

PROBATE GLOSSARY

A

ACCOUNTING

An act or system of making up or settling accounts; a statement of account, or a debit and credit in financial transactions. PROBATE: Final Accounting Report and Distribution.

ADEMPITION

The failure of a specific bequest of property because the property is no longer owned by the testator at the time of his death.

AD LITEM

For the suit; for purposes of the suit; pending the suit. (See *guardian ad litem*.)

ADMINISTRATOR

A person (sometimes a family member) appointed by the court to administer the estate of a person who died without a will (i.e., a Personal Representative). (See also, *general administrator, public administrator, and special administrator*.)

ADMINISTRATOR WITH WILL ANNEXED

A person appointed by the court to administer the estate of a person who died with a will, but the will either fails to nominate an executor or the named executor is unable to serve.

ADOPTION

The judicial act creating the legal parental relationship with no genetic linkage exists.

ATTESTATION

The act of witnessing the signing of a document by another, and the signing of the document as a witness. Thus, a will requires both the signature by the person making the will and attestation by at least two witnesses.

ATTESTATION CLAUSE

The clause generally at the end of an instrument wherein the witnesses certify that the instrument has been executed before them, and the manner of the execution of same. A certificate certifying as to the facts and circumstances attending execution of a will.

ATTORNEY-IN-FACT

The individual who is designated in the power of attorney document to act on behalf of another.

B

BENEFICIARY

An individual or organization to which a gift of property is made. Person (or organization) receiving benefits under a legal instrument such as a will, trust, or life insurance policy. Except when very small estates are involved, beneficiaries of wills only receive their benefits after the will is examined and approved by the probate court. Beneficiaries of trusts receive their benefits directly as provided in the trust instrument.

BEQUEATH

The first-person legal term used to leave someone personal property in the will, e.g., "I bequeath my antique car to my brother Jody."

BEQUEST

The legal term used to describe personal property left in a will.

BLOCKED ACCOUNTS

Cash or securities that are placed in a bank, trust company, insured savings and loan or insured brokerage account, subject to withdrawal only upon court order or statute.

BOND

A document guaranteeing that a certain amount of money will be paid to the victim if a person occupying a position of trust does not carry out his legal and ethical responsibilities. If an executor, trustee or guardian who is bonded wrongfully deprives a beneficiary of his/her property, the bonding company will replace it, up the limits of the bond.

C

CAPACITY

Mental ability to make a rational decision, which includes the ability to perceive and appreciate all relevant facts. Capacity is not necessarily synonymous with sanity. Legal capacity is the attribute of a person who can acquire new rights, or transfer rights, or assume duties according to the mere dictates of his/her own will, as manifested in acts, without any restraint or hindrance arising from his/her status or legal condition.

CERTIFIED COPY

An official copy of a particular document from a case file that is notated as a true, complete, and authentic representation of the original document.

CHANGE OF VENUE

The transfer of a case from one judicial district to another.

CITATION

A court-issued writ that commands a person to appear at a certain time and place to do something demanded in the writ, or to show cause for not doing so. An order or summons notifying a proposed conservatee of the petition being made, and or commanding the person to appear in court.

CODICIL

An amendment or supplement to an existing will. When admitted to probate, it forms a part of the will.

COMMUNITY PROPERTY

Property acquired by a couple during their marriage except by gift or inheritance.

CONFORMED COPY

A copy of a document filed with the court that has been stamped with the filing date by the court clerk.

CONSANGUINITY

An old-fashioned term referring to the relationship enjoyed by people who have a common ancestor. Thus, consanguinity exists between brothers and sisters but not between husbands and wives.

CONSERVATEE

A person determined by the court to be unable to protect and manage their own personal care or financial affairs, or both. And, for whom the court has appointed a conservator.

CONSERVATOR

A person or organization appointed by the court to protect and manage the personal care or financial affairs, or both, of a Conservatee. (See *LPS conservatorship*.)

