1. ESTATE PLANNING OVERVIEW

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I. Responsibilities of an Estate Planner

A. Objectives of estate planning are:

1. To effect the client's intent to transfer wealth, and, at the same time, to minimize estate, gift and generation-skipping transfer taxes, and administration expenses at death.
2. To minimize current income taxes; and
3. To provide for the client’s personal care and the management of the client's assets during the client’s disability or old age.

B. It is imperative that an estate planning professional know current estate planning techniques.

1. Relevant tax laws change constantly.
2. A poorly drafted instrument can dispose of property in a manner unintended by the client (e.g. a tax apportionment clause can wipe out a legacy of one-half of the residue).
3. A poorly conceived or poorly articulated estate plan can result in costly litigation such as a construction proceeding, and excessive taxation.
4. There has been a legal trend of liability of attorneys for negligence to third persons not in privity.

C. Estate planning operates against a background of complicated tax laws. A client's dispositive decisions therefore must be informed by a basic understanding of the relevant federal and state tax laws.

II. Every prospective client has an estate plan.

A. Non-probate assets pass:

1. by operation of law for example:

a. jointly held assets, and

b. unrevoked Totten trust accounts;

2. to a designated beneficiary other than the estate, for example:

a. insurance policies

b. retirement benefits and

c. United States savings bonds payable on death;

or 3. by the laws of descent and distribution of the decedent's domicile. (See EPTL Article 4 for the New York: State law of intestacy.)

III. Fact Gathering

A. To improve upon a client's existing scheme, the attorney must ascertain:

1. the client's dispositive wishes;

2. the nature, extent, situs of, and title to the client's assets; and

3. the client's personal data.

B. Ascertaining the manner in which a client holds title is critical to an analysis of-the probate and non-probate estates.

C. Among the relevant personal data are: the client's domicile and the citizenship of the client and the client's spouse.

1. The laws of the client's domicile determine, among other things:

a. state income and transfer taxes

i. n.b. -There is an exception with respect to real property and tangible personal property located outside the domicile.

ii. n.b. -A client's change of domicile must be complete so that the client's estate will not be subject to taxation.

b. family of rights, such as

i. right of election. See EPTL 5-l.l-A.

ii. community property. See EPTL 6-6.1 through 6-6.7.

2. Citizenship of the client and the client's spouse is significant because:

a. property transferred to an alien spouse does not qualify for the unlimited marital deduction; and

b. forced heirship laws of the country of which an alien client is a citizen may apply to the disposition of the client's property.

D. A checklist can be useful to an attorney gathering information from the client during an initial interview. See "Fact Gathering - Use of Checklists," by Michael M. Mariani, a copy of which is attached hereto.

IV. Some precepts in formulating an estate plan.

A. An attorney should be wary of conflicts of interest. Conflicts of interest can arise, for example:

1. in connection with the representation of spouses;
2. between a client and the client's child;
3. among shareholders; and
4. between a shareholder and a corporation.

B. The estate plan should provide for sufficient liquidity to meet anticipated transfer tax obligations.

C. The estate plan should provide for reasonable contingencies, in keeping with the ambulatory nature of a will.

D. An attorney draftsman should consider pertinent county rules.

APPENDIX B

FACT GATHERING-USE OF CHECKLISTS

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I. OBJECTIVES CHECKLIST

To determine client's main objectives for estate plan and the relative importance of each of these objectives.

A. Objectives for Client and Client's Spouse

1. Personal care during disability or old age.
2. Managing assets during disability or old age.
3. Securing advice for current management of assets.
4. Minimizing current income taxes.
5. Arranging for guardians for any of the client's minor children.
6. Arranging for disposition or continued management of family business after disability, retirement or death.
7. Changing residence to another jurisdiction - double domicile problems.
8. Making gifts to family members.
9. Establishing asset management for children.
10. Providing financial care for client's parents.
11. Insuring that family assets remain in family.
12. Making gifts to charities.
13. Purchasing additional life insurance.
14. Purchasing insurance to supplement income in case of disability.
15. Concern for health care decisions if gravely ill.
16. Concern for funeral arrangements and donation of bodily organs.
17. Minimizing estate and inheritance taxes and administration expenses at death.

B. Objectives under Client's Will

1. Selection of executor, trustee and successor fiduciaries.
2. Disposition of valued personal effects to spouse.
3. Disposition of valued personal effects to children, other family members or friends.
4. Authorizing spouse to make gifts to other family members during spouse's lifetime.
5. Authorizing spouse to make gifts to other family members under spouse's will.
6. Protecting assets left to spouse or child from present or future creditors.
7. Reduction of estate taxes at client's death regardless of estate tax consequences at death of surviving spouse.
8. Arranging for care of child with mental or physical handicap.
9. Arranging for care of parent or other family member.
10. Selection of guardian for minor children.
11. Arranging for the retention of the family home for the surviving spouse and the children.
12. Arranging for disposition of any professional practice assets.
13. Dispositions to any charity.
14. No contest clause.

