LEGAL TERMS

Words and Phrases Commonly Used in a
Last Will and Testament, Trust or Probate

Last Will and Testament = your final choices and words, or testimony; what you want done when you are gone.

Trust = a contract in which one person, the *Trustee,* agrees to hold and manage property for the benefit of another, the *beneficiary*. The person who creates the *Trust* and contributes property to it is called the *Settlor* or *Grantor.*

Probate = the process of proving what a deceased person owned and owed and that the remainder has been distributed to the *beneficiaries* in his *Will* or, if he did not have one, to his *heirs* under the Texas Rules of Descent.

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Administration = settling your affairs; settling your estate.

Administrator =someone appointed by a court to settle your affairs if you do not leave a valid *Will.* An *Administrator* and an *Executor*, the person you name to settle your affairs in a *Will*, are also called a *personal representative.*

A *dependent administration* is court-supervised. For example, a court order must be gotten to sell property.

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An *independent administration* is not court supervised. The person settling your affairs only needs to go to court to obtain *Letters Testamentary* (if you have a *Will*) or *Letters of Administration* (following an *Heirship Proceeding* if you do not). Other interaction with the court consists of electronically filing affidavits and, if required, an inventory, appraisement and list of claims owed to the estate.

Beneficiary = a person, charity or trust with the right to receive money or goods under a *Will* or a *Trust* or named the *beneficiary* of a life insurance policy, annuity, retirement account or pay-on-death bank account.

Contingent beneficiary = a person, charity or trust with the right to receive money or goods under a *Will* or *Trust* or named the *beneficiary* of a life insurance policy, annuity, retirement account or pay-on-death bank account if the *owner* and *beneficiary* are gone; sometimes called the *secondary beneficiary*.

Income beneficiary = a person who has the right to receive income earned by investments or assets held in a *Trust* but no right to the investments or assets themselves.

Initial beneficiary = the person, charity or trust the *Will* or *Trust* or retirement account benefits first.

Remainder beneficiary = a person, charity or *Trust* which becomes a *beneficiary* if the *initial beneficiary* or *beneficiaries* have died or have received all benefits due under the terms of a *Will* or *Trust.*

Residual beneficiary = the person who inherits under a *Will* if all *initial* and *remainder beneficiaries* die before the person who made the *Will*.

Secondary beneficiary = a person, charity or trust with the right to receive money from a life insurance policy, annuity, retirement account or pay-on-death account if the *owner* and *beneficiary* are gone; sometimes called the *contingent beneficiary.*

Bond or *Surety bond* = money or a contract from a bonding company or two personal guarantors given to the court to assure that the *administrator*, *executor* or *guardian* does their job. In Texas, your *Will* can waive the need for your *executor* to post a bond.

Child = someone born to or adopted by the person, regardless of age.

A child under 18 is called a *minor*. The law will treat that person as an adult if they have married, joined the armed forces or are over 16, self-supporting, living on their own and have gotten a court order saying that they should be treated as an adult under the law.

Issue = children born to someone and not children who are adopted.

Community Property = real or personal property belonging to a married couple, whether *jointly* or *separately* managed.

Crummey Powers = annual limited powers of *Trust beneficiaries* to require a *Trustee* to distribute money (or, rarely, goods) from a *Trust.*

Decant = to pour the assets of a *Trust* into a new *Trust* under Texas decanting rules. This may be done to preserve the *Grantor's* intent in the face of changing circumstances.

Descendants = the children born to someone, the children born to them and the children born to them and so on (not adopted children unless the document specifically includes them).

Devise = transfer ownership.

Disabled = eligible for benefits under the Social Security Act or, if referring to a private disability insurance policy, under that insurance policy.

Disclaim = refuse an inheritance.

Dispose = give, transfer.

Distribution = money or property given to a *beneficiary* under a *Will* or *Trust* or a life insurance policy, an annuity, retirement account or pay-on-death bank account or to an *heir* of someone who died without a *Will*, dying *intestate*.

Domicile = place you intend to remain, regardless of where you currently live.

Estate = your property; your assets.

Estate tax = federal tax paid by the *estate* on an *estate* over $5,450,000 (2016) or, for a married couple, combined *estates* of twice that. An *estate* is taxed where it is probated. Texas has no *estate* or *inheritance tax*. *Beneficiaries* or *heirs* domiciled or residing in another state or another country might be subject to *inheritance tax* there.

Executor = the person you name to carry out the instructions in your *Will*.

Ancillary Executor = someone to help your *Executor* handle real property located outside of Texas or to help your *Executor* with your on-line accounts, such as Facebook and frequent flyer miles.

Independent Executor = someone who settles your affairs independent of court supervision.

Family allowance = a court-approved amount to support the family for a year during probate.

