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ESTATE PLANNING GLOSSARY

A/B plan: See Marital/Family Trust plan.

Abatement: The reduction of a bequest under a will because of insufficient assets to pay the bequest.

Ademption: A gift of specific property under a will that fails because the property does not exist as a part of the **estate** at death.

Adjusted gross estate: The value of all property included in an **estate** for **estate** tax purposes, less allowable debts and expenses. Prior to the unlimited marital deduction, the term was defined in §2056(c) of the Internal Revenue Code.

Administrator: A person or institution named by the court to represent the **estate** when there is no will, the will did not name an executor, or the named executor is unable to act.

After-born child: A child born after a will or trust is executed.

Alien: A person who is not a citizen of the United States. A person who is resident in the U.S. can be an alien.

Alternate valuation: A federal **estate** tax term for the value of the gross **estate** six months after death (excluding property that was sold or otherwise disposed of before that date, in which case the date of sale or other disposition is used). It can be used only if federal **estate** tax actually due will be reduced.

Ancestor: A person from whom another has descended (whether through a mother or father).

Annual exclusion: See **Gift Tax Annual Exclusion.**

Anti-lapse statute: A statute that provides that the descendants of a deceased taker will receive the property bequeathed to the deceased taker. Application of the statute may be limited (*e.g.,* in Illinois, it applies only if the deceased taker was a descendant of the testator).

Applicable credit amount: This is an **estate** tax credit which allows the transfer of up to $5,250,000.00 of assets free of federal death tax.

Applicable exclusion amount: The amount of property that can pass free of tax pursuant to the applicable credit amount (See above).

Applicable federal rate (AFR): A rate published monthly by the Treasury Department, broken down into short-term, mid-term, and long-term. The rate (or a variation) is used to determine loan interest rates that will not result in imputation of interest and to determine values under various split-interest **planning** devices (life **estate**s, remainders, annuities, etc.).

Ascertainable standard: A power granted to a trustee to use income or principal for the benefit of a trust beneficiary in accordance with Code §2041(b)(1)(A) or Code §2514(c)(1) (*e.g.,* health, education, support, or maintenance).

Asset protection trust: A trust that is not subject to the claims of a beneficiary's creditors, including the grantor if the grantor is a beneficiary. Generally, if for the grantor's benefit, the trust must be created outside the U.S., but it also could be created in several jurisdictions. The most prominent U.S. jurisdictions are Alaska, Delaware, and Nevada. The effectiveness of asset protection trusts that include the grantor as a beneficiary is debated by attorneys.

Beneficiary: An individual or entity benefitting from a trust. The term includes an income beneficiary or a **remainderman**.

Bequest: A gift of property (other than real estate) under a will.

Bypass trust: A trust that is set up to bypass the surviving spouse's **estate** for federal **estate** tax purposes, thereby allowing full use of the exemption equivalent of $5,250,000.00 after 2012 for each spouse. This is limited to $4,000,000.00 for Illinois death tax.

Bypass trust plan: See **Marital/family trust plan.**

Charitable gift annuity: An annuity received by an individual when the individual sells property to a charity in exchange for the annuity.

Charitable lead trust (CLT): An irrevocable trust with a fixed term naming a charity as the income recipient (annuity interest or unitrust interest) with the remainder passing to non-charitable beneficiaries.

Charitable remainder annuity trust (CRAT): A charitable remainder trust in which the annuity is based on the initial value of the trust and never changes. See also **Charitable**

remainder trust.

Charitable remainder trust (CRT): A trust providing an annuity or unitrust distribution to an individual (possibly including the grantor) or individuals that will distribute to charity after the death of the individual or individuals.

Charitable remainder unitrust (CRUT): A charitable remainder trust in which the unitrust amount changes annually based on changes in the value of the trust assets. See also **Charitable remainder trust.**

Class gift: A gift (by will, trust, or otherwise) to individuals who are defined by a common class description (*e.g.*, "children," "grandchildren").

Codicil: A written change to a will.

Community property: Property acquired during marriage other than property received by gift or inheritance. Applies in approximately 14 states (mainly Southwest and West plus Wisconsin), and there are small differences from state to state. Each spouse has an *undivided* one-half interest in such property. Illinois is not a community property state.

Conservator: An individual or institution appointed by the court to administer the affairs of a disabled adult. In Illinois, now referred to as a "guardian."

