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1995

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Gessaman, Paul H. and Aiken, J. David, "NF95-233 Glossary of Estate Planning Terms" (1995). *Agricultural Research Division News & Annual Reports*. 333.

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Glossary of Estate Planning Terms

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This is one in a series of **NebFacts** providing information on forms of business organization used in business and estate planning by farm and ranch families. Titles in the series are listed at the end. Reading the documents in this series will improve your understanding of the estate planning tools and alternatives and make it easier to communicate with your attorney, accountant, and other helpers when your estate plan is prepared.

Your need for legal and tax advice: While the information contained in this document is thought to be accurate, it should not be used as a substitute for legal advice on matters related to business organization, taxation, estate planning, or other business and financial management matters. Consult with your legal and tax advisers before making decisions.

Estate planning is an important part of decision making in personal and business management, but it is an activity that most individuals participate in on only a few occasions during a lifetime. Like most specialized activities, estate planning has its own terminology. At times, limited familiarity with that terminology can be a barrier to communication between the typical citizen and his or her legal and tax advisers.

This glossary provides brief definitions of terms frequently used in estate planning. Careful reading will give you a basis for understanding most of the terms used by persons who will assist you in your estate planning activities, and will help you utilize their time and expertise more effectively.

Administrator -- An individual or entity such as a trust department of a bank appointed to handle the affairs of a person who has died without leaving a will.

Assets -- Things of value owned by a person, family, or business -- everything of value that's owned -- property.

Beneficiary -- A person who receives income or assets from a trust -- a person who benefits from the existence and operations of a trust.

Codicil -- A supplement to a will that adds to, subtracts from, qualifies, modifies, or revokes the provisions of a prior (existing) will.

Corpus of a trust -- Term used to designate the body of assets placed in a trust. The trust holds title to all property included in the corpus.

Decedent -- The person who has died.

Escheat -- Assignment of property to the state because there is no verifiable legal owner -- typically, where there is no heir to property.

Estate -- Everything of value (all property) that a person owns while living or at the time of death.

Estate tax -- A tax placed on the net value of a decedent's estate at the time of death; the tax rate increases as the size of the estate increases. Both the State of Nebraska and the federal government are legally authorized to assess and collect taxes on estates.

Executor or Executrix -- A person named in the decedent's will to serve as personal representative in probating the decedent's estate. The designated person may decline to serve as personal representative.

Fair market value -- The market price for an asset as would be agreed to by a willing buyer and a willing seller.

Fee simple ownership -- Property ownership where one person or entity holds the entire ownership interest.

Gift -- A voluntary transfer of property for which nothing of value is received in return. If Internal Revenue Service is to recognize a transfer as a gift, the donor(s) must unconditionally transfer all title and control of the property to the recipient(s) at the time the gift is given.

Gifting -- A means of implementation of an estate plan through gifts to intended successors in the ownership of assets owned by the person(s) making the gifts.

Grantor -- The person placing property in a trust.

Heir -- A person entitled by law to inherit part or all of the estate of an ancestor who died without leaving a valid will.

Holographic will -- A will entirely handwritten by the testator. The date and all words in the will including the signature must be in the handwriting of the testator. The signature of the testator can be, but need not be, witnessed.

Inheritance tax -- A tax levied by the county of residence of a person who inherits in which the rate of taxation depends on the size of the inheritance and the relationship between the person who inherits and the deceased.

Intergenerational succession -- Succession in property ownership in which the property is transferred from one generation to another; usually from members of an older generation to members of a younger generation.

Intangible property -- Property that only represents real value such as bonds, stock certificates, promissory notes, certificates of deposit, bank accounts, contracts, leases, and other similar items.

Intestate succession -- The distribution of property to heirs according to the statutes of the State of Nebraska upon the death of a person who owned the property but did not leave a valid will.

Irrevocable trust -- A trust that cannot be changed after it is established.

Joint tenancy -- A form of joint asset ownership by two or more persons in which each person has an equal undivided ownership interest that passes directly to the surviving joint tenant(s) upon the death of any joint tenant. Real estate held in joint tenancy does not pass through probate following the death of a person with ownership interest. Personal property such as machinery or livestock held in joint tenancy does not pass through probate if the right of survivorship is stated in the title to the property. Any joint tenant can petition the court and compel partition of a joint tenancy asset.

