

From the Law Office of AMBER RODRIGUEZ

Plain English Explanation for Common Estate Terms The Everyday-Person's Guide to Probate Terminology

By Amber Rodriguez

Listening to an attorney talk about a probate or trust litigation, probate or trust administration, conservatorship or estate plan can be a bit like listening to someone speak a foreign language. Terms get thrown around without much explanation. We hope this guide will help you better understand some of the most common terms in this area of law:

Administration: In the probate world, an “administration” refers to the process following someone’s death. There are various legal requirements during any administration, whether it is through a Will, a Trust or any other post-death transfer process. It is important to follow the proper process to assure any distributions from the estate are not subject to later claims from creditors or other people who believe they were the intended beneficiaries.

Administrator: A person appointed by the court, other than someone named in your Will, to manage your estate during the probate process.

Advance Health Care Directive: Sometimes referred to as a “Health Care Directive” or “AHCD,” an Advance Health Care Directive is a legal document used to nominate a person to make healthcare decisions for you if you should become unable to make those decisions yourself. Generally, an Advance Health Care Directive is only effective during your lifetime.

Agent: Someone acting on your behalf, usually under an Advance Health Care Directive or Durable Power of Attorney.

Beneficiary: A “beneficiary” is the recipient of a gift (also known as a distribution). You can choose anyone to be your beneficiary; there is no legal “right” to inherit. There are laws in California that will determine your beneficiaries for you, if you do not wish to draft a Trust or a Will to direct the distribution of your estate.

Conservatee: A person who has lost the right to make certain decisions for themselves and is now the subject of a conservatorship through the courts.

Conservator: A person appointed by the court to make certain decisions for another individual.

Conservatorship: A “conservatorship” is a court proceeding during which someone is appointed by the court to make certain decisions for you. A conservatorship may be of the person, of the estate, or both. A *conservatorship of the person* gives another individual the right to make certain personal decisions for you and represent you in various legal proceedings. If you are subject to a conservatorship of the person, you may lose the right to vote, to marry, or to decide where you are going to live. A *conservatorship of the estate* gives someone the right to make financial decisions on your behalf.

Durable Power of Attorney: In general, a Durable Power of Attorney is a legal document used to nominate a person to make financial decisions on your behalf. It is only effective during your lifetime.

Estate: “Estate” is a general term used to describe the assets belonging to an individual or Trust.

Estate Plan: An “estate plan” can be many different things, depending on the needs of the individual. Basically, an estate plan can – and should be – one or more documents which give direction to others on how to handle your personal and financial affairs if you should become unable to handle them yourself (if you become incapacitated or pass away, for example). An estate plan may include a Trust, Will, Durable Power of Attorney and Health Care Directive.

Executor: The person named under your Will to manage your estate following your death.

Fiduciary: A “fiduciary” is a person or institution who is entrusted to act for the benefit of someone else. A fiduciary may be the trustee of a Trust, the administrator or executor of a Will, or the agent under an Advance Health Care Directive or Durable Power of Attorney.

Personal Representative: A somewhat generic term used to describe any person acting on behalf of an estate. For example, both an Executor and an Administrator are considered to be personal representatives.

Probate: “Probate” actually has multiple meanings. First, it is an area of law that includes estate planning, estate administrations, guardianships and conservatorships. As an area of law, probate has its own code section under California law and its own unique set of rules (known as the “Probate Code”). In addition, “probate” is also used to refer to a court proceeding to administer a person’s estate following their death.

Professional Fiduciary: A “professional fiduciary” is a person or institution licensed by the state to act on behalf of someone else.

Trust: A “trust” is a legal document that gives direction to others on how your assets should be handled if you pass away or if you are simply no longer managing your assets yourself (due to incapacity, for example). A trust is a contract, but it is can also be considered a testamentary document (like a Will). A trust is effective during your lifetime, as well as following your death.

Trustee: The person named under your Trust to manage the trust assets.

Will: A “Will” is a legal document that is applicable only after your death. It may contain directions for the distribution of your assets, nominations of guardians for your children, or instructions for the disposition of your remains. In California, there are certain guidelines regarding the contents and execution of a Will. If your Will does not meet these guidelines, it may not be enforceable.

.....

Of course, these definitions are not meant to be complete legal descriptions. Instead, these definitions are meant to help you better understand the terms often encountered when you become involved in probate or trust litigation, a probate or trust administration, a conservatorship, or begin working on your own estate plan. We hope this guide assists you as you move through the process.

Do you have another term you would like us to define for you? Send us an email at info@estateattorneycalifornia.com and let us know. We are here to help.