

Probate Terms Definitions

A

Administrator

A person or institution appointed by the court (in the absence of a will otherwise naming an executor) to distribute the assets according to state intestacy laws and to pay creditors and taxes. The intestate personal representative.

Affidavit

A written statement made under oath.

Age of majority

The age when a person acquires all the rights and responsibilities of being an adult. In most states the age of majority is 18.

Assignment

The transfer of legal rights from one person to another.

B

Beneficiary

Person named in a will or insurance policy to receive money or property; person who receives benefits from a trust.

C

Capital gain

The profit made from the sale of a capital asset, such as real estate, jewelry, or stocks and bonds.

Capital loss

The loss that results from the sale of a capital asset, such as real estate, jewelry or stocks and bonds.

Chapter 13 bankruptcy

A type of bankruptcy in which a person keeps his assets and pays creditors according to an approved plan.

Codicil: An amendment to a will.

Chapter 7 bankruptcy

A type of bankruptcy in which a person's assets are liquidated (collected and sold) and the proceeds are distributed to the creditors.

Common-law marriage

In some states, a couple is considered married if they meet certain requirements, such as living together as husband and wife for a specific length of time. Such a couple has all the rights and obligations of a traditionally married couple.

Community property

Property acquired by a couple during their marriage. Refers to the system in some states for dividing the couple's property in a divorce or upon the death of one spouse. In this system, everything a husband and wife acquire once they are married is owned equally (fifty-fifty) by both of them, regardless of who provided the money to purchase the asset or whose name the asset is held in.

Conservator

Person or institution designated by the court to protect the interests of an incompetent and act on his/her behalf. Sometimes called a guardian.

Contract

An agreement between two or more parties in which an offer is made and accepted, and each party benefits. The agreement can be formal, informal, written, or oral. Some contracts are required to be in writing in order to be enforced.

Creditor

A person (or institution) to whom money is owed.

Creditors' claims period

Specific time frame, as defined by state probate laws, during which creditors can file a claim against a decedent's estate.

Custodian

Under the Uniform Transfers to Minors Act, the person appointed to manage and dispense funds for a child without court supervision and accounting requirements.

D**Debtor**

Person who owes money.

Decedent

Person who passed away.

Default

The failure to fulfill a legal obligation, such as neglecting to pay back a loan on schedule.

Docket number

Number designation assigned to each case filed in a particular court.

E**Easement**

Gives one party the right to go onto another party's property. Utilities often get easements that allow them to run pipes or phone lines beneath private property.

Elective share

Refers to probate laws that allow a spouse to take a certain portion of an estate when the other spouse dies, regardless of what was written in the spouse's will.

Emancipation

When a minor has achieved independence from his or her parents, often by getting married before reaching age 18 or by becoming fully self-supporting.

Encumbrance

Any claim or restriction on a property's title.

Escrow

Money or documents, such as a deed or title, held by a third party until the conditions of an agreement are met. For instance, pending the completion of a real estate transaction, the deed to the property will be held “in escrow.”

Escrow account

A special account in which a lawyer or escrow agent deposits money or documents that do not belong to the lawyer or the law firm.

Estate

The assets and liabilities left by a decedent.

Ex parte

Latin that means “by or for one party.” Refers to situations in which only one party appears before a judge.

Executor

A person or institution named in a will and appointed by the court to oversee and manage an estate, including the distribution of assets and satisfaction of creditors and taxes.

F**Family limited partnership**

A legal partnership between members of a family for the management and control of property.

Fiduciary duty

An obligation to act in the best interest of another party. For instance, a corporation’s board member has a fiduciary duty to the shareholders, a trustee has a fiduciary duty to the trust’s beneficiaries, and an attorney has a fiduciary duty to a client.

Foreclosure

When a borrower cannot repay a loan and the lender seeks to sell the property.

G**Grantor**

The person who sets up a trust.

Guardian

Person appointed by the court to take care of minor children or incompetent adults.

Sometimes called a conservator.

Guardian ad litem

Latin for “guardian at law.” The person appointed by the court to look out for the best interests of the child during the course of legal proceedings.

H**Heir**

Person entitled to inherit property of the decedent.

Holographic will

A handwritten will.

I**Intestate**

Dying without a legal will.

Irrevocable trust

A trust created during the maker’s lifetime that does not allow the maker to change it.

J**Joint and survivor annuity**

A form of pension fund payment in which the retired participant gets a check every month. If and when the participant dies, the spouse continues to get a monthly check equal to one-half of the benefit for the rest of his or her life.

