



# ESTATE PLANNING

TERMS AND CONCEPTS IN PLAIN  
ENGLISH

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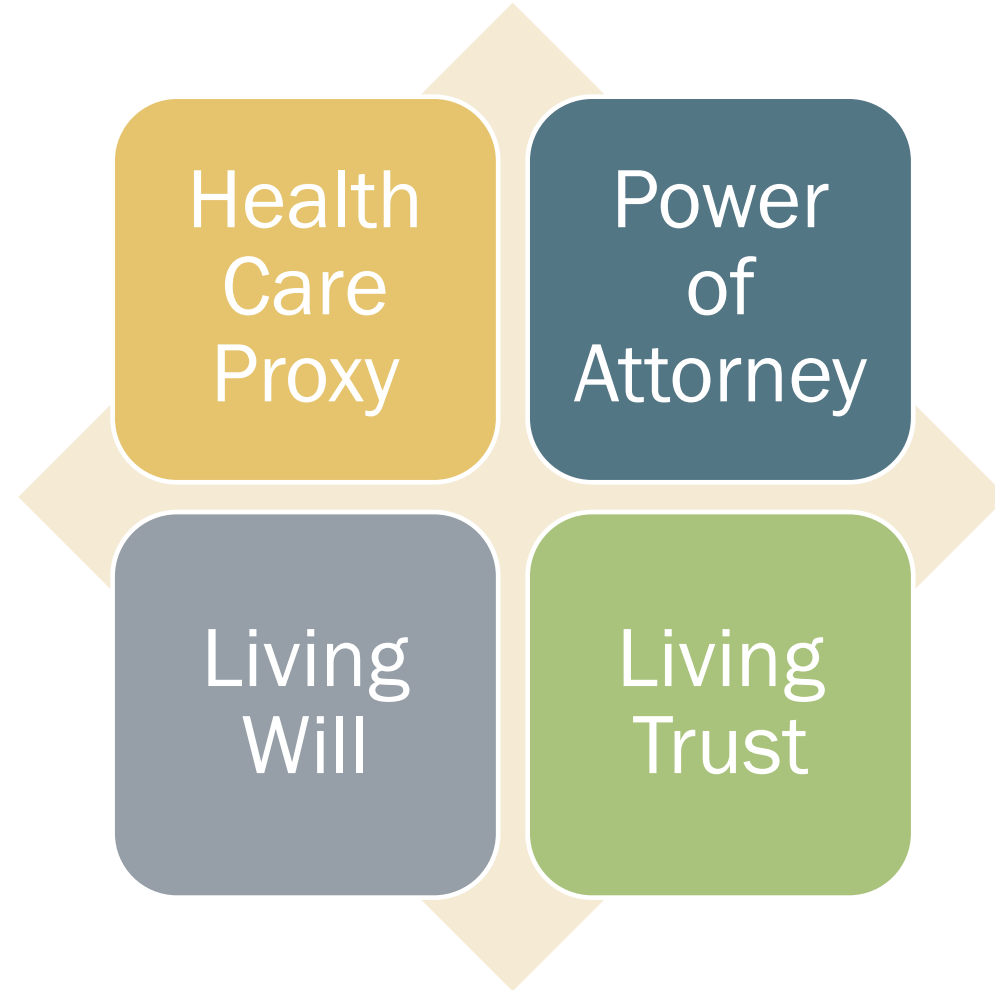
## WHAT IS AN ESTATE PLAN?

- Each estate plan is as unique as we are!
- Your plan can be as simple or as complicated as you need it to be. Factors include family needs and dynamics, tax considerations, and planning for disabled beneficiaries.
- Estate plans generally have two parts: documents during life, and documents effective after death.



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DOCUMENTS TO  
USE DURING  
YOUR LIFETIME



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# HEALTH CARE PROXY

- You (the **principal**) appoint an **agent** to make health care decisions on your behalf
- Your agent only makes decisions if you are unable to do so
- Only one agent can act at a time
- If you do not have a health care proxy and are unable to make medical decisions on your own, there is a New York law known as the Family Health Care Decisions Act (NY PHL Article 29-CC) that will provide a list of people to priority to make decisions if you are in a medical facility:
  - Spouse or domestic partner
  - Adult children
  - Parent
  - Adult sibling
  - Close friend



## LIVING WILL

- Done in connection with a health care proxy
- Does not appoint an agent, but gives your health care proxy information about your preferences regarding end-of-life decisions, such as artificial nutrition and hydration
- If your wishes are not known, use a best interest standard



# POWER OF ATTORNEY

- You (the **principal**) appoint an **agent** to make financial decisions on your behalf, generally used when someone loses capacity
- Your agent can act as soon as the document is signed by both you and your agent
- Different types of power of attorney – basic or expansive
- Expansive can give your agent the ability to make gifts or transfers, which are important for Medicaid planning
- Survives future incapacity (**durable**)
- Can avoid guardianship in many cases
- Ends on death



# TRUSTS

- Two types of trusts during your lifetime:
  - **Revocable** living trust (meaning you can make changes during your lifetime as long as you have capacity)
  - **Irrevocable** living trust (meaning the terms are set and cannot be changed)

