GLOSSARY

Accounting – Probate: The financial statement sometimes submitted to the court and always to the beneficiaries by the personal representative showing all probate assets in the estate and all transactions affecting or arising from those assets, from the time the executor or administrator was appointed to the date of the accounting. Probate accountings are usually filed on an annual basis.

Accounting – Trust: Unlike a probate accounting, there is no set format for the accounting a trustee provides a trust beneficiary. The account must simply provide sufficient information for the beneficiary to be reasonably informed about the administration of the trust. Under Massachusetts law an accounting must be provided to the Qualified Beneficiaries annually or on request unless the trust provides otherwise.

Administrator: A person named by a court to handle the settlement of the estate of a person who dies without a will, or for a deceased person who had a will but no named executor. Massachusetts does not use the term “administrator” and instead refers to this fiduciary as a “personal representative”.

Advancement: An amount given to an heir by the deceased during the heir’s lifetime intended as an “advance” against the heir’s share under the will.

Applicable Exclusion Amount (AEA): Formerly referred to as the unified credit, it is the tax credit allowed under the federal tax code that is applied to gift or estate taxes that may be due. The AEA is not a fixed amount, and can change from time to time based upon Congressional action.

Assisted Reproductive Technology (ART): All fertility treatments in which either eggs or embryos are handled, including in vitro fertilization (IVF). Many children are now conceiving using ART.

Ascertainable Standard: A limitation on distribution powers of the trustee. Often an ascertainable standard will limit distributions to health, education, maintenance, and support, or a combination of them. When a beneficiary serves as a trustee the power to distribute to said beneficiary/trustee is often limited by an ascertainable standard for estate tax avoidance reasons.

Asset Protection Trust: A trust, domestic or foreign, that is designed to protect the assets of the settlor (creator) of the trust while at the same time allowing the settlor to be a beneficiary.

Attorney-In-Fact: Under a power of attorney (durable or otherwise), the person named to act as legal agent for the person who gives the power of attorney. See **Power of Attorney.**

Beneficiary: A person who is entitled to receive benefits (usually money or other property) from a trust or an estate.

Charitable Lead Trust (CLT): An irrevocable trust where the income of the trust is paid to a charity for a specified term of years, after which the remainder passes to beneficiaries (usually family) specified by the Settlor. Virtually the opposite of a charitable remainder trust.

Charitable Remainder Trust (CRT): An irrevocable trust where the Settlor retains an income for life, after which the remainder passes to a qualified charity. The CRT is tax exempt, and it may sell the Settlor's appreciated assets and pay no capital gains tax. In addition, the Settlor is usually entitled to a present income tax deduction for the future gift to charity; the remaining trust assets are free of estate taxes.

Codicil: An amendment to an existing will, but executed with the same formalities as a will.

Conservator: A person who is appointed by a court to manage the estate of a protected person (someone who is a minor or who is incompetent), previously known as a guardian of a person's estate.

Co-tenancy: When two or more parties own the same property at the same time and the property remains undivided.

Crummey (Withdrawal) Power: A provision, typically in a trust, where a beneficiary is given the power, which usually lasts thirty to sixty days, to withdraw the beneficiary's share of a contribution made to the trust by the settlor or some other party. The purpose of the power is to cause the contribution to the trust to qualify as a tax-free gift to the beneficiary or beneficiaries.

Decanting: Distributing trust property from one trust to another trust pursuant to the trustee's discretionary authority to make distributions *to or for the benefit of* one or more of the beneficiaries of the first trust.

Devise: A gift of money or other property under a will or trust (sometimes referred to as a "Bequest").

Devisee: A person designated in a will to receive a bequest.

Disclaimer: When a beneficiary or heir under a will, an estate, or a trust does not wish to accept the bequest, the person may disclaim it (refuse to accept it) without tax consequences, if done within a certain time, usually nine months, after becoming entitled to the bequest.

Discretionary Trust: A trust that allows the trustee to decide in its unfettered judgment whether and how much to distribute to the beneficiaries from time to time.

Donee: A person who receives a gift.