Constructive trust: A trust imposed by a court of equity in order to reach a just result without regard to the intention of the parties.

Contingent interest: A future interest in property that is conditioned upon the happening or non-happening of a specified event; the interest may never become a vested interest. For example: I give my farm to John if he is over age 21 at my death.

Credit for prior transfers: A credit against the federal **estate** tax for the federal **estate** tax paid on another **estate**.

Credit shelter amount: See **Exemption equivalent.**

Credit shelter trust: See **Bypass trust.**

***Crummey* power (or *Crummey* right of withdrawal):** A limited withdrawal power from an irrevocable trust. Usually, the power lapses after a specified (short) period of time. The presence of such a power creates a present interest (for gift tax annual exclusion purposes) in the person to whom the power is given, regardless of whether the power is exercised. *See Crummey v. Commissioner*, 397 F.2d 82 (9th Cir. 1968).

Declaration of trust: See **Living (inter vivos) trust.**

Decoupled: Until 2005, Illinois and most other states imposed a state death tax equal to the federal credit for state death taxes. When the federal credit for state death taxes expired in 2005, states that imposed a tax to replace the tax coupled to the federal credit were said to have decoupled. The Illinois death tax exemption is $4,000,000.00 whereas the federal estate tax exemption is $5,250,000.00.

Defective grantor trust: See **Intentionally defective grantor trust (IDGT).**

Defined benefit plan: An employer-provided retirement plan that guarantees an employee specified retirement income, usually based on a formula that takes years of service and salary level into account. A pension plan is a defined benefit plan.

Defined contribution plan: An employer-provided retirement plan that does not require the employer to contribute a stated dollar amount but instead ties contributions to the employer's profit levels (usually based on a formula). A profit-sharing plan is a defined contribution plan.

Descendant: A person in the direct line of descent, such as a child or grandchild. Also referred to as a "lineal descendant."

Devise: A gift of real property under a will. A "specific devise" is an identified piece or class of real property.

Disclaimer: A refusal to take property to which a person is entitled.

Domestic trust: A trust with one or more U.S. persons having control (the control test) over all substantial decisions (including distribution or investment decisions and powers to remove, add, or replace trustees) and over the administration of which a court within the U.S. (the court test) is able to exercise primary supervision. A trust is presumed to meet the court test if the trust does not direct administration outside the U.S., the trust is administered exclusively in the U.S., and the trust is not subject to an automatic migration provision.

Domicile: An individual's permanent legal and intended home. A person can have only one domicile though residing in several locations.

Durable power: A power of attorney that continues even if the principal becomes incapacitated. See also **Healthcare power** and **Property power.**

Dynasty trust: A trust that may last forever.

Equitable apportionment: A legal doctrine that requires the recipients of probate and nonprobate assets to all pay their proportionate share of death taxes and administration expenses. Provisions in a will or trust can overrule this doctrine.

Estate freeze: Any of a number of **estate planning** techniques typically used to prevent the value of an owner's interest in a business or asset from increasing after the technique is implemented. Used to prevent **estate** tax liabilities from increasing as property values increase.

Estate tax: A transfer tax imposed at death on the value of property. The tax rate is 40% of any amount exceeding the federal exemption of $5,250,000.00. Illinois estate tax applies to assets exceeding $4,000,000.00. The rate floats with the size of the estate.

Executor: The individual or institution named in a will who is responsible for management of the assets, payment of debts and taxes, and ultimate transfer of the property passing under the will.

Exemption equivalent: The amount that can pass **estate** tax free ($5,250,000.00 in 2013 and thereafter) pursuant to the applicable credit amount. This exemption also applies for gift tax purposes. The exemption is adjusted annually for inflation.

Expectancy: An anticipated inheritance which may or may not in fact occur. Example: A child typically has an expectancy of inheriting assets from his or her parent. It could be defeated by the parent leaving the property to someone else.

Express trust: A trust established by a written instrument or by an oral agreement of the parties. Compare to **Constructive trust** or **Resulting trust.**

Family limited partnership (FLP): A device used to control assets and transfer property interests among family members.

Family trust: See **Bypass trust.**

"Five and five" power: A noncumulative general power of appointment giving the power holder the right to withdraw the greater of $5,000 or five percent of a trust share. By specific exception under the **estate** and gift tax provisions of the Code, the lapse of such power has no gift or **estate** tax consequences (except for the year in which the power holder dies).

