

Glossary

Simple definitions and explanations of terms commonly encountered by estate executors:

Abatement

Abatement is the reduction of specific bequests because the estate cannot fulfill them (for example, if the will specifies \$100K to be given to a particular heir, but the estate is worth only \$50K).

Ademption

Ademption occurs when a specific bequest cannot be fulfilled at all (for example, if the will specifies a piano to be given to a particular heir, but the estate contains no pianos).

Administrator

An estate administrator is someone appointed by the court to settle an estate on behalf of a deceased person who left no will. In practice, the term "administrator" can be used interchangeably with the term "executor", with the difference being that an administrator was not named as executor in the will.

Affidavit

An affidavit is simply a signed document attesting that what the document says is true. In some cases, you may need to have an affidavit notarized for the recipient to accept it.

Allocation

When an heir is entitled to a certain percentage share of an estate, the act of assigning certain assets for distribution to that heir is called allocation. When an executor is finished allocating assets, all assets should be assigned to appropriate inheritors, and the inheritors should all be receiving items worth their prescribed overall share in the estate. Allocation has no legal implications; it is just part of the settlement planning process.

Ancillary Probate

If an estate contains out-of-state real estate, that out-of-state property likely has to go through probate in the out-of-state jurisdiction, in a process generally known as

ancillary probate (because it is secondary to the main probate occurring in the decedent's home jurisdiction).

Appraisal

An appraisal is a professional analysis to determine the value of an asset. While there is no need to get bank accounts or shares of publicly traded stocks appraised, executors may need to get professional appraisals to value antiques, real estate, businesses, and so forth.

Asset

An asset is anything that's worth money: real estate, stocks, mutual funds, annuities, jewelry, furniture, cars, and so forth.

Asset Disposition

Asset disposition refers to the fate of an asset during estate settlement. For example, an asset might be distributed to an heir, it might be sold, or it might even be discarded because it was worthless and no one wanted it.

Bequest

When a will bestows to an heir a particular item or dollar amount (as opposed to just a share in the estate), it is called a bequest.

Barred Debt

If the statute of limitations for a given debt has expired, the debt is considered barred, meaning that no legal action can be taken to collect the debt. In many states, however, acknowledging the indebtedness in writing, or making a partial payment, can restart the clock, so executors need to take care not to inadvertently make a debt collectible that otherwise would not have been.

Beneficiary

Most commonly, a beneficiary is someone designated to automatically receive an asset upon the original owner's death, such as the beneficiary of a life insurance policy or a 401K. Some legal documents also talk about a beneficiary of an estate in a more general sense, meaning anyone who will inherit from the estate.

Claim

In the context of estate settlement, the term "claim" usually refers to the notification by a creditor that the decedent, and now the estate, owes the creditor money. Valid creditor claims usually have priority on estate funds over standard distributions to heirs, and executors can become personally liable for such debts if proper procedures are not followed. While specific law varies by state, executors are often legally required to notify creditors of the decedent's death.

Co-Executor

Some estates have more than one executor, in which case they are known as co-executors.

Codicil

A codicil is a document, written after the main will, that in some way modifies the existing will (for example, adding or revoking bequests, changing heir percentages, etc.).

Cost Basis

Cost basis represents, in essence, how much an asset cost the owner to acquire. Typically, when an asset is sold, taxes are due on the difference between the sale proceeds and the cost basis. However, most assets in the US enjoy a "step-up" in basis upon the death of the original owner, meaning that whatever the decedent paid for something, an heir will be able to report a cost basis equal to the asset's value on the date of death. For example, if John inherited stock worth \$500 on the day of the previous owner's death, when John eventually sells stock he will only owe taxes on any gains above \$500 ... even if the previous owner originally paid only \$100 for it.

Debt

A debt is an amount owed to another party, such as a mortgage, car loan, or credit card balance. The executor of an estate is responsible for resolving all estate debts before making any distributions to heirs.

Debt Resolution

A debt is considered resolved when there is no longer a valid claim that the estate is obligated to make any further payments. A debt may be resolved because the estate paid the full amount due, or because some or all of the debt was forgiven by the creditor. If the statute of limitations runs out on a debt, in some sense it is considered resolved, but in a more specific legal sense, it is considered barred.

