

# PROBATE GLOSSARY

*Common terms used in probate, trusts, and estate administration*

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## **Marc Cormier**

Berkshire Hathaway Home Services PenFed Realty

License # 620443 | (301) 660-6272 | [Marc@Help34.com](mailto:Marc@Help34.com)

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## **ABATEMENT**

A proportional diminution or reduction of the pecuniary legacies, when there are not sufficient funds to pay them in full.

## **ADEPTION**

When property mentioned in a will cannot be given to a beneficiary because it no longer belonged to the deceased at the time of death. For example, the particular gift may have been destroyed, sold, or given away between the time of the will and the time of death.

## **ADMINISTRATOR**

A person or institution appointed by a court to act on behalf of the deceased person in connection with the administration of a decedent's estate.

## **ADMINISTRATOR WITH WILL ANNEXED (ADMINISTRATOR CTA)**

An administrator appointed by a court to act on behalf of the deceased person who left a will, but where no nominated executor is willing and able to act.

## **AFFIDAVIT**

A written statement or affirmation made under penalty of perjury that requires notarization.

## **ANCILLARY ADMINISTRATION**

An administration of a decedent's property located in a state other than the state of the decedent's domicile.

## **BENEFICIARY**

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

## **CODICIL**

An addition to a will. The codicil 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, cancelled, 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 or lease for more than one year of community real property or a gift of community personal property. All property acquired during marriage from earnings, and the earnings themselves, are community property. Property acquired by gift or inheritance is separate property, not community property.

## CONSERVATOR

The individual or corporation who legally has charge of the care and management of the person, property, or both of an adult who is unable to provide for his own personal needs or who is substantially unable to manage his financial affairs. Limited conservatorships may be established for developmentally disabled adults.

## CONTINGENT BENEFICIARY

One to whom distribution is dependent upon the occurrence of an event.

## DECLARATION

A written statement made under penalty of perjury.

## DEVISEES AND LEGATEES

Persons named by a decedent in his will. A bequest or devise generally refers to real property and a legacy of money or personal property.

## DISCLAIMER

A refusal to accept, for example, a testamentary gift that is made in a prescribed manner and time.

## DOMICILE

The specific location of a person's permanent residence that determines, for many purposes, the laws that will govern his affairs. A person may have many residences, but he can have only one domicile. The domiciliary proceeding is that created in the jurisdiction of the decedent's domicile.

## DONEE

A person who receives a gift from another.

## DONOR

A person who makes a gift to another.

## ESCHEAT

The term which describes the reversion of property to the state in the event a person dies leaving no valid will and no heirs at law surviving him.

## ESTATE TAXES — FEDERAL

The death taxes imposed by the federal government on the transfer of assets upon death.

## EXECUTOR

The individual or corporation appointed in a will by a testator to take care of the testator's property after his death. Also called a personal representative.

## EX PARTE

A judicial proceeding granted without notice.

## FIDUCIARY

A person charged with a high degree of care who acts on behalf of another. Executors and trustees are fiduciaries.

**GRANTOR**

The individual or corporation who makes a grant (transfer) of property to another person (e.g., grantor of a trust, grantor of a deed of property).

**GUARDIAN**

The individual or corporation who legally has charge of the care and management of the person, property, or both, of a child during his minority.

**HEIR**

The person who inherits property under state law.

**INHERITANCE TAXES**

The taxes imposed, according to the relationship to the decedent, on the person who receives the property.

**INTESTATE**

Refers to someone who dies leaving no will.

**INTER VIVOS TRUST**

A trust created "between the living." The grantor (trustor) is a living person. An inter vivos trust can be either revocable or irrevocable.

**IRREVOCABLE TRUST**

A trust whose terms and provisions cannot be changed, modified, altered, amended, or revoked.

**JOINT TENANCY**

A form of property ownership by two or more persons, often designated as "joint tenants with right of survivorship." Joint tenants always own equal parts of joint tenancy property. When a joint tenant dies, his or her interest in the property automatically goes to the surviving joint tenant.

**LIFE ESTATE**

An interest in property, the term of which is measured by the life of its owner.

**LIFE TENANT**

The person who receives the benefits from the real or personal property during his lifetime only. The benefits stop when he dies.

**MINOR**

A person who is under the age of legal competence.

**PERSONAL REPRESENTATIVE**

This term describes an executor or administrator.

**POWER OF APPOINTMENT**

The actual power of legal authority given by the 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 designate the manner of disposing of the property. A power of appointment may be general or special, as defined below.

