

# EXECUTORSHIP AND ESTATE PLANNING MADE EASY: PART I –THE PROBATE PROCESS

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Is the author of *Estate Planning and Administration:  
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A second and revised edition was released by the publisher,  
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Is the author of a second book entitled *Special Needs Planning: A Guide for Families in New York with a Loved One with a Disability* released by the publisher, Graylake Publishing, in October, 2014.

# Estate Planning & Administration Made Easy: Part I

**COURSE DESCRIPTION:** The first part of this course will cover the basics of estate planning including drafting a Will and navigating the Probate process. The second part of this course will focus on the appropriate use of a Revocable Living Trusts as an Estate Planning Tool and a strategy to avoid the Probate Process.

# Who Can Make a Valid Will?

- ❖ Must be 18 years of age.
- ❖ Must be of sound mind and memory
  - ❖ The standard for capacity to make a Will is lower than the standard required to enter into a contract:
    - i. Must know the natural objects of your bounty
    - ii. Must know the extent and value of your property
    - iii. Must know generally your plan for disposition of your property
    - iv. Must know how these three elements interrelate

# What is a Valid Will ?

- ❖ Disposes of property in the “Probate Estate”
- ❖ Must Name an Executor
- ❖ May Name a Trustee
- ❖ May Name a Guardian
- ❖ Must be in Writing
- ❖ Must be signed “at the end”
- ❖ Must be Witnessed by Two Witnesses
- ❖ Must go through the “publication” process

# What is Probate?

“Probate” is the process maintained in the New York Surrogate’s Court whereby the original of the decedent’s last Will and Testament is offered and proved to be an authentic document which disposes of the decedent’s property



# What is the Probate Process?

- The “probate” process is generally started by the person named as the Executor in the will
- Persons interested and entitled to notice of the “probate” process include those persons named in the Will and those persons included in a class of blood relatives called “distributees”
- The “probate” process is generally completed within 30-45 days of the death of the decedent
- The activities of the Executor after the Will is admitted to “probate” is called “Estate administration.”

# What is Part of the Probate Estate?

- Individually Owned Property; including:
  - Cash, Stocks and Bonds
  - Savings Bonds
  - Automobile and Personal Property
  - Bank & Brokerage accounts
  - Real Property
- Property Payable to the Estate, including:
  - Life Insurance
  - Retirement Plans
  - IRA's
  - Annuities

# What is not part of the Probate Estate?

- Amounts passing by beneficiary designations
- Jointly Owned Property (w/ right of survivorship) passing to the surviving joint tenant
- Accounts with “transfer on death” (“TOD”) registration which pass to the named beneficiary
- Property contained in a Revocable Lifetime Trusts
- Property contained in an Irrevocable Trusts

# What is the “Gross Taxable” Estate?

The “gross taxable estate” is a third concept that the Executor must understand. The “gross taxable estate” is important because it determines whether the Executor must file a tax return and whether the Estate must pay an Estate Tax. The “gross taxable estate” includes whatever the decedent owned at the time of his or her death; including:

- Life insurance proceeds
- Retirement plan assets
- Real estate owned (including ½ the value of the family residence)
- Bank and brokerage accounts
- Personal Property
- Annuities
- Revocable Lifetime Trusts

# UNIFIED CREDIT AMOUNT

The “gross taxable estate” is generally of diminished importance to persons dying in New York because of the “unified credit amount.” An Estate is not required to pay an Estate Tax if the amount of the “gross taxable estate” is less than the “unified credit amount.” The “unified credit amount” for the Federal and State Tax purposes are:

- ✓ In 2016 the Federal amount is \$5,450,000. This amount is indexed for inflation.
- ✓ In 2016 the New York State amount is \$4,187,500 and on April 01, 2017 it will increase to \$5,250,000.00. This amount will rise to an amount equal to the Federal amount in 2019.

# What is Required to Start the Probate Process?

The “probate” process is started by the filing of a Petition; which contains information concerning:

- Name and address of decedent
- Name and address of the proposed Executor
- Name and address of certain blood relatives, called “distributees”
- Name and address of persons named in the Will
- Information on any “distributee” or person named in the Will that is an infant or under a disability

# What must accompany the “Probate” Petition?

The “Probate” Petition must be submitted to the Surrogate’s Court in the County in which the decedent resided and is accompanied by:

- Certified copy of the Death Certificate
- The original copy of the Will
- Family Tree
- If available, “waivers and consents”; if not, “citations”
- Filing fee

# What is the Results of the “Probate” Process?

- The “Probate” process results in the issuance of “Letters Testamentary”
- “Letters Testamentary” identify the Executor as the person authorized to act on behalf of the estate
- The Executor should secure multiple copies of “Certificates of Letters” to serve as proof of the Executor’s authority to act
- “Certificates of Letters” will be asked for by banks, insurance companies, brokerage houses and the like



# What happens after the Letters Testamentary are issued?

- The “probate” process is generally completed and Letters Testamentary are usually issued within 30-60 days of the date of the decedent’s death
- The period after the Letters Testamentary are issued involves the administration of the Estate and this period of administration takes between 9-15 months, depending upon the value, extent and nature of the property owned by the decedent and the willingness of the heirs to “get along.”

THANK YOU