

SPECIAL REPORT

Estate Planning Glossary

Administrator

An administrator is a person appointed by the court to settle the estate of a person who dies without a will or with a will that does not designate an executor.

Advance Medical Directive

An advance medical directive is a document that provides instructions concerning a person's healthcare if the person can not give those instructions. There are two different types of advance medical directives. The first is a living will that gives instructions concerning a person's healthcare if the person is dying. The second is a medical power of attorney that appoints an agent to make healthcare decisions for a person who is incapable of making these decisions. Frequently, an advance medical directive will include both a living will and a medical power of attorney.

Applicable Exemption Amount

The Applicable Exemption Amount (also known as the Unified Credit) is the amount that you can give away during your life or at your death without paying a federal gift or estate tax. Under existing law, this amount is \$2 million in 2007 and 2008, and \$3.5 million in 2009. The estate tax is scheduled to be repealed in 2010 and be reinstated in 2011.

Credit Shelter Trust

A credit shelter trust is a trust designed to use the decedent's Applicable Exemption Amount, but retain the assets in trust for the benefit of a surviving spouse.

Crummey Trust

See Irrevocable Life Insurance Trust, below.

d(4)(a) Supplemental or Special Needs Trust

Congress authorized the creation of d(4)(a) supplemental or special needs trusts with the assets of a disabled person. The assets in a d(4)(a) trust are not considered countable resources for determining the beneficiary's SSI or Medicaid eligibility. The trust must be: (1) irrevocable, (2) established for a disabled person under age 65, (3) created by the disabled person's parents, grandparents, guardian, or by a court, and (4) required at the disabled person's death to repay the state any assets remaining in the trust up to the amount paid under the Medicaid program for the disabled person.

d(4)(c) Supplemental or Special Needs ("Pooled") Trust

Congress authorized the creation of d(4)(c) supplemental or special needs trusts with the assets of a disabled person. The assets in a d(4)(c) trust are not considered countable resources for determining

the beneficiary's SSI or Medicaid eligibility. The trust must be: (1) created by and managed by a nonprofit organization, (2) maintained in a separate account for each beneficiary, (3) created by the disabled person, the disabled person's parents, grandparents, guardian, or by a court, and (4) required at the disabled person's death to repay the state any assets remaining in the disabled person's account up to the amount paid under the Medicaid program for the disabled person, or to leave these assets in the trust for the benefit of other disabled persons.

Disclaimer

A disclaimer is an instrument by which one refuses to accept a gift of property.

Disclaimer Trust

A disclaimer trust is a trust funded by a disclaimer. It is frequently used to permit a surviving spouse to fund a credit shelter trust with that amount of property necessary to limit the size of the surviving spouse's estate to the Applicable Exemption Amount.

Durable Power of Attorney

A durable power of attorney is an instrument by which a person, known as the principal, designates another person, known as the agent, to manage the principal's assets or affairs. Unlike a common law power of attorney, the durable power of attorney does not terminate upon the principal's incapacity or disability. The durable power of attorney can be effective upon execution ("immediately effective") or effective upon the principal's incapacity or other event ("springing").

Estate Tax

An estate tax is a state or federal tax imposed at the decedent's death upon the decedent's property.

Executor

An executor is a person named in a will to settle

the decedent's estate and to distribute the decedent's estate in accordance with the terms of the decedent's will.

Family Limited Partnership or Family Limited Liability Company

A family limited partnership or a family limited liability company is an entity used to provide for the centralized management and investment of family assets. They are taxed as partnerships for income tax purposes and provide discounts in valuation for gift and estate tax purposes.

Fiduciary

The term fiduciary includes executors, administrators, trustees, guardians, conservators, and agents. A fiduciary is a person who manages the assets or affairs of another person. The fiduciary is required to follow the instructions contained in the instrument that appointed the fiduciary and the various laws that pertain to fiduciaries, such as the Prudent Investor Act and the Uniform Principal and Income Act. The fiduciary owes certain duties to the beneficiary. These duties include the duty of loyalty, to use due care, to avoid conflicts of interest, and to provide information. A fiduciary that violates the instructions in the governing instrument, applicable laws, or fiduciary duties is liable to the beneficiary for any damages that the beneficiary suffers as a result of the violation.

Gift Tax

A gift tax is a state or federal tax imposed on a donor when the donor makes a gift of property.

Incentive Trust

An incentive trust is a trust created to provide an incentive to the beneficiary to avoid certain conduct or to induce the beneficiary to engage in certain conduct. For example, the trust could provide for: (1) a suspension of distributions if the beneficiary is addicted to or abuses drugs or alcohol, or (2) distributions to the beneficiary if the beneficiary obtains an education or is gainfully employed.