Fiduciary = from *fides*, Latin for loyalty (Dogs are named “Fido” because they are loyal, man’s best friend.) Someone legally required to act putting the interest of *beneficiaries* or *heirs* first, such as an *administrator, executor, guardian, Trustee* or *agent* under your Power of Attorney. Your lawyer is also a *fiduciary.* Your broker and financial advisor are not.

Generation-skipping tax = a tax to assure that either an *estate* or *gift tax* is paid by each generation on money over the amounts exempt from the federal *estate* and *gift taxes*.

Gift tax = tax paid by the giver on a gift to any one person of over $14,000 in one year (or $70,000 in one year with the gift tax effect taken over five years) or on a total lifetime amount of $5,450,000 (2016). The person receiving the gift receives it at the value it had in the hands of the giver. For U.S. tax purposes, direct payment of medical and education expenses is not treated as a gift nor are most gifts given by *Will.*

Grantor = the person who creates or establishes a *Trust,* sometimes called the *Settlor.*

Heir = someone who has a right to inherit under the Texas Rules of Descent. These Rules are derived from those of Colonial Spain and, before that, those of the Visigoths. (The mixed gender Visigoth army conquered, ruled and settled in medieval Spain and are the source of community property concepts.) They differ from Colonial English rules adopted by the 13 original states and from those of many other states and countries.

Heirship Proceeding = a court proceeding in which a court-appointed attorney represents and attempts to find unknown *heirs* and *heirs* who, perhaps because they are minors, imprisoned or reside in an institution, cannot speak for themselves.

Inheritance tax = tax paid by the person who inherits. There is no U.S. or Texas *inheritance tax*. Some states and countries have an *estate* or *inheritance tax* or both. The *estate tax* is imposed on *estates* probated there. The *inheritance tax* is imposed on *beneficiaries* or *heirs* resident or domiciled there, depending on the state or country.

Inter vivos Trust = a *Trust* which operates while the person who creates it is alive.

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Medicaid = a state-administered (and state- and federally-funded) program providing nursing home care (and care outside of a nursing home under a number of waiver programs) for people who show financial and medical need.

Medicare = a federal health insurance program for people 65 and older and disabled people receiving Social Security Disability Insurance for more than 24 months. Deductibles, co-pays and limits apply.

Medicare tax, formally called the *Unearned Income Medicare Contribution* or *Net Investment Income Tax* = a 3.8% surtax on the lower of modified adjusted gross income or net investment income. The exempt amount for a *Trust* is about 10% of that for an individual.

Miller Trust, sometimes called a *qualified income trust* or a *qualified interest trust*, a *QIT* or a *(d)(4)(B) trust*, is a Medicaid-compliant *Trust* which holds assets or investments, called the principal, and pays the income earned to the person receiving Medicaid to pay nursing home and other costs, preserving the principal for someone else.

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Partition (Suit for) = any *beneficiary* or *heir* can bring a suit for inherited property to be divided, or partitioned. If it cannot be equally divided or divided according to the terms of the *Will*, it must be sold and the money from the sale divided.

Per capita = Latin for "by the head." Property which is willed *per capita* is divided among the children living. If one child dies before his parents, his own children will inherit nothing: everything will be divided among his living siblings.

Per stirpes = Latin for "by the root." Property which is willed *per stirpes* is divided among the children with each grandchild getting a fraction or percentage of what was left to the child who is his parent if that parent has died.   For example, if one child has two children and the other has three, the children of the first child will each inherit 1/4th if their parent has died while the children of the second child will each inherit 1/6th if their parent has died.

Pro rata = Latin for "in proportion."

Qualified Domestic Relations Order or *QDRO* = a court order during or after a divorce suit distributing property and, if necessary, providing lifetime support for a child who is *disabled.* In Texas, a *disabled* child can seek this support order as an adult if no previous court order was made.

Qualified income trust, sometimes called a *Miller Trust,* a *qualified interest trust,* a *QIT* or a *(d)(4)(B) trust* is a Medicaid-compliant *Trust* which holds assets or investments, called the principal, and pays the income earned to the person receiving Medicaid for nursing home and other costs, preserving the principal for someone else.

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Qualified Terminable Interest in Property or *QTIP* = a trust which provides for a surviving spouse during her lifetime and, after her death, passes the property to others, often the children of a previous as well as those of the current marriage.

Residence = where you live at present, whether or not you usually live there or intend to remain there.

