Trusts & Estates Glossary

Note: The words that appear in italics are defined in this glossary.

A/B Trust or A/B/C Trust: a *trust* created by a married couple to lessen their overall *estate tax* liability. Also called a *bypass trust* or a *credit shelter trust*. At the death of the first spouse, the *estate* is divided into two parts. The first part is the surviving spouse's share of the *estate*, which transfers to an A Trust, fully revocable by the surviving spouse. The second part is the deceased spouse's share, which is placed in the *bypass trust* (B Trust) for the benefit of the surviving spouse. After the surviving spouse passes away, any remaining property in the *bypass trust* (B Trust) will pass to the deceased spouse's children or other *beneficiaries* without being subject to *estate tax*. If the deceased spouse's share of the estate exceeds the *estate tax exemption amount*, a third trust (C Trust) will be created for the overage. If the C Trust provides that all income will be paid to the surviving spouse, it will qualify for the *marital deduction*, and no *estate tax* will be owed on the C Trust unless property remains in the C Trust on the death of the surviving spouse. For a diagram, refer to Trust Diagrams – AB Trust (2011) on the Resources Page.

Abatement: a reduction. After a death, *abatement* occurs if the *decedent* did not leave enough property to fulfill all the *bequests* made in the *will* and meet other expenses. *Gifts* left in the *will* are cut back in order to pay taxes, satisfy debts or take care of other gifts that are given priority under law or by the *will* itself.

Abstract of Trust: a condensed version of a *living trust* document, which leaves out details of what is in the trust and the identity of the *beneficiaries*. The *trustor* can show an *abstract of trust* to a financial organization or other institution to prove that the *trustor* has established a valid *living trust*, without revealing specifics that may be kept private. In California, this document is called a *Certification of Trust*.

Acknowledgment: a statement made before a notary public or other person who is authorized to administer oaths stating that a document bearing one's signature was actually signed by that person.

Ademption: the failure of a *bequest* of property in a *will*. The *gift* fails (is "adeemed") because the *testator* no longer owned the property. Often this happens because the property was sold, destroyed or given away to someone other than the *beneficiary* named in the *will*. However, a *bequest* may also be adeemed when the *testator*, while still living, gives the property to the intended *beneficiary* ("ademption by satisfaction"). When a *bequest* is adeemed, the *beneficiary* named in the *will* is out of luck; he or she doesn't get cash or a different item of property to replace the one that was described in the *will*.

Administration: the process of handling the affairs of a deceased person's *estate* or *trust*.

Administrator/Administratrix: a male/female person or financial institution that is appointed to take care of the *estate* of a deceased person who died without a *will*. Also known as a *personal representative*.

Adult: in California, a person who is 18 years of age or older.

Advance Health Care Directive: a written document that appoints a health care *agent* and states health care wishes, including end-of-life decisions otherwise included in a *Living Will*. An *Advance Health Care Directive* is an all-encompassing document that provides an *agent* the right to choose or decline treatment, select or remove a physician, discharge an incompetent patient, obtain medical records, donate the *principal's* organs after death, authorize an autopsy, arrange for a funeral or memorial service, and bury or cremate the *principal's* remains.

Agent: a person authorized to act for and under the direction of another person when dealing with third parties. The person who appoints the *agent* is called the *principal*. Also known as an *attorney in fact*.

Alternate Beneficiary: a person, organization or institution that receives property through a *will*, *trust* or insurance policy when the first named beneficiary is unable or refuses to take the property. Also known as the *secondary beneficiary* or *contingent beneficiary*.

Ancestor: a family member from an earlier generation. Examples: parent, grandparent, great-grandparent, etc.

Ancillary Administration: *probate* proceedings in another state. This is usually necessary when the *decedent* owned *real estate* in a state other than his or her home state.

Annual Gift Tax Exclusion: the amount of money or other property that a *donor* can give to a *donee* in any calendar year without incurring a *gift tax*. Several kinds of *gifts* are exempt from *gift tax*: *gifts* to tax-exempt charities, *gifts* to your spouse (limited to $110,000 annually if the recipient is not a U.S. citizen) and *gifts* made for tuition or medical bills. A husband and wife can joint together and raise the exclusion to $22,000, even if only one spouse owns the gifted property, through a concept called *gift splitting*. In addition, the $11,000 annual gift-giving amount is the exclusion per *donee*. Carefully used, this *estate planning* strategy can be used to transfer significant amounts without any federal *gift tax*.

Appraisal: a determination of the value of something. A professional *appraiser* makes an estimate by examining the property, looking at the initial purchase price and comparing it with recent sales of similar property. Used to determine *fair market value*.

Appraiser: a person who is hired to determine the current value of *real estate* or other property.

Appreciation: an increase in value. Refers to appreciated property, which has increased in value since it was acquired.

Assets Subject to Administration: assets that are subject to administration in the *probate* court (i.e., assets that were held in the name of the deceased person only). Also referred to as the *estate*. Assets owned jointly with a surviving joint owner, life insurance proceeds, and retirement plan proceeds payable to a named beneficiary other than the estate are normally not part of the estate and are not subject to administration.

Attestation: the act of watching someone sign a legal document, such as a *will* or *power of attorney*, and then signing your own name as a *witness*. Attesting to a document means that you watched it being signed, not that you are vouching for its accuracy or truthfulness.

Attorney in Fact: a person named in a *power of attorney* to act on behalf of the *principal*. Also known as an *agent*.

Basis: for income and capital gains tax purposes, the value that is used to determine profit or loss when property is sold. Often the *basis* is what one pays for the property, "adjusted" to reflect improvements made or damage incurred while the property was owned. See also *stepped-up basis* and *carryover basis*.

Beneficiary: a generic term that usually refers to a person or entity that is entitled to receive something, for example, a *beneficiary* of an *estate* or *trust*, or a *beneficiary* of life insurance or retirement benefits.

Bequeath: a legal term that means "leave." For example, "I bequeath my baseball card collection to my brother, Hank Aaron."

Bequest: *personal property* (other than *real estate*) left to a *beneficiary* in a *will*.

Buy-Sell Agreement: an agreement between the owners of a business that provides that the shares owned by any one of them who dies or withdraws from the business shall be sold to and will be purchased by the surviving co-owners or by the business entity itself at a value or formula previously agreed upon by the parties and stipulated in the agreement.

Bypass Trust: an *estate planning* device (also called a *credit shelter trust* or B Trust in an *A/B Trust*) used to minimize the combined *estate taxes* payable by spouses. At the death of the first spouse, the *estate* is divided into at least two parts. The first part is the surviving spouse's share of the *estate*, which transfers to an A Trust, fully revocable by the surviving spouse. The second part is the deceased spouse's share, which is placed in the *bypass trust* (B Trust) for the benefit of the surviving spouse. After the surviving spouse passes away, any remaining property in the *bypass trust* (B Trust) will pass to the deceased spouse's children or other *beneficiaries* without being subject to *estate tax*. If the deceased spouse's share of the estate exceeds the *estate tax exemption amount*, a third trust (C Trust) will be created for the overage. If the C Trust provides that all income will be paid to the surviving spouse, it will qualify for the *marital deduction*, and no *estate tax* will be owed on the C Trust unless property remains in the C Trust on the death of the surviving spouse. For a diagram, refer to Trust Diagrams – AB Trust (2011) on the Resources Page.

Carryover Basis: the tax *basis* of someone who receives a *gift*. The recipient's *basis* is the same as the giver's *basis*; it simply "carries over" when the *gift* is made.

Cash Surrender Value: the amount of cash available upon voluntary termination of an insurance policy before the insurance benefits become payable.