C. Objectives under Power of Attorney

1. Enable attorney-in-fact to act for the client should the client become disabled, or for any other reason.
2. Enable attorney-in-fact to make tax-free gifts of up to $13,000 per year for each intended donee.
3. Allow attorney-in-fact to make unlimited tax-free gifts for medical and tuition expenses for each intended donee.
4. Empower the attorney-in-fact to act concerning all tax matters for the client.
5. Enable the attorney-in-fact to pay for all health care expenses for the client.
6. Enable the attorney-in-fact to create or modify a revocable trust for the client.
7. Enable the attorney-in-fact to transfer client's assets to client's revocable trust.
8. Enable the attorney-in-fact to deal with retirement plans and IRAs.
9. Enable the attorney-in-fact to act concerning all business matters for the client.

II. DOCUMENT CHECKLIST

To determine availability of relevant data.

A. Information Regarding Client

1. Current will and codicil.
2. Trust agreements- which client has created or under which the client may be a beneficiary.
3. Powers of attorney.
4. Naturalization papers.
5. Pending litigation papers.
6. Pre- or postnuptial agreements.
7. Divorce decree or separation agreement.
8. Military discharge papers.
9. Adoption papers regarding client or client's family members.
10. Health care proxy.
11. Living will.

B. Property Interests

1. Savings accounts and passbooks.
2. Personal financial statements.
3. Appraisals or documents evidencing ownership of fine arts, jewelry, antiques, furs, or other valuables.
4. Promissory notes and mortgages.
5. Inventory of stocks, bonds and securities.
6. Safe-deposit box or private safe.
7. Copyrights, trademarks and patents.
8. Royalty agreements.
9. Deeds to current residence and other real estate.
10. Title insurance policies.
11. Proprietary lease and stock certificate for cooperative apartment.
12. Employee benefits statements.
13. Loans and debts owed to client.
14. Loans and debts owed by client.

15. Custodian accounts established under New York Uniform Transfers to Minors Act.[1]

C. Life Insurance

1. All policies owned by client or client's spouse.
2. All policies owned by client or spouse insuring someone else's life.
3. Premium notice regarding insurance policies.
4. Summary statement of client's insurance program prepared by insurance agent.

D. Other Insurance

1. Homeowner's policy.
2. Tenant's policy.
3. Boater or fine arts policy.
4. Automobile policy.
5. Health, hospitalization and major medical policies.
6. Disability income insurance.
7. Long-term care insurance.
8. Umbrella (excess liability) policy.
9. Malpractice insurance.
10. Annuity contracts.
11. Fraternal benefits.

E. Business Interests

1. Agreements concerning joint ventures.
2. Partnership agreements.
3. Shareholders' agreements.
4. Stock redemption agreements.
5. Life insurance incident to an agreement.

F. Tax Returns

1. Copies of state and federal income tax returns for past three years.
2. Copies of state and federal gift tax returns that have been filed.
3. Copies of estate tax returns for those estates in which the client has received any interest.

[1] *See* EPTL 7-6.1 to 7-6.26.

III. FACT-GATHERING CHECKLIST

Provides starting point for preparing and organizing estate plan and assists in four phases of estate planning process: (1) ascertaining facts, (2) analyzing facts, (3) formulating plan, (4) implementing plan.

Checklist also reveals problem areas not obvious to the client:

1. Insufficient life, medical, liability, long-term care or disability insurance coverage.
2. Need for more liquidity to meet estate tax obligations.
3. Forgotten obligations created under existing agreements.
4. Need for durable general power of attorney.
5. Need to secure appointment for guardian and standby guardian for mentally retarded or developmentally disabled child, pursuant to SCPA Article 17-A.
6. Need for designation of successor custodian pursuant to EPTL 7-6.18 to obviate need for court proceeding if custodian dies before minor attains majority.
7. Death of nominated fiduciaries and intended beneficiaries.

A. Ascertaining Facts

1. Personal data- client.
   a. Name.
   b. Address.
      i. Home.
      ii. Business.
   c. Phone.
      i. Home.
      ii. Business.
   d. Social security number.
   e. Aliases, nicknames, surnames.
   f. Date and place of birth.
   g. Citizenship.
   h. Other residences.
   i. Marital status.
   j. Date and place of marriage.
   k. Pre- or postnuptial agreement.