Donor: A person who makes a gift; sometimes one who creates a trust (see **Settlor**).

Durable Power of Attorney: (See also **Power of Attorney**.) If a power of attorney is a "durable" power, it must be in writing, and, unlike a power that is not a durable power, the right to act under a durable power continues even though the person giving the power has become legally incompetent. A power of attorney, whether durable or not, expires on the giver's death. (It's not <u>that</u> durable!)

Dynasty Trust: An irrevocable trust intended to last (and grow) for several generations after the settlor's death (in some states, forever), bypassing estate taxes in each successive generation. (See **Generation-Skipping Trust** and **Rule Against Perpetuities**.)

Estate: Property in which the decedent had rights or control or an ownership interest (including both the probate estate, which is property that is subject to probate, and the non-probate estate).

Ethical Will: Not an actual "Last Will", but a non-legal document that communicates a person's values, experiences, and important lessons that the person wants their heirs to know and take into account when utilizing their inheritance.

Executor: A person (or organization) named in a will to handle the settlement of the estate according to the will. Massachusetts does not use the term "executor" and refers to this fiduciary as a "personal representative".

Family Trust: In common usage, a trust agreement that provides for a certain portion of the estate or trust to be set aside in a separate trust to operate for the benefit of the family (spouse or children or both).

Fiduciary: Anyone responsible for the custody or management of property belonging to others, such as an executor, administrator, personal representative, trustee, guardian, or conservator.

Fraudulent Transfer: A transfer that is deemed to have been made with the intent (express or implied) to defeat or prejudice the claim of a known or future creditor, and may therefore cause the transferred property to be considered available to satisfy the claim of the creditor. Sometimes referred to as a "fraudulent conveyance" (old term) or "voidable transaction" (newer term).

Guardian: A person who is appointed by a court to care for a protected person (a minor, if no parent with parental rights is living, or an incompetent person). A guardian is someone who may make decisions regarding where a protected person is going to live, their medical care, etc. Note that a guardian does not have control over the property of a protected person.

Generation-Skipping Transfer Tax: In addition to the gift tax and the estate tax, the third "transfer tax" is the generation-skipping transfer tax (GST tax). The GST tax is an additional tax imposed on lifetime gifts or transfers at death that "skip" a generation, such as a transfer from a grandparent to a grandchild. The GST tax is imposed at the highest estate tax rate.

Generation-Skipping Transfer Tax Exemption: The tax credit allowed under the federal tax code that is applied to GST taxes that may be due. The amount of the GST tax exemption and the applicable exclusion amount (AEA) for gift and estate taxes is currently the same. This has not always been the case.

Generation-Skipping Trust: A trust that is designed to provide benefits for two or more successive generations after that of the Settlor without being exposed to estate tax from generation to generation, and as well to avoid the generation-skipping tax (GST) imposed when a person attempts to provide for someone two or more generations younger than the Settlor. (See **Dynasty Trust** and **Rule Against Perpetuities**.)

Gift Tax: The federal (and sometimes state) tax levied on the act of making a taxable gift, usually charged to the donor.

Gift Tax Annual Exclusion Amount: The amount of a gift that is not subject to a gift tax, measured or allowed on an annual basis. The amount of the gift tax annual exclusion is determined by Congress and increases from time to time.

Grantor: A person who creates a trust – also called, donor, settlor.

Grantor Retained Annuity Trust (GRAT): An irrevocable trust for a specified term of years, during which the grantor will receive a specified annual sum (an annuity) and after which the remaining trust assets belong to the remainder beneficiaries, outside the grantor's estate.

Grantor Retained Interest Trust (GRIT): Similar to the GRAT, except that the annual payments to the grantor may be tied to the actual income of the trust. Close family members may not be remainder beneficiaries of a GRIT.

Grantor Trust: A trust that, for income tax purposes, is treated as owned by the grantor (the individual who creates and funds the trust) and that results in all income of the trust being taxed to the grantor (even though the grantor may not be a beneficiary of the trust). A grantor trust may be revocable or irrevocable.

