

Glossary of Estate Planning Terms

- **Advocacy:** The active support of a legal cause (example: obtaining government benefits through representation before courts and governmental agencies).
- **Attorney-in-fact:** The person named to act for another person under a power of attorney.
- **Beneficiary (under a trust):** The person who receives the equitable title to trust property and hence the right to benefit from that property according to the grantor's instructions.
- **Beneficiary (under a will):** A generic term for a person who receives property under a will.
- **Charitable Lead Trust:** A trust in which a charity obtains benefits for a specified period of time, after which the benefits return to the grantor or the grantor's family.
- **Charitable Remainder Trust:** A trust in which the grantor or the grantor's family retains benefits until a specified time, after which the remainder passes to a charity.
- **Charitable Trust:** A trust created for a charitable beneficiary.
- **Discretionary Trust:** A trust giving the trustee discretion with respect to payments to and on behalf of the trust beneficiary.
- **Donee:** The recipient of a gift.
- **Donor:** The maker of a gift.
- **Estate Tax:** A tax on a decedent's transfer of property at death.
- **Fiduciary:** A person having the legal duty to act for the benefit of another, such as an attorney, an executor or a trustee. A fiduciary is subject to obligations and responsibilities prescribed by law and is personally liable for any wrong-doing.
- **Generation-Skipping Transfer Tax:** An additional tax on certain transfers to beneficiaries who are more than one generation younger than the person transferring the property (example: a transfer from grandparent to grandchild).
- **Gift Tax:** A tax on lifetime transfers of property for less than full and adequate consideration.
- **Gift Tax Annual Exclusion:** The amount that a person may transfer to another annually without the imposition of a gift tax. Currently the gift tax annual exclusion amount is \$11,000.00 per donee.
- **Grantor:** A person who creates a trust. Also called settler, trustor and donor.
- **Guardian:** A person appointed by the court to be responsible for making decisions on behalf of a person deemed by a court to be incapable of making decisions and properly caring for himself/herself.
- **Guardian Ad Litem:** A guardian appointed by the court to represent the interest of certain individuals incapable of representing themselves (such as minors, incompetents or unborn beneficiaries) in legal proceedings.
- **Health Care Proxy:** A document appointing another person to make healthcare decisions in the event of incapacity or an inability to communicate.
- **Heir:** A person entitled to take property of a decedent under state default rules for those persons dying without a valid will.
- **Intestate:** Dying without a will.
- **Life Insurance Trust:** A trust which holds a life insurance policy and is designed to minimize transfer taxes and to provide additional funds to the estate. Policy premiums are covered through contributions to the trust which are structured to qualify for the annual gift tax exclusion.
- **"Pay Back" Requirement:** Phrase used to refer to the requirement that any assets remaining in an OBRA '93(d)(4) (A) trust be used to reimburse the state (see below).
- **Personal Representative (formerly Executor):** The person named under the will to act as the decedent's personal representative with respect to the administration and distribution of the decedent's estate.
- **Power of Attorney:** A document authorizing one person to act for another with respect to property.
- **Prudent Person Rule:** A flexible legal investment standard that allows a fiduciary to purchase securities that a prudent person of discretion and intelligence would choose in order to earn a reasonable income and to preserve the principal.
- **Testamentary Trust:** A trust created at the Grantor's death, pursuant to his or her will. Such trusts are subject to the jurisdiction of the Probate Court.
- **Trust Agreement:** A document whereby property is conveyed by the owner of the property (the grantor) to the trust to be managed by the trustee for the benefit of others (the beneficiaries).

- **Trustee:** The person who holds legal title to the trust property and who has the fiduciary duty to manage that property for the benefit of the trust beneficiary, according to the grantor's instructions and applicable trust law.
- **Supplemental Needs Trust (also known as Special Needs Trust):** A trust where the trustee has the discretion to make distributions on behalf of the beneficiary. The only limitation on the trustee's discretion is a directive that distributions be supplemental to otherwise available government benefits. The trust is designed to provide resources while still maintaining the beneficiary's eligibility for state and federal assistance programs.

There are two main types of supplemental needs trusts:

- **Third Person Supplemental Needs Trust:** A trust created for the benefit of a disabled person using funds contributed by another person, such as a parent. The assets contributed are held in trust for the benefit of the disabled person during his or her lifetime. Upon the disabled person's death, any remaining assets are not subject to a governmental payback provision.
- **OBRA '93 Trust:** Technical term for a trust funded with assets belonging to the disabled person for which the trust is created. Such trusts must meet the requirements prescribed by federal statute in order to maintain person's eligibility for governmental assistance. An OBRA '93-Trust can be one of two types:
 - **(d)(4)(A) Trust:** Technical term for an OBRA '93 Trust whereby a disabled person's assets are held in trust for the disabled person's benefit during his or her lifetime. Upon the disabled person's death, any assets remaining in the (d)(4)(A) Trust must be used to reimburse the state for governmental assistance received by the disabled person during his or her lifetime.

- **(d)(4)(C) Trust (also known as a Pooled Trust):**

Technical term for an OBRA '93 Trust whereby the individual assets of sever are pooled together into a common trust, usually managed by a charitable organization acting as trustee. Such pooling of assets leads to greater investment flexibility and rates of return while minimizing trust expenses. The collective assets are held in trust for the disabled persons' benefit during their lifetimes. Upon death, the remaining assets continue to be held in trust for the benefit of surviving and future contributors to the pooled fund.

- **Unified credit:** A credit available to each individual to offset gift and state tax liability.
- **Will:** A written document or oral declaration directing the disposition of the decedent's property upon the decedent's death.

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Note: Excerpts of the above taken from Barron's Law Dictionary, Third Addition, by Steven H. Gifts, 1991 and from Will., Trust, and Estates for Legal Assistants, by Gerry W. Beyer, and John C. Hanft, Aspen Publishers, 2002.

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