

A
GLOSSARY
OF
ESTATE PLANNING TERMS

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FORWARD

This Glossary of Estate Planning Terms is intended for the use of those who contemplate making, changing or completing estate plans. Its purpose is to provide definitions of some of the specialized language of the law dealing with estates and trusts.

The definitions of the terms that follow are general in nature and do not pertain to any particular situation or set of circumstances. They are not intended to be relied upon as legal advice. If you have questions about the terms or the legal concepts they represent, please consult your attorney for a more comprehensive explanation.

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A-B Trusts • Two trusts frequently formed by a married couple for the purpose of reducing or eliminating estate taxes by taking maximum advantage of the marital deduction provided by the Internal Revenue Code (“IRC”). On the death of the first spouse, one trust (often trust A) holds property with a value equal to the maximum amount that can be passed on free of federal estate tax. The other trust (often trust B) holds remaining property for the benefit of the surviving spouse. See: Marital Deduction and Marital Deduction Trust.

Administrator • The person appointed by the probate court in an intestate probate proceeding to serve as the personal representative whose duty it is to collect, manage and distribute a decedent’s estate when there is no will. See: Executor and Personal Representative.

Affidavit • A written declaration or statement of fact made voluntarily, on oath or affirmation of the person making it, before a person having authority to administer an oath or affirmation.

Affidavit of Identity and Survivorship • An affidavit identifying the decedent and the surviving joint tenants, pay-on-death, transfer-on-death or life estate beneficiaries of accounts, investments, insurance or real estate.

Ancillary Probate • A probate proceeding conducted in a state or jurisdiction other than where the decedent resided at the time of his or her death. An ancillary proceeding is frequently required when a decedent owned real estate in a state other than the state of his or her legal residence.

Annual Exclusion • The value of property that the IRC allows a person to transfer to another by gift without paying a gift tax or filing a gift tax return during a calendar year. That amount is currently \$14,000.00 in 2013, subject to adjustment in the future. See: Gift Tax.

Annuity • A contract giving a person (the “Annuitant”) the right to receive fixed, periodic payments either for life or for a term of years.

Ascertainable Standard • An IRC concept that describes the uses that may be made of trust property by or for a trust beneficiary. When followed, the concept prevents trust property from being included in the estate of the person creating the trust. The standard is frequently defined as use of trust property for the “health, education, maintenance and support” of the beneficiary.

Basis • An accounting term that refers to the original cost or acquisition price of a property. Sometimes called “cost basis.”

Beneficiary • An individual, trust or other entity designated to receive money, property or income from an estate, trust, account or contract such as an insurance policy or retirement account.

Bequest • A gift of personal property or money made in a will; a legacy. A gift of real estate is termed a “devise.”

Capital Gain or Loss • Generally, the difference between the cost basis and the sale price of property sold. For income tax purposes, a “long term-capital gain” occurs

when property is owned for more than a year and a “short-term capital gain” results from property held for less than a year.

Cash Value • The surrender value of certain types of life insurance policies, annuities, government bonds, certificates, etc.

Certificate Of Trust • A notarized document stating the name and date of a trust and the identity of the trustee(s); used as evidence of the existence of the trust and the authority of the trustee(s) to deal with trust property.

Charitable Deduction • A tax deduction allowed by the IRC for gifts made to qualified charities.

Conservator • A person appointed by the court to manage the property and financial affairs of a protected individual, such as a minor or incompetent person.

Decedent • A deceased person; one who has died.

Debtor • A person who owes money to another.

Devise • The gift of real estate made by will. The gift of personal property is called a “bequest.”

Disclaimer • The formal refusal of a beneficiary, devisee or legatee to accept property from an estate or trust. When made, property is usually transferred to others as if the beneficiary had died before the decedent.

Domicile • The place where a person has his or her true, fixed and permanent home; a permanent residence.

Donee • A person who receives a gift.

Donor • A person who makes a gift.

Durable Power of Attorney • A power of attorney that continues to be effective despite the fact that the principal has become incompetent or unable to manage his or her own affairs. See: Power of Attorney.

Estate • The total of all property of every kind that is owned by a decedent prior to the distribution thereof according to a will or the laws of intestacy.

Estate Tax • The tax levied upon the estate of a decedent by reason of his or her death. There is both a federal estate tax and a state estate tax in many states, including Minnesota.

