

# ESTATE PLANNING AND PROBATE GLOSSARY

The following is a glossary of the basic estate planning and probate terms that we may use from time to time.

In the definitions, words that appear in italics are words that also appear elsewhere in the glossary.

**A-B Trust:** refers to the split between the spouse's share (A) and the share of the decedent (B), which passes to a *Bypass Trust*. An A-B-C Trust adds a *marital deduction trust*, which is generally a *QTIP Trust*, when the deceased spouse's share of the estate exceeds the tax-free allowance that can go in the *Bypass Trust*.

**Accounting:** a periodic report by an executor, trustee or administrator as to the financial activity of the trust or estate for the relevant period.

**Administration:** the process of handling the affairs of a deceased person's *estate* or *trust*.

**Administrator:** the person or financial institution that is appointed to take care of the *estate* of a deceased person who died without a *will*, or who failed to name an *executor* or a backup when the named executor cannot serve.

**Adult:** in Texas, a person who is 18 years of age or older is legally an adult (although certain rights may be withheld until age 18).

**Ancillary Administration:** *probate proceeding* in another state undertaken when the deceased person owned real estate in a state other than the state of domicile, if needed to clear title into a new owner.

**Assets Subject to Administration:** typically, assets that are subject to *administration* in the probate court., meaning those assets that were in the name of the deceased person and remain in the *estate* because the asset had no *pay on death* beneficiary or survivor named. Accounts bearing another name for convenience (without a specific statement that such person(s) take by survivorship on death), are still part of the estate. The interest of a spouse in community property held solely in the name of the survivor is part of the deceased spouse's estate. Sometimes the assets subject to administration are referred to collectively as the "estate" or the "probate estate." Assets owned jointly with a surviving joint owner, life

insurance proceeds, and retirement plan proceeds payable to a named beneficiary other than the estate are normally not part of the estate because they are not subject to *administration*. Living Trust assets are not part of the estate. Some assets that are not part of the estate for probate purposes may still be part of the taxable estate for estate tax purposes only.

**Beneficiary:** a term that usually refers to a person or entity that is entitled to receive something at death, for example, a beneficiary of an *estate* or *trust*, or a beneficiary of life insurance or retirement benefits. A beneficiary may be able to take those assets without necessity of probate, if the instrument establishing the beneficial right so provides. This is common for a *living trust*, life insurance, retirement, and certain types of back accounts.

**Bypass Trust:** (also Credit Shelter Exemption Trust or AB Trust) a separate trust, representing the assets of the deceased spouse that is split off after the first death under a will or living trust. The amount passing to this trust is typically limited to the amount that can pass (other than to a spouse or charity) tax-free at death. Generally the surviving spouse is beneficiary of this trust for life, and then other beneficiaries take. The assets in this trust will not be taxed at the second death. The primary purpose of this trust is to assure that the couple receives the benefit of both estate tax exemptions.

**Charitable Remainder Trust:** a gift to a trust when the *donor* retains the income for a term of years or life and the charity receives the asset at death. This asset will not be taxed at death, even though the donor kept the income stream. The donor can take an income tax deduction on making the gift to the trust for the present value of the gift, meaning the value of the asset less the value of the retained income stream.

**Claim:** technically, this refers to any obligation of the estate to third parties, whether incurred before or as a result of death. Examples would be funeral expenses, the debts of a deceased person, and expenses of administration.

**Community Property:** typically the assets earned and accumulated during the marriage, excluding assets gifted to or inherited by a spouse or assets otherwise defined by law as *separate property*.

**Codicil:** a written amendment to a *will*.

**Conservator:** a term that is used in some states to mean the guardian of a minor or incapacitated person.

**Credit Shelter Exemption Trust:** see *Bypass Trust*.

**Crummey Withdrawal Right:** the right of a beneficiary to withdraw an annual gift to a trust for that beneficiary. Generally this right is available for 30 days, and if not exercised the funds stay in the trust under the Trustor's control. It is common to routinely waive the right to withdraw annual gifts, because in the long run the benefits from the trust will be greater.

**Custodian:** one who has possession of assets, often used to describe the company that holds an IRA, or the person that manages an UGMA or UTMA account.

**Dependent Administration:** a proceeding for the *administration* of a deceased person's *estate* in which there is considerable court involvement. There are papers that have to be filed with the court and various types of hearings before the probate judge. Typically used on estates where there is no *will*, or where the *will* does not specifically provide for *independent administrator*. Also used in all guardianship proceedings.

