

Probate and Estate Planning Terms

Abstract of Title: The written report on a title search which shows the history of every change of ownership on a piece of real estate, and any claims against the property, such as easements on the property, loans against it, deeds of trust, mortgages, liens, judgments, and real property taxes.

Administration: A judicial action in which a court undertakes the management and distribution of property.

Affiant: A person who signs an affidavit and swears to its truth before a notary public or some person authorized to take oaths.

Affidavit: A voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths.

Amendment: A change made by addition, deletion, or correction; an alteration in wording.

Agent: One who is authorized to act for or in place of another; a representative.

Annuity: An obligation to pay a stated sum periodically, to a stated recipient

Asset: An item that is owned and has value (Cash, inventory, equipment, real estate, accounts receivable, and goodwill).

Assign: One to whom property rights or powers are transferred by another.

Beneficiary: A person who is designated to benefit from an appointment, disposition, or assignment; one designated to receive something as a result of a legal arrangement or instrument.

Bequest: The act of giving property by will.

Bond: An obligation; a promise.

Probate Bond: A bond filed by a Personal Representative, required by law to be given during probate proceedings to ensure a faithful performance by the person under bond.

Capital Asset: A long term asset used in the operation of a business or used to produce goods or services.

Capital Gains Tax: A tax on income derived from the sale of a capital asset.

Caveat: A warning; a formal notice or warning given by a party to a court or court officer requesting a suspension of proceedings.

Certificate of Title: A document indicating ownership of real or personal property. This document usually identifies any liens or other encumbrances.

Claim: The assertion of an existing right, any right to payment or to an equitable remedy, even if contingent or provisional.

Codicil: A supplement or addition to the will, not necessarily disposing of the entire estate but modifying, explaining, or otherwise qualifying the will in some way. The codicil becomes a part of the will when admitted to probate.

Conflict of Interest: A real or seeming incompatibility between one's private interests and one's public or fiduciary duties; a real or seeming incompatibility between the interests of two lawyer's clients, such that the lawyer is disqualified from representing both clients if the dual representation adversely affects either the client or if the clients do not consent.

Conservator: A guardian, protector, or preserver.

Contest of Will: A lawsuit challenging the validity of a will and/or its terms.

Creditor: One to whom a debt is owed; a person or entity with a definite claim against another.

Custodian: A person or institution that has charge or custody of property, papers, or other valuables.

Decedent: A dead person, esp. one who has died recently. Also termed deceased.

Devisee: A recipient of property by will.

Disclaimer: A renunciation of one's legal right or claims; a repudiation of another's legal right or claim; a writing that contains such renunciation or repudiation.

Distribution: The act or process of apportioning or giving out.

Domicile: The residence of a person or corporation for legal purposes.

Elective Share: The percentage of a deceased spouse's estate, set by statute, that a surviving spouse may choose to receive instead of taking under a will or in the event of being unjustifiably disinherited.

Estate: All that a person or entity owns, including both real and personal property; the property one leaves after death; the collective assets and liabilities of a dead person.

Exempt Property: A debtor's holding and possessions that, by law, a creditor cannot attach to satisfy a debt.

Fair Market Value: The price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's length transaction; the point at which demand and supply intersect.

Family Allowance: A portion of a decedent's estate set aside by statute for a surviving spouse, children, or parents, regardless of testamentary disposition or competing claims.

Fiduciary: One who owes to another the duties of good faith, trust, confidence, and candor; one who must exercise a high standard of care in managing another's money or property.

Grantee: One to whom property is conveyed.

Grantor: One who conveys property to another.

Guardian: One who has the legal authority and duty to care for another's person or property. A guardian may be appointed either for all purposes or for specific purposes.

Heirs: A person who, under the laws of intestacy, is entitled to receive an intestate decedent's property. Loosely, a person who inherits real or personal property, whether by will or by intestate succession.

Homestead: The house, outbuildings, and adjoining land owned and occupied by a person or family as a residence.

Incapacitated Person: A person who is impaired by an intoxicant, by mental illness or deficiency, or by physical illness or disability to the extent that personal decision-making is impossible.

Interested Person: A person having a property right in or claim against a thing, such as a trust or decedent's estate.

IRA Account: An Individual Retirement Account in which income taxes on certain deposits and interest to the account are deferred until the monies are withdrawn.

Irrevocable Trust: A trust that cannot be terminated by the settler once it is created.

Insolvent: Having liabilities that exceed the value of assets; having stopped paying debts in the ordinary course of business or being unable to pay them as they fall due.

Intestate: One who has died without a valid will; relating to property owned by a person who died without a valid will.

Joint Tenancy: A tenancy with two or more co owners who take identical interests simultaneously by the same instrument and with the same right of possession.