CONSERVATORSHIP

A court proceeding to appoint a manager for the financial affairs or the personal care of one who is either physically or mentally unable to handle either or both.

CONSERVATORSHIP ESTATE

The conservatee's income and assets.

CONTESTANT

A person who contests the eligibility of a will to be admitted to probate.

CONTINGENT BENEFICIARY

Any person entitled to property under a will in the event one or more prior conditions are satisfied.

CONTESTED

A kind of case in which evidence is introduced by both parties.

CONTINUANCE

The adjournment or postponement of an action pending in a court to a future date.

COSTS

An award of money for expenses in a civil suit or reimbursement for expenses in a probate matter.

CREDITOR

A person (or institution) to whom money is owed.

CREDITOR'S CLAIM

A document wherein a creditor demands payment for debt owed by the decedent.

CUSTODIAN

Under the Uniform Transfers to Minors Act, the person appointed to manage and dispense funds for a child without constructing court supervision and accounting requirements.

CUSTODY

The care and keeping of anything. As applied to parental rights over children, embraces the sum of such rights with respect to rearing of a child, including its care.

D**DECEDENT**

A person who has died.

DECLARATION

In the law of evidence, an unsworn statement evidencing, supporting, establishing in writing made by a person and which is certified or declared under penalty of perjury to be true and correct. All declarations must be dated and signed by the declarant and must show the place of execution and name the state wherein the document was executed or otherwise, that the declaration is made under the laws of the state of California.

DEED

A written legal document that describes a piece of property and outlines its boundaries. The seller of a property transfers ownership by delivering the deed to the buyer in exchange for an agreed upon sum of money.

DEPENDENT

In family law, refers to a person who is financially supported by another person, usually the parent. In juvenile law, refers to a minor who is in the custody of the court because he or she has been abused, neglected, or molested.

DEVISE

A legal term that now means any real or personal property that is transferred under the terms of a will. Previously, the term only referred to real property.

DEVISEE

A person or entity who receives real or personal property under the terms of a will.

DISBURSEMENTS

The act of paying out money, commonly from a fund or in settlement of a debt or account payable.

DISCHARGE

The term used to describe the court order releasing the administrator or executor from any further duties regarding the estate being subjected to probate proceedings. This typically occurs when the duties have been completed but can also happen in the middle of the probate proceedings when the executor or administrator wishes to withdraw or is removed.

DISCLAIMER

The repudiation or renunciation of a claim or power vested in a person or which he/she formerly alleged to have. The disavowal, denial, or renunciation of an interest, right, or property impute to a person or alleged to be his/hers.

DISMISSAL WITH PREJUDICE

When a case is dismissed for good reason and the plaintiff is barred from bringing an action on the same claim.

DISMISSAL WITHOUT PREJUDICE

When a case is dismissed but the plaintiff is allowed to bring a new suit on the same claim.

DISTRIBUTEE

Someone who receives property from an estate.

DONEE

One who receives a gift. Thus, the beneficiary of a trust is generally referred to as the "*donee*."

DONOR

One who, while alive, gives property to another, in the form of a trust.

DURABLE POWER OF ATTORNEY

A written legal document that lets an individual designate another person to act on his or her behalf, even in the event the individual becomes disabled or incapacitated.

DURABLE POWER OF ATTORNEYFOR HEALTH CARE

A written legal document that allows an individual to designate another person to act on his or her behalf with regard to their health care decisions.

E**ELECTIVE SHARE**

Refers to probate laws that allow a spouse to take a certain portion of an estate when the other spouse dies, regardless of what was written in the spouse's will.

ENCUMBRANCE

Any claim or restriction on a property's title, a debt.

ESTATE

A person's total possessions (assets), including money, jewelry, securities, land, etc. These assets are managed by a fiduciary subject to a court order (e.g., guardianship estate, conservatorship estate, or decedent's estate).

EQUITY

The difference between the fair market value of your real and personal property and the amount you still owe on it, if any.

