



## **Terminology Common to Estate and Business Succession Planning<sup>1</sup>**

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**Administrator** – A person identified in a will or appointed by a court to carry out the instructions found in a will. Depending on the state, this may be referred to as the executor or personal representative.

**Alternate valuation date** – A date exactly six months following the decedent's date of death by which the personal representative may choose to revalue, for estate tax purposes, all assets held by the estate.

**Ancillary probate** – Type of probate if decedent had real property in another state.

**Annual exclusion** – The inflation-indexed annual amount that can be given to any individual or any number of individuals gift-tax-free. For calendar year 2017 the amount is \$14,000.

**Annuity** – A contract in which a given sum of money is paid to a beneficiary on a periodic basis for a specified time.

**Appraised value or appraisal** – An estimation of the value of property by disinterested people having certain qualifications and specific methodologies.

**Assets** – All types of property.

**Attorney** – Another term for lawyer.

**Basis** – The value of an asset for the purpose of determining the gain or loss on its sale or transfer. It is generally the purchase price of an asset plus related costs of purchasing the asset less allowable depreciation and insurance reimbursements for casualty and theft losses. If the property is transferred to a donee (gift recipient), the donor's basis usually becomes the donee's basis.

**Beneficiary** – A person named in a will to receive certain property of the testator. Also, a person who receives income or assets from a trust.

**Bequest** – Personal property received under a will.

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<sup>1</sup> The purpose of this fact sheet is for educational purposes only. Changes in the law may have occurred since publication. No statements should be considered as legal advice. People should consult with a licensed attorney about their individual cases.

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**Business plan** – A written document that describes a business’s product concept, potential customers, and necessary financial resources needed to achieve the objectives of the business.

**Buy/sell agreements** – Formal agreements that spell out terms of ownership transfers in case of death, divorce, disability, and dissolution. They include information on valuation, discounts and any restrictions on asset transfers.

**Chattel** – An article of personal property (personal and movable). An example is machinery and equipment.

**Closely held business** – A business organization in which the ownership is held by a limited number of people, often the same family, rather than owned by the public at large.

**Codicil** – A supplement, amendment, or addition to a will executed with all the formalities of the will itself. It may explain, modify, add to, subtract from, qualify, alter or revoke provisions in a will.

**Common disaster clause** – A statement in a will telling how property in the estate is to be distributed if would-be devisees die from the same accident.

**Competency** – A person generally is competent to make a will if the testator understands the following:

1. The general nature and extent of his/her property,
2. The testator’s relationship to the people named in the will,
3. What a will is, and
4. The transaction of simple business affairs

**Conservator** – A person appointed by the court to protect and manage the interests of the estate (property and business matters), financial affairs, and/or daily life of another person due to physical or mental limitations or age.

**Contingency plan** – Provisions in a comprehensive succession plan that mitigate the financial devastation caused by untimely death, disability and/or deteriorating health.

**Corpus of a trust** – The assets (property) placed in a trust. The trust holds title to all property included in the corpus.

**Death taxes** – Taxes due by reason of death of an individual. These may include federal, state, and local estate and/or inheritance taxes.

**Decedent** – The person who has died.

**Deed** – A legal instrument used to transfer title to real property in the eyes of the law. Specific types of deeds may include the following:

1. *Correction deed* - A document used to correct an error in a previously recorded deed.
2. *Deed restrictions* - Provisions placed in deeds to control how future owners may or may not use the property.
3. *Executor’s deed* - A deed used to convey the real property of a deceased person.
4. *Deed in escrow* - Papers prepared to transfer real estate to another owner and given to a third party for delivery at a later date or when the specified conditions are met.

5. *Gift deed* - A deed executed and delivered without consideration (a deed that states “love and affection” as the consideration).
6. *Guardian’s deed* - Used to convey property of a minor or legally incompetent person.
7. *Quitclaim deed* - A legal instrument used to convey whatever title held by the grantor. It contains no covenants, warranties, nor implication of the grantor’s ownership.
8. *General warranty deed* - An assurance or guarantee that something is true as stated, making it the highest quality title. A deed that usually contains the covenants of seizing, quiet enjoyment, encumbrances, further assurance and warranty forever.
9. *Special warranty deed* - The grantor warrants title only against defects occurring during the grantor’s ownership but not before that time.

**Donee** – A person who receives a gift from another person.

**Donor** – A person who makes (gives) a gift to another person.

**Dower** – The legal right of a widow to a portion of her deceased husband’s real property for support of herself and children. This may be referred to as the elective share of a surviving spouse.

**Employer Identification Number (EIN or FEIN)** – A unique number that identifies the business to the Internal Revenue Service.