Exclusion Amount • More properly the applicable exclusion amount, which is the total amount exempted from federal gift and/or estate tax. In 2013 that amount is \$5,250,000. Note that Minnesota imposes tax on the value of estates in excess of \$1,000,000.

Executor • A personal representative nominated in the will of a decedent and appointed by the court. See: Administrator, and Personal Representative.

Fair Market Value • The price that a willing buyer would pay a willing seller for property owned by the seller if neither party were under any compulsion to either sell or buy.

Fiduciary • A person having the highest duty of loyalty and fidelity, created by his undertaking, to act primarily for the benefit of another person. Trustees, personal representatives, executors administrators, conservators and guardians are fiduciaries.

Gift • The transfer of property by one person to another without payment or other consideration.

Gift Tax • The tax on the transfer of property during a donor's lifetime to another person other than a spouse. In 2013, the IRC allows an annual exclusion of property with a fair market value of up to \$14,000.00 without a tax. That amount is subject to adjustment in the future. See: Annual Exclusion.

Grantee • A person who receives property, either by purchase or gift.

Grantor • A person who transfers property, either by sale or gift. Also, a person who establishes a trust. The term "grantor" is used interchangeably with the terms "trustor" and "settlor" in the context of the creation of a trust.

Health Care Directive • A document appointing a health care agent, which gives the agent the power and authority to make health care decisions on behalf of the declarant, and/or which provides specific instructions concerning

care and treatment if the declarant is unable to express his or her own needs and desires for health care. See: Living Will.

Heir • A person who succeeds, or would succeed, to an estate of a decedent under the laws of intestacy.

Incapacity • The inability of a person to manage his or her own affairs. When determined by a court, incapacity frequently results in the appointment of a guardian or conservator to manage the affairs of the person found to be incompetent.

Incidents of Ownership • The factors that determine whether a person is the owner of particular property. In the case of a life insurance policy, incidents of ownership include such things as the right to change the beneficiary, designate the owner, borrow cash value, or assign the policy.

Independent Trustee • A trustee who is unrelated to the grantor or to the beneficiaries of a trust.

Inherit • To acquire property by legal right from a decedent.

Installment Sale • A contract by the terms of which a buyer makes an initial down payment and agrees to the payment of the balance of the purchase price over a period of time. Such a method may allow the seller to spread the payment of capital gains taxes over the period of the contract.

Inter Vivos Trust • *Inter vivos* is Latin for “between the living,” thus, an *inter vivos* trust is a trust that becomes effective during the lifetime of the grantor. See for comparison: Testamentary Trust.

Intestate • The term applied to a person, estate or probate proceeding when a decedent dies without a will.

IRC • Short for Internal Revenue Code. The IRC contains federal laws pertaining to taxes of all types. Statutes governing estates and trusts are found at 26 U.S.C. § 2001 et seq.

Irrevocable Trust • A trust that cannot be changed, cancelled or revoked once created. The IRC treats revocable trusts very differently from irrevocable trusts. For tax reasons, life insurance trusts, and charitable trusts are almost always irrevocable trusts. See: Revocable Trust.

Irrevocable Life Insurance Trust • A properly established and maintained irrevocable life insurance trust (“ILIT”) is a special type of trust that can be used to protect proceeds of a life insurance policy from taxation upon the death of the person or persons who are insured under the terms of the policy.

Issue • A term that refers to descendants, meaning one’s children, grandchildren, great grandchildren, etc.

Joint Tenancy • A type of ownership of property by two or more persons in which each owns an undivided interest in the whole and attached to which is the right of

survivorship; sometimes referred to as, “joint tenancy with right of survivorship.” On the death of one of two joint tenants, for example, the remaining tenant becomes the sole owner of the property.

Jurisdiction • The legal authority by which a court takes control of a case. In the context of a decedent, the authority of the probate court to appoint a personal representative and to oversee probate administration of the estate. The domicile of the decedent and the location of real estate owned by the decedent are factors that are used to determine whether a particular court has jurisdiction.

Laws of Intestacy or the Laws of Intestate Succession • The law that establishes the rights of persons to receive property from the estate of a decedent when there is no will or trust, or when an existing will or trust does not fully govern the distribution of estate property.

Letters Testamentary • A formal court document providing evidence of the authority of the appointed personal representative to handle the decedent’s property and all claims against his or her estate.

