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THE FOLLOWING IS INTENDED SOLELY AS AN ACCUMULATION OF GENERAL CONCEPTS AS AN AID IN UNDERSTANDING THE ESTATE PLANNING PROCESS. IT IS NOT TO BE RELIED UPON IN MAKING ESTATE PLANNING DECISIONS. AN ATTORNEY SHOULD BE CONSULTED TO ADVISE YOU ON THE APPROPRIATE ESTATE PLAN FOR YOUR PARTICULAR SITUATION.

### **GENERAL ESTATE PLANNING CONCEPTS**

The term "estate planning" is generally used to refer to planning for the administration and distribution of your assets upon your death. A proper estate plan has at least four purposes:

- To distribute your property to the people or entities you select through the method you choose.
- To minimize the effect of estate taxes.
- To identify the persons who will administer your estate and any trust entity you desire.
- To appoint a guardian for the benefit of your minor children, if any.

Your assets have been accumulated over your lifetime. The relatively small amount of time and money necessitated to devise a proper estate plan for your unique situation will ensure that your property is passed on to the parties you want to benefit in the most efficient manner.

The goal of this discussion is to aid you in understanding the estate planning and probate process. We believe that the better understanding you have, the greater the likelihood your estate plan will accomplish your desires.

## PARTS OF AN ESTATE PLAN

With few exceptions every adult needs a Will, regardless of age, marital status, or health. A Will is a written document which:

- Specifies your personal property and real property distribution desires.
- Designates an "independent" executor. He or she will be responsible for identifying and taking an inventory of your property; preserving your estate for your heirs; paying debts, creditors and taxes; and distributing the property among your beneficiaries or to a trust for their benefit, all as your Will provides. A Will can appoint an "independent" executor in Texas, which, as opposed to a "dependent" executor, is not required to obtain permission for each and every action from the court in which the Will is probated.
- Appoints guardians for minor children.

As implied in the above listing, the estate planning process usually involves more than just the preparation of a basic Will. It may involve trusts to support your children until they are of age, to manage your assets during or after your lifetime, or to shelter your estate from taxes while keeping it available to benefit those for which you want to provide. It also may involve gifts to people or charities. Finally, there are definite purposes and needs for insurance in many estates and the proper planning involving those policies may be critical to the function of the plan.

The first step in estate planning is to inventory your assets. Assets for this purpose include your home, jewelry, antiques, stocks and bonds, bank accounts, automobiles, insurance, retirement plan benefits, real estate and other property. Especially important in this process is to note how they are owned and how they were acquired. Then, take a similar inventory of your debts or liabilities.

The inventory is important because different size estates will have different needs merely because of their size. Also, it is common for people to not be aware of the size of their estate when insurance is included, so make sure and compile a relatively complete inventory. Small items of relatively little value, or personal items such as clothing, furniture and household appliances of rather general value can have their value estimated as a group as opposed to on an individual basis.

Secondly, you need to crystallize your personal goals with respect to your estate. This would include both a general and specific asset administration and distribution plan. For example, would you want any monies to be ear-marked to go to charity or would you like the bulk of your estate to be held in trust for your spouse's or children's future needs, including education? A person or entity would need to be chosen to serve as your independent executor and as Trustee of any trust created, with successors identified as well. Further, if you have minor children, some thought is needed to identify who their guardian would be in the event of the untimely death of both you and your spouse. If your entire family passed away in an accident, what should happen to your property?

Another step that is important for many people is to consider the tax laws as they relate to your plans. Those are summarized on pages 5 and 6 below.

### **IF YOU DIE WITHOUT A WILL**

If you die intestate (or without a Will), the probate court, through a representative it appoints, will control your estate and distribute your assets according to your state's intestacy statutes. These statutes were drafted in a way which may not match your personal wishes.

First, your assets may not be entirely distributed to your children or the other individuals you would have selected. For example, if you pass away leaving a spouse and children, all of your community property would be owned by your surviving spouse. The Texas probate laws generally favor the closest family members, so that nonrelatives or charities whom you may have wished to include will be overlooked.

Second, if you have minor children, and your spouse predeceases you, you will not be able to select their personal guardian. If no trust is provided in a Will, a guardianship for any assets passing to your children (including money) would be necessary as well. Then, the guardian of the estate of the children must petition the court each year for an allowance to support the children, and must annually report expenditures. The courts are reluctant to make distributions from the guardianships, and will generally do that only if the guardians are not able to take care of the children out of their own funds.