## **GENERAL POWER**

Enables the donee to designate himself, his creditors, his estate, the creditors of his estate, or any other person, as owner of the subject property.

## **SPECIAL POWER**

Limits the donee as to the persons to whom he can designate as owners of 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 A's children) but can never be the donee, 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 donee on his death.

## **POUR-OVER WILL**

A will that provides for the transfer, after or during the probate court proceedings, of all or part of the net assets of a decedent's probate estate 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 (inter vivos trust).

## **PRETERMITTED HEIR**

One who would normally be beneficiary of the decedent but who is not mentioned in the will.

## **PROBATE ADMINISTRATION**

The legal process whereby a probate court supervises the marshalling of a deceased person's debts and taxes and orders the property distributed according to decedent's will, or in its absence, to the deceased person's heirs. The probate court has jurisdiction over the personal representative and the decedent's assets.

## **QUASI-COMMUNITY PROPERTY**

In California only, that property acquired by a decedent while living outside California, which, if acquired in California, would have been community property. For federal estate tax purposes, quasi-community property is treated like separate property.

## **REAL PROPERTY**

An interest in land or property permanently affixed to land.

## **REMAINDER INTEREST**

An ownership interest in property that will become a present interest after the present owner or life tenant has received all the property benefits to which he is entitled.

## **RESIDUE**

The remaining part of a decedent's estate after the payments of debts and legacies. Also called "residuary estate."

## **RESIDUARY BENEFICIARY**

One to whom all or part of the residue is distributed.

## **REVERSIONARY INTEREST**

An ownership interest in property that returns to the original owner when the intervening interest expires.

## REVOCABLE TRUST

A trust whose terms and provisions can be changed, modified, altered, amended, or revoked.

## RIGHT OF REPRESENTATION

A method of distribution, sometimes referred to as "per stirpes," whereby the share of distribution of a deceased beneficiary is divided equally among his children.

## SEPARATE PROPERTY

In California, a category of property between husband and wife that is not community property or quasi-community property, but that is owned separately by the husband or wife.

## SETTLOR

Another word for grantor or trustor of a trust. The person who "settles" the assets into the trust.

## 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 relationships and results are very different from joint tenancy. Tenants in common need not hold equal interest, and on the death of a tenant in common, his interest will pass by his will or according to the laws of intestate succession.

## 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." Once in existence, this trust is irrevocable.

## TESTATE

Refers to someone who dies leaving a will.

## TESTATOR

The person who signs the will that disposes of his property; testatrix is the female term. It is common as a convenience to use the term testator for either a man or a woman.

## TOTTEN TRUST

A form of revocable trust, usually a bank account, that allows distribution to the beneficiary upon the death of the trustee, without the need for probate of the asset. Example: John Jones as Trustee for Mary Jones.

## TRUST

A legal entity established either during a trustor's lifetime (inter vivos) or at his death (testamentary). The trust is governed by the terms set forth in the trust documents. A trust must have a trustee, a beneficiary, and a "corpus" or property subjected to the trust.

## 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 (trustor or trustors) who created the trust. The trustee has a fiduciary obligation to the trust's beneficiaries enforceable in court if not carried out. The trustee is subject to strict regulation. Although he 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.

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## TRUSTOR

The person or persons who establish a trust. There can be more than one trustor.

## UNIFORM GIFTS TO MINORS ACT

A law that permits a person ("donor") to register stock, bank accounts, or insurance in the name of another ("custodian") for the benefit of one who is at the time a minor ("beneficiary") without preparing a formal trust document. In effect, the trust document has been written into the law. In so doing, the donor makes an irrevocable gift of the property to the minor, but the custodian holds, invests, reinvests, and applies the property for the benefit of the minor until his majority, at which time the property is turned over to the beneficiary. This is a simple, inexpensive way to make small gifts to a minor.

## WILL

A document, prepared and executed by a person with the formality required by the laws of the state of his domicile at the time, which is intended to govern and direct the disposition of his estate and settlement of his legal affairs at the time of his death and which has no legal effect until his death. If the document is entirely in the person's own handwriting, it is called a "holographic will." If a will is typed, it is called a "witnessed will" because the signing of it generally requires two or more witnesses to testify later, if necessary, that the execution was not procured by fraud, duress, or misrepresentation.

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### Disclaimer

This glossary is for general information only. It is not legal, tax, or accounting advice. Probate, trust, and inheritance rules vary by state and by the facts of each estate. Direct legal, tax, and accounting questions to a licensed professional. Marc Cormier is a Realtor with Berkshire Hathaway Home Services, (301) 660-6272 x 711.