Life Estate • An arrangement whereby the beneficiary (i.e. “life tenant”) is entitled to the use and/or income from property for his or her life, with the holder of the remainder interest to become the absolute owner upon the death of the life tenant.

Living Will • Also known as a health care directive. A document appointing a health care agent, giving the agent the power and authority to make health care decisions on

behalf of the declarant and/or providing specific instructions concerning care and treatment if the declarant is unable to express his or her own needs and desires. See: Health Care Directive.

Marital Deduction • An unlimited deduction from the value of the gross estate for property transferred to a surviving spouse. Property transferred to a spouse during the lifetime of the transferor is likewise not included in the transferor’s gross estate.

Marital Deduction Trust • The trust that receives property passing to the surviving spouse. See: A-B Trusts.

Minor • A person who is too young to have the legal capacity to govern his or her own affairs. The age of majority is established by state law, and is 18 in Minnesota.

Net Taxable Estate • The value of an estate upon which estate tax is assessed. Net taxable value is the gross value of all property owned by the decedent less deductions for such things as debts of the decedent, expenses of administration, and other reductions allowed by the IRC.

Notarized • A document that is signed and sealed by a commissioned Notary Public is considered to be “notarized.”

Notary Public • An official of the state, commissioned to administer oaths and to certify the validity of documents and the authenticity of signatures on documents.

Ordinary Income Property • Property that, if sold, gives rise to ordinary income or loss, as distinguished from a long-term capital gain or loss. A gift of ordinary income property to a charity is deductible only to the extent of the donor's adjusted cost basis in the property.

Pay-On-Death Account • An account that is designed to avoid probate. Typically, a bank account with one or more designated beneficiaries arranged so that on the death of the account holder, the balance of the account will be paid to the beneficiary or beneficiaries previously designated by the account holder.

Per Capita • A Latin term meaning, literally, “per head,” which describes a method of distributing an estate so that all of the surviving descendants share equally in the property. Also known as *pro rata*. See: *Per Stirpes*.

Per Stirpes • A Latin term meaning, literally, “to the roots,” which describes a method of distributing an estate in such a way that descendants take by right of representation. For example, if A and B are the children of a decedent, but B is also deceased leaving grandchildren C, D, E, F, and G, then A receives one half of the estate and each of B's 5 children receive one-fifth of B's one-half, or one-tenth of the estate. A *per capita* distribution among A and C, D, E, F and G would result in each receiving one-sixth of the estate.

Personal Representative • The general term for a person appointed by the court to administer the estate of a decedent. The term includes an executor, administrator and/or successor personal representative.

Power Of Appointment • The authority granted to another person, usually by will or trust, to allow the grantee of the power to decide how to distribute the property of a decedent. The power of appointment is "general" if it places no restrictions on the final distribution. A power of appointment is "limited" or "special" if it specifies alternatives or conditions for the final distribution.

Pour-Over Will • A will that contains a clause that transfers assets of a probate estate to a trust, for final distribution from the trust. The assets of the estate are said to "pour over" into the trust.

Power Of Attorney • A legal document giving the grantee authority to act on behalf of the grantor during the lifetime and competency of the grantor. See: Durable Power of Attorney.

Probate • The legal process that facilitates the transfer of the property of a decedent to his or her heirs, or to those identified in a valid will.

Probate Estate • A decedent's property that is subject to the probate process. Property that is held in trust or in joint tenancy, subject to the designation of a beneficiary, as in the case of a life insurance policy, or a pay-on-death account is not, generally, part of a probate estate.

QTIP Trust • A Qualified Terminable Interest in Property, or QTIP trust is a type of trust that provides an unlimited marital deduction for qualified property placed

in trust for the benefit of a surviving spouse. Such a trust restricts the ability of the surviving spouse to distribute the property at his or her death, and requires that the property be transferred to those beneficiaries designated by the original grantor.

Quitclaim Deed • A deed that transfers a person's interest in real estate without warranty of any kind. See: Warranty Deed, Personal Representative's Deed, Trustee's Deed and Transfer-on-Death Deed

Residual Estate • The portion of an estate that remains after all administrative expenses, taxes, and specific bequests have been paid. A person or entity designated to receive all or part of the residual estate is said to have a "residual interest."

