GOLOMBEK LAW LLC

Probate | Estate Planning | Elder Law Services

Glossary of Common Probate and Estate Planning Terms

Ademption – Disposition by testator of specific property (real or personal) bequeathed to a beneficiary in a will, so that at testator's death the property is no longer part of the estate. The beneficiary receives nothing unless the will substitutes another asset for the deemed property.

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).

Administration Expenses – Normal and reasonable costs, fees and expenses incurred in the administration of a decedent's estate. May be deductible on either the estate's 706 return (see below) or the 1041 (see below), but not both.

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.

Advance Medical Directive – A directive issued according to state law in which a competent person may direct future medical decisions. Usually involves a durable power of attorney for health care, allowable medical decisions (i.e. Do Not Resuscitate, No Heroic Measures, etc.), and end of life directives (usually also known as Living Wills.) Each state is different as to the amount of enforceability is given to decisions made today for events which have not yet happened and whether or not a named agent is required, authorized, or merely empowered to make specific decisions at a later date.

Ancillary Probate (Ancillary Administration) – A proceeding in a state other than the decedent's state of domicile and where a decedent owned property

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.

Annuity – A right to receive one or more payments for life or for a term of years. Often called a "pure" annuity or commercially, an "immediate" annuity. Contrast with the typical commercial "deferred" annuity where the right to receive payments is deferred while the tax on the growth and income produced inside the annuity is deferred as well until such time as a payment is made.

Antenuptual Agreement – Also known as a Pre-Nuptial Agreement. A contract entered into by a couple prior to marriage and usually pertaining to issues of support and property distribution in the event of a subsequent dissolution of marriage or death of either party. All states allow these agreements, although states differ in required formalities and enforceability of various terms and provisions.

Applicable Credit Amount – The amount of unused unified credit (see below) which the individual or the estate of an individual is entitled, which can be directly applied against the gift or estate tax incurred by the individual while alive (gift tax) or because of the death of the individual (estate tax.)

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 adjusted from time to time.

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.

Assignment – The transfer of title or ownership of any kind of property. However, an assignment is generally related to the transfer of rights in property, as distinguished from the property itself.

Attestation Clause – A paragraph at the end of a Will signed by the witnesses indicating that they affirm by their signatures that they have heard the testator declare the instrument to be his or her will and have witnessed the signing of the will. If a will has this clause, it is called a "Self Proving" will. It will not be necessary to later call the witnesses to testify as their signed and notarized affidavit will stand as proof of the legitimacy of their statement as to their belief as to the capacity of the testator/testatrix and the signing of the will absent of observable undue influence or duress.

Basis – The amount attributed to an asset for income tax purposes for determining gain or loss on sale or transfer and for determining the value of a gift in the hands of a donee. Usually the original acquisition cost adjusted up (usually via capital improvements or incremental taxes paid) or down (usually through depreciation.)

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.

Bequest – A gift by will of personal property as distinguished from a gift of real estate, although often used to cover a gift by will of either personal property or land, or both. "To bequeath" generally means to dispose of property of any kind by will. (See also devise and legacy.)

Buy Sell Agreement – A contract between owners of an entity used for the disposition and continuation of small business interests upon the occurrence of an event (usually the incapacity, retirement, or death of a principal.) The goals are the acquisition of a principal's interest by one or more remaining principals or by the entity itself. It often sets the criteria to determine the timing and value of business interests or stock for transfer tax purposes.

By Representation – A method of distributing property in which the property is divided into as many equal shares as there are (i) surviving descendants in the generation nearest to the designated ancestor which contains one or more surviving descendants and (ii) deceased descendants in the same generation who left surviving descendants, if any. Each surviving descendant in the nearest generation is allocated one share and the share of each deceased descendant in the same generation is divided among his or her descendants in the same manner.

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

Common Law Estate – A term generally used to distinguish a state that does not have community property.

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.

Conditional Gift – A gift which is only given to a beneficiary once one or a set of conditions have been fulfilled.

Conservator – An individual or a corporate fiduciary appointed by a court to care for and manage the property of a person who is unable to manage their own financial affairs.