Irrevocable Life Insurance Trust (ILIT)

An irrevocable life insurance trust is an irrevocable trust which is the owner and beneficiary of a life insurance policy insuring the life of the grantor. The trust agreement will frequently contain “Crummey” withdrawal powers for the beneficiary to insure that gifts to the trust qualify for the gift tax annual exclusion. Provided that the grantor never owned the life insurance in the trust or transferred ownership of the life insurance to the trust more than three years prior to his or her death, the face value of the life insurance will not be included in the grantor’s taxable estate for estate tax purposes.

Living Will

See Advance Medical Directive, above.

Marital Agreements

Marital agreements are agreements between married persons for the purpose of settling the rights and obligations of either or both of them. These rights and obligations may include: (1) their rights in any property of either or both of them, (2) the disposition of property upon their separation, divorce or death, (3) spousal support, (4) the making of a will, and (5) any other matter not in violation of the law or public policy.

Medicaid

Medicaid is a need based program that provides medical care, including nursing home care, to the aged, blind or disabled who meet resource and income tests.

Medical Power of Attorney

See Advance Medical Directive, above.

Per Stirpes Distributions

Gifts or distributions to a deceased person’s descendants per stirpes are made by dividing the assets into as many shares as there are then-living children of the deceased person and deceased children of the deceased person who left then-living descendants. Each then-living child is given one share, and the share of each deceased child is

divided among this child’s then-living descendants in the same manner.

Premarital Agreement

A premarital agreement is an agreement between prospective spouses made in anticipation of and to be effective upon their marriage. The purpose of the agreement is to settle the spouses’ rights and obligations with respect to: (1) their rights in any property of either or both of them, (2) the disposition of property upon separation, divorce or death, (3) spousal support, (4) the making of a will, and (5) any other matter not in violation of the law or public policy.

Probate

Probate is the judicial process by which an instrument is proven to be the decedent’s will. It is also frequently used to refer to the judicially supervised administration of the decedent’s estate.

Probate Tax

The probate tax is a state tax imposed on the decedent’s estate under the control of an executor or administrator.

Q-Tip Trust

A Q-TIP trust is a qualified terminal interest property trust. The Q-TIP trust requires the trustee to distribute all of the income of the trust to a surviving spouse. It may permit the trustee to make principal distributions only to the surviving spouse. The Q-TIP trust qualifies for the estate tax marital deduction and is frequently used by persons in a second marriage who wish to preserve the trust principal for children by a prior marriage.

Revocable Living Trust

A revocable living trust is a trust designed to dispose of the decedent’s assets at the decedent’s death in order to avoid the probate process. It is a will substitute.

Spendthrift Trust

A spendthrift trust is a trust that is designed to

protect the trust assets from the beneficiary's creditors.

Supplemental Security Income (SSI)

SSI is a needs based program under the Social Security Act that provides income benefits to the aged, blind or disabled.

Special Needs Trust (SNT)

An SNT is a trust created for the benefit of a beneficiary who receives SSI or Medicaid. The trust is drafted to provide discretionary benefits to the beneficiary, but not to be considered a countable resource for the beneficiary's SSI or Medicaid eligibility.

Third Party Supplemental or Special Needs Trust (SNT)

A third party supplemental or special needs trust is an SNT created for the benefit of a disabled person with the assets of someone other than the disabled person. The trust is drafted to provide discretionary benefits to the beneficiary, but not to be considered a countable resource for the beneficiary's SSI or Medicaid eligibility.

Trust

A trust is an agreement by which a grantor or settlor transfers property to a trustee to manage for the benefit of a beneficiary. The trust can be created during the grantor's life by an agreement ("intervivos trust") or at the grantor's death by the grantor's will ("testamentary trust"). The trust may be subject to revocation by the grantor ("revocable trust") or be irrevocable ("irrevocable trust").

Trustee

A trustee is a person who administers a trust in accordance with the terms of the trust agreement.

Will

A will is an instrument that appoints an executor to settle the decedent's estate and provides instructions for the distribution of the decedent's assets.

ABOUT THIS DOCUMENT

This document is not intended as a substitute for legal advice. It is distributed with the understanding that if you need legal advice, you will seek the services of a competent Elder Law attorney. While every precaution has been taken to make this document accurate, we assume no responsibility for errors or omissions, or for damages resulting from the use of the information in this Explanation.

Reprint permission is granted only for educational purposes with appropriate citation to Oast & Hook, P.C.

Oast & Hook also publishes the *Oast & Hook News*, which is archived in searchable format on our web site. If you would like to be added to the distribution list for this newsletter, or if you need additional information concerning this Explanation, you may contact us by emailing or calling:

Oast & Hook, P.C.
Tel: 757-399-7506
Fax: 757-397-1267
mail@oasthook.com

Oast & Hook, P.C.
www.oasthook.com

521 Middle Street Mall
Portsmouth, Virginia 23704
Tel: 757-399-7506
Fax: 757-397-1267

295 Bendix Road, Suite 170
Virginia Beach, Virginia 23452
Tel: 757-399-7506
Fax: 757-397-1267