



STEIN SPERLING

Resource Center

Decoding Estate Planning: Glossary of Common Terms

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Estate planning can be a complicated process, made more so by the many terms not used in everyday interactions. The following definitions will help you understand legal terms and phrases which are relevant to wills, trusts, probate and the estate planning process.

BENEFICIARY: The person for whose benefit a trust is created.

CODICIL: A document reflecting an addition, deletion, or change to a will.

CORPUS/PRINCIPAL: The principal or capital of an estate, as distinguished from the income.

DEVISE: A gift or bequest of an interest in real estate.

DISCLAIMER: A denial or renunciation of an interest in an estate or trust.

ESTATE: The property owned by a decedent at the time of death.

GRANTOR/SETTLOR: A person who establishes a trust.

GUARDIAN: An individual or a trust institution appointed by a court to care for the property or the person (or both) of a minor or an incompetent person.

IRREVOCABLE TRUST: A trust which by its terms cannot be revoked or modified by the grantor.

ISSUE: All of one's lineal descendants such as one's children and grandchildren.

JOINT TENANCY: The holding of property by two or more persons in such a manner that, upon the death of one joint owner, the survivor or survivors take the entire property; to be distinguished from tenancy in common.

LIVING WILL/ADVANCED MEDICAL DIRECTIVE: A document which allows a person to state in advance his or her wishes regarding the use or removal of life-sustaining or death-delaying procedures in the event of a terminal illness or injury.

PER STIRPES VS. PER CAPITA: These are terms used in the determination of the distribution of property from an estate or trust. As an example, a distribution to persons on a per stirpes basis would be "I give my estate in equal shares to my issue, per stirpes where if there are two children A and B and where B is deceased but survived by his own children C and D, then A receives one-half (1/2) of the estate and C and D (the sons of deceased son B) take a one fourth (1/4) share of the estate. If instead using the facts in the preceding example "I give my estate in equal shares to my issue, per capita, then A, C and D would each take a one-third (1/3) share of the estate.

PERSONAL REPRESENTATIVE: An individual or a trust institution nominated in a will and appointed by a court to administer and settle the estate of a decedent. In some states referred to as an Executor/Executrix.

POWER OF ATTORNEY: A document authorizing the person named therein to act as his agent, called attorney in fact, for the person signing the document. If the authority granted in the power of attorney survives the disability of the principal, the attorney in fact has a durable power of attorney. If the authority granted in the power of attorney commences in the future only upon the occurrence of a specified event or contingency, the power of attorney is known as a springing power.

PROBATE: The process of administering a decedent's estate, which steps include, among others matters, filing the decedent's will, if any, with the court for authentication, the appointment of the personal representative to administer the estate, collection of estate assets, the settlement and payment of creditor claims and taxes, the care and management of estate assets, and making distributions to heirs.

REVOCABLE TRUST: A trust which may be terminated by the grantor at any time during his or her lifetime. To be distinguished from an irrevocable trust.

TENANCY IN COMMON: The holding of property by two or more persons in such a manner that each has an undivided interest which, upon his or her death, passes as such to his or her heirs and not to the surviving co-owner; to be distinguished from joint

tenancy.

TENANCY BY THE ENTIRETY: A form of joint tenancy solely by a husband and Wife in such a manner that, upon the death of one spouse, the surviving spouse takes the entire property.

TESTAMENTARY TRUST: A trust established under the terms of a will.

TESTATOR/TESTATRIX: A man/woman who has made and left a valid will.

TRUST: A fiduciary relationship in which one person (the trustee) is the holder of legal title to property given to him or her by the grantor during the grantor's lifetime under a trust agreement or by virtue of a bequest made under will to be held and used for the benefit of another person (the beneficiary).

TRUSTEE: An individual or a trust institution which holds the legal title to property for the benefit of someone else.

WILL: A legal document executed in accordance with formalities prescribed by law under which a person directs how his or her estate is to be distributed after death; which also designates one or more persons to serve as personal representatives to administer the estate; and which may appoint one or more persons to serve as guardians for any minor children.