

ESTATE PLANNING TERMS AND DEFINITIONS

Depending on a family's or individual's needs, developing an effective estate planning strategy can be complicated. Such planning usually includes development of a testamentary document (trust or will or both), an advance health care directive, and a durable power of attorney. One of our goals is to ensure that clients fully understand the terms and concepts reflected in our legal system as it relates to their estate planning needs. The glossary presented below is by no means exhaustive, nor are the definitions legally sanctioned or adopted in all jurisdictions. However, this list provides a general sense of some of the more common terms and concepts encountered in this area of the law.

Advance Directive: A written document (form) that tells what a person wants or doesn't want if he/she in the future can't make his/her wishes known about medical treatment. This is also known as a living will.

Advocacy: The active support of a legal cause (example: obtaining government benefits through representation before courts and governmental agencies).

Artificial nutrition and hydration: When food and water are fed to a person through a tube.

Attorney-in-fact: The person named to act for another person under a power of attorney.

Autopsy: An examination done on a dead body to find the cause of death.

Beneficiary (under a trust): The person who receives the equitable title to trust property and hence the right to benefit from that property according to the grantor's instructions.

Beneficiary (under a will): A generic term for a person who receives property under a will.

Bypass Trust: An estate planning device used to minimize the combined estate taxes payable by spouses. At the death of the first spouse, the estate is divided into two parts. One part is placed in trust, usually to benefit the surviving spouse, without being taxed at the surviving spouse's death. The other part passes outright to the surviving spouse or is placed in a marital deduction trust.

Charitable Gift Annuity: An arrangement whereby the donor makes a gift to charity and receives back a guaranteed lifetime income.

Charitable Lead Trust: A trust in which a charity obtains benefits for a specified period of time, after which the benefits return to the grantor or the grantor's family.

Charitable Remainder Trust: A trust in which the grantor or the grantor's family retains benefits until a specified time, after which the remainder passes to a charity.

Charitable Trust: A trust created for a charitable beneficiary.

Comfort care: Care that helps to keep a person comfortable but doesn't make him/her get well. Bathing, turning and keeping a person's lips moist are types of comfort care.

Corpus of a Trust: This term refers to all the property transferred to a trust. For example, if a trust is established (funded) with \$250,000, that money is the corpus.

CPR (cardiopulmonary resuscitation): Treatment to try to restart a person's breathing or heartbeat. CPR may be done by pushing on the chest, by putting a tube down the throat or by other treatment.

Decedent: The person who has died.

Devise: To transmit or give (real property) by will.

Devisee: A person to whom land or other real property is devised or given by will.

Discretionary Trust: A trust giving the trustee discretion with respect to payments to and on behalf of the trust beneficiary.

Donee: The recipient of a gift.

Donor: The maker of a gift.

Durable Power of Attorney for Health Care: An advance directive that names someone to make medical decisions for a person if in the future he/she can't make his/her own medical decisions.

Escheat: Assignment of property to the state because there is no verifiable legal owner - typically, where there is no heir to property.

Estate Tax: A tax on a decedent's transfer of property at death.

Executor/ Executrix: The person named under the will to act as the decedent's personal representative with respect to the administration and distribution of the decedent's estate.

Fiduciary: A person having the legal duty to act for the benefit of another, such as an attorney, an executor or a trustee. A fiduciary is subject to obligations and responsibilities prescribed by law and is personally liable for any wrong-doing.

Future Interest: An ownership interest in property in which unlimited possession or enjoyment of property is delayed until some future time.

Generation-Skipping Transfer Tax: An additional tax on certain transfers to beneficiaries who are more than one generation younger than the person transferring the property (example: a transfer from grandparent to grandchild).

Gift Tax: A tax on lifetime transfers of property for less than full and adequate consideration.

Gift Tax Annual Exclusion: The amount that a person may transfer to another annually without imposition of a gift tax. Under current IRS regulations, the gift tax annual exclusion amount is \$12,000.00 per donee.

Grantor: A person who creates a trust. Also called settler, trustor and donor.

Grantor Trust: A trust whose creator retains control over the management of the trust assets and the distribution of its income.

Gross Estate: The total value of all the property interests of the decedent at the time of death.

Guardian: A person appointed by the court to be responsible for making decisions on behalf of a person deemed by a court to be incapable of making decisions and properly caring for himself/herself.

Guardian Ad Litem: A guardian appointed by the court to represent the interest of certain individuals incapable of representing themselves (such as minors, incompetents or unborn beneficiaries) in legal proceedings.

Health Care Proxy: A document appointing another person to make healthcare decisions in the event of incapacity or an inability to communicate.

Heir: A person entitled to take property of a decedent under state default rules for those persons dying without a valid will.

Holographic Will: A will written entirely in the testator's own handwriting.