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# REVOCABLE LIVING TRUSTS

- You are the **Grantor** (the person creating the trust)
- Usually you are also the **Trustee** (the person who manages the trust) during your lifetime, but you can name someone else
- You retain the right to make changes to the trust during your lifetime
- Can allow you to avoid probate, also useful if you have property outside of New York or have a complicated family tree
- Costs are relatively similar to the cost of probate, but the expenses are up front so your trustee does not have to do as much after your death
- Does not impact estate taxes







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## IRREVOCABLE LIVING TRUSTS

- You are the **Grantor** (the person creating the trust)
- You name someone else as the **Trustee** (the person who manages the trust)
- Trust terms are generally not able to be changed
- Useful for Special Need planning or Medicaid planning

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## DOCUMENTS USED AFTER DEATH

**Will**

**Continuing  
Trusts**

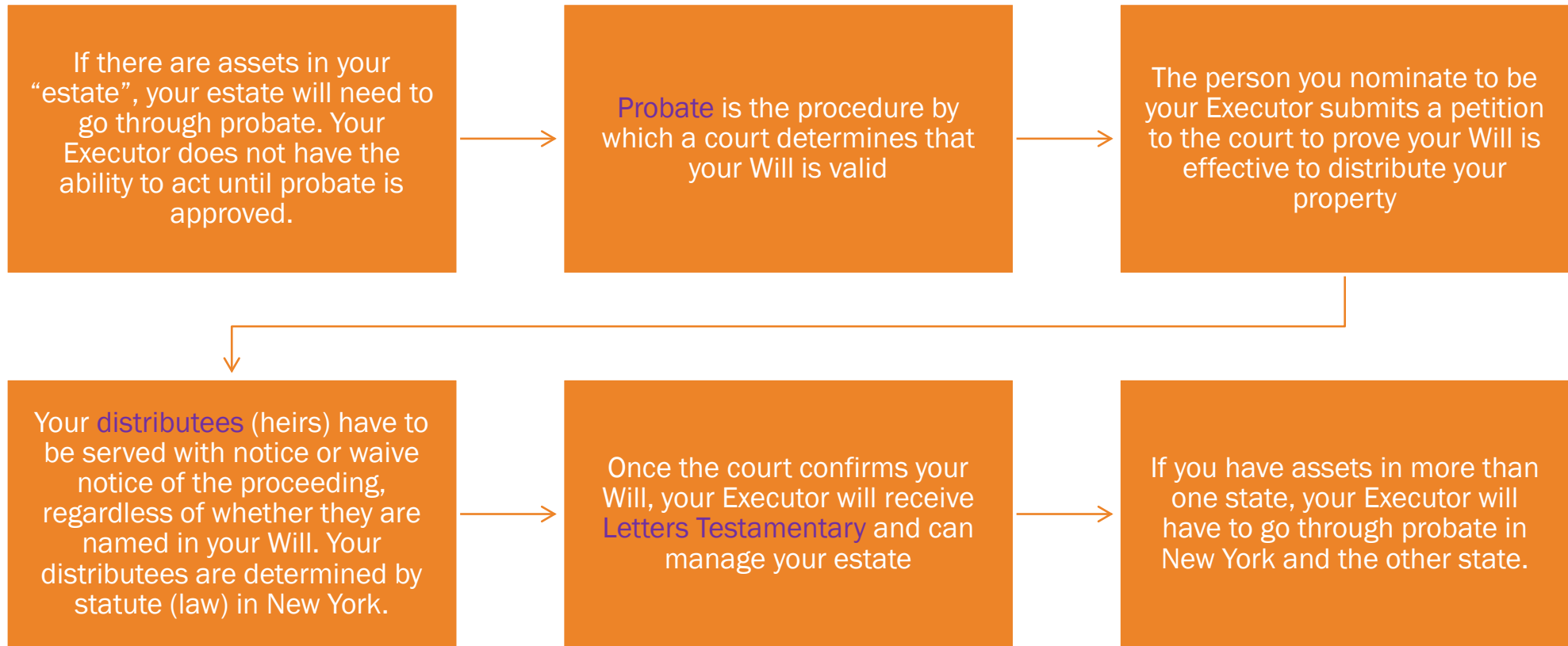
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# WILLS

- You name an **Executor** (the person who will manage your estate)
- You direct how you would like your estate to be distributed
- You can create a **testamentary trust** under your Will, that will only come into existence if your Will is probated
- Your “**estate**” only includes assets in your name when you die
  - Jointly owned property is not in your “estate”
  - Assets with named beneficiaries are not in your “estate”
  - Assets you put into a trust during your lifetime are not in your “estate”



# WILLS



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## LIVING TRUSTS WITH CONTINUING TRUSTS

If you have assets in a trust before your death, the trust may continue after your death

Not subject to a probate proceeding

Your Trustee can make final distributions pursuant to the terms of the trust



## WHAT IF YOU HAVE NO WILL?

- **Intestacy** – when a person dies without a Will, and his or her estate is distributed pursuant to statute (law)
  - Spouse and/or **issue** (children, grandchildren)
  - If none, to the decedent’s parents
  - If none, to the issue (children, grandchildren) of the decedent’s parents
  - If none, to the decedent’s grandparents
  - If none, to the issue (children, grandchildren) of the decedent’s grandparents
- This is an **Administration Proceeding**
- One or more of your distributees can petition the court to be named as your Administrator
- Just like in a probate proceeding, all of your distributees must be served with notice or waive notice
- If approved, the petitioner will receive **Letters of Administration**



THANK YOU FOR COMING!

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