529 plan: A device sponsored by individual states, pursuant to Code §529, by which transfers accumulate free of income taxes. Earnings withdrawn for education are not subject to income tax; otherwise, earnings withdrawn are subject to income tax plus a ten-percent penalty. The donor designates a beneficiary, but remains in control of the use of funds and can take property back. The donor can change the beneficiary. The assets in the 529 account are generally not includable in the donor's **estate** for federal **estate** tax purposes.

Flip charitable remainder unitrust: A charitable remainder net income unitrust that converts to a regular unitrust upon the happening of an event (*e.g.*, the sale of a nonmarketable asset, the attainment of a defined age, or the retirement of a beneficiary).

Foreign tax credit: A credit against the federal **estate** tax for death taxes paid to a foreign nation.
Foreign trust: A trust that is not a domestic trust.

Form 706: The federal **estate** tax return.

Form 709: The federal gift tax return.

Form 1041: The federal trust or **estate** income tax return.

Fractional marital formula: A formula that determines the amount of property passing to a marital trust as a fraction of all the assets.

General power of appointment: A power to appoint property to anyone, including the holder or his **estate** or his creditors.

General power of appointment marital trust: A type of marital trust over which the surviving spouse can have most of the control. The surviving spouse must receive the income and must have a lifetime or testamentary general power of appointment.

Generation-skipping transfer tax (GST tax): A tax in addition to the **estate** or gift tax imposed when property passes to a beneficiary two generations younger than the donor or the decedent (*e.g.,* a grandchild).

Generation-skipping transfer tax-exempt trust (GST trust): A trust that usually benefits multiple generations and is not subject to the GST tax because the GST exemption was allocated to it and it was initially equal to or less than the GST exemption. The term also applies to a trust grandfathered from the application of the GST tax. A GST trust is not subject to **estate** tax at the beneficiary's death.

Generation-skipping transfer tax exemption (GST exemption): The value of property that can be set aside for a beneficiary two generations or more younger than the donor or the decedent (*e.g.,* a grandchild) without the imposition of the tax. The GST exemption is $5,250,000.00 for 2013 and thereafter.

Gift tax: A tax imposed on transfers of property by gift during the donor's lifetime. Illinois has no gift tax – yet.

Gift tax annual exclusion: A gift that is not considered a taxable gift. The law permits the exclusion each year of the first $14,000.00 (2013) in gifts made to any one donee; married couples may jointly give up to $28,000.00 (2013) to any one donee tax free. There is no limit to the number of donees to whom the donor may make gifts in any year. In addition to the $14,000.00 gifts, direct payments (not to the donee) of tuition and medical care expenses are also exempt. The term generally applies to outright gifts, but can also apply to gifts in trust in limited circumstances. The donor of a **529 plan** (see above) may use five years of annual exclusions in one year. The gift tax annual exclusion is adjusted periodically in increments of $1,000.00 to reflect inflation.

Grantor: An individual who establishes a trust; also called the "settlor" or the "trustor."

Grantor retained annuity trust (GRAT): An irrevocable trust in which the grantor retained an annuity for a period of years.

Grantor retained unitrust (GRUT): An irrevocable trust in which the grantor retained a unitrust interest for a period of years.

Grantor trust: A trust, revocable or irrevocable, of which the income and capital gains are taxed to the grantor. See also **Intentionally defective grantor trust (IDGT).**

Gross estate: All property subject to estate tax in the decedent's **estate** (*e.g.*, probate property, joint tenancy property (only one half if between spouses), land trusts, revocable trusts, insurance owned by the decedent, profit-sharing plans, IRAs, 401(k)s) regardless of whether it qualifies for a marital or charitable deduction, and before any other deductions.

Guardian of the estate: An individual or institution legally responsible for the management of the assets of a minor or disabled adult. The guardian is appointed by the court and is under its supervision.

Guardian of the person: An individual or institution legally responsible for the care and well-being of a minor or disabled adult. The guardian is appointed by the court and is under its supervision.

Hanging power: Generally, a *Crummey* power that lapses gradually over a period of years.

Healthcare power of attorney: A power of attorney that allows the agent to make healthcare decisions for another.

Heirs: Persons who take a decedent's probate property if the decedent did not have a will. State law dictates who are a decedent's heirs.

