
Certified Specialist Programme in Probate Dispute Resolution

Probate Law Fundamentals

Probate Law Fundamentals: Key Terms and Vocabulary

Probate law is a specialized area of law that deals with the legal process of administering the estate of a deceased person. It involves various terms and vocabulary that are crucial to understand for anyone working in the field of probate law. In this guide, we will explore the key terms and vocabulary essential for the Certified Specialist Programme in Probate Dispute Resolution.

1. **Probate:** Probate is the legal process through which a deceased person's assets are distributed to their heirs and beneficiaries. It involves proving the validity of the deceased person's will, if there is one, and administering their estate according to the terms of the will or state law.
2. **Estate:** An estate refers to all the assets and liabilities that a person leaves behind at the time of their death. This includes real estate, personal property, investments, bank accounts, and debts.
3. **Executor:** An executor is a person appointed in a will to carry out the deceased person's wishes and manage the estate during the probate process. The executor is responsible for gathering the deceased person's assets, paying debts and taxes, and distributing the remaining assets to the beneficiaries.
4. **Administrator:** If a person dies without a will, or if the named executor is unable or unwilling to serve, the court may appoint an administrator to manage the estate. The administrator has similar duties and responsibilities to an executor.
5. **Beneficiary:** A beneficiary is a person or entity named in a will or trust to receive a share of the deceased person's assets. Beneficiaries may include family members, friends, charities, or other organizations.
6. **Will:** A will is a legal document that outlines how a person's assets should be distributed after their death. It may also appoint an executor, guardians for minor children, and specify funeral arrangements. A valid will must meet certain requirements set forth by state law.
7. **Trust:** A trust is a legal arrangement in which a person (the grantor) transfers assets to a trustee to hold and manage for the benefit of one or more beneficiaries. Trusts can be created during a person's lifetime (living trust) or through a will (testamentary trust).
8. **Intestate:** When a person dies without a will, they are said to have died intestate. In this case, state law determines how the deceased person's assets are distributed among their heirs.
9. **Personal Representative:** A personal representative is a general term that refers to either an executor or an administrator appointed to manage a deceased person's estate. The personal representative is

responsible for carrying out the probate process.

10. Letters Testamentary/Letters of Administration: These are court documents issued to the executor or administrator, granting them the legal authority to act on behalf of the estate. The letters empower the personal representative to collect assets, pay debts, and distribute property to beneficiaries.

11. Heir: An heir is a person who is entitled to receive a portion of the deceased person's estate under state law if there is no will. Heirs are typically close relatives, such as spouses, children, parents, or siblings.

12. Codicil: A codicil is a legal document that amends or supplements a will. It is used to make minor changes to the will without revoking the entire document. A codicil must meet the same formal requirements as a will.

13. Probate Court: Probate court is a specialized court that handles matters related to the administration of estates, wills, trusts, and guardianships. The court oversees the probate process, resolves disputes, and ensures that the deceased person's assets are distributed according to law.

14. Estate Planning: Estate planning is the process of arranging for the management and distribution of a person's assets after their death. It involves creating wills, trusts, powers of attorney, and other legal documents to protect assets and provide for loved ones.

15. Trustee: A trustee is a person or entity appointed to manage a trust on behalf of the beneficiaries. The trustee has a fiduciary duty to act in the best interests of the beneficiaries and follow the terms of the trust document.

16. Fiduciary Duty: A fiduciary duty is a legal obligation that requires a person in a position of trust, such as an executor, administrator, trustee, or guardian, to act in the best interests of the beneficiaries. Fiduciaries must avoid conflicts of interest and act prudently with the assets under their control.

17. Guardian: A guardian is a person appointed by the court to make decisions on behalf of a minor child or an incapacitated adult. The guardian is responsible for the care, custody, and well-being of the person under their guardianship.

18. Power of Attorney: A power of attorney is a legal document that authorizes a person (the agent or attorney-in-fact) to act on behalf of another person (the principal) in financial or legal matters. Powers of attorney can be limited or broad in scope.

19. Estate Tax: Estate tax is a tax imposed on the transfer of a deceased person's assets to their heirs and beneficiaries. The tax is based on the total value of the estate and may be subject to federal and state laws.

20. Gift Tax: Gift tax is a tax imposed on gifts of money or property during a person's lifetime. The tax is intended to prevent individuals from avoiding estate tax by giving away assets before death. Gift tax may also be subject to federal and state laws.

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21. **Residuary Estate:** The residuary estate is the portion of a deceased person's assets that is not specifically gifted to beneficiaries in a will or trust. It includes any remaining property, cash, or investments after debts, expenses, and specific bequests are paid.
22. **Intestate Succession:** Intestate succession is the legal process by which a deceased person's assets are distributed to their heirs when there is no valid will. State laws determine the order of inheritance based on the relationship of the heirs to the deceased person.
23. **Probate Assets:** Probate assets are assets that are owned solely by the deceased person and do not have a designated beneficiary. These assets must go through the probate process to transfer ownership to the heirs or beneficiaries.
24. **Non-Probate Assets:** Non-probate assets are assets that pass outside of the probate process and directly to beneficiaries. Examples of non-probate assets include joint tenancy property, retirement accounts with designated beneficiaries, and life insurance policies.
25. **Estate Administration:** Estate administration is the process of managing and distributing a deceased person's assets according to their will or state law. It involves identifying assets, paying debts and taxes, and distributing property to beneficiaries.
26. **Testator:** A testator is a person who makes a will. The testator outlines their wishes for the distribution of their assets and appoints an executor to carry out those wishes after their death.
27. **Executor's Commission:** An executor's commission is a fee paid to the executor for their services in administering the estate. The commission is typically a percentage of the estate's value and is subject to state law.
28. **Trustor:** A trustor is a person who creates a trust and transfers assets into the trust for the benefit of the beneficiaries. The trustor may also be referred to as the grantor or settlor of the trust.
29. **Residuary Beneficiary:** A residuary beneficiary is a person named in a will or trust to receive the remaining assets of the estate after specific bequests have been distributed. The residuary beneficiary is entitled to any property not otherwise accounted for in the estate plan.
30. **Advance Directive:** An advance directive is a legal document that outlines a person's preferences for medical treatment in the event they become incapacitated and unable to make decisions for themselves. Advance directives typically include a living will and a healthcare power of attorney.
31. **Living Will:** A living will is a type of advance directive that specifies a person's wishes regarding end-of-life medical care, such as life support, artificial nutrition, and resuscitation. A living will guides healthcare providers and family members in making decisions in accordance with the person's wishes.
32. **Healthcare Power of Attorney:** A healthcare power of attorney is a legal document that designates a