Cash Value: the equity amount of a *life insurance policy* available to the policy owner when the *life insurance policy* is surrendered to the company, or the amount upon which the total available for a policy loan is determined. During the early years of a traditional *whole life policy*, *cash value* is the reserve less a surrender charge. In the later years of a traditional *whole life policy*, the *cash surrender value* usually equals or closely approximates the reserve value.

Certification of Trust: a condensed version of a *living trust* document, which leaves out details of what is in the trust and the identity of the *beneficiaries*. The *trustor* can show an *abstract of trust* to a financial organization or other institution to prove that the *trustor* has established a valid *living trust*, without revealing specifics that may be kept private. In some states, this document is called an *Abstract of Trust*.

Charitable Gift Annuity: a contract between the *donor* and charity that guarantees fixed payments to one or two *income beneficiaries* for life, based on their ages.

Charitable Lead Trust: a charitable trust arrangement whereby a charity receives income from a *trust* for a period of years, then the remainder of the *trust* is paid to non-charitable *beneficiaries* (generally the *donor* or the *donor's* family members).

Charitable Remainder Annuity Trust: a charitable trust arrangement whereby the *donor* or other *beneficiary* is paid annually an income of a fixed amount of at least 5% but not more than 50% of the initial fair market value of property placed in the trust, for life or a period of up to 20 years. One or more qualified charitable organizations must be named to receive the remaining trust property upon the death of the *donor* or other *income beneficiaries*. The value of the charitable remainder interest must be at least 10% of the net fair market value of all property transferred to the trust, as determined at the time of the transfer.

Charitable Remainder Trust: a charitable trust arrangement that provides an income interest to non-charitable *beneficiaries* for life or a period of up to 20 years and a remainder interest to one or more qualified charitable organizations. For a diagram, refer to Trust Diagrams – Charitable Remainder Trust on the Resources Page.

Charitable Remainder Unitrust: a charitable trust arrangement whereby the *donor* or other *beneficiary* is paid annually an income of a fixed percentage of at least 5% but not more than 50% of the annually revalued trust assets, for life or for a period of up to 20 years. One or more qualified charitable organizations must be named to receive the remaining trust property upon the death of the *donor* or other *income beneficiaries*. The value of the charitable remainder interest must be at least 10% of the net fair market value of all property transferred to the trust, as determined at the time of the transfer. Compare *Flip NICRUT*, *Flip NIMCRUT*, *NICRUT*, *NIMCRUT*.

Charitable Trust: any trust designed to make a substantial gift to a charity and also achieve income and *estate tax* savings for the person who creates the trust.

Codicil: a written amendment to a *will*. Generally used to make minor changes and should be kept with the original *will*. Must be signed before *witnesses*, just like a *will*.

Community Property: a form of ownership under which property acquired during a marriage is presumed to be owned jointly unless acquired as *separate property* of either spouse. Applies in some form in ten states, including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin.

Community Property With Right of Survivorship: a way for married couples to hold *title* to property such that one spouse's half-interest in *community property* passes to the surviving spouse without *probate*. Available in Arizona, California, Nevada, Texas and Wisconsin.

Conservator: an *adult* person or financial institution appointed by a court to oversee the affairs of the *incapacitated* person. A *conservator* who manages financial affairs is called a "conservator of the estate." A *conservator* who handles personal matters, such as healthcare and living arrangements, is called a "conservator of the person." One *conservator* may be appointed to handle both financial affairs and personal matters. When the *incapacitated* person is a *minor* child, the *conservator* is referred to as a *guardian of the estate* or *guardian of the person*.

Contingent Beneficiary: a *beneficiary* who is entitled to receive a benefit if the primary *beneficiary* dies before receiving the benefit. Also known as an *alternate beneficiary* or *secondary beneficiary*.

Cost Basis: the value that one paid for property, used to determine profit or loss when the property is sold for income and capital gains tax purposes.

Credit Shelter Trust: an *estate planning* device (also called a *bypass trust* or B Trust in an *A/B Trust*) used to minimize the combined *estate taxes* payable by spouses. At the death of the first spouse, the *estate* is divided into at least two parts. The first part is the surviving spouse's share of the *estate*, which transfers to an A Trust, fully revocable by the surviving spouse. The second part is the deceased spouse's share, which is placed in the *bypass trust* (B Trust) for the benefit of the surviving spouse. After the surviving spouse passes away, any remaining property in the *bypass trust* (B Trust) will pass to the deceased spouse's children or other *beneficiaries* without being subject to *estate tax*. If the deceased spouse's share of the *estate* exceeds the *estate tax exemption amount*, a third trust (C Trust) will be created for the overage. If the C Trust provides that all income will be paid to the surviving spouse, it will qualify for the *marital deduction*, and no *estate tax* will be owed on the C Trust unless property remains in the C Trust on the death of the surviving spouse. For a diagram, refer to Trust Diagrams – AB Trust (2011) on the Resources Page.

Crummey Letter: a notice given to a *beneficiary*, informing the *beneficiary* that a *gift* has been made to a *trust* for the *beneficiary* and that the *beneficiary* has the power to demand that all or part of the *gift* be distributed to the *beneficiary*.

Crummey Power: a power given to a *beneficiary* to ensure that a *gift* qualifies for the *annual gift tax exclusion* for *gifts* in *trust*. The *beneficiary* is given the power to demand that property be distributed from the *trust* during the calendar year to the extent of the *annual gift tax exclusion* amount.

Curtesy: a surviving husband's right to receive a set portion of his deceased wife's *estate*, usually between one third and one half. Most states have abolished curtesy and replaced it with a concept known as the *statutory share*.

Custodian: the person or institution named to manage property left to a *child*. The *custodian* will manage the property if the *donor* dies before the *child* has reached the age of majority (18 in California) or up to age 25 (if specified by the *donor*). When the *child* reaches the specified age, he or she will receive the property and the *custodian* will have no further role in its management.

Custodianship: an ownership arrangement in which property management rights are given to a *custodian* for the benefit of a *beneficiary* under the Uniform Gifts to Minors Act or the Uniform Transfers to Minors Act. A *custodian's* duties resemble those of a *trustee*, although the *custodian* does not take legal title to the trust property and *custodianship* ends when the minor reaches the age of majority (age 18 in California) or the age specified by the *custodianship* (up to age 25 in California).

Death Tax: a tax levied at death, based on the value of property left behind. Federal *death taxes* are called *estate tax*. Some states levy *inheritance taxes* on people who *inherit* property. California does not impose an *inheritance tax*.

Decedent: the person who died.

Deed: a legal document conveying *title* to a property.

Defeasance: a clause in a *deed*, lease, *will* or other legal document that completely or partially negates the document if a certain condition occurs or fails to occur. *Defeasance* also means the act of rendering something null and void. For example, a *will* may provide that a *gift* is will be void if the *beneficiary* fails to marry before the *testator's* death.

Descendant: those persons who are in the blood line of the *ancestor*; persons who proceed from a body of another. Examples: child, grandchild, etc.

Devise: when used as a noun, it refers to an inheritance of *real property* or *personal property* under a *will*. When used as a verb, it means to dispose of *real property* or *personal property* by *will*. See also *bequest* and *bequeath*. Compare *legacy*.

Devisee: a person or entity designated in a *will* to receive a *devise*.

Discharge: a court order releasing the *administrator* or *executor* from any further duties connected with the *probate* of an *estate*. Typically occurs when the duties have been completed but may happen sooner if the *administrator* or *executor* wishes to withdraw or is dismissed.

Disclaim: to refuse or give away a claim or right. For example, if your uncle wanted to give you a polluted parcel of land, and your due diligence prior to accepting the gift revealed that the property's liabilities likely exceed its value, you could disclaim the gift, losing the opportunity to receive the land but avoiding the liability that is attributed to an owner, even when the owner did not cause the contamination. Also used as an *estate planning* strategy to pass property on to the next generation and skip a level of taxation.

