



DEFINITIONS

We've introduced many terms that may be new to you, so we've put together this list as a handy reference. There are also some legal terms that we have purposely not used because we wanted to keep our discussion easy to understand. But since you will probably feel more comfortable dealing with an attorney if you know some of his or her "legalese," we have defined some of those terms here also.

AB Trust - See tax planning trust.

Administrator - Person named by the court to represent the estate when there is no will or the will did not name an executor (female may be called administratrix); also called a personal representative.

Back-up Trustee - Also called successor trustee; person or institution named in the trust agreement who can take over should the first trustee die, resign or become unable to act.

Basis - The original cost of an asset; may be adjusted by several factors such as cost of certain improvements to the property, depreciation, etc. The taxable gain on the sale of an asset is the net sales price less adjusted basis. When the owner of property dies the basis is "stepped-up" to the value at the date of death.

Beneficiaries - In a living trust, the persons and/or organizations who receive the trust property after the death of the trust grantor.

By-Pass Trust - See tax planning trust.

Codicil - A written change or amendment to a will.

Conservator - One who is legally responsible for the care and well being of another person; if appointed by a court, the conservator is under the court's supervision.

Conservatorship - A court controlled program for persons who have been declared incompetent because they are unable to manage their own affairs. Also called a probate guardianship in some states.

Corporate Trustee - A bank, trust company or institution that is legally authorized to manage trusts.

Credit Shelter Trust - See tax planning trust.

Durable Power Of Attorney - See Power of Attorney.

Durable Power Of Attorney For Health Care - A special power of attorney that gives someone else the legal authority to make health care decisions for you in the event you are unable to make them for yourself; see also Health Care Directive.

Estate - Property and debts left by an individual at death.

Estate Taxes - Federal or state taxes on the value of the property left at death; often called inheritance tax or death tax.

Executor - Person or institution named in a will to carry out its instructions (female is executrix); also called a personal representative.

Fiduciary - Person having the legal duty to act for another's benefit; implies great confidence and trust, and a high degree of good faith.

Gain - When property is sold, the difference between what you receive and what you paid for it; used to determine the amount of taxes owed.

Grantor - The person who sets up or creates the trust; also called the trustor, settlor or creator.

Grantor Trust - The name the IRS uses for a revocable living trust.

Gross Estate - The value of an estate before the debts are paid; probate fees are usually calculated on the gross value of the estate.

Guardian - One who is legally responsible for the care and well-being of another person who is either incapacitated or a minor; appointed by the court and under the court's supervision.

Guardian of the Estate - One who is appointed to manage the assets of a minor (See also conservator).

Health Care Directive – A document giving instructions for medical care in the event of a terminal or vegetative condition. May also contain a Durable Power of Attorney for Health Care. Also called a living will.

Holographic Will - A handwritten will.

Incapacitated/Incompetent - One who is unable to manage his or her own affairs, either temporarily or permanently; also applies to minor children; lack of legal power.

Intestate - Without a will.

Irrevocable Trust - Opposite of revocable trust; a trust that cannot be changed or cancelled (revoked) once it is set up.

Joint Ownership - Also called joint ownership with right of survivorship or joint tenancy; when two or more persons own the same property; death of a joint owner immediately transfers ownership to the surviving joint owners; different from tenancy-in-common (see below).

Living Trust - A written legal document into which you place all of your property, with instructions for its management and distribution upon your incapacity or death; also known as a revocable inter vivos trust; a trust created during one's lifetime.

Living Will - A written document stating that you do or do not wish to be kept alive by artificial means when the illness or injury is terminal or when you are irreversibly vegetative or "brain dead." See Health Care Directive.

Marital Deduction - The amount you may give your spouse free of gift or estate taxes; this amount is currently unlimited for US citizens.

Minor Child - A child under the legal age for an adult; varies by state (usually under 18).

Net Value - The value of an estate after all debts have been paid; Federal estate taxes are based on the net value of an estate.

Per Capita - A way of distributing your estate so all members of the group take equally; share and share alike; if a member of the group is deceased, the estate is shared equally by the surviving members (not to the descendants of the deceased person); opposite of per stirpes.

Per Stirpes - A way of distributing your estate by right of representation. If you leave your estate to your children, per stirpes, a deceased child's share will go to his or her child(ren) in equal shares; also called by right of representation; opposite of per capita.

Personal Property - Movable property (as opposed to real property which is permanent, such as land); includes furniture, automobiles, equipment, cash and stocks.

Personal Representative - Another name for an executor or administrator.

Power of Attorney - A legal document giving another person legal authority to sign your name on your behalf in your absence; ends at incapacity or death; some states permit a durable power of attorney which is valid through incapacity and ends at death. These are general powers of attorney. There are also limited powers of attorney that give someone only limited authority for a very specific purpose (for example, to transfer a car title).

Probate - With a will (see testate) - the legal process of filing a will with the probate court; the court determines if the will is valid, hears all claims, orders creditors paid and property distributed according to the terms of the will.

With no will (see intestate) - the legal process of the probate court receiving all claims, ordering creditors paid and property distributed according to the laws of that state (the state's will).

Probate Guardianship - A court controlled program to manage the affairs of minor children or incapacitated persons. In some states, also called a conservatorship.

QTIP Trust - See Tax planning trust.

Real Property - Land and property that is "permanently" attached to land (such as a house).

Revocable Trust - Opposite of irrevocable trust; a trust in which the person setting it up retains the power to change or cancel (revoke) the trust during his or her lifetime.

Simple Pour Over Will - A short will used with a living trust; states that any property left out of your living trust will "pour over" from probate into your living trust upon your death.

Special Gifts - A separate listing of special property to go to selected persons; also called special bequests.

Spouse - Husband or wife.

Step-Up In Basis - See basis.

Tax Planning Trust - Living trust with special provisions to reduce or eliminate federal estate taxes for married persons: the "AB" trust (also called the "Credit Shelter" or "By-Pass" trust) and the "ABC" (also called the "QTIP" trust) are the most common types; can only be used by married persons.

Tenancy-In-Common - A form of joint ownership in which two or more persons own the same property in shares; at death of a tenant-in-common, ownership transfers to that person's heirs, not to the other owner; different from joint ownership/joint tenancy (see above).

Testamentary Trust - A trust set up in a will that only takes effect after death, through probate.

Testate - One who dies with a will.

Transfer on Death Designation (TOD) - Naming a beneficiary on an asset; when the owner dies the beneficiary immediately owns the property without probate; also called pay on death, TOD or POD.

Trustee - Person or institution agreeing to accept and manage property according to the provisions of the trust agreement.

Will - A written document with instructions for disposing of property at death; can only be enforced through the probate court.