

Glossary of Estate Planning Terms

A

A-B trust planning

– A common arrangement used in a will when a married testator has an estate with a value that exceeds his or her remaining estate tax exemption amount. A testator creates at the first death a marital trust or “A Trust” for the sole benefit of the surviving spouse for life (sometimes called a “Marital Trust” or “QTIP Trust”) and a bypass or “B Trust” for the benefit of the testator’s descendants or the testator’s surviving spouse and descendants for life (sometimes called the “Credit Shelter Trust” or “Family Trust”). After the death of the surviving spouse, the remaining assets of both trusts generally pass to the testator’s descendants. The B Trust passes at the death of the surviving spouse to the beneficiaries free of estate taxes regardless of the value of the B Trust at that time. The value of the A trust is included in the surviving spouse’s estate for estate tax purposes, and the surviving spouse’s remaining estate tax exemption is applied to the collective value of the A Trust and the surviving spouse’s own assets. Under prior law, only the decedent could use his or her estate tax exemption, so it was important to create the B Trust in order to earmark this exemption. Since the concept of portability is now part of the law, not everyone will need the complexity of the A-B trust structure in order to take advantage of his or her estate tax exemption. Portability allows the surviving spouse to use the unused estate tax exemption of the first spouse to die. Be careful, however. While it is seductively simple and inexpensive to leave all assets outright to the surviving spouse and plan on his or her use of portability to avoid estate taxes, trusts offer many more advantages than tax planning. Continuing to use trusts allows you the assurance that your assets will be used and distributed as and to whom you wish and offers other advantages such as asset or creditor protection and generation skipping.

Administration

– The process during which the executor or personal representative collects the decedent’s assets, pays all debts and claims, and distributes the residue of the estate according to the will or the state law intestacy rules (when there is no will).

Administrator

– The individual or corporate fiduciary appointed by the court to manage an estate if no executor or personal representative has been appointed or if the named executor or personal representative is unable or unwilling to serve.

Annual exclusion

– The amount an individual may give annually to each of an unlimited number of recipients free of federal gift or other transfer taxes and without any IRS reporting requirements. In addition, these gifts do not use any of an individual’s federal gift tax exemption amount. The annual exclusion is indexed for inflation and is \$14,000 per donor for 2013. Payments made directly to providers of education or medical care services also are tax-free and do not count against the annual exclusion or gift tax exemption amounts.

Applicable exclusion amount

– Another name for the estate tax exemption amount (formerly called the unified credit), which shelters a certain value of assets from the federal estate and gift tax. This amount is \$5 million and is inflation adjusted annually.

Ascertainable standard

– A standard, usually relating to an individual’s health, education, support, or maintenance, that defines the permissible reasons for making a distribution from a trust. Use of an ascertainable standard prevents distributions from being included in a trustee/beneficiary’s gross estate for federal estate tax purposes. Depending on state law, the use of an ascertainable standard may provide less protection for a beneficiary from creditors. If the risk of a lawsuit or divorce concerns you, you should discuss distribution standards with your attorney.

Attorney-in-Fact

– The person named as agent under a power of attorney to handle the financial affairs of another.

B

Beneficiary

– A person who will receive the benefit of property from an estate or trust through the right to receive a bequest or to receive income or trust principal over a period of time.

Bypass trust

– The “B Trust” in A-B trust planning that is sheltered from the federal estate tax by the decedent’s estate tax exemption amount. Because this trust “bypasses” the estate tax in the decedent’s estate and at the surviving spouse’s death, this trust often is called a bypass trust. This type of trust will not be as important for tax planning in light of the concept of portability in the estate tax law, but such a trust still will be valuable for many non-tax planning considerations. If you reside in a state with a lower estate tax exemption than federal estate tax law provides, you may need to modify the terms of any bypass trust to address that lesser amount. See the comments above concerning A-B trust planning.

C

Charitable lead trust

– A trust created during lifetime or at death that distributes an annuity or unitrust amount to a named charity for life or a term of years, with any remaining trust assets passing to designated non-charitable beneficiaries upon termination of the trust.

