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An Overview of Estate Administration

Estate Administration is a term we use when we talk about the management of an estate by someone else. Estate administration occurs during lifetime when the person is not able or willing to manage his or her own assets and finances, and someone else takes over to manage things for us until, hopefully, our capacity to act for ourselves is restored. The term also is used in the context of settling a decedent's estate. This involves paying the obligations the decedent left owing, filing final tax returns, and anything else that requires closure, then disposing of what remains to family, for the continuing support of a surviving spouse, for a child's education, to church or charity—whatever the decedent intended.

Lifetime Estate Administration.

If you lose your ability to manage your own assets and finances, usually due to some debilitating medical condition, someone has to step in and manage things for you. Lifetime estate administration involves how that occurs, who does this, and how this surrogate management of your affairs is conducted.

The advantages of advance planning are quite apparent when you compare the means of surrogate estate management available.

If you have a **living trust**, you have a detailed set of instructions that allows the people whom you trust to step in and carry on for you with relative ease. If you have not fully funded your trust by that time, your durable power of attorney can be used to complete that task so the trustee has complete control of your assets and finances to carry out your instructions.

If you only have a **durable power of attorney**, your agent is unlikely to have all of the authority needed to act for you in all situations. It is probable that the person you nominate to act for you will have to turn to the probate court to establish a conservatorship so that he or she has sufficient authority to act for you in all things necessary.

A **conservatorship** is inevitable if you have no plans in place when the need arises. This is unfortunate because the administration of your estate requires to the cost of establishing and operating a court-supervised process which is quite expensive and not completely private.

A Closer Look.

During your lifetime, your surrogate financial manager will continue to pay your bills, provide for your support and care, insure and safeguard your assets, make them as productive as possible in your specific situation, prepare and file your tax returns as required, and anything else your finances and needs require.

Advantages for couples. If you have a capable spouse, she or he may perform these tasks for the both of you, using the mutual authority couples have to manage their marital finances under state marital laws. Any transaction for which you both are required to participate, such as selling a jointly owned asset like your home, can be handled in several ways. One is by using a durable power of attorney that specifically authorizes the transaction. Your power of attorney should contain all of the powers that your situation may require. Real estate sales require careful drafting so that the sale powers you give your agent will pass muster with the title company. The other method is to use a special petition to the probate court under the conservatorship laws that allow you to obtain the authority to needed to enter into the transaction. This is a one-time procedure that does not involve establishing and operating a formal probate. It may be necessary if your power of attorney is insufficient, or you do not have one.

The rest of us. If you are single, divorced or widowed, you are not in a position to benefit from the mutual management provisions in the **marital laws**. Instead, you must rely on your advance estate planning, if any, to provide the authority necessary to take over your finances

and manage them for your benefit. Minimally, a well-drafted durable power of attorney will anticipate the requirements of your particular financial circumstances and provide all authority needed for your agent to step in and take effective control.

Trusts. However, if you have a living trust that you have substantially, if not fully, funded before the time comes when you can no longer manage things for yourself, then you should have all of the authority in place for your Successor Trustee to step in and manage your assets and finances just as you have instructed. This tool is augmented by the trustee's ability to ask the probate court for help or guidance for any particular situation or transaction for which your trust directions do not address or are unclear.

Conservatorships. Lacking these tools, your family or close relatives are left with no adequate alternatives. Someone will have to establish and operate a formal conservatorship to achieve these goals. Your surrogate financial manager will be under the control of the probate court, to which the conservator will be accountable on a regular basis. All of this will be very expensive because the work is detailed and the reporting is ongoing.

Post-death estate administration

This is all about settling your financial affairs and disposing of what is left as you have instructed in your trust or will. If you have not left a will, then your estate passes under the intestacy rules for the state of your residence.

Who Will Do This? This process is conducted by your survivors, by the trustee of your living trust, and/or by the executor of your will. In the case of a trust, your Successor Trustee will conduct these activities privately at a pace that is no more or less than needed to complete these tasks. If you just have a will or no will, then an estate representative appointed by the probate court will carry out these final tasks under court supervision and the rigid rules of the probate process. This person is called your executor or administrator.

How will this be done? As mentioned, if you have a trust, your Successor Trustee should have all of the authority required to settle and distribute your estate. However, there are some assets that are handled outside of the trust.

Non-trust assets. If you have a retirement plan, life insurance, an annuity, death benefits from employment, etc., these arrangements will be settled outside the context of your trust or a probate process. These are contracts between you and the provider of the plan or benefit to distribute directly to the beneficiaries you have designated. Your estate representative or trustee may locate these plans, but the beneficiary usually handles the pay out process with a certified copy of your death certificate.

Other assets of this type are interests in businesses, such as partnerships, LLCs, corporations, etc. Often there is an owner's agreement that deals with the disposition of a deceased owner's interest in the entity.

Also, assets you owned jointly with others may be transferred without action by your trustee or the probate court, if the form of title allows that. This is the case for ownership by joint tenancy and community property with right of survivorship. If you owned an interest in an asset in some other form of joint ownership, your interest will be handled like any other asset, either under the terms of your trust or the probate code.

Probate. Assets not held in the name of your trust will require the use of the probate code to formally or informally effect asset transfers.

Summary probate. If your estate is small in value or you have left community property for a surviving spouse, there are summary procedures through the probate process that can pass ownership without court supervision.

Formal Probate. Any other assets you leave are likely going to be the subject of a formal, court-supervised probate that structures the control you have over the estate and its final administration in a forum that creates a public record of the details of the decedent, his or her assets and obligations, and who will receive the remainder at the end of the process, all at significant cost to the estate that, in most cases, way overcompensates the estate representative and attorney.