

A handy Glossary of legal terms used or associated with Wills, Lasting Powers of Attorney, Probate and Estate Administration.

Administrator - The person responsible for looking after the affairs of someone who has died without making a Will.

Agricultural Property Relief (APR) - Relief from Inheritance Tax for the agricultural value of some farms and farmhouses (the value if the land & buildings could only be used for agricultural purposes and not the open market value). Various conditions apply including a minimum ownership period.

Asset - Anything a person owns of value including property and land, investments or money.

Attorney - An individual who is given the power to make decisions on someone else's behalf under an Enduring Power of Attorney, General Power of Attorney or Lasting Power of Attorney.

Beneficiary - A person or organisation who benefits on the death of another either under a Will or on Intestacy (see below).

Bloodline Planning - A generic term applied to estate planning strategies which are designed to maximise the legacies someone leaves to their children and grandchildren, with the aim of protecting them from the consequences of divorce, re-marriage, bankruptcy or liability for care fees. These normally take the form of a Life Interest Trust or Discretionary Trust in the Will.

Business Property Relief (BPR) - Relief from Inheritance Tax for businesses and potentially business assets – a minimum ownership period applies (usually 2 years) and the business or interest in the business must fulfil certain strict criteria.

Caveat - A notice to the Probate Registry which acts as a stop on an estate, preventing the issue of a Grant of Representation.

Chattels - Assets of a person, other than land, for example jewellery, ornaments, clothes, cars, furniture and so on.

Codicil - A legal document that amends the terms of a Will. If someone wants to make a simple change to their Will, drawing up a Codicil is an alternative to preparing an entirely new Will. A Codicil may change, modify, delete, extend or add provisions in a Will.

Court of Protection - This is a Court which can make decisions in relation to the property and affairs and personal welfare of adults (and children) who lack the mental capacity to make decisions for themselves. The Court has the same powers as the High Court and can make a wide range of decisions and orders including the appointment of Deputies or a declaration as to whether a person has capacity. The Court works closely with the Office of the Public Guardian.

Deed of Variation - A document that can vary the division of a person's estate after they have died either by changing their Will retrospectively or altering the persons entitled on an intestacy (where there is no Will). This must be done within 2 years of the person's death to be effective for Inheritance Tax purposes and Capital Gains Tax purposes.

Deputy - A person appointed by the Court of Protection to manage the personal and financial affairs of a person who lacks mental capacity and has not made a Power of Attorney.

Deputyship - Previously known as receivership, this is the process by which the Court of Protection appoints a Deputy or Deputies to deal with the affairs of a person who has lost mental capacity (i.e. is not capable of managing their own affairs) and did not have an Enduring or Lasting Power of Attorney in place. The Office of the Public Guardian keeps a register of Deputies and supervises the Deputy as they manage the affairs of the person who does not have capacity. Deputyship can relate to personal welfare decisions as well as to the management of property and affairs.

Discretionary Trust - A trust whose fund is distributed among two or more beneficiaries at the discretion of the Trustees who may decide to whom, when, and how much (if any) to distribute. The Trust may be accompanied by a letter or memorandum of wishes which may give guidance to, but not bind, the Trustees. They are a flexible way of setting property aside for the benefit of one or more persons.

Enduring Power of Attorney - A type of Power of Attorney used until October 2007 when Lasting Powers of Attorney were introduced. Existing Enduring Powers of Attorney are still valid, but new ones cannot be drawn up.

Estate - A generic term used to describe all property (personal belongings, cash, bank accounts, investments, property etc)

Estate Accounts - Accounts recording the financial position at the date of death and transactions during the administration period.

Executor - A person named in a Will to administer the deceased's Estate and distribute the Estate in accordance with the terms of the Will.

General Power of Attorney - A simple short term Power of Attorney, usually used to enable the sale or purchase of a property or asset to proceed during the temporary absence of the donor. It cannot be used if the person who made the General Power of Attorney loses capacity.

Grant of Letters of Administration - A document issued to a deceased's Administrator to authorise them to be able to deal with the Estate of the person that has died without leaving a valid Will.

Grant of Probate - A document issued to the Executors of a Will which will allow them to administer and distribute the Estate in accordance with the terms of the Will.

Grant of Representation - A generic term to describe a Grant of Probate or Grant of Letters of Administration.

Guardian - A person or persons appointed by the deceased to make decisions about their children until they reach 18 years of age.

Home Protection Trust / Protective Property Trust - Where a Will is structured so that on the death of the first person in a couple, their share of the property is put in trust allowing the surviving spouse or partner to continue to live in the property for their lifetime. On the death of the survivor the respective share of property would be given to the chosen beneficiaries as set out in the Will.

Inheritance Tax (IHT) - A tax due to the government on the value of certain lifetime gifts or on the value of the estate of someone who has died. There are some exemptions from the tax depending on the value of the gift or estate assets and the type of gift or estate asset involved.

Intestate / Intestacy Rules - A phrase to describe someone who has died without making a valid Will and the subsequent administration of that person's estate.