Third, without a Will, the court will appoint an executor of its choice, according to the statutory listing of property. It would also require a surety bond to be acquired and its premium paid out of your estate. Many people find comfort in selecting someone they know and trust to oversee their estate and waive this bonding requirement.

Finally, if you die without a Will, your estate will not have the benefit of estate tax planning to minimize the effects of federal and state taxes resulting in the payment of taxes which otherwise could have been avoided.

### **PROBATE**

Most estates include assets which pass through probate and those that pass outside of probate. Probate assets are those owned in your own name and which require some court action to determine where the assets should go. That court intervention would be done by applying either (i) the Will to carry out the decedent's wishes, or (ii) intestacy laws.

Nonprobate assets are those which transfer automatically to another person on your death. Examples of nonprobate assets include:

- Assets held in a trust.
- Assets given outright to your surviving spouse either during your lifetime or by a joint tenancy with right of survivorship account designation.
- Proceeds of a life insurance policy naming individual beneficiaries.
- Funds held in retirement plans, Individual Retirement Accounts (IRA's), or Keogh accounts payable to beneficiaries as designated.
- The portion of the community property owned by the surviving spouse.

The actual probate process begins when the probate court in your county of residence determines that (i) you passed away, (ii) your Will as presented to the Court is valid, and (iii) it is your last Will.

Secondly, the probate court will supervise the process of settling your estate. Depending upon whether your Will established an independent executor or not, a court will, in differing degrees:

- Oversee the actions of your executor in accumulating and administering your property.
- Determine the appropriateness of any creditors' claims.
- Guide the executor in his or her conveyance of your property to the beneficiaries or trusts named in your Will, or to your heirs if you die without a Will.
- Supervise a guardian's use of any property which is left to minor children, until they reach legal age of adulthood (18 in Texas).

Court supervision of the probate process ensures your directions are carried out properly.

Depending on your estate plan, probate can be informal and unsupervised or formal and supervised. The probate process can take as little as six months or, if contested, years. If you own property in other states, your Will must be probated in those states as well (called "ancillary probate administration"). Long, costly probate in Texas is generally a thing of the past with Independent Administration, but the cost of probate, as well as the possibility of contest, can be minimized with an appropriate estate plan drafted to meet your individual needs.

## AVOIDING PROBATE

There are certain advantages to an estate plan which enable you to avoid probate on some or all assets. Some of those advantages are:

- No ancillary probate (for out of state property);
- Maintains privacy;
- Provides for continuous, uninterrupted management of your assets, even in the event you become incompetent;
- Assures certain affairs are in order, prior to your death or incompetency; and
- If a Will contest or other challenge of your wishes is anticipated, a revocable trust will generally be less subject to attack.

A revocable "living" trust will accomplish these objectives and still enable you to change the terms at any time, or ultimately revoke the trust if you desire. The trustee of this trust can be anyone from your spouse to yourself.

**AN IMPORTANT NOTE TO REMEMBER IF YOU DECIDE UPON THE REVOCABLE LIVING TRUST: YOU STILL NEED A WILL TO DISPOSE OF PROPERTY NOT OWNED BY OR PAID TO THE TRUST IN THE MANNER YOU DESIRE.**

## ESTATE AND GIFT TAXES

If your estate is of a certain size, in 2011 and following it will be subject to federal estate taxes as well as state inheritance taxes. Federal estate taxes can be as much as 55% of the taxable estate. If you are married and you utilize the marital deduction (explained below), your estate is not taxed until it is passed on to your children or other heirs after the death of your spouse. The amount and rate of tax is based upon the size of your estate and the year of your passing.

Your taxable estate includes the following:

- Any separate property you own;
- One-half of the value of your community property (held jointly with your spouse);
- The value of any jointly held property with others, based on your ownership percentage;
- Any property over which you have a general power of appointment; and

- One-half of the value of any pension plans or the proceeds of life insurance policies you own on your life, if community owned, or all of them if separately owned.

**Deductions:** Deductions from your gross estate may include the following:

- Funeral expenses;
- Amount of debts owed at the time of death;
- Charitable gifts to be made in the Will or Trust; and
- Gifts to your spouse, if any.

If you give all of the taxable portion of your property to your spouse and the marital deduction is utilized, all property, personal and/or real, may be left to the spouse tax free. However, after the death of your spouse, this property will be taxed as it is passed to other heirs. Proper planning is important not only in this second estate, but for both estates.