person to make medical decisions on behalf of the principal if they are unable to do so themselves. The healthcare agent has the authority to consent to or refuse medical treatment based on the principal's wishes.

33. Trust Protector: A trust protector is a person or entity appointed to oversee the administration of a trust and ensure that the trustee fulfills their duties properly. The trust protector may have the power to remove and replace the trustee or modify the terms of the trust.

34. Spendthrift Trust: A spendthrift trust is a type of trust that restricts a beneficiary's access to trust assets and protects those assets from creditors. The trust terms specify that the trustee has discretion over distributions to the beneficiary to prevent them from squandering the assets.

35. Per Stirpes: Per stirpes is a Latin term that means "by roots" or "by branch." In estate planning, per stirpes distribution refers to dividing an inheritance among the deceased person's descendants in equal shares, with each branch of the family receiving a share if a beneficiary predeceases the testator.

36. Per Capita: Per capita is a Latin term that means "by head." In estate planning, per capita distribution refers to dividing an inheritance equally among all living beneficiaries, regardless of their relationship to the deceased person. If a beneficiary predeceases the testator, their share is distributed among the remaining beneficiaries.

37. Trust Agreement: A trust agreement is a legal document that establishes the terms and conditions of a trust. The trust agreement outlines the powers and duties of the trustee, the rights of the beneficiaries, and the distribution of trust assets according to the trustor's wishes.

38. Living Trust: A living trust is a type of trust created during a person's lifetime to hold and manage assets for the benefit of themselves or their beneficiaries. A living trust avoids probate and allows for the seamless transfer of assets upon the trustor's death.

39. Testamentary Trust: A testamentary trust is a trust created through a person's will and takes effect upon their death. The trustor's will specifies the terms of the trust, the trustee, and the beneficiaries who will benefit from the trust assets.

40. Trust Res: The trust res is the property or assets that are transferred into a trust and held for the benefit of the beneficiaries. The trust res may include real estate, investments, bank accounts, personal property, or any other assets designated by the trustor.

41. Trust Instrument: The trust instrument is the legal document that establishes a trust and outlines its terms and conditions. The trust instrument may be a trust agreement, a declaration of trust, or a trust deed, depending on the type of trust and the jurisdiction.

42. Trustee's Duty of Loyalty: A trustee's duty of loyalty requires the trustee to act in the best interests of the beneficiaries and avoid conflicts of interest. The trustee must not benefit personally from the trust assets

and must manage the trust prudently and in accordance with the trust terms.

43. **Trustee's Duty of Care:** A trustee's duty of care requires the trustee to manage the trust assets with the same care and diligence that a prudent person would exercise in managing their own affairs. The trustee must make informed decisions, diversify investments, and act in the best interests of the beneficiaries.

44. **Trustee's Duty to Account:** A trustee's duty to account requires the trustee to keep accurate records of the trust assets, transactions, and distributions. The trustee must provide a detailed account of the trust's financial activities to the beneficiaries and the court, if required.

45. **Trustee's Duty to Inform:** A trustee's duty to inform requires the trustee to keep the beneficiaries informed about the trust's administration, investments, and distributions. The trustee must communicate regularly with the beneficiaries and provide them with relevant information about the trust.

46. **Trustee's Duty to Invest Prudently:** A trustee's duty to invest prudently requires the trustee to manage the trust assets in a manner that is reasonable and in the best interests of the beneficiaries. The trustee must diversify investments, minimize risk, and seek a reasonable return on investment.

47. **No Contest Clause:** A no contest clause, also known as an in terrorem clause, is a provision in a will or trust that disinherits a beneficiary who contests the validity of the document. The clause is intended to discourage beneficiaries from challenging the will or trust in court.

48. **Trustee's Power of Appointment:** A trustee's power of appointment is the authority granted to the trustee to distribute trust assets to beneficiaries according to their discretion. The trustee may have limited or broad powers of appointment, depending on the trust terms.

49. **Trustee's Power to Delegate:** A trustee's power to delegate allows the trustee to appoint agents, advisors, or professionals to assist in managing the trust assets. The trustee remains ultimately responsible for the trust administration but can delegate certain tasks to others.

50. **Trustee's Power to Amend:** A trustee's power to amend allows the trustee to make changes to the trust terms, such as modifying distribution provisions, adding beneficiaries, or updating administrative procedures. The trustee must exercise this power in accordance with the trust instrument and state law.

In conclusion, understanding the key terms and vocabulary of probate law is essential for anyone working in the field of estate planning and administration. Whether you are a probate attorney, a trust officer, a financial planner, or a beneficiary, a solid grasp of these terms will help you navigate the complexities of probate law and effectively assist clients in managing their estates. By familiarizing yourself with the terminology and concepts outlined in this guide, you will be better equipped to handle probate disputes, resolve conflicts, and ensure the proper administration of trusts and estates.