

# ***ESTATE PLANNING: TOOLS and TERMS***

*by Roger Burrus, Attorney*

- Will:** A Will is a document meeting the testamentary requirements of the state of your residence that provides for the passing of your assets to your chosen heirs. Wills can be simple or complicated, depending upon your personal situation and wishes for your assets. A personal representative (executor or executrix) is named in the Will to administer the estate, and a guardian can be named for minor children. A will can also establish a trust for longer-term asset management.
- Probate:** From the Latin term meaning “to prove,” probate is the process set forth under the laws of your state to:
- 1) prove the validity of your Will;
  - 2) appoint the personal representative of your estate; and
  - 3) administer the assets of the estate, which in simple terms, is to:
    - a) take control and protect the decedent’s assets;
    - b) settle and pay the decedent’s debts;
    - c) determine and pay income and death taxes; and
    - d) distribute assets to the persons named in the Will.
- Non-Probate Assets:** Assets that are not distributed pursuant to the Will, such as:
- 1) assets titled jointly with rights of survivorship, or payable on death;
  - 2) assets with a named beneficiary who survives the decedent, for example:
    - a) life insurance;
    - b) pension plans; and
    - c) IRA and 401K accounts.
- Note that the joint owner or beneficiary must survive you, and if not, the asset could then pass under your will.
- Power of Attorney:** During your lifetime, a power of attorney is used to name someone you trust to manage your financial affairs. It can be effective upon signing, or it can be drafted to only become effective upon your incapacity. A durable power of attorney is one that is not affected by your subsequent disability or incompetence. A general power of attorney is one with broad powers as opposed to a specific power of attorney that is limited to certain powers.
- Appointment of a Health-care Representative** Sometimes referred to as a healthcare power of attorney, this document names someone to make medical decisions for you if you become unable to do so yourself.
- Living Will:** Also known as a life-support declaration, a living will allows you to state your wishes regarding life-prolonging medical procedures, including nutrition and hydration, if you are diagnosed with a terminal illness.
- Trust:** A trust is an arrangement whereby the creator of the trust, called the settlor or grantor, transfers property to a trustee, who then manages and invests the trust property for the

benefit of the trust beneficiaries. The trust property consists of assets that are either transferred to the trustee during the settlor's lifetime, or upon death. The settlor can reserve the right to change the trust (a revocable trust), or it can be irrevocable.