



LINCOLN PARK

A S S O C I A T E S

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Glossary of Estate Planning Terms

Glossary of terms provided by the American Bar Association (www.americanbar.org).

A Trust

The surviving spouse's portion of an A-B trust. Also called marital trust or survivor's trust.

A-B Trust

A trust that includes a tax-planning provision that lets you provide for your surviving spouse and keep control over who will receive your assets after your spouse dies. It also lets both spouses use their federal estate tax exemptions. This can save a substantial amount in estate taxes and leave more money for your beneficiaries. For example, in 2012, when the federal estate tax exemption is \$5 million, an A-B trust will let a married couple transfer up to \$10 million to their beneficiaries estate tax- free, saving up to \$1,750,000 in estate taxes.

Administration

The court-supervised distribution of an estate during probate. Also used to describe the same process for a trust after the grantor dies.

Administrator

Person named by the court to represent a probate estate when there is no will or the will did not name an executor. Female is administratrix. Also called personal representative.

Advanced Directive

A written document (form) that tells what a person wants or doesn't want if he/she in the future can't make his/her wishes known about medical treatment. This is also known as a living will.

Alternate Beneficiary

Person or organization named to receive your assets if the primary beneficiaries named in your Trust die before you do.

Ancillary Administration

An additional probate in another state. Typically required when you own real estate in another state that is not titled in the name of your trust.

Annual Exclusion

Amount you can give someone each year without having to file a gift tax return or pay a gift tax. Currently \$13,000 per recipient (\$26,000 if married). The amount of tax-free gifts is tied to inflation and may increase from time to time.

Assets

Basically, anything you own, including your home and other real estate, bank accounts, life insurance, investments, furniture, jewelry, art, clothing, and collectibles.

Assignment

A short document that transfers your interest in assets from your name to another. Often used when transferring assets to a trust.

B Trust

The deceased spouse's portion of an A-B trust. Also called credit shelter or bypass trust.

Basis

What you paid for an asset. The value that is used to determine gain or loss for income tax purposes.

Beneficiaries

In a living trust, the persons and/or organizations who receive the trust assets (or benefit from the trust assets) after the death of the trust grantor.

By-Pass Trust

Another name for the "B" part of an A-B living trust because the assets in this trust bypass federal estate taxes.

C Trust

See "QTIP."

Certificate of Trust

A shortened version of a trust that verifies the trust's existence, explains the powers given to the trustee, and identifies the successor trustee(s). Does not reveal any information about the trust assets, beneficiaries, or their inheritances.

Children's Trust

A trust included in your living trust. If, when you die, a beneficiary is not of legal age, the child's inheritance will go into this trust. The inheritance will be managed by the trustee you have named until the child reaches the age at which you want him/her to inherit.

Codicil

A written change or amendment to a Will.

Co-Grantors

Two or more persons who establish one living trust together.

Co-Trustees

Two or more individuals who have been named to act together in managing a trust's assets. A corporate trustee can also be a co-trustee.

Common Trust

One living trust established by two or more individuals (usually a married couple).

Community Property

Assets a husband and wife acquire by joint effort during marriage if they live in one of the eight community property states. (Wisconsin also has a similar law, but does not use the term "community property.") Each spouse owns half of the assets in the event of divorce or death.

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. May also be called a guardian. (Duties and titles can vary by state. For example, in Missouri, there is a guardian of the person and a conservator of the estate.)

Conservatorship

A court-controlled program for persons who are unable to manage their own affairs due to mental or physical incapacity. May also be called a guardianship.

Contest

To dispute or challenge the terms of a will or trust.

Corporate Trustee

An institution, generally a bank or trust company, that specializes in managing trusts.

Credit Shelter Trust

Another name for the B Trust in an A-B living trust because this trust "shelters" or preserves the federal estate tax "credit" of the deceased spouse.

Creditor

Person or institution to whom money is owed.

Custodian

Person named to manage assets left to a minor under the Uniform Transfer to Minors Act. In most states, the minor receives the assets at legal age.

Deceased

One who has died.

