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## A Glossary of Estate Planning Terms

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## A GLOSSARY OF ESTATE PLANNING TERMS

ADAPTED FOR SOUTH DAKOTA AUDIENCES BY DAVID REZAC, SCHOOL OF LAW GRADUATE STUDENT, UNIVERSITY OF SOUTH DAKOTA, ANNE MARIE FEIOCK, J.D., YOUNG LAWYERS SECTION PRESIDENT, SOUTH DAKOTA BAR ASSOCIATION, AND ELIZABETH E. GORHAM, PHD, AFC, ASSOCIATE PROFESSOR AND EXTENSION FAMILY RESOURCE MANAGEMENT SPECIALIST, SOUTH DAKOTA STATE UNIVERSITY, WITH PERMISSION OF MONTANA STATE UNIVERSITY, AUTHOR MARSHA A. GOETTING, PHD, CFP®, CFCS, PROFESSOR AND EXTENSION FAMILY ECONOMICS SPECIALIST, MONTANA STATE UNIVERSITY.

**Administrator** Term formerly used for a person named in a will to carry out settlement of the estate. Under the South Dakota Uniform Probate Code, the term is now personal representative.

**Alternate Valuation Date** A date exactly six months following the decedent's date of death that the personal representative may choose to revalue, for federal estate tax purposes, all assets held by the estate.

**Ancillary Probate** Term for probate if decedent had real property in another state.

**Annual Exclusion** The amount of \$11,000 that can be given to any individual or any number of individuals gift tax free. A husband and wife together can give \$22,000 to each person.

**Annuity** The periodic payment of a definite sum of money, with such payments to continue for life or for a definite number of years.

**Assets** All types of property which can be made available for the payment of debts.

**Attorney** Another name for a lawyer.

**Beneficiary** A person (or institution) who derives benefit from the creation of a trust, proceeds of insurance policy, or property designated by a will.

**Closely-Held Business** A business organization in which the ownership is held by a limited number of people (often within the same family) rather than owned by the public at large.

**Codicil** A supplement, amendment, or addition to a will executed with all the formalities of the will itself. It may explain, modify, add to, subtract from, qualify, alter, or revoke provisions in a will.

**Common Disaster Clause** A statement in a will telling how property is to be distributed if would-be devisees die from the same accident as the testator.

**Conservator** A person who is appointed by a court to manage the estate of a protected person who, because of age, intellect, or health, is incapable of managing his or her own affairs.





**Consideration** Something which has value, such as real or personal property or a promise given in exchange for another promise.

**Contingency** The possibility of coming to pass; an event that may occur.

**Corpus** Trust property; the principal sum as distinguished from interest or income.

**Death Taxes** Taxes due by reason of death of an individual.

**Decedent** A deceased person.

**Deed** A legal instrument used to transfer title to real property in the eyes of the law.

**Devise** When used as a noun, real or personal property given to another by will. When used as a verb, to dispose of real or personal property by will.

**Devisee** Any person designated in a will to receive real or personal property.

**Domicile** That place where a person has voluntarily fixed his/her habitation, not for a temporary or special purpose but with a present intention of making it his/her home unless and until something, which is uncertain and unexpected, shall happen to induce him/her to adopt some other permanent home.

**Donee** One who receives a gift.

**Donor** One who makes a gift.

**Durable Power of Attorney** Allows the power of attorney to survive any disability the principal could suffer.

**Escheats** When a decedent's property goes to the state because of lack of heirs.

**Estate Tax (South Dakota)** The South Dakota estate tax is equal to the maximum credit allowable for state death taxes against the federal estate tax.

**Estate Tax (Federal)** Taxes assessed by the federal government upon a decedent's right to transfer property.

**Exempt Property** This property is protected from creditors and devisee claims. It includes specific items such as photos, clothing, and an amount to provide the fuel necessary for one year. In addition to these specific amounts an additional amount of personal property can be selected, not to exceed the value of \$6,000 if head of a family or \$4,000 if not the head of a family.