**Entity** – A stand-alone business unit which may be formed as a sole proprietorship, partnership, LLC, corporation, or other legal structure.

**Equal vs. equitable distribution** – “Equal” distribution means that property is divided in equal percentages among heirs. “Equitable” distribution means that property is divided based upon the contributions and needs of the heirs. Both types of distribution may be considered as “fair” – fairness is in the eye of the beholder.

**Escheat** – Assignment of property to the state because no verifiable legal owner exists. Typically, where no heir to property exists.

**Estate** – Everything of value (all property) that a person owns while living or at the time of death.

**Estate settlement** – Another term for the probate process.

**Estate tax** – Taxes assessed by the local, state or federal government upon a decedent’s right to transfer property.

**Executor** – A person named in a will to carry out its instructions; if male, the person is called an executor, and if female, the person is called an executrix. It may be referred to as the administrator or personal representative.

**Fair market value** – The market price for an asset as agreed to by a willing buyer and a willing seller.

**Fee simple property ownership** – Ownership by one person who can buy, sell, give, or mortgage the asset as he or she sees fit. When the owner is married, real estate is subject to a spouse’s dower rights and, therefore, any transactions require the spouse’s signature. At death, the fee simple property becomes part of the probate estate.

**Fiduciary** – A person in a position of trust, responsibility, and confidence for another. Also called personal representative, guardian, conservator, or trustee.

**Formal probate proceedings** – Proceedings conducted before a judge with notice to interested people for probate of a will or appointment of a personal representative.

**Gift** – A voluntary transfer of property – title and control – for which nothing of value is received in return.

**Gifting** – An estate planning tool used to implement an estate plan by making gifts to intended successors of assets owned by the person/people making the gifts. A gift is only possible while the donor is alive.

**Grantor** – The person placing property in a trust.

**Gross estate** – For federal estate tax purposes, the total value of all property real or personal, tangible or intangible that a decedent had owned or had control over at the time of death.

**Guardian** – A person legally empowered and charged with the duty of taking care of another who, because of age, intellect or health, is incapable of managing his or her own affairs. A guardian is responsible for the person and his/her well-being, and a conservator manages the property of a minor or incapacitated person.

**Heir** – A person entitled by law to inherit part or all of the estate of an ancestor who died without leaving a valid will.

**Incidents of ownership** – Rights applying to ownership interest in an insurance policy. These include the right to change a beneficiary, borrow on a policy, and change premium modes.

**Income statement** – A document that lists all expenses, income, and changes in inventory for a business during a specific period of time.

**Inherit** – To receive property from a deceased person.

**Inheritance tax** – A tax paid by a person who inherits property or assets having financial value. The rate of taxation depends on the size of the inheritance and the relationship between the person who inherits and the deceased. Inheritance tax laws vary state by state. Some states have no inheritance taxes and some states have county inheritance taxes.

**Intergenerational succession** – Succession in property ownership in which the property is transferred from one generation to another, usually from members of an older generation to members of a younger generation. In business succession planning, it includes the transfer of management responsibilities and profit opportunities.

**Intestate** – A term used when a person dies without leaving a valid will.

**Intestate succession** – Laws that direct how a deceased's assets shall be divided when the person dies intestate (without a will).

**Intangible property** – Property that only represents real value, such as bonds, stock certificates, promissory notes, certificates of deposit, bank accounts, contracts, and leases. In contrast, tangible property can be seen.

**Joint tenancy with rights of survivorship (JTRS)** – A conveyance or devise to two or more people as joint tenants or as joint tenants with rights of survivorship creates a form of ownership with survivorship-ownership by two or more individuals in which all owners must agree to any transactions involving sale, gift or use of borrowing purposes. At death, the surviving joint tenants take title to the property without probate proceedings. The IRS considers 100 percent of JTRS property value as part of the “gross estate” subject to estate taxes unless valid evidence is provided showing different percent ownership.

**Lateral succession** – Succession in property ownership in which the property is transferred between members of the same generation.

**Letters of administration** – A document issued by the probate court giving the administrator authority to administer the estate.

**Letters testamentary** – A document issued by the probate court giving the executor authority to administer the estate under the provisions of the decedent’s will.

**Liabilities** – Financial amounts owed by a person, family or business. Everything owed to others.

**Life estate** – A transfer of ownership from an owner to a second party with a reservation of some rights, such as life use of the residence. The property does not go through probate but is usually considered a part of the decedent’s estate for tax purposes.

**Life insurance** – A contract between an owner of a policy and an insurance company stating that, for a consideration (premium), the company will pay a given sum (face value of policy) to a named beneficiary in the case of a death of the named insured.

**Life tenant** – A person with the right to use an estate for the period of his or her lifetime or that of another specified person.