ESCHEAT

A legal doctrine under which property belonging to a deceased person with no heirs passes to the state.

ESCROW

Money or documents, such as a deed or title, held by a third party until the conditions of an agreement are met. For instance, pending the completion of a real estate transaction, the deed to the property will be held "in escrow."

ESTATE

All the property a person owns.

EXECUTOR

The person named in a will to carry out the directions as set forth in the will. This person is the personal representative of the decedent's estate.

EX PARTE

Latin that means "by or for one party." Refers to situations in which only one party (and not the adversary) appears before a judge.

EXPENSES OF ADMINISTRATION

The expenses incurred by an executor or administrator in carrying out the terms of a will or in administering an estate. These include probate court fees, fees charged by an executor or administrator, attorney's fees, accountant fees, and appraiser's fees.

F

FAIR MARKET VALUE

That price for which an item of property would be purchased by a willing buyer, and sold by a willing seller, both knowing all the facts and neither being under any compulsion to buy or sell.

FIDUCIARY

A person or organization that manages property for a person, with a legal responsibility involving a high standard of care (e.g., conservators, guardians, personal representatives, agents, or trustees). As a descriptive word rather than a noun, fiduciary means something based on a trust or confidence.

FIDUCIARY DUTY

An obligation to act in the best interest of another party. For instance, a corporation's board member has a fiduciary duty to the shareholders, a trustee has a fiduciary duty to the trust's beneficiaries, and an attorney has a fiduciary duty to a client.

G

GENERAL ADMINISTRATOR

One who is appointed to generally administer the entire estate.

GRANTOR

The person who transfers assets into a trust for the benefit of another. (Also known as a *trustor*.)

GUARDIAN

A person appointed by the court to protect and manage the personal care or financial affairs, or both, of a minor (ward).

GUARDIAN AD LITEM

Latin for "guardian at law." A person appointed by a court to represent the interests of an incapacitated, mentally handicapped, or minor person in a court case.

GUARDIANSHIP

The office, duty, or authority of a guardian. Also, the relation subsisting between guardian and ward.

H

HEARING

A formal court proceeding with all parties in a case present, but without a jury.

HEIR

A person who would naturally inherit property through a will, or from another who died without leaving a will.

HOLOGRAPHIC WILL

Generally, a will that is completely handwritten, dated and signed by the person making the will.

I

INCAPACITY

The lack of ability to act on one's own behalf.

INHERITANCE TAX

California law no longer has a state inheritance tax as such. But if federal estate tax is owed, some of the amount is paid to the state and allowed as a credit on the amount of federal tax owed.

INTER VIVOS TRUST

A trust set up during the lifetime of a person to distribute money or property to another person or organization (as distinguished from a person who transfers money or property after death).

INTESTATE/INTESTACY

Without a will. Opposite of *testate*.

INVENTORY

A complete listing of all property owned by the decedent at death.

IRREVOCABLE LIVING TRUST

A trust created during the maker's lifetime that does not allow the maker or anyone else to change it.

ISSUE

A term generally meaning all natural children and their children down through the generations. Adopted children are considered the issue of their adopting parents and the children of the adopted children (and so on) are also considered issue. A term often used in place of issue is "*lineal descendants*."

J

JOINT TENANCY WITH RIGHT OF SURVIVORSHIP

Property that names a co-owner on its deed or title. At the death of one of the co-owners, the other will become the sole owner of the property, regardless of what may be conveyed in the will.

JUDGMENT

A court's official decision on the matters before it.

JURISDICTION

A court's authority to rule on the questions of law at issue in a dispute, typically determined by geographic location and type of case.

K

KINDRED

All persons described as relatives of the decedent under the California Probate Code.

L

LAPSE

The failure of a gift of property left in a will because when the testator dies the beneficiary is deceased and no alternate has been named. California has a statute (termed an "*anti-lapse*" statute), which prevents gifts to relatives from lapsing unless the relative has no heirs of his or her own.