**Gifts:** Gifts of property, whether given while you are alive or after your death, have the potential of being taxed. If the gift is made while you are alive, it may be subject to gift tax. If it is made after you die, for example through your Will, the tax is called estate tax. The tax system is generally referred to as the federal transfer tax system, or the unified gift and estate tax system. There are exclusions, however, which enable you to "give away" portions of your estate prior to your death to decrease the size of your estate upon your death. Gifts other than to your spouse which exceed \$13,000 per person and for which gift tax returns are required must be considered for purposes of computing someone's gross estate. Each person also has the ability to leave or give away up to \$1,000,000, free of federal gift taxes, in his lifetime.

**Unified Credit Exemption Equivalent:** The federal estate tax is eliminated for people dying in 2010, but under current law, it is re-instituted at a 55% rate and a \$1,000,000 exemption equivalent (as inflation adjusted) in 2011. This exemption does not affect your ability to give away \$13,000 per person, per year (or \$26,000 with your spouse's participation).

**Generation-Skipping Tax Exemption:** There is no generation-skipping tax in 2010. As your legacy moves from your children's generation to your grandchildren's generation, it will be subject to estate taxes in your children's estate. If you choose to bypass your children's generation and give directly to your grandchildren, you can only do so up to \$1,000,000 in 2011 and beyond per donor (\$2,000,000 for husband and wife). This \$1,000,000 amount is called the generation-skipping transfer tax exemption ("GST Exemption"). If you wish to give it to your grandchildren only if and when your children are through with the money or property, you can apply that GST

Exemption to amounts held in trust for the children's benefit, so when the grandchildren receive the assets, they are not taxed in the children's estates.

## TRUSTS

Trusts are used to ensure property is managed and used for the benefit of particular beneficiaries while minimizing tax liability. There are living trusts, which are in effect during your life and may be revocable or irrevocable, as well as testamentary trusts, which do not go into effect until you die.

Trusts do not take the place of a Will, but are commonly used in conjunction with a Will to properly dispose of remaining assets.

The following are some of the more common types of trusts:

**Revocable Living Trust:** A revocable living trust can ensure your own personal and financial welfare in the event that something happens to you during your lifetime. You will be able to select someone to make decisions and act on your behalf should you become incapacitated or incapable of making decisions. In addition, you may appoint a professional manager as current or successor trustee to manage and make decisions about the trust's assets. A revocable trust will avoid the time and expense of probate on the assets transferred into and held by the trust, but it will not avoid estate tax on its own. This trust can perform many of the objectives of a Will by passing title or benefits to property at your demise.

**Irrevocable Trust:** This is a method to transfer ownership of an asset without making an outright gift. You relinquish any right to all assets in the trust as well as the income and principal from the trust and the power to change the trust agreement. As a result, the asset is not considered part of your taxable estate. You may name the recipient of the assets, income, or principal. Because the transfer is considered a gift to the beneficiaries of the trust, a gift tax may be imposed unless the transfer qualifies for the gift-tax annual exclusion (currently \$13,000) per recipient or you use some or all of your lifetime exclusion amount (currently \$1,000,000). One popular use of an irrevocable trust is to use it to acquire a life insurance policy on your life, particularly with the goal of minimizing the estate and taxable providing funds for estate taxes.

**Bypass (Family) or Credit Shelter Trust:** This trust is used at the passing of the first of two spouses to utilize the maximum amount of property that can pass tax free to beneficiaries other than a spouse. The bypass trust arranges for any assets under the unified credit exemption equivalent to be held ultimately for some remaining beneficiary but in the near term for a surviving spouse. This structure allows you to pass up to the exemption equivalent to your children, estate tax free, while your spouse can have access to this amount during his or her lifetime, if needed. This trust does not impair the surviving spouse's ability to use his or her own unified credit exemption equivalent in their Will or during their lifetime.

**Marital Trust:** You can provide for your spouse without leaving your property directly to him or her through this vehicle. You may appoint either your spouse or another individual to act as trustee of this Trust, with your spouse as sole beneficiary, and the trust will qualify for the marital deduction. Your spouse must receive all income generated in this Trust.

One of ten preferred type of marital deduction trust can dictate how your property, held in trust during your surviving spouse's lifetime, will be distributed upon the death of your spouse.

