

Glossary



Advance Health Care Directive - a legal document, which provides a person both with the opportunity to state one's wishes about medical treatment and life-prolonging procedures and to grant another person the right and authority to handle matters related to the health care of the principal.

Annual Exclusion Amount - the amount of property the IRS allows a person to gift to another in a calendar year before a gift tax is assessed and/or a gift tax return must be filed. For 2018, the annual exclusion is \$15,000. Therefore, up to \$15,000 can be given to any number of people in 2018 and none of the gifts will be taxable. Each taxpayer can make annual exclusion gifts, so a couple can give \$30,000 to as many people as they wish. To qualify for the annual exclusion, the gift must be one over which the donee has full control and can enjoy immediately.

Ascertainable Standard - the phrase is generally used to define the limitation on the trustee's access to the "B" trust (when doing A/B trusts, also known as marital and family trusts) that is necessary to protect the trust corpus for estate tax purposes. Access to principal for the "health, education, maintenance, and support" (HEMS) of the surviving spouse and children is acceptable to the IRS.

Asset Protection - the process of organizing assets in advance to guard against legal problem, taxes, and other risks to which the assets would otherwise be subject, usually involving transfers from an unprotected form of ownership (e.g., direct individual ownership) to a different type of ownership or asset using an asset protection vehicle (e.g., trusts, business entities, family limited partnerships).

Assets - Items of value, including cash, stocks, bonds, business interest, insurance proceeds, jewelry, art, antiques, and real estate. The general term "property" is used in the Maine Probate Code.

Assignment - The act of transferring to another part of one's property, interest or rights. For example, one can assign a promissory note or tangible personal property to a trust.

Beneficiary - a person or entity entitled to receive income or assets, as the result of being named in a will, trust, life insurance policy or on a retirement account. In the Maine Probate Code, a trust beneficiary is "a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust."

Bond - an insurance policy used to ensure against the misuse of funds under the control of a fiduciary like a Conservator, a Trustee, or a Personal Representative. The bond guarantees that a certain amount of money will be paid if a party is injured due to acts of the fiduciary.

Charitable Remainder Trust - A trust which consists of assets which are paid over to the trust after the expiration of a life estate or intermediate estates and designated for charitable purposes. There are various other charitable trusts such as; charitable remainder annuity trust, grantor retained annuity trust, charitable lead annuity trust, charitable remainder unitrust, etc. These trusts can be used for tax planning and have a current and remainder beneficiaries either of which may be a charity(s) as the names suggest.

Charitable Trust - Trusts designed for the benefit of a class or the public generally. They are essentially different from private trusts in that the beneficiaries are uncertain. In general, such trusts must be created for charitable, educational, religious, or scientific purposes.

Domicile - a person's legal residence usually evidenced by where he or she maintains the most important family, social, economic, political, and religious ties. A person can have multiple residences but only one domicile. The individual cannot choose to make his home in one place for the general purposes of life and in another for tax purposes.

Elective Share - A surviving spouse's choice of whether she or he will take what is

provided in the spouse's Will, or rather take the statutorily prescribed share, which is what the law allows and could be more than received by Will.

Estate - all the property a person owns when he or she dies. Under the Maine Probate Code, estate "includes the property of the decedent, trust, or other person whose affairs are subject to this Code as originally constituted and as it exists from time to time during administration".

Estate Tax - A tax imposed on the right to transfer property by death.

Estate Tax Exclusion - A certain amount of each estate is exempted from taxation by the federal government sometimes called the exclusion.

Generation-Skipping Trusts - these are also known as "Dynasty Trusts." They are intended to take advantage of the exemptions from the federal generation-skipping transfer tax, benefitting distant or multiple generations of a person's descendants.

Gift Tax - A tax imposed on the transfer of property by gift. The tax is imposed on the donor of the gift and is based on the fair market value of the property at the date of the gift.

Guardian - The Maine Probate Code defines Guardian as "a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian *ad litem*."

Heir - A person who receives property from a deceased relative who died without a will or trust. Modern usage includes anyone who receives property from a decedent through any means. The Maine Probate Code defines this term as "those persons, including a spouse, who are entitled, under the statutes of intestate succession, to the property of a decedent."

Holographic Will - One that is entirely written, dated, and signed by the hand of the testator himself.

Incapacitated Person - In Maine, this is a person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause except minority to the extent that the person

lacks sufficient understanding or capacity to make or communicate reasonable decisions concerning his person.

Inheritance Tax - A tax imposed in some states upon the privilege of receiving property from a decedent; not a tax on the property but on the right to acquire it.

Inter Vivos Trust - This indicates the trust was created during the grantor's lifetime; it is not a specific type of trust.

Intestate Succession - The method by which a person's estate is distributed when the property is not disposed of by a will, through joint ownership, or other probate avoidance techniques.