l. Prior marriages.
    i. Date and place.
    ii. How terminated.
        (a) Certified copies of decrees or judgments.
        (b) Potential obligations surviving death.
m. Date of adoption, if applicable.
n. Occupation.
o. Employer.
p. If retired, former occupation and employer.
q. Military service- branch, grade, serial number.
r. Health problems, if any.
s. Location of safe-deposit box.
t. Resided with spouse in community property states?
    i. Community property jurisdictions: Arizona, California, Idaho, Louisiana, New Mexico, Nevada, Texas, Washington.
    ii. Potential problems- decisions in common law jurisdictions showed no consistent pattern regarding disposition of property which was community property or derived from community property.
    iii. *Uniform Disposition of Community Property Rights at Death Act, Uniform Laws Annotated,* Master Edition, Volume 8A, 1-13, adopted by Colorado (1973), Hawaii (1973), Oregon (1973), Kentucky (1974), Michigan (1975), North Carolina (1981), New York (1981), Arkansas (1981), Virginia (1982), Alaska (1984), Connecticut (1985), Wyoming (1985), Montana (1989), and Florida (1992).
    iv. New York law-EPTL 6-6.1 to 6-6.7 codifies this act; cannot dispose of surviving spouse's share of the community property; deceased spouse's interest in community property is not subject to right of election; step-up in basis of value of all community property.

2. Personal data- client's spouse.
3. Personal data- client's children.
    a. Adopted children.
        i. Formal adoption.

ii. Equitable adoption.

b. Nonmaritals.

4. Family tree of client and spouse.

a. Client may die residing in, or owning real estate in, jurisdiction with solemn form of probate.

b. Indicates client's natural objects of bounty and prospective fiduciaries.

c. May be required at client's death-for example, see Uniform Rules for Surrogate's Court § 207.16(c).

5. Assets, type of ownership and location.

a. Personal property.

i. Collectibles.

ii. Antiques.

iii. Works of art.

iv. Furs and jewelry.

v. Coin or stamp collection.

vi. Furnishings.

vii. Motor vehicles.

viii. Library.

ix. Pets.

x. Guns.

xi. Professional practice assets.

xii. Electronic equipment.

xiii. Computers.

b. Cash and cash equivalents.

i. Savings accounts.

ii. Checking accounts.

iii. Time deposits.

iv. "In trust for" accounts.

v. Money market accounts.

vi. Treasury bills.

vii. Credit union accounts.

viii. Cash hoards.

c. Securities.

i. Stocks.

ii. Tax-exempt bonds.

iii. Corporate bonds.

iv. U.S. Treasury securities.

v. Custody management accounts.

vi. Savings bonds.

vii. Investment management accounts.

viii. Promissory notes and mortgages.

d. Life insurance, annuities and employee benefits.

i. Face amount of life and group insurance owned on self.

ii. Face amount of life and group insurance owned on others.

iii. Stock options and restricted stock awards.

iv. Deferred compensation.

v. Post -death salary.

vi. Vested pension rights and profit -sharing plans.

vii. Employee benefit plan statements, summary plan statements and employment literature to determine other benefits.

viii. IRA.

ix. 401(k) and other retirement plans.

e. Business interests.

i. Proprietorship.

ii. Professional practice.

iii. Closely held business interests.

iv. Tax shelters.

v. Joint ventures.

vi. Partnership interest.

vii. LLC, LLP and other limited liability entities.

viii. Royalties.

ix. Commissions.

f. Real estate.

i. Principal residence.

ii. Vacation residence.

iii. Other residences.

iv. Undeveloped property.

v. Farmland.

vi. Oil, gas and mineral interests.

6. Liabilities.

a. Judgments.

b. Bank loans.

c. Promissory notes.

d. Accounts payable.

e. Pledges.

f. Secured loans.

g. Unsecured loans.

h. Accrued taxes.

7. Advisors.

a. Physician.

b. Life insurance agent.

c. Casualty insurance broker.

d. Accountant.

e. Attorney.

f. Investment advisor.

g. Securities custodian.

h. Banker.

i. Clergyman.

B. Analyzing Facts

C. Formulating Plan

1. Unlimited marital deduction- shifting ownership of assets.

2. Gift giving to reduce taxable estate and reduce income generated from those assets.

3. Consider splitting assets to take advantage of applicable exclusion amount and generation-skipping tax exemption.
4. Joint ownership of property in other jurisdictions to avoid ancillary proceedings.
5. Consider purchasing additional life insurance to meet anticipated estate tax obligations.
6. Use of durable power of attorney as estate planning tool.
7. Consider relevancy of health care proxy, living will and HIPAA authorization form.
8. Determine if client has charitable intentions and discuss vehicles for making charitable dispositions, if applicable.
9. Establish a revocable trust for asset management during lifetime and after death.
10. Establish an irrevocable insurance trust to use as a gift-making vehicle.
11. Review and update, if necessary, beneficiary designations for IRAs, 401 (K) plans and other retirement plans.
12. Estate planning with increasingly more emphasis on lifetime planning.
13. Tailor plan to meet client's objectives.

Estate Planning Glossary

Estate planning, wills, and trusts often involve a lot of unfamiliar "legalese." Congress, state legislatures, courts, judges, and lawyers use an array of legal terms, such as "per stirpes," many of which are unfamiliar to the lay person. Sometimes these words must be used in certain documents. To help you understand estate planning terms better, we have put together this glossary.