Joint tenancy

A way to title (own) property where each person (tenant) owns an undivided interest. When one tenant dies, his or her interest passes to the survivor.

L**Legatee**

Also known as a beneficiary. Person named in a will to receive property.

Lien

A claim against someone's property. A lien is instituted in order to secure payment from the property owner in the event that the property is sold. A mortgage is a common lien.

Living trust

A trust created during the maker's lifetime. Some living trusts are set up so that they can be changed during the maker's lifetime. These are called "revocable." Others, known as "irrevocable," are set up so that they can't be touched.

Living will

A document that states a person's wishes regarding life-support or other medical treatment in certain circumstances, sometimes when death is imminent.

M**Marital exemption**

A tax provision that allows an unlimited amount of property of one spouse to transfer to the other upon death without incurring estate or gift tax.

Minor

A person who does not have the legal rights of an adult. A minor is usually defined as someone who has not yet reached the age of majority. In most states, a person reaches majority and acquires all of the rights and responsibilities of an adult when he or she turns 18.

N**Notary public**

A person authorized to witness the signing of documents.

P**Pension plan**

An employer's program for providing retirement income to eligible employees.

Per stirpes

Latin for “by familial stocks.” Distribution of an estate equally among the members of a group of descendants having a particular degree of kinship (as children), with the issue (that is, the offspring) of a deceased member of that group representing the deceased member, taking the deceased member’s share, and dividing it equally among themselves. For example, if a decedent had three children, one of whom had already died leaving issue, the estate would be divided into thirds, with each living child receiving a one-third share, and the issue (children) of the deceased child dividing a one-third share equally amongst themselves.

Personal representative

A person who manages the legal affairs of a decedent in probate. If the decedent had a will, then the personal representative is known as the Executor (if the Executor is female, Executrix). If the decedent did not have a will and the assets are being distributed according to laws of intestacy, then the personal representative is known as the Administrator (if the Administrator is a female, Administratrix).

Petition for probate

The probate court document that summarizes a will’s provisions and names the heirs.

Power of attorney

The authority to act legally for another person.

Probate

The court supervised process whereby a decedent’s assets are distributed to a decedent’s heirs and creditors are paid back after s/he passes away.

Promissory note

A document in which a borrower agrees (promises) to pay back money to a lender according to specified terms.

Q

Quitclaim deed

A deed that transfers the owner's interest to a buyer but does not guarantee that there are other claims against the property.

R

Real property

Land and all the things that are attached to it. Anything that is not real property is personal property. A house is real property, but a dining room set is not.

Residuary estate

Also known as residue of the estate. Portion of the estate left after bequests of specific items of property are made.

Residuary legatee

The person or persons named in a will to receive any residue left in an estate after the bequests of specific items are made.

Retainer

Refers to the up front payment a client gives a lawyer to accept a case. The client is paying to "retain" the lawyer's services.

Revocable trust

A legal document that may be changed or cancelled that allows you to maintain control of your assets. It is used to avoid probate and for estate planning purposes.

Right of survivorship

In a joint-tenancy, the property automatically goes to the co-owner if one of the co-owners dies. A co-owner in a joint tenancy cannot give away his or her share of the property.

S

Self-proving will

A will accompanied by a sworn statement from witnesses and signed before a notary public.

Spendthrift trust

A trust designed to keep money out of the hands of creditors, often established to protect someone who is incapable of managing his or her financial affairs.

Spousal right

The entitlement of one spouse to inherit property from the other spouse. The right varies from state to state.

Statutory fees

In many states and in the majority of probate matters, the amount an attorney can charge for his or her services is specified by law as a percentage of the gross value of the estate.

T**Tangible personal property**

Anything other than real estate or money, including furniture, cars, jewelry, etc.

Tenancy in common

A type of joint ownership that allows a person to sell his share or leave it in a will without the consent of the other owners. If a person dies without a will, his share goes to his heirs, not to the other owners.

Testamentary trust

A trust created by the provisions in a will. Typically comes into existence after the writer of the will dies.

Testate

Having a legal will.

Testator

The person who makes a will.

Title

Ownership of property.

Totten trust

A bank account in your name for which you name a beneficiary. Upon the death of the named holder of the account the money transfers automatically to the beneficiary.

Trustee

Person or institution that oversees and manages a trust.

W**Will**

A legal document that directs distribution of assets upon death.