

Conference on Aging

GLOSSARY OF COMMON TERMS IN ESTATE PLANNING DOCUMENTS

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We recognize that estate planning documents may contain confusing terminology, or what is commonly called “legalese.” While we try to make our documents as understandable as possible, the reality is that these are legal documents, and they should contain legal terms to be sure that they do what you need them to do.

However, in order to help you in reviewing them, we have provided this glossary of terms that you may find in your documents. You should always feel free to ask us questions if you do not understand the meaning of any terms that are in your documents or you do not understand how they impact your specific situation. Your specific plan may or may not reference or include all of these terms.

ASSET Something that you own. All property, real or personal. (See the definition of Property Types below for more explanation.)

ATTESTATION OF A WILL The act of persons witnessing the signing of a will by a testator. Under Indiana law, a will requires two witness to be valid.

ATTORNEY-IN-FACT This is the person named in a Power of Attorney document to handle your business affairs and miscellaneous financial and personal matters, if you are ill, incapacitated and unable to handle your business and financial matters. Please note: We know that this term can be confusing. An “attorney-in-fact” does not need to be someone who is a lawyer. See the definition for “Power of Attorney (POA)” for more explanation.

BEQUEST A gift of property in a will.

CODICIL A written amendment to a will. A codicil must also be witnessed by two witnesses. In modern times, it is usually more appropriate to restate the entire will, if possible, if a change must be made, in order to eliminate the confusion that codicils can create.

DECEDENT The person who has died.

DEVISEE A person who to whom you give property in your will.

DOMICILE The place where a person has his true, fixed and permanent residence.

ESTATE All property left by a decedent in which he has an interest, this includes both personal property and real estate.

EXECUTOR(RIX) The Personal Representative of an estate where a person dies leaving a will. Under Indiana law the term “executor” (or the female counterpart, “executrix”) is an archaic term and has been disregarded for the generic term “Personal Representative.”

FIDUCIARY This is a generic term and encompasses many areas of responsibility. It means a person who has been entrusted with responsibility towards another. A Personal Representative, Executor, Trustee, Alternate Trustee, Attorney-in-Fact and Guardian are all classified as a fiduciary.

GUARDIAN A person appointed by the court to take care of and be responsible for a minor or incapacitated adult. The term conservator is also utilized to refer to a guardian. The court can appoint a guardian of the person as well as a guardian over the person's estate. Your estate planning documents may name a person or persons who you desire to be your guardian, if one is ever needed.

HEALTH CARE REPRESENTATIVE Individual you have named to make medical decisions on your behalf, if you are unable to communicate with your physician. This person would be the one who would determine what type of medical treatment you were to receive, authorize surgery, and give health care directives. Indiana law has a default list of who your Health Care Representative is if you have not made a written designation of a person. If you have signed an Appointment of Health Care Representative document as part of your estate planning, this is the person (and alternate) who you have named to make decisions about your care, and you have given them authority to act on your behalf in this same document. (Some people call this a "health care POA.")

HEIRS The people who will inherit your property under Indiana law if you die without a will. Under Indiana law, a surviving spouse is an heir, and a legally adopted person is an heir.

INTER VIVOS A Latin phrase meaning "between the living". An inter vivos trust, for example, is one set up by one living person for the benefit of themselves or another individual and becomes operative during the donor's lifetime. An inter vivos gift is a gift you make while you are alive.

INTESTATE An individual who dies without a will is said to have died "intestate." If a person dies intestate, the state of their domicile at the time of their death will govern the distribution of their estate assets by "default" laws. You can find Indiana's default laws in Indiana Code §29-1-2-1.

ISSUE A direct lineal descendant; for example, a child, grandchild, great-grandchild, etc.

LIVING WILL Legal document giving your family, physician, and health care providers direction as to receiving artificial food and hydration if your condition is deemed terminal or you are in a persistent vegetative state. In Indiana, a Living Will is not binding on your representative or the doctors. Its purpose is to be sure your Health Care Representative knows what you would want him/her to do if you could tell him/her.

NON-PROBATE ASSETS Property of a decedent that is not part of the assets that are administered in the court probate process. Most often, this includes accounts that have a named beneficiary designation (e.g. retirement accounts, life insurance), assets that are jointly owned, or assets that are owned by a trust.

PERSONAL REPRESENTATIVE The person is appointed by the Court to administer an estate. This is a generic term. Example: An Administrator (who is administering an estate without a will) can be a Personal Representative, and an Executor (who is administering an estate with a will) can also be a Personal Representative. The Personal Representative is the individual or banking institution that will handle the administration of your estate.