A-B Trust
Also called a **by-pass trust** or a **credit shelter trust**. The purpose of an A-B Trust is to help married couples avoid **federal estate taxes**. Typically a spouse leaves his/her separate assets and share of community/marital property to a trust (Trust A and Trust B) instead of to the other spouse. The surviving spouse receives the income earned on the assets of the deceased spouse's trust for life. The **trustee** is also directed to pay **principal** to meet the surviving spouse's need for "health, education, support and maintenance" during his or her lifetime. On the surviving spouse's death, the remaining assets of the trust are distributed to the **beneficiaries** selected by the **Trust Maker**, typically his or her children. Because the assets of the trust never belonged to the second spouse, they are not counted as part of that spouse's estate for tax purposes.

Ademption
Extinguished or withdrawn. This term is used to describe the situation in which a **special gift** of property (whether a sum of money or an item of **personal property** or **real property**) intended for a beneficiary at a person's death can't be given. This might happen because the property was given to the beneficiary during the deceased's lifetime or because the property that was to be given as a **special gift** has been sold, lost, or otherwise disposed of by the owner and is not part of the **estate** at the time of his/her death.

Administrator (or the feminine, **Administratix**)
Person named by a probate court to represent the estate of a deceased person when there is no will or the will did not name an **executor**. The term **personal representative** is also used to include an administrator and an executor.

Adult
A person who has reached the age at which he or she is able to enter into binding legal agreements. In some states, a person is regarded as an adult on his or her 18th birthday. In some other jurisdictions the age is 21.

Annulment
Made legally void, as if it never happened. A marriage that has been annulled is treated as if it never occurred (for most purposes).

Attorney-in-Fact
A person given authority to act on behalf of another person, who is called the **principal**. An attorney-in-fact can be any **adult** who the principal selects. (He or she need not be a lawyer.) Typically, people appoint an attorney-in-fact in a written **power of attorney**, granting the attorney-in-fact the power to transact business (enter into agreements, contracts, make transfers of property, etc.). The authority of the attorney-in-fact cannot last beyond the life of the principal.
Back-up Trustee (also called the **Successor Trustee**)
The person or institution named in a trust agreement who will assume control of the trust if the original trustee dies, resigns, or becomes unable or unwilling to act. In sporting terms, it is like someone who sits on the bench and only comes on if a regular team member is injured or plays badly. There can be several layers of back-up trustees who take over in the order the trust creator designates.

Beneficiary -
A person or organization that is to receive a benefit. The benefit may flow from an insurance policy or another contract such as a trust or a will.

By-Pass Trust --See **A-B Trust**.

Charitable Lead Unitrust (CLUT)
A trust set up to benefit a charity during the donor's lifetime or for a fixed term of years. While the donor is alive the income from the trust goes to one or more charitable foundations. When the donor dies the assets in the trust go to the heirs or beneficiaries named in the trust. This kind of trust is generally for the very rich and for those whose children won't need the income until years later when the trust ends.

Charitable Trust
One of several different types of trusts that benefit a charity or the public, including Charitable Lead Trusts and Charitable Remainder Trusts. Typically , charitable trusts are established as part of an estate plan to lower or avoid imposition of federal (and some state) estate and gift taxes and/or to save capital gains tax.

Charitable Remainder Trust (CRT)
A trust where the donor receives an income from the trust assets during his or her lifetime. When the donor dies the assets of the trust go to a charity. The donor or trust creator can sell the assets without paying capital gains tax and receives an annual income. He or she will also receive a tax deduction for the charitable gift and eliminate appreciated assets from his or her estate.

Charitable Remainder Annuity Trust
A charitable remainder trust in which the trust donor is paid an annual fixed dollar amount.

Charitable Remainder Unitrust
A charitable remainder trust in which the trust donor is paid an annual fixed percentage of the fluctuating value of trust assets.

Codicil
A written change or amendment to a will; it might revoke, explain, or add to provisions in the existing will. A codicil must be executed with the same formality as an original will.

Cohabitation
Living together without being married to each other.

Commingle
To mix together. If **separate property** (nonmarital property) of a husband and wife is commingled and cannot be traced to its source, the property is likely to become **community property** (marital property). See also **transmute**.

Community Property
Property acquired during a marriage and while living in one of the 9 **community property states** (see below). As a general rule, everything derived from the earnings of either spouse is shared equally by a husband and wife. Each spouse owns only one-half of the community property because the other half belongs to the other spouse. Community property rules can be modified by **premarital** and **postmarital agreements**. See also **separate property, commingle, quasi-community property, marital property**, and **nonmarital property**.

Community Property States
States in which community property laws apply are: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington State, and Wisconsin.

Conflicts of Interest
Actual or potential conflicting objectives. Conflicts of interest often arise when a course of action would benefit one spouse but restrict or negatively impact the other.

