



Schanker and Hochberg P.C.

ATTORNEYS & COUNSELORS AT LAW

ASSURING YOUR LEGACY

MARCH 2020



EXECUTORS/TRUSTEES

The Trustee's and/or Executor's responsibilities are financial, personal and legal. They are also detailed and time-intensive. Who to choose and how to select for these positions should be carefully considered.

For purposes of Estate Planning, we prepare Last Wills and Testaments and/or Revocable Living Trusts to govern the administration of a decedent's Estate. An Executor is named under a Will and Trustees are named under Trusts (there are various different types for different purposes). For purposes of general disposition of an Estate, clients prepare a "Revocable Living Trust" for the purpose of Probate avoidance which saves the Estate unnecessary delays and expenses and a host of other potential frustrations. Under a Revocable Living Trust, the designated Trustee/Co-Trustee's duties mostly parallel the Executor's duties.

These duties include the following:

- Identify assets and determine if Probate is necessary (Executor).
- Marshal assets owned by the decedent, including investment and brokerage accounts; bank accounts; personal property; and real estate into an account in the name of the Estate (once Letters Testamentary are

IN LIGHT OF THE CURRENT GLOBAL CIRCUMSTANCES

We at Schanker and Hochberg P.C. always aim to provide the very best of services to our clients. We publish this Newsletter hoping that everyone is safe and remaining healthy to the best of their abilities. We are encouraging telephone conferences unless we are doing a "signing" of documents, for which a person to person meeting will be required. Due to the recent limitations on working on-site, we have to operate this way until this Pandemic subsides. Please don't hesitate to contact us with any questions.

REVIEW, REVIEW, REVIEW

It is exceedingly important, now more than ever, to familiarize yourself with your Estate Plan. Review the documents, make sure you can locate the originals. Does your named Executor/Trustee, Agent under your Power of Attorney, Health Care Proxy, Guardian for minor children have their original, signed document in their possession and available? Have circumstances for your beneficiaries changed?

Has law changed affecting the enforceability of your documents? For instance, in 2010, New York State significantly changed the Statute pertaining to a Power of Attorney. Estate Tax rules have changed in New York State since 2014 and also Federally in 2017. As of January 1, 2020, the rules regarding inherited IRA's significantly changed (the SECURE Act passed on December 20, 2019). Most extraordinary is that (with the exception of a surviving spouse and a small handful of other exempt parties, Required Minimum Distributions stretched over the course of the inheriting beneficiary's lifetime are no longer possible and the balance of the retirement account (IRAs, ROTH IRAs, 401ks, 403bs), must be entirely paid out to the beneficiary within a ten (10) year period. ***If you have a Revocable IRA Trust, you must have this reviewed and most likely Amended to adjust to this new legislation.***

You should review beneficiary designations on retirement accounts and life insurance policies and ensure title on your assets are appropriate.

We welcome you to contact us to help evaluate your existing planning or to initiate the planning process [(631) 424-5400].

Are you a S.K.I-er? (Spending Kids Inheritance)

Are you spending your heirs inheritance or more focused on accumulation in anticipation of their future bounty? This greatly affects the kind of Estate Planning you design for yourself. Inform your trusted practitioner of which class you fall into; spender or accumulator. We can better help structure your planning with this in mind! ■

***Schedule a complimentary appointment
to review existing Estate Planning documents***

IN OUR LONG ISLAND, MANHATTAN, OR NEW JERSEY OFFICE.

Contact us at our main telephone number (631) 424-5400.