Income beneficiary: A person or persons currently entitled to the income of the trust (including persons who <u>may</u> receive income at the discretion of the trustee).

Income in respect of a decedent (IRD): Property that if collected by the decedent before he or she died would be subject to income tax (*e.g.*, IRA proceeds, deferred compensation, payments under an installment sale, annuity income or profit-sharing proceeds).

Inheritance tax: A tax levied by a local government (usually a state) on property that is inherited. The amount of tax relates to the amount of each inheritance received (and <u>by whom</u>)

rather than the total size of the decedent's **estate**. Tax rates usually depend on (a) the relationship of the beneficiary to the decedent and (b) the total value of the bequest received by the beneficiary.

Investment Trust Advisor: Usually refers to a person or entity (other than the trustee) given authority by the trust document to direct or otherwise exercise investment powers of the trust.

Intangible property: Personal property that is representative of other rights (*e.g.*, stock in a corporation, bank accounts, interests in a partnership even if the partnership owns real **estate**, or a beneficial interest in a land trust) as contrasted with personal property that can be touched or otherwise perceived by the senses.

Intentionally defective grantor trust (IDGT): An irrevocable trust that contains a defect causing the income (and usually the capital gains) of the trust to be taxed to the grantor.

Intestacy law: A state law that governs the distribution of an individual's **probate estate** when the individual does not have a will or the will does not completely dispose of the assets (or the individual does not dispose of the property in another manner, *e.g.*, revocable trust, beneficiary designation, or joint tenancy).

Intestate: A term used to describe the **estate** of an individual who has not made a valid will. Examples: "He died intestate," or "An intestate estate."

Irrevocable trust: A trust which the grantor has no power to revoke or amend.

Irrevocable life insurance trust (ILIT): An irrevocable trust established for the purpose of excluding life insurance proceeds from the estate of the insured (and the insured's spouse if married) for **estate** tax purposes.

Joint tenancy: A form of joint ownership in which the death of one joint owner results in 100% ownership in the surviving joint owner(s).

Lapse: The termination of a right or a power usually due to inaction on the part of the person holding the right or the power. Example: The lapse of a power of appointment by failing to exercise it.

Lapsed gift: A gift under a will or trust which fails by prior death of the beneficiary.

Life estate: An interest limited to use during a person's life or the life of another.

Limited power of appointment: See **Special power of appointment.**

Liquid assets: Cash or equivalent assets that can be readily converted into cash without any serious loss. Examples are cash, Treasury bills, money market fund shares, and certificates of deposit.

Living (inter vivos) trust: A trust that is created during the lifetime of the grantor and may be amended or revoked by the grantor during the grantor's lifetime. It will usually be used as the ultimate vehicle for the distribution of the grantor's assets when the grantor dies. Also known as a "revocable trust."

Living will: A document authorizing a physician to withhold or withdraw life support in certain limited circumstances. Living wills are trumped by Health Care Powers of Attorney in Illinois.

Lump-sum distribution: A payment made from a "tax-advantaged" retirement plan that is made in one payment rather than in installments.

Marital deduction: A deduction that is available for transfers between spouses, either during lifetime or at death. Such transfers are exempt from gift and **estate** tax but subject to **estate** tax at the death of the surviving spouse. The deduction is not applicable if the donee spouse is not a U.S. citizen. See also **Qualified domestic trust (QDOT).**

Marital/family trust plan: An **estate** plan that divides property between two trusts — one trust equal to the exemption equivalent ($5,250,000.00 in 2013 and thereafter) that is not subject to **estate** tax at the surviving spouse's death and another trust that qualifies for the marital deduction.

Marital/non-marital trust plan: See **Marital/family trust plan.**

Marital property: In Illinois, this includes generally all property acquired during marriage other than property received by gift or inheritance. The concept applies at divorce and does not govern the disposition of property at death under Illinois law.

Marital/residuary trust plan: See **Marital/family trust plan.**

Maximum marital deduction: The maximum marital deduction allowed; since 1982, the deduction has no limit and therefore may include the entire estate regardless of value.

Merger of title: Occurs when all beneficial interests in an asset (such as a life **estate** and a remainder) become simultaneously owned by the same person or persons.

Minor: A person who has not reached the age of majority (legal age); in most states, the age of majority is 18.