Conservatorship – A legal proceeding in which a person is appointed by the court as conservator to manage the assets and financial affairs of a person who is unable to do so on their own.

Corpus – The traditional Latin term used to describe the principal of a trust as distinguished from the income generated from the corpus. Also called a Res. Under traditional trust law, a trust had to have a corpus or a res (the terms are interchangeable) in order to exist. More modern law (as created by statute in a number of states) may allow a trust to exist without a current corpus. Any income generated which is not distributed and upon which the trust pays income tax, now becomes corpus or principal.

CPR Directive – Cardio-Pulmonary Resuscitation directives are designed to limit the artificial or extraordinary measures to be used in a life-sustaining emergency treatment. Often known as a "Do Not Resuscitate" order, their validity and legality, as well as terms and conditions, vary widely from state to state. Usually, they should be included in an individual's medical records as a medical directive authorized by the attending physician irrespective of whether or not a state allows a written directive from the individual.

Decedent – An individual who has died.

Decedent's Estate – The assets or estate of a person who has died.

Decedent's Final Return – The form 1040 for a decedent which accounts for the income tax obligations incurred between the time of the last tax return and the date of death.

Deed – A written instrument that conveys an interest in real property from the Grantor (see below) to a Grantee (see below). States differ as to the formalities required and whether or not a deed must be recorded in order to be valid.

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.

Devise – A gift of real property under a will, as distinguished from a gift of personal property.

Devisee – A person who receives real property through a will.

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. The process of disclaiming may be utilized in order to avoid a tax triggering event. 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.

Discretionary Trust – A trust that empowers the trustee to decide the timing and amount of distributions to the beneficiary.

Disinherit – To legally bar someone from inheriting from you at your death.

Domicile – Similar to place of residence but adds the element of intent, i.e. where you intend to eventually return and make your home. Domicile usually is same as residence, but can be different. Intent must be supported by sufficient contacts and actions to establish domicile.

Donee – The recipient of a gift. The term also refers to the recipient of a power of appointment.

Donor – The person who makes a gift. The term also refers to the person who grants a power of appointment to another.

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

Duress – Force, pressure, or excess influence which results in someone doing something that they would not have otherwise done. Actions taken under duress can be either void or voidable.

Education Trust – A trust created to provide for the beneficiary's education. The terms can be crafted to meet the needs of the grantor and beneficiary.

Equitable Title – Beneficiary ownership of an asset; the right to use, spend, consume and/or enjoy an asset or its income.

Escheat – The reversion of property to the state in the absence of legal heirs.

Estate – The money, property and all possessions owned by the deceased person.

Estate Accounting – A record of all of the financial transactions from the date of death to the date when the final payment are made to the beneficiaries. This includes values of all of the assets which made up the estate and all of the payments made using those assets.

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. Several 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.

Exclusion Amount – A term used by the Internal Revenue Code to identify the value of assets owned by a decedent effectively exempt from the federal estate tax.

Executor/Executrix – 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.

Fair Market Value – The value a willing buyer would pay a willing seller, both of whom have knowledge of all material facts, and neither of whom are under any compunction to buy or sell.

Family Allowance – An allowance of money from the estate to the family for support during administration. Applicability and amounts will vary from state to state.

Family Limited Liability Company – Refers to a Limited Liability Company (LLC) formed specifically to aid in the transfer of assets from parents to children in a series of steps designed to reduce estate taxes.

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.

Family Office – A group of professionals that oversee and coordinate the legal, tax, accounting and business aspects of one or more families with large estates. .

Federal Estate Tax – A transfer tax levied on the right to transfer property at death, imposed upon and measured by the value of the taxable estate left by the decedent.

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. When the acting fiduciary is a company/organization, they are often referred to as a Corporate/Professional Fiduciary.

Form 706 – The IRS form for reporting a decedent's estate tax obligation. The form is due nine months from the date of death with 6 month extension available upon request.

Form 709 – The IRS form for reporting lifetime gifts and generation skipping transfers. Each person must file a form 709 on or before April 15 each year for all reportable transfers of the previous calendar year.

