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F.A.Q. ABOUT ESTATE PLANNING AND ESTATE PROBATE
ESTATE PLANNING QUESTIONS

1.Q. What is estate planning and what issues should be addressed?

A. Simply stated, estate planning is the process where consideration is given to making sure that a person's assets are distributed in accordance with the person's wishes, in such a manner that will ensure that the value of the assets received by the person's beneficiaries is maximized by the reduction or elimination of estate taxes and other costs and expenses arising after a person's death. Consideration should be given, first and foremost, to the person's wishes and desires as to the ultimate disposition of the person's property and how best to ensure that the intended beneficiaries receive those assets unreduced by estate taxes and expenses to the greatest extent permitted by law.

2. Q. What exactly is a Will and what purpose does it serve?

A. A Will, also known as a Last Will and Testament, is the legal document that disposes of certain assets owned by a person after that person's death. The Will does not dispose of all assets that a person owns. The Will only disposes of assets that are titled in the person's sole individual name at the time of death. Other assets, such as property owned in joint names with another person at the time of death, life insurance proceeds payable under a policy with a designated beneficiary or retirement plan benefits with designated beneficiaries such or pension or profit sharing plans, 401(k) plans or IRAs pass outside of the Will to the person who is the joint owner or designated beneficiary.

3. Q. Who needs to have a Will?

A. Every competent person over the age of eighteen should have, at the very least, a basic Will. No one knows in advance when death will come or what will be owned at the moment of death.

4. Q. I am married and have two young children. All of my assets are in joint names with my spouse. Is there any reason for me to have a Will at the present time?

A. Yes. In your instance, two very good reasons, namely your two young children! Even if you do not own any assets that would require a Will to transfer ownership to your loved ones, a Will can also serve as a critical estate planning tool for someone with minor children. A Will gives you the opportunity to appoint a Guardian for any minor child that may survive you and your spouse. If you do not take advantage of this opportunity, a Guardian will be appointed by a Judge who does not have to benefit of knowing you, your family, or the family's needs and who may very well wind up appointing someone that would not even be considered by you to undertake this important role.

5. Q. What is a Living Will?
   A. A Living Will and a Last Will and Testament are two completely different legal documents. The purpose of a Will is explained in answer 2. A Living Will is the legal document used by a person to memorialize in writing what medical procedures he or she wants or does not want to have performed in order to extend life in the event that the person is suffering from a medical condition for which there is little or no chance of recovery. It is used as a guide for the person that you name as your health care agent to make health care and medical decisions for you.

6. Q. What is a Health Care Proxy?
   A. A Health Care Proxy is the legal document used by a person to appoint a health care agent to make health care decisions on their behalf when, but only when, they are unable to make health care decisions on their own.

7. Q. What is a General Durable Power of Attorney?
   A. A General Durable Power of Attorney is the legal document used by a person to designate another person as their agent to act on their behalf in just about any matter other than making health care decisions. The document can be drawn up so as to make it operative as of the time of its execution or to take effect upon the occurrence of a future event such as a signed statement by the person's doctor stating that he or she is not competent to manage his or her own business affairs. The fact that it is "durable" means that it will continue to be in full force and effect even after the person that executes it becomes incompetent.

8. Q. Can I prepare my estate planning documents on my own using forms found on the internet or otherwise coming to me attention?
   A. It is possible for you to do so but it is strongly suggested that you do not attempt to do this on your own. The forms that are available on the internet will, invariably, need to have some provisions either modified, deleted or added in order for them to carry out your desires in the most efficient and economical manner possible when it comes to minimizing or eliminating estate taxes and other estate expenses and to ensure that they conform to the requirements of New York State law. Documents prepared by an experienced estate attorney will provide you with the greatest chance of ensuring that your wishes will be carried out as efficiently and inexpensively as possible.

ESTATE PROBATE QUESTIONS

1. Q. What does probate mean? I have heard that it should be avoided if at all possible.
   A. There are those planners who give the impression that probate is to be avoided in all cases like the black death. While it is true that there are certain situations where a person would be better off avoiding a probate proceeding if possible, it really is not the case in most situations. Probate simply refers to the process where, after a person dies, his or her Will is filed with the Probate Court having jurisdiction over the estate, together with certain documents and a petition signed by the person named as Executor in the Will asking the Court to declare that it is a valid and genuine Will of the decedent which should be used to determine who is entitled to receive the decedent's property. If there are no minors or persons under disability interested in the Estate and where everyone's whereabouts is known, the probate process can in most cases be completed within a period ranging from a day or two to a week or two.

2. Q. What happens after the Will is admitted to probate by the Court?
   A. After the Will is admitted to probate, the person designated in the Will as Executor is granted what are known as Letters Testamentary which give the Executor the power and duty to collect and value the decedent's assets, pay all of the person's just debts and funeral and administration expenses, file whatever estate or income tax returns that may be required, and, when all of this has been accomplished, look to the Will to see who the decedent wants to receive the remaining assets of the Estate.

3. Q. How long should it take to do all that is required to "settle" a person's estate?
   A. How long it takes to "settle" an estate depends on the facts and circumstances involved in the particular estate. Assuming that there are no major disputes among the beneficiaries or the need to commence a lawsuit to collect a debt owed to the decedent or to pursue a wrongful death claim, an estate where no estate tax returns are required should be wound up no later than one year after the decedent dies and even sooner in many cases.

4. Q. Does the person named as Executor have a duty to justify his or her actions to the beneficiaries?
   A. An Executor does have a duty to account to the beneficiaries as to the value of the assets that have come under his or her control, any increases or decreases in the value of those assets on their sale or other disposition, all income earned by the Estate and all debts and funeral and administration expenses paid on behalf of the Estate. Normally, this is accomplished by a form of informal accounting by the Executor, but in some instances, such as when there is a minor or person under disability interested in the estate or if there is a dispute between a beneficiary and the Executor, a formal accounting detailing each and every item must be prepared and filed with the Court to obtain the Court's approval of the Executor's actions.

5. Q. What tax returns are required to be filed by an Estate?
   A. The attorney for the Estate will advise the Executor as to what returns are required, and if the Executor is represented by Tully Rinckey PLLC, normally most if not all of the required returns can be prepared by us on the Executor's behalf. Returns that may be required include the decedent's final federal and state personal income tax returns, federal and state fiduciary income tax returns reporting income earned after death and federal and state estate tax returns if the value of the estate is large enough to require estate tax returns to be filed.