Charitable remainder trust

– A tax-exempt trust created during lifetime or at death that distributes an annuity or unitrust amount to one or more designated non-charitable beneficiaries for life or a term of years, with the remaining trust assets passing to charity upon termination of the trust. If appreciated assets are transferred to a charitable remainder trust and sold by the trust, the trust does not pay capital gains tax. Instead, the non-charitable beneficiaries are taxed on a portion of the capital gains as they receive their annual distributions and, in this manner, the capital gains tax is deferred.

Codicil

– A formally executed document that amends the terms of a will so that a complete rewriting of the will is not necessary.

Community property

– A form of ownership in certain states, known as community property states, under which property acquired during a marriage is presumed to be owned jointly. Only a small number of states are community property states, and the rules can differ significantly in these states.

Conservator

– An individual or a corporate fiduciary appointed by a court to care for and manage the property of an incapacitated person, in the same way as a guardian cares for and manages the property of a minor.

Credit shelter trust

– Another name for the bypass or “B Trust” in A-B trust planning.

Crummey trust

– An irrevocable trust that grants a beneficiary of the trust the power to withdraw all or a portion of assets contributed to the trust for a period of time after the contribution. The typical purpose of a Crummey trust is to enable the contributions to the trust to qualify for the annual exclusion from gift tax. In light of the current high gift and estate tax exemption amounts, many taxpayers will no longer need their trust contributions to qualify for the annual exclusion.

D

Decedent

– An individual who has died.

Descendants

– An individual’s children, grandchildren, and more remote persons who are related by blood or because of legal adoption. An individual’s spouse, stepchildren, parents, grandparents, brothers, or sisters are not included. The term “descendants” and “issue” have the same meaning.

Disclaimer

– The renunciation or refusal to accept a gift or bequest or the receipt of insurance proceeds, retirement benefits, and the like under a beneficiary designation in order to allow the property to pass to alternate takers. To be a qualified disclaimer and thereby not treated as a gift by the disclaimant (the person who makes the disclaimer), the disclaimer must be made within nine months and before the disclaimant has accepted any interest in the property in order to avoid a tax triggering event. In light of the current high gift and estate tax exemption amounts, it may be feasible in many instances to disclaim even after that time period to accomplish non-tax goals. State laws addressing disclaimer may differ, and some wills and trusts might include express provisions governing what happens to assets or interests that are disclaimed. Be certain to consider all these issues before disclaiming.

Durable power of attorney

– A power of attorney that does not terminate upon the incapacity of the person making the power of attorney.

E

Estate planning

– A process by which an individual designs a strategy and executes a will, trust agreement, or other documents to provide for the administration of his or her assets upon his or her incapacity or death. Tax and liquidity planning are part of this process.

Estate tax

– A tax imposed on a decedent's transfer of property at death. An estate tax is to be contrasted with an inheritance tax imposed by certain states on a beneficiary's receipt of property. More than 20 states have state estate taxes that differ from the federal system, so your estate could be subject to a state estate tax even if it is not subject to a federal estate tax.

Estate tax exemption amount

– Another name for the unified credit amount, applicable exclusion amount, and credit shelter amount.

Executor

– A person named in a will and appointed by the court to carry out the terms of the will and to administer the decedent's estate. May also be called a personal representative. If a female, may be referred to as the executrix.

F

Family office

– An arrangement to coordinate the legal, tax, and other needs of one or more families, either through a true office staffed with employees or through outsourcing to the family’s regular advisors. Frequently, a family’s private trust company serves as the family office.

Family trust

– A trust established to benefit an individual’s spouse, children or other family members. A family trust is often the bypass trust or credit shelter trust created under a will.

Fiduciary

– An individual or a bank or trust company designated to manage money or property for beneficiaries and required to exercise the standard of care set forth in the governing document under which the fiduciary acts and state law. Fiduciaries include executors and trustees.

G

Generation-skipping transfer (GST) tax

– A federal tax imposed on outright gifts and transfers in trust, whether during lifetime or at death, to or for beneficiaries two or more generations younger than the donor, such as grandchildren, that exceed the GST tax exemption. The GST tax imposes a tax on transfers that otherwise would avoid gift or estate tax at the skipped generational level. Some states impose a state generation-skipping transfer tax.