**Devise:** to dispose of real or personal property by *will*.

**Devisee:** a person or entity designated in a *will* to receive a *devise*.

**Directive to Physicians:** an instrument that sets out instructions for dealing with life support decisions.

**Disclaimer:** the process of legally declining a gift or devise, in which case the asset passes to the descendants of the person that disclaimed, or to others, depending on the law of the state, the relationship of the person disclaiming to the original owner, and the terms of the instrument setting up the gift. Disclaimers generally must be made within nine months of the death or gift to be valid.

**Domicile:** the home or permanent residence. The laws of the state of a person's domicile determine what happens to that person's property at death.

**Donee:** the recipient of a gift.

**Donor:** a person who makes a gift.

**Escheat:** assigning property to the state when a person dies with no known beneficiaries under a *will* and no known *heirs* if

there is no *will*.

**Estate:** this word has a number of meanings depending on the context in which it is used. For federal estate tax purposes, it refers to all of a deceased person's assets that are included in that person's estate for tax purposes (usually everything, including non-probate assets). It is also used to refer to those items of property that are subject to *administration* in the probate court. For example, life insurance owned by the decedent and payable to a named beneficiary such as a surviving spouse is not part of the deceased person's *estate* that is subject to *administration* in the probate court, but it is included in the deceased person's *estate* for federal estate tax purposes.

**Estate Planning:** the process of arranging one's personal and financial affairs in a manner that minimizes taxes and offers disposal of property in a manner consistent with the original owner's wishes.

**Executor:** the person or financial institution that is appointed to administer the estate of a deceased person who died with a *will*, naming such person to serve. The Executor will be supervised by the Court, and make periodic accountings to the Court unless you have provided in your will that this person will serve as an *Independent Executor*.

**Exempt Property:** in Texas this refers to the home, personal effects and certain other property that are exempt from creditors. In a probate context these assets may be set aside in favor of a surviving spouse or dependent child. Otherwise the homestead protections end at death. A surviving spouse is also entitled to a *homestead allowance* and a *family allowance*.

**Family Allowance:** an allowance that a surviving spouse is entitled to from his or her deceased spouse's estate that is subject to *administration* for a period of one year during the period of *administration* of the estate. This is not a set amount but is to be a reasonable amount payable to the surviving spouse and minor children.

**Family Limited Partnership (FLP):** a limited partnership created to act as a closely held business for administering family investments, and designed to provide continuity for management or winding up, a method for lifetime gifting, and better tax treatment on assets still owned at death.

**Fiduciary:** comes from a Latin word meaning trust and confidence. This is a generic term used to refer to a person (or entity) that serves in a representative capacity. An *executor*, *administrator*, *trustee*, *guardian*, and agents under powers of

attorney are all fiduciaries. A fiduciary stands in a position of confidence and trust with respect to each *heir, devisee, and/or beneficiary*.

**Grantor (also, Settlor or Trustor):** in a trust context, this refers to a person that established a trust, including a *living trust*. The term "Grantor" is also used to refer to one who is transferring real estate in a deed.

**Guardian of the Estate:** an *adult* person or financial institution appointed by a court, who is responsible for a *minor* child's or *legally incapacitated person's* property until that *minor* child becomes an adult or the *legally incapacitated person* becomes competent to be responsible for his or her own property.

**Guardian of the Person:** an *adult* person appointed by a court, who is responsible for a *minor* child or *legally incapacitated person's* personal care and nurturing. A designation may be made by a parent in advance as to who should serve for his or her own children. This is often set out in *will* but can be done in a separate legal document as well. The designation is not mandatory on the Court, but the Court will give the person(s) designated top priority in determining the best interest of the child. The designation by one parent does not nullify the rights of another surviving parent.

**Health Care Power of Attorney:** an instrument that appoints an agent to make general health care decisions in the event of later incapacity. Also known as a Medical Power of Attorney.

**Heir:** person, who inherits property from the estate of a deceased person who died without a *will*, or when the *will* fails to fully dispose of the subject property.

**Incapacitated Person:** a person who has been determined by a court as not capable of handling his or her personal and financial affairs.

**Independent Administration:** that portion of the *administration* of a deceased person's estate in which the *personal representative* performs various duties without being supervised by the probate court. For example, the *personal representative* may pay *claims*, sell real estate and personal property, and make distributions to the *beneficiaries* without any court involvement, if the *personal representative* is acting independently.

**Independent Executor:** an *Executor* who is allowed to act independently of court supervisions after performing certain procedures through the probate proceeding. The will must provide for an independent executor, or all devisees must

agree to allow the *Executor* to serve independently.

**Intangible Personal Property:** property that is typically represented by some paper associated with it, such as stocks, bonds, mutual funds, bank accounts, and cash.

**Inter Vivos Trust:** see *living trust* below.

**Intestate:** refers to dying without a *will*.

**Inventory:** the formal list of property submitted to the Court by the personal representative in a probate proceeding.