Minority discount: A discount allowed when valuing an asset that is not publicly traded; the discount is allowed because of a lack of liquidity and/or lack of control.

Natural guardian: A person who has a natural right to guardianship of a minor child because of a parental relationship.

Net income charitable remainder unitrust (NICRUT): A trust from which the individual or individuals receive the lesser of the net income or the unitrust amount. See also **Charitable remainder trust (CRT).**

Net income makeup charitable remainder unitrust (NIMCRUT): A trust from which the individual or individuals receive the lesser of the net income or the unitrust amount, but if income ever exceeds the unitrust amount, it can be used to make up for years in which the net income was less than the unitrust amount. Compare **Charitable remainder trust (CRT).**

Non-ascertainable standard: A power granted to a trustee to use income or principal for the benefit of a trust beneficiary not in accordance with Code §2041(b)(1)(A) or Code §2514(c)(1) (*e.g.,* comfort, welfare, best interests, or happiness). See also **Ascertainable standard**.

Nonmarital property: In Illinois, all property that is not marital property. Compare **Marital Property.** This is only meaningful in the context of a divorce.

OBRA '93 trust: A trust established with the assets of a disabled individual created before the disabled individual attains age 65 by the individual's parent, grandparent, legal guardian, or a court and allowing the beneficiary to obtain state aid (Medicaid) without exhaustion of the trust assets, provided the state recovers its money (to the extent of trust assets) at the death of the disabled individual. The trustee may use trust assets for the beneficiary for items beyond what the state will provide for the individual. Created by an amendment to the Social Security Act made by §13611 of the Omnibus Budget Reconciliation Act of 1993, Pub.L. No. 103-66, 107 Stat. 312.

Payable-on-death (POD) account: A deposit of money in a bank account in one's own name with a designated beneficiary. The account creator-owner owns and controls the account without restriction during his or her life. At the death of the account creator-owner, the beneficiary becomes the account owner. See also **Transfer-on-death account.**

Pecuniary bequest: A bequest of a specific amount of money. The amount may be determined by formula such as a percentage or fraction.

Pecuniary legacy: A gift of money by will.

Pecuniary marital formula: A formula that determines the dollar amount of property to be allocated to a marital trust.

Per capita: Distribution to members of a group in equal shares (*e.g.*, "children of *X*" or "descendants of *X*"). Compare **per stirpes**.

Personal representative: Another name for an executor or administrator.

Per stirpes: Distribution to members of a multi-generation group (descendants) with members of a younger generation taking only if their parent is deceased. For example, *X* has three children, *A*, *B*, and *C*; if all three are living, they take equally; if *A* is deceased and has two children, *A*'s two children split the share *A* would have taken if living; if *A* is deceased and has no descendants, *B* and *C* take the property equally.

Portability: Federal law allows each person to pass $5,250,000.00 of assets without death tax. Portability is the concept where a decedent may use the unused federal estate tax exemption of his or her previous deceased spouse. The effect is to double the exemption for the spouse who dies second. This applies for federal law only, not Illinois law.

Posthumous child: A child born after his or her father's death. Compare to **After-born child.**

Pourover will: A will that is used after death in conjunction with a living trust to "pour over" any assets to the trust that are not transferred to the trust before death.

Power of appointment: A right given by the owner of property to another person (the power holder) under a will or trust giving the power holder the ability to name another person or entity (beneficiary under the exercise of the power) who will receive property subject to the power.

Power of attorney: A written instrument authorizing an agent (sometimes called the "attorney-in-fact") to act on behalf of the person who signed the instrument (the principal). If the agent is authorized to act in all matters, the agent has a general power of attorney. If the authority granted in the instrument is not affected by the disability of the principal, the agent holds a "durable" power of attorney. If the agent's powers become effective only upon the happening of an event described in the instrument, the agent holds a "springing" power of attorney.

Precatory words: Provisions in an instrument requesting that someone take or refrain from taking some action but not requiring it.

Predeceased ancestor rule (or Predeceased child rule): In the context of the generation-skipping tax, when the parent of the taker who is a descendant of the transferor is not living at the time of the transfer, the taker is placed in the generation of the deceased parent. The rule can apply to collateral heirs such as grandnieces and grandnephews if the transferor has no living descendants.

Pretermitted child: A child born after a parent has executed a will (a) who is not provided for in the parent's will and (b) whose exclusion from the will is not expressly provided for in the will itself.

