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Definitions of Commonly Used Estate Planning and Probate Terms

Following is an explanation of commonly used words and phrases related to estate planning and probate.

Administrator: A court-appointed person who manages the estate of a deceased person who has died without a will. An administrator is also referred to as a personal representative of a decedent's estate.

Advanced Directive for Healthcare: A written document in which an individual designates another person to make health care and health-related decisions and sets forth his or her wishes regarding the use of life-sustaining treatment in the event that in the event that the individual becomes incapacitated, terminally ill or permanently unconscious. Please note that the Advanced Directive for Healthcare has replaced the Durable Power of Attorney for Health Care and the Living Will.

Ancillary Probate: A probate proceeding conducted in a different state from the one the deceased person resided in at the time of death. Usually, ancillary probate proceedings are necessary if the deceased person owned real estate in another state.

Attorney-in-Fact: An individual designated in a power of attorney to act as the agent of the person who executed the document.

Beneficiary: A person who receives funds, property, or other benefits from a will, contract, or insurance policy.

Decedent: The person who has died.

Durable Power of Attorney for Health Care: A written document in which an individual designates another person to make health care and health-related decisions in the event that the individual becomes incapacitated. Please note that the Durable Power of Attorney for Health Care has been replaced by the Advanced Directive for Healthcare.

Estate: An individual's property and assets -- including real estate, bank accounts, life insurance policies, stocks, and personal property such as automobiles and jewelry.

Executor: A person named in a will who is authorized to manage the estate of the deceased person. The executor will collect the property, pay off any debts, and distribute property and assets according to the terms of the will. An executor is also known as a personal representative of a decedent's estate.

Fiduciary: A person or institution that is legally responsible for the management, investment, and distribution of funds; i.e. the trustee identified in a trust.

Grantor: A person who transfers assets to another, usually into a trust.

Guardian: An individual with the legal authority to care for another, usually a minor child or an incapacitated adult.

Incapacity: A person's inability to act on his or her own behalf, i.e. the "sound mind" requirement for drafting a valid will. A court makes a finding of incapacity.

Inter vivos trust: A trust that is created during a person's lifetime, which holds property for the benefit of another.

Intestate: A term used when a person dies without a valid will, so that his or her estate passes to heirs based on the laws of descent and distribution of his or her state.

Joint Tenancy With Right of Survivorship: A title that is often placed on co-owned property. At the death of one owner, the other owner will be legally entitled to sole possession of the property, regardless of what provisions are made in a will. A husband and wife often use this form of ownership.

Laws of Descent and Distribution: The order in which the decedent's property is distributed if he or she dies without a will.

Living Trust: A revocable trust established during a grantor's lifetime that is used for the placement of some or all of the grantor's property. In a situation involving a married couple, a basic living trust does not effectively use the personal estate tax exemption of either spouse (the amount of a deceased person's estate that may pass to his or her heirs without estate taxes, currently \$1.5 million). Because of this deficiency of a basic living trust, an AB Trust (discussed above) is often recommended instead to married couples with substantial assets.

Living Will: A binding legal document that sets forth a person's wishes regarding the use of life-sustaining treatment in the event that he or she becomes terminally ill or permanently unconscious. Living will provisions are also included under an advanced directive for healthcare.

Non-Probate Assets: Assets that do not go through the probate practice because the ownership arrangement dictates who will receive the property at death; i.e. life insurance and retirement accounts that designate a beneficiary, property titled in a trust, property titled as joint tenants with a right of survivorship, payable on death accounts, etc.

Pour-Over Will: A will that distributes everything to a trust. Pour-Over Will is usually executed along with a revocable living trust.

Power of Attorney: A written document that gives one person the legal authority to act on behalf of another person.

Probate: A process whereby a court reviews a will to make sure that it is authentic, and allows others to make legal challenges to the will.

Probate Assets: Assets which are held solely in the decedent's name at death or otherwise owned solely by the decedent and which contain no provision for automatic succession of ownership at death.

Tenants in Common: A title that is used with co-owned property. At the death of one owner, their share passes according to the provisions that are made in a will, or according to the laws of descent and distribution.

Testate: A term used when a person dies with a valid will, so that his or her estate passes according to the will provisions.

Trust: A written document providing that property be held by one (the "trustee") for the benefit of another (the "beneficiary"). A trust may be created during the grantor's lifetime or after his or her death.

Trustee: A person named in a trust document who will manage property owned by the trust, and distribute the trust income or property according to the terms of the trust document. A trustee may be an individual or a business.

Will: A document that directs how property shall be distributed upon a deceased person's death. A Will is also known as Last Will and Testament.

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