**Lineal descendant** – One who is, by blood relationship, in the direct line of descent from an ancestor. The term often includes legally adopted children.

**Living will** – A document which sets forth an individual’s personal wishes with respect to medical care, including life-sustaining procedures. Also known as an advance care or advance medical directive.

**Long-term care (LTC) insurance** – Insurance coverage that may provide payments for nursing-home care, home-health care, and personal or adult day care for individuals.

**Marital deduction** – The unlimited exemption for the transfer of assets to a surviving spouse under the federal estate and gift tax legislation.

**Marketable title** – Title that is free from encumbrances and any reasonable doubt as to the owner. Title can be sold or mortgaged readily.

**Medical directive or patient advocate** – A document advising medical care providers of a person’s intent, wishes, and desires in the event a medical catastrophe occurs. The medical directive may spell out specific wishes but also includes an appointed fiduciary to make necessary medical decisions. The document should include proper medical release information to allow access to medical records for an informed decision.

**Operating agreement** – A set of standard operating procedures and management policies specifically designed to maintain the operational integrity of a farm or agribusiness. It may include a decision-making process, income/expense management, dispute resolution, ownership transfer, and other terms and conditions of business ownership/management.

**Partition** – The judicial separation of the respective interests in property of joint owners or tenants in common so each may take possession, enjoy and control his or her share of the property.

**Pay on death (POD)** – Designation naming of a beneficiary to receive an account balance on a party's death.

**Personal property** – Assets whose ownership arises out of physical possession of the property or as the result of a document showing ownership. Almost anything not classified as real property (real estate) is personal property. Examples include livestock, machinery, stored grain, bank deposits, stocks and bonds, checking and savings accounts, automobiles, and other transportation and recreation vehicles.

**Personal representative** – A person named in a will or appointed by the district court to administer the estate of a decedent. Formerly referred to as executor or administrator.

**Power of attorney (POA)** – A written document in which one person gives another the power to conduct certain acts on his or her behalf.

1. *Durable power of attorney* - Allows the power of attorney to survive any disability the principal could suffer.
2. *Health care POA* - grants powers related to health-care decisions.

**Pretermitted child** – One who may, under certain circumstances, become an heir by birth or adoption subsequent to the date of execution of a testator's will.

**Private annuity** – A means of transferring property from one owner to another by "selling" it for an unsecured promise to pay the original owner an income for life. The sale price is based on fair market value at the time of sale.

**Probate** – A court procedure for settling the personal and business affairs of a decedent by formally proving the validity of a will and establishing the legal transfer of property to beneficiaries, or appointing an administrator and supervising the legal transfer of property to heirs if no valid will exists. Probate rules vary state by state.

**Probate court** – A court of law with the authority to verify the legality of a will and carry out its instructions.

**Real property** – Ownership rights in land and its improvements; for example, real estate, minerals, royalty interests, growing timber, land, and buildings attached to the land.

**Remainder interest** – A future interest in property held by a remainder person, usually following a life estate or term interest.

**Remainder person** – A person entitled to hold a remainder interest.

**Reverse mortgage** – A contract/mortgage whereby a company makes payment to a homeowner based on the calculated value of a home. It allows the individual to reside there until death and takes title to the property upon issuing the loan as consideration and security for the loan. The loan is not required to be paid back in full

in this type of arrangement, but the house is removed from the person's ownership and estate upon issuing the mortgage.

**Right of election** – The surviving spouse's right to a share of the augmented estate rather than accepting the amount provided by will or intestate succession statutes. The percentage is based on the length of marriage.

**Right of first refusal** – The right to have the first opportunity to purchase a piece of property (usually real estate) when such becomes available or the right to meet any other offer on the subject property. The person holding a right of first refusal does not have the obligation to make the purchase.

**Sale** – A transfer of property from one owner to another for a consideration at fair market value.

**Sole ownership** – Title to property in one name.

**Sound mind** – The testator possesses a sound mind for the purposes of making a will if he or she:

1. Understands the nature of the act of making a will or codicil to it,
2. Knows the extent and character of the property subject to the will,
3. Knows and understands the proposed disposition of that property, and
4. Knows the natural objects of his or her bounty

**Spouse** – A person's legal wife or husband. The definitions of relationships such as "common law spouse" and "domestic partner" vary by state.

**Succession** – A term used to describe the transfers of asset ownership through inheritance, gifting, preferential sale or other means that fulfill the wishes of the person/people with present ownership of the assets.

**Sweat equity** – The increased financial value of a farm or other business (over and above money or tangible assets contributed) that was created by uncompensated mental and/or physical efforts.

**Tangible property** – Property that is capable of being perceived by the senses. Generally, tangible property is real estate, personal property or moveable property that has value of its own and is not merely a representation of real value. Land, machinery, buildings, business equipment, inventories, homes and furnishings are examples of tangible property.

