

DEFINITIONS

We may have introduced some legal terms that are new to you, so we've put together this handy reference. There are also some legal terms that we have purposely *not* used in this book because we wanted to keep it easy to understand. But, since you will probably feel more comfortable dealing with an attorney if you know some of their "legalese," we've included some of it here.

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

A-B Trust—A living trust with a provision that lets you provide for your surviving spouse, keep control over who will receive your assets after your spouse dies, and leave up to \$2 million (in 2002 and 2003) to your beneficiaries, estate-tax free. (This amount will increase over the next several years as the federal estate tax exemption increases. See page 75 for the current schedule.)

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.

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. It is currently \$11,000 per recipient (\$22,000 if married). However, this amount is now tied to inflation and may increase from year to year.

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, like a bank or trust company, that specializes in managing trusts.

Credit Shelter Trust—Another name for Trust B 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.

Family Business Deduction—An additional federal estate tax exemption for family-owned businesses and farms that qualify. When added to the individual federal estate tax exemption, the maximum amount currently exempt from federal estate taxes is \$1.3 million. Under current law, this deduction will be eliminated in 2004 when the individual federal estate tax exemption increases to \$1.5 million.

Federal Estate Tax Exemption—Amount of an individual's estate that is exempt from federal estate taxes. For the current schedule, see page 75.

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—A steep tax (equal to the highest federal estate tax rate in effect at the time) on assets that “skip” a generation and are left directly to grandchildren and younger generations. Everyone has an exemption from this tax. In 2003, the exemption is \$1,120,000.

Gift—A transfer from one individual to another without fair compensation.

Gift Tax—A federal tax on gifts made while you are living. Currently \$11,000 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, or donor.

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—When two or more persons own the same asset.

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).

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 this includes 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 table 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.”

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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 \$11,000 in one year to someone other than your spouse. (This amount is now tied to inflation and may increase from year to year.) Under current law, the value of the gift is applied to your federal gift and estate tax exemption, and no gift tax is required to be paid until the exemption has been exhausted.

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 any federal estate taxes owed after death. In 2002 and 2003, the credit is \$345,800—the amount of estate taxes owed on the first \$1 million in assets.

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.

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