both the Federal government and New York State have specific guidelines determining whether or not an Estate is taxable. These laws are currently in flux and it would be best to speak to an attorney regarding whether or not your Estate has assets which will require the payment of a tax obligation to any authority.

How can I minimize the amount of taxes my Estate needs to pay?

There are numerous estate planning techniques which may be available to you in order to reduce the amount of your taxable estate. These methods are often complex and sophisticated and require the advice of an attorney based upon your specific circumstances.

How do I plan for needing Medicaid?

Planning for the potential need for Medicaid is a complex and involved process and requires asset reallocation procedures. Our staff will be happy to discuss these considerations with you if you feel the need.

What is a Durable Power of Attorney and what does it do?

A Durable Power of Attorney is a legal document that gives the person whom you designate as your "Agent" broad powers to handle your property and attend to any business matters on your behalf during your lifetime. You may also name alternate "Agent(s)" or specify that Agents must work together. These powers may include the ability to mortgage, sell or otherwise dispose of your real or personal property without advance notice to you or approval by you. These powers will continue to exist even after you become

disabled or incompetent and are explained more fully in the New York General Obligations Law, Article 5, Title 15, Sections 5-1502A through 5-1503, which expressly prohibit the use of any other or different form of Power of Attorney. HYPERLINK http://www.codes.lp.findlaw.com/nycde/gob/5/15/5-1502A.http://www.codes.lp.findlaw.com/nycde/gob/5/15/5-1502A. A Durable Power of Attorney is ONLY effective during your lifetime. Once you pass away, your Agent(s) no longer have the power to make decisions on your behalf. At that time, responsibilities will turn over to the Executor/Executrix of your Will.

How should I choose the person to act as my Power of Attorney?

You should select as your Agent(s) (and any alternates) people you trust who are going to be comfortable making what might be hard decisions on your behalf. They should know you well and be guided by your values in making choices for you.

You should notify your Agent(s) (and any alternates) that you have named them. They need to agree to act as your Agent(s) and are obligated to affirm in writing their agreement to serve befor Durable Power of Attorney becomes effective as to that designated Agent. If you do not appoint an Agent(s), and then become unable to make your own decisions, a Court may be required to appoint someone to make business decisions for you. Those decisions may not necessarily be the same ones as you might choose. Therefore, it is best to have your choice of Agent(s) in place before they are needed.

What is a Living Will and Health Care Proxy and what does it do?

A Living Will and Health Care Proxy is a legal document that allows you to name a person designated as your “Agent” to make health care decisions for you if you become unable to make your own decisions or become incapacitated. You may also name alternate “Agent(s)” or specify that Agents must work together. This form also allows you to express your wishes regarding health care treatment options, organ and tissue donation, and funeral arrangements, so that your Agent(s) are fully aware of your choices. There is no substitute, however, for telling your Agent(s) your wishes directly.

How should I choose my Health Care Agent?

You should select as your Agent(s) (and any alternates) people you trust who are going to be comfortable making what might be hard decisions on your behalf. They should know you well and be guided by your values in making choices for you.

You should notify your Agent(s) (and any alternates) that you have named them, and they need to agree to act as your Agent(s) if asked to do so. Your Agent(s) does not have authority to make decisions for you until you are unable to make your own decisions. If you do not appoint an Agent(s), and then become unable to make your own decisions, a Court may be required to appoint someone to make health care decisions for you. Those decisions may not necessarily be the same ones as you might choose. Therefore, it is best to have your choice of Agent(s) in place.

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Estate Administration: *Frequently Asked Questions*

- **I am listed as Executor in a Will - what does that mean and what do I have to do?**
- **How does the Estate Administration (Probate) process work?**
- **My family member died with few or no assets - is there a simplified version of Estate Administration?**
- **Do I have to wait until the Court is finished to receive the life insurance benefits?**
- **Who is responsible for the outstanding debts of the Estate?**
- **My family member died owning real property or a house - how do I sell it?**
- **How long does an Estate Administration take?**
- **What will the Estate Administration cost?**

I am listed as Executor in a Will - what does that mean and what do I have to do?

An Executor is the person appointed to administer the estate of a person who has died leaving a Will which nominates that person. Unless there is a valid objection, the judge will appoint the person named in the Will to be executor. The Executor must insure that the person's desires as expressed in the Will are carried out. Practical responsibilities include gathering up and protecting the assets of the estate, obtaining information in regard to all beneficiaries named in the Will and any other potential heirs, collecting and arranging for payment of debts of the estate, approving or disapproving creditor's claims, making sure estate taxes are calculated, forms filed and tax payments made. Frequently, the Executor will retain the services of an attorney for the estate who will assist the Executor in carrying out his or her duties.

How does the Estate Administration (Probate) process work?

Probate literally means to "prove a Will". If a person passes away and leaves a Will, they are said to have died testate and a Probate Petition (or Petition for Letters Testamentary) needs to be filed with the Surrogate's Court in the County in which he died. The Petition will allow the Court to consider the original Will and appoint the Executor/Executrix (also known as a fiduciary) named therein to carry out the terms of the Will. If a person dies without a Will, they are said to have died intestate, and the law provides that the Court can intervene in appointing an Administrator (also known as a fiduciary) of the Estate to act in much the same way as an Executor/Executrix. The difference is that the Court has made the election as to who will serve from among those qualified, rather than you choosing for yourself.

