

Probate Real Estate

A Practical Guide for
Personal Representatives

Understanding the Terminology



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Understanding the Terminology

Abatement

A proportional reduction of cash gifts when the estate does not have enough funds to pay all distributions in full.

Ademption

Occurs when a gift listed in a will cannot be transferred because the asset was no longer owned by the deceased at death (for example, it was sold, lost, or given away).

Administrator

A person or entity appointed by the court to handle and manage a deceased individual's estate.

Administrator with Will Annexed (Administrator CTA)

A court-appointed administrator who manages an estate when a will exists, but no named executor is able or willing to serve.

Affidavit

A written statement confirmed under oath, signed and notarized, and subject to penalties for perjury.

Ancillary Administration

A secondary probate process for property located in a different state than where the deceased primarily lived.

Beneficiary

A person or organization entitled to receive assets or benefits from a will, trust, or other arrangement.

Codicil

A separate legal document used to make changes or additions to an existing will, executed with the same formal requirements.

Community Property

Assets acquired during a marriage that are jointly owned by both spouses, typically excluding gifts or inheritances received individually.

Conservator

An individual or organization appointed to manage the personal care or finances (or both) of an adult unable to do so themselves.

Contingent Beneficiary

A beneficiary who receives assets only if certain conditions or events occur.

Declaration

A written statement made under penalty of perjury, usually without notarization.

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Devisees and Legatees

Individuals named in a will to receive property—typically real estate (devisees) or personal property/money (legatees).

Disclaimer

A formal refusal to accept an inheritance or gift, made within legal guidelines and timeframes.

Domicile

A person's primary and permanent home, which determines the governing legal jurisdiction for their estate.

Donee

The recipient of a gift.

Donor

The individual who gives a gift.

Escheat

The transfer of a deceased person's property to the state when there are no valid heirs or will.

Estate Taxes – Federal

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

Executor

A person or institution named in a will to carry out the instructions and manage the estate after death.

Ex Parte

A legal action or proceeding conducted without notifying all parties involved.

Fiduciary

Someone legally obligated to act in another party's best interest, such as an executor or trustee.

Grantor

The person or entity that transfers property or creates a trust.

Guardian

An individual or organization legally responsible for caring for a minor's personal and/or financial needs.

Heir

A person legally entitled to inherit property when someone dies without a will.

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Inheritance Taxes

Taxes assessed on individuals who receive property from a deceased person, often based on their relationship to the decedent.

Intestate

Describes someone who dies without leaving a valid will.

Inter Vivos Trust

A trust established during a person's lifetime, which can be revocable or irrevocable.

Irrevocable Trust

A trust that cannot be changed or canceled once it has been created.

Joint Tenancy

A form of co-ownership where two or more people hold equal shares, and ownership automatically transfers to surviving owners upon death.

Life Estate

A property interest that lasts for the duration of a person's life.

Life Tenant

An individual entitled to use or benefit from property during their lifetime, after which the interest passes to another party.

Minor

A person who has not yet reached the age of legal adulthood.

Personal Representative

A general term referring to either an executor or administrator managing an estate.

Power of Appointment

Authority granted to someone to decide how certain property will be distributed.

Power (General)

Allows broad discretion, including the ability to assign the property to oneself, one's estate, or others.

Power (Special)

Limits who can receive the property, excluding the person holding the power, their estate, or creditors.

Pour-Over Will

A will that directs assets to be transferred into an existing trust upon death.

Pretermitted Heir

A close family member unintentionally omitted from a will who may still have inheritance rights.

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Probate Administration

The court-supervised process of settling a deceased person's estate, including paying debts and distributing assets.

Quasi-Community Property

Property acquired in another state that would be considered community property if obtained in a community property state.

Real Property

Land and anything permanently attached to it.

Remainder Interest

A future ownership interest that takes effect after a prior interest, such as a life estate, ends.

Residue

The portion of an estate that remains after debts, taxes, and specific gifts have been distributed.

Residuary Beneficiary

A person who receives all or part of the remaining estate after other distributions are completed.

Reversionary Interest

An interest that returns to the original owner after a temporary ownership period ends.

Revocable Trust

A trust that can be altered or revoked by the person who created it.

Right of Representation (Per Stirpes)

A method of distribution where a deceased beneficiary's share passes equally to their descendants.

Separate Property

Assets owned individually by one spouse, not jointly shared as marital property.

Settlor

Another term for the person who establishes and funds a trust.

Tenancy in Common

A type of co-ownership where individuals may own unequal shares and can pass their portion to heirs rather than co-owners.

Testamentary Trust

A trust created through a will that becomes effective upon the individual's death and cannot be changed afterward.

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Testate

Describes someone who dies with a valid will.

Testator

The person who creates and signs a will.

Totten Trust

A simple, revocable trust (often a bank account) that names a beneficiary to receive funds upon death without probate.

Trust

A legal arrangement where one party holds and manages assets for the benefit of another according to specified terms.

Trustee

The individual or entity responsible for managing a trust and carrying out its terms for the beneficiaries.

Trustor

The person who creates a trust and contributes assets to it.

Uniform Gifts to Minors Act (UGMA)

A law allowing assets to be held by a custodian for a minor without creating a formal trust, with control transferring when the minor reaches adulthood.

Will

A legal document outlining how a person's assets and affairs should be handled after death, becoming effective only upon their passing.

This glossary is intended to help you better understand common terms you may encounter throughout the probate process.

While it provides general definitions, every estate is unique, and certain terms may carry different implications depending on your specific situation and state laws.

If you have questions about how any of these terms apply to your circumstances, it's always wise to consult with a qualified professional to ensure you are making informed decisions.