Disclaimer: a renunciation of one's claim or right.

Disinherit: to deliberately prevent someone from *inheriting* something. Usually done by a provision in a *will* stating that someone who would ordinarily *inherit* property (i.e., a close family member), should not receive any property. In most states, a spouse cannot be completely *disinherited*. With a few exceptions, children can be *disinherited*. Used as an *estate planning* strategy when receiving an inheritance would disqualify the recipient from receiving or continuing to receive government assistance.

Domicile: one's home or permanent residence. The laws of the state of a person's domicile determine what happens to that person's property at death.

Donation: a gift of property. The Internal Revenue Service allows a *donor* to take a certain income tax deduction for *donations* made to qualified charitable organizations.

Donee: someone who receives a gift.

Donor: someone who makes a gift.

Dower: a surviving wife's right to receive a set portion of her deceased husband's *estate*, usually between one third and one half. Most states have abolished dower and replaced it with a concept known as the *statutory share*.

Durable Power of Attorney: a written document which allows someone (the *principal*) to authorize another person (the *attorney in fact* or *agent*) to act on the *principal's* behalf, and which may remain in effect during a subsequent disability or incompetency of the *principal*.

Durable Power of Attorney for Finances: a legal document that allows someone (the *principal*) to authorize another person (the *attorney in fact* or *agent*) to manage the *principal's* financial affairs immediately (as of the date the power was signed) or in the future (a *springing power* that becomes effective only when two physicians certify that the *principal* is *incapacitated*).

Durable Power of Attorney for Health Care: a legal document that allows someone (the *principal*) to authorize another person (the *attorney in fact*, *agent*, *health care proxy*, etc.) to make medical decisions for the *principal* if the *principal* is unable to make those decisions for himself or herself. A separate document in some states, a *Durable Power of Attorney for Health Care* is part of the *Advance Health Care Directive* in California.

Elective Share: the portion of a deceased person's *estate* that a spouse is entitled to claim under state law. The *elective share* is usually one-third or one-half of the deceased spouse's property, but in some states the exact amount of the spouse's share depends on whether or not the couple has young children and, in a few states, on how long the couple was married. In most states, if the deceased spouse left a *will*, the surviving spouse must choose either what the *will* provides or elect against the *will*. Sometimes referred to as *dower* or *curtesy*; more often known as a *statutory share* or *forced share*.

Entity: an organization, institution or being that has its own existence for legal or tax purposes. An *entity* is often an organization with an existence separate from its individual members. Includes a corporation, partnership, *trust*, *estate* or government agency. Treated like a person, an *entity* can function legally, be sued, and make decisions through *agents*.

Escheat: the forfeit of all property to the state when a person dies without *heirs*.

Estate: this word has a number of meanings depending on the context in which it is used. For federal *estate tax* purposes, it refers to all of a deceased person's assets that are included in that person's *estate* for tax purposes (usually everything). It is also used to refer to those items of property that are subject to *administration* in the *probate* court. For example, life insurance owned by the *decedent* and payable to a named *beneficiary* such as a surviving spouse is not part of the deceased person's *estate* that is subject to *administration* in the *probate* court, but it is included in the deceased person's *estate* for federal *estate tax* purposes.

Estate Planning: the process of arranging one's personal and financial affairs so as to conserve assets before and after death, distribute property to loved ones with minimal delay, ensure liquidity during *administration*, reduce *probate* fees and taxes, and provide for the family’s financial needs. *Estate planning* involves the counsel of professional advisors, including a lawyer, accountant, financial planner, insurance agents, bankers and brokers. At a minimum, planning an *estate* for a California resident should include three documents: (1) a *Will*, (2) a *Durable Power of Attorney for Finances*, and (3) an *Advance Health Care Directive*.

Estate Tax: a tax imposed by the state or federal government on the transfer of property from a *decedent* to his or her *heirs* or *beneficiaries*. All property, regardless of its form of ownership, and whether or not it is subject to *probate*, is subject to federal *estate tax*. However, federal *estate tax* must be paid only on property that exceeds the *estate tax exemption amount* in the *decedent’s* year of death.

Estate Tax Exemption Amount: the amount of property that may pass to a *decedent’s beneficiaries* or *heirs* free of *estate tax*. Varies based on the year of death, as shown below:

Year of Death	***Estate Tax Exemption Amount***	***Tax Rate***
2005	$1.5 million	47%
2006	$2 million	46%
2007	$2 million	45%
2008	$2 million	45%
2009	$3.5 million	45%
2010	Unlimited	N/A
2011	$1 million	55%

Executor/Executrix: a male/female person or financial institution that is appointed to administer the *estate* of a deceased person who died with a *will*. Also known as a *personal representative*.

Failure of Issue: a situation in which a person dies without children who could have *inherited* his or her property.

Fair Market Value: the price at which an item can be sold at the present time between two unrelated people, neither under compulsion to buy or sell.

Family Allowance: a certain amount of a *decedent’s estate* to which immediate family members are entitled at the beginning of the *probate* process. The *family allowance* is intended to help support the surviving spouse and children during the time it takes to *probate* the *estate*. The amount of the *family allowance* is determined by state law and varies greatly from state to state.

Fiduciary: a person or institution in the position of great trust and responsibility, such as a *personal representative, trustee, guardian, conservator*, or *agent*.

Five and Five Power: a provision that allows the *beneficiary* of a *trust* the right to withdraw the greater of $5,000 or 5% of the principal from a *trust* without causing the entire *trust* property to be included in his or her *estate* for federal *estate tax* purposes.

Flip NICRUT: Flip NIMCRUT: a hybrid *charitable remainder unitrust* that starts off as a *NICRUT* because the contributed asset is hard to value and illiquid. After the asset is sold, the *trust* is permitted to flip to a standard *charitable remainder unitrust*. Only one flip is permitted. Compare *CRUT*, *Flip NIMCRUT*, *NICRUT*, *NIMCRUT*.

Flip NIMCRUT: a hybrid *charitable remainder unitrust* that starts off as a *NIMCRUT* because the contributed asset is hard to value and illiquid. After the asset is sold, the *trust* is permitted to flip to a standard *charitable remainder unitrust*. Only one flip is permitted. Compare *CRUT*, *Flip NICRUT*, *NICRUT*, *NIMCRUT*.

Forced Share: the portion of a *decedent's estate* that a spouse is entitled to claim under state law. The *forced share* is usually one-third or one-half of the deceased spouse's property, but in some states the exact amount of the spouse's share depends on whether or not the couple has young children and, in a few states, on how long the couple was married. In most states, if the deceased spouse left a *will*, the surviving spouse must choose either what the *will* provides or elect against the *will*. Sometimes referred to as *dower* or *curtesy*; more often known as an *elective share* or *statutory share*.

Funding: the process of transferring ownership of property to a *trust*.

Future Interest: an ownership interest in property in which unlimited possession or enjoyment of property is delayed until some future time.

General Power of Appointment: a power of the *donee* to pass on an interest in property to whomever the *donee* pleases, including the *donee* or the *donee's estate*.

Generation Skipping Transfer (GST): a transfer of property, usually in *trust*, that is designated to provide benefits for *beneficiaries* who are two or more generations younger than the generation of the *grantor*.

Generation Skipping Transfer Tax (GSTT): a transfer tax generally assessed on transfers to grandchildren, great grandchildren, and others who are at least two generations younger than the *donor*. Designed to trap property transfers, so that the Internal Revenue Service can impose the *estate tax* on each generation, and otherwise increases the tax when a generation is skipped. The GSTT is very steep – it is a flat 55% of the value of property transferred in 2005-2006, 45% of the value of property transferred in 2007-2009.

Generation Skipping Transfer Tax Exemption: an exemption from *generation-skipping transfer tax* for transfers by an individual either during life or at death. From 2005 through 2010, the GSTT exemption equals the estate tax exemption amount.

