

Estate Planning Glossary

Advance Health Care Directive--see Durable Power of Attorney for Health Care.

Decedent--A person who has died.

Devise--A gift made by a will or a trust. A devise is made to a beneficiary under the terms of the will or trust.

Domicile--A person's permanent legal residence. While a person may have more than one residence, he or she can have only one domicile. Typically, the domicile is the same place you use for purposes of voter registration.

Durable Power--A power (typically a power of attorney) that continues despite mental incompetence of the principal. See also Power of Attorney and Attorney-in-Fact.

Durable Power of Attorney for Health Care--A document that grants a person, sometimes known as a Health Care Agent, the legal authority to make health care decisions for another in the event that the latter person is unable to make them for him/herself.

Durable Power of Attorney for Property--A document which allows another person to act on your behalf. Because it's "durable" that right continues during your incompetence.

Estate--The total of all assets, all debts and other obligations of an individual. At the time of death the total amount of benefits (life insurance, annuity and retirement benefits) to be paid to beneficiaries are often also considered part of the estate for Federal Estate Tax purposes

Executor (or the feminine, Executrix)--A person or institution named in a will and appointed by a court to carry out the will's instructions and to manage the probate estate. The duties of the executor include making an inventory of all property, paying debts and expenses, and distributing the remaining estate to the beneficiaries. Known as the Personal Representative in California.

Execution--The act of properly signing legal documents, such as a Power of Attorney, a Trust or a Will. For example, proper execution of a will is more than "just signing" and normally requires at least two witnesses who are not beneficiaries under the will. For a power of attorney or a trust, proper execution involves having a notary public certify your signature. Advice & Counsel has its clients follow a special document signing ceremony when executing their Legal Control and Protection Plan' documents.

Exemption Credit--The amount of tax credit, similar in nature to the personal income tax exemption, applied to the transfer tax due at a person's death. The exemption credit of \$220,550 enables a person to transfer a total of up to \$675,000 of property (as of 2000-2001) from his/her estate both during his/her lifetime and after death without incurring a transfer tax. (The estate tax exemption amount rises to \$1million in 2002-2003, \$1.5 million in 2004-2005, \$2 million in 2006--2008, and \$3.5 million in 2009. The tax is abolished in 2010, and then reinstated in 2011.) Currently, annual gifts of up to \$11,000 (in 2002) to as many individuals as one wishes may be made in each calendar year by an individual (and gifts of up to \$22,000 may be made by a married couple) without counting against the lifetime exemption credit.

Family Limited Partnership--A legal partnership agreement between members of a family for the management and control of property for the benefit of family members. Sometimes used to minimize transfer taxes.

Federal Estate Taxes--Taxes imposed by the US Government on the value of a person's estate upon his or her death. To be over simplistic, the Federal Estate Tax for individual citizens begins at a 37% rate on amounts in excess of \$1,000,000 (or the current exemption level). The rate quickly increases as the size of the estate increases, and goes as high as 55% (in 2001) (the tax rate declines to 50% beginning in 2002, decreasing until it reaches 45% in 2007-2009. The tax is eliminated in 2010 and reinstated in 2011.) Although some states also impose a State Estate Tax or Inheritance Tax, the total taxes paid on the estates of California residents are not increased by California estate or inheritance taxes. However, if you own property in other states or countries, those jurisdictions may also impose tax.

Fiduciary--A person in whom one places great confidence in and upon whom one relies for his or her integrity, trust, and good faith. A fiduciary has the legal duty to act in the best interest and benefit of another and therefore is held to the very highest legal standards. A trustee is a fiduciary.

Future Interest--An interest in property that occurs in the future, after certain events have taken place. See also Remainderman.

Gain--The difference between the Tax Basis (the amount originally paid for property with certain adjustments) and the amount received for the property when it was sold. This value is used to determine the amount of capital gains tax due on the income from the sale. See also Cost Basis and Stepped-up Basis.

