
ESTATE PLANNING VOCABULARY

Applicable Exclusion Amount. (Also known as the “*unified credit equivalent exemption amount*”.) An exclusion from the gross estate before the tax is calculated. Changing over time, in 2009, the Applicable Exclusion Amount was \$3,500,000. In 2010, there is no estate tax, but in 2011, the tax returns with an Applicable Exclusion Amount of \$1,000,000. It is expected that Congress will pass legislation on this during 2010 or early 2011.

Advanced Health Care Directive. A new and more flexible form of the Durable Power of attorney for Health Care discussed below.

Basis. The value used to determine gain or loss for income tax purposes.

Beneficiary. The person who receives the benefit of a transaction (e.g., the beneficiary of a life insurance policy, trust or will).

Charitable Lead Trust. A split interest charitable trust in which the charity receives the income generated by the trust assets for a specified time period with the principal reverting to the settlor (“*Grantor Lead Trust*”) or the settlor’s heirs (“*Family Lead Trust*”) at termination. Depending upon how structured, the settlor may receive either a current income tax or gift/estate tax deduction for the value of the income stream granted to the charity. Duration typically is 5 - 20 years. Primary advantage is to obtain a significant tax deduction without relinquishing ultimate control of the asset.

Charitable Remainder Annuity Trust (CRAT). A split interest charitable trust in which the settlor receives a fixed income during the trust’s life with the principal reverting to the charity at termination. Typically established for a term tied to the settlor’s life. Usually structured to: a) generate a current income tax deduction; b) avoid capital gains tax on a highly appreciated asset; and c) generate a higher overall return than a straight sale and investment of proceeds would.

Charitable Remainder Unitrust (CRUT). A split interest charitable trust in which the settlor receives an income during the trust’s life based on a fixed percentage of the principal value. The principal reverts to the charity at termination. Typically established for a term tied to the settlor’s life. Usually structured to: a) generate a current income tax deduction; b) avoid capital gains tax on a highly appreciated asset; c) generate a higher overall return than a straight sale and investment of proceeds would; and d) protect the settlor against inflation eroding the income stream’s value. Requires annual trust asset valuation.

Codicil. A document that may modify, add to, subtract from, qualify, alter, or revoke provisions in an existing will. It is signed with the same formalities as a will. A codicil may be revoked, canceled, or destroyed at any time.

Community Property. Real or personal property owned in common by husband and wife as a kind of marital partnership. Either spouse has management and control of the property, however, both must join in a transfer. All property acquired during marriage from earnings and the earnings themselves usually are community property. Usually property acquired by gift or by inheritance is not community property. However, separate property may become community property if they are commingled.

Donor. One who makes a gift. The gift recipient is the donee.

Durable Power of Attorney. A power of attorney which authorizes the agent to manage the principal's assets which survives the principal's physical or mental incapacity.

Durable Power of Attorney for Health Care. A power of attorney which authorizes the agent to make health care decisions for the principal consistent with his or her expressed wishes or best interests. Typically, the agent has the power to accept or deny any care or treatment for the principal's physical or mental condition.

Estate Taxes. Death taxes imposed by the federal government on asset transfers assets at death. The taxes are generally paid by the estate's executor. There is no estate tax for persons dying in 2010.

Executor. The person appointed by a will to take charge of the testator's property after death. He has the legal obligation to marshal the decedent's property, pay his outstanding bills, and then distribute the property under the probate court's supervision.

Fiduciary. A person charged with a duty of trust on behalf of a beneficiary. Executors and trustees are fiduciaries.

General Power of Attorney. A power of attorney which gives the agent **full** authority to transact any and all kinds of business on the principal's behalf. (Also see "**Power of Attorney**" and "**Special Power of Attorney**" below.)

Gift Tax Annual Exclusion. The first \$13,000 of gifts are annually excludable from gift tax liability. The limit is adjusted periodically for inflation.

Guardian. The person who, usually under court supervision, has the legal care and management of the person, property, or both of a child during his minority. In California, minority ends at age 18. A Conservator is a person similarly appointed by the court to care for the person or property of an incompetent adult.

Heir. The person who inherits property under state law.

Inheritance Taxes. California has no inheritance tax.

Intervivos Trust. A trust created by a person during their lifetime. Compare this to a testamentary trust. (Also see "**Irrevocable Trust**" and "**Revocable Trust**" below.)

Irrevocable Trust. A trust, the terms and provisions of which ordinarily cannot be changed, modified, altered, amended, or revoked. Under certain circumstances, a court may make limited changes. Charitable Remainder Annuity Trusts, Charitable Remainder Unitrusts and Charitable Lead Trusts all are irrevocable trusts.

Issue. Generally, lineal descendants (children, grandchildren, etc.) and adopted children. However, a testator can, in his or her will, define issue to exclude adopted children.

Joint Tenancy. A form of property ownership by two or more persons designated as “*joint tenants*”. When a joint tenant dies, his or her interest in the property automatically goes to the surviving joint tenant outside of and beyond the power of the deceased joint tenant’s will.

Life Estate. An interest in property, the term of which is measured by the life of the person holding the interest.

Life Tenant. The person who receives benefits from real or personal property during his or her lifetime only. The benefits stop when he or she dies. The benefits may be rents, income and possibly the use of the property. The life tenant is not necessarily the “*tenant*” occupying the property, such as a lessee or renter.