Deed

A document that lets you transfer title of your real estate to another person(s). Also see warranty deed and quitclaim deed.

Disclaim

To refuse to accept a gift or inheritance so it can go to the recipient who is next in line.

Discretion

The full or partial power to make a decision or judgment.

Disinherit

To prevent someone from inheriting from you.

Distribution

Payment in cash or asset(s) to one who is entitled to receive it.

Durable Power of Attorney for Asset Management

A legal document that gives another person full or limited legal authority to sign your name on your behalf in your absence. Valid through incapacity. Ends at death.

Durable Power of Attorney for Health Care

A legal document that lets you give someone else the authority to make health care decisions for you in the event you are unable to make them for yourself. Also called a health care proxy or medical power of attorney.

Equity

The current market value of an asset less any loan or liability.

Estate

Assets and debts left by an individual at death.

Estate Taxes

Federal or state taxes on the value of assets left at death. Also called inheritance taxes or death taxes.

Executor

Person or institution named in a will to carry out its instructions. Female is executrix. Also called a personal representative.

Federal Estate Tax Exemption

Amount of an individual's estate that is exempt from federal estate taxes. In 2012, the exemption is \$5,120,000. If Congress does not act by the end of 2012, on January 1, 2013 the exemption will be \$1 million.

Fiduciary

Person having the legal duty to act primarily for another's benefit. Implies great confidence and trust, and a high degree of good faith. Usually associated with a trustee.

Funding

The process of transferring assets to your living trust.

Gain

The difference between what you receive for an asset when it is sold and what you paid for it. Used to determine the amount of capital gains tax due.

Generation Skipping Transfer Tax (GSTT)

A steep tax on assets that "skip" a generation and are left directly to grandchildren and younger generations. In 2012, the GST exemption is the same as the federal estate tax exemption (double for a married couple) with a tax rate of 35%. If Congress does not act before the end of 2012, on January 1, 2013 the GST exemption will be \$1 million with a top tax rate of 55%.

Gift

A transfer from one individual to another without fair compensation.

Gift Tax

A federal tax on gifts made while you are living. Currently \$13,000 per person per year is exempt from gift tax. Also see "Annual Exclusion."

Grantor

The person who sets up or creates the trust. The person whose trust it is. Also called creator, settlor, trustor, donor or trustmaker.

Gross Estate

The value of an estate before debts are paid.

Guardianship

See "Conservatorship."

Health Care Proxy

See "Durable Power of Attorney for Health Care."

Heir

One who is entitled by law to receive part of your estate.

Holographic Will

A handwritten will.

Homestead Exemption

Portion of your residence (dwelling and surrounding land) that cannot be sold to satisfy a creditor's claim while you are living.

Incapacitated/Incompetent

Unable to manage one's own affairs, either temporarily or permanently. Lack of legal power.

Independent Administration

A form of probate available in many states. Intended to simplify the probate process by requiring fewer court appearances and less court supervision.

Inheritance

The assets received from someone who has died.

Inter vivos

Latin term that means "between the living." An inter vivos trust is created while you are living instead of after you die. A revocable living trust is an inter vivos trust.

Irrevocable Trust

A trust that cannot be changed (revoked) or cancelled once it is set up. Opposite of revocable trust.

Intestate

Without a will.

Joint Ownership

A form of ownership in which two or more persons own the same asset together. Types of joint ownership include joint tenants with right of survivorship, tenants in common, and tenants by the entirety.

Joint Tenants with Right of Survivorship

A form of joint ownership in which the deceased owner's share automatically and immediately transfers to the surviving joint tenant(s).

Land Trust

Often used for privacy. Title is transferred to a corporate trustee or corporation, but you keep control over how the property is managed. Because the title is in the name of the corporate trustee or corporation, no one knows the property belongs to you. In all financial transactions and dealings, your personal name never comes up. Also called a title holding trust.

Liquid Assets

Cash and other assets (like stocks) that can easily be converted into cash.

"Living Probate"

The court-supervised process of managing the assets of one who is incapacitated.