PER STIRPES This term is used in a Will when the testator would like for the same proportional share that would have been given to his or her child to pass to that child's children (the testator's grandchildren) if the child happens to die before the testator.

POWER OF ATTORNEY (POA) A document in which you name someone else to act on your behalf for certain matters. A POA can be broad or narrow, effective immediately or only upon incapacity, and can be durable (i.e. stay in place until you revoke it) or expire at a set time. When you sign a POA, you are the “principal” and the person to whom you give these powers is the “attorney-in-fact.” Please note: It is common for people to refer to the person who is their “attorney-in-fact” as, “my POA.” For example, if your mom has named you as attorney-in-fact, you might tell the bank, “I am mom’s POA.” While this is technically incorrect, most people and institutions will understand what you are saying.

PROBATE The official court process that allows a Personal Representative to be appointed to administer the assets of a person after he/she has died. Please note: It is a common misconception that if a person has a will, that having the will means no probate will be needed when he or she dies. This is untrue! Probate is the process that gives legal authority to that will.

PROBATE ESTATE The assets of a decedent that would trigger the need to open a probate estate. In Indiana, if a person dies owning \$50,000 or more of probate assets, then a probate proceeding will be needed with the court (even if the person has a Will). Probate assets are usually assets that do not have a beneficiary named on them, that are not jointly owned with someone else, or that are not titled in the name of the decedent’s revocable trust.

PROPERTY TYPES Property can take many forms and depending on the type, the law may treat it differently and it may be treated differently in your will or trust depending on its type. Personal property (sometimes called “personalty”) can be either tangible (e.g. household items, vehicles, jewelry, etc.) or intangible (e.g. cash, bank accounts, etc.). Real property (sometimes called “realty”) means real estate (e.g. house, land, condo, etc.).

REMAINDER BENEFICIARY Those persons who will take title to the assets in a trust after the income beneficiary dies.

RESIDUARY ESTATE That portion of an individual’s estate after payment of specific bequests. Generally, this is the main portion of estate assets from which taxes are paid and major distributions made to one’s beneficiaries.

REVOCABLE LIVING TRUST or REVOCABLE TRUST A trust created during a person’s life, which can be altered, amended and revoked during his/her life. Once the person creating the trust (the Settlor) dies, the trust becomes irrevocable. The most common reason that this type of trust is used in estate planning is to avoid a need to probate a will when the Settlor dies.

SETTLOR The Settlor is the person who creates a trust. For example, in your estate plan, you are the Settlor of your Revocable Trust. Married couples sometimes make a joint revocable trust, in which case, they are both the Settlers.

TESTAMENTARY TRUST A trust which is appears in a person’s Will and which is created and funded with assets after the testator dies. Trusts for minor children or grandchildren are good examples of testamentary trusts.

TESTATE The type of estate that occurs when a person dies with a will.

TESTATOR A person who signs and executes a will.

TRANSFER ON DEATH A written designation under the relevant Indiana laws that names a beneficiary to receive an asset once you die. Often, this is done in relation to a “Transfer on Death Deed,” which allows you to name a beneficiary for real estate that you own. When done properly, making “transfer on death” designations can help avoid the need for a probate estate.

TRUST There are many different types of trusts, but the most common type used for estate planning is a revocable trust, described above. In general, a trust is a written agreement between a Settlor and a Trustee to administer property for the benefit of the named beneficiary. A trust can have provisions for a Successor Trustee and for distribution of the trust assets when certain events happen, such as the death of the Settlor.

TRUSTEE The Trustee is the person who accepts the responsibility of administering a trust. In your estate plan, you are the original trustee of your own Revocable Trust. Couples who create a joint trust are usually co-Trustees while they are alive.

SUCCESSOR TRUSTEE The Successor Trustee is the individual who takes over the original Trustee's responsibilities when the original Trustee dies, resigns, becomes incapacitated, or for any reason is unable to serve and fulfill their duties as Trustee.

CORPORATE TRUSTEE A bank or financial institution who has trust powers under the state's laws, who is named as a Trustee in any will or trust.

INDIVIDUAL TRUSTEE An individual who is named as a Trustee in any will or trust.

WILL A written document that states how you want to distribute your property after your death. The document must be executed in accordance with the state laws.

POUROVER WILL A type of will used in connection with a Revocable Living Trust. Its purpose is to provide a way to move assets that are not in the trust at the time of the Settlor's death into the trust afterwards so that they can be administered according to the trust provisions.

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