Generation Skipping Trust: any *trust* having *beneficiaries* who belong to two or more generations younger than the *grantor*.

Gift: a voluntary transfer of property for which nothing of value is received in return. If the Internal Revenue Service is to recognize a transfer as a *gift*, the *donor* must unconditionally transfer all title and control of the property to the recipient when the *gift* is made. If the *gift* or combination of *gifts* exceed $11,000 in one year, the *donor* is responsible for a *gift tax*.

Gift Splitting: a technique used to avoid a *gift tax* when a married couple files an election on their *gift tax* return that allows both spouses to treat gifts made by one spouse as having been made equally by both spouses. Using this technique, a married couple can gift a single *donee* up to $22,000 in any year without paying *gift tax*.

Gift Tax: federal taxes assessed on any *gift*, or combination of *gifts*, from one person to another that exceeds $11,000 in one year. Several kinds of *gifts* are exempt from *gift tax*: gifts to tax-exempt charities, gifts to your spouse (limited to $110,000 annually if the recipient is not a U.S. citizen) and gifts made for tuition or medical bills. In addition to the $11,000 *annual gift tax exclusion*, there is a $1 million cumulative tax exemption for *gifts*. In other words, you can give away a total of $1 million during your lifetime -- over and above the gifts you give using the annual exclusion -- without paying *gift tax*.

Gifting: a means of implementation of an *estate plan* through *gifts* to intended successors in the ownership of assets owned by the person(s) making the *gifts*.

Grantee: a person to whom property is transferred by deed or to whom property rights are granted by means of a *trust* instrument or some other document.

Grantor: in the case of a *trust*, the person who creates the *trust*. Also known as a *donor*, *settlor* or *trustor*. In the case of a deed, the person who transfers *real estate* to the *grantee*.

Grantor Retained Annuity Trust ("GRAT"): a *grantor retained income trust* in which the *grantor* retains the right to set an annuity (i.e., a set annual dollar amount) for a fixed term and gives the principal of the trust to others, such as the *grantor's* children, at the end of the fixed term. If the *grantor* survives until the end of the annuity term, all of the *trust* principal will be excluded from the *grantor's estate* for *estate tax* purposes.

Grantor Trust: for purposes of the income taxation of *trusts*, a *trust* in which the *grantor* or a third party, because of certain rights to income or principal or certain powers over the disposition of the income and principal, is treated as the owner of the *trust* and taxed on the income of the *trust*. A *grantor trust* is not treated as a separate *entity* for income tax purposes.

Grantor Retained Income Trust: an *irrevocable trust* designed to save on *estate tax*. The *grantor* keeps the *trust* income, or use of the *trust* income, for a period of years ("term"). When the term ends, the property passes on to the *beneficiaries* named in the *trust*. If the *grantor* survives until the end of the term, all of the *trust* principal will be excluded from the *grantor's estate* for *estate tax* purposes. However, if the *grantor* dies before the term expires, all of the *trust* property will be included in the *grantor's estate* for *estate tax* purposes. See also *GRITs* and *GRUTs*.

Grantor Retained Unitrust ("GRUT"): a *grantor retained income trust* in which the *grantor* retains the right to a unitrust amount (i.e., a fixed percentage of the *fair market value* of the *trust* property, recalculated annually) for life or a fixed term and gives the principal of the trust to others, such as the *grantor's* children, at the end of the fixed term. If the *grantor* survives until the end of the unitrust term, all of the *trust* principal will be excluded from the *grantor's estate* for *estate tax* purposes.

Gross Estate: the total value of all property in which a *decedent* had an interest. Included in the *decedent's estate* for *estate tax* purposes.

Group Life Insurance: life insurance available through an employer or association that covers participating employees and members under one master insurance policy. Most *group life insurance* policies are *term insurance policies* (i.e., policies that terminate when the member or employee reaches a certain age or leaves the organization and do not accumulate any *cash surrender value)*.

Guardian: an *adult* who has been given the legal right by a court to control and care for a *minor*. Someone who looks after a child, taking responsibility for the child's physical, medical and education needs, is called a *guardian of the person*. Someone who assumes control of a *minor's* property is called a *guardian of the estate*. Sometimes one person will be named to take care of all of these tasks. An individual appointed by a court to care for an *incapacitated adult* may also be known as a *guardian* but is more frequently called a *conservator*.

Guardian of the Estate: someone appointed by a court to care for the property of a *minor* child that is not supervised by an *adult* under some other legal method, such as a *trust*. A *guardian of the estate* may also be called a "property guardian" or "financial guardian."

Guardian of the Person: someone appointed by a court to take responsibility for a *minor* child's physical, medical and educational needs. A *guardian of the person* may also be called a "custodial guardian."

Guardianship: a legal relationship created by a court between a *guardian* and a ward (i.e., a *minor* child or an *incapacitated adult*). The *guardian* has a legal right and duty to care for the ward. This may involve making personal decisions for the ward, managing the ward's property, or both. *Guardianship* of an *incapacitated adult* is more typically called *conservatorship*.

Health Care Directive: see *Advance Health Care Directive*.

Heir: a person who *inherits* property from someone who has died. The traditional meaning includes only those who had a legal right to the *decedent's* property. The modern usage, however, includes anyone who receives property from the *decedent's estate*. *Heirs* may be determined under state *intestate succession* law if no *beneficiaries* are named in a *will* or *trust*, or if none of the *beneficiaries* named in the *will* or *trust* survive the *decedent*.

Heirs Apparent: one who expects to be receive property from the *estate* of a family member, as long as he or she outlives that person.

Holographic Will: a *will* that is completely handwritten, dated and signed by the *testator*. *Holographic wills* are generally not *witnessed*. Although legal in many states, making a *holographic will* is never advised except as a last resort.

Human Life Value: for purposes of life insurance, the present value of the family's share of the deceased breadwinner's future earnings.

In Terrorem: the Latin phrase meaning "in fear." Used to describe provisions in contracts, *wills* and *trusts* meant to scare a person into complying with the terms of the agreement. For example, a *will* might include no contest clause stating that an *heir* will forfeit his or her inheritance if he or she challenges the validity of the *will*. Of course, if the *will* is challenged and found to be invalid, then the clause itself is also invalid and the *heir* takes whatever he or she would have *inherited* if there were no *will*.

Incapacitated: a person who has been determined by a court as not capable of handling his or her personal and financial affairs.

Incapacity: (1) a lack of physical or mental abilities that results in a person's inability to manage his or her own personal care, property or finances; (2) a lack of ability to understand one's actions when making a *will* or other legal document.

Incidents of Ownership: any control over property. If you give away property but keep an *incident of ownership*, then legally no gift has been made. This distinction is very important when making large gifts in an effort to reduce *estate tax*. For example, if the insured *trustor* of an *irrevocable life insurance trust* possesses *incidents of ownership* in the *trust's life insurance policy* within three years of death, the policy proceeds will be included in the insured's *gross estate*.

Income Beneficiary: the *beneficiary* of a *trust* who is entitled to receive the income generated from the property inside the *trust*.

Income in Respect of a Decedent ("IRD"): income earned by a *decedent* or income to which the *decedent* had a right prior to death, but which was not properly includible in the *decedent's* gross income prior to death.

Incompetence: the inability, as determined by a court, to handle one's own personal or financial affairs. A court may declare that a person is incompetent after a hearing at which the person is present and/or represented by an attorney. A finding of incompetence may lead to the appointment of a *conservator* to manage the person's affairs. Also known as *incompetency*.

Incompetency: see *incompetence*.

Inherit: to receive property from someone who has died.

Inheritance Tax: a tax imposed by some states on people or organizations who *inherit* property from a *decedent*. The taxes are based on the value of the *inherited* property.