LEGACY

An old legal word meaning a transfer of personal property by will. The more common term for this type of transfer is bequest or devise.

LEGATEE

Also known as beneficiary. Person named in a will to receive property.

LETTERS

The court document that establishes the authority to act as a guardian, conservator, or personal representative (executor or administrator). In decedent's estates, an executor's letters are designated "*letters testamentary*," and an administrator's letters are "*letters of administration*."

LIFE ESTATE

They type of ownership a person possesses in real estate when he/she has only the right of possession for his/her life, and the ownership passes to someone else after his/her death.

LIMITED CONSERVATORSHIP

A type of conservatorship for developmentally-disabled adults.

LIVING TRUST

A trust set up while a person is alive and which remains under the control of that person during the remainder of her life. Also referred to as "*inter vivos trusts*."

LIVING WILL

Also known as a medical directive or advance directive. A written document that states a person's wishes regarding life-support or other medical treatment in certain circumstances, usually when death is imminent.

LPS CONSERVATORSHIP

A specific type of conservatorship, under the Lanternman-Petris-Short (LPS) Act, which allows for involuntary detention and treatment of a person (the conservatee). This conservatorship is a result of mental disorder and the conservatee appears to be a danger to himself/herself or others, or is gravely disabled. The Public Guardian must file this matter. (See *conservator* and *conservatee*.)

M

MARITAL DEDUCTION

A deduction allowing for the unlimited transfer of any or all property from one spouse to the other generally free of estate and gift tax.

MINOR

A person under the age of 18. A minor is usually defined as someone who has not yet reached the age of majority. The term does not apply to an emancipated youth. As used in the context of a guardianship, a person under the age of 18 years of age who is placed in the care of a court-appointed guardian.

MINUTE ORDER

The courtroom clerk's written minutes of court proceedings. Copies of the minute orders are usually kept in the case files and the court clerk's office.

N

NET ESTATE

The value of all property owned at death less liabilities.

NEXT OF KIN

The closest living relatives of a decedent, under the California law governing intestate succession.

NOTICE

Information given to a person or entity of some act done, or about to be done.

NUNC PRO TUNC

From the Latin: "*now for then*", used when an order is issued on one date but is effective retroactively.

O

ORDER TO SHOW CAUSE

Court order commanding a person to appear in court at a specific date and time, and to show cause to the court's satisfaction why he or she should not be compelled to perform a certain act (or cease a certain act).

P

PECUNIARY

Monetary; relating to money; financial; consisting of money or that which can be valued as money.

PERSONAL EFFECTS

Belongings of a personal nature, such as clothes and jewelry.

PERSONAL PROPERTY

All items, both tangible and intangible, that are not real property. Anything owned by a person that can be moved such as money, securities, jewelry, etc. (As opposed to real property e.g. house, land, crops, cabin, etc.)

PERSONAL REPRESENTATIVE

The generic title applied to the person who is authorized to act on behalf of the decedent's estate. Almost always, this person is either an administrator or executor appointed by the court to administer a decedent's estate.

PETITION

A written, formal request, properly filed with the court, for a specific action or order. The petition is a pre-printed court form in some cases, or written in proper format on pleading paper in others (e.g., petition for probate, petition for conservatorship, etc).

PETITIONER

One who presents a petition to a court. The person who opposes the prayer of the petition is called the "*respondent*."

PLEADINGS

In a civil case, the allegations by each party of their claims and defenses.

POINTS AND AUTHORITIES

Also referred to as "*P's and A's*." Points and authorities refer to the written legal argument given to support a request for a motion. It includes references to past cases, statutes, and other statements of law to give added emphasis to the legality of the motion being requested.

POWER OF ATTORNEY

A written legal document that gives an individual the authority to act for another.

PRAYER

That portion of a petition or complaint that sets forth the requested relief or damages to which the petitioner or plaintiff deems himself/herself entitled.

