

Glossary

The following glossary is intended to provide you with a description of certain technical terms that may appear in your documents. These definitions are written so as to facilitate your understanding of your Estate Plan. You should not rely on this glossary for the precise, technical meaning of all terms defined therein, however. If you would like a further explanation of any of the terms, please let us know.

GLOSSARY OF ESTATE PLANNING TERMS

ADMINISTRATOR

(See PERSONAL REPRESENTATIVE)

AGENT

The person who is given the authority to make decisions on behalf of a person signing a Power of Attorney, who is referred to as the "Principal." (See DURABLE POWER OF ATTORNEY FOR HEALTH CARE and DURABLE POWER OF ATTORNEY FOR PROPERTY.)

ANNUAL EXCLUSION

The amount a person can give away each year free of gift taxes per donee without reducing the donor's EXEMPTION AMOUNT. The annual exclusion was set at \$10,000 in 1997, but is indexed for inflation. In order to qualify for the annual exclusion, the gift must be a "present interest" to the donee (i.e., the donee must be currently entitled to receive the gift). As of 2022, the annual exclusion amount is \$16,000.

APPORTIONMENT

The allocation of estate taxes among the beneficiaries of a Will or trust. (See also EQUITABLE APPORTIONMENT.)

ATTESTATION CLAUSE

A clause found in a Will where the witness certifies that the document has been signed in his or her presence.

BENEFICIARY

A person who is, or will be, a recipient of benefits from a Will, an estate, a trust, a retirement plan, insurance policy, etc.

CASH VALUE LIFE INSURANCE POLICY

A policy that accumulates internal policy values because the insurer charges a premium during the earlier years of the contract that is considerably higher than mortality costs of the contract during those years. Part of this excess premium payment accumulates as the policy's cash value that, prior to the death of the insured, is available to the owner.

CHARITABLE DEDUCTION

A deduction allowed on the federal estate and gift tax return for property bequeathed or gifted to a qualified charity.

CLOSELY HELD STOCK

Stock that is not traded on a public exchange, but rather is privately held by a limited number of persons.

CODICIL

A separate written document that amends a prior Will. It is executed if the testator wishes to change or add to the Will.

CORPORATE FIDUCIARY

A bank, trust company or other institution that is qualified to serve as a personal representative or trustee.

CORPUS

(See PRINCIPAL.)

CURRENT BENEFICIARY

A trust beneficiary who may currently receive trust distributions. (See also REMAINDER BENEFICIARY.)

DECEDENT

A person who has died.

DECLARATION TO PHYSICIANS

A document that directs that artificial life support should not be used if a person is suffering from a terminal illness that has resulted in death being imminent or the person is in a persistent vegetative state.

DEFERRED MARITAL PROPERTY

Property belonging to a married person who resides in Wisconsin and that has been acquired before moving to Wisconsin. Generally speaking, such property is treated like individual property prior to the owner's death and like marital property after the owner's death. (See also INDIVIDUAL PROPERTY; MARITAL PROPERTY.)

DIRECT SKIP

A gift or bequest directly to a grandchild or other person more than one generation younger than the Transferor. Also refers to transfers to trusts whose beneficiaries are all skipped persons. (See also GENERATION-SKIPPING TAX and TRANSFEROR.)

DISCLAIMER

An unqualified refusal to accept a gift or bequest. If a beneficiary makes a valid disclaimer that meets the requirements of both local law and Internal Revenue Code, the assets that have been disclaimed will not be includable in the disclaimant's taxable estate.

DONEE

One to whom a gift or bequest is given.

DONOR

(1) One whom makes a gift or bequest; (2) See GRANTOR.

DURABLE POWER OF ATTORNEY FOR HEALTH CARE

A document that grants to the agent the power to make medical decisions on behalf of the principal. It is “durable” because the document remains in effect in the event of the principal’s incompetency. Also called Medical Power of Attorney. (See also AGENT and PRINCIPAL.)

