

Estate Planning Vocabulary

Basis of property. The value used to determine gain or loss for income tax purposes. The Basis may be the original purchase price or a different amount, depending on the law affecting the transaction.

Beneficiary. The individual or corporation that receives the benefit of a transaction, e.g., a life insurance policy beneficiary, a trust beneficiary under a will.

Codicil. An addition to a will that may modify, add to, subtract from, qualify, alter, or revoke provisions in the will. The codicil is a separate document. It is signed with the same formalities as a will. The codicil can be changed, revoked, canceled, or destroyed at any time.

Community property. Real or personal property that is owned in common by husband and wife as a kind of marital partnership. Either spouse has management and control of the community real and personal property; however, both spouses must join in a transfer of ownership of community real property or lease of that property for more than one year. All property acquired during marriage from earnings, and the earnings themselves, are community property. Property acquired by gift or inheritance is not community property. Spouses can by written agreement change the character of property from separate to community and vice versa.

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

Estate taxes (federal). The death taxes imposed by the federal government on the transfer of assets on death. The taxes are generally paid by the executor of the estate out of estate assets.

Executor. The individual or corporation nominated in a will by a testator to take care of the testator's property after death. Also called a personal representative. The executor is confirmed by the probate court and has legal and business responsibilities and functions under the jurisdiction of the probate court. The executor chooses the attorney to do the legal work for the estate. Executrix is the term for the female executor, although executor is now used for both male and female personal representatives in probate.

Exemption Equivalent. A unified tax credit (see below) is deducted from any estate tax owed. This credit is the tax equivalent of the deduction from the gross estate of an amount called the exemption equivalent. The exemption equivalent is now \$600,000.

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

Future interest-gift tax. A gift by a donor to a recipient, the donee, that the donee does not get the benefit, use, or enjoyment of until sometime in the future. Such a gift cannot take advantage of the \$10,000 annual exclusion, which is reserved for the gift of a present interest. If a parent gives

\$5 in trust to be paid by the trustee to a child in three years, the gift is a future interest.

Generation-skipping tax. The death or lifetime transfer tax imposed on a taxable distribution from or a taxable termination of a generation-skipping trust, which is defined as a trust with two or more generations of beneficiaries belonging to a younger generation than the grantor. The tax is now imposed on direct transfers to grandchildren, after deducting the appropriate exemption.

Gift tax annual exclusion. The federal government allows the donor to exclude \$10,000 of a gift from gift tax liability if the gift is of a present interest to a specific individual donee. A present interest gift is one of which the donee has an immediate unrestricted right of use, benefit, and enjoyment. The payment of school tuition or medical care on behalf of another is usually not treated as a gift and not subject to gift tax.

Grantor. The individual or corporation that makes a grant of property to another person, e.g., grantor of a trust, grantor of a deed of property.

Gross up rule for gift tax. The amount of gift tax paid on gifts made within three years of death is included in a decedent's gross estate. This "gross up" rule eliminates any incentive to make deathbed transfers to remove an amount equal to the gift taxes from the assets of the decedent.

Guardian. The individual (or corporation) who legally is responsible for the care and management of the person, property, or both of an unmarried child during his or her minority. In California, minority now ends at age 18. A guardian also may have authority over the property of a married minor. A conservator is a person who may be appointed to care for the person or property or both of an incompetent adult, or for the person of a married minor.

Heir. The person who inherits property under state law.

Inter vivos trust. A trust created between living people. The grantor (settlor or trustor) is a living person or existing corporation. Compare this to a testamentary trust.

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.

Issue. Generally, children or grandchildren (progeny, offspring, lineal descendants) including 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 with right of survivorship." 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; the property passes outside probate. But holding property in joint tenancy has dangers, including certain tax disadvantages. Consult your attorney before taking title to property in joint tenancy.

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 the benefits from real or personal property during his or her lifetime only. The benefits stop when the person dies. The benefits are 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 marital deduction is the amount of property one spouse can give to the other spouse outright or in a special trust without estate or gift taxation. Under present law the marital deduction is unlimited; therefore 100 percent of property, whether community or separate, passed to a spouse is considered a marital deduction in computing the transfer taxes. But it may be unwise to give all to a surviving spouse.

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 period of years. If the trust violates the rule against perpetuities, it is void from its beginning. The perpetuities clause in wills and trusts provides that the trusts contained in them terminate automatically at the required time. This protects the legality of the trust.

Personal property. Movable property as contrasted with real property, which is fixed in place. Personal property includes money, furniture, automobiles, and equipment.

Power of appointment. The actual power or legal authority given by the deed, trust, or will of one person, the donor of the power, to a second person, the donee of the power, which enables the second person to sell, transfer, contribute, mortgage, or dispose of property owned by the first person. A power of appointment may be general or special, as defined below:

General power of appointment. Enables the second person to do all those acts for himself, his creditors, his estate, the creditors of his estate, or any other person. (Useful in generation-skipping tax planning.)

Special power of appointment. Limits the second person concerning the persons to whom the second person can transfer the property over which he has a power of appointment. The limitation of appointment can be very specific, e.g., to a group consisting only of the children of the first person, or the children of the second person. But never can the second person appoint, i.e., "give," the property to himself, his estate, his creditors, or the creditors of his estate, because this would defeat the purpose of the special power, namely, to keep the appointive property from being taxed in the estate of the second person on his death.