Form K-1 – The IRS form for reporting distributions from pass through entities (LLCs, Partnerships) and distributions of income from trusts.

Funding a Trust – The process of transferring ownership of assets into a trust.

General Power of Appointment – A power given to someone which gives the donee a right at any time to designate the property to parties that may include the donee, the donee's estate, the donee's creditors, or the creditors of the donee's estate. Contrast this to a Special, or Limited Power of Appointment where the power does not include the rights to direct the assets to any of: the donee, the donee's estate, the donee's creditors, or the creditors of the donee's estate. The difference is that at death, any assets over which the decedent had a General Power of Appointment is included in his or her taxable estate (although not usually in a probate estate) while assets over which the decedent had a Limited Power of Appointment is not included in his or her taxable estate.

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.

Generation Skipping Trust – Generally defined in IRC Sec. 2611(b) as any trust that has junior generation beneficiaries in more than one generation below the grantor's generation (also referred to as a Dynasty Trust).

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.

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 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 assets will not be included in the grantor's estate for federal estate tax purposes.

Grantor Retained Annuity Trust – An irrevocable trust formed as part of an estate plan with the goal of passing assets without payment of estate tax. The trust pays a fixed annuity to the grantor for a defined term, with the remainder passing either outright or in further trust for noncharitable beneficiaries, typically the grantor's children.

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 adjusted for inflation.

Guardian – An individual or professional fiduciary 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.

Guardianship – A legal proceeding in which a person is appointed by the court as guardian to manage and make decisions for an incapacitated person involving his/her care and medical needs.

Guardian Ad Litem – A neutral party (usually an attorney) appointed by the court for a particular purpose in a legal proceeding involving a minor or legally incapacitated person in order to represent his/her best interests.

Healthcare 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.

Holographic Will – A will which, depending on the requirements of state law, is either: 1) entirely in the handwriting of the testat(or)(rix); or 2) the material portions are in the handwriting of the testat(or)(rix). Additional requirements vary by state.

Incapacitated Person – As defined in the Colorado Probate Code, an incapacitated person is an individual other than a minor, who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.

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.

Income Beneficiary – The person who will receive the income from a trust for a specified period of time (e.g., the beneficiary's life). See also, Remaindermen.

Inheritance Tax – Any death tax which is levied by a state government upon the takers of a Decedent's property as opposed to a tax on the estate as a whole.

Insolvent Estate – An estate where the total assets are smaller than the total liabilities (including debts, funeral expenses, etc.)

Inter Vivos – Made during life.

Inter Vivos Trust – A trust created during the settlor's lifetime. It became operative during lifetime as opposed to a trust created under a will (testamentary trust, see below), which does not become operative until the testator dies. An inter vivos trust can be either revocable or irrevocable. The Revocable Inter Vivos trust is the commonly called Living Trust. Irrevocable inter vivos trusts are usually advanced tax planning tools.

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/Intestacy – 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.

IRA – Individual Retirement Account; allows for tax-deferred retirement savings.

Irrevocable – Once made, cannot be changed or amended by the Grantor without a court order.

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.

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

Lapse – A situation where the beneficiary dies before the testator, and thus the gift contemplated to such beneficiary lapses.

Legal Competence – Generally, only persons over the age of 18 may make contracts or perform testamentary acts (create a will or name a beneficiary).

Legatee – A person receiving personal property through a will.

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).

Last Will and Testament – The traditional term referring to a will. It was an outgrowth of the old English law under which a will was a disposition of real estate and a testament was a disposition of personal property. The two terms originally meant different things, but the difference is no longer recognized.

Legacy – A gift of personal property by will. It would perhaps be more traditionally proper to use the term bequest to include any disposition by will, the term devise to cover gifts of real estate, and the term legacy to cover gifts of personal property. However, both at law and in common practice, these terms are not used with any great respect for this distinction and often appear more or less interchangeably.