Inheritor: a person or organization who receives property from a *decedent*.

Installment Sale: a sale in which taxable gain is recognized over a number of years as the payment for the property sold is received.

Intangible Personal Property: *personal property* that cannot be physically touched. This type of property may have some paper associated with it. Includes stock, bonds, bank notes, mutual funds, bank accounts, contracts, leases, trade secrets, patents, copyrights and trademarks. Compare *tangible personal property*.

Inter Vivos Trust: the Latin phrase for "between the living." See *living trust*.

Intestate: refers to dying without a *will*. When a person dyes *intestate*, the *probate* court must appoint an *administrator* to distribute the *decedent's* property according to state *intestate succession* law.

Intestate Succession: the method by which property is distributed when a person dies without a valid *will*. Each state's law provides that the property be distributed to the closest surviving relatives. In most states, the surviving spouse, children, parents, siblings, nieces and nephews, and next of kin inherit, in that order. For a breakdown of California's Intestate Succession Law, refer to California Intestate Succession Law on the Resources Page.

Inventory: a complete listing of all property owned by a *decedent* at the time of death. The *personal representative* is responsible for making the *inventory* and filing it with the court, if there is a *probate* proceeding.

Irrevocable Life Insurance Trust ("ILIT"): an *irrevocable trust* established to own one or more insurance policies and thereby prevent those policies from being included in the insured's *estate* for *estate tax* purposes. For a diagram, refer to Trust Diagrams – Irrevocable Life Insurance Trust on the Resources page.

Irrevocable Trust: a *trust* that can no longer be amended or revoked by anyone. Most *revocable trusts* become irrevocable at some time, for example, when the person who established the *trust* dies.

Issue: a term generally meaning all children and their children down through the generations, including grandchildren, great-grandchildren, and so on. Also called lineal *descendants*.

Joint Tenancy: a form of ownership shared with an unlimited number of individuals. Each tenant owns an equal undivided share of the property. In California, *joint tenancy* is presumed to be "with *right of survivorship*," so that when one tenant dies, the surviving tenant(s) succeed to full ownership by operation of law. No *probate* is required, and the property is not subject to a *will* or *trust*. Nevertheless, there are many reasons why *joint tenancy* is not a replacement for proper *estate planning*. For an explanation of the pitfalls of Joint Tenancy, refer to Why Joint Tenancy is Not a Replacement for Proper Estate Planning on the Resources Page.

Lack of Marketability Discount: when the value of an asset is less than its initial or expected *fair market value* due to unusual circumstances that make it not readily saleable.

Lapse: under a *will*, the failure of a *gift* of property. A *gift lapses* when the *beneficiary* dies before the *testator*, and no alternate *beneficiary* has been named. Some states have "anti-lapse statutes," which prevent *gifts* to relatives of the *decedent* from *lapsing* unless the relative has no *heirs* of his or her own. A *lapsed gift* becomes part of the *residuary estate*.

Lawful Issue: formerly, statutes governing *wills* used this phrase to specify children born to married parents, and to exclude children born out of wedlock. Now, the phrase means the same as *issue* and lineal *descendant*.

Legacy: an outdated legal word meaning *personal property* left by a *will*. The more common term is *bequest*.

Letters of Administration: document issued by the *probate* court giving the *administrator* authority to *administer* the *estate*.

Letters Testamentary: the document that the *probate* court gives to the *executor*, authorizing the *executor* to settle the *estate* according to a *will* or the state's *intestate succession law*.

Liability: a financial obligation, debt, claim or potential loss.

Life Beneficiary: a person who receives benefits, under a *trust* or by a *will*, for his or her lifetime. For an example, see the discussion of the B Trust under *A/B Trust*.

Life Estate: a limited property right, to use or occupy property for life. Upon the *life estate* holder's death, *title reverts* to the *grantor* or a third party.

Life Insurance: a contract in which an insurance company agrees to pay money to a designated *beneficiary* upon the death of the policy holder. In exchange, the policyholder pays a regularly scheduled fee, known as the insurance premiums. The purpose of life insurance is to provide financial support to those who survive the policyholder, such as family members or business partners. When the policyholder dies, the insurance proceeds pass to the *beneficiaries* free of *probate* (unless the *estate* is named as beneficiary or no named *beneficiaries* survive the insured). Insurance proceeds are counted as part of the owner's *estate* for federal *estate tax* purposes.

Life Insurance Planning: a systematic method of determining the insured's financial goals, which are translated into specific amounts of life insurance, then periodically reviewed for possible changes.

Living Trust: a *trust* established during a person's lifetime by a written instrument, to own property and provide instructions for property management and distribution upon the *trustor's* disability or death. Also known as an *inter vivos trust* or a *revocable living trust*.

Living Will: a document in which one states one's wishes about certain kinds of medical treatments and life-prolonging procedures. The document takes effect if one cannot communicate one's healthcare decisions. A separate document in some states, a *Living Will* is part of the *Advance Health Care Directive* in California.

Marital Deduction: a deduction allowed by the federal *estate tax* laws for all property passed to a surviving spouse who is a U.S. citizen. The *marital deduction* (which really functions as an exemption) allows anyone, even a billionaire, to pass his or her entire *estate* to a surviving spouse without any tax at all.

Marital Property: most of the property accumulated by spouses during marriage. In California, *marital property* is called *community property*. States differ as to what is included in or excluded from *marital property*. California includes all property and earnings during marriage as *community property* but excludes *inheritances* (which are treated as *separate property*).

Marital Property Agreement: a written agreement between spouses to define the financial interest of each spouse as of the date the agreement is signed and to guide the course of the couple's financial relationship throughout the marriage.

Minor: in California, a person who is under the age of 18.

Minority Discount: a discount applied to the value of an interest in a corporation, limited liability company, or limited partnership that is not publicly marketable. Reflects the fact that a minority interest has less value than a controlling interest, since a minority interest holder cannot control business actions.

Needs Approach: method for estimating the amount of *life insurance* appropriate for a family by analyzing various family needs that must be met if the family head dies and converting those needs into specific amounts of *life insurance*. Considers financial assets.

Net Amount at Risk: in *life insurance,* the difference between the face value of the *life insurance policy* and the policy's *cash value*. Also known as "pure amount of protection."

Net Estate: the value of all property owned at death, after liabilities and debts are subtracted.

Net Income Makeup Unitrust ("NIMCRUT"): an alternative to the standard *charitable remainder unitrust* that distributes the lesser of a fixed percentage of the annual value of the *trust* assets or the net annual income of the *trust*. In years where the *trust's* net income exceeds the unitrust amount, the *trust* may permit greater distributions to "make up" for lesser distributions in prior years. Compare *net income trust* (*"NICRUT"*).

Net Income Unitrust ("NICRUT"): an alternative to the standard *charitable remainder unitrust* that distributes the lesser of a fixed percentage of the annual value of the *trust* assets or the net annual income of the *trust*. Compare *net income makeup trust* (*"NIMCRUT"*).

Net Taxable Estate: the total value of a *decedent's* assets that are subject to *estate tax*, after liabilities and deductions are subtracted. Also called the *taxable estate*.

Next of Kin: the *decedent's* closest relatives, as defined by state law. Usually the spouse and nearest blood relatives.

Non-probate estate: the distribution of a *decedent's* property by any means other than *probate*. Many types of property pass free of *probate*, including property left outside of a *will* through *probate*-avoidance methods such as *pay-on-death designations, joint tenancy, living trusts*, and *life insurance*. *Non-probate* distribution may also occur if the *decedent* leaves an invalid *will*. In the case of an invalid *will*, property passes according to *intestate succession*.

Partition: the judicial separation of the respective interests in property of joint owners so that each make take possession, enjoy, and control his or her share of the property.

