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Estate Planning Glossary

Administrator. The individual or corporation appointed to take care of the decedent's property when there is no will or the executor named in the will does not act. Same function and responsibilities as an executor (see below).

Advance Health Care Directive. A document in which you name another person (your agent) who can make health care decisions for you, if you are unable to make decisions for yourself. The person you name can request or withhold medical treatment and other medical decisions you would make if you were competent.

Basis of property. The value used to determine gain or loss for income-tax purposes. The basis may be cost or a different amount, depending on the law affecting the transaction.

Beneficiary. The individual or corporation who receives the benefit of a transaction, e.g., beneficiary of a life-insurance policy, beneficiary of a trust, beneficiary under a will.

Codicil. An addition to a will, the codicil may modify, add to, subtract from, qualify, alter, or revoke the provisions in the will. The codicil is a separate document. It is signed with the same formalities as a will. The codicil itself can be changed, revoked, canceled, or destroyed at any time.

Community property. Real or personal property that is owned in common by husband and wife as a kind of marital partnership. Either spouse has management and control of the community real and personal property. However, both spouses must join in a transfer of ownership or lease for more than one year of community real property. All property acquired during marriage from earnings, and the earnings themselves, are community property. Property acquired by gift or inheritance is not community property.

Donor. One who makes a gift. The recipient of that gift is called the donee.

Equivalent exemption. A unified tax credit is deducted from any estate tax owned. This credit is the tax equivalent to the deduction from the gross estate of an amount called the equivalent exemption. The exemption equivalent for persons dying in 2004 equals $1,500,000. The exemption equivalent will continue to increase, each year, until it reaches $3.5 million in 2009.

Estate Taxes - Federal. The death taxes imposed by the federal government on the transfer of assets on death. The executor of the estate pays the taxes from the estate.

Executor. The individual or corporation appointed in a will by the testator to take care of the testator's property after his death. Also called a personal representative. The executor is confirmed by the probate court. He has legal and business responsibilities, and functions under the jurisdiction of the probate court. The executor chooses the attorney to do the legal work for the estate. Executrix is the term for the female executor, although executor is now often used for both male and female personal representatives in probate.

Fiduciary. A person charged with the duty of trust on behalf of a beneficiary. Executors, guardians, conservators, and trustees are fiduciaries.

Future interest - gift tax. A gift by a donor to a recipient, the donee, of which the donee does not get the benefit, use or enjoyment until sometime in the future. Such a gift cannot take advantage of the $10,000 annual exclusion, which is reserved only for a gift of a present interest.

Generation-skipping tax. The death or lifetime transfer tax imposed on a taxable distribution from, or a taxable termination of, a generation-skipping trust which is defined as a trust with two or more generations of beneficiaries belonging to a younger generation than the grantor.

Gift Annuity - A contribution that you make to a charity that is part gift and part investment. By making the contribution, you receive an agreement with the charity to pay you a fixed amount for the rest of your life. At your death, the residue of the amount you initially gifted is retained by the charity. At the time of the gift, you get a tax deduction for a portion of the original amount contributed. In addition, a portion of each annual payment to you is tax-free. The annual payment percentage is based on your age at the time of the gift.

Gift Tax Annual Exclusion. The federal government allows the donor to exclude $11,000 of a gift from gift-tax liability if the gift is of a present interest to a specific individual donee. A present interest gift is one of which the donee has an immediate unrestricted right of use, benefit, and enjoyment.

Grantor. The individual or corporation who makes a grant of property to another person, e.g., grantor of a trust, grantor of a deed of property.

Guardian. The individual or corporation who legally has the care and management of the person and/or property of a child during his minority. In California, minority now ends at age 18. A guardian also may have authority over the property of a married minor. A conservator is a person who may be appointed to care for the person or property or both of an incompetent adult, or for the person of a married minor.

Heir. The person who inherits property under state law.

Inheritance taxes. Repealed in California.

Inter vivos trust. A trust created "between the living." The grantor (trustor) is a living person. Compare this to a testamentary trust.

Irrevocable trust. A trust whose terms and provisions cannot be changed, modified, altered, amended, or revoked. Under certain limited circumstances, a court may make limited changes.