Letters of Administration – Written documents, authorized by the judge in an intestate matter, or a proceeding for a protected person (minor or mental incapacity) which authorizes the person named therein as Conservator, Guardian of the Assets, Executor, Personal Representative, or other named fiduciary appointed by the court to perform all acts necessary to administer the estate. Usually with each copy is certified by the court and signed by the Court Administrator, Registrar, or other court official. Often, third parties require Letters to have been certified by the court or the Court Administrator, Registrar, or other court official.

Letters of Guardianship/Conservatorship – Written documents, authorized by the judge in guardianship proceeding for a "ward" or in a conservatorship proceeding for a "protected person" which authorizes the person named therein as Guardian or Conservator (i.e. "fiduciary") appointed by the court to perform all acts necessary to carry out such role. Often, third parties require Letters to have been certified by the court or the Court Administrator, Registrar, or other court official.

Letters Testamentary – Written documents, authorized by the judge in a testate matter which authorizes the person named therein as Executor or Personal Representative to perform all acts necessary to administer the estate. Often, third parties require Letters to have been certified by the court or the Court Administrator, Registrar, or other court official.

Limited Power of Appointment – A power given to someone which gives the donee a right at any time to designate the property to parties that specifically does not include the right to give the property to either one or more of: the donee, the donee's estate, the donee's creditors, or the creditors of the donee's estate. Contrast this to a General Power appointment where the power does, or may, include the rights to direct the assets to any of: the donee, the donee's estate, the donee's creditors, or the creditors of the donee's estate. The difference is that at death, any assets over which the decedent had a Limited Power of Appointment is not included in his or her taxable estate while the assets over which the decedent had a General Power of Appointment is included in his or her taxable estate (although not usually in a probate estate).

Liquid Assets – Cash or assets that can be readily converted into cash without any serious loss of principal (for example, CDs or life insurance paid in lump sum). This is a very important concept to keep in mind when planning future transfers, to pay for expected tax obligations, creditors, or business associates (see Buy-Sell Agreements, above).

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."

Living Will – A written expression of an individual's wishes concerning life-sustaining procedure in terminal illness and imminent death situations. Also known as an Advance Medical Directive (see above). There are considerable differences from state to state as to what forms are allowed or required, the formalities necessary, and the acts of the agent, which can be authorized or directed. There are also considerable differences from state to state as to the acceptance and enforcement of such directives created in another state (e.g. this is unlike the rule that a will, or a marriage, which is valid in one state must be recognized by all states.) Watch for considerable evolution in this legal area over the next decades.

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 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.

Medical (Durable) Power of Attorney – A type of power of attorney which appoints an agent to provide informed consent (or informed refusal) to medical and health related matters. A medical durable power of attorney covers a broader spectrum of situations and medical procedures than a living will can.

Medicare Set-Aside Trust (MSA) – A predetermined amount of money set aside from the settlement of a personal injury case (always used in worker's compensation suits and in some cases, a third-party liability suit) on behalf of a plaintiff who is a Medicare recipient. The funds are typically held in a trust and used to cover projected lifetime medical costs covered by Medicare.

Mental Competence – The mental ability to be able to do a certain thing. Traditionally, there have been different standards for capacity to make contracts than for making a testamentary act.

Mirror Wills – Two people, usually spouses, can have wills that are identical with the exception of referring to each other as the heir. Unlike a contract to will, the survivor is free to change the terms after the first person dies. Also referred to as "Reciprocal Wills".

Non-Grantor Trust – A trust, which was created either while the grantor was alive (irrevocable inter-vivos trust, see above) or at the testator's death (testamentary trust, see below) that is deemed irrevocable and considered a separate taxpayer. The technical determination as to whether or not a trust is a grantor trust (see above) or a non-grantor trust is whether or not the grantor retained one or more powers listed in IRS Code §671 -679.

Non-Liquid Assets – Cash or assets that cannot be readily converted into cash without serious loss of principal (for example, CDs or life insurance paid in lump sum). Is a very important concept to keep in mind when planning future transfers and it is likely that there will be tax obligations, or requirements to pay creditors, or business associates.