Other trusts that may be useful under certain circumstances include:

**Children's Trusts:** The children's trust is usually funded at the passing of the surviving spouse. Distributions from this trust are made to accomplish the purposes described in the trust itself. Therefore, it can mandate income and/or principal distributions for the health, education, support, and maintenance of children. If there is more than one child, the trust may be kept together as one trust and distributions "sprinkled" out to the beneficiaries from that common fund until the youngest child attains a certain age, i.e., twenty-five (25) years. After that date, the trust would be divided into separate trusts for each child. Thereafter, distributions for one child would not deplete the other child(ren)'s trust share(s). Distributions of large portions of the trust, leading to its ultimate termination, may begin a definite number of years after the survivor's passing or as the children reach certain ages, such as twenty-five (25), thirty (30), and thirty-five (35). Generally, the more money involved in a distribution, the more appropriate it might be to come at a later age in a child's life. For example, if the net monies in the children's trust totaled \$2,000,000 and the family had two children, each child would have \$1,000,000 in his or her trust share. If paid in three installments to each child, the first installment to a child would be \$333,333. The timing and size of this installment should be managed to accomplish family purposes with care taken not to negatively affect the child or children. Another approach (and currently our recommended method) is to leave the money in trust for the children's lifetime but over time transition the trustee function to them. This method keeps the assets generally protected from creditors and potential marital problems, but permits the child to direct the ultimate disposition of the assets as they pass away.

**Charitable Trusts:** A charitable remainder trust provides you with a current income tax deduction for a portion of the value of property given to the trust while the income from the assets goes to you or your beneficiary. Upon the termination of the trust, the charity receives the principal. Conversely, a charitable lead trust provides a charity with the income from your principal, paid over certain amount of time, after which the principal passes to your heirs.

**GRIT (Grantor Retained Income Trust):** This mechanism allows you to transfer assets to a trust and still collect income or use the property for the term of the trust. This type of trust is often used to "freeze" the value of estate assets for estate-tax purposes.

**Combination of Trusts:** Frequently, the financial goals individuals have for their legacies involve the combination of several of the concepts segregated above. For example, the bypass trust can provide distributions for children and/or grandchildren for health and education during the surviving spouse's lifetime. Children's trusts can mandate charitable distributions to be made annually, or culminate at the end of the Trust or the death of children with a gift to charity.

Just as individuals take great care in the accumulation and management of their financial affairs during their life, some well considered plans should be made for the management of assets to accomplish their purposes after they die.

### **POWERS OF ATTORNEY AND LIVING WILL**

**Durable Power of Attorney:** The durable power of attorney ("durable POA") is a document that allows your attorney in fact to transact all types of business on your behalf as if you were executing the documents yourself. It is intended to allow another to handle your business in the event you are unable to oversee those matters for any reason, such as your incapacity or absence.

The events that cannot be delegated through a durable POA include your ability to make or change your Will, to serve as an officer or director of a corporation, or to make a gift of substantially all of your property. However, your attorney in fact can execute real estate sale documents, convey stock, make limited gifts and cash government checks, to name just a few items, without your consent unless you limit his or her power in the power of attorney document.

Your incapacity can trigger the effectiveness of this power or you can have it become immediately effective. Further, unlike a general POA, a durable POA will not terminate upon your incapacity.

After it is executed and notarized, it is not necessary to file the durable POA of record unless it is used for real estate transactions. Then it must be filed at the courthouse in the county in which you reside. To terminate the durable POA for real estate transactions, a termination statement must be similarly recorded. To terminate a durable POA for anything other than real estate transactions, refer to the Statutory Durable Power of Attorney for instructions.

The alternative to a power of attorney would be either a guardianship formed in the court having probate jurisdiction over you at the time the guardianship is appropriate, or a revocable trust with a successor trustee. Both of these alternatives are likely to be more expensive than a power of attorney, but are available. If you desire any further information on either of the above, please request that information from my office.

**Durable Power of Attorney for Health Care:** The Durable Power of Attorney for Health Care ("health POA") is intended to be a sharing of authority of your control over health decisions

with the attorney in fact. It was legislatively created to provide some assurance to health care providers as they rely upon a family member's decisions. Therefore, if you are incapacitated and are unable to make medical decisions, the attorney in fact can authorize the physicians or hospitals to perform medical treatment on you.

Unlike the durable POA, this document does not have to be recorded in the county in order to be effective. Also, to terminate this power of attorney, you need only destroy all copies of it, execute a repudiation document which would be similar in execution formalities to the original document, or mark "canceled" or similar wording across the face of all copies. I would also suggest that you notify all parties who hold these documents if and when you cancel the health POA.