**Family Allowance** The surviving spouse and minor children are entitled to a reasonable family allowance in cash from the estate for their maintenance during the period of probate administration. The personal representative may determine the family allowance in a lump sum not exceeding \$18,000, or periodic installments not exceeding \$1,500 per month for one year.

**Fiduciary** Includes personal representative, guardian, conservator, and trustee.

**Formal Probate Proceedings** Those conducted before a judge with notice to interested persons for probate of a will or appointment of a personal representative.

**Gross Estate** For federal estate tax purposes, the total value of all property—real or personal, tangible or intangible—that a decedent had owned or had control over at the time of death.

**Guardian** A person legally empowered and charged with the duty of taking care of another who, because of age, intellect, or health, is incapable of managing his or her own affairs. The guardian manages the person.

A conservator manages the property of a minor or incapacitated person. A person can be appointed both guardian and conservator.

**Heirs** Those persons who are entitled under the statutes of intestate succession to the property of a decedent.

**Holographic Will** A will in which the signature and material provisions are in the handwriting of the testator, and which needs not be witnessed.

**Homestead Allowance** A surviving spouse of a decedent who was a resident of South Dakota is entitled to keep the family home or, if the home is sold, up to \$30,000 of the sale proceeds. The \$30,000 limit does not apply if the decedent or spouse is seventy years of age or older.

**Informal Probate Proceedings** Those conducted without prior notice to interested persons by the clerk of the court for probate of a will or appointment of a personal representative.

**Inherit** To receive property from a deceased person.

**Inter Vivos Trust** Legal name for a living trust. The trust is set up by the grantor during his or her lifetime.

**Intestate** A term used when a person dies without leaving a valid will.

**Irrevocable** A term used to describe a trust in which the trustor (maker of the trust) has, by the terms of the trust agreement, specifically given up the power to alter, amend, or terminate the trust either entirely or in part. In South Dakota, trusts are irrevocable unless the donor expressly reserves the power to revoke.

**Joint Tenancy** A form of co-ownership in which two or more persons hold interests in the same property with right of survivorship.

**Incidents of Ownership** Rights applying to ownership interest in an insurance policy. These include the right to change a beneficiary, to borrow on a policy, to change premium modes, and so on.

**Life Estate** A condition created whereby a person has the right to use property only for his or her lifetime.

**Lineal Descendant** One who is, by blood relationship, in the direct line of descent from an ancestor. The term includes adopted children in South Dakota.

**Marital Deduction (Gift)** Allows married persons to make unlimited lifetime gifts to each other and claim a marital deduction for any amount without a gift tax.

**Marital Deduction (Estate)** Allows married persons to make unlimited testamentary devises to the surviving spouse and claim a marital deduction for any amount and avoid an estate tax on such amount.

**Pay on Death (POD)** Designation is the naming of a beneficiary to receive an account balance on a party's death.

**Per Capita** Equal shares to all who inherit.

**Personal Representative** A person named in a will or appointed by the circuit court to administer the estate of a decedent. Formerly referred to as executor, administrator.

**Personal Property** Assets whose ownership arises either out of physical possession of the property, or as the result of a document showing ownership. Examples: livestock, machinery, stored grain, bank deposits, stocks and bonds, checking and savings accounts, automobiles and other transportation and recreational vehicles. In South Dakota, all property other than real estate.

**Per Stirpes** Term used by a testator to describe the division of property among different degrees of kinship. For example: A had children B and C. B had one child B1 and C had two children C1 and C2. If A had in his will that his property be divided per stirpes, and B and children of C were survivors, then B would receive one-half and the children C1 and C2 would split the other half (1/4 to each). If the property had been divided per capita, than all would have received equal shares of one-third each.



**Power of Attorney** A written, notarized document in which one person gives another the power to conduct certain acts on his or her behalf.