Debt Forgiveness

If a creditor agrees to forgo repayment on a debt, the debt is considered forgiven and no further payment is required. The IRS considers such forgiveness a taxable event, however, and the estate should report any amounts forgiven as income, even though no money actually changes hands.

Decedent

The term decedent refers to the deceased person whose estate an executor is responsible for settling.

Descendant

A descendant is someone who can trace his or her lineage back to a particular ancestor, in this case, the decedent. A descendant could be a child, a grandchild, a great-grandchild, and so on. Some states treat biological descendants differently from step-children and adopted children, and their descendants in turn. Nieces, nephews, and cousins are not considered descendants, but may still be entitled to a share of an intestate estate.

Devise

A devise is an old-fashioned term for a bequest of real estate (i.e., giving real estate to a particular heir via the will).

Devisee

The term "devisee" is used in some states to refer to a person explicitly named in the will to inherit from an estate. While the term "heir" is commonly used to refer to anyone who will inherit from an estate, the term "devisee" more precisely identifies the fact that an inheritor was named in the will.

Digital Asset

A digital asset is an asset that exists in the digital realm, not the physical world. Examples of digital assets include cryptocurrency, NFTs, frequent flier miles, and social media accounts. Any digital asset of value must be included in the official estate, although there are some gray areas.

Distribution

A distribution is the delivery of an asset or cash to a given heir (i.e., inheritor). After resolving debts and paying any taxes due, an executor should distribute the

remaining estate to the heirs in accordance with the instructions in the will (or as dictated by the court).

EIN (Employer Identification Number)

An estate must obtain an EIN (Employer Identification Number) from the IRS in order to be able to file estate taxes, open an estate account, and more.

Elective Share

In a number of states, a surviving spouse of a decedent can choose to ignore the terms of the will, and file for a so-called elective share of the estate, which is defined by law.

Estate

When someone dies, their estate is the sum of the assets they owned at death, as well as any debts. The job of an executor is to inventory the estate, protect the assets, resolve the debts, and ultimately distribute the remaining proceeds to the rightful inheritors.

Estate Account

In order to manage estate finances, an executor usually opens an account at a bank on behalf of the estate, into which the executor can deposit income and sale proceeds, pay expenses, and ultimately distribute funds to heirs. An estate account is usually required because an executor has no legal authority to make transactions in accounts previously owned by the decedent.

Estate Administration

Estate administration refers to the process of managing an estate during the estate settlement process. Usually, this term is used in the context of a court-supervised settlement, known as probate.

Estate Sale

An estate sale is like a super-sized garage sale, in which you try to liquidate all unwanted contents of the home. Unlike a garage sale, it does not need to take place at the home, and professional estate sales companies will sometimes create centralized sales that include the contents from multiple estates.

Estate Settlement

Estate settlement refers to the process of collecting all estate assets, resolving estate debts, and distributing the remaining assets to the rightful heirs.

Executor (Executrix)

An executor is a person responsible for settling an estate on behalf of a deceased person. The term *executrix* is a somewhat old-fashioned way to refer to a female executor. Typically, a person becomes an executor because he or she was named executor in the will, although it often requires an application for probate to make that appointment official.

Executor Compensation and Fees

An executor is entitled to compensation for his or her work. Such executor fees can be specified by the will, or if not, are governed by state laws which vary dramatically by state.

Exempt Property

Many states designate certain personal property as potentially exempt from the probate process, if a surviving spouse and/or children wish to formally claim it. This exempt property can be somewhat substantial: in NY, for example, a surviving spouse can claim up to \$25K in marketable securities, up to \$25K in a vehicle, up to \$20K in household items, and more.

Family Allowance

In a number of states, a surviving spouse and/or children are entitled to an allowance paid out of the estate for living expenses during the period of estate administration. Typically, this allowance must be approved by the court.

Fiduciary

A fiduciary is someone who acts on behalf of another, putting that other person's interests ahead of their own. You often encounter fiduciaries in terms of investment managers, insurance agents, and so forth. In this sense, an executor is also considered a fiduciary.

Fiduciary Duty

As a fiduciary, an executor is required (i.e., has a fiduciary duty) to act with the highest ethical standards and to place the interests of the decedent and the rightful heirs above his or her own interests.