Private annuity: A transaction in which an individual sells property to another individual, corporation (other than a company in the business of issuing annuities), trust, or partnership in exchange for an annuity.

Private foundation: Typically, a charitable trust or not-for-profit corporation that makes gifts to operating charities. Often controlled by the individual (or members of the individual's family) establishing the foundation. Gifts to private foundations will usually qualify for a charitable income, gift, or **estate** tax deduction.

Probate estate: Property that passes under a decedent's will (or as directed by law under the intestacy statute if the decedent died without a will). See **Intestate.**
Property power of attorney: A power of attorney that grants the agent the power to act with respect to the principal's property.

Prudent investor rule: The contemporary version of the **Prudent man rule** (see below). It signifies the standard to be applied to a fiduciary, such as a trustee, requiring the fiduciary to invest and manage all assets as would a prudent investor under like circumstances, taking into account risk management and investment diversification.

Prudent man rule: The older standard to be applied to fiduciaries, requiring the fiduciary to invest and manage all funds as would a prudent man under like circumstances.

Qualified domestic trust (QDOT): A type of marital trust that must be used to obtain an **estate** tax marital deduction if the surviving spouse is not a U.S. citizen. Not available for lifetime gifts.

Qualified perpetual trust: A trust in Illinois that is not subject to the rule against perpetuities.

Qualified personal residence trust (QPRT): A trust funded with the grantor's residence and/or vacation residence that, after a term of years in which the grantor retains the right to live in the home rent free, will pass to the remaindermen.

Qualified terminable interest property (QTIP) trust: A type of marital trust over which the surviving spouse may have only limited control, such as the right to income, but not principal.

Quasi-community property: In California, property of a married couple moving to California from a common-law state that, upon dissolution of marriage or death, will be considered community property.

Remainderman (remaindermen): A person or persons entitled to principal after the death of an income beneficiary or beneficiaries.

Resulting trust: A trust resulting in law because of the acts of parties regardless of any intent to create a trust. Compare **Express trust** and **Constructive trust.**

Revocable trust: See **Living (inter vivos) trust.**

Right of representation: See **Per stirpes.**

Rollover IRA: An IRA that receives assets from another IRA or an employer's qualified retirement plan.

Rule against perpetuities: A common-law rule or state law that terminates a trust 21 years after the death of identifiable persons living at the time the trust was created.

Self-canceling installment note (SCIN): An installment note that is cancelled upon the death of the person who made the loan.

Separate property: In community property states, all property that is not community property.

Short-term guardian: A guardian appointed by an acting guardian to take over the acting guardian's duties each time the acting guardian is unavailable or unable to carry out those duties. Appointment cannot exceed 60 days prior to June 1, 2008, or 365 days thereafter. See 755 ILCS 5/11-5.4 and 5/11-13.2, as amended by P.A. 95-568.

Special needs trust: A trust (other than a trust established with the beneficiary's own assets) for a beneficiary who may receive state assistance. The trustee may use assets for the beneficiary's needs beyond what the state will provide, and the state is not entitled to reimbursement at the beneficiary's death.

Special power of appointment: A power to appoint property to anyone other than the holder or the holder's **estate** or creditors. Usually a defined group related to the donor of the power such as "descendants and their spouses."

Specific bequest: A gift by will of a specific amount of money or specific items of tangible or intangible personal property.

Spendthrift trust: A trust that is not subject to the claims of a beneficiary's creditors.

Sprinkling trust (or spray trust): A trust with provisions giving the trustee the discretion to distribute any or all of the income or principal among beneficiaries equally or unequally.

Standby guardian: A guardian designated by an acting guardian to be appointed as guardian by the court when the acting guardian can no longer act.

Tangible property: Personal property that can be touched or otherwise perceived by the senses and is not representative of other rights. Furniture, cars and jewelry are examples of tangible personal property. Although a stock certificate is tangible, it is considered <u>intangible</u> because it is representative of other rights (ownership rights in a corporation) that are not tangible.

Temporary guardian: A guardian appointed on a temporary basis, usually pending the appointment of a permanent guardian, upon a showing of necessity for the immediate welfare and protection of an allegedly disabled person.

Tenancy by the entirety: A form of joint ownership between spouses that, upon the death of one spouse, results in the immediate transfer of ownership to the surviving spouse. In Illinois, it is limited to a homestead. It is not subject to the claims of a creditor unless the creditor is a creditor of both spouses.