PRELIMINARY DISTRIBUTION

A petition for an order for preliminary distribution of all, or a portion of, the share of a decedent's estate to which a beneficiary is entitled to. The court shall order distribution under this article if at the hearing it appears that the distribution may be made without loss to creditors or injury to the estate or any interested person.

PREDECEASED SPOUSE

The term applied to a spouse who has died before the decedent while married to him or her.

PRETERMITTED HEIR

A child or spouse who, under certain circumstances, is not mentioned in the will and who the court believes was accidentally overlooked by the testator when making his/her will. If the court determines that an heir was pretermitted, that heir is entitled to receive the same share of the estate as he/she would have had the testator died intestate.

PROBATE

The judicial process in which an instrument purporting to be the will of a deceased person is proven to be genuine or not; lawful distribution of the decedent's estate. The legal process of administering a will. Also, the judicially supervised process for marshaling a decedent's assets, paying proper debts, and distributing the remaining assets to the persons or entities entitled to them. An estate may be probated even if there is no will.

PROBATE ESTATE

All the assets owned at death that require some form of legal proceeding before title may be transferred to the proper heirs. Property that passes automatically at death (property in trust, life insurance proceeds, property in a "pay-on-death" account or property held in joint tenancy) is not in the probate estate.

PROBATE REFEREE

An official appointed by the California State Controller to value all property (except for cash type items) in probate, small estate petitions, conservatorship, and guardianship matters filed with the court. Probate Referees also assist trustees in valuing assets in non-probate matters.

PROOF OF SERVICE

The form filed with the court that proves the date on which documents were formally served on a party in a court action.

PUBLIC ADMINISTRATOR

A publicly appointed person who handles the administration of an estate when no other person has been appointed as executor or administrator.

PUBLIC RECORD

A court record available for inspection by the general public. (Compare *confidential record*, *sealed record*.)

Q

R

REAL PROPERTY

Land and all the things that are attached to it. Anything that is not real property is personal property and personal property is anything that isn't nailed down, dug into or built onto the land. A house is real property, but a dining room set is not.

RESIDUARY ESTATE

Also known as residue of the estate. Portion of the estate left after bequests of specific items of property are made. Often the largest portion.

RESIDUARY LEGATEE

The person or persons named in a will to receive any residue left in an estate after the bequests of specific items are made.

REVOCABLE LIVING TRUST

A trust created during the maker's lifetime that can be changed. Allows the creator to pass assets on to chose beneficiaries without going through probate.

RIGHT OF SURVIVORSHIP

In a joint-tenancy, the property automatically goes to the co-owner if one of the co-owners dies.

S

SEALED RECORD

A record closed by a court to further inspection by anyone unless further ordered by the court (compare *confidential record*, *public record*).

SELF-PROVING WILL

A will accompanied by a sworn statement signed by the witnesses under penalty of perjury. Many states accept such wills in order to avoid the cumbersome process of requiring an executor to track down the witnesses.

SOLVENT

Present ability of debtor to pay out of his estate all of his debts.

SPECIAL ADMINISTRATOR

A person appointed to take temporary charge of the estate until general letters are issued.

SPECIAL NEEDS TRUST

A Special Needs Trust enables a person under a physical or mental disability, or an individual with a chronic or acquired illness, to have, held in Trust for his or her benefit, an unlimited amount of assets. In a properly-drafted Special Needs Trust, those assets are not considered countable assets for purposes of qualification for certain governmental benefits.

SPECIFIC BEQUEST

A specific item, distinguished from all others of the same kind belonging to the testator that is designated in the will as going to a specific beneficiary. If the specific item is no longer in the estate when the decedent dies, the bequest fails and resort cannot be made to other property of the decedent.

SPENDTHRIFT TRUST

A trust designed to keep money out of the hands of creditors. Often established to protect someone who is incapable of managing his or her financial affairs.

