

Estate Planning Jargon

Defining terms commonly used in estate planning

Using consistent terminology when discussing estate planning issues can help reduce confusion.

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ESTATE PLANNING DOCUMENTS

Term	Description
Will (or Last Will and Testament)	Legal document used in a probate setting to nominate an Executor to administer a deceased person's estate and direct the disposition of the estate.
Codicil	Amendment to a Will.
Bequest	Distribution of property to another person or entity pursuant to the terms of a Will.
Trust	Legal entity designed to own assets. Created by a legal document outlining the parties, trustee powers, direction as to investment and distributions, etc.
Revocable Trust	Trust that can be amended or revoked (in part or in whole) by the Grantor.
Irrevocable Trust	Trust that cannot be amended or revoked by the Grantor.
Living Trust	Trust created during the Grantor's lifetime. Often refers to a Revocable Living Trust, but a trust created during the Grantor's lifetime could also be irrevocable.
Testamentary Trust	Trust created upon the Grantor's death, e.g., according to the terms of the Grantor's Will.
Power of Attorney	Legal document giving an Agent limited or broad authority to act on behalf of the Principal.
Financial Power of Attorney	Power of Attorney that gives an Agent the authority to make decisions regarding the Principal's property and other financial affairs.
Medical Power of Attorney	Power of Attorney that gives an Agent the authority to make decisions regarding the Principal's health care.
Durable Power of Attorney	Power of Attorney that is effective even during the Principal's incapacity.
Springing Power of Attorney	Power of Attorney that becomes effective only upon the Principal's incapacity.

HIPAA Authorization	Legal document (or part of a Power of Attorney or Trust) that gives a Personal Representative named in the document (or an Agent or a Trustee) the right to request and receive the Principal's personal medical information that is otherwise kept private.
HIPAA	Health Insurance Portability and Accountability Act of 1996.
Living Will	Legal document in which one expresses their wishes regarding the application and withholding/withdrawal of medical treatment in the event they are permanently unconscious or terminally ill.
Advance Directive	Another name for a Living Will. May include provisions like those in a Medical Power of Attorney, e.g., appointment of an Agent to make health care decisions.

PARTIES TO THE ESTATE PLAN

Term	Description
Grantor (or Settlor or Trustor)	Person who creates a trust.
Trustee	Person or entity named by the Grantor to carry out the provisions of a trust.
Beneficiary	Person or entity named by the Grantor to receive distributions from a trust.
Testator	Deceased person whose estate is being administered.
Executor/Executrix	Person or entity named in a Will and appointed by the probate court to administer a deceased person's estate. May be referred to in the Will or elsewhere as a Personal Representative.
Personal Representative	See "Executor/Executrix" and "HIPAA Authorization."
Agent (or Attorney-in-Fact)	Person named in a Power of Attorney to make decisions on behalf of the Principal.

ACCOUNT AND ESTATE ADMINISTRATION

Term	Description
Probate	Process by which a deceased person's estate is administered. Typically involves opening a case with the local probate court, submitting a copy of the deceased person's Will, an inventory of assets owned by the deceased person before their death, etc.
Letters Testamentary	Court document giving the Executor the authority to carry out the terms of a deceased person's Will.
Estate Affidavit	Legal document used in cases involving estates less than a certain state-defined amount where full probate is not necessary and Letters Testamentary will not be issued.

Tenancy in Common	Form of joint ownership where each co-owner can dispose of their interest in the asset. A co-owner's share of an asset held as Tenants in Common passes through their probate estate, i.e., according to their Will.
Joint Tenancy with Rights of Survivorship (JTWROS)	Form of joint ownership where each co-owner has an undivided interest in the asset. A co-owner's share of an asset held as Joint Tenants with Rights of Survivorship passes without probate to the surviving owner.
Tenancy by the Entireties	Form of joint ownership available only to married couples and only in some states. Like Joint Tenancy with Rights of Survivorship, but protected during both spouses' lifetimes from creditors of only one spouse or the other.
Transfer on Death/Pay on Death (TOD/POD)	Agreement that can be added to an account allowing the account to pass without probate to named beneficiaries.
Primary Beneficiary	Beneficiary who will receive an account—often a retirement account or proceeds from an insurance policy—or other asset upon the owner's death.
Contingent Beneficiary	Beneficiary who will receive an account or other asset upon the owner's death if the Primary Beneficiary disclaims or dies before the owner.
Required Minimum Distribution (RMD)	Amount that must be withdrawn from an IRA (Individual Retirement Account) or other retirement account. In the estate planning context, retirement account beneficiaries must take RMDs after the original owner's death according to IRS rules (which are beyond the scope of this article).
Conduit Trust	Trust with a provision that requires payment to the trust beneficiary of any distributions to the trust from an inherited retirement account to the trust. Conduit trusts can disregard other beneficiaries in determining the applicable period for RMDs.
Accumulation Trust	Trust that accumulates RMDs and other distributions from inherited retirement accounts owned in the trust. Distributions are typically kept in a separate account within the trust. Accumulation trusts might need to consider other potential trust beneficiaries (remainder beneficiaries) who might receive trust assets after the death of the trust beneficiary in determining the applicable period for RMDs.