Final Accounting

An estate final accounting is a financial report that details all financial activity in the estate from the moment of death until the final distribution, covering everything from estate expenses and income, to asset sales and changes in value.

Forced Heirship

Louisiana and Puerto Rico both have the concept of forced heirship, which is intended to force a parent to leave at least a certain amount of the estate to his or her children, regardless of what the will may say.

Gross Value

The gross value of an estate or an asset is simply the value of that item without taking into consideration any associated debts. For example, the gross value of a home that sells for \$500K is \$500K, even if it has an associated \$200K mortgage and thus is really only "worth" \$300K to the owner.

Heir

In common usage, an heir is someone entitled to inherit from an estate. In the most specific legal sense, an heir is someone related to the decedent who would normally inherit from the estate even if there were no will.

Heir-at-Law

An heir-at-law is someone related to the decedent who would inherit from the estate if there were no will ... even if there is a will, and that will does not leave anything to the person in question. It is sometimes required during probate to notify heirs-at-law of the estate proceeding even if they will not inherit anything.

Homestead Exemption

In a number of states, a so-called homestead (the primary residence of a decedent) can be exempted from the normal probate process, with special privileges granted to a surviving spouse and/or children.

Holographic Will

A holographic will is simply a will that was handwritten and signed by the decedent.

Inheritor

An inheritor is simply someone who will inherit something from an estate.

Inventory

An estate inventory is a list of all an estate's assets and debts.

Insolvent Estate

If an estate's debts are greater than its assets, it is considered to be insolvent.

Intestate Estate

An estate is considered intestate if there is not a valid will. Under such circumstances, state law determines who will inherit from the estate

Joint Tenancy

If an asset is held in joint tenancy, all owners share complete ownership of the asset. If the asset is held in joint tenancy with rights of survivorship (the usual case), upon the death of one of the owners, the remaining owners automatically retain complete ownership (although some paperwork may need to be filled out). Ownership by joint tenancy is not available in all jurisdictions.

Lapse

If a bequest was intended for an heir who predeceased the decedent, then that bequest is said to "lapse", meaning that it becomes invalid.

Legacy

While legacy has a broader meaning in common usage, when it comes to estate settlement, a legacy is simply another term for bequest.

Legatee

The term "legatee" is used in some states to refer to a person named in the will to inherit from an estate. While the term "heir" is commonly used to refer to anyone who will inherit from an estate, the term "legatee" more precisely identifies the fact that an inheritor was named in the will.

Letters

When the court officially appoints someone to settle an estate, that person receives documents which certify the appointment and can be used to prove authority to other people. These documents are usually referred to as the executor's "Letters", or more formally, "Letters Testamentary" (if there is a will) or Letters of

Administration (if there is not a will). The process of receiving these Letters is called the Grant of Letters.

Life Estate

A life estate is an interest granted in an asset for the lifetime of the recipient, perhaps most commonly seen in the granting of a life estate in the family homestead for the surviving spouse (whereby the surviving spouse can live in the home until his or her death, at which point it reverts to the control of the person who inherited actual ownership of the asset).

Living Trust

A living trust is a trust (see [Trust](#) below) established by a decedent during his or her life, whose primary purpose is to allow the included assets to bypass probate and be directly distributed to the named beneficiaries.

Medallion Signature Guarantee

A medallion signature guarantee is a stronger, more rigorous type of notarization which is sometimes required when dealing with particular types of assets, such as stock certificates.

Net Value

The net value of an estate or an asset is simply the value of that item after taking into consideration any associated debts. For example, the net value of a home with a \$200K mortgage that sells for \$500K is \$300K.

Notarize

Estate settlement often requires that an executor notarize various documents, which means getting a local notary public to stamp the document with his or her seal, indicating that you provided proof of identity when you signed the document.

Notice

During the estate settlement process, it is often advisable and sometimes required to notify other parties about certain things (for example, an executor may be required to notify creditors about a probate appointment). Depending on state rules and the particular circumstances, it may be sufficient to hand-deliver such a notice, it may be required to send such a notice via mail, and it may be required to publish the information in a newspaper or journal. The legal requirements can be quite particular here, so special care is advised.