STANDING

The legal right to initiate a lawsuit. To do so, a person must be sufficiently affected by the matter at hand, and there must be case or controversy that can be resolved by legal action.

STATUS REPORT

A report filed by the personal representative within one year after the date of issuance of letters. The report shall show the condition of the estate, the reasons why the estate cannot be distributed and closed, and an estimate of the time needed to close administration of the estate.

STATUTE

Any written law passed by a state or federal legislative body.

STATUTORY WILL

California form will.

STIPULATION

An agreement between parties or their attorneys.

SUA SPONTE

From the Latin: "*of its own will.*" Commonly used when a judge does something without being so requested by either party in a case.

SURETY

One who undertakes to pay money or do any other act in the event that his principal fails therein. One bound with his/her performance of some duty or promise and who is entitled to be indemnified by someone who ought to have paid or performed if payment or performance be enforced against him/her.

SURETY BOND

See *bond*.

T**TANGIBLE PERSONAL PROEPRTY**

Personal property that takes a tangible form, such as automobiles, furniture and heirlooms. Although such items as stock ownership and copyrights may be represented in the form of paper certificates, the actual property is not in physical form and therefore considered intangible personal property.

TAXABLE ESTATE

The fair market value of all assets owned by a decedent at date of death (gross estate) less certain allowable deductions, such as debts of the decedent, last illness and funeral expenses, and expenses of administering the decedent's estate (attorney's fees, court costs and newspaper publication fees).

TENANCY IN COMMON

A type of joint ownership that allows a person to sell his share or leave it in a will without the consent of the other owners. If a person dies without a will, his share goes to his heirs, not to the other owners.

TESTAMENTARY DISPOSITION

A disposition of property in a will.

TESTAMENTARY TRUST

A trust created by the provisions in a will. Typically comes into existence after the writer of the will dies.

TESTATE

A person who has made a will or who has died leaving a valid will; opposite of intestate.

TESTATOR

The person who makes a will.

TITLE

Ownership of property.

TOTTEN TRUST

A bank account in your name for which you name a beneficiary. Upon the death of the named holder of the account, the money transfers automatically to the beneficiary.

TRANSFER AGENT

A representative of a corporation who is authorized to transfer ownership of a corporation's stock from one person to another. An executor or administrator must use a transfer agent when passing title to a decedent's stock to an heir or beneficiary.

TRUST

A written legal instrument created by a grantor during his or her lifetime or at death for the benefit of another. Property is given to a trustee to manage for the benefit of a third person. Generally the beneficiary gets interest and dividends on the trust assets for a set number of years. A legal arrangement under which one person or institution (called a “*trustee*”) controls property given by another person (termed a “*trustor*”, “*grantor*” or “*settler*”) for the benefit of a third person (called a “*beneficiary*”). The property itself is sometimes termed the “*corpus*” of trust.

TRUSTEE

The person named in a trust document who will manage the property owned by the trust and distributes any income according to the document. A trustee can be an individual or a corporate fiduciary.

TRUSTOR

The person who transfers assets into a trust for the benefit of another. (Also known as a “*grantor*.”)

U

UNIFORM TRANSFERS TO MINORS ACT

California law, which provides a way for someone to give or leave property to a minor by appointing a “custodian” to manage the property for the minor.

V

VENUE

The geographical limits of court’s jurisdiction (usually a county, or a division with a county).

VERIFICATION

An oral or written statement that something is true, usually sworn to under oath.

W

WARD

A person, especially a child, placed by the court under the care of a guardian.

WILL

A legal document directing the disposal of the testator’s property after their death. A will is revocable during the maker’s lifetime.

WILL CONTEST

A proceeding peculiar to probate for the determination of questions of construction of a will or whether there is or is not a will. Any kind of litigated controversy concerning the eligibility of an instrument to probate as distinguished from validity of the contents of the will. (Will contests are in rem proceedings in that the contest is brought against the thing, the will, as opposed to in personam proceedings, which are brought against a person.)

X, Y, & Z

i