

Glossary of Terms – A guide to Private Client terminology



A

Ademption – When an item is not in the estate's possession at the time of death.

Administrator – The person or people appointed to administer the estate of a deceased who dies intestate.

Annual Exemption – The amount which individuals can transfer per year free of Inheritance Tax (currently £3,000), this can be carried forward for one tax year if unused.

Asset – An item of property owned by a person.

Attorney – A person acting in the best interests of a Donor (the person creating the power) under a power of attorney when they no longer have mental capacity.

B

Banks v Goodfellow – Legal case which established the test for testamentary capacity considering whether a testator understands the nature and effect of making a Will, the extent of their estate and any claims from those who may expect to benefit from the Will.

Beneficial Joint Tenants – Ownership of land or property whereby each party owns the entire property equally and does not have a defined share.

Beneficiary – Someone who is entitled to benefit from a Will or Trust, whether that be a present, future or contingent benefit.

Bequest – A gift of personal property left in a Will.

Book cost – The original cost of an asset.

Business Property Relief – Inheritance Tax relief on business assets.

C

Capacity – Having the mental capability to make decisions to put a valid legal document in place.

Capital – The basic asset of an individual used to generate income or held as an investment.

Capital Gains Tax – A tax on the profit when an asset is sold or disposed of that has increased in value.

Capital Taxes – The office of the HMRC that deals with the administration of Inheritance Tax.

Charitable Gift – A donation made to a non-profit, private foundation, or charity.

Chargeable Gift – A gift on which Inheritance Tax may be payable.

Chattels – Personal belongings which can be moved from one place to another.

Client – Someone who uses services provided by a legal professional.

Codicil – A subsequent document which makes valid alterations to an existing Will.

Contentious Estate – Where an estate is left unequally which may give rise to claims against the estate when the individual passes away.

Contested Estate – A formal objection raised against the validity of a Will.

Contingent Gift – A gift which only takes effect if a certain condition is met.

Court of Protection – The Court which makes decisions on financial and welfare matters for people who cannot make decisions at the time they need to be made (they lack mental capacity). The Court may also choose to appoint someone as a 'deputy' to make such decisions.

Creditor – A person or company to whom money is owed.

D

Death Certificate – An official document, signed by a doctor, which records when and where a person died and the cause of death.

Debtor – A person or company who owe money to an individual, trust or estate

Deceased – A person who has passed away.

Deed of Variation – A document which allows beneficiaries named in a Will to make changes to the distribution of an estate.

Deliberate deprivation of assets – Intentionally decreasing overall assets in order to minimise or defend against third party claims against the estate.

Deputy – Someone who has been appointed by the Court to manage the affairs of someone who lacks the mental capacity to make decisions relating to their property and finance and health and welfare matters.

Destruction – The act of a testator burning, tearing or otherwise destroying their Will with the intention to revoke it.

Devise – A gift by Will of freehold property.

Disbursement – A payment made to a third party.

Disclaimer – The act of a beneficiary refusing to accept a legacy if they have yet to receive any benefit from it.

Discretionary Trust – A trust where the beneficiaries and their entitlements are determined at the discretion of the trustees.

Distribution – The act of administering the terms of a Will once all assets have been realised and all debts paid.

Domicile – The country that a person treats as their permanent home.

Donor – The person who has created a Lasting Power of Attorney and appointed attorneys to act in their best interests and make decisions for them in relation to their property and finance and health and welfare matters.

E

Enduring Power of Attorney – A legal document enabling a donor to appoint attorneys to make decisions regarding their property and financial affairs. It has not been possible to create an EPA since October 2007 when Lasting Powers of Attorney were introduced.

Engrossment – The final preparation of a Will or legal document for signature.

Estate – A person's assets, entitlements, and obligations at the time of death.

Executor – Someone appointed in a Will to take legal responsibility for carrying out the instructions left by the deceased in the terms of their Will.

Exoneration – The relief from liability.

Excepted estate – An estate where no inheritance tax needs to be paid.

F

Fiduciary – Someone who acts on behalf of another to manage money or property with responsibility and good faith.

Freehold – If you own the freehold of a property, you own the building and the land upon which it stands.

G

Golden Rule – Where an aged or seriously ill testator requires a Will, the solicitor should arrange for a medical practitioner to carry out an assessment and provide a written report in relation to the mental capacity of the testator.

Grant of letters of administration with the Will annexed – The grant of representation obtained by the personal representatives where there were no executors appointed in the Will or the appointed executor is unwilling or unable to act.

Grant of Probate – A document issued by the Court to confirm the executor's authority to deal with the estate and validates the Will.

Grant of Representation – The general term for a High Court order that establishes the authority of one or more Personal Representatives to collect in assets and distribute the estate, and either the validity of the Will or the fact that the deceased died intestate.

Guardian – Someone who is appointed to have 'parental responsibility' over a child under the age of 18.

H

Hotchpot – A clause inserted into a Will which considers any gifts made during your lifetime when distributing your estate. Such gifts are treated as advancements against a person's inheritance and are therefore deducted from the beneficiaries share of your estate upon distribution.

I

Income – Receipts of rents, interests and dividends produced by capital held.

Income Tax – A tax levied on net personal or business income.

