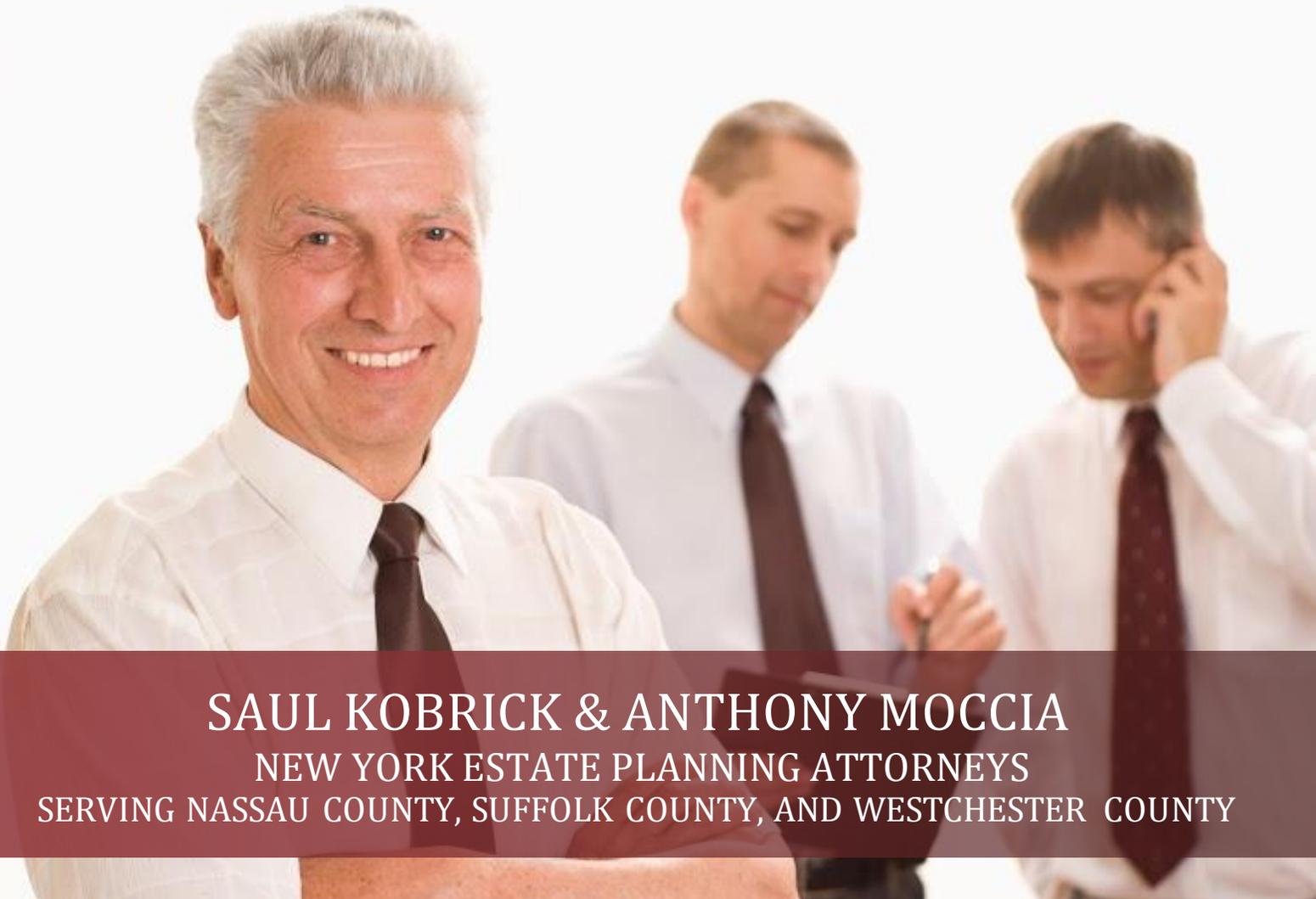


THE NEW YORK PROBATE PROCESS – PERSONAL REPRESENTATIVE BASICS

*“In **Part I** of this series we will discuss how a Personal Representative is appointed and take a broad look at what the position entails. In **Part II**, we will look at the steps you should take after being appointed the PR of an estate.”*



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The death of a family member or loved one typically ushers in a period of heightened emotions and uncertainty for those impacted by the death. Regardless of how far in advance you are notified that death was inevitable, “preparing” to lose someone close to you is simply not really possible. As a result, a good deal of confusion also tends to follow a death. Adding to that confusion is the knowledge that someone must handle the legal ramifications of the decedent’s death.

If a Last Will and Testament was executed by the decedent prior to death the individual appointed as Executor in the Will shall be responsible for overseeing the probate of the estate left behind by the decedent. If the decedent died intestate or without leaving behind a valid Will, the probate court will need to appoint someone to be the Personal Representative of the estate.



If you are appointed to be the Personal Representative, or PR, of the estate the first thing you should do is retain the services of an experienced New York estate planning attorney to provide you with advice and guidance throughout the probate process. It will also be beneficial, however, to have a basic understanding of duties and responsibilities of a PR as well as where to begin once you are appointed.

