

ESTATE PLANNING DEFINITIONS

Here are some general estate planning terms to assist you in understanding your estate planning documents. Additional definitions are found on my website.

General Terms

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| COMMUNITY PROPERTY (CP) | A form of ownership allowed only between husband and wife, and allowed only in "community property states"; includes all earnings or appreciation <i>accrued during marriage</i> unless otherwise agreed upon in a pre-marital agreement; CP is treated as <i>owned one-half by each spouse</i> . Each spouse has the right to dispose of his or her one-half of the CP by will or by trust. |
| SEPARATE PROPERTY (SP) | All property <i>earned prior to marriage</i> , and all <i>gifts and inheritances</i> (i.e., a child's inheritance from his or her parent will be separate property of that child even if the child is married). A spouse can convert his or her own separate property to community property of both spouses by agreement or by commingling assets (so as to be untraceable to separate property). |
| TAX BASIS (also called Cost Basis) | Generally, <i>capital gain or loss for income tax purposes</i> is measured by the difference between tax basis and selling price; tax basis is the acquisition cost of an asset. |
| "STEPPED-UP" INCOME TAX BASIS | Assets owned by a decedent receive a <i>new tax basis</i> equal to the fair market value of the asset as of date of death; i.e., the new tax basis is "stepped-up" to the date of death value. For appreciated property, the effect of the "stepped-up" basis is that the appreciation accrued from date of acquisition to the date of death completely escapes income taxation. |
| QUASI-COMMUNITY PROPERTY | Property accumulated by a married couple while residing in a non-community property state, which would have been community property had the couple been a California resident. Such quasi-community property is treated as if community property. |
| TANGIBLE PERSONAL PROPERTY | Property that is located in your home, i.e., furniture, furnishings, personal effects - anything that you can touch. The disposition of tangible personal property should be addressed in your Letter of Instructions (Ethical Wills), which is a non-legal document that you can change at any time. |

Will Terms

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| PROBATE | A <i>public</i> court process required to transfer assets to beneficiaries according to a Will or according to the California Probate Code if there is no Will; the probate court oversees the identification of beneficiaries and distribution of assets; probates are <i>costly and time-consuming</i> proceedings ("simple" estates can take a year to go through probate). |
| "POUR-OVER" WILL | A document which allows you to <i>nominate guardians</i> for your minor children; also serves as a <i>back-up device</i> for assets not properly titled in your Family Trust's name. If an asset is not properly owned by your Family Trust on your passing, your Will instructs the executor to "pour over" such assets into your Family Trust and distribute them in accordance with the trust terms; becomes a public document upon your passing; a Will <i>requires a probate</i> proceeding to make distributions. |

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| EXECUTOR | Agent designated in your Will to be appointed as the “ <i>manager</i> ” of your probate estate during the term of the probate proceeding; authority is given only by order of the probate court during a probate proceeding; if the Family Trust is maintained properly, your executor will not need to act because no probate proceeding will be needed. |
| GUARDIAN | Person appointed by a court to be legally responsible for the <i>care of a minor child</i> (for California, a child under the age of 18 years); parents should nominate their preferred guardians in a Will to provide the court with guidance on whom to appoint. |
| TESTATOR | Person making the Will. (A Testatrix is a female person making a Will.) |

Family Trust Terms

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| FAMILY TRUST (also called revocable trust) | A vehicle to hold and own assets of your estate; can be revoked or terminated at any time by the settlor of the trust; the trust organizes and provides order to your assets in the event of your disability or death; <i>preserves privacy</i> regarding the management and distribution of your estate; allows your estate to be distributed <i>without probate</i> ; you name <i>successor trustees</i> of your trust who will manage your trust if you are unable; provides clear directions for your successor trustees on how you wish your assets to be handled in your disability or death. |
| SETTLOR (aka grantor, trustor) | The person <i>who creates a trust</i> and funds the trust with his/her assets; funding occurs when assets are titled in the name of the trust. |
| BENEFICIARY | The person <i>for whose benefit the trust was created</i> ; typically the settlor is the present beneficiary of the trust for his or her lifetime; after the settlor’s passing, the beneficiaries of the trust is usually the settlor’s children. |
| TRUSTEE | The person who <i>manages the trust assets</i> ; typically the settlor is also the trustee of the trust during his or her lifetime; the trust document generally provides the direction to the trustee on how to manage. |
| ISSUE | Lineal descendants (i.e., your children, grandchildren, great-grandchildren, etc.) |
| HEIRS-AT-LAW | Closest living relative according to the Probate Code; if there are no issue, the closest living relative are parents, then siblings, then siblings issue, etc. |
| DECEASED SPOUSE | The first spouse to pass away is the deceased spouse; the other spouse is the surviving spouse. |
| TRUST ADMINISTRATION | The process of <i>distributing assets of a Family Trust after the settlor’s death</i> ; the trustee of the trust manages this process; the assets owned by the decedent are valued as of date of death and valid obligation (debts, expenses, taxes, etc.) of the decedent are paid by the trustee using the decedent’s trust estate prior to distribution of assets. |