Tenancy in common: A form of ownership in which two or more persons own the same property. At the death of a tenant in common, the decedent's interest passes according to the decedent's will, or by intestacy if there is no will, not to the other owner (unless the decedent's will so provides). Compare **Joint tenancy** and **tenancy by the entirety.**

Terminable interest: Any interest in property that terminates upon the death of the holder or upon the happening of some other specified event.

Testamentary capacity: The mental ability to make a valid will. The Illinois Supreme Court in *Butler v. O'Brien,* 8 Ill.2d 203, 133 N.E.2d 274, 278 (1956), stated: "Testamentary capacity requires only that the person making a will have sufficient mind and memory to understand the particular business in which he is engaged, to know the natural objects of his bounty, and the character and extent of his property, and to make disposition of said property according to a plan formed in his own mind." Thus, the standard is not very high.

Testamentary trust: A trust created by a will that takes effect only after death.

Testate: A term used to describe the **estate** of an individual who has left a valid will. Compare **Intestate.**

Testator: An individual who creates a will.

Total return trust: A trust where a trustee can distribute a percentage of the trust without regard to whether the source is current income or capital gains.

***Totten* trust:** A trust created by a deposit of money in a bank account in one's own name as trustee for another. The account creator/trustee owner owns and controls the account without restriction during his life. At the death of the trustee, the account passes to the beneficiary. *See In re Totten,* 179 N.Y. 112, 71 N.E. 748 (1904).

Transfer-on-death (TOD) account: A form of registration for securities or brokerage accounts that operates in the same fashion as a *Totten* trust, *i.e.*, the asset passes to a named beneficiary. These accounts trump otherwise inconsistent provisions of Wills and Trusts. See also **Payable-on-death account.**

Trust: A legal arrangement in which one person (the grantor) transfers legal title of property to a trustee to manage the property for the benefit of one or more beneficiaries.

Trust Advisor: Usually associated with "distribution trust advisor" and means any one or more persons given authority by the trust (other than the trustee) to direct or otherwise exercise distribution powers. This is typically used to determine discretionary distributions of income or principal to a beneficiary. This also often refers to an investment trust advisor who would be instructing the acting trustee concerning investments of the trust.

Trustee: An individual or institution that manages property according to the instructions in the trust agreement.

Trust Protector: A person or entity (usually not the trustee) chosen by the creator of a trust who is given certain powers to interpret or change details of the trust. This could be as simple as removing and substituting a trustee, or could go as far as changing the beneficiaries of the trust. Recognized statutorily under Illinois law effective January 1, 2013.

Two-trust plan: See **Marital/family trust plan.**

Undivided interest: A type of interest held in property in which the property is titled among parties as joint tenants or as tenants in common. No owner has the right to exclusive use or control of any particular piece or fraction of the property; rather, each owner has an equal right with all of the other owners to use and enjoy 100 percent of the property.

Unified credit: See **Applicable credit amount.**

Uniform Transfers to Minors Act (UTMA) or Uniform Gifts to Minors Act (UGMA): Statutory provisions allowing for transfer of property to a minor with a custodian named to act on behalf of the minor without having to be appointed as the minor's guardian. UTMA assets are treated as owned by the minor for income and other tax purposes. The Illinois Uniform Transfers to Minors Act at 760 ILCS 20/1, *et seq.*

Unitrust: A trust that provides for a distribution to an income beneficiary of a <u>percentage</u> of the trust assets based on the value of the assets on an annual valuation date (*e.g.,* the first day of the year).

Valuation discounts: Discounts from fair market value allowable because of minority interest, lack of control, and/or lack of marketability.

Vested interest: A present, ascertainable, fixed right of possession or enjoyment of property when actual delivery of the property may be postponed until a later date. For example: a remainder interest in named persons who need not survive any particular time period or event. Compare to **Contingent interest.**

Ward: A minor or incapacitated adult whose affairs are being supervised by the probate court.

Will: A document directing the disposition of a person's property that is not operative until death.

2032A election: An election under Code §2032A to reduce the value of real property (either farm property or real **estate** used in business) for federal **estate** tax purposes when certain tests are met.

6166 election: An election under Code §6166 to pay **estate** tax in installments attributable to operating business interests when certain tests are met.

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