DURABLE POWER OF ATTORNEY FOR FINANCIAL MATTERS

A document that grants the agent the power to make decisions concerning the property of the principal. It is “durable” in that the document remains in effect in the event of the principal’s incompetency. Also called Durable Power of Attorney or Financial Power of Attorney. (See also AGENT; PRINCIPAL.)

DYNASTY TRUST

A trust that continues for several generations of the Grantor’s descendants. In most cases, this type of trust is intended to avoid transfer taxes on trust distributions to future generations.

ESTATE TAX

A tax on the right to transfer property after death to the decedent’s heirs or other beneficiaries. As a result of the American Taxpayer Relief Act of 2012 (or “ATRA”), the federal estate tax rate is 40% on all amounts above the estate tax exemption amount. (See also EXEMPTION AMOUNT.)

EQUITABLE APPORTIONMENT

Estate taxes are equitably apportioned among beneficiaries when each beneficiary pays that amount of the total estate taxes due in proportion to the value of a decedent’s taxable estate that the beneficiary receives.

EXCLUSION AMOUNT

(See EXEMPTION AMOUNT.)

EXECUTOR

(See PERSONAL REPRESENTATIVE.)

EXEMPT TRUST

A trust from which distributions are exempt from generation skipping taxes because the trust has a 0 Inclusion Ratio. (See also GENERATION-SKIPPING TAX, INCLUSION RATIO, and NON-EXEMPT TRUST.)

EXEMPTION AMOUNT

Also known as “the Unified Exemption Amount.” This is the amount of property that can be given away during life (in addition to the annual exclusion) or at death, without incurring a gift tax. The exemption amount is indexed for inflation and was increased to \$12,060,000 per person in 2022. Amounts above this exemption amount will be taxed at a flat 40% rate. However, the exemption amount is scheduled to drop to approximately \$6,300,000 per person (indexed for inflation) beginning in 2026, unless the law changes between now and then.

FAMILY TRUST

A trust that is established upon the death of a married person to receive that amount of assets belonging to that decedent that is equal to his or her unused Unified Exemption Amount. A Family Trust will commonly name a surviving spouse and children as co-beneficiaries. A Family Trust is not subject to estate taxes when the surviving spouse dies. This trust is sometimes also called the Credit Shelter Trust. (Compare to QTIP TRUST.)

FIDUCIARY

A person or institution that manages the assets on behalf of another, including a Personal Representative, Trustee and a Guardian.

GENERATION-SKIPPING TAX (GST)

A transfer tax that is imposed on gifts, bequests and trust distributions to persons (such as grandchildren) who are more than one generation younger than the Transferor (that is, the person making the transfer). This tax is imposed at a flat 40% rate and is in addition to any estate tax that may be due. (See also GENERATION-SKIPPING TAX LIFETIME EXEMPTION.)

GENERATION-SKIPPING TAX LIFETIME EXEMPTION

Each individual is entitled to an exemption that entitles him or her to make gifts or leave bequests to skipped persons (i.e. grandchildren) without the imposition of the generation-skipping tax. This exemption is equal to the federal estate tax exemption. (See EXEMPTION AMOUNT and SKIPPED PERSONS.)

GIFT TAX

Each individual is entitled to an exemption amount that shelters both lifetime gifts in excess of the annual exclusion and transfers at death from taxation. Gifts in excess of the exemption amount are subject to tax at a flat 40% rate. (See also ANNUAL EXCLUSION and EXEMPTION AMOUNT.)

GRANTOR

The person who creates a trust (sometimes also referred to as the “Donor” or the “Settlor”).

GRANTOR TRUST

A living trust, the assets of which are regarded as still being owned by the Grantor for income tax purposes. As a result, the income generated by trust assets is taxable to the Grantor, not to the trust or its beneficiaries.

GROSS ESTATE

Refers to property that is taxable at death (i.e. property owned by the decedent at death, property transferred by the decedent but over which the decedent retained an interest or control, and certain amounts transferred within three years of death). NOTE: A person's gross estate includes both probate and non-probate property.

GUARDIAN

A court appointed fiduciary responsible for the person or property, or both, of a minor or an incompetent adult.