Non-Probate Property – Any property that passes outside the probate administration of the estate. It passes other than by will or the intestacy laws (for example, jointly held property, beneficiary designations on retirement plans, POD/TOD designations) or by contract (for example life insurance proceeds payable to a named beneficiary, or property in an inter vivos trust). Important note, while the mechanics of the transfer avoided probate proceedings, some states have probate laws which may make these assets subject to the probate proceedings to pay creditors. In addition, all non-probate transfers are fully includable in the decedent's taxable estate. The manner of passing the asset does not matter to the IRS, only that the decedent owned it, or had sufficient control over it at time of death, and that someone else received the asset by reason of the decedent's death.

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 sitused 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.

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.

Pay-On-Death (POD) Account – method of providing for a beneficiary-like transfer at death of accounts at a banking institution which does not need probate. This needs to be authorized by state banking law. Not all states have POD arrangements. In states without such laws, one can use a "Totten Trust" (see below) to provide a similar result. For securities institutions, the corresponding method is known as Transfer on Death or TOD.

Pecuniary Bequest -A provision in a will or a trust which makes a bequest of a specific dollar amount.

Per Capita At Each Generation Distribution – Most modern method of dividing a decedent's estate, which combines the best properties of Per Stirpes and Per Capita. Each branch of the family lines is treated equally as in Per Stirpes. As in Per Stirpes, the most senior members (generationally) of the branch take for that branch. However, if there are multiple members of a generation, which take because they all are senior in that branch, each member of that generation takes equally from all the assets, which would go to that generation from all branches (i.e. Per Capita, but only for the amount that generation takes). Comes from proposed provisions of the Uniform Probate Code II, not adopted yet in many states, but can be written in wills and/or trusts to overwrite the default law.

Per Stirpes – A Latin phrase meaning "per branch" and is a method for distributing property by representation or 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.

Personal Property – Any property that is not real property or an interest in real property.

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

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

Post-Nuptial Agreement – A contract entered into by a couple after marriage and usually pertaining to issues of support and property distribution in the event of a subsequent dissolution of marriage or death of either party. Many, but not all states allow these agreements and those that do allow them may differ in required formalities and enforceability of various terms and provisions.

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 – A document, signed while you are still competent, appointing someone you name as your "agent" or "attorney-in-fact" to handle your affairs. "General" powers of attorney convey a broad range of authority, while "special" or "limited" powers of attorney are narrower and limited to specific activities or transactions. 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.

Pre-Nuptial Agreement – Also known as an Antenuptial Agreement. A contract entered into by a couple prior to marriage and usually pertaining to issues of support and property distribution in the event of a subsequent dissolution of marriage or death of either party. All states allow these agreements, although states differ in required formalities and enforceability of various terms and provisions.

Pretermitted Child – A person who may become an heir by birth or adoption subsequent to the date of a will's execution.

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. The person who gives authority to an agent to act for him or her in a power of attorney is also referred to as the principal.

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.

Probate Property – Real or personal property that is passed under the terms of a will; if there is no will, it passes under the intestacy laws (for example, individually held property or one-half of community property).

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

Protected person –As defined in the Colorado Probate Code, a minor or other individual for whom a conservator has been appointed or other protective order has been made.

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.

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.

Quitclaim Deed – A deed that transfers interests in real estate without guarantees.

Real Property – Land, or interests in land and anything attached to the land. Always controlled by the laws of the state where the land is located.

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.

Required Minimum Distribution (RMD) – The amount the owner of a qualified plan must withdraw each year from the qualified plan after the Required Beginning Date.

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.

Respondent – As defined in the Colorado Probate Code, an individual for whom the appointment of a guardian or conservator or other protective order is sought.

Revocable – Can be changed or amended.

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

Right of Election – A surviving spouse's right to claim a share of the deceased spouse's augmented estate rather than accepting the amount provided by the will or intestate succession.

Roth IRA – A special form of IRA for which the owner receives no income tax deduction for contributions, but the account does accumulate tax-deferred. Most significantly, withdrawals from the Roth IRA are <u>not</u> subject to income taxation.

Rule Against Perpetuities (RAP) – The common law principle that limits trusts so that they must end at some point. Several states have modified or even abolished the rule.

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.