Issue. Generally, progeny, offspring, lineal descendants, and adopted children. However, a testator can, in his will, define issue to exclude adopted children.

Joint tenancy. A form of property ownership by two or more persons designated as "joint tenants with right of survivorship." When a joint tenant dies, his interest in the property automatically goes to the surviving joint tenant outside of and beyond the power of the Will of the deceased joint tenant and the property passes outside probate. But holding property in joint tenancy has dangers. Consult your attorney before taking title to property in joint tenancy.

Life estate. An interest in property, the term of which is measured by the life of an identified person, generally the person holding such interest.

Life tenant. The person who receives the benefits from real or personal property during his lifetime only. The benefits stop when he dies. The benefits are rents, income, and possibly the use of the property. The life tenant is not necessarily the "tenant" occupying the property, such as a lessee or renter.

Marital deduction. In estate and gift taxation, the amount of property one spouse can give to the other spouse outright or in a special trust without estate or gift taxation. For decedents dying after 1981, 100% of the property, whether community or separate, passed to a spouse is considered a marital deduction in computing the transfer taxes. Therefore, the marital deduction is considered unlimited.

Minor. A person who is under the age of legal competence. In California, the age is 18.

Perpetuities, rule against. A complicated rule whose purpose is to keep property from being frozen in a trust beyond a certain period of years. The perpetuities clause in wills and trusts provides that the trusts contained in them terminate automatically at the required time. This protects the legality of the trust.

Personal property. Movable property as contrasted with real property, which is fixed.

Power of Appointment. The actual power or legal authority given by the deed or will of one person, the donor of the power, to a second person, the donee of the power, which enables the second person to sell, transfer, contribute, mortgage or dispose of property owned by the first person. A power of appointment may be general or special, as defined below.

---General power. Enables the second person to do all those acts for himself, his creditors, his estate, the creditors of his estate, or any other person.

---Special power. Limits the second person as to the persons to whom he can transfer the property over which he has a power of appointment. The limitation of appointment can be very specific, e.g., to a group consisting only of the children of the first person, or the children of the second person. But never can the second person appoint, i.e., "give," the property to himself, his estate, his creditors, or the creditors of his estate because this would defeat the purpose of the special power, namely, to keep the appointive property from being taxed in the estate of the second person on his death.

Power of Attorney for Property Management. A document in which you name a person or persons who can conduct financial transactions for you. The person you name is authorized to sign for you and conduct any business that you would be able to conduct, if you were present. If you wish to limit your Agent's power, you can restrict it in the document. A "Durable" Power of Attorney for Property is one that is valid even if you become incompetent or incapacitated. There is specific language in the document that makes a Power of Attorney "durable". If you do not want someone to be able to act for you if you are incompetent, the specific language should be excluded from the document. In most cases for estate planning purposes, a Durable Power of Attorney is used.

Pour-over Will. A will that provides for the transfer, after or during the probate court proceedings, of the net assets of the deceased person from the executor's control to the control of a trustee who is in charge of a trust that was in existence immediately before the death of the deceased person. The executor pours over the assets into the open vessel of the existing trust.

Present interest. See Gift tax annual exclusion.

Probate. The court proceedings in which the probate court has jurisdiction over (a) the executor, and (b) the assets of the deceased person. The purposes of probate are:

(a) to protect the heirs from fraud and embezzlement;
(b) to protect the federal, state and local governments so that all taxes are paid by the estate; and
(c) to protect the creditors of the deceased person so that they are paid.

Probate starts with the will being admitted to probate and the executor being granted "letters testamentary." Probate ends after all taxes are paid, creditors are paid, and assets are accounted for and distributed as provided in the will. Probate lasts from six months to two years or more, depending on the complications in the estate.

Quasi-community property. In California only, that property defined in Probate Code Section 201.5, or property that was acquired by a deceased person while living outside California and that, if acquired in California, would have been community property. For federal estate tax purposes, quasi-community property is treated like separate property.

Real property. Any interest in land, or property permanently affixed to land.

Remainder interest. Ownership of property left in trust after a previous owner or the life tenant received all the property benefits to which they were entitled.