In **Part I** of this series we will discuss how a Personal Representative is appointed and take a broad look at what the position entails. In **Part II**, we will look at the steps you should take after being appointed the PR of an estate.

WHAT IS THE PERSONAL REPRESENTATIVE'S JOB?



The job of a Personal Representative is essentially the same as that of an Executor. The primary difference between the two is that an Executor is nominated by the decedent in his/her Will whereas a PR either volunteers or is appointed directly by the court when no valid Will was left behind by the decedent. The overall job of a PR is to oversee the probate of the decedent's estate, ultimately making sure all debts of the estate are paid and all assets

transferred to the intended beneficiaries or heirs of the estate.

WHAT IS A "FIDUCIARY?"

As a Personal Representative you have a fiduciary duty to the estate and to the heirs of the estate, collectively referred to as the "principals." By definition, a "fiduciary duty" is a legal duty to act only in someone else's best interest and is the strictest duty of care recognized by the law. As a fiduciary you cannot profit from your position unless the principals are notified and agree. Furthermore, you have a heightened duty to avoid conflicts of interest.

HOW IS A PERSONAL REPRESENTATIVE SELECTED?

When an individual dies intestate one of the first orders of business is to determine who will be the PR of the estate. New York Surrogate's Court Procedure Act Section 1001(1) governs the appointment of a PR, requiring that the PR be someone who is a distributee of the estate (an heir). When there is more than one potential PR, the order of priority is as follows:

1. Surviving spouse
2. The children
3. The grandchildren
4. The father or the mother
5. The brothers or the sisters
6. Any other persons who are distributees and are eligible to qualify with preference given to the person entitled to the largest share of the estate, except
 - a. The court may grant letters to more than one person if more than one distributee equally qualifies; and
 - b. If the distributees are the issue of grandparents on only one side of the decedent's family tree and are individuals other than the aunts and uncles of the decedent, the letters shall be issued to the public administrator or the chief financial officer of the county.

A non-distributee if no one else qualifies. In that case, the court will appoint a public Personal Representative, often an attorney who is a member of the local Bar association and who has experience with the probate process.

WHAT ARE THE LEGAL REQUIREMENTS FOR BEING A PR?

Along with being a distributee of the estate (in most cases), the Personal Representative must also meet the following legal qualifications:

- Eighteen years of age or older.
- Competent.
- A New York State domiciliary or a non- domiciliary resident of the state.
- Not convicted of a felony.

Not otherwise disqualified because of deceitfulness, carelessness, substance abuse, lack of cognition, or other reasons, which make him or her unfit for the position. Further, it is within the Court’s discretion to determine the eligibility of those individuals to act as personal representatives who are unable to read or write the English language. NY SCPA § 707(2).

WHAT ARE “LETTERS OF ADMINISTRATION?”

Once the court has officially appointed you as the PR of the decedent’s estate the court will issues “Letters of Administration.” These are legal documents that give you the authority to act on behalf of the decedent throughout the probate of the estate.

WILL I BE COMPENSATED FOR MY DUTIES AS THE PERSONAL REPRESENTATIVE?

The law allows a PR (or Executor) to be compensated for fulfilling his or her duties; however, compensation may be waived by the PR. If you choose to accept compensation it will be paid out of estate assets. In the State of New York, N.Y. Surr. Ct. Proc. Act § 2307 governs “fiduciary commissions” by providing a fee schedule that determines how much compensation you will



receive based on the value of the estate assets received and paid out during the probate of the estate. If you have been appointed the Personal Representative of an estate, or are

considering volunteering for the position, it is in your best interest to consult with an experienced New York State estate planning attorney right away. In addition, please read Part II of this series where we discuss what to do next after being appointed PR.

New York Life, [How the Probate System Works](#)

NYC Kings County Public Administrator, [Frequently Asked Questions](#)

N.Y. EPT. LAW § 11-1.1 : NY Code, [Section 11-1.1: Fiduciaries' Powers](#)

Wills, Trusts, and Estate Administration, [Chapter 12](#)

About the Attorneys



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Saul Kobrick is an attorney licensed to practice law in the State of New York and the owner, senior partner and founder of The Law Offices of Kobrick & Moccia. Mr. Kobrick is licensed to practice law in all courts of New York State, as well as in the Federal District Courts for the Southern and Eastern Districts of New York. He is a member of the New York State Bar Association as well as a member of the American Academy Estate Planning Attorneys. Mr. Kobrick is also a member of the National Academy of Elder Law Attorneys.

Experience

Prior to founding his Garden City Law Firm in 1992, Mr. Kobrick has for many years, practiced law both as a Sole Practitioner, and in partnership in New York City. His practice focuses on elder law, wills, trusts and estate planning. Mr. Kobrick provides quality Estate Planning and Elder Law services to residents of Nassau County, Westchester County and Suffolk County.



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Mr. Moccia joined the Law Firm in 2006. As a law clerk and became partner in January of 2015. Mr. Moccia speaks regularly to residents of Nassau County, Suffolk County, and Westchester County about estate planning, wills, trusts, and Medicaid planning.

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