

ESTATE PLANNING GLOSSARY

NOTE: This section will help address many of your questions about estate planning. However, the information contained in this section is for educational purposes only and does not serve as legal advice or opinion. Your particular circumstances or changes in the law may affect whether the information in this section applies to you. You should consult with a tax or estate planning professional licensed in your state before using or relying on any of the information in this section.

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A

AB TRUST: A two trust plan that divides an estate into two groups of assets. The first group is held in an "A" trust (or marital trust) and passes to the spouse under the unlimited marital deduction. The remaining assets are held by a second trust (often referred to as a "B" trust, residuary trust, exemption trust, credit shelter trust, or family trust), in an amount equal to (or less than) the applicable lifetime exclusion amount of the first spouse to die. The assets in the "B" trust are not included in the surviving spouse's estate and flow to the surviving children (or other beneficiaries) free of estate taxes. The advantages of this two trust plan can also be obtained by having one trust that is divided into two specific sub-trusts.

ADVANCE HEALTH CARE DIRECTIVE: A legal document whereby a person authorizes another (his or her "agent") to make medical decisions on the person's behalf in the event the person is no longer able to make such decisions him or herself. In California, one's physician can act on an agent's orders pursuant to a valid Advance Health Care Directive without incurring liability for doing so.

AGENT: A person who acts for another by the latter's authority. The distinguishing characteristics of an agent are that the agent acts on behalf of the principal, the agent does not own title to the principal's property, and the agent has a duty to follow the principal's instructions.

ANNUAL EXCLUSION: The amount of property (presently \$13,000, or \$26,000 for a married couple) that may annually be given to a donee, regardless of the donee's relationship to the donor, free of gift tax. Only gifts of present interests qualify for the annual exclusion.

ANNUITY: The amount payable according to contract or trust annually or at other regular intervals for either a certain or an indefinite period, as for a stated number of years or for life. An Annuitant is another name for the beneficiary of an annuity.

APPLICABLE EXCLUSION AMOUNT: Sometimes referred to as the credit shelter amount or exemption equivalent. In 2009, the applicable exclusion amount is \$3.5 million. This is the amount of taxable transfers that would generate federal gift or estate taxes in an amount equal to the applicable unified credit.

APPLICABLE FEDERAL RATE: The statutory interest rate that must be charged for most loans and installment agreements to avoid imputation of income under the Internal Revenue Code.

ASSETS: The property of a deceased person subject to the payments of his debts and gifts.

ASSET PROTECTION TRUST: An asset protection trust, commonly referred to as an "APT," is a trust arrangement using the laws of a jurisdiction with favorable asset protection laws for such trusts.

ASSIGNEE: A person appointed by another or by the court to do some act or enjoy some right, privilege, or property.

ASSIGNMENT: The transfer in writing by one person to another of the title to personal property. The assignment of stocks or registered bonds may be effected by filling in the form printed on the reverse of the certificate or by the execution of a separate assignment form.

ASSIGNOR: A person who makes a transfer of title or interest in writing.

ATTORNEY IN FACT: An agent who is given written authorization by a principal to transact business for the principal (e.g., through a Durable Power of Attorney).

B

BENEFICIARY: (1) The person for whose benefit a trust is created. (2) The person to whom the amount of an insurance policy or annuity is payable.

BEQUEATH: To give personal property by Will.

BUY-SELL AGREEMENT: An agreement between owners of a business where they arrange to transfer their shares upon death or the occurrence of another event to the other owners or back to the business. A buy-sell agreement is intended to provide continuous control and certainty in the event that one or more owners is unable to run the business.

C

CAPITAL GAINS and LOSSES: A computation for tax purposes that usually equals the difference between the purchase price and the sales price.

CHARITABLE BEQUEST: A gift of personal property to a legal charity by Will.

CHARITABLE DEVISE: A gift of real property to a legal charity by Will.

