

Glossary of Estate Planning Terms

Administrator:

The one appointed by the Probate Court to manage the probate estate where no executor has been designated, or where the designated executor is unable or unwilling to serve.

Advance Medical Directive:

The legal instrument in which a person nominates another to make medical decisions when one is unable to do so, and also expresses the person's wishes as to the extent of "extraordinary" medical care desired in case of imminent death from an irreversible condition, or in the case of a persistent vegetative state. The Advance Medical Directive includes both a "living will" and a "durable power of attorney for health care decisions".

Attorney-In-Fact:

The person appointed under a Power of Attorney to conduct the affairs and deal with the property of another. The attorney-in-fact need not be a lawyer; any competent adult individual may serve. Under many recent state statutes, the term "Attorney-In-Fact" has been replaced by the term "Agent" under the Uniform Powers of Attorney Act.

Beneficiary:

The person named in a Will or Trust to receive property from the maker of the Will or Trust. The named beneficiary has "equitable title" to the Trust property.

By-Pass Trust:

The Trust created to hold assets of a value equal to the decedent's estate tax exclusion amount on such terms that those assets will "by-pass" further estate taxes when the initial beneficiary of the Trust dies. (Same as "Credit Shelter Trust" and "B-Trust".)

Capacity:

The legal competence to effectively perform a given act (e.g. to write a Will or Trust, to enter into a binding contract).

Conservatorship:

Probate proceeding initiated to supervise management of the property of an incapacitated or incompetent person. (Also see Guardianship below)

Decedent:

Person who has died.

Designated Beneficiary:

An individual beneficiary of a retirement account (IRA, 401(k), 403(b), etc.) who qualifies as a person whose life expectancy may be used for determining required minimum annual distributions. The term "designated beneficiary" is a term of art under the I.R.S. regulations, one of which requires that to qualify as such the beneficiary must be an individual with an ascertainable life expectancy. Thus, for example, a charitable organization cannot qualify as a "designated beneficiary".

Equitable Title:

Beneficial ownership of an asset; the right to use, spend, consume and/or enjoy an asset or its income.

Estate Planning:

The process of arranging one's property and affairs so as to insure their current management and ultimate disposition in the most efficient, effective, economical, and private manner, taking into consideration the effect of state and federal tax and administrative laws and regulations.

Estate Tax:

Tax imposed by U.S. government and some states on the transfer of property from a decedent to his or her heirs or beneficiaries. The estate tax is levied on and measured by the size of the decedent's estate, rather than on the amount received by any particular beneficiary.

Exclusion Amount:

The new term -"applicable exclusion amount"- used by the Internal Revenue Code to identify the value of assets owned by a decedent effectively exempt from the federal estate tax.

Exemption Equivalent:

Old term for applicable exclusion amount. (See above.)

Executor (male)/Executrix (female):

The one nominated in a Will and thereafter appointed by the Probate Court to manage and distribute a decedent's estate in accordance with the terms of the Will. May also be referred to as a **Personal Representative**.

Fiduciary Responsibility:

A serious responsibility of trust imposed upon one by the law, requiring the utmost degree of integrity and prudence in dealing with the property entrusted to the fiduciary (e.g. Trustee, Administrator, Executor, Guardian, Conservator or Agent).

Fractional Interest:

The less than 100% share of ownership held by a co-owner of an asset.

Funding a Trust:

Re-registering legal title to one's assets in the name of the Trustee of your Trust. This must be done with certain assets in order for these assets to avoid probate.

Generation Skipping Transfer (GST) Tax:

A federal tax imposed on certain transfers, either by gift or at death, between a donor/decedent and a person more than one generation removed (e.g., a grandchild).

Grantor:

The person who establishes a Trust. Also referred to as the "Trustor", and sometimes referred to as the "Settlor" of the Trust.

Gross Estate:

The total value, for estate tax purposes, of everything in which one has an ownership interest at the time of death.