Generation Skipping Transfer Tax (GST Tax)--A 55% tax imposed on transfers of money or property made during life or at death that skip a generation of family members. The GST tax also applies to transfers to non-family members 37 - 1/2 years younger than the person making the transfer. For example if a grandparent leaves money directly to a grandchild rather than to his own son/daughter (the grandchild's parent), it may create GST Tax. Fortunately, GST taxes apply when the totals of all gifts during lifetime or at death exceed \$1,060,000 in 2001 (drops in 2002 to \$1,000,000, but then increases to match the applicable estate tax exemptions in effect for that calendar year).

Grantor--The person who sets up or creates the trust; also called a Settlor, Trust Creator, Trust Maker, or Trustor.

Gross Estate--The value of an estate before the debts are paid. In California Probate statutory attorneys and personal representatives fees are usually calculated based on the gross value of the estate, so that the value of the home is calculated before deducting the amount due on the mortgage. For example, if a person owns a house worth \$500,000 with a \$400,000 mortgage, her gross estate is \$500,000 although the net value is but \$100,000.

Guardian--The person responsible for the health, education and welfare of a minor child.

Guardianship--A court-controlled program to manage the affairs of minor children.

Health Care Agent--Person designated to make health care decisions for an individual.

Holographic Will--A handwritten will. In California, all material provisions in a holographic will must be written entirely by hand and be signed by the person making the holographic will for it to be valid. Holographic wills are often poorly written. Some can be worse than having no Will at all.

Incapacity/Incompetent--Legally unable to manage one's own affairs due to mental disability. This may be temporary or permanent.

Informed Consent--An authorization to proceed by a person who has been given and understands all of the relevant facts. The concept of informed consent is often used with respect to medical decisions. If the procedures to be used and the associated risks and benefits of the procedures have been fully explained so that you understand them, you are in a position to give informed consent.

Inheritance Tax--A tax imposed by the state at the time of a person's death that is based upon the total value of the decedent's estate.

Inter-vivos--Made during one's lifetime, such as a living trust. In contrast, a testamentary trust is a trust that takes effect after a person has died.

Interlineation--Something written in-between; often a change to a typed document that is made by crossing out words and entering in replacement words. Never change an executed will or trust by interlineation.

In-Terrorum Clause--A provision of a will or trust that disinherits a person in the event that he/she

challenges the terms of the will or trust. Sometime called a No-Contest Clause.

Intestate--Having died without a will or without providing legally binding instructions for the distribution of one's property after his/her death. See also testate and probate.

Irrevocable--Something that cannot be altered, changed or modified. An irrevocable trust is one that cannot be changed, canceled or revoked once it is established.

Issue-- Refers to a person's descendants -- children, grandchildren, great-grandchildren, great-great-grandchildren, etc.

Joint Tenancy--Property owned by two or more people in a manner such that upon death of one of the joint owners, all of his/her interest in the property is transferred immediately, by operation of law, to the other surviving owners. If the joint tenancy exists between a husband and wife, it may be called a Tenancy-by-the-Entirety. Compare with Tenancy-in-Common.

Judgment (or Judgement)--An official court order regarding the rights or claims of the parties to a legal action or proceeding.

Legatee--See Beneficiary.

Limited Liability Company--A business entity with limited liability which can be operated less formally than a corporation.

Living Trust (sometimes called an Inter-Vivos Trust)--A written legal document established during a person's lifetime into which he/she places property. The living trust contains instructions for management and distribution of the trust property during his/her lifetime as well as upon his/her death or disability. A living trust is typically revocable, enabling the person to change it at any time, so long as the person remains legally competent to enter into contracts.

Living Will (also known as a Natural Death Declaration)--A document that defines the circumstances -- such as if the person is suffering from a terminal illness with no expectation of recovery -- under which health care professionals should withhold or remove artificial life support, or refrain from using heroic measures, if the person is unable to give informed consent due to incapacity. See also Health Care Agent.

Minor Child--A child under the legal age of adulthood. The age varies by state but is usually is either the child's 18th or 21st birthday; in California the age of majority is 18. Unless other plans have been set forth in a will or trust any property left to a minor child becomes his or her own property to use, to spend or to give away, once he/she reaches the age of majority.