CHARITABLE LEAD TRUST: A trust for a fixed term of years where a charity is the income beneficiary (of an annuity of a sum certain for a set term or for the life of a beneficiary or a unitrust payment of a fixed percentage of the trust assets paid annually) and the remainder goes to a non-charitable beneficiary.

CHARITABLE REMAINDER TRUST: A trust arrangement where a remainder interest passes to a charity upon the termination or failure of a prior interest.

CHARITABLE ANNUITY TRUST: A trust that provides a sum of not less than five percent of the initial fair market value of the principal, to be paid at least annually to a non-charitable beneficiary, with the remaining principal paid to a charity.

CHARITABLE REMAINDER UNITRUST: A trust that provides a fixed percentage, not less than five percent of the net fair market value of the principal, valued annually, to be paid at least annually to a non-charitable beneficiary, with the remaining principal paid to a charity.

CHARITABLE TRUST: A trust created for the benefit of a legal charity.

CLASS GIFT: A gift to members of the same class (e.g., a class consisting of one's grandchildren).

CODICIL: An amendment to a Will executed with all the formalities of the Will.

COMMUNITY PROPERTY: Property in which husband and wife each have an undivided one-half interest by reason of their marital status. California is a community property state, which means that upon the death of a person with a spouse or registered domestic partner, one-half of the community property belongs to the surviving spouse or partner and the other half to the decedent. Each spouse or partner may dispose of his or her half of the community property in his or her will or trust, or otherwise.

COMPLEX TRUST: A trust in which income may be accumulated or distributed, in the trustee's discretion. Complex trusts are also known as discretionary trusts or accumulation trusts.

CONSERVATOR (OR GUARDIAN OF AN ESTATE): Generally, an individual or institution appointed by a court to care for property (e.g., of an incompetent person or a minor)

CONTINGENT BENEFICIARY: A beneficiary whose interest is conditioned upon a future occurrence that may or may not take place. Unless or until the condition takes place, the interest is only contingent.

CORPUS: The principal of an estate, as distinguished from the income.

COST BASIS: The original cost of property usually based on the purchase price or, in the case of property received from an estate (with a few exceptions), on the fair market value of the property at the death of the deceased.

CREDITOR'S NOTICE: In probate, the notice published stating the decedent's death and the name of the executor or personal representative to whom claims should be presented for payment.

CRUMMEY POWER or CRUMMEY TRUST: A limited power of withdrawal by a beneficiary over trust property that ordinarily lapses within a specified period of time. Since property transferred to a trust may not otherwise create a present interest in a beneficiary, a Crummey power is used to create a present interest and secure an annual exclusion for the donor of the property, permitting trust management of the property for the benefit of the beneficiary as contrasted with an outright gift.

CUSTODIAN: A person who has the duty to safeguard, conserve, and account for property in his or her care.

D

DEATH TAXES: Taxes imposed on property or on the transfer of property at the owner's death; a general term including estate taxes, inheritance taxes, and all succession or transfer taxes connected with the death of the owner of the property.

DECLARATION OF TRUST: An acknowledgement by one holding or taking title to property that he holds the property in trust for the benefit of someone else.

DEED OF TRUST: A deed (usually for real property) conveying property to a trustee; usually used to secure a mortgage interest in real estate.

DEFECTIVE GRANTOR TRUST: An irrevocable trust that is treated as a grantor trust for tax purposes. Usually it is the creator of the trust, or the grantor, who wants to be taxed on the income from the trust.

DEFINED BENEFIT PLAN: A pension plan that guarantees the payment of a specified benefit at retirement age and provides for annual contributions equal to an actuarially determined amount that is sufficient to produce the specified benefit. Typically these plans are governed by federal laws. The primary governing federal laws being ERISA and the Internal Revenue Code section 412.

DEFINED CONTRIBUTION PLAN: A pension plan that provides for an individual account for each participant and for benefits based upon the amount contributed to the participant's account including any income, expenses, gains, or losses. Typically these plans are governed by federal laws. The primary governing federal laws being ERISA and the Internal Revenue Code section 401.

