

The terminology used when discussing trusts and estates can often be unfamiliar and our glossary of fiduciary terms is designed to help you understand it better. If you have a question about the glossary or would like information on any of our services, contact Ed Sullivan, Vice President, at 617-557-9800, or email him at esullivan@welchforbes.com.

GLOSSARY OF FIDUCIARY TERMS

AFFIDAVIT – A document, sworn to and signed before a notary or other court officer, containing a specific statement.

AGENT – A person who acts for another person by the latter's authority. The distinguishing characteristics of an agent are (1) that he acts on behalf and subject to the control of his principal, (2) that he does not have title to the property of his principal, and (3) that he owes the duty of obedience to his principal's orders.

ANCESTOR – One from who a person is descended whether through father or mother.

ANNUAL EXCLUSION – The amount of property that may annually be given to a donee, free of gift tax, regardless of the donee's relationship to the donor.

ANNUITY – The amount payable according to contract annually or at other regular intervals for either a certain or an indefinite period, as for a stated number of years or for life.

BENEFICIARY – (1) the person for whose benefit a trust is created (2) The person to whom the amount of an insurance policy or annuity is payable.

BEQUEST – A gift of personal property by Will; a legacy.

CAPITAL GAINS (and Losses) – The difference between purchase price and selling price in the sale of assets. The computation is used primarily in tax computations.

CHARITABLE LEAD TRUST – A trust for a fixed term of years wherein a charity is the income beneficiary and the remainder goes to a noncharitable beneficiary.

CHARITABLE REMAINDER TRUST – A trust arrangement wherein the remainder interest goes to a legal charity upon the termination or failure of a prior interest.

CHARITABLE REMAINDER ANNUITY TRUST – A trust which provides a sum certain, not less than five percent of initial fair market value of all property placed in trust, to be distributed at least annually to a noncharitable beneficiary, with remainder to a qualified charity.

CHARITABLE REMAINDER UNITRUST – A trust which provides a fixed percentage, not less than five percent of net fair market value of property, valued annually, to be distributed at least annually to a noncharitable beneficiary, with remainder to a qualified charity.

COLLATERAL – Specific property, commonly securities, given by a borrower to a lender as a pledge for the payment of a loan or other obligation.

CONTINGENT BENEFICIARY – The beneficiary whose interest is conditioned upon a future occurrence which may or may not take place. Unless or until the condition takes place the interest is only contingent.

CORPORATE FIDUCIARY – A trust institution serving in a fiduciary capacity, such as executor, administrator, trustee, or guardian.

CORPORATE TRUSTEE – A trust institution serving as a trustee.

COST BASIS – The original price or cost of an asset usually based on the purchase price or, in the case of assets received from an estate, on the appraised value of the assets at the death of the donor or some anniversary or other fixed date.

CREDIT SHELTER TRUST – A taxable trust, usually employed as part of a testamentary estate plan, that usually is funded with the estate tax basic exclusion amount. Such a trust is often structured to provide benefits to a decedent's surviving spouse, while avoiding inclusion in that spouse's gross estate. Property in the credit shelter trust can thus pass through to descendants with no estate taxes. This type of trust is also referred to a Bypass Trust or a Family Trust.

CRUMMEY TRUST – A trust established granting a beneficiary a limited power to withdraw income or principal or both. This power is exercisable during a limited period of time each year and is noncumulative. The power of withdrawal is generally limited to the amount excludable from gift tax liability under the annual gift tax exclusion or to the greater of \$5,000 or 5 percent of the trust property.

CUSTODIAN – One whose duty it is to hold, safeguard, and account for property committed to his care.

DESCENDANT – One who is descended in a direct line from another, however remotely (child, grandchild, great-grandchild).

DIRECT SKIP – An outright generation-skipping transfer, either by gift or at death, to a recipient, known as a "skip person", who is two or more generation levels below the transferor. A direct skip also occurs upon a transfer by gift or at death to a trust, all of the beneficiaries of which are skip persons.

DISBURSEMENT – Money paid out in discharge of a debt or an expense; to be distinguished from distribution.

DISCLAIMER – A denial or disavowal of any interest in or claim to the subject of the action, such as, renunciation of any title, claim, interest, estate or trust.

DISTRIBUTION – The apportionment of personal property (or its proceeds) among those entitled to receive the property according to the applicable statute of distribution or under the terms of the Will or trust agreement; to be distinguished from disbursement.

DISTRIBUTION IN KIND – The distribution of the property itself; to be distinguished from the conversion of the property into cash and the distribution of the proceeds of such conversion.

DIVERSIFICATION – The process of spreading the investment of a fund both as to type of securities and as to industries.

DONEE – One who receives a gift.

DONOR – One who makes a gift.

ESCROW – Money, securities, instruments, or other property or evidences of property deposited by two or more persons with a third person, to be delivered on a certain contingency or on the happening of a certain event. The subject matter of the transaction (the money, securities, instruments, or other property) is the escrow; the terms upon which it is deposited with the third person constitute the escrow agreement; and the third person is termed the escrow agent.

FAIR MARKET VALUE – A price that would induce a willing seller to sell and willing buyer to buy.

FIDUCIARY – An Individual or a trust institution charged with the duty of acting for the benefit of another party as to matters coming within the scope of the relationship between them. The relationship between a guardian and his ward, an agent and his principal, an attorney and his client, one partner and another partner, a trustee and a beneficiary, each is an example of fiduciary relationship.