Pay-on-Death ("POD") Designation: a way to avoid *probate* for bank accounts, government bonds, individual retirement accounts and, in many states, securities or a car. To create a *pay-on-death designation*, simply name someone on the ownership document (such as the registration card for a bank account) to *inherit* the property at your death. You retain complete control of your property while you are alive, and you can change the *beneficiary* (*payee*) at any time. At your death, the property is transferred directly to the *beneficiary*, free of probate. Compare *transfer-on-death designation*.

Per Capita: a method of determining what share of property a *beneficiary* or a *will* or *trust* receives if one *beneficiary* dies before the *testator*, and that deceased *beneficiary* is survived by children. A *per capita* distribution results in each *beneficiary*, including each child of a deceased beneficiary, receiving an equal share. For example, Adam's *trust* provides that his children, Becky and Cindy, will *inherit* Adam's home. Cindy dies before Adam, leaving two children, Ducky and Earl. When Adam dies, Becky, Ducky and Earl will each receive a one-third share of Adam's home. Compare *per stirpes* and *right of representation*.

Per Stirpes: a method of determining what share of property a *beneficiary* or a *will* or *trust* receives if one *beneficiary* dies before the *testator*, and that deceased *beneficiary* is survived by children. A *per stirpes* distribution results in all the surviving children of a deceased *beneficiary* splitting the deceased *beneficiary's* share. For example, Adam's *trust* provides that his children, Becky and Cindy, will *inherit* Adam's home. Cindy dies before Adam, leaving two children, Ducky and Earl. When Adam dies, Becky receives a one-half share of Adam's home. Cindy's children split her one-half share, thus Ducky and Earl each receive a one-quarter share of Adam's home. Also known as *right of representation.* Compare *per capita*.

Personal Property: all property other than land and buildings attached to land. Includes bank accounts, cars, furniture, jewelry, pets and season football tickets. Compare *real estate*.

Personal Representative: the person or financial institution appointed in a *will* (also called an *executor* or *executrix*) or by the *probate* court (also called an *administrator* or *administratrix*) to administer a deceased person's *estate*.

Policy Basis: the owner's investment in a *life insurance policy*. Used to determine the taxable portion of policy distributions when a taxable event occurs (e.g., a taxable income gain occurs when the surrender proceeds of withdrawal distribution exceeds the policy basis).

Pooled Income Fund: a trust arrangement which accepts *gifts* of cash or certain properties from persons who want to provide support for the charitable organization. *Gifts* made to the *pooled income fund* are commingled and invested by the *trustee*. Units of participation are awarded to the *donor* for the *gift*. Income is paid to the *donor* proportionate to the *donor's* share of fund earnings.

Pot Trust: a trust for children in which the *trustee* has discretion to spend money on each child, taking money out of the *trust* to meet each child's specific needs. Enables the *trustee* to provide more for one child than another child, for example if one child has a medical emergency. Also presents challenges to the *trustee*, who must make difficult choices when disbursing funds to the various *beneficiaries*.

Pour-Over Will: a *will* that "pours over" property into a *trust* when the *testator* dies. In California, property left through the *will* must go through *probate* if its total *fair market value* exceeds $100,000.

Power of Appointment: the legal authority to decide who will receive someone else's property, usually property held in a *trust*. Most *trustees* can distribute the income from a *trust* only according to the terms of the *trust*, but a *trustee* with a *power of appointment* can choose the *beneficiaries*, sometimes from a list of candidates specified from the *trustor*. A *beneficiary* who holds a *power of appointment* may exercise the *power of appointment* through his *living trust* and/or *will*. A *power of appointment* is general, and included in the power holder's *estate* for *estate tax purposes*, if the holder may select any *beneficiaries*. A *power of appointment* is limited or special, and not included in the power holder's *estate* for *estate tax purposes*, if it limits the choice of *beneficiaries*.

Power of Attorney: a document that gives another person legal authority to act on your behalf. If you create such a document, you are called the *principal*, and the person to whom you give this authority is called your *agent* or *attorney-in-fact*. If you make a *durable power of attorney,* the document will continue in effect even if you become *incapacitated*.

Pretermitted Heir: a child or spouse who is not mentioned in a *will* and whom the court believes was accidentally overlooked by the person who made the *will*. For example, a child born or adopted after the *will* is made, and not otherwise included in the *will*, may be deemed a *pretermitted heir*. If the court determines that an *heir* was accidentally omitted, that *heir* is entitled to receive the same share of the *estate* as he or she would have if the *decedent* had died without a *will*. Also called an omitted heir.

Primary Beneficiary: the beneficiary of a *life insurance policy* who is first entitled to receive the policy proceeds on the insured's death.

Principal: (1) in a *power of attorney*, the person who appoints an *agent* or *attorney-in-fact* to act on his or her behalf; (2) in a *trust*, the *trust* property, as opposed to the income generated by the *trust* property.

Probate: an expensive (4-8% of the *fair market value* of the *probate estate*) and time-consuming (6 months – several years) court procedure following a person's death that includes:

- proving the authenticity of the *decedent's will*;
- appointing someone to handle the *decedent's* affairs (*personal representative*);
- identifying and inventorying the *decedent's* property;
- paying debts and taxes;
- identifying *heirs*; and
- distributing the *decedent's* property according to the *will* or, if there is no *will*, according to state *intestate succession law*.

In California, formal *probate* can be avoided if the *fair market value* of property subject to a *will* does not exceed $100,000.

Probate Estate: property subject to the authority of the *probate* court. Compare *non-probate estate*.

Proving a Will: convincing a *probate* court that a document is truly the *decedent's will*. Usually this is a simple formality that the *personal representative* easily satisfies by showing that the *will* was signed and dated by the *decedent* before two or more *witnesses*. When the will is *holographic*, it is still valid in many states if the *executor* or *executrix* can produce relatives and friends to testify that the handwriting is that of the *decedent*.

Pur Autre Vie: French phrase meaning "for another's life." Used to describe the duration of a property interest. For example, Gordon is given the use of a vacation home for as long as his father lives.

Qualified Domestic Trust ("QDOT"): a trust arrangement which allows property transferred to a surviving spouse who is not a U.S. citizen to qualify for a special exclusion in lieu of the *marital deduction* (which is not available to non-U.S. citizens). The *QDOT* ensures that, at the death of the surviving spouse, the assets placed in the *QDOT* will incur federal *estate tax* since the tax was avoided at the first spouse's death. used to postpone *estate tax* when more than the amount of the personal federal *estate tax*.

Qualified Terminable Interest Trust ("QTIP"): a type of trust for wealthy married couples that allows a surviving spouse to postpone *estate tax*. The *QTIP* allows the surviving spouse to make use of the trust property tax-free. The surviving spouse must have the sole income interest in the trust, payable at least annually. Taxes are deferred until the surviving spouse dies and the trust property is received by the final trust *beneficiaries*, who were named by the first spouse to die.

Quasi Community Property: a form of property owned by a married couple. If a couple moves to a *community property* state from a non-community property state, property they acquired together in the non-community property state may be considered *quasi-community property*. *Quasi-community property* is treated just like *community property* when one spouse dies or if the couple divorces.

Real Estate: land, improvements and buildings, including attached items and growing things. Similar to *real property*.

Real Property: land, structures, firmly attached and integrated equipment (such as light fixtures or a well pump), anything growing on land, and all interests in the property which may be the *remainder*, *life estate* or tenancy for years, the right to drill for oil, a *reversion* if the property is no longer used for its current purpose, use of airspace or an easement across another's property. Similar to *real estate* but includes interests which are not physical, such as a right to acquire property in the future. Compare *personal property*.

Remainder: a right to a future interest.

