

Administrator - The person designated by the court to manage and distribute a probate estate when there isn't a will. If there is a will, the person so designated is called the executor (male), executrix (female), or personal representative.

Affidavit - A sworn, written statement executed under oath in front of a witness or witnesses.

Affidavit of Domicile - A sworn, written statement verifying city, county and state of residence.

Ancillary Probate - A probate proceeding conducted in a state other than the state where the decedent lived and the primary probate occurs.

Annual Exclusion - The amount of property the IRS allows a person to gift to another person during a calendar year before a gift tax is assessed and/ or a gift tax return must be filed. The amount is increased periodically, typically indexed for inflation. There is no limit to the number of people you can give gifts to which qualify for the annual exclusion. To qualify for the annual exclusion, the gift must qualify as a present interest gift, which means that the recipient can enjoy immediately and have full control over said gift immediately.

Beneficiary - The person(s) or organization(s) who receive(s) the benefits of trust property held under the terms of a trust.

Bequest - An old legal term meaning to give a gift or leave property under the terms of a will.

Bond - An insurance policy used to ensure a legal representative will do his job and not misuse or steal funds he is controlling. The bond guarantees that a certain amount of money will be paid if a party is injured due to acts of the legal representative.

By Right of Representation - Common terminology for the Latin term, Per Stirpes. This is the most common way of distributing an estate such that if one of the children is dead, the deceased share is then passed down to his/her living issue (children).

Charitable Remainder Trust - A trust used to make large donations of property or money to a charity so the person making the gift or donation can obtain a tax advantage. In a charitable remainder trust, the donor reserves the right to use the trust property during his life or some other specified time period, and when the agreed period is over the property goes to the charity.

Codicil - A written change or amendment to a will.

Community Property - Some state laws require that all assets acquired during a marriage belong equally to both spouses, except for gifts and inheritances given specifically to one spouse. States with such laws are known as community property states.

Conservator - A person appointed to be legally responsible for the management of property and money belonging to a minor or incompetent person. The conservator may act as the guardian or the guardian may be a separate person and the conservator will just work with the guardian.

Conservatorship - A court controlled program where a conservator is appointed by the court to manage the monetary affairs of a person(s) who is unable to manage his/her own affairs.

Cost Basis - A tax term, which refers to the original or acquisition value of a property, used to determine the amount of tax that will be assessed. The basis is deducted from the sales price of the property when it is sold to determine the profit or loss.

Creditor - A person or institution to whom money is owed.

Decedent - The person who has died.

Deed - A written document used to evidence ownership and/or transfer title to real estate.

Debtor - A person who owes money.

Devise - A legal term referring to real estate which passes through a will.

Disclaimer - The refusal of a beneficiary to accept property willed to him. When a disclaimer is made, the property is generally transferred to the person next in line under the will. A disclaimer is also called a renunciation.

Disposition - The parting with or giving away of property.

Disinherit - Cutting a person off from his or her inheritance in an estate where he or she would have been a natural heir.

Domicile - The state or county which is the primary residence of a person.

Donee - A person who receives a gift.

Donor - A person who makes a gift.

Durable Power of Attorney - A document established by an individual (the principal) granting another person (the agent) the right and authority to handle the financial and other affairs of the principal. The Durable Power of Attorney survives through the period of incompetency of the principal.

Durable Power of Attorney for Health Care - A document established by an individual (the principal) granting another person (the agent) the right and authority to handle matters related to the health care of the principal.

Escheat - A legal word that describes the situation where property transfers to the ownership of the state government because there are no legal inheritors to claim it.

Estate - The aggregate of all assets and debts held (owned) by an individual during his or her life or at the time of his or her death.

Estate Taxes - Taxes potentially imposed on the transferring property by reason of death. The estate tax is most commonly used in reference to the tax imposed by the Federal Government rather than the state government. The estate tax system is intended to limit the amount of a family's wealth that may be transferred free of taxation to lower generations.

Executor/ Executrix - The person (male/female) named in a will to manage a decedent's estate. The more modern term is personal representative, which removes any reference to the sex of the named individual.

Exemption Equivalent - When property is given as a gift or passed to heirs as part of an estate, it is subject to federal estate and gift tax laws. Each person is given a tax credit (the "unified credit") that can be used to offset the tax assessed against a specific amount of property. The amount of property that results in a tax exactly equal to the unified credit is known as the exemption equivalent. More simply stated, the unified credit is equal to the amount of tax due on a gift or estate transfer of property that has a value equal to the exemption equivalent amount.