Conservator
The person appointed by a court to be legally responsible for the care and well-being of another person, typically a person who has become incompetent or incapacitated, and/or to manage the person's property and financial affairs. The court may appoint different conservators for the person and for the estate. A conservator is under the supervision of the court and must report all actions and financial dealings made on behalf of the incompetent person to the court. In some places, a conservator may be called a guardian or a curator.

Conservatorship
A court-controlled program for persons who are unable to manage their own personal and financial affairs due to physical incapacity or mental incompetence. In some respect this is akin to probate, but for a living person.

Corporate or Institutional Trustee
A corporation that handles the management of trusts. Under the laws of most states only banks and trust companies can be corporate trustees. (California also permits trust branches of title insurance companies to serve as trustees.)

Cost Basis
The **tax basis** is the value that is used to determine **gain** or loss for income tax purposes. Cost basis means using the amount originally paid for the property to calculate the tax basis. Generally, the tax basis will equal the purchase price, plus the cost of capital improvements, less depreciation. Subtract this amount from the sale price of the property, and you have the amount the property has gained in value. The seller may owe capital gains tax on this amount. Once the property is transferred upon the owner's death, it is revalued as of the date of death; this is called the **stepped-up Basis** for Federal Income Tax purposes.

Crummey Letter
A written notification to the beneficiaries who have withdrawal rights that contributions of money -- typically to an **irrevocable life insurance trust** -- have been received on their behalf. The beneficiaries then have a period of time to withdraw the funds. Use of a Crummey Letter can avoid certain potential tax problems arising from the gift of a **future interest** and is a record of the amount of gifts given for purposes of the annual gift tax exemption of $12,000 per person. [2008]

Decedent
A person who has died, also called the deceased.

Devise
A gift made by a will or a trust. A devise is made to a **beneficiary** under the terms of the will or trust. In some states this term is only used to refer to gifts of real property. In other states a devise is the same thing as a bequest and can apply to any kind of property.

Domicile
A person's permanent legal residence. While a person may have more than one residence, he or she can have only one domicile. Typically, the domicile is the same place you use for purposes of voter registration. You are presumed to have your domicile in the country of your birth or where your parents were born unless you have broken ties with that country.

Durable Power
A power (typically a **power of attorney**) that continues despite mental or physical incapacity of the **principal**. A durable power may arise only when the principal becomes incapacitated. See also **Power of Attorney** and **Attorney-in-Fact**.

Durable Power of Attorney for Health Care
A document that grants a person, sometimes known as a **health care agent** or health care proxy, the legal authority to make health care decisions for another in the event that the latter person is unable to make them for him/herself.

Estate
The total of all assets, all debts, and other obligations of an individual. At the time of death the total amount of benefits (life insurance, annuity, and retirement benefits) to be paid to beneficiaries are often also considered part of the estate for **Federal Estate Tax** purposes

Executor (or the feminine, **Executrix**)
A person or institution named in a will and appointed by a probate court to carry out the will's instructions and to manage the **probate** estate. The duties of the executor include making an inventory of all property, paying debts and expenses, and distributing the remaining estate to the beneficiaries. An executor is known as the **personal representative** in California.

Execution
The act of properly signing legal documents, such as a **power of attorney**, a Trust or a **will**. For example, proper execution of a will is more than "just signing" and normally requires at least two witnesses who are not beneficiaries under the will. For a power of attorney or a trust, proper execution involves having a **notary public** certify your signature. State law defines the proper execution of documents. For example, some states restrict who may be a witness to documents like a durable power of attorney for health care.

Family Limited Partnership
A legal partnership agreement between members of a family for the management and control of property for the benefit of all parties. Sometimes used to minimize **gift and estate taxes**.

Federal Estate Taxes
Taxes imposed by the US Government on the value of a person's estate upon his or her death. To be over simplistic, the Federal Estate Tax for individual citizens is 45% on amounts in excess of the exemption amount, which is $2 million as of 2008. The exemption amount will be $3.5 million in 2009, and then the estate tax will be repealed in 2010. In 2011 the estate tax will be reinstated with an exemption amount of $1

million, unless Congress passes a new law. Some states also impose a **state estate tax** or **inheritance tax**.

Fiduciary
A person in whom one places great confidence and upon whom one relies for his or her integrity, trust, and good faith. A fiduciary has the legal duty to act in the best interest and benefit of another and therefore is held to the very highest legal standards. A **trustee** or an **attorney-in-fact** is a fiduciary.

Future Interest
An interest in property that occurs in the future, after certain events have taken place. See also **remainderman**.

Gain
The difference between the **tax basis** (the amount originally paid for property with certain adjustments) and the amount received for the property when it was sold. This value is used to determine the amount of capital gains tax due on the income from the sale. See also **cost basis** and **stepped-up basis**.