FOR OUR LOCATION ADDRESSES, PLEASE SEE OUR WEBSITE AT

www.schankerochberg.com



EXECUTORS/TRUSTEES *CONT.*

- obtained) and obtain a Tax Payer Identification number. (Executor and/or Trustee)
- Determine if a State and/or Federal Estate Tax are due or if an Estate Tax Return should be prepared and filed to preserve Portability (doubling of the Federal Estate Tax Exemption). (Executor and/or Trustee)
- Prepare and file the decedent's final Income Tax Return, final Gift Tax Return and the Income Tax Returns for the Estate. (Executor and/or Trustee)
- Identify any liabilities of the Estate. (Executor and/or Trustee)
- Appraise and value all of the decedent's assets. (Executor and/or Trustee)
- Assets have to be safeguarded and insured, and locks on residences may need to be changed. (Executor and/or Trustee)
- Determine the estate's cash needs and sell assets to raise necessary funds to pay bills and estate taxes. (Executor and/or Trustee)
- Review the decedent's estate plan to identify if there are post-death tax planning opportunities for the estate to save on taxes, including whether disclaimers could be useful. (Executor and/or Trustee)
- Collect benefits due to the decedent (i.e. employment benefits, veteran's benefits, life insurance, including life insurance due to a trust). (Executor and/or Trustee)
- If the decedent was a business owner, determine the estate's interest in the business and possibly value the business; there may also be ongoing responsibilities for running the business, depending on succession plans. (Executor and/or Trustee)
- Distribute personal property and pay specific cash bequests; sell any personal property not disposed of by Will or Trust. (Executor and/or Trustee)
- As appropriate, clean out the house(s) and sell the real estate, including developing a marketing plan for the property. (Executor and/or Trustee)



- Fund the Trusts created by the Will/Trust, if any. (Executor and/or Trustee)
- Account to the beneficiaries at the conclusion of the estate process and obtain Receipt, Release, and Refunding Bonds. (Executor and/or Trustee)

An Executor and/or Trustee can be an individual or a trust company, or a combination of the two serving as Co-Executors and/or Co-Trustees.

The decision of who to select must be based on careful consideration of the expertise and skills necessary to effectively carry out the serious responsibilities of serving as Executor and/or Trustee: professional knowledge, objectivity, sensitivity, availability and honesty. Who to name also depends on the size and complexity of the assets and family dynamics.

After you sign your Will and/or Trust... Where to keep the documents

After you execute your Will, where do you keep the originals? We only have clients sign one original of their Last Wills and Testaments. For Probate purposes, if you sign more than one original document then all must be submitted to the Surrogate's Court if Probate is required. If your Executor cannot, then the legal presumption is that the Executor intended to destroy the Will and the proceeding is now called an "Administration". Assets are distributed according to State Statute rather than as you set forth in your Will.

If you executed the single "one" Last Will and Testament, and Probate is required, and you cannot locate the original, executed document then the legal presumption is that you intended to destroy it. The Executor must then commence a "lost Will" proceeding to get a copy of a signed Will accepted into Probate.

We have done the "lost Will" proceeding and it is complicated and drawn out. In one case, the decedent's brother had stolen the Will and intentionally withheld it from the Executor. In another, the Decedent's Will was stored by the Attorney who later retired and we were unable to locate him or obtain the original document. His wife was the Executor and her Will is also missing (however she can create a new one). In both of these cases, the copy was admitted to Probate and the legal presumption overcome but that is a case by case determination. If the client is in possession of the original Will and then loses it and passes away, the legal presumption is that he/she intended to destroy the document.

For these reasons, we advise our clients to store their original Wills with us, in our fireproof and waterproof safes. It is entirely your choice what you prefer to do.

Elder Law Alert

The elderly population is generally experiencing increased life expectancies, along with increasing care needs due to physical and cognitive declines. Pride is a strong character trait and often times prevents someone for asking for help until circumstances turn critical. When that happens, others who are stepping in to help pay bills,



coordinate expenses, and navigate care needs may not know what resources are available, how to locate bills, other notifications, or even be authorized to speak with certain agencies (Long Term Care Insurance carriers, Health Insurance providers, etc.).