Revocable Trust • A trust established during the life of the grantor who retains the right to both the income and principal along with the right to amend or cancel the trust. Assets are held in the name of the trustee. On the death of the grantor, the trust becomes irrevocable and trust assets are distributed by the trustee according to the terms of the trust. A properly drawn revocable trust frequently avoids the necessity of a probate proceeding.

Section 2503 Trust • A type of irrevocable trust authorized by section 2503 of the IRC, frequently established for the education of children. Section 2503 allows annual gifts up to the annual exclusion amount to be made to the trust, rather than directly to the child. Such gifts still qualify for the annual exclusion.

Self-Proved Will • A will that has been properly witnessed according to state law, to which is attached a notarized affidavit by the testator and the witnesses stating that all of the proper formalities of the execution of the will have been met.

Separate Property • In community property states, all property that is not held as tenants in common by a married couple is considered separate property. In general, it is property owned by only one spouse and includes inherited property and property acquired before the marriage.

Settlor • A person who establishes a trust. The term settlor is used interchangeably with the terms "trustor" and "grantor."

Simple Trust • Trusts that are established with terms that require the trust to distribute all income, so that the trust does not accumulate income on which income taxes must be paid.

Sprinkle or Sprinkling Power • The power given a trustee to decide how and when to distribute trust income to the trust's different beneficiaries. The sprinkling power allows the trustee to "sprinkle" the trust's income over the beneficiaries using the "ascertainable standard" as a guide to distributions to the surviving spouse and children.

Stepped-Up Basis • The new cost basis established for a property as of the date of death of the decedent or six months after the date of death of the decedent, if the alternative valuation date is used. The new basis or

“stepped-up basis” is the value of the property used to assess the estate tax.

Successor Trustee • The trustee who takes over when the initial trustee is no longer able or willing to serve.

Unified Credit • A credit against the federal Unified Transfer Tax which allows a decedent to transfer by gift and/or on death up to \$5,000,000 without tax. The amount of the exclusion is indexed for inflation so that in 2013 the amount that can be transferred without federal tax is \$5,250,000. (Note that Minnesota imposes tax on the value of estates in excess of \$1,000,000.)

Unified Transfer Tax • The federal tax applicable to transfers by gift and at death made in years after 1978. For 2013, transfers, except to a spouse, in excess of \$5,250,000 made by gift or on death are subject to tax at the top marginal rate of 40%. (Note that Minnesota imposes tax on the value of estates in excess of \$1,000,000.)

Tangible Personal Property • Property other than cash, securities, or real estate such as jewelry, paintings, stamp collections, automobiles, household goods and furnishings or other personal property.

Testamentary Trust • A trust that is created upon death by the terms of a person's will. See: *Inter Vivos* Trust.

Testatrix • Traditionally, a person of the female gender who creates a last will and testament or will. See: Testator.

Testator • Traditionally, a person of the male gender who creates a last will and testament, or will. Now, commonly, any person who creates a will regardless of gender. See: Testatrix

Tenants In Common • A form of property ownership for two or more owners. A deed can specify various percentages of ownership for the individual owners, but where no percentage is specified, each is presumed to own an undivided *pro rata* share. There is no right of survivorship as with joint tenancy property.

Transfer-On-Death Deed • A deed that designates one or more beneficiaries to acquire title to real property on the death of the owner of record. The deed operates to transfer ownership in a manner similar to a bank account designated as a “pay-on-death” account.

Trust • A legal arrangement, usually created by a written agreement or declaration, in which property is held and managed by a person or persons, known as trustees, for the benefit of other persons, known as beneficiaries.

Trust Corpus or Trust Res • The property that comprises and is subject to a trust.

Trustee • The person or institution that holds and manages the trust property according to the terms of the trust.

Trustor • A person who establishes a trust. The term “trustor” is used interchangeably with the terms “settlor” and “grantor.”

Uniform Transfers To Minors Act • State statutes that provide a method for transferring property by gift or inheritance to minors who lack the legal capacity to own and manage property. These laws allow an adult (called the “custodian”) to hold legal title manage the property for the benefit of the minor transferees.

Warranty Deed • A deed in which the grantor warrants good, clear title. In addition to title, warranties include the right to possession and quiet enjoyment; freedom from liens and encumbrances; the right to convey the property and the obligation to defend the title against all claims.

Will or Last Will and Testament • A written instrument that directs the distribution of a person’s property following his or her death. To be effective, a will must be properly signed and witnessed, as prescribed by state law. See: Self-Proved Will.