Generation-skipping transfer tax (GST Tax)
A 46% tax imposed on transfers of money or property, which skips a generation of family members. made during the lifetime or on the death of the decedent. For example, if a grandparent leaves money directly to a grandchild rather than to his own son/daughter (the grandchild's parent), the transfer may incur GST tax. The GST tax also applies to transfers to non-family members more than 37and a half years younger than the person making the transfer. Fortunately, each person has a lifetime GST tax exemption of $1 million. So only transfers of more than that amount per person would be subject to the tax. The $12,000 per person per year gifts that are exempt from the gift tax are also exempt from the GST.

Grantor
The person who sets up or creates the trust; also called a **settlor, trust creator, trust maker**, or **trustor**.

Gross Estate
The value of an estate before the debts are paid and without considering liens on estate property or probate costs. In a few states **probate** statutory attorney fees and **personal representative** fees are calculated based on the gross value of the estate. For example, the value of the home is calculated before deducting the amount due on the mortgage. If a deceased's assets are a house worth $500,000 with a $400,000 mortgage, her gross estate is $500,000, although the **net value** is only $100,000.

Guardian
The person responsible for the health, education, and welfare of a **minor child** and/or for handling the minor child's financial affairs. The person who makes decisions about the child's day-to-day life, such as medical care, education, and daily care, is called the guardian of the person. The person who takes care of the child's finances is called the guardian of the estate. One person can fill both roles.

Guardianship
A court-controlled relationship between a guardian and the minor child who is subject to the guardianship for the purpose of caring for and managing the affairs of **minor children**.

Health care agent or **health care proxy**
Person designated to make health care decisions for an individual.

Holographic will
A handwritten will that is dated and signed by the person making the will. The requirements for a valid holographic will vary from state to state and some states don't recognize them at all. Because holographic wills aren't favored by courts they should be avoided if possible.

Incapacity/incompetent
Legally unable to manage one's own affairs due to mental disability. This may be temporary or permanent.

Informed consent
An authorization to proceed by a person who has been given and understands all of the relevant facts. The concept of informed consent is often used with respect to medical decisions. If the procedures to be used and the associated risks and benefits of the procedures have been fully explained so that a person understands them, that person is in a position to give informed consent.

Inheritance tax
A tax imposed by a minority of states at the time of a person's death that is based upon the total value of the **decedent's** estate.

Inter-vivos
A Latin term which means "between the living." This is used to describe trusts made during one's lifetime, such as a **living trust**. A living trust takes effect while the trust creator is still alive. In contrast, a **testamentary trust** is a trust that takes effect after a person has died.

Interlineation
Something written in-between; often a change to a typed document that is made by crossing out words and entering in replacement words. Never change an executed will or trust by interlineation.

In-Terrorum Clause
In-Terrorum is a Latin term meaning "in fear." It is used to describe a provision of a will or trust that disinherits a person if he or she challenges the terms of the will or trust. It is sometimes called a No-Contest Clause. If the challenge to a will or trust is successful, the in-terrorum clause may also be invalid.

Intestate
Having died without a will or without providing legally binding instructions for the distribution of one's property after his or her death. See also **testate** and **probate**.

Irrevocable
Something that cannot be altered, changed, or modified. An irrevocable trust is one that cannot be changed, canceled, or revoked once it is established.

Issue
Refers to a person's descendants--children, grandchildren, great-grandchildren, great-great-grandchildren, etc.

Joint Tenancy
A way that property may be owned by two or more people. In a joint tenancy when one of the joint owners dies, all of his/her interest in the property is transferred immediately, by operation of law, to the other surviving owner(s). If the joint tenancy exists between a husband and wife, it may be called a **tenancy-by-the entirety**. Compare with **tenancy-in-common**.

Judgment
An official court order regarding the rights or claims of the parties to a legal action or proceeding.

Legatee --See **Beneficiary**.

Living trust (sometimes called an **inter-vivos trust**)
A trust established during a person's lifetime into which she or he places property. The written document setting up the living trust contains instructions for management and distribution of the trust property during his or her lifetime as well as upon his or her death or disability. A living trust is typically **revocable**, which means a person can change it at any time, so long as the he or she remains legally competent.

Living will (also known as a **natural death declaration**)
A document that defines the circumstances--such as if the person is suffering from a terminal illness with no expectation of recovery -- under which health care professionals should withhold or remove artificial life support, or refrain from using heroic measures, when the patient is unable to give **informed consent** due to incapacity. See also **health care agent**.

Look-back period
The period of time a state will review for gifts or transfers of assets for people applying for Medicaid. The time period is 36 months, or 60 months for establishing a trust. A person may be ineligible for Medicaid if assets have been given away or transferred during this period.

Marital property
Property belonging to both spouses in a marriage in a non-community property state. This is comparable to community property in a community property state. See **community property, separate property, nonmarital property, and transmute**.

Medicaid
A medical insurance program funded by state and federal funds, whose benefits are based on need. Medicaid is often used to pay for nursing home and rest home care.