Personal Property

Personal property is the legal term for everything a decedent owned, other than real property (i.e., land and any associated improvements).

Personal Property Exemption

In a number of states, a surviving family is entitled to certain amounts of personal property which is therefore excluded from the official estate, and passes directly to the family.

Personal Representative

In the context of an estate, a personal representative is someone responsible for managing and settling an estate on behalf of a deceased person. The term may be used in other contexts for other roles, but in this context it is the official term used in many states to reference an executor. In practice, the term "personal representative" can be used interchangeably with the term "executor".

POD (Payable on Death)

A POD account is one that is set up to automatically pay its contents to one or more beneficiaries upon the death of the original owner, bypassing any probate.

Pour-Over Will

A pour-over will is a will which specifies that upon death, certain (or all) assets should be automatically transferred to a named trust, and distributed from there. Note that such an approach does not obviate the need for those assets to first go through the probate process, since they were not in the trust at the moment of death.

Probate

Probate is the court-supervised process of administering a decedent's estate, ultimately distributing the net proceeds to the rightful heirs (generally in accordance with the will, if a valid will is available). All estates must be settled, but not all estates must go through the court probate process. Note that in Quebec, probate does not refer to the overall settlement process, and only refers to the process of proving that a will is valid.

Real Property

Real property is the legal term for land (and any associated buildings and improvements). Anything that is not real property, is by definition, personal property.

Residuary Estate

The residuary estate (also known as the residuary estate) is the amount remaining in the estate after all debts and obligations have been satisfied, and any specific bequests handled. It is from the residuary estate that percentage distributions to heirs are made.

Right of Survivorship

Sometimes property is owned with "right of survivorship", which means that upon the death of one of the owners, the property will automatically pass to the remaining owners (some paperwork may also be required).

Small Estate

Many states have laws that allow small estates to bypass or minimize probate. The qualification criteria to be considered "small" varies widely by state (\$40,000 in Missouri), and may include surprisingly wealthy estates due to various exclusions.

Small Estate Affidavit

A small estate affidavit is a sworn statement concerning estate inventory and heirs, which some states allow you to use to collect estate assets rather than requiring official court documentation.

Succession

Most commonly, the term succession refers to the successive ownership of a given asset (i.e., the act of passing down an item from the decedent's estate to the heir). In Louisiana, the term succession is broadly used to refer to the overall estate settlement process, is specifically used to refer to the process known as "probate" in other states, and may be used in place of "estate" to refer to the decedent's entire collection of assets (and debts).

Summary Administration

Summary administration allows an executor to abbreviate the probate process for small or simple estates in certain jurisdictions.

Surviving Spouse Elective Share

In a number of states, a surviving spouse of a decedent can choose to ignore the terms of the will, and file for a so-called elective share of the estate, which is defined by law.

Statute of Limitations

Every state has statutes of limitations that determine the length of time after which a debt is considered uncollectable, and no action can be taken in court to collect on the debt.

Tolling a Debt

In some states, when someone dies, the statutes of limitation on any associated debts are placed on a temporary hold to allow everyone to sort things out. This process is automatic, and called "tolling the debt".

Trust

A trust is a legal arrangement that allows a third party, or trustee, to hold assets on behalf of beneficiaries. Executors commonly encounter trusts when a decedent has tried to avoid probate by placing most of his or her assets in a trust. Executors have no authority over such trusts, per se, although it is common for the same person to serve as both executor of the estate, and trustee of the trust. Executors also encounter trusts when the decedent's will requests that a trust be established on behalf of minor children.

Trustee

A trustee is someone responsible for managing a trust. Similar to an executor for an estate, a trustee for a trust is responsible for managing and distributing assets, in this case in accordance with the terms of the trust. An executor for an estate has no official control over a trust, per se, but it's common for the same person to be a trustee for the trust, and executor for the entire estate.

Will

A will is a signed document that expresses a person's desires for the handling of his or her estate upon his or her death. The validity of a will is governed by local state rules, but in general a will can cover almost anything, from percentage distribution to various heirs, to named bequests of particular items, to specified preferences for particular executors, to specified payments for executor services, to guardianship of minor children, and more. It is the executor's duty to try to honor the wishes expressed in a will, although this may sometimes not be possible.