Family Trust - Can be another name for a living trust.

Fiduciary - A person with the legal duty to act primarily for another's benefit in a position of trust, good faith, candor and responsibility.

General Power of Attorney - A legal document that, when properly executed, gives one person (the agent) full legal authority to act on behalf of another (the principal). The scope of the document can be as broad or narrow as you desire as defined in the document. A general power of attorney becomes invalid when the principal dies or becomes incompetent.

Gift - A transfer of property without receiving some benefit in return. The person making the transfer cannot be obligated in any way to make the transfer.

Gift Taxes - Taxes levied by the Federal Government on gifts.

Grantor - The person who establishes a trust and transfers assets into it. Other terms for the grantor include "trustor" and "settlor."

Grantor Trust - A trust in which the person establishing the trust retains enough "ownership rights" or "incidents of ownership" that the person is treated by the IRS as the owner of the trust assets for tax purposes. The right to revoke the trust is sufficient to make the trust a grantor trust.

Gross Estate - The total value of an estate on the date of the decedent's death. This value is determined before debts and other deductions are subtracted from the value of the assets comprising the estate.

Guarantor - A party who guarantees repayment of a loan, using their own assets if necessary.

Guardian - A person designated by court appointment and given the responsibility of managing the personal affairs of a minor child or a person that is legally incompetent to manage his or her own affairs.

Heir - A person who, by law, inherits property from a deceased relative who didn't leave any type of will or trust which distributes his or her property after death. The term is generally used to refer to a person who receives property from a decedent through any means.

Holographic Will - A do-it-yourself handwritten will. To be valid, this will must be totally in your own handwriting, signed and dated. About 20 states allow holographic wills, but it is best to have a more formal will.

Homestead Laws - State laws which protect your house, clothing, and personal property, up to a specific dollar amount, from being taken away by most types of lawsuits or bankruptcies.

Incapacitated - A person who is legally incapable of managing his or her own business affairs. A person may be permanently or temporarily incapacitated. A probate court usually decides if a person is incapacitated or not. The term incapacitated is often used interchangeably with incompetent.

Incidents of Ownership - All or any management control over a trust or an insurance policy. In relation to an insurance policy, incidents of ownership include the right to change the beneficiaries, borrow cash value, and change the ownership, among other rights.

Incompetent - A person who is legally incapable of managing his or her own business affairs. A person may be permanently or temporarily incompetent. A probate court usually decides if a person is incompetent or not. Incompetent is often used interchangeably with incapacitated.

Independent Trustee - A trustee who is unrelated to the person who establishes a trust (the grantor) and the beneficiaries of the trust. Unrelated attorneys, banks, corporations, etc., are usually chosen to act as independent trustees.

Inherit - To take or receive property by legal right from a deceased person.

Inheritance Tax - A tax imposed upon the transfer of property from a deceased person's estate. Inheritance tax is a term which is usually applied to the taxes charged by a state, whereas the taxes imposed by the Federal Government are usually referred to as estate taxes.

Inter Vivos Revocable Trust - Another name for a living trust. "Inter vivos" is Latin meaning "between the living."

Intestate - To die without a will or other valid estate transfer devise.

Intestate Succession - The order of persons entitled to received property distributed by a state court when the deceased failed to write a will or trust, or the will or trust has failed to legally distribute the deceased person's property.

Irrevocable Trust - A trust that cannot be changed or canceled once it is set up. Irrevocable trusts are treated by the IRS very differently than revocable trusts.

Issue - A legal term used in wills and trusts meaning one's children, grandchildren, etc., either through birth or adoption.

Joint Ownership - The situation where two or more people own the same piece of property together. The property can be owned by the people as joint tenants, tenants in common, tenants by the entirety and other legally defined relationships.

Joint Tenancy - When two or more people take title to the same property and simultaneously each owns 100% of the property, or has full rights to the property. At the death of one joint tenant, his or her share immediately transfers to the ownership of the survivor(s).

Jurisdiction - The location where a person has access to the court system. The place where a person lives usually determines which court has the legal right to adjudicate his or her claims, probate proceedings, or other matters. The location of real property can also determine the "jurisdiction" of legal matters related to that property.

