

A Glossary of Estate Planning Terms

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This is a glossary of some of the estate planning terms used in MSU Extension Estate Planning MontGuides. Keep this glossary close in case you come across an unfamiliar term when you read the fact sheets.

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Administrator: Term formerly used for a person named in a will to carry out settlement of the estate. Under the Montana Uniform Probate Code, the term is now personal representative.

Alternate Valuation Date: A date exactly six months following the decedent's date of death that the personal representative may choose to revalue for estate tax purposes, all assets held by the estate.

Ancillary Probate: Term for probate if decedent had real property in another state.

Annual Exclusion: The amount of \$13,000 that can be given to any individual or any number of individuals gift tax free. A husband and wife together can give \$26,000 to each person.

Annuity: The periodic payment of a definite sum of money, with such payments to continue for life or for a definite number of years.

Assets: All types of property which can be made available for the payment of debts.

Attorney: Another name for a lawyer.

Beneficiary: A person (or institution) who derives benefit from the creation of a trust, proceeds of insurance policy, or property designated by a will.

Closely-Held Business: A business organization in which the ownership is held by a limited number of people often with the same family rather than owned by the public at large.

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

Common Disaster Clause: A statement in a will telling how property is to be distributed if would-be devisees die from the same accident.

Conservator: A person who is appointed by a court to manage the estate of a protected person who, because of age, intellect, or health, is incapable of managing his or her own affairs.

Consideration: Something which has value, such as real or personal property or a promise given in exchange for another promise.

Contingency: The possibility of coming to pass; an event that may occur.

Corpus: Trust property; the principal sum as distinguished from interest or income.

Death Taxes: Taxes due by reason of death of an individual.

Decedent: A deceased person.

Deed: A legal instrument used to transfer title to real property in the eyes of the law.

Devise: When used as a noun, real or personal property given to another by will. When used as a verb, to dispose of real or personal property by will.

Devisee: Any person designated in a will to receive real or personal property.

Domicile: That place where a person has voluntarily fixed his/her habitation, not for a temporary or special purpose but with a present intention of making it his/her home unless and until something, which is uncertain and unexpected, shall happen to induce him/her to adopt some other permanent home.

Donee: One who receives a gift.

Donor: One who makes a gift.

Durable Power of Attorney: Allows the grantor of the power of attorney to survive any disability the grantor could suffer.

Escheats: When a decedent's property goes to the state because of lack of heirs.

Estate Tax (Federal): Taxes assessed by the federal government upon a decedent's right to transfer property.

Exempt Property: Property not exceeding \$10,000 in value in excess of any security interests in household furniture, automobiles, furnishings, appliances and personal effects to which a surviving spouse is entitled from the estate. This property is protected from creditors and devisee claims (Montana law).

Family Allowance: The surviving spouse and minor children are entitled to a reasonable family allowance in cash from the estate for their maintenance during the period of probate administration. The personal representative may determine the family allowance in a lump sum not exceeding \$18,000, or periodic installments not exceeding \$1,500 per month for one year (Montana law).

Fiduciary: Includes personal representative, guardian, conservator and trustee.

Formal Probate Proceedings: Those conducted before a judge with notice to interested persons for probate of a will or appointment of a personal representative.

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

Guardian: A person legally empowered and charged with the duty of taking care of another who, because of age, intellect, or health, is incapable of managing his or her own affairs. The guardian manages the person. A conservator manages the property of a minor or incapacitated person. A person can be appointed both guardian and conservator.

Heirs: Those persons who are entitled under the statutes of intestate succession to the property of a decedent.

Holographic Will: A will in which the signature and material provisions are in the handwriting of the testator, and which needs not be witnessed.

Homestead Allowance: A surviving spouse of a decedent who was a resident of Montana is entitled to a homestead allowance of \$20,000.

Informal Probate Proceedings: Those conducted without notice to interested persons by the clerk of the court for probate of a will or appointment of a personal representative.

Inherit: To receive property from a deceased person.

Inter Vivos Trust: Legal name for a living trust. The trust is set up by the grantor during his or her lifetime.

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

Irrevocable: A term used to describe a trust in which the trustor (maker of the trust) has, by the terms of the trust agreement, specifically given up the power to alter, amend, or terminate the trust either entirely or in part. In Montana, trusts are irrevocable unless the donor expressly reserves the power to revoke.

Joint Tenancy: A form of co-ownership in which two or more persons hold interests in the same property with right of survivorship.

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

Life Estate: A condition created whereby a person has the right to use property only for his or her lifetime.

Lineal Descendant: One who is, by blood relationship, in the direct line of descent from an ancestor. The term includes adopted children in Montana.

Marital Deduction (Gift): Allows married persons to make lifetime gifts to each other and claim a marital deduction for any amount without a gift tax.

Marital Deduction (Estate): Allows married persons to transform unlimited assets to the surviving spouse after the death of the first spouse without an estate tax.

Pay on Death (POD): Designation is the naming of a beneficiary to receive an account balance on a party's death.

Per Capita: Equal shares to all who inherit.

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

Personal Property: Assets whose ownership arises either out of physical possession of the property, or as the result of a document showing ownership. Examples: livestock, machinery, stored grain, bank deposits, stocks and bonds, checking and savings accounts, automobiles and other transportation and recreational vehicles. In Montana, all property other than real estate.

Power of Attorney: A written, notarized document in which one person gives another the power to conduct certain acts on his or her behalf.

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

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

Probate: Probate is the process of the personal representative gathering all the property of someone who died, paying all just debts and taxes, and distributing the balance to the devisees designated in the will or to the heirs as prescribed by the legislature where there is no will or the will is defective.

Real Property: Real estate, minerals and royalty interests, growing timber, land and buildings attached to the land.

Remainderman: One entitled to the remainder of a life estate after a particular reserved right or interest has expired.

Revocable: A trust in which the trustor (maker of the trust) has, by the terms of the trust agreement, reserved the power to alter, amend or terminate the trust and to receive the property back from the trustee.

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

Right of Representation: Term used by a testator to describe the division of property among different degrees of kinship.

For example: A had children B and C. B had one child, B1, and C had two children, C1 and C2. If A had in his will that his property be divided by representation, and B and children of C were survivors, then B would receive one-half and the children, C1 and C2, would split the other half ($\frac{1}{4}$ to each). If the property had been divided per capita, B and children C1 and C2 would have received equal shares of one-third each.

Separate Listing of Tangible Personal Property: A list separate from the will that identifies both the items and persons to receive them.

Sole Ownership: Title to property in one name.

Spouse: A person's wife or husband.

Succession Law: Law which governs the disposition of one's estate if there is no will.

Tenancy in Common: A type of co-ownership between two or more persons who hold undivided interests in the same property with no right of survivorship for the surviving tenant in common. When one dies, his or her share becomes part of his or her estate. The property goes to his or her heirs and not to the other tenants in common unless they are also his/her heirs or, if there is a will, to his/her devisees.

Testamentary: Pertaining to a will.

Testamentary Trust: A trust, set up in a will, which does not become effective until the death of the testator.

Testator: A person making a will.

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

Trust: The legal relationship created by virtue of one party holding legal title to property, whether real or personal, for the benefit of another.

Trustee: The person, or corporate body holding title to the trust property, appointed to execute, administer, and carry out the terms of a trust for the benefit of the beneficiary.

Trustor: Maker of a trust.

Will: The legal instrument expressing a person's wishes and directions as to the disposition and distribution of his/her property after death.

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



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