Marital Deduction. In estate and gift taxation, the amount of property one spouse can give to the other spouse outright or in trust without estate or gift taxation. For decedents dying after 1981, 100% of property passed to a spouse is deductible in computing the transfer taxes. Therefore, the marital deduction is considered unlimited. For persons dying in 2010, there is no estate tax.

Minor. A person who is under the age of legal competence. In California, the age is 18.

Perpetuities, Rule Against. A complicated rule, the purpose of which is to keep property from being frozen in a trust beyond a certain time period. If the trust violates the rule against perpetuities, it is void. The perpetuities clause in trusts provides that the trust terminates automatically at the required time to protect the trust’s validity.

Personal Property. Movable property as contrasted with real property which is fixed in place. Personal property includes money, furniture, vehicles, stocks, bonds, etc.

Pooled Income Fund: A charitable trust maintained by a public charity to which a donor may contribute property retaining a lifetime income interest.

Pour-over Will. A will providing that after probate the decedent’s net assets pass to a trustee who was in charge of a trust in existence before the decedent’s death. The estate executor “*pours over*” the assets into the existing trust.

Power of Appointment. The power, usually given in the will of one person (the power’s donor), to a second person (the power’s donee), which enables the second person to sell, transfer, mortgage, or dispose of property owned by the first person. A power of appointment may be general or special, as defined below.

Power of Appointment (General). Enables the second person to do all the specified acts for himself, his creditors, his estate, or any other person.

Power of Appointment (Special). Limits the second person concerning the persons to whom he can transfer the property over which he has a power of appointment. The limitation may be very specific (e.g., to a group of specified children of the donor or the donee). The second person may never appoint (i.e., “give”) the property to himself, his estate, his creditors or his estate’s creditors because that would defeat the special power’s purpose; namely to limit the donee’s power and thereby keep the property out of his estate for tax purposes.

Power of Attorney. A written authorization given by one person, a “*principal*,” to another, an “*agent*”, to perform certain acts on the principal’s behalf. There are several types of powers of attorneys. (Also see “Durable Power of Attorney,” “Durable Power of Attorney for Health Care,” “General Power of Attorney” and “Special Power of Attorney.”)

Probate. Court proceedings in which the court takes jurisdiction over the executor and the assets of a decedent. The purposes include protection of:

1. The heirs from fraud and embezzlement;
2. The government so that all taxes are paid by the estate; and
3. The decedent’s creditors so that they are paid.

Probate starts with the will being admitted to probate and the executor being issued “*letters testamentary*.” It ends when all taxes and creditors are paid and the assets are accounted for and distributed as provided in the will.

Real Property. An interest in land or property permanently affixed to land such as a building.

Remainder Interest. The residual ownership of property left in trust after a previous owner or life tenant received all the property benefits to which they are entitled. A charity’s interest in a CRAT or a CRUT or a Pooled Income Fund is a remainder interest.

Revocable Trust. A trust, the terms of which can be changed, modified, altered, amended, or revoked. The power to so act is usually reserved by the trust settlor but sometimes is granted to a second person. The revocable trust is popular as a means of avoiding probate, providing estate management for the incompetent, and as a will substitute.

Right of Representation (or “per stirpes”). Refers to a method of dividing property upon a designated beneficiary’s death. The beneficiary’s descendants take the same share as the beneficiary would have received had the beneficiary lived.

Separate Property. In California, a category of property held by a husband or a wife which is not community property but rather is owned separately. Gifts, inheritances, and property

owned before marriage usually are separate property.

Settlor. Also known as the “*Trustor*.” The person who establishes a trust. There can be more than one settlor.

Special Power of Attorney. A power of attorney which gives the agent **limited** authority to transact business on the principal’s behalf. Usually, the power is limited to the signing of specific documents such as a grant deed or deed of trust in a special real estate transaction.

Spendthrift Trust. A trust that provides a fund for a beneficiary’s maintenance, which by its terms insulates the beneficiary’s interest from the beneficiary’s improvidence, incapacity, and creditor’s claims.

Tenancy in Common. A form of holding title to real or personal property by two or more persons. Because there is no right of survivorship, the legal relationship is very different from joint tenancy.

Testamentary Trust. A trust that comes into being only upon a person’s death and his or her will provides for its establishment at death.

Testator. The person who makes a will.

Trust. A legal entity established either by a trust agreement signed by the settlor during his life (intervivos) or after death pursuant to a will (testamentary).

Trustee. The individual or corporation who in a trust has the **bare legal title** to the assets and the power given in the trust to carry out the wishes of the trust’s settlor. The trustee has a fiduciary obligation to the trust’s beneficiaries. Although he has legal title for convenience, the beneficial or equitable title is in fact owned by the beneficiaries.

Unified Credit Equivalent Exemption Amount. (Also known as the “*applicable exclusion amount*”.) Changing over time, in 2009, the Applicable Exclusion Amount was \$3,500,000. In 2010, there is not estate tax, but in 2011, the tax returns with an Applicable Exclusion Amount of \$1,000,000. It is expected that Congress will pass legislation on this during 2010.

Will. The document a person signs to provide for the orderly disposition of his or her assets after death.