Medicare
A federal health care insurance available to seniors and some disabled persons. There are several different options for coverage.

Minor Child
A child under the legal age of adulthood. The age varies by state but a child is usually considered an adult by his or her 18th or 21st birthday.

Natural death declaration
A form of Living Will approved in some states, also known as Directive to Physicians. See **living will**.

Net-income charitable remainder unitrust (NICRUT)
A form of charitable trust in which the donor is paid a fixed percentage of the trust assets annually. In this type of trust there is no distribution to the donor unless the trust has earned enough interest to cover the payment. In other words, the principal assets of the trust are not distributed.

Net income with makeup charitable remainder unitrust (NIMCRUT)
Same as an NICRUT but if the trust earns more than the fixed percentage during a later year, the unitrust is able to make up an earlier shortfall to the amount that its earned income is more than its fixed percentage.

Net value
The value of an estate after all debts have been paid. **Federal estate taxes** are based on the net value of an estate. Compare with **Gross Estate**.

Nonmarital property
Property belonging to only one spouse in a marriage in a non-community property state. This is comparable to separate property in a community property state. See **community property, separate property, marital property**, and **transmute**.

Notary public
A person who has been authorized to administer oaths and witness documents. Some legal documents, such as deeds, require the services of a notary public. The powers of a notary vary somewhat from state to state.

Ownership interest
The legal right to manage, sell, or give away property.

Per Capita
A means by which a grantor can distribute his or her estate so that each of the surviving descendants will share equally, regardless of generation. For example, if the deceased has two surviving children and two surviving grandchildren, under a per capita distribution they would each receive 25%. Compare with **per stirpes**.

Personal property
Movable property, including furniture, antiques, automobiles, business equipment, cash, and stocks. Compare with **real property**.

Personal representative --See **executor** and **administrator**.

Per Stirpes
A method of dividing an estate among one's surviving descendants. Each survivor receives only the amount, or a portion of the amount, that his/her immediate ancestor would have received if that ancestor had been alive at the time of the grantor's death. The following example may make this clearer: Assume a person has 4 children -- 3 sons and 1 daughter -- and leaves everything to "the children or their survivors, per stirpes." If all 4 children survive the parent, each of the 4 children would receive 25% of the estate, and the grandchildren would receive nothing. If 1 of the 3 sons and the daughter die before the parent, that leaves only 2 of the sons alive. If there is 1 child of the deceased son (a grandchild) and 2 grandchildren from the deceased daughter, under a per stirpes distribution the 2 sons would each get 25%, the 1 grandchild of the deceased son would get his/her father's share of 25%, and the 2 children of the deceased daughter would split her 25% share and receive 12.5% each. Compare with **per capita**.

Pooled-income fund (PIF)
These are funds from several donors that are pooled and invested by a charity. Donors get a tax deduction and annual income based on the their units of participation in the fund. When a donor dies the portion of the fund assets donated by the deceased go to the charity.

Postmarital agreement (also called a **post-nuptial agreement**)
An agreement entered into between a husband and wife that defines each spouse's respective rights to property. These agreements are governed by state law and differ from state to state.

Pour over will
A short will often used with a **living trust** , which states that any property left out of the living trust will become part of (or "pour over" into) the trust upon death.

Power of appointment
The legal authority to decide who will receive property belonging to someone else. Often used when a person is given the authority to direct the ultimate distribution of property under the terms of another person's will or trust.

Power of attorney
A legal document that gives another person, the **attorney-in-fact**, legal authority to act on the **principal's** behalf. This authority ends at the death of either the principal or the attorney-in-fact. A **durable power of attorney** is valid through the principal's disability. If a power of attorney is unrestricted, it is called a **general power of attorney**. If there are restrictions, it is called a **limited power of attorney**, such as one for a very specific purpose (to sell a home, for instance). If the power only becomes effective upon certain conditions, it is considered a **springing power of attorney**.

Premarital agreement (Also called a **Pre-nuptial agreement**)
An agreement entered into between a man and a woman prior to their marriage that can define the respective legal rights and obligations to property, whether acquired before or after the marriage. These agreements are governed by state law, which varies from state to state.

Principal
(1) A person who is the original source of authority, often used when the owner of property authorizes another person, through a **power of attorney**, to act in his/her stead. (2) Capital or original property of a trust or fund as opposed to interest or other earnings derived from that property.

Probate
The process through which the legal title to property is transferred from a decedent to the beneficiaries. If a person dies with a will (**testate**), the probate court determines if

the will is valid, hears any objections to the will, orders that creditors be paid, and supervises the process to assure that property is distributed by the **personal representative or executor** according to the terms of the will. If a person dies without a will (**intestate**) the probate court appoints an **administrator** who receives all claims, pays creditors, and then distributes all property according to the laws of the state.

Property
Anything that is owned or possessed. See also **real property** and **personal property**.