Lateral succession -- Succession in property ownership in which the property is transferred between members of the same generation.

Letters of Administration -- Document issued by the probate court giving the administrator authority to administer the estate.

Letters Testamentary -- Document issued by the probate court giving the executor authority to administer the estate under the provisions of the decedent's will.

Liabilities -- Amounts owed by a person, family, or business -- everything owed to others.

Living trust -- A trust established during the lifetime of the grantor.

Partition -- The judicial separation of the respective interests in property of joint owners or tenants in common so each may take possession, enjoy, and control his or her share of the property.

Personal representative -- An executor, administrator, or anyone else who is in charge of a decedent's property.

Probate -- A court procedure for settling the personal and business affairs of a decedent by formally proving the validity of a will and establishing the legal transfer of property to beneficiaries, or appointing an administrator and supervising the legal transfer to property to heirs if there is no valid will.

Revocable trust -- A trust that can be changed after it is established. Assets can be added or removed from the corpus of the trust, the beneficiary(ies) can be changed, and other changes including termination of the trust, are allowed. A revocable trust becomes irrevocable upon the death of the grantor.

Sound mind -- The testator possesses sound mind for the purposes of making a will if he or she: (1) understands the nature of the act of making a will or codicil thereto, (2) knows the extent and character of the property subject to the will, (3) knows and understands the proposed disposition of that property, and (4) knows the natural objects of his or her bounty (i.e. his or her heirs). Whether the testator was of sound mind is tested (determined) by the state of the testator's mind at the time the will or codicil is executed (written and signed).

Succession -- A term used to describe transfers of asset ownership through inheritance, gifting,

preferential sale, or other means that fulfill the wishes of the person(s) with present ownership of the assets.

Tangible property -- Property that is capable of being perceived by the senses -- generally refers to real estate, personal property, and moveable property that has value of its own and is not merely a representation of real value. Land, machinery, buildings, crops, and livestock are examples of tangible property.

Tax basis -- The owner's cost of an asset for income and estate tax purposes as determined under the Internal Revenue Code and IRS regulations (see *NF93-144, Determining Property Basis*).

Tenants in common -- A form of asset ownership in which two or more persons have an undivided interest in the asset and the ownership shares are not required to be equal.

Testamentary trust -- A trust established after the death of the grantor under the provisions of the grantor's will.

Testator -- One who writes or has written and signs a will.

Trust -- A legal mechanism that separates the responsibility of owning property from the benefits of owning property. Property placed in a trust is owned by the trust, and no longer is owned by the grantor (s).

Trust declaration or trust instrument -- A document defining the nature and duration of the trust, the powers of the trustee, and identifying the trust's beneficiary(ies).

Trustee -- The person or legal entity such as a bank or trust company who receives property and places it in a trust, and manages the trust for the benefit of the beneficiary or beneficiaries in ways consistent with the trust declaration and good business practice.

Undivided interest -- The interest or right in property owned by each joint tenant or tenant in common. Each tenant has equal right to use and enjoy the entire property. Unless an agreement to the contrary exists, each tenant is entitled to an income share proportional to his or her ownership interest. If the property is sold, the sale proceeds are shared among tenants in proportion to the ownership shares held by each tenant.

Will -- A person's written declaration of desires for disposal of his or her property after death.

Documents in this series:

NF 95-227 *Intestate Succession In Farming and Ranching*

NF 95-233 *Glossary of Estate Planning Terms*

NF 95-236 *Nebraska Inheritance and Estate Taxes*

EC 95-819 *Estate Planning for Farm and Ranch Families: Information for Your Legal and Tax Advisers*

Related publications:

NF 93-143 *Federal Estate and Gift Taxes*

NF 93-144 *Determining Property Basis*

NF 93-145 *Special-Use and Alternative Valuation of Estate Property*

NF 93-146 *Delayed Payment of Federal Estate Taxes*
NF 93-147 *Tax Considerations in Selling Farm Property*

File NF233 under: FARM MANAGEMENT

F-13, Estate Planning

Paper version issued August, 1995

Issued in furtherance of Cooperative Extension work, Acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Elbert C. Dickey, Dean and Director of Cooperative Extension, University of Nebraska, Institute of Agriculture and Natural Resources.

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