DEVISE: A gift of real property by Will; to be distinguished from bequest.

DIRECT HEIR: A person in the direct line of ascent or descent of the decedent (e.g., a father, mother, son, daughter).

DIRECT SKIP: A generation skipping transfer either by gift or at death to someone (known as a “skip person”) who is two or more generations below the transferor. Such a transfer may trigger a generation skipping transfer tax.

DISCLAIMER: A refusal of any interest in or claim to property. Often done by an heir or beneficiary of an estate for estate planning or tax avoidance purposes.

DISCRETIONARY POWERS: Powers that are left to the judgment/discretion of the trustee under the terms of the trust. Discretionary powers give the trustee the right, but not necessarily the duty, to perform or omit certain actions. Sometimes the discretionary powers are written with certain ascertainable limitations.

DISCRETIONARY TRUST: A trust in which the trustee has discretion to decide how much of the trust income and principal to distribute to a beneficiary.

DISTRIBUTABLE NET INCOME (DNI): All income generated by a trust, less all deductible expenses paid by a trust (whether charged against principal or income). This is a term used to determine the amount of income tax due from the trust or the beneficiaries, depending upon who is to be taxed on such income.

DISTRIBUTION STANDARD: Trust provisions that set a standard for discretionary distributions of a trustee to a beneficiary.

DONEE: One who receives a gift.

DONOR: One who makes a gift.

DONOR ADVISED FUND: An account with a community trust, foundation, or charity that permits a donor to make gifts to the entity and direct where, when, and to whom his or her gifts are distributed. This avoids the need for a donor to create a private foundation in order to direct his or her gifts.

DURABLE POWER OF ATTORNEY: A Power of Attorney that remains effective after the disability or incapacity of the person granting the power. Typically, a person granting a Power of Attorney will provide that it is exercisable only upon his disability or incapacity; this is commonly referred to as a “springing durable power of attorney”.

E

ELECTING SMALL BUSINESS TRUST: A trust that is eligible to own shares of Subchapter S corporations.

ELECTION: The choice of an alternative right or course; for example, the right of a widow to take the share of her deceased husband's estate to which she is entitled under the law, despite a contrary provision in the Will, is known as the widow's election.

EMPLOYEE BENEFIT PLAN: A plan established or maintained by an employer or employee organization, or both, for the purpose of providing employees a benefit, such as a pension, profit-sharing, stock bonus, medical, dental, accident, or disability benefits.

EQUITABLE OWNERSHIP: The interest of a person who has a beneficial right to enjoy property, the legal ownership of which is in another person or entity. A person who holds this interest has "Equitable Title."

ERISA: An acronym for the Employee Retirement Income Security Act of 1974, which set up federal minimum standards for employee benefit plans. The Act also established an insurance program designed to guarantee workers receipt of pension benefits if their defined benefit pension plan should terminate.

ESTATE: *See Gross Estate.*

ESTATE FREEZE: An estate planning strategy designed to prevent the value of an owner's interest in appreciating property from increasing for federal estate tax purposes.

ESTATE PLAN: A definite plan for the administration and disposition of one's property during one's lifetime and at one's death; usually set forth in a Will and one or more trust agreements. It is also designed to minimize costs and taxes to one's estate.

ESTATE TAX: California does not have an estate tax. The federal estate tax is imposed on the "taxable estate" of every decedent who is a citizen or resident of the United States. For individuals dying in 2008, the federal estate tax applies to taxable estates of \$2 million or more, after adjusting for taxable gifts made during lifetime. For individuals dying in 2009, the federal estate tax applies to taxable estates of \$3.5 million or more, after adjusting for lifetime taxable gifts.

EXECUTOR: An individual or a trust institution nominated in a Will and appointed by a court to settle the estate of the testator. If a woman, she is an executrix. Also referred to in some states as a "Personal Representative."