Joint Tenants - Where co-owners of property own as joint tenants, on the death of one co-owner the property automatically passes and belongs to the survivor(s) by reason of survivorship. The interest of a deceased joint tenant does not fall into his or her estate.

Lasting Power of Attorney (LPA) - Is a legal document where someone (while they still have mental capacity) nominates a trusted friend or relative or professional person to look after their affairs if they lose capacity. LPAs must be registered with the Office of the Public Guardian before they can be used and this can be done at any time. A Property and Finance LPA, once registered, can be used before mental capacity is lost, but a Health and Welfare LPA, once registered, may only be used once mental capacity has been lost.

Legacy - A gift given by someone after death through a Will.

Life Interest - A gift of property (in terms of a right to occupy it) or the income from that property or income from cash or investments to a person or persons (known as a Life Tenant) for their lifetime.

Life Tenant - This is a person who is entitled to benefit from a trust during their lifetime. They cannot have the capital in the trust fund (unless there is express provision in the trust document to enable the Trustees to release capital); they are entitled only to the income or enjoyment of the property, for example, if the trust fund was a house, the beneficiary would be entitled to live there rent free.

Mental Capacity - The ability to make decisions for oneself. If someone is no longer able to make decisions for themselves, through either an accident, dementia or a stroke, they are said to have lost mental capacity.

Mirror Wills - A pair of Wills in almost identical terms. Many spouses/partners have mirror Wills in which they leave their estate to the same ultimate beneficiaries named in both Wills who would benefit on the death of the surviving spouse/partner. The survivor can however still change the terms of his/her Will as they are not mutual Wills.

Nil Rate Band (NRB) - The amount that HMRC allows someone to pass on to those other than their spouse/registered civil partner without Inheritance Tax being payable upon it. The NRB for 2016/2017 is £325,000.

Potentially Exempt Transfer (PET) - These transfers are potentially exempt from Inheritance Tax, and there is no limit on such transfers. This term is used for gifts made within the 7 year period (often referred to as the 7 year rules or the 7 year clock) to friends and relatives. If the person making the gift were to die within the 7 years, the value is added on to their estate. If they don't, then the gift is exempt. Detailed tax advice needs to be taken where a gift has been made to a trust.

Power of Attorney - This is a formal document giving legal authority from one person (the donor) to another (the attorney) so that the Attorney may act on behalf of their principal. Power of Attorney may be an ordinary General Power of Attorney or it may be a Lasting Power of Attorney.

Office of the Public Guardian (OPG) - A government body which keeps the register of Enduring Powers of Attorney (EPAs), Lasting Powers of Attorney (LPAs) and supervises Deputies appointed by the Court of Protection. The OPG works closely with the Court of Protection see above.

Personal Representative (PR) - A deceased's Executor(s) or Administrator(s).

Probate Registry / Probate Court - A division of the High Court responsible for issuing Grants of Probate and Grants of Letters of Administration and settling disputes relating to estates.

Remainderman - The person who receives the capital of an estate on the death of the Life Tenant. They are essentially the ultimate beneficiary.

Residence Nil Rate Band - This is sometimes known as the Family Home Allowance. Introduced on 6 April 2017 for deaths which have occurred after that date. It is an additional allowance to the Nil Rate Band which is available when someone is leaving a property (that they have previously occupied) to their descendants. There is strict criteria which must be fulfilled in order to be eligible.

Residue - What is left of a person's estate after specific gifts, legacies and debts have all been paid.

Severance of Tenancy - The document required to change the ownership of a property from Joint Tenants to Tenants in Common.

Specific Gift - The gift of a particular item, sum of money or other asset to a beneficiary.

Statutory Wills - Where a vulnerable person lacks the capacity to make a will, the Court of Protection may authorise a Statutory Will to be executed on their behalf.

Statutory Gifts - An attorney or deputy who wishes to make a lifetime gift (usually of cash, shares or property) on behalf of a vulnerable person can request the permission of the Court of Protection to do so. This might have benefits for inheritance tax planning but will depend on the capital and income of the vulnerable person.

Tenants in Common - Where co-owners own property as Tenants in Common, each co-owner has a defined share or interest and on death this will pass in accordance with his or her Will or the Intestacy Rules and will not necessarily pass to the surviving co-owners.

Testator/Testatrix - A person who has made a Will.

Trust - A way of looking after money, land, property and investments or any other asset without specifically leaving it to someone directly. One or more persons (the Trustees) hold property for the benefit of others (the beneficiaries). A Trust enables assets to be held on behalf of a beneficiary so that rather than them receiving money or property outright, the assets are received with restrictions and so can only be used in the way prescribed by the Trust document (e.g. the Will could leave a sum of money does not pass to a child until their 21st birthday).

Trustee - A person or persons who look after and manage the Trust and the Trust assets until such time as the Trust is brought to an end.

Will - A written document outlining a person's last wishes to include the appointment of Executors, Guardians and the gift of money or assets to one or more beneficiaries.

We hope you have found this Glossary of Terms useful. For individual advice and assistance please contact a member of the Wills Trusts and Probate team.

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