Letters Testamentary - A formal court order (document) issued by a probate judge giving the personal representative authority to conduct business, contract, sell estate property, pay bills, distribute estate property, and otherwise act on behalf of the estate.

Life Estate - The right to receive the benefits from a property during one's lifetime. The person with the beneficial right does not actually own the property, therefore and when he/she passes the property is not included in the their estate.

Life Insurance Trust - A type of irrevocable trust used to hold life insurance. When a life insurance policy is held in an insurance trust, it is protected from estate taxes when the insured dies; provided the trust is established properly, managed properly, and the insured does not retain any incidents of ownership.

Revocable Living Trust - See Living Trust

Living Trust - A type of revocable trust used in estate planning to avoid probate, help in situations of incompetency, and may allow for a more seamless transition of one's assets after the death of the grantor or person who established the trust. The trust can be effective in eliminating or reducing estate taxes for married couples. Revocable Living trusts are established during the life of the grantor, who retains the right to the income and principal and the right to amend or revoke the trust. When the grantor dies, the trust becomes irrevocable.

Minor - A child who is not old enough to have the legal capacity to govern his or her own affairs. Depending upon the specific state and the specific laws being applied, a minor is usually either under 21 years old or 18 years old.

Net Taxable Estate - The value of an estate upon which the federal estate tax is levied. The net taxable estate, or net estate value, is the total value of the property within the estate less outstanding liabilities, expenses, and other deductions allowed by the law.

Notarized - The affirmation of an agent (the notary) of the state affirming that the signature on the document is in fact the signature of the person purportedly signing the document.

Notary - A person who has state granted authority to certify the validity or authenticity of the signature being made on a document.

Per Capita - A method of distributing an estate such that all of the surviving beneficiaries share equally in the inheritance of property. Also know as Pro Rata.

Per Stirpes - See By Right of Representation.

Personal Representative - The modern term for the executor or executrix, who is the court appointed individual that probates the will and carries out the will's instructions under court supervision.

Pour-over Trust - A trust designed to receive property that is "poured over" into it. The property is usually "poured over" or received from a pour-over will through the probate process.

Pour-over Will - A will which contains a clause that transfers some or all of the assets that pass through the will into a trust for final distribution from the trust. The will's assets are said to "pour over" into the trust.

Power of Appointment - The power given to a person, by appointment in a will or a trust, to distribute the property that passes through the will or trust at the discretion of the person appointed. Other than to give the appointed person the authority to make the distribution, the will or trust doesn't make distribution of the property.

Power of Attorney - A document established by an individual (the principal) granting another person (the agent) the right and authority to handle the financial affairs for the principal. A power of attorney becomes invalid at the death or incompetency of the principal, unless the power of attorney is a "durable power of attorney" which remains in effect after the principal becomes incompetent.

Primary Beneficiary - The person, or persons, for whose benefit a trust is originally established. When conditions change and the primary beneficiaries are no longer in a position to receive the benefit of the trust, the benefit goes to the contingent beneficiaries.

Probate - The legal process of proving the validity of a will which facilitates the transfer of a deceased person's property. The court establishes the authenticity of the will (if any), appoints a personal representative or administrator, identifies heirs and creditors, directs payment of debts and taxes, and oversees distributions of the assets according to the will. In the absence of a will, state law will dictate the disposition of one's assets.

Probate Court - The part of the judicial system dedicated to handling probate matters which includes settlement of intestate and testate estates, adoptions, appointment of guardians, name changes, and other matters.

Probate Estate - A deceased person's property which is subject to the probate process. Property held in a living trust is usually not considered part of the probate estate.

Probate Fees - The fees, often a percentage of the estate, paid to the attorney and others who handle the probate proceeding.

QTIP Trust - A Qualified Terminable Interest Trust (Q-Tip) is a type of trust which provides an unlimited marital deduction for qualified property put into the trust. However, rather than permitting the surviving spouse to have full power to distribute the property to anyone he or she wishes, the trust restricts the ability of the surviving spouse to distribute the property in the trust to a select group of individuals, such as the children, as agreed when both spouses were alive. Without the new QTIP laws, the trust property would have resulted in the property not qualifying for the marital deduction tax benefit.

Quitclaim Deed - A document (a deed) that transfers a person's interest in a piece of real estate, without the warranties or guarantees that are made in a warranty deed.