**Pretermitted Child** One who may, under certain circumstances, become an heir due to birth or adoption after the date of execution of a testator's will.

**Private Annuity** A means of transferring property from one owner to another by "selling" it for an unsecured promise to pay the original owner an income for life. The sale price is based on fair market value at the time of sale.

**Probate** The process of the personal representative gathering all the property of someone who died, paying all just debts and taxes, and distributing the balance to the devisees designated in the will or to the heirs as prescribed by the legislature where there is no will or the will is defective.

**Real Property** Real estate, minerals and royalty interests, growing timber, land and buildings attached to the land.

**Remainderman** One entitled to the remainder of an estate after a particular reserved right or interest has expired.

**Revocable** A trust in which the trustor (maker of the trust) has, by the terms of the trust agreement, reserved the power to alter, amend, or terminate the trust and to receive the property back from the trustee.

**Right of Election** The surviving spouse's right to a share of the augmented estate rather than accepting the amount provided by will or intestate succession statutes. The percentage is based on the length of marriage.

**Separate Listing of Tangible Personal Property** A list separate from the will that identifies both the items and persons to receive them.

**Sole Ownership** Title to property in one name.

**Spouse** A person's wife or husband.

**Succession Law** Law that governs the disposition of one's estate if there is no will.

**Tenancy in Common** A type of co-ownership between two or more persons who hold undivided interests in the same property with no right of survivorship for the surviving tenant in common. When one dies, his or her share becomes part of his or her estate. The property goes to his or her heirs and not to the other tenants in common unless they are also his/her heirs or, if there is a will, to his/her devisees.

**Testamentary** Pertaining to a will.

**Testamentary Trust** A trust, set up in a will, which does not become effective until the death of the testator.

**Testator** A person making a will.

**Transfer on Death (TOD)** Designation on securities that allows the naming of a beneficiary to receive them upon death of a party.

**Trust** The legal relationship created by virtue of one party holding legal title to property, whether real or personal, for the benefit of another.

**Trustee** The person, or corporate body holding title to the trust property, appointed to execute, administer, and carry out the terms of a trust for the benefit of the beneficiary.

**Trustor** Maker of a trust.

**Will** The legal instrument expressing a person's wishes and directions as to the disposition and distribution of his/her property after death.

**Witness** A person who observes the signing of a will and attests to the signature.

## REFERENCES

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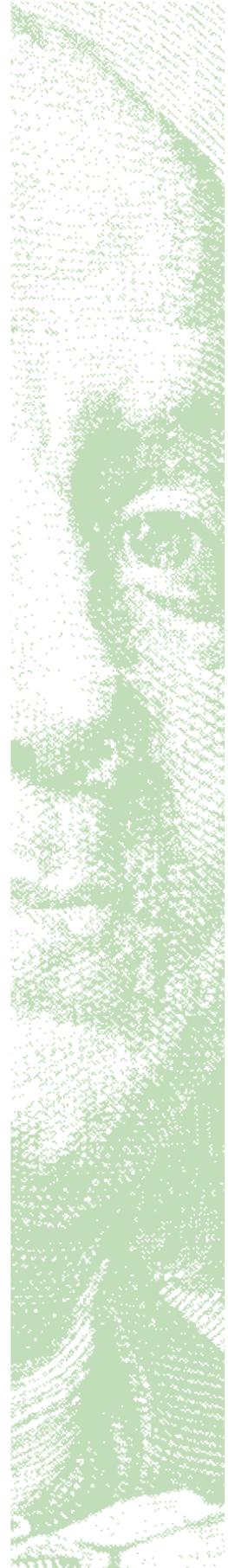
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## ACKNOWLEDGEMENTS

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This publication is suggested for the reading of all South Dakotans. It has been reviewed and approved by the South Dakota Bar Association and South Dakota State University faculty in the Human Development, Consumer and Family Sciences Department, College of Family and Consumer Sciences, March 2005.

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