Living Trust

A written legal document that creates an entity to which you transfer ownership of your assets. Contains your instructions for managing your assets during your lifetime and for their distribution upon your incapacity or death. Avoids probate at death and court control of assets at incapacity. Also called a revocable inter vivos trust. A trust created during one's lifetime.

Living Will

A written document that states you do not wish to be kept alive by artificial means when the illness or injury is terminal.

Marital Deduction

A deduction on the federal estate tax return that lets the first spouse to die leave an unlimited amount of assets to the surviving spouse free of estate taxes. However, if no other tax planning is

used, and the surviving spouse's estate is more than the amount of the federal estate tax exemption in effect at the time of his/her death, estate taxes will be due at that time.

Marital Trust

See "A Trust."

Medicaid

A federally-funded health care program for the poor and minor children.

Medicare

A federally-funded health care program, primarily for Americans over age 65 who are covered by Social Security or Railroad Retirement benefits.

Minor

One who is under the legal age for an adult, which varies by state (usually age 18 or 21).

Net Estate

The value of an estate after all debts have been paid. (Federal estate taxes are based on the net value of an estate.)

Net Value

The current market value of an asset less any loan or debt.

Payable-on-Death Account

See "Totten Trust."

Per Capita

A way of distributing your estate so that your surviving descendants will share equally, regardless of their generation.

Per Stirpes

A way of distributing your estate so that your surviving descendants will receive only what their immediate ancestor would have received if he/she had been living at your death.

Personal Property

Movable property. Includes furniture, automobiles, equipment, cash and stocks. Opposite of real property that is permanent (like land).

Personal Representative

Another name for an executor or administrator.

Pour Over Will

A short will often used with a living trust. It states that any assets left out of your living trust will become part of (*pour over* into) your living trust upon your death.

Power of Attorney

A legal document giving someone legal authority to sign your name on your behalf in your absence. Ends at incapacity (unless it is a *durable* power of attorney) or death.

Probate

The legal process of validating a will, paying debts, and distributing assets after death.

Probate Estate

The assets that go through probate after you die. Usually these include assets you own in your name and those paid to your estate. Usually does not include assets owned jointly, payable-on-death accounts, insurance and other assets with beneficiary designations. Assets in a trust also do not go through probate.

Probate Fees

Legal, executor, and appraisal fees and court costs when an estate goes through probate. Probate fees are paid from assets in the estate before the assets are fully distributed to the heirs.

Qualified Domestic Trust (QDOT)

Allows a non-citizen spouse to qualify for the marital deduction.

Qualified Terminable Interest Property (QTIP)

A trust that delays estate taxes until your surviving spouse dies so more income will be available to provide for your spouse during his/her lifetime. You can also keep control over who will receive these assets after your spouse dies.

Qualifying Subchapter S Trust (QSST)

Trust that meets certain IRS qualifications and is allowed to own Subchapter S stock.

Quitclaim Deed

Document that allows you to transfer title to real estate. With a quitclaim deed, the person transferring the title makes no guarantees, but transfers all his/her interest in the property.

Real Property

Land and property that is permanently attached to land (like a building or a house).

Recorded Deed

A deed that has been filed with the county land records. This creates a public record of all changes in ownership of property in the state.

Revocable Trust

A trust in which the person setting it up retains the power to change (revoke) or cancel the trust during his/her lifetime. Opposite of irrevocable trust.

Required Beginning Date (RBD)

The date you must begin taking required minimum distributions from your tax-deferred plans. Usually, it is April 1 of the calendar year following the calendar year in which you turn age 70 1/2. If your money is in a company-sponsored plan, you may be able to delay your RBD beyond this date if you continue working (providing you are not a 5% or greater owner of the company).

Required Minimum Distribution (RMD)

The amount you are required to withdraw each year from your tax-deferred plan after you reach

your Required Beginning Date. This amount is determined by dividing the year-end value of your tax-deferred account by a life expectancy divisor found on a chart provided by the IRS.

Separate Property

Generally, all assets you acquire prior to marriage and assets acquired by gift or inheritance during marriage.

Separate Trust

A trust established by one person. A married couple has separate trusts if each spouse has his/her own trust with its own assets. In contrast, see "Common Trust."