Revocable Trust - A trust which can be amended or revoked by the person(s) who established the trust.

Real Property - Land and attachments to the land, such as buildings, fences, etc.

Section 2053 Trusts - A type of irrevocable trust, authorized by section 2503 of the IRS code, typically established for benefit of a child. Contributions (gifts) may be to the trust up to the annual gift exclusion (\$13,000 for 2009, as indexed for inflation) without incurring any gift taxes.

Self Proving Will - A will which has been properly witnessed (by either two or three witnesses depending on state laws) and the witnesses have signed an affidavit before a notary public stating that all of the proper formalities of the will's execution have been complied with. This usually makes it very easy for the court to prove the will.

Separate Property - In community property states, all property which is not held commonly by a married couple is considered separate property. In general, it is property owned by one spouse in which the other spouse does not own an interest.

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

Spendthrift - An individual who cannot handle money wisely and spends it wastefully.

Springing Power - A power to act on the occurrence of some certain criteria, such as an illness or incompetency. The power is said to spring into existence upon the occurrence of the event. The agent's power to act for the principal under a durable power of attorney is usually a springing power.

Sprinkle or Sprinkling Power - The power given a trustee to decide how, when, and why to distribute trust income to the trust's different beneficiaries. It is a valuable power to give the trustee in irrevocable trusts because it can allow the trustee to distribute income to the beneficiaries who will pay the smallest amount of income tax on the distribution.

Sprinkling Trust - A trust that grants the trustee a sprinkling power which allows the trustee to decide how, when, and why to distribute the trust income among the trust's beneficiaries.

Stepped-up Basis - The new cost basis established for a property after the property has been valued and taxed as part of an estate.

Successor Trustee - The trustee who takes over when the initial trustee can no longer serve in that function.

Taxable Estate - The portion of an estate that is subject to federal estate taxes or state death taxes. Technically, all property owned by an estate is subject to federal estate taxes but because of the unified credit, only estates with a value over the exemption equivalent amount actually have to pay any estate taxes.

Tenants by the Entirety - A way of owning property which, for almost all practical purposes, is the same as joint tenants. Tenancies by the entirety are creations of state law and are used only between husbands and wives, whereas joint tenancies can be used by anyone, not just by husbands and wives.

Tenants in Common - A way of owning property in which two or more owners can share in the ownership of a property. The owners can own various percentages of the property, unlike joint tenants which each own an equal share. When one owner dies, the deceased's share does not automatically go to the surviving owner(s) but rather is disposed of per the wishes of the deceased.

Testamentary Trust - A trust created by a will.

Testate - One who dies leaving a will.

Totten Trust - A bank account that is designed to get around probate. The account is created by a person in his or her own name as the trustee for another person. It is a type of revocable trust until the creator dies, then it is paid out to the designated beneficiary(ies).

Trust - A legal document in which property is held and managed by a trustee for the benefit of another known as a beneficiary. A trust is a relationship in which property is held by one person for the benefit of another. The trust can be created verbally, but will most often be in writing.

Trust Certificate - A summary of the trust's terms prepared by an attorney that evidences the trust exists.

Trustee - The person or institution that manages the trust property under the terms of the trust.

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

Unified Credit - A tax credit is given to each person by the IRS to be used during his or her life or after his or her death. The tax credit equals the amount of tax (gift or estate) which is assessed on the exemption equivalent value of property. It is considered the unified credit because it applies to both gift taxes and estate taxes and results from the IRS's effort to unify these two tax systems thereby making them consistent.

Uniform Gift (or Transfer) to Minors Act – (UGMA/UTMA) A series of state statutes that provides a method for transferring property by gift to minors who cannot legally manage the property for themselves. The laws allow an adult to manage the property and yet not have it owned by the adult.

Unlimited Marital Deduction - The unlimited deduction allowed under federal estate tax law for all qualifying property passing from the estate of the deceased spouse to the surviving spouse. The value of the property passing to the surviving spouse under the marital deduction is deducted from the deceased spouse's estate before federal estate taxes are calculated on the estate. Proper planning and use of the deduction allows more property to pass estate tax free to the family.

Will - A legal document stating the intentions of a deceased person concerning the distribution of his or her property, and management of his or her affairs following his or her death. State law dictates the legality of a will.