GUARDIAN AD LITEM

An individual who has been appointed by the probate court to represent the interest of a minor, incompetent or unborn person in a probate proceeding.

HEALTH CARE AGENT

Person appointed to make health care decisions on behalf of the principal of a Health Care Power of Attorney. (See also DURABLE POWER OF ATTORNEY FOR HEALTH CARE and PRINCIPAL.)

HEIRS-AT-LAW

The person or persons who are entitled to receive an individual's assets under state law if the decedent dies intestate. Typically, this will be the decedent's then-living relatives (spouse, children, parents, siblings, nieces and nephews, etc.). (See also INTESTATE.)

INCIDENTS OF OWNERSHIP

Powers and beneficial interests relating to an insurance policy that, if owned by the insured person at death, will cause the insurance proceeds to be estate taxable when the insured person dies.

INCOME BENEFICIARY

The person who will receive income distributions from a trust for a specified period of time (such as the beneficiary's life). (See also REMAINDERMEN.)

INCLUSION RATIO

The fraction that determines the percentage of a trust distribution that is subject to generation skipping taxes. In most cases, a trust should have an inclusion ratio of either 0 or 1 to minimize generation skipping taxes. (See also GENERATION-SKIPPING TAXES and SKIPPED PERSON.)

INDIVIDUAL PROPERTY

(See SEPARATE PROPERTY.)

INTER VIVOS TRUST

A trust created by agreement during life, as opposed to a testamentary trust created by a Will. Such a trust can be used to hold legal title to assets during a person's lifetime and thereby shelter those assets from probate at the person's death.

INTERNAL REVENUE CODE ("IRC")

The statutes that govern the imposition of all federal taxes.

INTESTATE

The term used to refer to a person who has died leaving probate property not disposed of by a valid Will, or otherwise.

ISSUE

A person's direct descendants, or offspring, including children, grandchildren, great grandchildren, and the like. Also called descendants.

JOINT INTEREST

(See JOINT TENANCY)

JOINT TENANCY

A form of equal, undivided ownership in property that, upon death of one owner, automatically passes to the surviving owner(s). Also called Joint Interest.

LAPSE

(1) The result when a beneficiary named in a Will or trust fails to survive the testator or Grantor. (2) A Power of Appointment is said to lapse if the holder does not exercise it within the permitted period.

LIMITED POWER OF APPOINTMENT

A limited power of appointment may only be exercised in favor of members of a specified class of permissible appointees. (See also POWER OF APPOINTMENT.)

LIVING TRUST

A trust created by agreement during life, as opposed to a testamentary trust created by a Will. Such a trust can be used to hold assets during a person's lifetime and thereby shelter those assets from probate at the person's death. Also called an inter-vivos trust.

LIVING WILL

(See DECLARATION TO PHYSICIANS.)

MARGINAL ESTATE TAX RATE

The tax rate at which the last dollars in an estate are taxed.

MARITAL DEDUCTION

A deduction allowed on the federal estate and gift tax return for property bequeathed or gifted to a surviving spouse.

MINIMUM DISTRIBUTIONS

This term refers to the amount a participant in a qualified retirement plan is required to withdraw from his or her account each year following his or her Required Beginning Date (which is typically the year after he or she reaches age 70-1/2). In general, the amount a participant must withdraw is based upon the age of the participant and a hypothetical person deemed to be 10 years younger than the participant. (See also MINIMUM DISTRIBUTION INCIDENTAL BENEFIT RULE.)

NON-EXEMPT TRUST

A trust distribution from which are either partly or entirely subject to generation skipping taxes because the trust has an inclusion ratio of greater than 0. (See also INCLUSION RATIO.)

PAYABLE ON DEATH DESIGNATION

A designation assigned to a financial account that designates the persons to whom the financial institution is to transfer the assets held in the account when the account holder dies. A P.O.D. designation eliminates the need to probate the designated account.

PECUNIARY BEQUEST

A specific bequest of a specified dollar amount. (See also SPECIFIC BEQUEST.)