Once a Will has been admitted to probate, that is, proven to the satisfaction of the Surrogate's Court, and an Executor/Executrix has been appointed and confirmed by the issuance of Letters Testamentary or Certificates of Appointment, the Estate Administration Process can begin. This will include collecting the assets and debts of the Estate, establishing an Estate checking account, and paying the liabilities of the Estate, any specific bequests identified in the Will and, finally, distributing the remainder to the Beneficiaries.

An Inventory is prepared and filed with the Court delineating all of the assets and liabilities of the Estate. If there are enough assets in the Estate to pay all of the Decedent's debts and administrative expenses, and satisfy any specific bequests, then distributions are made to the remaining Beneficiaries named in the Will and an Accounting (either formal or informal) is prepared and may be filed with the Court. If necessary, once the Court approves the Accounting, it will grant a Settlement Order and the Administration of the Estate is completed. An Estate is required to remain open for a minimum of seven (7) months from the date of death of the Decedent. Most Estates are closed within a year to 18 months. If there is real property to be sold, this may extend the timing of the completion of the administration of the Estate as well.

If the Estate is determined to be insolvent (there are not enough funds to pay the Decedent's obligations), the process may take slightly longer as creditors may file legal claims against the Estate and these claims will need to be negotiated. If, even after negotiation, there are still insufficient assets in the Estate to pay these claims, additional negotiations will be required to pro-rate the outstanding claims and divide the remaining funds among the known creditors to settle the debts of the Estate. Court approval is required for this process in most cases.

My family member died with few or no assets - is there a simplified version of Estate Administration?

If an individual dies leaving no real property in his/her name and assets of less than $20,000.00, subject to certain family set-asides. Voluntary Administration can be utilized as a simplified version of probate. Under such circumstances, the fiduciary is not entitled to compensation for his or her services, fees to the Court are limited, and the process of administration is considerably less formal. Voluntary Administration may follow the terms of the Decedent's Will, if he or she left one. Otherwise, the process is treated as a condensed version of ordinary Estate Administration.

Do I have to wait until the Court is finished to receive the life insurance benefits?

Normally, life insurance benefits (along with IRAs and other retirement accounts), if they have designated a beneficiary, pass outside of the Estate by operation of law. Therefore, they usually can be distributed before the probate process is completed.

Who is responsible for the outstanding debts of the Estate?

The Estate is responsible for paying its own debts. While the Executor/Executrix's duties include collecting the bills to be paid and making arrangements for the payment of them (with the assistance of the attorney's office) this does not make the Executor/Executrix liable for the obligation if the Estate does not have sufficient funds to satisfy all of its obligations. There are times where a family member or friend will advance money to the Estate in the form of paying a specific bill (i.e., funeral expenses) prior to the appointment of an Executor/Executrix, but these outlays of money will be reimbursed to that individual by the Estate at such time as the estate checking account has been established, assuming the Estate has the resources to do so. Please note that frequently a funeral director will require that a family member accept personal responsibility for these costs.

My family member died owning real property or a house - how do I sell it?

At such time as an Executor/Executrix is appointed by the Court and it is determined that real property should be sold, a normal real estate sale will take place. The difference will be that the Executor/Executrix will be selling the property as the representative of the Estate based on their appointment by the Court and the authority given to them by the documents issued by the Court (i.e., Letters Testamentary or Letters of Administration).

How long does an Estate Administration take?

As described above, the process of getting the Will of the Decedent admitted to probate and an Executor/Executrix or Administrator appointed can generally be accomplished within one or two months. The entire process of administering an Estate can take up to a year, and sometimes longer. In New York, the law requires that an Estate remain open for not less than seven (7) months after the appointment of an Executor/Executrix or Administrator. If the appointment of the fiduciary can take a month or two, and the law requires the Estate to remain open for not less than seven (7) months after the appointment, under ideal circumstances the administration of an Estate can take between eight (8) months and one (1) year, from start to finish. Taxable Estates cannot be closed until the IRS and New York State Department of the Treasury accept the Estate tax returns (Forms 706 and ET-706), which must be filed within nine (9) months of the date of death, although extensions are customarily requested and granted, as the information needed to prepare these returns is often time-consuming to obtain. Taxable Estates optimally can close within two (2) years of the date of the Decedent's death, including receipt of Closing Letters from the IRS and NYS. Many Estates, however, are not required to file these Estate tax returns.

What will the Estate Administration cost?

It is difficult to estimate the cost of attorney's fees, as the time expended depends upon the different requirements of each Estate and its level of complexity. However, legal fees are overseen by the Surrogate's Court. It is our practice to require a retainer fee, which is based upon an initial projection of the attorney and staff time which will be required to initiate the proceedings. The retainer fee amount is not intended to serve as a fixed fee for all of the legal services to be rendered to bring the Probate/Administration Process to a conclusion, but is merely an initial deposit against the time to be expended. Regular invoices will be submitted to the Executor/Executrix or Administrator as the process proceeds detailing the time expended and the amount of any disbursements. Our office is also always available to discuss the progress of the estate administration with the fiduciary.

Court fees and charges are set by statute or Court rules. In general, they are determined by the size of the Estate (amount of assets). The schedule below outlines the current applicable filing fees (which are subject to change without notice):

$0, but under $10,000	$ 45.00
$10,000, but under $20,000	$ 75.00
$20,000, but under $50,000	$ 215.00
$50,000, but under $100,000	$ 280.00
$100,000, but under $250,000	$ 420.00
$250,000, but under $500,000	$ 625.00
$500,000 and over	$ 1,250.00

The Court also imposes fees for certified copies of Letters Testamentary or Letters of Administration, which are required. Currently, these Letters cost $6.00 each. If Letters of Trusteeship are required, an additional cost is required for appointment (which is also subject to specific Court rules).