**Irrevocable Trust:** a *trust* that can no longer be amended or revoked by anyone. Most revocable *trusts* become irrevocable at some time, for example, when the person who established the *trust* dies. Other trusts may be irrevocable from inception, such as a life insurance trust.

**Letters of Administration:** the paper that is issued by the *probate clerk* to an administrator, showing that the administrator has the authority to act on behalf of an *estate*.

**Letters Testamentary:** the paper that is issued by the probate clerk to an executor, showing that the executor has the authority to act on behalf of an estate.

**Life Insurance Trust:** an irrevocable trust created to hold life insurance policies in such a way that the policies will not be treated as the part of the insured's taxable estate upon the death of the insured.

**Living Trust (also revocable living trust or intervivos trust):** a *trust* that is established during life to hold assets so they will not pass under a *will*. The trust is established by a written trust agreement. This type of trust is typically self managed during life, it is still treated as if the Grantor owns the trust assets during life, thus it does not file separate tax returns during the Grantor's lifetime. At death, however, assets held under the living trust avoid probate and can make settlement faster and simpler.

**Marital Property Agreement:** a contract between spouses which may be entered into before or during marriage to alter their rights in property under the default laws in Texas as to *community property* and *separate property*.

**Marital Deduction:** the tax code allows a deduction for gifts to a spouse or to a special type of trust for a spouse. In this manner the estate tax can be fully deferred until the second

death.

**Minor:** in Texas, a person who is under the age of 18, although some special laws may limit certain rights until age 21.

**Muniment of Title:** a simplified proceeding in probate to admit a will to probate without opening an estate administration. This is allowed only when there are no debts and no need to administer (sell or divide) assets.

**Pay on Death (POD):** an account set up to pay to a beneficiary at death, without giving that person account access prior to death.

**Personal Representative:** a generic reference to the person or financial institution appointed by the court to administer a person's *estate*, either as *administrator*, *executor* or *guardian*.

**Power of Attorney:** a document that grants to an agent the right to deal with the assets of another party until the death of the true owner. In order for the right to continue during the incapacity of the owner, it must specifically so provide, in which case it is a "durable" power of attorney.

**Probate Proceeding:** a *proceeding* usually started by a petition or motion and culminating in a hearing before a probate judge after notice to interested persons to determine whether a will should be admitted to probate. Typically a second phase then begins, which is the administration of the probate estate.

**QTIP Trust:** a trust that splits off under the will or living trust to hold assets of a deceased spouse that exceed the tax-free amount. Assets in this trust are not taxed until the second death, and then only if not covered by the survivor's tax exemption.

**Revocable Living Trust:** a *living trust* or *inter vivos trust* that can be amended and revoked, usually by the person who established the *trust*. This *trust* may become irrevocable and unamendable when the only person who can amend or revoke the trust dies or becomes incompetent.

**Separate Property:** typically assets owned prior to marriage (including proceeds and reinvestment thereof), and assets received by gift or inheritance during a marriage. In Texas, income from separate property is considered *community property*, unless a valid *Marital Property Agreement* provides otherwise.

**Settlor:** a person who established a *trust*.

**Small Estates Proceeding:** a *proceeding* that allows for distribution of an estate with assets valued at less than \$50,000 and no real estate other than a home.

**Spousal Allowance:** see *family allowance* above.

**Tangible Personal Property:** personal assets that you can touch, such as furnishings, cars, dishes, jewelry, tools, and sporting equipment.

**Testamentary Trust:** a *trust* that is created by direction set out in a person's *will*.

**Testate:** refers to dying with a *will*.

**Testator:** a person who makes a *will*.

**Trust:** an arrangement, usually established by a written document, to provide for the management and disposition of assets. It normally involves three parties: the person who establishes the trust (sometimes called a *grantor*, *settlor*, or *trustor*), a *trustee*, and one or more *beneficiaries*.

**Trustee:** an adult individual or financial institution that is designated to be responsible for the *administration* of a *trust*. There may be more than one *trustee* (co-trustees), and an individual and a financial institution may serve as co-trustees.

**Trustor:** see *settlor* above.

**UGMA (TUGMA in Texas):** accounts held under the Uniform Gifts to Minors Act for a minor until age 18. The newer version of this statute is the UTMA.

**UTMA (TUTMA in Texas):** accounts held under the Uniform Transfers to Minors Act for a minor until he reaches age 21. This newer version of the statute extends the terminage to life insurance and allows greater flexibility in what investments may be made with the funds.

**Will:** a written document which disposes of one's property at death. It may also name executors and trustees and designate a *guardian* for a *minor* or legally incapacitated adult child.