Jurisdiction: A geographic area within which political or judicial authority may be exercised.

Last Will: The most recent will of a deceased; the instrument ultimately fixing the disposition of real and personal property at the testator's death.

Laws of Intestate Succession: Laws of a state that determine who is entitled to inherit the decedent's Probate Estate when he/she dies without a valid Will.

Letters of Administration: A formal document issued by a probate court to appoint the administrator/Personal Representative of an estate.

Lien: A legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied.

Life Estate: An estate held only for the duration of a specified person's life, usually the possessor's.

Litigation: The process of carrying on a lawsuit; a lawsuit itself.

Living Will: An instrument, signed with the formalities necessary for a will, by which a person states the intention to refuse medical treatment and to release healthcare providers from the liability if the person becomes both terminally ill and unable to communicate such a refusal.

Personal Property: Any movable or intangible thing that is subject to ownership and not classified as real property.

Personal Representative: A person who manages the legal affairs of another because of incapacity or death.

Petition: A formal written request presented to a court or official body.

Per Stirpes: Proportionally divided between beneficiaries according to their deceased ancestor's share.

Pleading: A formal document in which a party to a legal proceeding sets forth or responds to allegations, claims, denials, or defenses.

Power of Attorney: An instrument granting someone authority to act as agent or attorney-in-fact for the grantor.

Preuptial Agreement: An agreement made before marriage, usually to resolve issues of support and property division if the marriage ends in divorce or by the death of a spouse.

Principal: Chief; primary; one who authorizes another to act on his or her behalf as an agent.

Probate: A court procedure in which the court determines the existence of a valid will and the estate is settled by the personal representative, who pays all valid claims and distributes whatever remains to the beneficiaries.

Probate Estate: A decedent's property subject to administration by a personal representative.

Qualified Retirement Plan: A retirement plan that qualifies for certain federal income tax deferrals or credits.

Real Property: Land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land.

Receiver: A disinterested person appointed by a court, or by a corporation or other person, for the protection or collection of property that is the subject of diverse claims.

Registrar: A person who keeps official records

Remainder Interest: The property that passes to a beneficiary after the expiration of an intervening income interest.

Residuary Beneficiary: A beneficiary who is entitled to whatever is left of the Probate Estate once the specific gifts made in the Will have been distributed and the decedent's bills, taxes, and costs of Probate have been paid.

Residuary Estate: The part of the decedent's estate remaining after all debts, expenses, taxes, and specific bequests and devises have been satisfied.

Revocable Trust: A trust in which the settler reserves the right to terminate the trust and recover the trust property and any undistributed income.

Right of Survivorship: A joint tenant's right to succeed to the whole estate upon the death of the other joint tenant.

Secured Debt: A debt backed by collateral.

Self Proved Will: A will proved by the testator's affidavit instead of by the live testimony of attesting witnesses.

Spendthrift Trust: A trust that prohibits the beneficiary's interest from being assigned and also prevents a creditor from attaching that trust.

Statute of Limitation: A statute establishing a time limit for suing in a civil case, based on the date when the claim accrued.

Subpoena: A writ commanding a person to appear before a court or other tribunal, subject to a penalty for failing to comply.

Successor Trustee: A trustee who succeeds an earlier trustee, usually as provided in the trust agreement.

Surrogate: A person appointed to act in the place of another.

Tenancy: The possession of occupancy of land by the right or title, especially under a lease; a leasehold interest in real estate; the period of such possession or occupancy.

Tenancy by the Entirety: A joint tenancy that arises between husband and wife when a single instrument conveys realty to both of them but nothing is said in the deed or will about the character of their ownership.

Tenancy in Common: A tenancy by two or more persons, in equal or unequal undivided shares, each person having an equal right to possess the whole property but no right of survivorship.

Testator/Testate: A person who has made a will; especially a person who dies leaving a will. Also termed testate

Title: Legal evidence of person's ownership rights in property; and instrument that constitutes such evidence.

Trust: The right, enforceable solely in equity, to the beneficial enjoyment of property to which another person holds the legal title; a property interest held by one person (trustee) at the request of another (settler) for the benefit of a third party (beneficiary).

Trust Fund: The property held in trust by a trustee.

Trustee: One who, having legal title to property, holds in trust for the benefit of another and owes a fiduciary duty to that beneficiary.

Undue Influence: Coercion that destroys a testator's free will and substitutes another's objectives in its place.

Unsecured Creditor: A creditor who, upon giving credit, takes no rights against specific property of the debtor.

Waiver: The voluntary relinquishment or abandonment – express or implied – of a legal right or advantage; the instrument by which a person relinquishes or abandons a legal right or advantage.

Will: A document by which a person directs his or her estate to be distributed upon death.