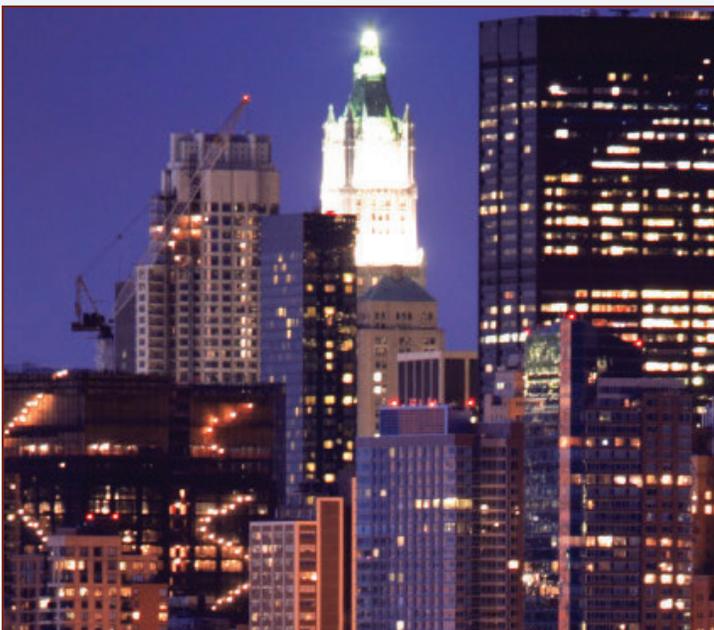
It is strongly recommended that families be organized and perhaps consider contacting utilities, credit card companies, banks, mortgage providers, etc. to request duplicate notices be sent to the named Power of Attorney or trusted person who can be of any assistance if the time comes.

Surrogate's Court Alert

Please be advised that the Surrogate's Courts in all of New York State are essentially on a shut down with minimal staff. They are only attending to absolute emergency matters. Therefore all pending Probate, Administration, Accounting, and other Surrogate's Court matters will be delayed until the Coronavirus pandemic is contained. ■

MEET & REVIEW

Schedule a complimentary appointment to review existing Estate Planning documents in our Long Island Office, our Manhattan Office, or our New Jersey office. Contact us at our main telephone number at (631) 424-5400. Please see our website at www.schankerochberg.com for our location addresses.



We regularly meet with clients in our centrally located Empire State Building office.

Schanker and Hochberg P.C.

**EXTENSIVE SERVICES
INCLUDE:**

- *Complimentary Initial Consultations for Estate Planning, Probate and Estate Administration matters (not for matters of Elder Law or Special Needs Planning)*
- *Complimentary Annual Review meetings for existing clients*
- *Complimentary Family meetings for existing clients*
- *Tax alert services for existing clients*



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Our main office is housed in an elegantly restored Victorian structure in the heart of Huntington Village. Here, we welcome you and your family into a relaxing, warm setting where we will work together to improve your circumstances and achieve your goals.

To better serve our clients and their families, we also have convenient office locations in Midtown Manhattan and New Jersey; we also offer our services to clientele in Florida and California.

GENERAL DISCLAIMER: While we hope this newsletter provides useful information, please know that this newsletter does not predict or guarantee the outcome or result in any particular situation and no attorney-client relationship exists or is established as a result of this newsletter or its receipt.

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ANDREA B. SCHANKER, ESQ.

Andrea B. Schanker, Esq. – Partner, received her Bachelor of Arts degree in Clinical Psychology from University of Rochester in 1999 and her Juris Doctor from New York Law School in 2002. Andrea is a licensed member of the New York and New Jersey Bar Associations. She is the 2016-2017 President of the Huntington Lawyers' Club, a member of the Suffolk County Bar Association and a member of the New York State Bar Association where she is an active member within the Trusts and Estates Section and the Elder Law and Special Needs Section. Ms. Schanker is also a member of the Suffolk County Bar Association and the American Bar Association.

Ms. Schanker joined Schanker and Hochberg P.C., in 2004 as an Associate Attorney specializing in Estate Planning, Estate Administration, Business Succession Planning, and Elder Law. She regularly delivers Estate Planning presentations to professionals in the financial industry and their clients. Ms. Schanker also regularly advises accountants, financial advisors, and insurance advisors in connection with her areas of expertise.

Andrea lives in Huntington with her husband, Michael Abruzzo and their daughters, Patricia Gertrude Abruzzo and Sylvia Grace Abruzzo.