ESTATE/TRUST DIVISION AND DISTRIBUTION

Term	Description
Marital Trust	Irrevocable trust for the sole benefit of the surviving spouse and designed to include trust assets in the surviving spouse's taxable estate.
Marital Power of Appointment Trust	Marital Trust that gives the surviving spouse a Testamentary General Power of Appointment to qualify for the Unlimited Marital Deduction at the first death and result in inclusion of trust assets in the surviving spouse's taxable estate at the second death.

Marital QTIP Trust	Marital Trust (other than a Power of Appointment Trust) that meets IRS requirements to qualify for the Unlimited Marital Deduction upon the first death and result in inclusion of trust assets in the surviving spouse's taxable estate upon the second death. To qualify, the trust must (1) be irrevocable, (2) benefit only the surviving spouse during their lifetime, (3) pay—or give the surviving spouse the right to withdraw—trust income, and (4) give the surviving spouse the right to convert principal into income-producing property.
QTIP	Qualified Terminable Interest Property.
Credit Shelter/Bypass Trust	Trust created upon the death of a married person for the benefit of the surviving spouse and perhaps others, e.g., children. Designed to use the deceased spouse's estate tax exemption to keep assets and future growth in the value of those assets available to the surviving spouse but out of the surviving spouse's taxable estate. May also be called a Family Trust, although—like many other terms—a "Family Trust" may be used for other purposes.
State QTIP	Part of a Credit Shelter/Bypass Trust designed to be excluded from the surviving spouse's taxable estate for Federal purposes but <u>not</u> for state purposes. The exemption in states that have their own estate tax and estate tax exemption is lower than the Federal exemption. Therefore, funding a Credit Shelter/Bypass Trust up to the deceased spouse's Federal exemption could mean state estate tax at the first death. Instead, placing the difference between the state and Federal exemptions in a State QTIP Trust avoids Federal estate tax at both the first and second deaths, and defers state estate tax until the second death.
DSUEA	Deceased Spouse's Unused Exemption Amount. Since there is no estate tax on assets that a deceased person leaves to the surviving spouse or a Marital Trust, the deceased spouse's Federal estate tax exemption could go unused. However, the surviving spouse can file an estate tax return to keep the DSUEA and use it—in addition to the surviving spouse's own Federal estate tax exemption—to avoid estate tax at the second death.
Portability	Use of the DSUEA by the surviving spouse. A few states also allow portability of the deceased spouse's state estate tax exemption.
Reverse QTIP	Election as to some or all of a QTIP Trust that allows application of the deceased spouse's unused GST exemption to the trust, even though it will be included in the taxable estate of the surviving spouse. Unlike the Federal estate tax exemption, the GST tax exemption is not "portable." Thus, a Reverse QTIP Trust may be necessary to preserve the deceased spouse's GST tax exemption and avoid GST tax otherwise applicable to trusts for descendants.
Disclaimer	Election by a beneficiary to refuse to accept some or all of an inheritance or distribution from a trust. The beneficiary/disclaimant is treated as if they were no longer living, and the inheritance/distribution then passes accordingly. If the disclaimed is a Qualified Disclaimer, the beneficiary/disclaimant is not treated as having made a taxable gift to the ultimate recipient.
Qualified Disclaimer	Disclaimer that meets four criteria. First, the disclaimer must be in writing and identify the asset disclaimed. Second, it must be made within 9 months of the transfer, e.g., the date of the transferor's death. Third, the disclaimant must not have accepted any interest in the asset. Fourth, the asset must pass without any direction from the disclaimant.

