

SANDRA L. CLAPP & ASSOCIATES, P.A.

IMPORTANT ESTATE PLANNING DEFINITIONS

The following are some of the common phrases that you may encounter in developing an estate plan:

Ancillary Representative - A personal representative or agent who is qualified to act in a state other than in the decedent's state of residence or where a probate proceeding is originally commenced. The ancillary representative is appointed to seek probate of assets located in or subject to the laws of the ancillary jurisdiction.

Beneficiary - A person who has any interest in a trust. Property in a trust is held and administered for the benefit of persons named in the trust instrument (who are the beneficiaries).

Codicil - A document which supplements, amends or revokes portions of an existing will.

Conservator - A person who has qualified and been appointed to act as the conservator of a minor or incapacitated person. A conservator has responsibility for the management of the property and affairs of an incapacitated person.

Custodian - A person who holds property or assets for a minor person pursuant to the Idaho Uniform Transfers to Minors Act or other similar acts.

Devisee - The person designated in a will to receive a distribution of property from a decedent.

Estate - The property and rights of a decedent which exist prior to the distribution of that property in accordance with a will or pursuant to applicable intestacy provisions.

Fiduciary - Any person who holds a position of trust over assets or decisions relating to another person. Common examples of a fiduciary are a personal representative, trustee, guardian, conservator, and custodian.

Grantor - The person who transfers property to a trustee to establish a trust.

Guardian - A person who has qualified and been appointed to act as the guardian of a minor or incapacitated person. A guardian has responsibility for the continuing care and supervision of the person of the incapacitated person.

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Heirs at Law - Those persons entitled to receive assets of the estate pursuant to the laws in effect for an intestate estate in the jurisdiction where administration of the estate is occurring.

Holographic Will - A will which does not comply with the formal requirements of Idaho law. The signature and material provisions of the holographic will must be in the handwriting of the testator to be valid.

Intestacy or Intestate - The status of dying without making a will or other distribution to take effect upon death. Statutory provisions have been developed by all state legislatures which direct how property of a deceased person is to be distributed when such person dies without making a will or other complete distribution of property.

Irrevocable Trust - A trust which cannot be revoked, withdrawn or cancelled.

Issue - The issue of a person means his or her lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definition of child and parent contained in the Idaho Code at the date of the Will.

Personal Representative - The fiduciary appointed to administer the estate of a deceased person. The personal representative has responsibility to submit the decedent's will to probate (if a will exists), inventory and value the assets of the decedent, pay the proper debts and liabilities of the decedent, pursue or release claims of the estate, and distribute property of the decedent to the persons entitled to receive it either under a valid will or as directed pursuant to the intestacy statutes.

POST - Physician Order for Scope of Treatment (POST). The POST is referenced in the Living Will and Durable Power of Attorney for Health Care form. The POST is prepared by your physician and will replace the former "do not resuscitate" (DNR) and Comfort One programs in documenting and directing the patient's treatment wishes concerning life-sustaining treatment (See Idaho Code Section 39-4509). Under former laws, a patient who wanted to limit their life-sustaining care was often required to have multiple directives that applied in different settings (e.g., a Comfort One that applied to EMS personnel or a separate DNR order for each facility that might render care), thereby confusing the patient and health care providers. The new POST is intended to simplify the situation by replacing the former directives with one standardized form that applies in all treatment settings. It also provides patients with greater flexibility in expressing their wishes and a process for discussing those wishes with their attending physician.

Probate - The court proceeding and process which provides a statutory mechanism to establish the authenticity of a will, inventory and value property of a decedent, pay debts and expenses of the decedent, and distribute property to the persons entitled to receive it.

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Revocable Trust - A trust which may be revoked, withdrawn or cancelled by the grantor(s). A revocable trust may be commonly referred to as a “living trust.”

Testamentary Trust - A trust established or which takes effect upon the death of the grantor.

Testator/Testatrix - Creator or Maker of a Will

Trust - A relationship where a grantor transfers property to a trustee to be held, administered and distributed for the benefit of the trust beneficiaries.

Trust Agreement - The document which establishes the terms under which the trust is administered, identifies the property which is transferred to the trustee, identifies the beneficiaries, and sets forth conditions upon which property of the trust may be distributed to the beneficiaries.

Trustee - A person who assumes the responsibility to administer a trust for the benefit of the beneficiaries of the trust. A trustee is a fiduciary who generally owes the highest duties to the beneficiaries of the trust.

Uniform Transfers to Minors Act - Statutory provisions which allow a transfer of assets to a custodian to be held for the benefit of a minor child.

Will - A document which takes effect at death to dispose of property and which may express other desires such as the nomination of a person to act as personal representative of the estate, the establishment of trusts, the appointment of a guardian and/or conservator, charitable devises, and the exclusion of certain heirs. Pursuant to Idaho law, a will must be in writing, be signed by the testator or in the testator’s presence, and be signed and witnessed by two persons. In addition, the testator must be 18 or more years of age, be of sound mind, and act under no constraint or undue influence.

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