Intangible Personal Property: Property other than real estate and other than property that can be "touched." Examples of intangible personal property are bonds, bank accounts, LLC interests, copyrights, patents, etc., as they all merely represent the right to receive something of value.

Intestate: When a person dies without a will, each state has intestacy laws that determine the distribution of a person's wealth when the person dies intestate. If you don't have an estate plan, the laws of your place of domicile will provide one for you – it may just not be the one you want.

Irrevocable Life Insurance Trust (ILIT): A trust that holds (as owner and beneficiary) one or more life insurance policies on the settlor's life and is typically designed to produce estate-tax-free benefits, such as the exclusion of the insurance proceeds from the estate of the insured as well as the estate of the insured's spouse. If the ILIT is a GST trust, the insurance proceeds can be protected from the estate tax down the generations.

Irrevocable Trust: A trust that cannot be changed or revoked by the person who created it.

Issue: Lineal descendants of a person, i.e., children, grandchildren, etc.

Joint Ownership (also referred to as Joint Tenants with Rights of Survivorship – JTWROS): When two or more people own the same property at the same time, generally in equal shares, with the understanding that on the death of any of them, the survivor(s) will own the whole.

Joint tenant: One of the joint owners in a joint ownership or a joint tenancy.

Kiddie tax: The income tax imposed on the unearned income (dividends, interest) in excess of an annual exemption, on a minor child or a full-time college student under age twenty-four. The tax on the excess income is imposed at the parent's highest tax rate.

Letter of Wishes: A non-binding statement that a person leaves for a trustee who has discretion in making distributions of trust assets, explaining how they would like the trust assets used for the beneficiaries. A parent of a minor child may also write a Letter of Wishes to their child's guardian explaining how they would like the child to be raised in their absence.

Life estate: The right to the use of property during one's lifetime only. At the death of the life estate holder, the property belongs to the "remaindermen" outright.

Life tenant: A person who has a life estate.

Living trust: A trust created during the lifetime of the person who created it.

Living Will: Not a will at all but a legal declaration (signed and witnessed like a will) that in the event of a catastrophic illness, the person does not (or does) wish to be kept alive by artificial means or heroic measures.

Marital Deduction: A deduction for estate and gift tax purposes for the amount of property that passes in a certain way to a spouse from the other spouse.

Marital Deduction Trust: A trust established to receive an amount on behalf of the surviving spouse that qualifies for the gift or estate tax marital deduction.

Nominee Trust: A special purpose trust, originally designed to hold real estate and thus sometimes called a "realty trust," where the identity of the beneficiaries is contained in a document *separate* from the rest of the trust and so does not appear in public records. The separate document is called a "schedule of beneficial interest" or SBI. A nominee trust can hold any asset, not just real estate.

No Contest Clause: A statement in a will or trust providing that a beneficiary who contests the document or in any way interferes with its operation will forfeit the beneficiary's share. Not all states recognize or enforce a no contest clause. Massachusetts does enforce such a clause. The no contest clause is also referred to as an "in-terrorem clause" and a "forfeiture clause".

Non-Grantor Trust: An irrevocable trust that is an independent tax payer, generally meaning that the trust pays income tax on undistributed income and the beneficiaries of the trust pay income tax on income that is distributed to them.

Non-Judicial Settlement Agreement (NJSA): An agreement among the beneficiaries and the trustee (and the Settlor if living) that changes the terms of an irrevocable trust in a manner that does not violate the material purpose of the trust. The agreement does not need to be approved by a court.

Nonprobate property: Property owned or partially owned by the deceased which does not pass through his probate estate, such as jointly held property or property in a living trust or an asset with a beneficiary designation (like a retirement account).

Partition: The act of asking a court to legally separate or divide property that is owned by two or more parties. Typically used where two or more co-owners of real estate are unable to resolve a dispute over the use or disposition of the property. A legal partition most often results in a court-ordered sale of the property and a division of the net proceeds.

Personal Representative: A person appointed by a court to handle the settlement of a deceased person's probate estate. If the person died with a will appointing a personal representative, the court will give preference to the person named in the Last Will.

