

# **Estate Planning and Administration 101:**

## **Getting Your Affairs in Order**

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# **Estate Planning 101: Frequently Asked Questions**

## **What is an Estate Plan?**

An Estate Plan is a collection of documents that lays out who should be responsible for the management of your affairs during a time of disability and following your ultimate demise.

An Estate Plan usually includes a Will, Durable Power of Attorney and Healthcare Power of Attorney with Advanced Directive. It outlines how you would like for your money and property and other assets to be distributed, it can make provisions for whom should speak for you in the form of a power of attorney, and it will alert your family what to do in the event of an end-stage illness with a healthcare directive and living will.

## **What is a Will?**

A Will is a document that will direct what happens with your real property, monetary assets and other possessions following your passing. By specifically outlining who gets what, a Will obviates the need for conflict within families, and also provides a measure of security for the drafter, called a Testator, who knows that their final wishes will be followed.

**Important Tip:** To be properly executed, a Will must be signed, dated, and either notarized, or witnessed and signed by two people, or both. If a will is not witnessed, people familiar with your signature will have to certify its validity.

## **What is a Power of Attorney?**

A power of attorney document is most commonly found in one of two forms: (1) Durable Power of Attorney and (2) Healthcare Power of Attorney and Advanced Directive.

A Durable Power of Attorney is what one would call a "business" Power of Attorney. The person granting the power is the Principal, and the person receiving is an Agent. A Durable POA allows an Agent to have broad powers to speak and act on behalf of a Principal with little to no oversight.

A Healthcare Power of Attorney and Advanced Directive is a document that provides direction for healthcare providers about who they are authorized to speak to about your health, medications, and medical procedures. A Healthcare Power of Attorney is only applicable when the Principal is unable to speak for him/herself, on either a temporary or permanent basis.

An Advanced Directive is what is commonly referred to as a "Living Will." It is a document that outlines your wishes in the event there you have an end-stage illness and is used to guide your Agent in making final decisions.

## **Are there any other components to an Estate Plan?**

A comprehensive Estate Plan includes, but is not limited to: Life Insurance, Revocable Trusts, Irrevocable Trusts, Deeds, Guardianship and even Prenuptial Agreements. Using these tools will help you to shield your assets during your lifetime, minimize inheritance and estate tax liability, provide specific parameters and protections for beneficiaries, and any other purpose that your situation demands.

# **Estate Administration 101: Frequently Asked Questions**

## **What is an Executor/Administrator?**

An Administrator and an Executor serve in the same capacity: as the personal representative of an Estate. An Administrator is someone who represents an Estate when the decedent did not have a Will. An Executor is a person who represents in an Estate where the person did have a Will. Both Executor and the Administrator are bound to administer the estate in accordance with the law.

## **What is probate?**

Probate is a process wherein the law determines how to distribute a person's property after they die, whether or not they had a will. The probate process includes opening an estate, acquiring assets, publishing notices, paying inheritance taxes and ultimately distributing property to heirs and/or beneficiaries.

**Important Note:** If a person owned real property, an Estate *almost always* needs to be raised to transfer that property to the person who will inherit it. Most Tangled Titles originate in Estates that were never opened, an oversight that could prove (very) costly.

## **What assets are considered probate vs. non-probate?**

Some assets are distributed to heirs by the court and some assets go directly to specific beneficiaries.

Probate assets include things that were owned by a decedent in their name only—e.g. bank accounts, real property, personal property.

Non-probate assets are those that pass directly to beneficiaries automatically. Non-probate assets are often exempt from inheritance tax, and include assets such as life insurance policies with designated beneficiaries, property held in certain classes of trust and real property owned in joint tenancy.

## **Who's responsible for paying taxes?**

The Personal Representative is responsible for ensuring that available ESTATE assets are used to satisfy any tax balance and debts that are due. The Personal Representative is not personally responsible for any of a decedent's personal debts. Personal Representatives must be prudent though, as they may be responsible for any premature distributions.

## **Can I avoid probate?**

You can avoid probate by creating Revocable and/or Irrevocable Trusts during your lifetime to manage the seamless transfer of your assets following your death. Additionally, using non-probate assets like Life Insurance and Annuities and transfer-on-death designations can ensure your assets get to their destination without getting "stuck in the traffic" of probate.

## **Important Documents Checklist**

You should take the time to compile these items and keep them together in a safe or fireproof box:

- Deed(s) for all real estate
- Mortgage satisfaction documents
- Original Will (Original is required!)
- Power of Attorney(s)
- Trust Instrument(s)
- Funeral/Burial Plans and Arrangements (if pre-made)
- Life Insurance Policy Document(s)
- Marriage/Divorce Records
- Birth/Adoption Records

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**Shabrei M. Parker** is a multi-dimensional advocate, whose practice areas include trusts and estates, life and family planning, business development, and sophisticated wealth building. In addition to her practice, Ms. Parker is a professor and scholar. An Adjunct Professor, frequent community presenter and author of continuing legal education curriculum, Ms. Parker enjoys sharing her knowledge, wisdom and experience with broad audiences. A Philadelphia native,

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