Guardianship:

Court proceeding initiated to supervise management of the personal affairs (e.g. living accommodations, nursing home selection) of a minor or an incapacitated person. In some states the term "guardianship" also refers to the procedure used to manage property and legal affairs of such a person. (Referred to in some states, e.g. Virginia, as a "Conservatorship.")

Heir:

The person entitled to distribution of an asset or property interest under applicable state law, in the absence of a Will or Trust. (Note that "heir" and "beneficiary" are not synonymous, though they may refer to the same individual in a particular case.) Your heirs are the ones who will inherit your property if you die with no valid Will or Trust in effect.

Inheritance Tax:

Tax imposed by some states on the amount received by a particular heir or beneficiary. Nebraska has an inheritance tax; Virginia and the District of Columbia do not.

Insurance Trust:

An irrevocable Trust established to own life insurance on a person, so designed as to exclude the proceeds of the policy — the death benefit—from the insured person's taxable estate at death.

Intestate/Intestacy:

Dying without leaving a valid Will or Trust in effect, such that the decedent's estate is distributed in accordance with state law. (See "Heir" above.)

IRA:

Individual Retirement Account (see "Retirement Accounts),

Irrevocable Trust:

A Trust that cannot be revoked, modified or amended (except to a very limited extent) once it has been established. Irrevocable Trusts are often used in tax planning to get property "out" of a person's taxable estate so that it will not be subject to estate tax upon his or her death.

Joint Ownership:

Any arrangement through which title to an asset is shared by more than one owner.

Joint Tenancy:

A form of joint ownership of property that carries an automatic right of survivorship, such that title to the interest of a deceased joint owner automatically vests in the surviving joint tenant(s) by operation of law upon the death of one joint tenant. (Contrast with "Tenants-in-Common".)

Legal Title:

"Registered ownership" of an asset. Refers to the person(s) whose name is on the deed, signature card, registration certificate, etc.

Living Will:

The instrument used to express one's wishes for treatment in the event of irreversible terminal condition or persistent vegetative state. Now often replaced by Advance Medical Directive. (See above.)

Marital Deduction:

The deduction against gross estate value accorded by the Internal Revenue Code for transfers by gift or upon death to one's spouse. Under current law the marital deduction is unlimited, e.g. there is no estate or gift tax on qualifying transfers of any amount to a U.S. citizen spouse.

Payable-on-Death Account (POD):

A bank account titled in the name of the original owner, but directing distribution to a named beneficiary upon the owner's death. POD accounts avoid probate administration.

Personal Representative:

An executor or administrator (see above). In Maryland both executors and administrators are referred to as the Personal Representative (often abbreviated "P.R.").

Pour-Over Will:

A Will used in conjunction with a Revocable Living Trust to dispose of *any* property owned by the decedent at time of death which was not transferred to the Trust during the Trustor's lifetime. The Pour-Over Will also revokes all prior Wills, but unlike traditional Wills it does not contain detailed dispositive provisions; rather it directs distribution of all individually owned property of the Testator to the Trustee of his/her Trust. The Trust instrument contains detailed instructions relating to the distribution of the property. Like all Wills, a Pour-Over Will is subject to probate administration.

Power-of-Attorney: Durable General

A legal instrument whereby one appoints and empowers another person as agent to deal with one's property and affairs. (See Attorney-in-Fact above). A General Power of Attorney is one which gives the Attorney-in-Fact broad, plenary powers. A Durable Power-of-Attorney is one which remains effective even after the maker becomes incapacitated. Most comprehensive estate plans include a General Durable Power-of-Attorney.

Power-of-Attorney: Health Care

A legal instrument whereby one appoints and empowers another person as their medical Representative, to make health care decisions in the event you cannot make them yourself. Our Health Care Power of Attorney is a "Durable Springing Power of Attorney". "Durable" meaning it **continues to be in effect** as long as you **cannot** make decisions for yourself. "Springing" meaning it **does not** go into effect **until** you are unable to make or communicate health care decisions.

