

ESTATE PLANNING GLOSSARY

Administration

the process during which the executor or personal representative collects the decedent's assets, pays all debts and claims, and distributes the residue of the estate according to the will or the state law intestacy rules (when there is no will).

Administrator

the individual or corporate fiduciary appointed by the court to manage an estate if no executor or personal representative has been appointed or if the named executor or personal representative is unable or unwilling to serve.

Assets

everything someone owns, including real property, bank accounts, life insurance, investments, jewelry, furniture, retirement accounts, and vehicles.

Beneficiary (or Devisee or Heir or Inheritor or Recipient)

a person who receives something from a will, trust, or other legal contract, such as a life insurance policy, a retirement account, a payable-on-death account.

Bequest (or Devise)

a gift in a will or trust. Gifts are normally specific (a particular item or cash gift) or residuary (a percentage share of what is left after all other gifts have been made). A testator can make a bequest to a specific person, organization, or a class of people (e.g., children, grandchildren.)

Codicil

a document which is an addition or amendment to an existing will

Community Property

the assets acquired by the joint effort of spouses during marriage in a community property state. This includes, but is not limited to, all earnings of both spouses and property acquired with those earnings. In the event of divorce or death, each spouse owns half of community property assets. Pre- or post- marital agreements may impact community property rights, either expanding or restricting its application. Laws governing community property vary greatly state-by-state.

Community Property State

a state where community property rules apply. This is in contrast to a separate property state. Currently, the community property states are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin. In addition, Alaska is an opt-in community property state, which means that it gives both parties the option to make their property community property.

Custodian

a person named to manage assets left to a minor. In most states, the minor receives the assets at the legal age of adulthood.

Deceased

a person who has died.

Decedent

an individual who has died.

Deed

a legal document that lets someone transfer a real estate title to another person.

Descendants

an individual's children, grandchildren, and more remote persons who are related by blood or because of legal adoption. An individual's spouse, stepchildren, parents, grandparents, brothers, or sisters are not included. The term "descendants" and "issue" have the same meaning.

Durable Financial Power of Attorney, Durable Power of Attorney for Asset Management

a legal document that lets someone designate another person, called an agent or attorney-in-fact, to act on his or her behalf with regard to specifically financial decisions. "Durable" refers to the fact that the agent retains this authority even if the person who created the durable power of attorney becomes incapacitated. This power ends at death.

Durable Healthcare Power of Attorney (or Healthcare Proxy or Medical Power of Attorney)

a legal document that lets someone designate another person, called an agent or attorney-in-fact, to act on his or her behalf with regard to specifically healthcare decisions. Oftentimes, a durable healthcare power of attorney is included in a comprehensive Advanced Healthcare Directive.. "Durable" refers to the fact that the agent retains this authority even if the person who created the durable power of attorney becomes incapacitated. This power ends at death.

Durable Power of Attorney

a legal document that lets someone designate another person, called an agent or attorney-in-fact, to act on his or her behalf. "Durable" refers to the fact that the agent retains this authority even if the person who created the durable power of attorney becomes incapacitated. This power ends at death.

Estate

the total assets and debts held by a person at death.

Estate Planning

a process where an individual designs a strategy and executes a will, trust, and/ or other documents to provide for the distribution of his or her assets upon incapacity or death. In addition, many thorough estate plans include planning for healthcare needs near the end of life and guardianship for any children.

Executor (or Personal Representative)

a person you appoint who is responsible for carrying out the legal and financial wishes stated in your will, including the payment of debts, sale of assets, and distributions to beneficiaries. This person plays the same role as an administrator if you had died without a valid will.

Family office

an arrangement to coordinate the legal, tax, and other needs of one or more families, either through a true office staffed with employees or through outsourcing to the family's regular advisors. Frequently, a family's private trust company serves as the family office.

Family trust – A trust established to benefit an individual's spouse, children or other family members. A family trust is often the bypass trust or credit shelter trust created under a will.

Fiduciary

a person or institution who is legally responsible to act in the best interest of the person for whom he or she or it is serving.

Financial Guardian (or Guardian of the Estate or Conservator)

a person appointed by a parent who attends to the financial affairs of his or her minor children in the event of the parent's death. The financial guardian has the obligation to use the assets of the estate to provide for the care and maintenance of your children. If a financial guardian is not specified in the will, it is generally assumed that the appointed guardian will play the role of both guardian and financial guardian. Generally, if the surviving spouse is also a parent of a minor child, he or she will be appointed as financial guardian.

Gift

a transfer from one person to another without fair compensation in return. This term can also be used to refer to a bequest.

Grantor (or Trustmaker or Trustor or Settlor)

a person who creates a trust.

Guardian (or Guardian of the Person or Conservator)

a person appointed by a parent who attends to the care of his or her minor children in the event of the parent's death. At minimum, this includes health and living affairs. Depending on whether a separate financial guardian is appointed, this would also include financial affairs.

Health care power of attorney

a document that appoints an individual (an "agent") to make health care decisions when the grantor of the power is incapacitated. Also referred to as a "health care proxy."

Heir

an individual entitled to a distribution of an asset or property interest under applicable state law in the absence of a will. "Heir" and "beneficiary" are not synonymous, although they may refer to the same individual in a particular case.

Holographic Will

a type of will that is handwritten and signed by the testator. Only some states recognize holographic wills as valid, and those must follow state-by-state guidelines.

Incapacity, Incompetence

the situation in which a person cannot act on their own behalf.

Inter vivos

in Latin, this roughly translates to "between the living."

Intestacy, Intestate

the situation in which a person dies without a valid will. In this case, the distribution of assets will follow the default state laws of the deceased person's final residence.