PERSONAL REPRESENTATIVE

The person appointed by the probate court to represent, manage and distribute assets belonging to a decedent that are subject to probate. Also known as the Administrator or Executor.

PER STIRPES

(See RIGHT OF REPRESENTATION.)

POUR-OVER WILL

A Will that provides for probate assets to be distributed to a living trust upon the testator's death.

POWER OF APPOINTMENT

The term used to refer to authority given to a trust beneficiary to designate how assets that remain in the trust are to be distributed, typically after the beneficiary's death. A limited power of appointment may only be exercised in favor of members of a specified class of permissible appointees. (See also LIMITED POWER OF APPOINTMENT.)

POWER OF ATTORNEY

A document executed by one person, called the principal, authorizing another person, called the agent, to perform designated acts on behalf of the principal. (See also DURABLE POWER OF ATTORNEY FOR HEALTH CARE and DURABLE POWER OF ATTORNEY FOR PROPERTY.)

PRINCIPAL

(1) The term that is used to refer to assets which have been placed in trust, including appreciation in value of those assets (but not the income generated thereby). Also called corpus. (2) A person who signs a power of attorney.

PRO RATA

In proportion.

PROBATE

Court supervised proceedings whereby assets in the name of a decedent and whose transfer is governed by the decedent's Will (or by the laws of intestacy if the decedent has no Will) are legally transferred to the decedent's heirs or beneficiaries.

PROBATE ESTATE

All of the decedent's property passing to others via probate. This includes all property held in the name of the decedent, excluding property held jointly with another, that is transferable at death directly to a designated person, property held in trust and property passing by way of beneficiary designation.

PUBLICLY TRADED SECURITIES

Stocks that are traded on an established securities exchange.

QTIP TRUST

This is a trust that can qualify for both the marital deduction and also the Unified Exemption Amount. When this type of trust is funded after a married person dies, a single trust can take advantage of both the marital deduction and exemption amount available at the first spouse's death. However, all of the trust income must be distributed to the surviving spouse and trust principal may not be distributed to anyone other than the surviving spouse prior to his or her death. As a result, a QTIP trust is typically best suited to those situations where distributions to persons other than a surviving spouse (such as children) are not intended until the surviving spouse's death. (See also MARITAL DEDUCTION and EXEMPTION AMOUNT.)

QUALIFIED CONSERVATION EASEMENT

A federal estate tax exclusion of up to \$500,000, which is allowed where a conservation easement is created with respect to qualified property. The easement serves to restrict development or other commercial activity on the subject property.

REMAINDER BENEFICIARY

A trust beneficiary who will become a current beneficiary after a specific event (i.e. after another beneficiary dies, the expiration of a term of years, etc.) (See also CURRENT BENEFICIARY.)

REMAINDERMEN

The persons who will receive a beneficial interest in a trust after the death of the income beneficiary or beneficiaries.

REQUIRED BEGINNING DATE (RBD)

This is the date on which a participant is required to begin receiving distributions from his or her retirement plan(s), and is the later of April 1st of the year following the year the participant reaches age 70-1/2 or the date on which the participant retires (unless the participant owns 5% or more of the employer who sponsors the retirement plan).

RIGHT OF REPRESENTATION

The principle upon which the issue of a deceased person inherits the share of an estate that would have been inherited by their immediate ancestor, if still living. Also referred to as "per stirpes."

RULE AGAINST PERPETUITIES

A common law principle invalidating a contingent bequest if the contingent interest remains in effect for prohibitively long period of time.

S CORPORATION

A corporation for which an election has been made to have corporate income taxed directly to the shareholders.

SETTLOR

(See DONOR.)

SITUS

The term used to refer to the state whose laws govern the interpretation, administration, or both, of a trust.

SKIPPED PERSON

A term used in connection with the Generation-Skipping Tax to refer to a grandchild or other person two or more generations below that of the Transferor. (See also GENERATION-SKIPPING TAX.)

SPECIFIC BEQUEST

A gift of a particular item of property to a designated individual or institution.