Settle an Estate

The process of handling the final affairs (valuation of assets, payment of debts and taxes, distribution of assets to Beneficiaries) after someone dies.

Settlor

See "Grantor."

Special Gifts

A separate listing of special assets that will go to specific individuals or organizations after your incapacity or death. Also called special bequests.

Special Needs Trust

Allows you to provide for a disabled loved one without interfering with government benefits.

Spendthrift Clause

Protects assets in a trust from a beneficiary's creditors.

Spouse

Husband or wife.

Stepped-up Basis

Assets are given a new basis when transferred by inheritance (through a will or trust) and are re-valued as of the date of the owner's death. If an asset has appreciated above its basis (what the owner paid for it), the new basis is called a stepped-up basis. A stepped-up basis can save a considerable amount in capital gains tax when an asset is later sold by the new owner. Also see "Basis."

Subchapter S Corporation Stock

Stock in a corporation which has chosen to be subject to the rules of subchapter S of the Internal Revenue Code.

Surviving Spouse

The spouse who is living after one spouse has died.

Survivor's Trust

See "A Trust."

Successor Trustee

Person or institution named in the trust document who will take over should the first trustee die, resign, or otherwise become unable to act.

Tax-Deferred Plan

A retirement savings plan (like an IRA, 401(k), pension, profit sharing, or Keogh) that qualifies for special income tax treatment. The contributions made to the plan and subsequent appreciation of the assets are not taxed until they are withdrawn at a later time -- ideally, at retirement, when your income and tax rate are lower.

Taxable Gift

Generally, a gift of more than \$13,000 in one year to someone other than your spouse. The value of the taxable gift is applied to your federal gift tax exemption. After you have used up your exemption, additional gifts will be taxed, usually at the highest estate tax rate in effect. In 2012, the gift tax exemption is the same as the federal estate tax exemption (double for married couples) and the tax rate is 35%. If Congress does not act before the end of 2012, on January 1, 2013 the exemption will be \$1 million and the tax rate will be 55%.

Tenants-in-Common

A form of joint ownership in which two or more persons own the same property. At the death of a tenant-in-common, his/her share transfers to his/her heirs.

Tenants-by-the Entirety

A form of joint ownership in some states between husband and wife. When one spouse dies, his/her share of the asset automatically transfers to the surviving spouse.

Testamentary Trust

A trust in a will. Can only go into effect at death. Does not avoid probate.

Testate

One who dies with a valid will.

Title

Document proving ownership of an asset.

Transfer Tax

Tax on assets when they are transferred to another. The estate tax, gift tax and generation skipping transfer tax are all transfer taxes.

Trust

An entity that holds assets for the benefit of certain other persons or entities.

Trust Company

An institution that specializes in managing trusts. Also called a corporate trustee.

Trustee

Person or institution who manages and distributes another's assets according to the instructions in the trust document.

Trustor

See "Grantor."

Totten Trust

A "pay-on-death" account. A bank account that will transfer to the beneficiary who was named when the account was established. The terms "transfer on death" ("TOD"), "in trust for" ("ITF"), "as trustee for" ("ATF"), and "pay on death" ("POD") often appear in the title.

Unified Credit

The amount each person is allowed to deduct from federal estate taxes owed after death. In 2012, the credit is \$1,772,800. This is the amount of estate taxes that would be due on \$5,120,000 in net assets. After applying this credit, the result is that \$5,120,000 is "exempt" from estate taxes in 2012.

Uniform Transfer to Minors Act (UTMA)

Law enacted in many states that lets you leave assets to a minor by appointing a custodian. In most states, the minor receives the assets at legal age.

Unfunded

Your living trust is unfunded if you have not transferred assets into it.

Warranty Deed

Document that allows you to transfer title to real estate. With a warranty deed, the person guarantees that the title being transferred is clear (free of any encumbrances). If the title is defective, the person making the transfer is liable. Compare to quitclaim deed.

Will

A written document with instructions for disposing of assets after death. A will can only be enforced through the probate court.