Irrevocable Trust

a type of trust that generally cannot be changed or terminated once it's created. This is in contrast to a revocable trust. An irrevocable trust can be designed and used to remove assets from the creator's taxable estate.

Joint Ownership

a type of ownership in which two or more people own the same asset together. More specific types of joint ownership include JOint Tenancy with Right of Survivorship, Tenancy in Common, and Tenancy by the Entirety.

Joint Tenancy with Right of Survivorship, Joint Ownership with Right of Survivorship

a type of ownership in which two or more people own the same asset together, and where at death of a co-owner, the other co-owner will become the sole owner of the asset, regardless of the distributions made in the deceased co-owner's will. The jointly owned asset is transferred immediately at death without requiring court action.

Life beneficiary

an individual who receives income or principal from a trust or similar arrangement for the duration of his or her lifetime.

Life estate

the interest in property owned by a life beneficiary (also called life tenant) with the legal right under state law to use the property for his or her lifetime, after which title fully vests in the remainderman (the person named in the deed, trust agreement, or other legal document as being the ultimate owner when the life estate ends).

Living Trust

a type of trust created by a living grantor, transferring the assets to a trustee who holds and distributes property and/or income for a beneficiary or beneficiaries, in accordance to the grantor's instructions.

Minor

a person who has not yet reached the legal age of majority (or legally recognized age of adulthood), 18 in most states.

Nuncupative Will

a type of will that is verbal. Only some states recognize nuncupative wills as valid, and those must follow state-by-state guidelines. It is also recognized for active duty military personnel in some cases. A nuncupative will can informally be referred to as a “deathbed” will, as it is often created in cases where a person is in their final illness before a sufficient number of witnesses and afterwards transcribed to writing.

Personal Property

a type of property that is movable, including furniture, vehicles, cash and stocks. This is in contrast to real property that is immovable (like land).

Personal representative

an executor or administrator of a decedent's estate.

Pour-Over Will

a type of will often used with a living trust. A pour-over will state that any assets not specified to a beneficiary (other than the trust itself) will become part of the living trust at death. Some states only allow this kind of pour over of assets to an existent or identifiable trust.

Principal (or Corpus)

the real property and personal property in a trust to be used for the benefit of trust beneficiaries, either through distribution or income generation. In the trust, the grantor specifies how and when the trustee can use the principal.

Probate

a court-supervised process that determines whether a will is valid and supervises the executor in carrying out the testator's legal and financial wishes. Usually this includes a court hearing to establish the death of the testator, the residency of the testator, the genuineness of the will, its conformance with statutory requirements for its execution, and the competency of the testator at the time the will was made. During probate, the court will also decide on whether any valid challenges to the will exist.

Probate Estate

a subset of a person's estate that goes through probate at death. Usually the probate estate does not include assets under joint ownership, payable on the death accounts, retirement plans such as 401Ks & IRAs, insurance policies with specified beneficiaries, and any assets in a trust.

Real Property (or Real Estate Property)

a type of property that is immovable, including land and anything attached to the land, such as natural resources that are on or under it and man-made structures that are permanently attached to it. This is in contrast to personal property that is movable (like vehicles).

Remainder interest

an interest in property owned by the remainderman that does not become possessory until the expiration of an intervening income interest, life estate or term of years.

Revocable Trust

a type of trust that can be changed or terminated during the grantor's lifetime. This is in contrast to an irrevocable trust.

Settle an Estate

the process of handling the final affairs after a person dies. This usually includes the valuation (or appraisal) of assets, payment of debts and taxes, and distribution of assets to beneficiaries.

Settlor

term frequently used for one who establishes or settles a trust. Also called a “trustor” or “grantor.”

Surviving Spouse

a spouse who outlives his or her partner (usually by at least a set period of 120 hours).

Tenancy by the entirety

a joint ownership arrangement between a husband and wife, generally with respect to real property, under which the entire property passes to the survivor at the first death and while both are alive, may not be sold without the approval of both.

Tenancy in common – A co-ownership arrangement under which each owner possesses rights and ownership of an undivided interest in the property, which may be sold or transferred by gift during lifetime or at death.

Testamentary

relating to a will or other document effective at death.

Testamentary Trust

a type of trust that is created at death, usually by the terms of a will. Unlike living trusts, testamentary trusts must go through probate before the trust is created, since, for example, the genuineness and validity of the will, and appointment of an executor still need to be established before the creation of the trust. Although a testamentary trust does not avoid probate, it may serve some of the common desired functionalities of a trust, for example, establishing a trust to leave assets to minor children.

Testator

a person who creates a will.

Trust

a legal agreement between three parties: a grantor, a trustee, and a beneficiary or beneficiaries. The grantor can also be the trustee and/ or a beneficiary, but a beneficiary other than the grantor must also be appointed. Oftentimes a trust provision is added to a will when someone wants additional flexibility on how assets are treated after death. There are many different types of trusts that are tailored towards specific situations.

Trustee

a person or institution who is responsible for managing any property or assets a grantor transfers into and titles in the name of the trust. The trustee has duties to be loyal, be prudent, be impartial, and to inform the beneficiaries of the trust. The trustee can be the grantor and/ or a beneficiary of a trust in addition to the trustee role.

Ward

in the trusts & estates context, this means the person (usually a minor child or incapacitated adult) for whom a guardian cares.

Widow

a woman who has lost her spouse by death and has not remarried.

Widower

a man who has lost his spouse by death and has not remarried.

Will

a writing specifying the beneficiaries who are to inherit the testator's assets and naming a representative to administer the estate and be responsible for distributing the assets to the beneficiaries.