Inheritance Tax – A one-off tax payable when an estate is over the inheritance threshold (currently £325,000).

Inter Vivos – A gift made during a donor's lifetime between living persons.

Intestacy – Where a person has died intestate and their estate is therefore distributed according to statutory regulations called the Rules of Intestacy.

Intestate – Where a person has died without leaving a valid Will.

Issue – An individual's descendants (children, grandchildren & adopted children), but not stepchildren.

J

Jurisdiction – The power that a Court of law has to carry out legal judgements or to enforce laws.

L

Lasting Power of Attorney – A legal document which allows someone to make decisions on your behalf in relation to your property and finance and health and welfare matters, when you lack the mental capacity to do so yourself.

Leasehold – The leaseholder owns the property but not the land upon which it is built.

Legacy – A gift under the terms of a Will.

Legatee – A beneficiary under the terms of a Will whom is to receive a gift of money or a legacy.

Letter of Wishes – A document which is drawn up to accompany a Will or trust which is used to guide those managing an estate or a trust. Letters of Wishes are informal, non-binding documents.

Letters of administration – A document which appoints people to administer a person's estate where there is no valid Will capable of being admitted to probate.

Liability – The act of being subject to a legal obligation.

Life Interest Trust – A trust which gives the beneficiary the right of enjoyment either for life, a specified period of time, or until an event has occurred. The beneficiary can receive the right to benefit either by allowing them use of an asset or receiving income from an asset.

Lifetime Chargeable Transfer – A lifetime transfer on which tax is payable at the time of transfer at half of the full IHT death rates. If the transferor dies within 7 years, a further tax charge at the full death rate of 40% is payable but any tax already paid can be offset against this.

M

Market Value – The amount for which something can be sold on the open market.

Mental Capacity Act 2005 – Government legislation which provides a legal framework for acting and making decisions on behalf of adults who lack the capacity to make particular decisions for themselves.

Mirror Wills – Separate Wills executed by two individuals that contain identical terms where each leaves the same gifts to the other and each names the other an executor. Testators are not bound by one another when they create mirror Wills.

Minor – A person under the age of 18.

N

Nil Rate Band – The amount up to which there is no inheritance tax payable on the value of the estate, which is currently £325,000. For couples who are married or in a civil partnership, any unused nil rate band can be transferred to their spouse/civil partner on death, enabling a couple to leave up to £650,000 tax free on second death.

Next of Kin – A persons closest living blood relative.

Non-proving executor – A person appointed as an executor under the terms of the Will who does not wish to play an active role in the administration of the estate. A non-proving executor has the right to prove the Will at a later time.

O

Obligation – A requirement to take a particular type of action, that may have a legal basis.

Office Copy Entries – A certified, modern equivalent of physical Title Deeds.

Office of the Public Guardian – A government body which is responsible for maintaining the register of attorney's, deputies and guardians, and monitoring their actions on behalf of people who have lost mental capacity.

P

Pecuniary legacy – A gift under the terms of a Will of a fixed sum of money.

Personal Representative – A blanket term for executors and administrators.

Potentially Exempt Transfer (PET) – A lifetime gift from one individual to another that is exempt from Inheritance Tax if the transferor survives 7 years. If they die within 7 years, the transfer becomes a chargeable transfer subject to Inheritance Tax.

Predeceased – Someone who dies before the person who has made the Will.

Probate – The legal process of administering the estate of someone on death. This involves organising their money, assets and possessions and distributing them as inheritance after paying any taxes and debts.

R

Remunerated Executor – Where the executor is paid for their services beyond normal 'out of pocket' expenses.

Renunciation – A proposed executor of a Will who does not wish to take up their appointment.

Residuary Beneficiary – The individuals who receive the remainder of an estate after all other legacies, liabilities, tax, and expenses have been paid.

Residue – The remainder of the estate after all specific and pecuniary legacies, liabilities, tax, costs, and disbursements have been settled.

Revocation – The act of cancelling a legal document.

S

Settlor – The person who establishes a trust, held and administered by a trustee for the benefit of another.

Sole Proprietor – Someone who owns an asset by themselves as a whole.

Specific Gift – A gift of a particular item, not including money.

Statutory Notices – An advertisement that is placed in the local media and London Gazette before distributing an estate to allow any missing beneficiaries or creditors to the estate to come forward within a 2-month period.

Survivorship – When assets are jointly owned and one owner dies, the asset will automatically pass to the surviving partner.

T

Taper Relief – A percentage reduction in the tax which would otherwise be payable on a transfer.

Tenants in Common – Ownership of property whereby each person owns a defined share.

Testate – When a person dies leaving a valid Will.

Testator/Testatrix – The person who is making a Will.

Trust – A Trust is the formal transfer of assets to a small group of people or to a trust company with instructions that they hold the assets for the benefit of others. If the trust is to be made during a person's lifetime, it is usually accompanied by a trust deed.

Trustee – A person or firm that holds or administers property or assets for the benefit of a third party.

U

Undue Influence – The act of someone forcing or coercing an individual into making a Will in a particular way.

V

Vested interest – When a person is legally entitled to what has been left to them in a Will.

W

Will – A legal document which sets out how an individual wishes to dispose of their assets after their death.

Witnesses – Two independent adults who are present together with the Will drafter, when they sign and date the Will.