**Directive to Physicians:** Unlike the Durable Power of Attorney for Health Care, this document was created to provide the choice for terminally ill patients to have the hospital or physician withhold or withdraw treatment in order to die naturally. Physicians must certify that the patient's condition is terminal or that his or her condition is irreversible, and that such procedures would serve only to artificially prolong the moment of death.

### CONSIDERATIONS IN ESTATE PLANNING

Obviously, this information only scratches the surface of estate planning. Many legal and tax law requirements apply to the general principles discussed. Legal guidance should be sought before taking any action.

Following are a number of considerations to weigh in planning your estate.

- If you leave assets directly to minor children, a guardianship must be established and the guardian (even the child's surviving parent) must petition the court for even routine expenditures on the children's behalf. Also, a guardianship must terminate when the child is 18. Instead, you may be wise to bequeath your property to a trust established in the children's names, to name someone or an institution with trust powers as trustee, and provide for its termination when you think it would be wise to have the children receive the principal.
- If you appoint an independent executor, he or she will not have to seek permission from the court for each action, which will decrease the burden on the executor and lower the attorney's fees necessary to accomplish the probate process.
- If you plan to be married, you may wish to consider a prenuptial agreement to control your assets in the event of divorce or death. This may be particularly important in certain circumstances, such as if you own a closely held business or wish to bequeath your estate to children from a previous marriage.

- If you are married, agreements between spouses are enforceable to partition community property into each spouse's separate property or clarify which assets are separate property.
- It is wise to avoid provisions likely to be ruled invalid or to cause a challenge from neglected heirs. If you seek to totally disinherit a child, it should be unequivocally indicated in your Will that this is your intent. Also, bequests that appear as favoritism or slights may cause challenges to the Will or, just as damaging, lasting ill feelings in your family. For those issues, a revocable trust may be superior because it is not usually as subject to contest as a Will.
- Few tools are available after death to relieve your estate from taxes if you have not properly planned the disposition of your estate.
- Anytime your life or circumstances change dramatically, your estate plan probably should be updated. Changes in the following areas may alter your desires significantly:

Marital Status  
Ownership or Value of Property  
Birth of a Child  
Tax Laws  
Income or Employment Status  
Business Ownership  
Relocation  
Receiving an Inheritance

At a minimum, you should have your estate plan reviewed every five years.

- Keep your affairs in order and maintain an inventory of all your property. Take some time to educate your selected independent administrator about the location of your Will, your property, where you keep your inventory, and who your advisors are (your attorney, accountant, insurance professional, financial planner, etc.).
- Your Will is effective until you change or revoke it. You may alter your Will by executing a new one or by adding a "codicil," which is done in the same manner as a Will. If you make changes to your Will after its execution by writing on the document itself, you may invalidate the entire Will.
- Designating a beneficiary of your life insurance policy does not take the place of a Will. Life insurance is only one asset which needs to be considered in your overall estate plan. Under certain circumstances, it is even advisable to make your insurance payable to your

estate. Unless the estate or trusts contained in the Will are the beneficiaries, the insurance proceeds

will pass outside of the estate for probate purposes, so the Will cannot impact distribution of its proceeds.

- If you own your checking or brokerage accounts as joint tenants with right of survivorship, those items will not be probated and the survivor will have immediate access to and ownership of the account. Again, this may inadvertently frustrate the purposes of the Will and your overall estate plan; so we generally only recommend a relatively small value of assets be held in this way.
- Married couples should work closely together in estate planning so family objectives can be met regardless of who dies first, although each marriage partner can and should make his or her own determination of his or her estate plan. However, never contract to make a Will or execute a joint Will.
- Do not have a beneficiary, executor or trustee serve as a witness to your Will.
- Because estates shrink or grow, use percentages instead of dollars to divide assets.
- The best assets to give as current, tax-free gifts may be those which are appreciating in value because the asset and subsequent appreciation is excluded from your estate for estate tax purposes. Alternatively, it may be good estate and income tax planning to give property which generates a large amount of annual taxable income.
- Many of my clients wish (after their surviving spouse no longer needs the assets) to have their one half of community assets plus their separate property to ultimately pass to their children or their other beneficiaries. If property is left outright to a spouse, the deceased person has lost control over those funds. The way to continue control is through a marital trust and/or bypass trust. In that manner, if the surviving spouse remarries or changes his or her Will, they cannot potentially disinherit the children of the deceased spouse.
- An S corporation can have only certain trusts as a shareholders. If you hold shares in an S corporation and anticipate those shares being held in trust for the benefit of your spouse or children, care will be needed for the shares to pass to a special trust ("QSST").
- When would a charity be an appropriate beneficiary? Most people give liberally during their lives. Would a gift to a charitable "community foundation" ever be a good option?