Per capita	Example: Client has 3 children—A, B, and C. A has 2 children—X and Y. B has 1 child—Z. C has no children. Client’s estate plan leaves \$300,000 to the children, per capita. However, A and B die before Client. C, X, Y, and Z each receive \$75,000.
Per capita by generation	Same example as above, but Client’s estate plan leaves \$300,000 to the children, per capita by generation. C receives \$100,000 (one-third of \$300,000). X, Y, and Z each receive \$66,667 (one-third of the remaining \$200,000).
Per stirpes	Same example as above, but Client’s estate plan leaves \$300,000 to the children, per stirpes. C receives \$100,000 (one-third of \$300,000). X and Y each receive \$50,000 (one-half of one-third of \$300,000). Z receives \$100,000 (one-third of \$300,000).
Power of Appointment	Right of a Beneficiary to redirect trust principal. May be effective during lifetime and/or upon death (“testamentary”).
Limited Power of Appointment	Right of a Beneficiary to redirect trust principal other than to themselves, their creditors, their estate, and creditors of their estate. May be further limited, e.g., exercisable in favor of only the Beneficiary’s descendants or Grantor’s descendants other than Beneficiary. Despite what can be fairly broad discretion, trust assets subject to a limited power of appointment are not included in the Beneficiary’s taxable estate (which means they would not be subject to estate tax but also would not receive a step-up in cost basis).
General Power of Appointment	Right of a Beneficiary to redirect trust principal even to themselves, their creditors, their estate, and/or creditors of their estate. Trust assets subject to a general power of appointment are included in the Beneficiary’s taxable estate (which means they would receive a step-up in cost basis but might be subject to estate tax).

TRANSFER TAX

Term	Description
Cost Basis	Cost at which asset was acquired.
Step-Up (or Step-Down)	Adjustment, upon an owner’s death, in the cost basis of an asset to the value as of the date of death (or as of the Alternate Valuation Date, if applicable). Some assets are not eligible for a step-up in cost basis.
Alternate Valuation Date	6 months after the date of death. Available when determining the value of assets for estate tax and other purposes if (1) the alternate value is lower than the value of the asset as of the date of death and (2) use of the alternate value would reduce Federal estate tax.
Annual Exclusion	Amount that may be given each year from one person to another without gift tax and without filing a gift tax return. Currently \$16,000 (in 2022).
Gift Splitting	Technique by which a married donor can double Annual Exclusion gifts. Involves a gift tax return in which one spouse indicates that a gift was made equally by both spouses and uses each of their Annual Exclusions.

Crummey Powers	Right of an irrevocable trust beneficiary to withdraw gifts to the trust. Typically exercisable immediately after the gift is made and within 30 days after the beneficiary receives notice of the gift. Qualifies gifts to an irrevocable trust for the annual gift tax exclusion.
Gift/Estate/GST Tax Exemption	Total amount that may be transferred during life without gift tax and/or upon death without estate tax. Currently, the Federal gift, estate, and GST tax exemption is unified at \$12,060,000 (in 2022), but some states assess their own estate tax and have their own exemptions. Lifetime exemption gifts reduce the donor's gift and estate tax exemption (but not the GST tax exemption unless those gifts are to "Skip Persons").
Unlimited Marital Deduction	Allowance that an uncapped amount can pass to a surviving spouse or specially-designed Marital Trust for their benefit without Federal estate tax.
"5 & 5"	The greater of \$5,000 and 5% of trust principal per year. A beneficiary of an irrevocable trust may be given the right to withdraw "5 & 5" without causing the value of trust assets to be included in their taxable estate.
"HEMS"	"Health, Education, Maintenance, Support." Under Internal Revenue Code §2041(b)(1)(A), a Beneficiary who is also serving as Trustee may distribute principal to themselves and assets can still be excluded from their taxable estate as long as principal distributions are limited to those needed for the Beneficiary's health, education, support, and maintenance.
Ascertainable Standard	Phrase used in Internal Revenue Code §2041(b)(1)(A). See "HEMS," which is offered in the Code as an example of an ascertainable standard and has become common language included in trusts where the beneficiary is serving as their own trustee.
GST	Generation Skipping Transfer. Transfer to a person who is more than one generation younger than the transferor, e.g., from a grandparent to a grandchild. There are three types of GSTs: (1) Direct Skip, (2) Taxable Termination, and (3) Taxable Distribution. May trigger GST tax to the extent the value transferred exceeds the transferor's GST tax exemption.
Skip Person	Person who is more than one generation younger than the donor, e.g., a grandchild, but note that, if the grandchild's parent (i.e., the donor's child) is not living, the grandchild is not deemed to be a skip person. Also includes unrelated person who is more than 37.5 years younger than the donor.
Direct Skip	Transfer (GST) directly from a donor to a Skip Person. Subject to GST tax to the extent the value exceeds the donor's available GST tax exemption. Tax payable by the donor.
Taxable Distribution	Distribution from a trust to a Skip Person. Subject to GST tax to the extent the trust was not exempt from GST tax. GST tax payable by the beneficiary.
Taxable Termination	Distribution from a trust to a Skip Person upon the termination of the trust or death of the beneficiary. Subject to GST tax to the extent the trust was not exempt from GST tax or included in the beneficiary's taxable estate. GST tax payable by the trust.