Remaindermen: one or more persons or organizations who will *inherit* property in the future. For example, Hector left his home "to Irma for life, and then to Jarret." Jarret is a *remainderman* because he will *inherit* the home in the future, after Irma dies.

Representative: someone who is authorized to act on your behalf. Includes a *personal representative, administrator, administratrix, executor, executrix, agent, attorney-in-fact*, or *trustee*.

Residuary Beneficiary: a person or organization who receives property by a *will* or *trust* that is not specifically left to another designated *beneficiary*. For example, Katrina makes a *trust* leaving her home to Larry and the remainder of her property to Mandy. Mandy is the *residuary beneficiary*.

Residuary Estate: the property that remains in a *decedent's estate* after all specific gifts are made, and all debts, taxes, administrative fees, *probate* costs, and court costs are paid. The *residuary estate* also includes any gifts under a *will* that fail or *lapse*. Also known as *residue*.

Residue: see *residuary estate*.

Restraint on Alienation: a provision in a *deed* or *will* that attempts to restrict ownership of the property. For example, Norman's *trust* leaves his home to his daughter, Olivia, on the condition that she never add her husband's name to the *deed*. *Restraints on alienation* are generally unenforceable.

Reversion: a right to get property back in the future, when a *life estate* was previously given.

Revert: to return to the former owner or to the *heirs* of the former owner.

Revocable Living Trust: a *living trust* or *inter vivos trust* that can be amended and revoked, usually by the person who established the *trust*. Assets can be added or removed from the *trust*, *beneficiaries* can be changed, and other changes, including termination of the *trust*, are permitted. A *revocable living trust* may become irrevocable and unamendable when the only person who can amend or revoke the *trust* dies or becomes *incompetent*.

Rider: term used in *insurance* contracts to describe a document that amends or changes the original policy.

Right of Representation: a method of determining what share of property a *beneficiary* or a *will* or *trust* receives if one *beneficiary* dies before the *testator*, and that deceased *beneficiary* is survived by children. Distribution by *right of representation* results in all the surviving children of a deceased *beneficiary* splitting the deceased *beneficiary's* share. For example, Adam's *trust* provides that his children, Becky and Cindy, will *inherit* Adam's home. Cindy dies before Adam, leaving two children, Ducky and Earl. When Adam dies, Becky receives a one-half share of Adam's home. Cindy's children split her one-half share, thus Ducky and Earl each receive a one-quarter share of Adam's home. Also known as *per stirpes.* Compare *per capita*.

Right of Survivorship: the right of a surviving owner to take *title* to a deceased owner's share of the property. See *community property with right of survivorship* and *joint tenancy*.

Rule Against Perpetuities: a complex legal doctrine that limits the amount of time that property can be controlled after death by a person's instructions in a *trust* or *will*. Any interest in property is void if it will not *vest* within a period measured by a life or lives in being at the time of creation of the interest plus 21 years and the period of gestation. Many states have modified the rule by statute.

Section 2503(c) Trust for Minors: a *trust* designed to comply with Internal Revenue Code Section 2503(c). A gift placed in this type of *trust* for the benefit of a *minor* will qualify for the *gift tax annual exclusion* although the *gift* does not constitute a present interest.

Section 303 Stock Redemption: when certain requirements are satisfied, Internal Revenue Code Section 303 permits a shareholder's *estate* or *heirs* to sell the *decedent's* closely held corporation enough stock to pay *estate taxes*, *administration* costs, and funeral expenses without the corporation's distribution being treated as a divided for income tax purposes.

Section 6166: section of the Internal Revenue Code that allows for a 14-year spread-out of the *estate tax* for qualifying *estates* (e.g., *estates* that include closely held businesses or farms).

Self-Proving Will: a *will* that is created in a way that allows a *probate* court to easily accept it as the true *will* of the *decedent*. In most states, a *will* is *self-proving* when two *witnesses* sign under penalty of perjury that they observed the *testator* sign the *will* and the *testator* told the *witnesses* that the document was the *testator's will*. If no one contests the validity of the *will*, the *probate* court will accept the *will* without hearing the testimony of the *witnesses* or other evidence. To make a *self-proving will* in other states, the *testator* and one or more *witnesses* must sign an affidavit (i.e., sworn statement) before a notary public certifying that the *will* is genuine and that all formalities have been observed.

Separate Property: in *community property* states, property owned and controlled entirely by one spouse in a marriage. At divorce, *separate property* is not divided under the state's property division laws, but is kept by the spouse who owns it. *Separate property* includes all property that a spouse obtained before marriage, through *inheritance* or as a *gift*. *Separate property* also includes any property that is traceable to *separate property*.

Settlement Option: ways in which *life insurance policy* proceeds can be paid other than in a lump sum, including interest, fixed period, fixed amount, and life income options.

Settlor: a person who establishes a *living trust*. Also known as a *grantor* or *trustor*.

Sound Mind: the *testator* must possess *sound mind* when writing and signing a *will*. This requirement is satisfied if the *testator*: (1) understands the nature of the act of making a *will* or a *codicil*, (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 (i.e., his or her *heirs*).

Special Administrator: (1) a person appointed by the *probate* court to take charge of only a designated portion of an *estate*. For example, a *special administrator* might be appointed to oversee the *probate* of a wine collection, but not the entire *estate*. (2) A person appointed to be responsible for a *decedent's* property for a limited time or during an emergency, such as a challenge to the *will* or the qualifications of the *executor*. In such case, the *special administrator* has responsible for maintaining and preserving the *estate*.

Special Needs Trust: a *trust* designed to provide for the supplementary needs of a person who receives or is expected to receive government assistance because of a disability. The *trustee* has discretion to pay for expenses of the *beneficiary* above those expenses covered by the government. The *special needs trust* ensures that the *beneficiary* will not be disqualified from receiving government assistance.

Specific Bequest: a specific item of property that is left to a *beneficiary* under a *will*. If the *testator* no longer owns the property when the *testator* dies, the *bequest* fails. See *ademption*.

Spendthrift Trust: a *trust* created for a *beneficiary* the *trustor* considers irresponsible with money. The *trustee* retains control of the trust income, doling out money to the *beneficiary* as needed, and sometimes paying third parties (creditors, for example) on the *beneficiary's* behalf, bypassing the *beneficiary* completely. *Spendthrift trusts* typically contain a provision prohibiting creditors from seizing the *trust* fund to satisfy the *beneficiary's* debts.

Split Dollar Plans: a method of purchasing *life insurance* in which premium payments and policy benefits are divided, usually between an employer and an employee. Often an executive benefit that provides *life insurance* protection for an executive's survivors at minimal cost to the employee.

Springing Power: a *power of attorney* that takes effect only when and if the *principal* becomes *incapacitated*, as certified by two independent physicians.

Sprinkling Trust: a *trust* that gives the *trustee* discretion to disburse *trust* funds among the *beneficiaries* as the *trustee* sees fit.

Statute of Limitations: a statute which bars lawsuits upon valid claims after the expiration of a specified period of time. The period varies by state law and for different types of claims.

Statutory Share: the portion of a deceased person's *estate* that a spouse is entitled to claim under state law. The *statutory share* is usually one-third or one-half of the deceased spouse's property, but in some states the exact amount of the spouse's share depends on whether or not the couple has young children and, in a few states, on how long the couple was married. In most states, if the deceased spouse left a *will*, the surviving spouse must choose either what the *will* provides or elect against the *will*. Sometimes referred to as *dower* or *curtesy*; more often known as an *elective share* or *forced share*.

Stepped Up Basis: a *decedent's* capital gains property that passes to others escaping capital gains tax when sold by the person who *inherits* the property. *Inheritors* receive the property at date-of-death *fair market value*. The *inheritor's* basis is deemed to be "stepped up" and does not reflect the *decedent's* original *cost basis* for determining applicable capital gains on the sale of the property. Also known as a step up in basis.