Incapacity: The lack of ability to act on your own behalf.

Intangible Property: Property that cannot be touched and that represents real value such as bonds, stock certificates, promissory notes, certificates of deposit, bank accounts, contracts, leases, and other similar items.

Inter Vivos Trust: A revocable trust created while the donor is still alive to hold property for the benefit of another, also called living trust.

Intestate: Dying without a will.

Intestate Succession: The distribution of property to heirs according to the statutes of the state of residency upon the death of a person who owned the property but did not leave a valid will.

Inventory: A detailed, itemized list, report, or record of things in one's possession.

Irrevocable Trust: A trust that cannot be changed or terminated after it is established.

Lateral Succession: Succession in property ownership in which the property is transferred between members of the same generation.

Legatee: One who receives property by will; also known as a beneficiary or a devisee.

Life Insurance Trust: A trust which holds a life insurance policy and is designed to minimize transfer taxes and to provide additional funds to the estate. Policy premiums are covered through contributions to the trust which are structured to qualify for the annual gift tax exclusion.

Life-sustaining Treatment: Any medical treatment that is used to keep a person from dying. A breathing machine, CPR, and artificial nutrition and hydration are examples of life-sustaining treatments.

Living Trust: A revocable trust created while the donor is still alive to hold property for the benefit of another, also called inter vivos trust.

Living will: An advance directive that tells what medical treatment a person does or doesn't want if he/she is not able to make his/her wishes known.

Marital Deduction: A deduction allowing for the unlimited transfer of any or all property from one spouse to the other generally free of estate and gift tax.

Organ and Tissue Donation: When a person permits his/her organs (such as the eyes or kidneys) and other parts of the body (such as the skin) to be removed after death to be transplanted for use by another person or to be used for experimental purposes.

"Pay Back" Requirement: Phrase used to refer to the requirement that any assets remaining in an OBRA '93(d)(4)(A) trust be used to reimburse the state (see below).

Persistent Vegetative State: When a person is unconscious with no hope of regaining consciousness even with medical treatment. The body may move and the eyes may be open, but as far as anyone can tell, the person can't think or respond.

Power of Attorney: A document authorizing one person to act for another with respect to property.

Probate: A legal process of settling the estate of a deceased person, specifically resolving all claims and distributing the decedent's property under the valid will.

Real Property: Another term for real estate. It includes land and things permanently attached to the land, such as trees, buildings, and stationary mobile homes.

Secured Creditor: A creditor who holds some special financial assurance of payment of his debt, such as a mortgage or a lien.

Special Needs Trust: See Supplemental Needs Trust

Succession: A term used to describe transfers of asset ownership through inheritance, gifting, preferential sale, or other means that fulfill the wishes of the person(s) with present ownership of the assets.

Supplemental Needs Trust (also known as Special Needs Trust): A trust created for the benefit of a disabled person where the trustee has the discretion to make distributions on behalf of the beneficiary. The only limitation on the trustee's discretion is a directive that distributions be supplemental to otherwise available government benefits. The trust is designed to provide resources while still maintaining the beneficiary's eligibility for state and federal assistance programs. There are two main types of supplemental needs trusts:

Third Person Supplemental Needs Trust: A trust created for the benefit of a disabled person using funds contributed by another person, such as a parent. The assets contributed are held in trust for the benefit of the disabled person during his or her lifetime. Upon the disabled person's death, any remaining assets are not subject to a governmental payback provision.

OBRA '93 Trust: Technical term for a trust funded with assets belonging to the disabled person for which the trust is created. Such trusts must meet the requirements prescribed by federal statute in order to maintain person's eligibility for governmental assistance.

Tangible Property: Property that is capable of being perceived by the senses - generally refers to real estate, personal property, and moveable property that has value of its own and is not merely a representation of real value. Land, machinery, buildings, crops, and livestock are examples of tangible property. Tangible *personal* property refers to property exclusive of real estate.

Terminal condition: An ongoing condition caused by injury or illness that has no cure and from which doctors expect the person to die even with medical treatment. Life-sustaining treatments will only prolong the dying process if the person is suffering from a terminal condition.

Testamentary Trust: A trust created at the Grantor's death, pursuant to his or her will. Such trusts are subject to the jurisdiction of the Probate Court.

Testator: One who writes or has written and signs a will.

Trust Agreement: A document whereby property is conveyed by the owner of the property (the grantor) to the trust to be managed by the trustee for the benefit of others (the beneficiaries).

Trustee: The person who holds legal title to the trust property and who has the fiduciary duty to manage that property for the benefit of the trust beneficiary, according to the grantor's instructions and applicable trust law.

Unified credit: A credit available to each individual to offset gift and state tax liability.

Will: A written document or oral declaration directing the disposition of the decedent's property upon the decedent's death.

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