Natural Death Declaration--A form of Living Will approved in some states, also known as Directive to Physicians. See Living Will.

Net-income Charitable Remainder Unitrust (NICRUT)--There is no distribution to the donor until income is earned by the trust.

Net income with Makeup Charitable Remainder Unitrust (NIMCRUT)--Same as an NICRUT but the income can be deferred by the donor, and credit can accumulate for the unpaid years to be redeemed when assets earn income.

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. Compare with Gross Estate.

Notary Public--A person who has been authorized to administer oaths. Some legal documents, such as deeds, require use of a Notary Public.

Ownership Interest--The legal right to manage, sell, or give away property.

Per Capita--A means by which a grantor can distribute his/her estate so that each of the surviving descendants will share equally, regardless of generation. Compare with Per Stirpes.

Personal Property--Movable property, including furniture, antiques, automobiles, business equipment, cash and stocks. Compare with Real Property.

Personal Representative--See Executor and Administrator.

Per Stirpes--A method of dividing an estate among one's surviving descendants. Each survivor receives only the amount that his/her immediate ancestor would have received if that ancestor had been alive at the time of the grantor's death. The following example may make this clearer: Assume a person has 4 children -- 3 sons and one daughter -- each of whom survive, and leaves everything to "the children or their survivors, per stirpes". In that case, each of the 4 children would receive 25% of the estate and the grandchildren receive nothing. If one of the 3 sons and the daughter have died, that leaves only 2 of the sons alive. If there is also 1 child of the deceased son (a grandchild) and 2 grandchildren from the deceased daughter. Under a per stirpes distribution, the 2 sons each get 25%, the 1 grandchild of the deceased son gets his/her father's share of 25%, and the 2 children of the deceased daughter split her 25% share and receive 12.5% each. Compare with Per Capita.

Pooled-income Fund (PIF)--These are funds from several donors that are pooled and invested by charity. Donors get tax deduction and annual income prorated. Escapes CRFs cost and administration, but there is some loss of control.

Post-Marital Agreement (also called a Post- Nuptial Agreement)--An agreement entered into between a husband and wife that defines each spouse's respective rights to property.

Pour Over Will--A short will often used with a living trust that states that any property left out of the living trust will become part of (or "pour over" into) the trust upon death.

Power of Appointment--The legal authority to provide instructions. Often used when a person is given the authority to direct the ultimate distribution of property under the terms of another person's will or trust.

Power of Attorney--A legal document that gives another person, the attorney-in-fact, legal authority to act on the principal's behalf. This authority ends at the death of either the principal or the attorney-in-fact. A durable power of attorney is valid through the principal's disability. If a power of attorney is unrestricted, it is called a general power of attorney. If there are restrictions, it is called a limited power of attorney, such as one for a very specific purpose (to sell a home, for instance). If the power only becomes effective upon certain conditions, it is considered a springing power of attorney.

Pre-Marital Agreement (Also called a Pre- Nuptial Agreement)--An agreement entered into between a man and a woman prior to their marriage that can define the respective legal rights and obligations to property, whether acquired before or after the marriage.

Principal--(1) A person who is the original source of authority, often used when the owner of property authorizes another person, through a power of attorney, to act in his/her stead. (2) Capital or original property as opposed to interest or other earnings derived from that property.

Probate--The process through which the legal title to property is transferred from a decedent to the beneficiaries. If a person dies with a will (testate), the probate court determines if the will is valid, hears any objections to the will, orders that creditors be paid and supervises the process to assure that property is distributed by the Personal Representative or Executor according to the terms of the will. If a person dies without a will (intestate) the probate court appoints an Administrator who receives all claims, pays creditors, and then distributes all property according to the laws of the state.

Property--Anything that is owned or possessed. See also Real Property and Personal Property.