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| FUNDING YOUR TRUST (aka TRUST TRANSFERS) | Removing an individual's or individuals' names from title to a bank account or non-retirement brokerage account or business asset and added the Family Trust's name on title. In doing so, the asset is being "added" to the trust. By being on title, the trust becomes the owner of the asset and can control the management and distribution of the asset, thereby avoiding probate as to the asset. |
| INTER VIVOS TRUST | A trust created during life, such as a family trust. |
| TESTAMENTARY TRUST | A trust created after the death of an individual - for example, one created through a probate proceeding. |
| REVOCABLE TRUST | A trust that can be changed, amended and terminated by the settlor. The Family Trust is a revocable trust. |
| IRREVOCABLE TRUST | A trust that cannot be changed or amended by anyone, and cannot be terminated by anyone, except by the trust's own terms. After the settlors pass away, a Family Trust becomes irrevocable. An irrevocable trust will require its own taxpayer identification number (TIN) and will need to file separate tax returns each year. |

Estate Tax Terms

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| ESTATE TAX | A transfer tax imposed upon the value of property owned by a person at date of death; the federal estate tax rate for 2007 is 45%; the estate tax is paid by the decedent's estate before distribution to beneficiaries; California currently has no estate tax. |
| ESTATE TAX EXEMPTION | An estate tax rule that allows each individual to pass a certain amount of property owned at death <i>free of estate tax</i> ; the exemption is non-transferrable and must be used by the individual during life or at death, or the exemption will be lost; the exemption amount is \$2,000,000 for 2006, 2007 and 2008. |
| ESTATE TAX RETURN | Tax return (IRS Form 706) required to report and pay estate taxes for each estate with a gross estate equal to or greater than the applicable estate tax exemption amount; must file and pay within 9 months of date of death. There is currently only a federal estate tax return, no California estate tax return. |
| UNLIMITED MARITAL DEDUCTION | For married couples, an estate tax rule which allows each individual to pass an unlimited amount property owned at death to a spouse without estate taxation at that time. If all of the decedent's property passes to the surviving spouse, the decedent's estate tax exemption amount will not be used. Property passed to the surviving spouse is included in the surviving spouse's estate when the survivor passes away so the unlimited marital deduction only <i>postpones estate tax</i> until the surviving spouse's passing. NOTE: Use of the estate tax exemption amount avoids estate tax completely. |

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| <p>BYPASS TRUST (also called a Credit Shelter Trust, or an Exemption Trust)</p> <p>If not automatic, then may be called a <u>Disclaimer Trust</u></p> | <p>For married couples; an <i>automatic irrevocable trust</i> created via a Family Trust to <i>save the deceased spouse's estate tax exemption amount</i>; rather than all property passing to the surviving spouse using the unlimited marital deduction, the deceased spouse's estate tax exemption amount is used with the creation of the Bypass Trust. The Bypass Trust is funded with the decedent's property up to the estate tax exemption amount. Usually, the <i>surviving spouse is the primary beneficiary of the Bypass Trust</i>. Upon the surviving spouse's passing the Bypass Trust assets pass to beneficiaries designated by the deceased spouse. The purposes of the Bypass Trust are to (1) "bypass" the estate tax by using the estate tax exemption amount of the first spouse to pass away; and (2) preserve the remainder wishes of the first spouse to pass away.</p> <p>This trust is often used to "control" assets in the estate of the first spouse to pass away. The first spouse to pass away may wish for his or her asset to pass to third parties (i.e., children of a prior marriage, etc.) upon the death of the surviving spouse. An irrevocable trust such as a Bypass Trust is the way to accomplish this.</p> |
| <p>QUALIFIED DOMESTIC PROPERTY TRUST (QDOT TRUST)</p> | <p>A special trust needed to take advantage of the unlimited marital deduction in the event that the surviving spouse is a non-US citizen. One trustee of the Qualified Domestic Property Trust (QDOT) must be a U.S. citizen.</p> |
| <p>QUALIFIED TERMINABLE INTEREST PROPERTY TRUST (QTIP TRUST)</p> | <p>A special trust to take advantage of the unlimited marital deduction upon the death of a first spouse. The assets in the QTIP Trust are free from estate taxes upon the deceased spouse's death, but are subject to estate taxes upon the surviving spouse's death. The assets in the QTIP Trust must be used for the surviving spouse's benefit during the surviving spouse's life.</p> |
| <p>DISCLAIMER TRUST</p> | <p>For married couples; an optional irrevocable trust created via a Family Trust to save the deceased spouse's estate tax exemption amount; this trust is different from the Bypass Trust in that only the surviving spouse creates this trust and the trust is created after the death of the first spouse. The Disclaimer Trust is a flexible estate planning tool in estates where estate tax is a primary concern, but due to changing tax law and fluctuating estate values, it is uncertain whether there is estate tax liability exposure.</p> |

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