## **ASSET PROTECTION**

- Another area of planning receiving tremendous attention is the topic of asset protection. There are two major types of asset protection techniques: transfers to others and transfers to an entity that, itself, offers some protection. You can transfer any asset to a member of your family and it will be free from the claims of your creditors so long as the purpose of the transfer was not to avoid the claims of the creditors<sup>1</sup>.
- Entities such as limited partnerships, limited liability companies, and corporations prohibit the creditors of those entities from coming against the owner's assets. Formats can be structured so that creditors cannot force a liquidation of the entity's assets. Trusts that are founded by one person for the benefit of another can be drafted to keep the creditors of both the grantor and beneficiary from seizing their assets.
- An area of asset protection that is occasionally overlooked is protecting your estate after your children or spouse inherit it. That can be accomplished through the use of trusts so that if a spouse remarries a person who has undisclosed credit problems, the assets held should not be subject to those liabilities. Further, for children's outright inheritances, consider that these assets may be subject to their spouse's liabilities as well as their own. If the children are not very careful in keeping the property separate and they later marry then divorce, the property they inherited from you may be enjoyed by their former spouse. Finally, at their death, any property owned by your child will be governed by their Will. That Will may give what was your property to your child's spouse and not the grandchildren whom you may have intended to ultimately benefit. These negative ramifications of an outright bequest can be eliminated or substantially reduced through the use of trusts.

### DEFINITIONS

Administrator - A person appointed by a court to manage the estate of a person who dies intestate.

Beneficiary - A person designated to receive the income or principal of a trust or estate.

Bequest - Personal property given to another by Will.

Codicil - A document which adds to or changes a Will. Its execution must usually comply with the formalities required for the execution of a Will.

Decedent - A dead person.

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<sup>1</sup> Many liabilities of one spouse are not enforceable against the other spouse's separate property, so partition of certain community property assets into the separate property of each spouse is simple and therefore a popular method.

Devise - Real property given to another by Will.

Estate - An interest in assets and personal property.

Estate Tax - The tax paid by the administrator or executor of a decedent's estate out of the assets of the estate itself as a result of someone's death.

Executor - A person appointed by a testator in a Will to carry out the provisions of the Will. A woman acting in such a capacity is an "executrix." A "co-executor" acts as executor together with another or others. See personal representative.

Fiduciary - A person in a position of trust or confidence. The fiduciary is bound by a duty to act in good faith and as a prudent person would. Examples of fiduciaries are trustees, executors, and administrators.

Grantor - A person who makes a transfer of property. The term is commonly used to describe a person who establishes and transfers property to a trust.

Guardian - A person legally appointed to manage the rights and/or property of a person incapable of taking care of his or her own affairs. A "guardian ad litem" is appointed by the court to prosecute or defend an action for a minor. Also known as a "committee" or "conservator."

Heir - A person entitled to inherit a portion of the estate of a person who has died without a Will.

Independent Executor - An executor who is appointed under a decedent's Will to manage the estate of a decedent with minimal court supervision.

Intestate - Dying without a Will.

Living ("Inter Vivos") Trust - A trust which goes into effect while the settlor is alive.

Personal Representative - An executor or administrator charged with marshaling assets, paying bills and taxes, and ultimately distributing an estate.

Power of Attorney - A document which authorizes a person to act as another's agent. A "durable" power of attorney continues after a person becomes incompetent. Otherwise, all powers of attorney terminate upon incapacity. Durable and other powers of attorney terminate upon death.

Probate - The proving of the validity of a Will, and the administration of the estate.

Testamentary Trust - A trust established by a Will. This type of trust begins some time after the testator's death.

Testator - A man who makes or has made a Will. A "testatrix" is a woman who makes or has made a Will.

Trust - A legal relationship where property is transferred to and managed by a person or institution for the benefit of another.

Trustee - The person or institution entrusted with the duty of managing property placed in trust. A "co-trustee" serves as trustee with another. A "contingent trustee" or "successor trustee" becomes trustee upon the happening of a named future event.

Will - A legally executed document which explains how and to whom a person would like his or her property distributed after death.