Irrevocable Trust - In contrast to a Revocable Trust, an Irrevocable Trust is one in which the terms of the trust generally cannot be amended or revised until the terms or purposes of the trust have been completed. Although in rare cases, a court may change the terms of the trust due to unexpected changes in circumstances that make the trust uneconomical or unwieldy to administer, under normal circumstances an irrevocable trust cannot be changed by the trustee or the beneficiaries of the trust.

Living Trust - A type of trust used to avoid probate. It is established during the life of the grantor who retains the right to the income and principal while living and then the property passes directly to the beneficiaries without court involvement upon the death of the grantor. The trust is revocable during the life of the grantor and becomes irrevocable upon the grantor's death.

Maine Uniform Trust Code - The UTC, a model act, is a comprehensive codification of the laws of trusts.

Per Capita - Latin for "by heads," this method is used in estate planning to indicate that each of the named beneficiaries should receive equal shares of the estate

Per Stirpes - A common method of distributing an estate such that if one of the children is dead, his or her children share equally in his or her share. Also known as By Right of Representation.

Planned Gift - Also known as a charitable gift.

POA - Power of Attorney is an instrument, in writing, whereby one person, as principal, appoints another as his agent and confers authority to perform certain specified acts or kinds of acts on behalf of the principal. There are powers of attorneys for financial needs and for medical needs.

POD Account - This is a “payable on death” account; it is designed to avoid probate. It is a contract between the bank and the account holder guaranteeing that, upon the account holder’s death, the bank will pay the balance of the account to whoever is designated to receive the account.

Post Mortem - Latin meaning “after death.”

Pour Over Will - is a testamentary device wherein the writer of a will creates a trust, and decrees, in the will, that the property in his estate at the time of his death shall be placed in the trust.

Power of Appointment - The power given to a person, by appointment in a will or a trust, to distribute the property that passes through the will or trust at the discretion of the person appointed. Other than to give the appointed person the authority to make the distribution, the will or trust does not make distribution of the property.

Probate - The legal process following a person’s death which includes proving the authenticity of the deceased person’s will, identifying a person to handle the deceased’s affairs, identifying and inventorying the deceased’s property, identifying heirs and distributing the person’s property either by will or if no will exists then in accordance with state law, and paying debts and taxes.

Probate Estate - A deceased person’s property, which is subject to the probate process.

Real Property - Land and attachments to the land such as buildings and fences.

Revocable Trust - A trust, which can be revoked or changed by the person(s) who established the trust without the consent of the trustee.

Settlor - A person who establishes a trust. The term settlor is used interchangeably with the terms "trustor" and "grantor."

Special Needs Trust - This type of trust is created to ensure that beneficiaries who are disabled or mentally ill can enjoy the use of property which is intended to be held for their benefit. In addition to personal planning reasons for such a trust (the person may lack the mental capacity to handle their financial affairs) there may be fiscal advantages to the use of a trust. Such trusts may also avoid beneficiaries losing access to essential government benefits. Special needs trusts can provide benefits to, and protect the assets of, the physically disabled or mentally disabled. Special Needs Trusts are frequently used to receive an inheritance or personal injury settlement proceeds on behalf of a disabled person or are founded from the proceeds of compensation for criminal injuries, litigation or insurance settlements.

Stepped-up Basis - The new basis (cost) established for a property after the property has been evaluated and taxed as part of an estate. The new basis or "stepped-up basis" is the value of the property used to assess the estate tax.

Taxable Estate - The portion of an estate that is subject to federal estate taxes or state death taxes. Technically, all of an estate is subject to federal estate taxes, but because of the unified credit, only estates with a value over the exemption equivalent amount actually have to pay any estate taxes. Therefore, it is common to refer to an estate with a value under the exemption equivalent amount as a nontaxable estate.

Testamentary Trust - A trust created within a will and executed with the formalities required of a will; it does not take effect until the death of the settlor.

Testate - One who dies leaving a will. The opposite term is intestate.

Trust - A legal document in which property is held and managed by a trustee for the benefit of another person known as a beneficiary. A trust is a relationship in which property is held by one person for the benefit of another. The trust can be created verbally, but will most often be in writing.

Trustee - The person or institution in whom an estate, interest, or power is vested,

under an express or implied agreement to administer or exercise it for the benefit of or to the use of another.

Unlimited Marital Deduction - The unlimited deduction allowed under federal estate tax law for all qualifying property passing from the estate of the deceased spouse to the surviving spouse. This deduction allows anyone to pass their entire estate to their spouse without tax consequences.

Will - The legal expression of a person's wishes as to the disposition of his property, to take effect after his death. The document names the person to manage the deceased's estate and often nominates a guardian if there are minor children.