Per Capita: A method of distribution among beneficiaries where each beneficiary receives an equal share. For example, if a trust had 5 beneficiaries and required "per capita" distribution, each beneficiary would receive a 1/5 share, regardless of their relationship to the Settlor of the trust.

Per Capita At Each Generation: A method of distribution among beneficiaries where each beneficiary in the same generation receives an equal share. For example, if a Settlor has three children, two of whom have died, one leaving two grandchildren and the other leaving one grandchild, and the Settlor's trust states that it is to be distributed to the Settlor's descendants "per capita at each generation", the living child will receive 1/3 of the trust and the children of the deceased children will split the remainder (so each will receive 2/6). This is the default in Massachusetts (and is colloquially referred to as the "equally near, equally dear" method of distribution).

Per Stirpes: A method of distribution among beneficiaries that is also known as "right of representation" that refers to the genealogical distance between a Settlor of a Trust and a beneficiary.   For example, using the facts above, but Settlor's trust states that it is to be distributed to the Settlor's descendants "per stirpes", the living child will receive 1/3 of the trust and the children of deceased child No. 1 will split the that child's 1/3 (so each will receive 1/6) and the child of deceased child No. 2 will receive that child's 1/3.

Pet Trust: A trust that is created for the continuing care of an animal. The trust is required to terminate upon the death of the animal or if it was created for more than one animal, upon the death of the survivor animal. This is a type of Purpose Trust.

Portability: An election on a federal estate tax return that permits the transfer a deceased spouse's unused exemption amount (DSUEA) to the surviving spouse to use in their own estate during their lifetime or at death. Note that a surviving spouse can only use the DSUEA of their most recently deceased spouse. Note that some states offer portability of their own estate tax exemptions.

Pot Trust: A trust that is held as a single share for multiple beneficiaries.

Pourover Provision: A provision in a will that usually gives the bulk of the probate estate to a living trust created by the testator before or at the time the will is signed.

Power of Appointment: The power to dispose of property. A Power of Appointment may appear in a will, trust, or deed. There are may ways to create and exercise a Power of Appointment.

Power of Attorney: A document (or verbal instruction) giving someone the right, which can be broad or very limited, to legally act for the person giving the power, typically with respect to administrative and financial matters. If a power of attorney is a "durable" power, it must be in writing, and unlike a power that is not a durable power, the right to act under a durable power continues even through the person giving the power has become legally incompetent. In the United States, a power of attorney, whether durable or not, expires on the giver's death. (See **Durable Power of Attorney**.)

Probate: The public procedure in each state required in some instances to legally settle the estate of a deceased person and transfer his "probate property." Massachusetts has two general types of probate: "formal probate" and "informal probate". In many estate plans, the need to probate an estate is eliminated through the use of trusts or other survivorship provisions, and the transfer of wealth at death takes place in a private manner.

Probate Property: Property that may be transferred only through probate procedure and would include assets titled in the deceased's name alone or as a tenant in common or proceeds of property that are payable to the estate.

Protector: A person or entity other than a trustee who is given certain power over the trust, such as the power to veto trust distributions, change trustees, etc. A trustee has legal title to the trust's assets. The protector does not.

Purpose Trust: A trust that is created and funded for a specific purpose (see **Pet Trust**) rather than for individual beneficiaries. Often these trusts are used to satisfy business objectives.

Qualified Beneficiary: A statutory term that includes a beneficiary of a trust who is a permissible distributee of trust principal or income or would be a permissible distributee of principal or income of the trust if the trust terminated on that date.

Qualified Terminable Interest (QTIP) Trust: A trust leaving mandatory income to a spouse and optionally principal at the discretion of a trustee where the spouse has no control over the disposition of the remaining trust principal at her death. The QTIP trust can qualify for the estate tax marital deduction.

Residuary Estate: Whatever remains of the estate after payment of debts, expenses, taxes, and specific bequests. In a "pourover" will, the residuary estate is typically left to a living trust.

