

HEIRS' PROPERTY: DEFINITIONS AND KEY TERMS

“DURING LIFE” DOCUMENTS

Conservatorship and/or Guardianship – the appointment of a guardian or conservator by a judge to manage the financial affairs and/or daily life of another person due to old age or physical or mental limitations

Living Will (advance healthcare directive) – a written, legal document that spells out medical treatments you would or would not want to be used to keep you alive, as well as your preferences for other medical decisions, such as pain management or organ donation, when you can no longer make decisions for yourself

Power of Attorney (POA) – a legally binding document that allows you to appoint someone to manage your property, medical, or financial affairs

“END OF LIFE” CONCEPTS, ROLES, & DOCUMENTS

Key Concepts

Assets – real or personal property (including cash/liquidity) owned by a person or company, regarded as having value and the ability to meet debts, commitments, or legacies.

Decedent – a person who has died

Estate – a person's property or net worth. When the person is deceased, their estate goes through probate and is distributed according to the terms of their Last Will & Testament. If there is no will, the estate is “administered” in accordance with the state's laws of intestate succession

Estate Administration – a court-administered process in which the probate court administers the estate in accordance with the state's laws of intestate succession to the decedent's heirs-at-law

Intestate – the decedent died without a valid Last Will & Testament. When a person dies intestate, the estate is distributed in accordance with the state's laws of intestate succession, after creditors are paid

Probate – a court-administered process in which the probate court confirms the validity of a Last Will & Testament and allows other people the option to challenge the will. The estate is then administered in accordance with the Last Will & Testament. (Called “succession” in Louisiana)

Testate – the decedent died with a valid Last Will & Testament

Roles

Administrator - a court-appointed person ordered to manage the estate of a deceased person who died intestate

Beneficiary - a person entitled to receive funds or other property under a trust, Last Will & Testament, retirement account, or insurance policy.

Executor/Executrix - a court-appointed person or institution who is responsible for carrying out the terms of a Last Will & Testament and overseeing the probate of the Will & administration of the assets/estate

Heir - a person legally entitled by law to the property of a decedent; a person inheriting and continuing the legacy of a predecessor

Notary - a person authorized to perform certain legal formalities and certify/witness signatures on estate planning documents, contracts, deeds, etc.

Personal Representative - a collective name for either Executors or Administrators

Spouse - a life partner in a marriage, civil union, or common-law marriage as recognized by state law

Testator/Testatrix - a person who has written and executed a Last Will & Testament before their death

Trustee - a trustee is a person or business that administers a trust

Documents

Codicil - an addition or supplement that explains, modifies, or revokes a Last Will & Testament or part of one

Holographic Will - a handwritten and testator-signed document that is legally binding in some states, but not produced by a lawyer

Irrevocable Trust - created when a person gives up his/her rights to change the terms of a trust once created. The trustor/grantor cannot later change the terms of an irrevocable trust.

Last Will & Testament (Will) - a document which directs how property (including minor children) is to be distributed to beneficiaries and heirs upon a person's death

Living Trust - a legal arrangement established by an individual (the grantor/trustor) during their lifetime to protect their assets and direct their distribution after the grantor's death. Avoids the probate process.

Mutual Will - a type of will, usually executed by a married or committed couple, that is mutually binding

Revocable Trust - allows the trustor/grantor to amend and make changes to the trust after it has been formed

Testamentary Trust - a trust that is specified in and created by a person's Last Will & Testament

Trust - a fiduciary arrangement that allows a third party, or trustee, to hold assets on behalf of a beneficiary or beneficiaries.

Ownership/Distribution of Property

Community Property - property owned jointly by a married couple (in some states).

Heir's Property - property owned jointly by numerous co-owners, most of whom are related. It usually passes from one generation to another when a landowner dies intestate or with no succession/estate planning for the land

Joint Tenancy with Rights of Survivorship - the holding of an estate or property jointly by two or more parties, the share of each passing to the other or others upon death.

Life Estate - an interest in property only for the life of a person with the remaining interest (remainder) to vest in others upon the death of the person holding the life estate

Per Capita - Latin term = "by head" or "for each head." The inheritance is distributed among all the heads of your beneficiaries within the same generation/class. Lower generations are effectively disinherited.

Per Stirpes - a way of distributing the estate of a decedent where each branch of the family receives an equal share of an estate. Latin term = "by roots" or "by branch"

Tenants-In-Common - co-owners who jointly own property without rights of survivorship

Transfer on Death/Payable on Death - lets beneficiaries receive assets at the time of the person's death without going through probate

Types of Entities

Corporation - a legal entity that is separate and distinct from its owners. For profit corporations act through a board of directors selected by its shareholders (owners).

Limited Liability Company - a legal entity that is separate and distinct from its owners. It acts through its manager(s) or its members (owners)