Pour-over will. A will that provides for the transfer, after or during the probate court proceeding, of the net assets of the deceased person from the executor's control to the control of a trustee who is in charge of a trust that was in existence immediately before the death of the deceased person. The executor pours over the assets into the open vessel of the existing trust.

Present interest. See Gift tax annual exclusion.

Probate. The court proceedings in which the probate court has jurisdiction over the executor and the assets of the deceased person. The purposes of probate include protection of:

- (1) The heirs from fraud and embezzlement;
- (2) The federal, state, and local governments so that all taxes are paid by the estate; and
- (3) The creditors of the deceased person so that they are paid.

Probate starts with the will being admitted to probate and the executor being granted "letters testamentary." Probate ends after all taxes are paid, creditors are paid, and assets are accounted for and distributed as provided in the will. Probate lasts approximately nine months to two years or more, depending on the complications in the estate.

QTIP Trusts. A special trust designed for the benefit of a surviving spouse under the requirements of the Internal Revenue Code that permit the assets transferred to that trust to escape death taxes on the death of the first spouse to die. The technical requirements are strict and must not vary from the Internal Revenue Code.

Quasi-community property. In California only, quasi-community property is (generally) property acquired by either spouse while living outside California, that, if it had been acquired in California, would have been community property. For federal estate tax purposes, quasi-community property is treated as separate property.

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 the interest of a previous owner or the life tenant has terminated.

Reversionary interest. The future return-to-ownership interest in property by a person who for a period of time has surrendered his or her ownership in trust or outright to another person. After that period, the property "reverts" or comes back to the original owner.

Revocable trust. A trust whose terms and provisions can be changed, modified, altered, amended, or revoked. The power to do all this is usually reserved by the person who created the trust, (the settlor) but sometimes the power may be given by the creator to a second person. The revocable trust is popular as a means of avoiding probate and as a substitute for a will. The revocable trust is often used for aged people to protect themselves and their assets from the expense and delays of conservatorships. Before using a revocable trust, a person should consult with an attorney who is experienced with revocable trusts; promoters are abusing the use of the revocable trust.

Right of representation or per stirpes. Refers to a method for dividing property among the descendants when the original beneficiary has died. The descendants of that beneficiary take the

same share or right that the beneficiary would have received had the beneficiary lived. Contrast this with per capita division in which each beneficiary (e.g., grandchild) receives the same amount as the other beneficiaries of the same relationship (i.e., the other grandchildren).

Settlor. The person who creates a trust. That person can also be called the trustor.

Separate property. In California, a category of property held by husband or wife that is not community property, but that is owned separately by the husband or wife. The problems of separate property arise generally in marital dissolution and, in estate planning, in the determination of death taxes. Gifts, inheritances, and property owned before marriage are usually considered separate property.

Spendthrift trust. A trust that provides a fund for the maintenance of a beneficiary, which by its terms shelters the beneficiary's interest from the beneficiary's improvidence, incapacity, and the claims of creditors.

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 to this property, the legal relationships and results are very different from joint tenancy. Title to property should be taken by a person only after consulting with an attorney because the effect on income tax, estate tax, death rights, etc., varies depending on how title is held.

Testamentary trust. The trust that comes into being only as a result of the death of a person whose will provides for the creation of the trust after his death; hence, the term "testamentary."

Testator. The person who makes a will. Testatrix is the female equivalent, but it is common as a convenience to use the term testator for either a man or a woman.

Trust. A legal entity established either by a trust agreement signed by a person during the person's life or arising after death from a will or testamentary trust. The trust is governed by the terms in the documents. A trust can last as long as 50 years, if not longer, so must be written with great care.

Trustee. The individual or corporation who in a trust has bare legal title to the assets and has the power given in the trust to carry out the wishes of the person or persons (settlor or trustor) who created the trust. The trustee has a fiduciary obligation to the trust's beneficiaries. The trustee is subject to strict regulation. Although the trustee has legal title for convenience, the beneficial or equitable title is in fact owned by the beneficiaries. When there is more than one trustee, the trustees are called co-trustees.

Trustor. The person who establishes the trust. There can be more than one trustor.

Unified estate and gift tax rates. Effective January 1, 1977, the separate estate and gift tax schedules were combined into a single new tax schedule, so that the cumulative value of taxable gifts made during life is added to the value of the decedent's estate in determining the applicable estate tax rates. The same tax rates apply to both lifetime gifts and to the estate left at death. The

annual exclusion per donee is now \$10,000, and the availability of the annual exclusion still gives the attorney opportunities to recommend a gift program to the client. Gifts of school tuition payments and payments of medical care which the donor paid directly to the providers are no longer taxable as gifts. See Gift tax annual exclusion.

Unified tax credit. The unified "credit" is a dollar amount deducted from a "tentative tax." The unified tax credit amount is now \$192,800. The financial impact of the unified credit is that, in most instances, an estate of up to \$600,000 will not be subject to estate or gift tax.

Will. The document a person signs to provide for the orderly disposition of his or her assets after death, in accord with that person's wishes to provide for family security and protection and to minimize death taxes.