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NF96-299 Estate Planning Glossary

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Estate Planning Glossary

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This is one in a series of **NebFacts** providing information on the use of estate planning "tools" — mechanisms that can be used in attaining desired estate planning outcomes. Titles in the series are listed following the last narrative section of each document. Reading the documents in this series will improve your understanding of estate planning tools and alternatives, and make it easier to communicate with your attorney, accountant, and other helpers when your estate plan is prepared.

Your need for legal and tax advice: While the information contained in this document is thought to be accurate, it should not be used as a substitute for legal advice on matters related to business organization, taxation, estate planning, gifting of assets, life insurance, or other business and financial management matters. Consult with your legal and tax advisers before making decisions.

Estate planning is an important part of decision making in personal and business management. It is also an activity that most individuals participate in only a few times during a lifetime. Like most specialized activities, estate planning has its own terminology. At times, limited familiarity with that terminology can be a barrier to communication between the typical citizen and his or her legal and tax advisers.

This glossary provides brief definitions of terms frequently used in estate planning. Careful reading will give you a basis for understanding most of the terms used by persons who will assist you in your estate planning activities, and will help you use their time and expertise more effectively.

Administrator

An individual or an entity (for example, the trust department of a bank) that is appointed by the court to handle the affairs of a person who has died without leaving a will.

Assets

Things of value owned by a person, family, or business
everything of value that's owned
property.

Beneficiary

A person named in a will to receive certain property of the testator. Also, a person who receives income or assets from a trust
a person who benefits from the existence and operations of a trust.

Codicil

A supplement to a will, that adds to, subtracts from, qualifies, modifies, or revokes the provisions of a prior (existing) will.

Corpus of a trust

Term used to designate the body of assets (property) placed in a trust. The trust holds title to all property included in the corpus.

Decedent

The person who has died.

Escheat

Assignment of property to the state because there is no verifiable legal owner typically, where there is no heir to property.

Estate

Everything of value (all property) that a person owns while living or at the time of death.

Estate tax

A tax placed on the net value of a decedent's estate at the time of death; the tax rate increases as the size of the estate increases. Both the State of Nebraska and the federal government are legally authorized to assess and collect taxes on estates.

Executor or Executrix

A person named in the decedent's will to serve as personal representative in probating the decedent's estate. The designated person may decline to serve as personal representative.

Fair market value

The market price for an asset as would be agreed to by a willing buyer and a willing seller.

Fee simple ownership

Property ownership where one person or entity holds the entire ownership interest.

Gift

A voluntary transfer of property for which nothing of value is received in return. If Internal Revenue Service is to recognize a transfer as a gift, the donor(s) must unconditionally transfer all title and control of the property to the recipient(s) at the time the gift is given.

Gift

An estate planning tool used to implement an estate plan by making gifts to intended successors of assets owned by the person(s) making the gifts.

Grantor

The person placing property in a trust.

Heir

A person entitled by law to inherit part or all of the estate of an ancestor who died without leaving a valid will.

Holographic will

A will entirely hand-written by the testator. The date and all words in the will including the signature must be in the handwriting of the testator. The signature of the testator can be, but need not be, witnessed.

Inheritance tax

A tax levied by the county of residence of a person who inherits. The rate of taxation depends on the size of the inheritance and the relationship between the person who inherits and the deceased.

Intergenerational succession

Succession in property ownership in which the property is transferred from one generation to another; usually from members of an older generation to members of a younger generation.

Intangible property

Property that only represents real value such as bonds, stock certificates, promissory notes, certificates of deposit, bank accounts, contracts, leases, and other similar items.

Intestate succession

The distribution of property to heirs according to the statutes of the State of Nebraska upon the death of a person who owned the property but did not leave a valid will.

Irrevocable trust

A trust that cannot be changed after it is established.

Joint tenancy

A form of joint asset ownership by two or more persons in which each person has an equal undivided ownership interest that passes directly to the surviving joint tenant(s) upon the death of any joint tenant. Real estate held in joint tenancy does not pass through probate following the death of a person with an ownership interest. Personal property such as fixtures and equipment, inventories, or vehicles held in joint tenancy does not pass through probate if the right of survivorship is stated in the title to the property. Any joint tenant can petition the court and compel partition of a joint tenancy asset.

Lateral succession

Succession in property ownership in which the property is transferred between members of the same generation.

Letters of Administration

Document issued by the probate court giving the administrator authority to administer the estate.

Letters Testamentary

Document issued by the probate court giving the executor authority to administer the estate under the provisions of the decedent's will.

Liabilities

Amounts owed by a person, family, or business everything owed to others.

Living trust

A trust established during the lifetime of the grantor.

Partition

The judicial separation of the respective interests in property of joint owners or tenants in common so each may take possession, enjoy, and control his or her share of the property.

Personal representative

An executor, administrator, or anyone else who is in charge of a decedent's property.

Probate

A court procedure for settling the personal and business affairs of a decedent by formally proving the validity of a will and establishing the legal transfer of property to beneficiaries, or appointing an administrator and supervising the legal transfer of property to heirs if there is no valid will.

Revocable trust

A trust that can be changed after it is established. Assets can be added or removed from the corpus of the trust, the beneficiary(ies) can be changed, and other changes including termination of the trust, are allowed. A revocable trust becomes irrevocable upon the death of the grantor.

Sound mind

The testator possesses sound mind for the purposes of making a will if he or she: (1) understands the nature of the act of making a will or codicil thereto, (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). Whether the testator was of sound mind is tested (determined) by the state of

the testator's mind at the time the will or codicil is executed (written and signed).

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 assets.

Tangible property

Property that is capable of being perceived by the senses _ generally, tangible property is real estate, personal property, or moveable property that has value of its own and is not merely a representation of real value. Land, machinery, buildings, business equipment, inventories, homes, and furnishings are examples of tangible property.

Tax basis

The owner's cost of an asset for income and estate tax purposes as determined under the Internal Revenue Code and IRS regulations. (See NF 93-144, "Determining Property Basis," for detailed information and examples.)

Tenants in common

A form of asset ownership in which two or more persons have an undivided interest in the asset, where the ownership shares are not required to be equal, and where ownership interests can be inherited.

Testamentary trust

A trust established after the death of the grantor under the provisions of the grantor's will.

Testator

One who writes or has written and signs a will.

Trust

A legal mechanism that separates the responsibility of owning property from the benefits of owning property. Property placed in a trust is owned by the trust, and no longer is owned by the grantor(s).

Trust declaration or trust instrument

A document defining the nature and duration of the trust, the powers of the trustee, and identifying the trust's beneficiary(ies).

Trustee

The person or legal entity such as a bank or trust company who receives property and places it in a trust, and manages the trust for the benefit of the beneficiary or beneficiaries in ways consistent with the trust declaration and good business practice.

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 an agreement to the contrary 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.

Will

A person's written declaration of desires for disposal of his or her property after death.

Documents in This Series:

- NF 95-236, *Nebraska Inheritance and Estate Taxes*
- NF 96-291, *Intestate Succession As An Estate Planning Tool*
- NF 96-292, *A Will As An Estate Planning Tool*
- NF 96-293, *Joint Tenancy As An Estate Planning Tool*
- NF 96-294, *Tenants In Common Ownership As An Estate Planning Tool*
- NF 96-295, *A Trust As An Estate Planning Tool*
- NF 96-296, *Gifting As An Estate Planning Tool*

- NF 96-297, *Life Insurance As An Estate Planning Tool*
 - NF 96-298, *Charitable Remainder Trusts and Charitable Annuities As Estate Planning Tools*
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