SPENDTHRIFT CLAUSE

A clause in a trust that restricts the beneficiary from transferring any of his or her beneficial interests in a trust to creditors. For example, a typical spendthrift clause would not permit the beneficiary to pledge his or her beneficial interest in the trust as collateral against a loan. A spendthrift clause will therefore prevent the creditors of a trust beneficiary from filing a lien against the beneficiary's interest in the trust corpus.

SPOUSAL ROLLOVER

Where qualified retirement plans and Individual Retirement Accounts (IRA's) are payable to a surviving spouse, the survivor will have an option to "roll over" the funds held in the decedent's IRA into his or her own IRA, thereby deferring the income tax on the plan funds until the surviving spouse's required beginning date.

STEP-UP IN BASIS

In income tax law, the upward adjustment in basis resulting from the acquisition of property from a decedent. As a result, persons who inherit property do not have to pay capital gain taxes on appreciation that occurred while the decedent was living.

TAKERS-IN-DEFAULT

(See ULTIMATE TAKERS.)

TANGIBLE PERSONAL PROPERTY

An individual's personal belongings such as furniture, clothing, jewelry and the like.

TAX CLAUSE

A provision in a Will or trust specifying how estate taxes are to be allocated among the beneficiaries of the taxable estate. (See also APPORTIONMENT.)

TAXABLE ESTATE

In federal estate tax law, the gross estate reduced by total deductions and credits. (See also GROSS ESTATE.)

TAXABLE GIFTS

This refers to the total gifts made in a given year reduced by total deductions and exclusions.

TENANTS-IN-COMMON

A form of joint ownership where two or more parties own an undivided interest in property. Unlike joint tenancy, however, at death a deceased party's interest does not automatically pass to the survivor(s).

TERM LIFE INSURANCE

A type of life insurance policy that has little or no value prior to the death of the insured because the premium charged simply buys pure mortality protection. If the insured dies while the policy is in effect, the company will pay the face value; otherwise, it will pay nothing. A large majority of such policies expire before the insured person dies because of the ever-increasing premiums associated therewith.

TESTATOR

A male individual who executes a Will.

TESTATRIX

A female individual who executes a Will.

TRANSFER ON DEATH

(See Payable on Death Designation.)

TRANSFEROR

A term used in connection with the Generation Skipping Tax to refer to the person who makes a transfer to a skipped person. (See also GENERATION-SKIPPING TAX and SKIPPED PERSON.)

TRUST

A separate legal entity that can be created either during life or after death to hold property on behalf of individuals referred to as the trust beneficiaries.

TRUSTEE

The person or bank that is responsible to carry out the provisions of the Trust Agreement. The Trustee typically holds legal title to the trust assets, distributes those assets to the beneficiaries in accordance with the Trust Agreement, and is responsible for the investment of the trust assets.

TRUST FUNDING

The process of retitling assets into the name of a living trust.

TRUST PROTECTOR

A Trust Protector is given certain powers not typically given to a Trustee that could prove helpful if circumstances arose that were unanticipated at the time the Trust Agreement was executed. For example, a Trust Protector can be given the authority to revoke or amend the terms of an otherwise irrevocable Trust Agreement in the event of an unexpected change in the law or a change in the surrounding circumstances. It is preferable to grant this type of authority to a Trust Protector rather than the Trustee(s) because, unlike a Trustee, a Trust Protector is not a fiduciary. This means the Trust Protector may take actions that could help advance the overall objectives of the Trust Agreement or that may be adverse to one particular beneficiary, but beneficial to the beneficiaries as a whole.

ULTIMATE TAKERS

Persons or institutions entitled to receive an individual's assets if all other previously named beneficiaries are deceased. Also known as Takers in Default.

UNIFIED EXEMPTION AMOUNT

(See EXEMPTION AMOUNT.)

WHOLE LIFE INSURANCE

(See CASH VALUE LIFE INSURANCE POLICY.)

WILL

A written document that is executed in accordance with the formalities required by state law that disposes of a person's probate property at death.