Quasi-Community Property
Property acquired during a marriage while **not** living in one of the 9 **community property states** that would have been community property if the couple were living in a community property state. As a general rule, everything derived from the earnings of either spouse in one of the non-community property states will be quasi-community property. See also **community property, separate property, marital property**, and **nonmarital property**. Quasi-community property rules can be modified by **premarital** and **postmarital agreements** made by the spouses.

Real property
Land and property that is "permanently" attached to the land such as a house or barn. Compare with **personal property**.

Remainderman
A person who receives what is left, typically from a will or trust, usually after a life estate or interest that lasts during one lifetime. Children and grandchildren are often remaindermen. For example, a husband may leave property in a trust with the income to go to his wife during her life. Upon her death, the remaining **estate** goes to the couple's children or their survivors.

Revocable
Subject to alteration, change, or modification.

Revocable Trust
A trust in which the person who created it retains the power to change, cancel, or revoke the trust during his/her lifetime (assuming he or she remains competent).

Revocation
The act of terminating what has been done. Often used in connection with taking back the authority granted under a **power of attorney**, the termination of an **inter-vivos trust** during a person's lifetime, or voiding a will.

Separate property
Property acquired by either husband or wife before a marriage or after the termination of a marriage. In addition, property acquired during a marriage by gift or inheritance by

one spouse that is kept separate and distinct from **community property** remains separate property. See also **commingle, community property, quasi-community property, marital property, nonmarital property**, and **transmute**.

Separation
The act of taking apart. Often used when a married couple decides that they no longer intend to live as husband and wife. This may have an important impact on **community property**.

Settlor
A person who owns the property that is placed into a trust. Also called a **grantor, trust creator, trust maker**, or **trustor**.

Sole ownership
Property that is owned by only one person.

Special Gift
A specifically identified item of property, such as a home, a ring, antique, or a sum of money, earmarked in a will or trust to go to a particular person or charity, before any other distribution is made.

Spouse
A husband or wife.

Springing power of attorney
A **power of attorney** that becomes effective only when a specified event occurs, such one that only become effective if two physicians find that the **principal** is unable to manage his/her own affairs. See **power of attorney**.

State estate tax --See **inheritance tax**.

Stepped-up basis
The revaluation (for tax purposes) of property upon a person's death. For example, if a person bought a home in 1965 for $25,000 and at the time of his or her death in 1999 the home was worth $200,000, his or her heirs would have a tax basis of $200,000, not $25,000, in that property. The importance of a stepped-up-basis is that no income or capital gains tax is paid on the $175,000 increase in value, should the heirs sell the home for $200,000. See **cost basis**.

Tax basis --See **cost basis**.

Tenancy -in-common
A form of ownership of property in which two or more persons share ownership (may be equal or unequal shares). At the death of a tenant-in-common his/her share in the

property transfers to his/her heirs, rather than to the other surviving owner(s). Compare with **joint tenancy**.

Testamentary trust
A trust set up in a will that takes effect after the death of the trust creator. Compare with **living trust**.

Testate
The condition of a person who dies with a valid will. See also **intestate** and **probate**.

Transfer tax
The combined federal estate and gift tax. A single **exemption credit** applies whether the property was transferred during a person's lifetime (**gift tax**) or is held by a person at the time of his or her death (**estate tax**).

Transmute
This term is used to describe the transfer of **separate property or nonmarital property** to **community property** or **marital property** (or the reverse).

Trust
A long recognized legal concept (first used in ancient Greece during the times of Socrates and Plato) in which some or all property of a **trust creator** is held on behalf of a **beneficiary** (which may be or include the trust creator) in the name of the **trustee**. The term also refers to the legal document that contains the provisions for the control, management, and distribution of property. The rights of the beneficiaries, and the rights, powers and duties of the trustee, are set forth in the trust agreement. That is why it is so important that a trust be properly prepared.

Trustee
A person or institution responsible for the management and distribution of property held in a **trust**. The trustee has the authority to act according to the instructions provided in the trust agreement. See **fiduciary**.

Trust maker or **trustor**
A person who owns the property that is placed into a trust. Also called a **creator, grantor**, or **settlor**.

Unified credit exemption
The amount of property the federal government allows a person to transfer during life or after death without paying gift or estate taxes (jointly called transfer taxes). That exemption amount is $2 million in 2008 and will go up to $3.5 million in 2009. In 2010 the estate tax will be repealed and then reinstated in 2011 with an exemption of $1 million, unless Congress passes a new law. Currently, annual gifts of up to $12,000 to as many individuals as one wishes may be made in each calendar year by an individual (and

gifts of up to $24,000 may be made by a married couple) without counting against the lifetime credit exemption.

Will
A written document that provides instructions for disposing of a person's property upon the person's death. A will generally also names an **executor** or **personal representative** to handle the estate. A will must be signed and (unless it is a **holographic** will) properly witnessed in order to be valid. Upon the person's death a will must go through the **probate** process in order to have the deceased's instructions carried out.