Settlor = the person who creates or establishes a *Trust*, sometimes called the *Grantor.*

Trust = an agreement in which one person, the *Trustee*, agrees to hold and manage property for the benefit of another, the *beneficiary.* The person who creates or establishes the *Trust* is called the *Grantor* or *Settlor* and might also be either the *Trustee* or the *Beneficiary.*

Ascertainable standard = a *Trust* document provision guiding the *Trustee's* distribution. The most common is a "HEMS" *Trust* for health, education, maintenance and support. A *Trustee* may also be permitted to make distributions at his sole discretion. Other standards include limiting the distributions to those which will not cause a *disabled beneficiary* to lose current or possible future government benefits; limiting the percentage distributed by a certain age; allowing larger distributions as direct payments for education and medical expenses; and allowing larger than usual annual distributions for the down payment on a first home or if the *beneficiary* is unemployed or experiences a financial hardship for other reasons, such as divorce.

Asset Protection Trust = a *Trust* designed to protect certain assets from potential creditors.

Bypass Trust, sometimes called an *A/B Trust* or a *Credit Shelter Trust* = a *Trust* which provides separately for the surviving spouse and children to minimize gift and estate taxes when a married couple's combined estate exceeds $10.9 million (2016).

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First Party Trust = a *Special Needs Trust* funded with money of the *beneficiary*. Social Security Administration rules govern its creation. The state Medicaid agency must be named the *remainder beneficiary.*

Grantor Trust = a *Trust* in which the person contributing the assets to the *Trust*, called the *Grantor* or *Settlor*, may also be the *Trustee.*

Intentionally Defective Grantor Trust = a *Grantor Trust* which produces income treated as that of the *Grantor* while the *Grantor* is alive but which does not become part of the *Grantor's* estate when he dies.

Irrevocable Trust = a *Trust* which is irrevocable and not counted in determining Medicaid eligibility but which can be modified by court order under Texas decanting rules.

Irrevocable Life Insurance Trust = a Medicaid-exempt *Trust* which holds and borrows against a life insurance policy to pay medical and other bills of the person whose life is insured. Any money remaining generally becomes a life insurance policy death benefit.

Master Pooled Trust, sometimes called a *(d)(4)(C)Trust*, = a *Trust* which pools and invests the subaccounts of many *disabled* people, preserving their rights to government benefits.

Revocable Living Trust = a *Trust* holding a married couple's assets separate from their estate for probate purposes but disregarded in determining Medicaid financial eligibility. The *Trust* becomes irrevocable on the death of the first spouse. In the 1990s, when the federal estate tax exemption was much lower, this was a useful estate tax planning device. It remains popular in states which do not have Texas's simplified probate.

Sole benefit trust = a *Trust* which benefits one person during their lifetime, as is required for the *beneficiary* to receive Social Security disability benefits.

Sole discretion = a *Trust* provision allowing the *Trustee* to decide if and when to distribute assets to a *beneficiary.*

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Special Needs Trust, sometimes called a *Supplemental Needs Trust*, = a *Trust* which holds money to supplement government benefits for someone who is *disabled*. It must be created and funded before the *disabled* person is 65.

Sprinkling Trust = a *Trust* which allows the *Trustee* to choose which *beneficiary* should receive how much each year, “sprinkling” *Trust* income and principal.

Supplemental Needs Trust, sometimes called a *Special Needs Trust,* = a *Trust* which holds funds to supplement government benefits for someone who is *disabled.* It must be created and funded before the *disabled* person is 65.

Testamentary Trust = a trust created by a Last Will and Testament.

Third Party Trust = a *Trust* established with the money of someone other than the *beneficiary.* A *Special Needs Trust* which is a *Third Party Trust* is not required to name the state Medicaid agency as the *remainder beneficiary.*

Trust Advisor or *Trust Protector* = someone who can remove the *Trustee* and, if the *Trust* document allows, receive reports from the *Trustee* and others, such as a care manager, and advise the *Trustee.* The *Trust Advisor* or *Trust Protector* is often a family member or friend of the *beneficiary* of a *Trust* administered by a bank, trust company or professional *Trustee.* The *trust* document specifies powers and liability.

Trust Advisory Committee = a group of people who, acting together, can remove the *Trustee* and, if the *Trust* document allows, receive reports from the *Trustee* and others, such as a care manager, and advise the *Trustee.* The *Trust Advisory Committee* is often a group of family members or friends of the *beneficiary* of a *Trust* administered by a bank, trust company or professional *Trustee.* The *trust* document specifies powers and liability.

Unearned Income Medicare Contribution, also called the *Net Investment Income Tax* or *Medicare Tax* = a 3.8*%* surtax on the lower of modified adjusted gross income and net investment income. The exemption for a *Trust* is about 10% of that for an individual.

Uneconomical Trust = a *Trust* which costs too much to administer. In Texas a *Trustee* may decide that a *Trust* holding $50,000 or less is an *uneconomical trust,* terminate the *Trust* and distribute whatever it holds to the *beneficiaries.*

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