Quasi-Community Property--Property acquired during a marriage while not living in one of the 9 community property states that would have been community property if the couple were living in a community property state. As a general rule, everything derived from the earnings of either spouse in one

of the non-community property states will be quasi-community property. See also Community Property and Separate Property. Quasi-community property rules can be modified by pre-marital and post-marital agreements made by the spouses.

Real Property--Land and property that is "permanently" attached to the land such as a house or barn. Compare with Personal Property.

Remainderman--A person who receives what is left, typically from a will or trust. Children and grandchildren are often remaindermen. For example, a husband may leave property in a trust with the income to go to his wife for life. Upon her death, the remaining estate goes to the couple's children or their survivors.

Revocable--Subject to alteration, change or modification.

Revocable Trust--A trust in which the person who created the trust retains the power to change, cancel, or revoke the trust during his/her lifetime (assuming he or she remains competent).

Revocation--The act of terminating that which has been done. Often used in connection with the taking back of the authority granted under a power of attorney or the termination of an inter-vivos trust during a person's lifetime.

Separate Property--Property acquired by either husband or wife before a marriage or after the termination of a marriage. In addition, property acquired during a marriage by gift or inheritance by one spouse that is kept separate and distinct from community property remains separate property. See also Commingle, Community Property, Quasi-Community Property and Transmute.

Separation--The act of taking apart. Often used when a married couple decides that they no longer intend to live as husband and wife. This may have an important impact on community property.

Settlor--A person who owns the property that is placed into a trust. Also called a Grantor, Trust Creator, Trust Maker or Trustor.

Sole Ownership--Property that is owned by only one person.

Special Gift--a specifically identified item of property, such as a home, a ring, antique, or a sum of money, earmarked in a will or trust to go to a particular person or charity, before any other distribution is made.

Spouse--A husband or wife.

Springing Power of Attorney--A power of attorney that becomes effective only when a defined contingency occurs, such as if two physicians find that the principal is unable to manage his/her own affairs. See Power of Attorney.

State Estate Tax--See Inheritance Tax.

Stepped-up Basis--The revaluation (for tax purposes) of property upon a person's death. For example, if a person bought a home in 1965 for \$25,000 and at the time of his/her death in 1999 the home was worth \$200,000, his/her heirs would have a tax basis of \$200,000 in that property. The importance of a stepped up basis is that no income tax is paid on the \$175,000 increase in value, should the heirs sell the home for \$200,000. See Cost Basis.

Tax Basis--See Cost Basis.

Tenancy-in-Common--A form of ownership of property in which two or more persons share ownership (may be equal or unequal shares). At the death of a tenant-in-common, his/her share in the property transfers to his/her heirs, rather than to the other surviving owner(s). Compare with Joint Tenancy.

Testamentary Trust--A trust set up in a will that takes effect after death. Compare with Living Trust.

Testate--A person who dies with a valid will. See also Intestate and Probate.

Transfer Tax--The combined Federal Estate and Gift tax. A single exemption credit applies whether the property was transferred during a person's lifetime (gift tax) or is held by a person at the time of his/her death (estate tax).

Transmute--This term is used to describe the transfer of separate property to community property (or of community property to separate property).

Trust--A long recognized legal concept (first used in ancient Greece during the times of Socrates and Plato) in which some or all property of a Trust Creator is held on behalf of a beneficiary (which may include the trust creator) in the name of the Trustee. The term also refers to the legal document for the control, management and distribution of property. The rights of the beneficiaries, and the rights, powers and duties of the trustee, are set forth in the trust agreement. That is why it is so important that your trust be properly prepared.

Trustee--A person or institution responsible for the management and distribution of property held in a Trust. The trustee has the authority to act according to the instructions provided in the trust agreement.

See Fiduciary.

Trust Maker or Trustor--A person who owns the property that is placed into a trust. Also called a Creator, Grantor or Settlor.

Will--A written document that provides instructions for disposing of a person's property upon the person's death. A will generally also names an executor or personal representative to handle the estate. A Will must be signed and (unless it is a holographic will) properly witnessed in order to be valid. Upon the person's death a will must go through the probate process in order to have the instructions carried out.