Succession: a term used to describe transfers of asset ownership through *inheritance*, *gifting*, preferential sale, or other means that fulfill the wishes of the person(s) with present ownership of the asset.

Successor Trustee: the person or institution who takes over the management of *trust* property when the original *trustee* has died or become *incapacitated*.

Suicide Clause: a contractual provision in a *life insurance policy* stating that if the *insured* commits suicide within a certain period after the policy is issued, the face amount of insurance will not be paid; only premiums paid will be refunded.

Surrender Charge: the fee charged to a policy owner when a *life insurance policy* or annuity is surrendered for its *cash value*.

Taking Against the Will: a procedure under state law that gives a surviving spouse the right to demand a certain share (usually one-third to one-half) of the deceased spouse's property. The surviving spouse can take that share instead of accepting whatever he or she inherited through the deceased spouse's *will*. If the surviving spouse decides to take the *statutory share*, this decision is called *taking against the will*.

Tangible Personal Property: property that can be touched. Includes cars, furniture, jewelry, photographs, tools, etc.

Tax Basis: the owner's cost of an asset for income and *estate tax* purposes as determined under the Internal Revenue Code and Internal Revenue Service regulations.

Taxable Estate: the total value of a *decedent's* assets that are subject to *estate tax*, after liabilities and deductions are subtracted. Also called the *net taxable estate*.

Tenancy by the Entirety: a special kind of property ownership for married couples. Both spouses have the right to enjoy the entire property, and when one spouse dies, the surviving spouse receives *title* to the property (i.e., a *right of survivorship*). Similar to *joint tenancy* but available only in about half the states. California does not have *tenancy by the entirety*.

Tenancy in Common / Tenants in Common: a form of asset ownership in which two or more persons have an *undivided interest* in the asset. Ownership shares are not required to be equal. Each tenant can leave his or her interest to whomever the tenant chooses through a *will* or *trust*. If a tenant dies without a *will*, the tenant's interest will pass by the state's *intestate succession law*. In some states, including California, two people are presumed to own property as *tenants in common* unless they agree otherwise in writing.

Term Life Insurance: no frills *life insurance*, with no *cash surrender value* and no loan value (i.e., an amount that can be used as collateral for a loan). *Term life insurance* provides a pre-set amount of coverage if the policyholder dies during the period of time specified in the policy. Policyholders usually have the option to renew at the end of the term for the period of years specified in the policy. Unlike *whole life insurance*, premiums generally increase as the insured person gets older and the risk of death increases.

Testamentary Disposition: property left by the provisions of a *will* or *trust*.

Testamentary Trust: a *trust* established after death under the provisions of the *decedent's will*.

Testate: refers to dying with a *will*.

Testator: a person who makes a *will*.

Title: a noun referred to the form of ownership of *real property* or *personal property*, which stands against the right of anyone else to claim the property. *Real property* is evidenced by a *deed* (or judgment of distribution from an *estate*) or other appropriate document recorded in the public records of the county. *Personal property* title is generally shown by possession, particularly when no proof or strong evidence exists to show that the property belongs to another, or that it has been stolen or known to be lost by another. Automobiles and other vehicles have *titles* registered with the state's Department of Motor Vehicles, which issues a "pink slip" to the owner.

Totten Trust: another term for a *pay-on-death* account.

Transfer for Value Rule: a federal income tax rule which states that if ownership of a *life insurance policy* was transferred for valuable consideration, a portion of the death proceeds maybe included in gross income rather than qualifying for the usual income tax exemption of death proceeds. Five "safe harbor" exceptions apply: (1) transfer to the insured, (2) transfer to a partner of the insured, (3) transfer to a partnership in which the insured is a partner, (4) transfer to a corporation in which the insured is a shareholder or officer, and (5) transfer to a corporation from another corporation in a tax-free reorganization.

Transfer-on-Death ("TOD") Designation: a way to avoid *probate* for securities or cars, in California. To create a *transfer-on-death designation*, simply name someone on the ownership document (such as the pink slip) to *inherit* the property at your death. You retain complete control of your property while you are alive, and you can change the *beneficiary* (transferee) at any time. At your death, the property is transferred directly to the *beneficiary*, free of probate. Compare *pay-on-death designation*.

Trust: a legal arrangement, established by a written document, to provide for the management and disposition of assets. A *trust* involves three parties: the person who establishes the *trust* (called a *grantor*, *settlor* or *trustor*), the person who manages the *trust* (called the *trustee*), and the person or people who benefit from the *trust* (called the *beneficiary* or *beneficiaries*).

Trust Corpus: Latin phrase meaning "the body" of the *trust*. Refers to all property transferred to a *trust*. Also known as "res," a Latin word meaning "thing."

Trust Instrument: a document defining the nature and duration of the *trust*, the powers of the *trustee*, and identifying the *trust beneficiaries*. Also known as a "trust agreement" or "trust declaration," depending on the *trust* terms.

Trust Merger: under a *trust*, the situation that occurs when the sole *trustee* and the sole *beneficiary* are the same person or institution. There is no longer a separation between the *trustee's* legal ownership of *trust* property and the *beneficiary's* interest. The trust "merges" and ceases to exist.

Trustee: an adult individual or financial institution that is designated to be responsible for the *administration* of a *trust*. There may be more than one *trustee* (co-trustees), and an individual and a financial institution may serve as co-trustees.

Trustor: a person who establishes a *living trust*. Also known as a *grantor* or *settlor*.

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 a contrary agreement 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.

Unified Tax Credit: the tax credit that can be used to reduce the amount of federal *estate tax* or *gift tax*.

Universal Life Insurance: a type of *whole life insurance* that offers additional features and advantages. Like *whole life insurance*, *universal life insurance* accumulates *cash surrender value* through investment of the premium payments. The unique feature of *universal life insurance* is that it has variable premiums, benefits and payment schedules, which are tied to market interest rates and investment portfolio performance. *Universal life policies* normally provide more consumer information (e.g., cost of insurance, policy proceed payments, invested amount).

Unrelated Business Taxable Income ("UBTI"): taxable income earned by an otherwise tax-exempt organization from activities unrelated to their tax-exempt purpose.

Variable Life Insurance: a type of *whole life insurance* in which the death benefit varies, depending on the performance of investments. The insurance company places some or all of the fixed premium payments into an investment account; some companies let the insured person decide how the money is invested. The policyholder bears the risk of investment losses, though there is a guaranteed minimum benefit payment. One benefit of *variable life insurance* is that interest and dividend income from the investment account is not taxed until it is paid out to the policyholder.

Variable Universal Life Insurance: a type of *whole life insurance* that provides greater potential for financial gain and accordingly brings greater risks. Like *universal life insurance*, *variable universal life insurance* offers flexible premiums, payment schedules and benefits. *Variable universal life policies* are riskier, having more upside and downside potential, because the premiums are invested in equities, rather than money market accounts and bonds. Also called universal variable life insurance.

Vest: to confer an immediate, fixed right of immediate or future possession and enjoyment of property.

Vested Remainder: an unconditional right to receive *real property* at some point in the future. A *vested* interest may be created by a *deed*, a *will* or a *trust*.

Whole Life Insurance: *life insurance* that provides coverage for the policyholder's entire life. In return, the policyholder pays a fixed premium throughout his or her life. The policy builds up cash reserves that may be paid out to the policyholder when he or she surrenders or partially surrenders the policy or uses the cash reserves to fund low-interest loans. The annual increase in the cash value of the policy is not taxed. If the policyholder surrenders the policy, a portion of the payment is not taxable. Also called straight life insurance or ordinary life insurance.

Will: a written document which disposes of one's property at death. In addition to naming *beneficiaries*, the *will* is used to nominate *personal representatives* and designate *guardians* for *minor* children.