Reversionary interest. The future return to ownership of property by a person who for a period of years surrenders his ownership in trust or outright to another person. After that period, the property "reverts" or comes back to the original owner.

Revocable trust. The Revocable Trust, or Revocable Living Trust, is a trust whose terms and provisions can be changed, modified, altered, amended, or revoked. The power to do all this is usually reserved by the person who created the trust, but sometimes the power may be given by the creator to a second person. The revocable trust is popular as a means of avoiding probate and as a substitute for a will. The revocable trust is also used by people to protect themselves and their assets from the expense and delays of conservatorship. Under certain circumstances, a revocable living trust can be used to minimize or avoid estate taxes. Before using a revocable trust, a person should consult with an attorney who is experienced with revocable trusts.

Separate property. In California, a category of property between husband and wife that is not community property, but that is owned separately by the husband or wife. The problems of separate property arise generally in marital dissolution and in death taxes. Gifts, inheritances, and property owned before marriage are usually considered separate property.

Settlor. Another word for the creator, grantor, or trustor of a trust. The person who "settles" the assets into the trust.

Sprinkling trust. A trust in which the trustee has the power given to him in the trust document, to "sprinkle" or "spray" the income or benefits among the trust beneficiaries. The sprinkling trust gives flexibility to the trustee who can then pay the income or benefits to or among the beneficiaries according to their needs, rather than equally without regard to their needs.

Tenancy in common. A form of holding title to real or personal property by two or more persons. Because there is no right of survivorship, the legal relationships and results are very different from joint tenancy. A person should take title to property only after consulting with his attorney because the effect on income tax, estate tax, death rights, etc., depends on the manner in which title is held.

Testamentary trust. The trust that comes into being only as the result of the death of a person whose will provides for the creation of the trust after his death; hence, the term "testamentary."

Testator. The person who signs the will, and in it disposes of his property. Testatrix is the female term, but it is common as a convenience to use the term "testator" for either a man or a woman.

Trust. A legal entity established either by a trust agreement signed by a person during his life or arising after death from a Will or testamentary trust. The trust is governed by the terms in the documents. They can last as long as 50 years, if not longer. That is why they must be written with great care.

Trustee. The individual or corporation who is a trust has bare legal title to the assets and has the power given in the trust to carry out the wishes of the person or persons (trustor) who created the trust. The trustee has a fiduciary obligation to the trust's beneficiaries. The trustee is subject to strict regulation. Although he has legal title for convenience, the beneficiaries in fact own the beneficial or equitable title. When there is more than one trustee, the trustees are called co-trustees.

Trustor. The person who establishes the trust. There can be more than one trustor. Also called "grantor."

Unified estate and gift tax rate. Effective January 1, 1977, the separate estate and gift tax schedules were combined into a single new tax schedule, so that the cumulative value of taxable gifts made during life is added to the value of the decedent's estate in determining the applicable estate tax rates. The same tax rates apply to both lifetime gifts and to the estate left at death. The former $30,000 annual exclusion exemption (for gift tax) has been eliminated. But, there is an $11,000 annual exclusion per donee gifts made after 2002. Gifts of school tuition and payments for medical care are no longer taxable as gifts, so long as certain conditions are met. The unified estate and gift tax rate starts at 37% and quickly increases to 50%. Thus, without planning to minimize estate and gift tax, over one-half of a person’s assets could go to Uncle Sam in taxes.

Unified tax credit. The previous estate tax exemption and the gift tax exemption were replaced by a tax "credit." For a number of years, the unified gift and estate tax credit remained at the same level. However, Congress adopted a graduated increase in the unified tax credit. The amount of the unified tax credit exempts a portion of a person’s estate assets from being taxed upon their death. The equivalent exemption amounts, based on the unified tax credit, increases from $625,000 in 1998 to $3.5 million in 2009. In 2010, there is no Unified Tax Credit because the tax is eliminated that year. However, unless Congress acts to make the repeal of the tax permanent, the estate and gift tax will return in 2011.

Will. The document a person signs to provide for the orderly disposition of his assets after his death, in accord with his wishes to provide for family security and protection.