Gift tax

– The tax on completed lifetime transfers from one individual to or for the benefit of another (other than annual exclusion gifts and certain direct payments to providers of education and medical care) that exceed the gift tax exemption amount (\$5 million inflation adjusted). Under the concept of portability in the tax law, if your spouse predeceased you after 2010 with remaining unused exemption (the deceased spouse unused exemption, or DSUE) and an estate tax return was filed, your exemption for gift tax purposes can be augmented by your deceased spouse’s DSUE. Only the State of Connecticut imposes a separate state gift tax.

Grantor

– A person, including a testator, who creates, or contributes property to, a trust. If more than one person creates or contributes property to a trust, each person is a grantor with respect to the portion of the trust property attributable to that person’s contribution except to the extent another person has the power to revoke or withdraw that portion. The grantor is also sometimes referred to as the “settlor,” the “trustor,” or the “donor.” Contrast with the use of the term “grantor trust” to imply a trust the income of which is taxed to the person considered the “grantor” for income tax purposes.

Grantor trust

– A trust over which the grantor retains certain control such that the trust is disregarded for federal (and frequently state) income tax purposes, and the grantor is taxed individually on the trust's income and pays the income taxes that otherwise would be payable by the trust or its beneficiaries. Such tax payments are not treated as gifts by the grantor to the trust or its beneficiaries. Provided the grantor does not retain certain powers or benefits, such as a life estate in the trust or the power to revoke the trust, the trust will not be included in the grantor's estate for federal estate tax purposes. Contrast with the non-tax reference to a person who forms or makes gifts to a trust as the "grantor."

Gross estate

– A federal estate tax concept that includes all property owned by an individual at death and certain property previously transferred by him or her that is subject to federal estate tax.

GST exemption

– The federal tax exclusion that allows a certain value of generation-skipping transfers to be made without the imposition of a generation-skipping tax. The GST exemption amount is \$5 million inflation-adjusted (\$5.25 million in 2013).

Guardian

– An individual or bank or trust company appointed by a court to act for a minor or incapacitated person (the "ward"). A guardian of the person is empowered to make personal decisions for the ward. A guardian of the property (also called a "committee") manages the property of the ward.

H

Health care power of attorney

– A document that appoints an individual (an "agent") to make health care decisions when the grantor of the power is incapacitated. Also referred to as a "health care proxy."

Heir

– An individual entitled to a distribution of an asset or property interest under applicable state law in the absence of a will. "Heir" and "beneficiary" are not synonymous, although they may refer to the same individual in a particular case.

I

Income

– The earnings from principal, such as interest, rent, and cash dividends. This is a fiduciary trust accounting concept and is not the same as taxable income for income tax purposes.

Insurance trust

– An irrevocable trust created to own life insurance on an individual or couple and designed to exclude the proceeds of the policy from the insured’s gross estate at death.

Interest of a beneficiary

– The right to receive income or principal provided in the terms of a trust or will.

Intestate

– When one dies without a valid will, such that the decedent’s estate is distributed in accordance with a state’s intestacy law.

Inventory

– A list of the assets of a decedent or trust that is filed with the court.

Irrevocable trust

– A trust that cannot be terminated or revoked or otherwise modified or amended by the grantor. As modern trust law continues to evolve, however, it may be possible to effect changes to irrevocable trusts through court actions or a process called decanting, which allows the assets of an existing irrevocable trust to be transferred to a new trust with different provisions.

J

Joint tenancy

– An ownership arrangement in which two or more persons own property, usually with rights of survivorship.

K

No terms listed

L

Life beneficiary

– An individual who receives income or principal from a trust or similar arrangement for the duration of his or her lifetime.

Life estate

– The interest in property owned by a life beneficiary (also called life tenant) with the legal right under state law to use the property for his or her lifetime, after which title fully vests in the remainderman (the person named in the deed, trust agreement, or other legal document as being the ultimate owner when the life estate ends).

Living trust

– A trust created by an individual during his or her lifetime, typically as a revocable trust. Also referred to as an “inter vivos” trust, “revocable living trust” or “living trust.”

M

Marital deduction

– An unlimited federal estate and gift tax deduction for property passing to a spouse in a qualified manner. In other words, property transfers between spouses generally are not taxable transfers because of the marital deduction.

Marital trust

– A trust established to hold property for a surviving spouse in A-B trust planning and designed to qualify for the marital deduction. A commonly used marital trust is a qualified terminable interest property trust, or QTIP trust, which requires that all income must be paid to the surviving spouse.

