

Estate Planning Part 10:

A Glossary of Terms

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Administrator — a person appointed by the court to manage the assets and liabilities of the deceased person. If the person performing these probate services is named in the deceased person's will, they are the *executor*.

Advanced medical directive — a written document that specifies a person's wishes concerning their medical care in the event that person becomes incapacitated and unable to directly provide those instructions.

One type of advanced medical directive is a *living will*. When a person is no longer able to make decisions regarding their medical treatment, the living will governs the withholding or withdrawal of life-sustaining treatment in the event of an incurable or irreversible condition that will cause death in a relatively short time.

Assets — the entire property of a person or that person's estate. Assets include tangible, intangible, real, and personal property.

Beneficiary — the person (may be more than one) or organization receiving either a transfer of property or part of another arrangement such as trusts, life insurance policies, retirement fund death benefits, or other estate assets.

Bequeath — to give personal property by will to another person or organization.

Bond — an incentive to fulfill an obligation; it also provides reassurance that compensation is available if the duty is not fulfilled.

Charitable remainder trust — an irrevocable, potentially tax-exempt trust that consists of an income stream paid to the trust beneficiaries with the remainder designated for charitable purposes after the expiration of a life estate or intermediate estate trust.

Codicil — a supplement or an addition to a will. A codicil may explain, modify, add to, subtract from, qualify, alter, restrain, or revoke provisions in an existing will. It does not contain the entire will or revoke a total prior will.

Conservator — a person legally appointed to manage the financial affairs of another person.

Deed — a real estate instrument written and signed by the person selling the property.

Dower and curtesy rights — the provision that the law makes for a widow from the lands or property of a spouse for support and the care of any children. A type of life estate that, by law, entitles a spouse to claim their portion of the estate upon the spouse's death.

Estate — a term used in probate proceedings to refer to all the assets (all property) and liabilities of the deceased person.

Executor — a person previously appointed by the deceased to carry out the directions and requests in their will. The person who is responsible for the disposal of the property according to the deceased person's provisions in their will.

Federal and state estate taxes — taxes imposed by the federal and state governments on the right to transfer property at death. They are levied on the deceased person's estate, including all property in the control of the deceased at the time of their death. They are not levied on the beneficiary or heir(s) receiving the property.

Fiduciary — in law, a person in a position of authority whom the law obligates to act solely on behalf of the person they represent in good faith. Examples of fiduciaries are agents, executors, trustees, guardians, and officers of corporations. Unlike people in ordinary business relationships, fiduciaries may not seek personal benefit from their transactions with those they represent.

Financial planner — a professional person with special training in advising those who want to supplement their knowledge of personal finances.

Guardian — a person lawfully invested with the power and charged with the duty of taking care of a person who is considered incapable of administering their own affairs and with managing the property and rights of that person.

Holographic will — a will written entirely by the *testator* with their own hand and not witnessed (attested).

Inheritance tax — a tax imposed on the privilege of receiving property from a deceased person at that person's death. The tax is measured by the value of the property passing to the beneficiary. No inheritance tax is levied on Class A beneficiaries, which include the surviving spouse, children by blood or adoption, grandchildren, and parents.

Intestate — dying without a will. When this happens, Kentucky law prescribes who will receive the deceased person's property.

Liability — a general term for anything for which you are by law obligated, responsible, or answerable in compensation or restitution.

Living trust — a trust that is created and operative during the lifetime of the one who creates the trust. It is commonly for the benefit or support of another person. More recently, a living trust has become an estate planning instrument in addition to or in place of a will.

Nuncupative will — an oral will dictated by the *testator* in their last sickness before a sufficient number of witnesses and dependent on their oral testimony for proof. Nuncupative wills are not recognized in Kentucky.

Ownership — the right of one or more persons to possess and use a thing to the exclusion of others. It includes the right to control, handle, dispose of and/or transmit it to others. Ownership is absolute when a single person has control over it. Ownership is qualified when it is shared with one or more persons. *Joint tenancy* is defined as two or more persons owning and holding title to property with one and the same interest. When one person dies, the remaining owner(s) has right of survivorship to the deceased person's interest in the property. *Tenancy in common* is a form of ownership whereby each owner holds an undivided interest in the property. Unlike joint tenancy, there is no right of survivorship.

Power of attorney — a written document whereby a person appoints another person as their agent and confers authority to that person to perform certain specified acts or kinds of acts on behalf of the person making the document. It allows another person to act on their behalf. A *durable power of attorney* exists when a person prepares a power of attorney that becomes effective upon signing and remains effective in the event they become incapacitated. A conditional or *springing power of attorney* takes effect only if and when a person becomes incapacitated. There are both medical and financial power of attorneys.

Probate — the court procedure by which a will is proved to be valid or invalid. Today, it generally refers to the legal process of administering the estate of a deceased person — collection of assets, liquidation of liabilities, payment of taxes, and distribution of property to the heirs.

Property — denotes everything that is the subject of ownership, including real, tangible or intangible, visible or invisible, and personal items. It is everything that has an exchangeable value or makes up the estate. Real property refers to land and generally whatever is erected, growing upon, or affixed to the land. Tangible property is all property that is touchable and has a physical existence, whether it is real or personal. Intangible or invisible property is property of value that does not have a physical existence, such as stocks or bonds. Personal property is generally everything that is not real estate. Community property is property owned in common by both spouses, each having an undivided one-half interest by reason of marital status. Kentucky is not a common property state.

Q-TIP — this term refers to a *qualified terminal interest property* trust. Usually it is a type of marital deduction bequest in which the surviving spouse receives all of the income for life but is not given a general power of appointment. The property qualifies for a marital deduction only to the extent that the executor so elects on the federal estate tax return.

Surety — one who has become legally liable for the debt, default, or failure in duty of another. Failure to perform the act obligates the person to pay a sum of money or to forfeit money on deposit. A surety usually is involved in an estate, and the bond makes the surety responsible for the consequences of the obligated person's behavior.

Testamentary letters — formal documents of authority and appointment given to an executor by the court empowering that person to fulfill the executor’s responsibilities.

Testate/testator — the person who makes or has made a will or the person who dies leaving a will.

Trust — a legal entity and document created by a person for the benefit of designated beneficiaries under the laws of the state. There are many different types of trusts. Some trusts are revocable during the lifetime of the person who created them; others are irrevocable.

Trustee — the person who holds responsibility of managing the assets and income of the trust for the economic benefit of the beneficiaries.

Will — an instrument by which a person makes a disposition of their real and personal property to take effect after death. It is revocable during the person’s lifetime. A self-proving will is a will that eliminates some of the formalities of proof required to be in compliance with state law. It is made self-proven by the notarizing of the signatures of the witnesses at the time of the signing of the will.

The Estate Planning Series

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- Part 1: *Getting Started*
(FCS5-420)
- Part 2: *Your Records and Personal Information*
(FCS5-422)
- Part 3: *Selecting Your Team*
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- Part 4: *Financial Planners*
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- Part 5: *Wills and Probate in Kentucky*
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- Part 6: *Trusts*
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- Part 7: *Federal and State Estate Taxes*
(FCS5-427)
- Part 8: *Planning Your Digital Estate*
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- Part 9: *How to Settle an Estate*
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- Part 10: *A Glossary of Terms*
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