Revocable trust: A trust that may at any time be altered, amended, or revoked by the creator. Such a trust is sometimes referred to as a living trust.

Right of Representation: See **Per Stirpes**.

Settlor: A person who creates a trust, sometimes referred to as the donor, trustor, or grantor.

Spousal Lifetime Access Trust (SLAT): A SLAT is a trust for the benefit of a spouse (or a spouse and descendants) that uses the Settlor's AEA and funded with gifts. The benefit of this type of trust is that it generally results in a smaller estate for estate tax purposes in the Settlor's estate, exclusion of the assets in the spouse's estate, and allows use of the assets for the Spouse if needed. Note that SLATs can get complicated if the Settlor and the beneficiary spouse divorce.

Special Needs Trust (SNT): A trust naming a disabled person as beneficiary, established by another person, providing the trustee with complete discretion to make (or not to make) distributions to or for the beneficiary, having in mind both the beneficiary's special needs and the beneficiary's eligibility for benefits that may be available to the beneficiary outside the trust.

Spendthrift Provision: The provision in a trust agreement that allows the donor to declare the share of the beneficiary out of reach of the beneficiary's creditors. The funds of this particular beneficiary (other than the donor), while in the trust, cannot be attached or recovered by someone suing the beneficiary. (See also **Asset Protection Trust**.)

Spray Provision: A provision in a trust giving the trustee the discretion to make unequal distributions among the beneficiaries. Also known as a sprinkle provision.

Stepped-Up Cost Basis: An increased (usually) tax cost in property that takes effect when that property is received as the result of a person's death and included in the deceased person's estate for estate tax purposes. The basis adjustment that occurs at death can be upwards or downwards. The asset in the estate has its basis adjusted to the fair market value of the asset at the decedent's death. Not all assets in the estate are eligible for a basis adjustment. Notably, retirement accounts do not receive a basis adjustment.

Supplemental Needs Trust: A special trust established for a person who is receiving or may be receiving benefits under a welfare benefit program where the trust provides benefits that are over and above (supplemental to) the person's basic needs for food, clothing, and shelter. The assets in a properly drafted supplemental needs trust will not affect the person's eligibility for government benefits. This type of trust may or may not be the same as a Special Needs Trust, depending on the respective terms and circumstances.

Tangible Personal Property: Property other than real estate that has inherent value and can be touched, such as jewelry, furniture, clothing, automobiles, boats, machinery, etc.

Tenancy By The Entirety: A special form of joint tenancy in which only spouses can be co-tenants and neither (alone) can cause a division of the property. This type of ownership may offer creditor protection.

Tenancy In Common: When two or more parties own the same property at the same time, but not necessarily in equal shares, and there is no right of survivorship, so that a deceased co-tenant's share passes through his estate. Any co-tenant can cause a division of the property (see **Partition**).

Testamentary Trust: A trust created under the terms of a will and therefore only effective through the court probate process. A testamentary trust in some states requires the filing of annual accountings to the probate court, whereas a living trust only requires accountings to the beneficiaries. Massachusetts has reduced the court oversight of testamentary trusts but has not eliminated it.

Trust: A relationship in which one person (the trustee) is the holder of legal title to property (the trust assets) to keep or use for the benefit of another person (the beneficiary), although in some cases a person can be a trustee and also a beneficiary of the same trust.

Trustee: An individual or professional organization that holds the legal title to the trusts assets and manages it for the benefit of another person or persons. It is possible for a person to be both trustee and beneficiary of a trust.

Under 65 Trust (also called a "d4A" trust): This is a SNT that is established by a parent, grandparents, legal guardian, or court with the resources of a disabled person for the purpose of allowing them to qualify for public assistance benefits. The beneficiary must be under the age of 65 when the trust is established and there can be no additions to the trust after the age of 65. The trust must also state that at the death of the beneficiary, the public assistance benefits that were paid for the beneficiary during their lifetime will be repaid to the extent possible.

Voluntary Administration: A simplified procedure in Massachusetts for probate estates with no real property that are valued at $25,000 or less (excluding the value of a car).