N

Non-Resident Alien

– An individual who is neither a resident nor a citizen of the United States. A non-resident alien nonetheless may be subject to federal estate tax or probate with regard to certain assets situated in the United States. An estate tax treaty between that individual’s home country and the United States may affect this result.

No-Contest Clause

– A provision in a will or trust agreement that provides that someone who sues to receive more from the estate or trust or overturn the governing document will lose any inheritance rights he or she has. These clauses are not permissible in all instances or in all states.

O

Operation of Law

– The way some assets will pass at your death, based on state law or the titling (ownership) of the asset, rather than under the terms of your will.

P

Personal representative

– An executor or administrator of a decedent's estate.

Per stirpes

– A Latin phrase meaning “per branch” and is a method for distributing property according to the family tree whereby descendants take the share their deceased ancestor would have taken if the ancestor were living. Each branch of the named person's family is to receive an equal share of the estate. If all children are living, each child would receive a share, but if a child is not living, that child's share would be divided equally among the deceased child's children.

Pour over will

– A will used in conjunction with a revocable trust to pass title at death to property not transferred to the trust during lifetime.

Power of appointment

– A power given to an individual (usually a beneficiary) under the terms of a trust to appoint property to certain persons upon termination of that individual's interest in the trust or other specified circumstances. The individual given the power is usually referred to as a “holder” of the power. The power of appointment may be general, allowing the property to be appointed to anyone, including the holder, or limited, allowing the property to be distributed to a specified group or to anyone other than the holder. Property subject to a general power of appointment is includible in the holder's gross estate for federal estate tax purposes.

Power of attorney

– Authorization, by a written document, that one individual may act in another's place as agent or attorney-in-fact with respect to some or all legal and financial matters. The scope of authority granted is specified in the document and may be limited by statute in some states. A power of attorney terminates on the death of the person granting the power (unless “coupled with an interest”) and may terminate on the subsequent disability of the person granting the power (unless the power is “durable” under the instrument or state law).

Power of withdrawal

– A presently exercisable power in favor of the power holder other than a power exercisable in a fiduciary capacity limited by an ascertainable standard, or which is exercisable by another person only upon consent of the trustee or a person holding an adverse interest in the trust.

Principal

– The property (such as money, stock, and real estate) contributed to or otherwise acquired by a trust to generate income and to be used for the benefit of trust beneficiaries according to the trust's terms. Also referred to as trust corpus.

Private trust company

– An entity formed by a family to serve as fiduciary for the estates and trusts of extended family members. Often referred to as a family trust company.

Probate

– The court supervised process of proving the validity of a will and distributing property under the terms of the will or in accordance with a state's intestacy law in the absence of a will.

Probate tax

– A tax imposed by many jurisdictions on property passing under an individual's will or by a state's intestacy law.

Property

– Anything that may be the subject of ownership, whether real or personal, legal or equitable, or any interest therein.

Prudent man rule

– A legal principle requiring a trustee to manage the trust property with the same care that a prudent, honest, intelligent, and diligent person would use to handle the property under the same circumstances. See Prudent Investor Act.

Prudent Investor Act

– A law that provides for how fiduciaries must invest trust, estate and other assets they hold in a fiduciary capacity, such as a trustee or executor.

Q

Qualified domestic trust

– A marital trust (referred to as a “QDOT”) created for the benefit of a non-U.S. citizen spouse containing special provisions specified by the Internal Revenue Code to qualify for the marital deduction.

Qualified personal residence trust

– An irrevocable trust (referred to as a “QPRT”) designed to hold title to an individual’s residence for a term of years subject to the retained right of the individual to reside in the home for the term, with title passing to children or other beneficiaries at the end of the term.

Qualified terminable interest property

– Property (referred to as “QTIP”) held in a marital trust or life estate arrangement that qualifies for the marital deduction because the surviving spouse is the sole beneficiary for life and entitled to all income.

R

Remainder interest

– An interest in property owned by the remainderman that does not become possessory until the expiration of an intervening income interest, life estate or term of years.

Residue

– The property remaining in a decedent’s estate after payment of the estate’s debts, taxes, and expenses and after all specific gifts of property and sums of money have been distributed as directed by the will. Also called the residuary estate.

Revocable trust

– A trust created during lifetime over which the grantor reserves the right to terminate, revoke, modify, or amend.