Self-Proving Will – A will which contains an "Attestation Clause" which is a paragraph at the end of a Will signed by the witnesses indicating that they affirm by their signatures that they have heard the testator declare the instrument to be his or her will and have witnessed the signing of the will. It will not be necessary to later call the witnesses to testify as their signed and notarized affidavit will stand as proof of the legitimacy of their statement as to their belief as to the capacity of the testator/testatrix and the signing of the will absent of observable undue influence or duress.

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

Separate Property – In general, all property a person acquired prior to a marriage and the assets that person received by gift or inheritance during the marriage.

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.

Spousal Elective Share – The right in most states of a surviving spouse to elect to take a statutory share instead of the amount in the will or trust. Usually it is the share they otherwise would have gotten from the state's laws of intestate distribution instead of the share they were left in the will or trust. Usually spouses cannot be disinherited in a will or trust, while other heirs can be. States differ on who can challenge a will or trust and how it can be challenged for an elective share.

Situs – Physical location, usually of property or trust administration. Important in determining which courts and which state laws govern.

Springing Power of Attorney – A power of attorney (either a traditional or a durable, see above), which becomes operative only when a specified event occurs, such as the principal's physical or mental incompetence or disappearance. While it appears to give the Principal more protection, it practice, it may be much more difficult for the Agent to use as it inherently requires the Agent to prove the incapacity of the Principal with all of the inherent privacy and release issues that proof might entail.

Step-Up Basis – The often used, and misused terms to describe the new basis acquired by the recipient of an inheritance in which the decedent's property is increased to fair market value of the asset on the date of death. It is more properly referred to as an "Adjustment to Basis" as it could easily be a Step-down in basis if the date of death fair market value is below the decedent's adjusted basis. The estate (nor the recipient) gets any tax loss for such downward adjustment.

Supported Decision-Making – the way an adult with a disability or diminished capacity has made or is making his or her own decisions by using friends, family members, professionals, and other people he or she trusts to: Help understand the issues and choices; Ask questions; Receive explanations in language he or she understands; Communicate his or her decisions to others if necessary; or Facilitate the exercise of decisions regarding his or her day-to-day health, safety, welfare, or financial affairs.

Survivor – Usually referring to the surviving spouse in a husband and wife couple. The spouse who survives the decedent's death.

Survivorship – The situation that arises where one person outlives another. The word can be used to describe a clause called "a survivorship clause" which specifies what happens when someone dies before the deceased.

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. (It is important to note that in some states, tenancy is common is the default rule when joint tenancy language is not used.)

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.

Testamentary Capacity – The mental capacity necessary to create a valid document that disposes of a person's asset as a result of their death. The components and tests of this capacity are a function of state law and vary from state to state.

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.

Undue Influence – In a will challenge case, if a person used a position of power over the deceased to "influence" that person to change their will to benefit the person with the power in a way that the deceased otherwise would not have done, it is the use of Undue Influence, which can be the basis to have the will disregarded.

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.

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 Probate Code – A model or uniform law for states regarding probate. Not federally sponsored. UPC reduces the burden and cost of probate. Each state where it is enacted has its own version. However, concepts from the UPC can be found in many state's laws which have not enacted the full UPC. Colorado has the UPC.

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.

Vested Interest – An interest in real or personal property which is absolute, fixed and not contingent, although the right to possession and enjoyment may be postponed until some future date or until the occurrence of some event.

Vested Remainder – A current interest in property that is the absolute right to receive the remainder of property or a trust after the current use or income interest has ended. A remainder interest has current economic value and may be sold or transferred. However, since the use of the subject matter of the property is inherently delayed, a gift of a remainder interest is always a gift of a future interest (see above).

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.

Ward – A person who has been determined by a court of competent jurisdiction to need the protection of the court and has thus been placed by the court of law under the care of a guardian.

Warranty Deed – A deed transferring title to real estate where the person transferring the ownership makes guarantees about the validity of the transfer.

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.

Will Contest – A legal dispute regarding elements of a decedent's will. The dispute could be over whether or not the Will was validly executed, or was a product of duress, fraud, or undue influence, or over ambiguous terms or provisions, which are not consistent with the governing law.