**Tax basis (federal)** – The owner's cost of an asset for income and estate tax purposes as determined under the Internal Revenue code and IRS regulations.

**Tenancy in common (TIC)** – The ownership of property by two or more individuals who own an individual, undivided share of interest of the whole property. Each owner has the right to transfer to another person his/her ownership interest. A TIC typically has no right of survivorship. Thus, if person A and person B are tenants in common of a parcel of land and A dies, A's ownership in the parcel goes to the party identified in A's will – not necessarily B.

**Tenancy by the entirety (TE)** – An interest in property that can be held only between a husband and wife in which each person has the right of survivorship over the property and which neither person can terminate without the consent of the other. At death, the surviving spouse takes title to the property without probate proceedings. In accordance with IRS laws, TE ownership is considered to be owned 50 percent by each, husband and wife. Therefore, the surviving spouse receives a stepped-up tax basis to the "fair market value" for the 50



percent received from the deceased spouse's estate. The surviving spouse now has two basis in the property: 1) The original basis for the 50 percent owned before the death of the spouse and 2) the stepped-up basis in the 50 percent inherited from the estate of the deceased spouse.

**Term life insurance** – An insurance policy with a set duration limit on a coverage period.

**Testamentary** – Pertaining to a will.

**Testate** – To die without a will.

**Testator** – One who writes or has written and signs a will. A male is called a testator, and a female is called a testatrix.

**Title** – The right to or ownership of something. A deed indicates or conveys title to real property.

**Title by descent** – Laws that direct how a deceased's assets shall be divided to heirs when no will exists.

**Transfer on death (TOD)** – Designation on securities that allows the naming of a beneficiary to receive them upon the death of a party.

**Trust** – Ownership and control of property by a third party (trustee) who manages the property and pays the income to a named beneficiary according to the instructions given by the person setting up the trust and who transfers property into it.

1. *Generation-skipping trusts* - Trusts that are used to provide income to a generation or two of heirs, with the property eventually passing to individuals two or three generations down the line.
2. *Inter vivos trust (living trust)* - A trust that takes effect during the life of its creator. However, the trust may continue after death.
3. *Living trust* - A trust established during the lifetime of the grantor.
4. *Testamentary trust* - A trust that is intended to come into existence at death. Its purpose is to provide for the management of property after death. They often are contained in an individual's will.
5. *Revocable trust* - A trust that is included as part of the taxable estate and can be revoked any time. The revocable trust can take on many different versions and may require special language to work through tax planning with a large taxable estate.
6. *Irrevocable trust* - A trust that is irrevocable and is not counted as part of the taxable estate. This trust should be used sparingly and only if the estate has significant tax problems. Once assets are put into the irrevocable trust, they cannot be removed, and the owner forever loses control, access and the benefit of the items placed in an irrevocable trust.
7. *Life insurance trust* - This is a special irrevocable trust that holds life insurance policies to exclude them from the gross estate. When a policy is not in the irrevocable trust and the decedent maintained control, it is counted as part of the gross estate.
8. *Special-needs trust* - This can be a revocable or irrevocable trust that is formed for a special-needs child, pet, business, real estate or other property that requires specific and special attention post- death.
9. *Charitable remainder trust* - A tax-exempt irrevocable trust designed to reduce the taxable income of individuals by first dispersing income to the beneficiaries of the trust for a specified period of time and then donating the remainder of the trust to the designated charity.

**Trustee** – A person or institution who holds property in trust for another.



**Trustor** – A person making a trust.

**Trust corpus** – The subject matter of the trust. Definite and ascertainable property that is transferred to the trustee.

**Undivided interest** – The interest or right in property owned by each joint tenant or tenant in common. Each tenant has equal right to use and enjoy the entire property. Unless an agreement to the contrary exists, each tenant is entitled to an income share proportional to his or her ownership interest. If the property is sold, the sale proceeds are shared among tenants in proportion to the ownership shares held by each tenant.

**Undue influence** – A term referring to a situation in which a person improperly or wrongfully persuades or takes over the mind of another person to make that person's will conform to that of another person. The dominion and control must be such that the free will of another is overcome and the influenced person is caused to do what he or she would not otherwise have done but for the dominion and control. The influence must have been so great that the testator lost the ability to exercise his/her own judgment and could not refuse to give in to the pressure being exerted.

**Will** – A legal document directing the disposal of one's property after death.

1. *Holographic will* – A will that is handwritten entirely and signed by the testator, and may or may not be witnessed.
2. *Nuncupative will* - A will made orally.

**Witness** – A person who observes the signing of a will and attests to the signature.

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