S

S corporation

– A corporation that has made a Subchapter S election to be taxed as a pass-through entity (much like a partnership). Certain trusts are permitted to be shareholders only if they make the appropriate elections.

Self-dealing

– Personally benefiting from a financial transaction carried out on behalf of a trust or other entity, for example, the purchasing of an asset from a trust by the trustee unless specifically authorized by the trust instrument.

Settlor

– Term frequently used for one who establishes or settles a trust. Also called a “trustor” or “grantor.”

Special needs trust

– Trust established for the benefit of a disabled individual that is designed to allow him or her to be eligible for government financial aid by limiting the use of trust assets for purposes other than the beneficiary’s basic care.

Spendthrift provision

– A trust provision restricting both voluntary and involuntary transfers of a beneficiary’s interest, frequently in order to protect assets from claims of the beneficiary’s creditors.

T

Tangible personal property

– Property that is capable of being touched and moved, such as personal effects, furniture, jewelry, and automobiles. Tangible personal property is distinguished from intangible personal property that has no physical substance but represents something of value, such as cash, stock certificates, bonds, and insurance policies. Tangible personal property also is distinguished from real property, such as land and items permanently affixed to land, such as buildings.

Tenancy by the entirety

– A joint ownership arrangement between a husband and wife, generally with respect to real property, under which the entire property passes to the survivor at the first death and while both are alive, may not be sold without the approval of both.

Tenancy in common

– A co-ownership arrangement under which each owner possesses rights and ownership of an undivided interest in the property, which may be sold or transferred by gift during lifetime or at death.

Terms of a trust

– The manifestation of the grantor’s intent as expressed in the trust instrument or as may be established by other evidence that would be admissible in a judicial proceeding.

Testamentary

– Relating to a will or other document effective at death.

Testamentary trust

– A trust established in a person’s will to come into operation after the will has been probated and the assets have been distributed to it in accordance with the terms of the will.

Testator

– A person who signs a will. If a female, may be referred to as the testatrix.

Transfer on death designation

– A beneficiary designation for a financial account (and in some states, for real estate) that automatically passes title to the assets at death to a named individual or revocable trust without probate. Frequently referred to as a TOD (transfer on death) or POD (payable on death) designation.

Trust

– An arrangement whereby property is legally owned and managed by an individual or corporate fiduciary as trustee for the benefit of another, called a beneficiary, who is the equitable owner of the property.

Trust instrument

– A document, including amendments thereto, executed by a grantor that contains terms under which the trust property must be managed and distributed. Also referred to as a trust agreement or declaration of trust.

Trustee

– The individual or bank or trust company designated to hold and administer trust property (also generally referred to as a “fiduciary”). The term usually includes original (initial), additional, and successor trustees. A trustee has the duty to act in the best interests of the trust and its beneficiaries and in accordance with the terms of the trust instrument. A trustee must act personally (unless delegation is expressly permitted in the trust instrument), with the exception of certain administrative functions.

U

Unified credit

– A credit against the federal gift and estate tax otherwise payable by an individual or estate. Frequently referred to as the estate tax exemption amount, the exemption equivalent, or applicable exclusion amount. The current exemption amount is \$5 million inflation adjusted (\$5.25 million in 2013).

Uniform custodial trust act

– A law enacted by some states providing a simple way to create a trust for a minor or adult beneficiary without the need for a complex trust document. Such a trust typically is used for a trust of modest size, particularly for a disabled beneficiary. An adult beneficiary may terminate the trust at any time, otherwise the trust may continue for the life of the beneficiary.

Uniform transfers to minors act

– A law enacted by some states providing a convenient means to transfer property to a minor. An adult person known as a “custodian” is designated by the donor to receive and manage property for the benefit of a minor. Although the legal age of majority in many states may be 18, the donor may authorize the custodian to hold the property until the beneficiary reaches age 21. Formerly called the Uniform Gifts to Minors Act.

V

Virtual Representation

– A mechanism provided in a will or trust, or in some instances by state law, to permit a beneficiary to make decisions on behalf of another beneficiary who can claim or receive property only under or after them.

W

Will

– A writing specifying the beneficiaries who are to inherit the testator’s assets and naming a representative to administer the estate and be responsible for distributing the assets to the beneficiaries.

X

No terms listed

Y

No terms listed

Z

No terms listed