FISCAL YEAR – The period encompassing 365 days over which the company maintains financial records and, at the end of which, the books are closed and profit or loss determined. This may or may not correspond with calendar year.

FOUNDATION – A permanent body of property established by contributions from one source or from many sources for charitable, educational, religious, or other benevolent uses or purposes.

GENERAL POWER OF APPOINTMENT – The power of the donee (the one who is given the power) to pass on an interest in property to whomever he pleases, including himself or his estate.

GENERATION SKIPPING TAX – A tax imposed on any generation-skipping transfer at a flat rate computed with reference to the maximum federal estate rate applicable at the time of the transfer.

GENERATION SKIPPING TRANSFER – Any taxable distribution or taxable termination with respect to a generation skipping trust or any direct skip from a transferor.

GENERATION SKIPPING TRUST – Any trust having beneficiaries who belong to two or more generations younger than the grantor.

GRANTOR – A person who transfers property by deed or who grants property rights by means of a trust instrument or some other document. See also Settlor.

GRANTOR RETAINED ANNUITY TRUST – A trust in which the grantor retains the right to a set annual dollar amount (the annuity) for a fixed term and gives the principal to others, such as the grantor's children, at the end of that 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 death tax purposes. A grantor retained annuity trust is sometimes referred to as a "GRAT."

GRANTOR TRUST – For purposes of the income taxation of trusts and estates, a trust in which the grantor or a third-party, because of certain rights to income or principal or certain power over the disposition of income and principal, is treated as the owner of the trust and taxed on the income thereof. Consequently, a grantor trust is not treated as a separate entity for income tax purposes.

GST EXEMPTION – An exemption from the generation-skipping tax for transfers by an individual either during life or at death.

INCOME BENEFICIARY – The beneficiary of a trust who is entitled to receive the Income from it.

INTER VIVOS TRUST – A trust created during the settlor's lifetime; also known as a living trust; to be distinguished from trust under Will or testamentary trust.

INTESTATE – (adjective) (1) Without having made and left a valid Will. (2) Not devised or bequeathed; not disposed of by Will. (3) (noun) A person who dies intestate.

IRREVOCABLE TRUST – A trust which by its terms (1) cannot be revoked by the settlor or (2) can be terminated by him only with the consent of someone who has an adverse interest in the trust – that is, someone to whose interest it would be for the trust not to be terminated, such as a beneficiary; to be distinguished from a revocable trust.

JOINT TENANCY – The holding of property by two or more persons in such a manner that, upon the death of one joint owner, the survivor or survivors take the entire property; to be distinguished from tenancy in common (no right of survivorship) and tenancy by the entirety (right of survivorship but must be between husband and wife).

LIVING TRUST – A trust that becomes operative during the lifetime of the settlor; as opposed to a trust under Will. The same as a trust inter vivos.

LIVING WILL – A document which allows a person to state in advance his or her wishes regarding the use or removal of life-sustaining or death-delaying procedures in the event of a terminal illness or injury.

MARITAL TRUST – The portion of a decedent's estate that may be given to the surviving spouse without its becoming subject to the federal estate tax levied against the decedent's estate.

POWER OF ATTORNEY – A document, sometimes witnessed and acknowledged, authorizing the person named therein to act as his agent, called “attorney in fact”, for the person signing the document. If the “attorney in fact” is authorized to act for his principal in all matters, he has a general power of attorney; if he has authority to do only certain specified things, he has a special power of attorney. If the authority granted in the power of attorney survives the disability of the principal, the attorney in fact has a durable power of attorney. If the authority granted in the power of attorney commences in the future only upon the occurrence of a specific event or contingency, the power of attorney is known as a springing power.

REMAINDERMAN – The person who is entitled to a trust after the prior trust has expired. For example, “I devise Blackacre to A for life remainder to B.” A is the life tenant; B, the remainderman.

REVOCABLE TRUST – A trust which may be terminated by the settlor or by another person; opposed to an irrevocable trust.

RULE AGAINST PERPETUITIES – A rule of common law that makes void any estate or interest in property so limited that it will not take effect or vest within a period measured by life or lives in being at the time of the creation of the estate plus 21 years and the period of gestation. In many states the rule has been modified by statute. Sometimes it is known as the rule against remoteness of vesting.

SETTLOR – A person who creates a trust, such as a living trust, to become operative during his lifetime; also called donor, grantor or trustor. Compare Testator.

SIMPLE TRUST – A term known only in tax laws to describe a trust that is required to distribute all of its income currently and does not provide for any charitable distribution; as opposed to a Complex Trust which makes discretionary distributions and is allowed to accumulate income.

SKIP PERSON – With respect to a generation-skipping transfer, a recipient or beneficiary who is a least two generation levels below that of the transferor.

TESTAMENTARY TRUST – A trust established by the terms of a Will.

TESTATOR – A person who has made and left a valid Will at his death. Compare Settlor.

TRUST – A fiduciary relationship in which one person (the trustee) is the holder of the legal title to property (the trust property) subject to an equitable obligation (an obligation enforceable in a court of equity) to keep or use the property for the benefit of another person (the beneficiary).

TRUST ADMINISTRATOR – A person in the employment of a trust institution who handles trust accounts in the sense of having direct contacts and dealings with trust customers and beneficiaries.

TRUST COMPANY – A corporation, one of whose stated objects is to engage in trust business.

TRUSTEE – An individual or an institution that holds right to property for the benefit of someone else.

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