Probate:

The process, usually administered by a probate court or an official subject to the court's authority, established in all fifty states to supervise the transfer of legal title to property from a decedent to his heirs or beneficiaries, or to supervise the management of the property and affairs of one incapable of handling his or her own affairs.

Procrastination:

"Putting off doing something until later." [Webster definition] Most common reason people neglect to establish basic estate plan while alive, often resulting in unnecessary expense, delay, taxes, and family friction after the death of the procrastinator.

Retirement Accounts:

Any of the various accounts, funds or plans established to provide retirement benefits for an individual, created pursuant to federal law and regulations and providing for tax-deferred accumulation during the life of the account, including IRAs, 401(k)s, 403(b)s, Pension and Profit Sharing Plans, etc. These accounts, with the exception of "Roth IRA's," are subject to income tax upon withdrawal. They (including Roth IRA's) are also includable in the estate of the owner for Estate Tax purposes.

Revocable Living Trust:

A Trust established by an individual, or a married couple, that becomes effective immediately upon establishment while the Trustor is still alive (thus "Living"), remains revocable and amendable during the lifetime of the Trustor (thus "Revocable"), and is used to (1) avoid probate; (2) facilitate some tax planning; (3) provide for management during periods of incapacity without need for guardianship or conservatorship; (4) address family circumstances; and (5) provide for ultimate distribution of the estate. The Trust is a comprehensive set of instructions for the management and ultimate distribution of the property, accounts and other assets you own.

Roth IRA:

A special form of IRA for which the owner receives no income tax deduction for contributions, but the account does accumulate tax-deferred. Most significantly, withdrawals from the Roth IRA are not subject to income taxation.

Settlor:

Same as Trustor or Grantor. Alternate term for one who establishes a Trust.

Special Needs Trust/Supplemental Needs Trust:

A Trust established for a disabled person to provide supplemental support without disqualifying the beneficiary from eligibility for governmental assistance programs.

Successor Trustee:

The Trustee who "takes over" upon the death, disability or resignation of the original Trustee of a Trust, or a prior Trustee of a Trust.

Tangible Personal Property:

Personal property which ordinarily has no registered ownership attached to it, e.g. furniture, clothing, jewelry, antiques, collections, etc., but not cash or other financial assets.

Tenancy-in-Common:

A form of co-ownership in which a deceased tenant's share passes to his/her heirs or beneficiaries through his/her estate under the terms of a Will, or in accordance with the laws of intestate succession in the absence of a Will. (Contrast with Joint Tenancy.)

Testator (male)/Testatrix (female): Person who makes a Will.

Trust:

A legal arrangement in which "legal title" (registered ownership) to assets is transferred to a "Trustee", who thereafter has a fiduciary duty to manage and distribute the Trust assets for the benefit of the beneficiaries of the Trust, all in accordance with the instructions contained in the Trust document ("Declaration of Trust"). The beneficiaries hold "equitable title" (right to use and enjoy) to those assets. Trusts of various types are frequently used in estate planning to achieve tax, financial, and personal objectives. **It is helpful to remember that every Trust is simply a set of your instructions.**

Trustee:

One who holds *legal* title to Trust assets, managing and distributing those assets in accordance with the terms and conditions specified in the Declaration of Trust. The Trustee may be an individual or a bank or trust company licensed to serve as a Trustee. A Trust may have one or more Trustees (Co-Trustees) who act together.

Trustor:

The individual or individuals establish a Trust. The terms "Grantor and "Settlor" are synonyms for "Trustor".

Trust Estate (Trust Property):

The assets transferred to the Trustee by re-registering their legal titles in the name of the Trustee. The Trust Estate can include real estate, bank accounts, stocks, bonds, brokerage accounts, partnership interests, tangible personal property, and many other types of financial and legal interests.

Will:

The legal instrument traditionally used to direct disposition of one's property after death.