An Estate Planning Glossary

The estate planning process is a complex one. During the course of your research into the firm to choose to handle your needs in administering your assets you will hear numerous terms being used. Here is a sample of the concepts that are commonly employed by trusts and estates attorneys. It is offered merely as illustrations of the broad concepts defined and not in any way meant to be exhaustive or relied upon as legal advice.

A/B Trust. Types of inter vivos trusts or testamentary trusts used by married couples. In this type of living trust, two trusts (trust A and trust B) are created at the time the first spouse dies. By dividing the couple's estate into two trusts at the first death, each spouse can pass the maximum amount of property allowed to avoid federal estate taxes. One trust, often trust A, would be referred to as the marital deduction trust and the other trust, often trust B, would be referred to as the **credit shelter trust**.

Accounting. The record of an account showing the transactions of the fiduciary in a particular format and the submission of such a record to the court or to the beneficiaries of a trust or estate by the fiduciary.

Administrator. Any person to whom letters of administration have been issued to administer an intestate estate.

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

Annual Gift Exclusion: In 2011, the amount of $13,000 that can be given to any individual or any number of individuals gift tax free. A husband and wife together can give $26,000 to each person even if they funds come from only one of the spouses, they may elect to “split” the gift and thereby utilize both annual exclusions.

Ante-nuptial agreement (or, pre-nuptial agreement). An agreement with respect to their property made before a marriage by the parties to the marriage.

Applicable Credit Amount: The Applicable Credit Amount, previously known as the **Unified Credit** is the tax credit mechanism that effectively exempts the **Exemption Amount** of an estate from estate taxes. For example, in 2011 and 2012, $5,000,000.00 of a decedent's estate will be exempted from federal estate taxes. The Applicable Credit Amount for $5,000,000.00 is $1,730,800.00 at a marginal tax rate of 35%. When the decedent's estate tax return is filed, the preparer first calculates the amount of tax based on the total value of the net estate, and then subtracts the Applicable Credit Amount to reduce or eliminate the amount of estate tax otherwise due. (It should be remembered that New York shelters only $1,000,000.00 from State estate taxes.)

Ascertainable Standards. Limited trustee powers to provide health, education, maintenance and support ("HEMS") for a surviving spouse or others. This avoids trust assets being included in a beneficiary's estate.

Beneficiary. Any person entitled to any part or all of an estate.

Bequest. A transfer of personal property by will.

Charitable trusts: A menagerie of irrevocable trusts where the current or future beneficiary is a charitable organization [as defined under IRS Section 501(c)(3)]. These trusts can offer significant income tax, estate tax and capital gains tax benefits.

Charitable lead trust. A trust for a fixed term of years wherein a charity is the income beneficiary and the remainder goes to a non-charitable beneficiary.

Charitable remainder trust. An arrangement wherein the remainder interest goes to a legal charity upon the termination or failure of a prior income and/or principal interest.

Charitable remainder annuity trust. A trust which provides a sum certain, not less than five percent of initial fair market value of all property placed in trust, to be distributed at least annually to a non-charitable beneficiary, with remainder to a qualified charity.

Charitable remainder unitrust. A trust which provides a fixed percentage, not less than five percent of net fair market value of property, valued annually, to be distributed at least annually to a non-charitable beneficiary, with remainder to a qualified charity.

Close corporation (or, closely-held corporation). One whose entire stock is held by one or by a few persons, as the members of a family.

Codicil: A supplement to a will that alters the original in some way but does not replace the will.

Credit shelter trust: (also, bypass trust). A trust which is set up to bypass the surviving spouse's estate, thereby allowing full use of the applicable exclusion amount for both spouses. The "B" trust of the A/B trust description.

Crummey Trust. A Crummey Trust is a trust in which the beneficiary, a child for example, has the power to withdraw monetary contributions made to a trust for a short period of time, 45 days for example, such that the transfer qualifies for the annual gift exclusion. When combined with an irrevocable insurance trust, the Crummy Trust is a popular method of making gifts, that qualifies for annual exclusions. Each time a contribution is made, the beneficiary must have a temporary right to demand withdrawals from the trust assets equal to the value of the gift.

Devise. When used as a noun, a transfer of real property by will. When used as a verb, to transfer real property by will.

Devisee. Any person to whom real property is transferred by will.

Direct Skip. A transfer to one who is more than one generation younger than the transferor.

Disclaimers. The renunciation of any gift or bequest or other interest. For tax purposes taxpayers have up to nine months to disclaim an asset from the time the gift was made (in an estate, it would be nine months from the date of death). Also called "qualified disclaimers." In New York, these are called renunciations.

Distributee: A person entitled to share under the laws of New York in an estate of a person who dies without a will (see intestate).

Domicile. A fixed, permanent and principal home to which a person wherever temporarily located always intends to return.

Tax apportionment. A doctrine that requires the recipients of probate and non-probate assets to all pay their proportionate share of death taxes. This can be overridden by a tax clause in a Will or trust.

Estate. All of the property of a decedent, trust, absentee, internee or person for whom a guardian has been appointed as originally constituted, and as it from time to time exists during administration. The term has a different meaning for tax purposes.

Executor. The person named in the will to administer the estate.

Exemption Amount: This is the equivalent amount of assets that can be transferred free of tax, either at lifetime or death, by applying the **Applicable Credit Amount** when calculating estate and gift taxes. When property is given as a gift or passed to heirs as part of an estate, it is subject to federal estate and gift tax laws. Each person is given a tax credit (the "unified credit") that can be used to offset the tax assessed against a specific amount of property. The amount of property that results in a tax exactly equal to the unified credit is known as the "exemption equivalent" Technically, no property is exempt from federal estate and gift taxes, but the term exemption equivalent is commonly used. Stated another way, the **unified credit** is equal to the amount of tax due on a gift or estate transfer of property that has a value equal to the exemption equivalent amount. See **Exemption Amount**. See **Exemption Equivalent.**

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Fiduciary. A general term to describe a person who has been appointed to administer an estate, such as an administrator, executor, or trustee.

Fiduciary Duty. The duty of a fiduciary to act in a position of trust, good faith, candor and responsibility, on behalf of another. The duty is one of the best defined responsibilities under the law and is very strictly enforced by the courts.

Form 706. IRS Estate Tax Return.
Form 709. IRS Gift Tax Return.

Form 1041. IRS Estate and Trust Income Tax Return

General power of appointment. The power of the donee (the one who is given the power) to pass on an interest in property to whomsoever he pleases, including himself, his creditors, or his estate. See also Power of Appointment.

Generation-skipping transfer tax. A tax imposed on both outright gifts and transfers in trust to or for the benefit of persons two or more generations younger than the donor, such as grandchildren. The generation-skipping tax will be imposed only if the transfer avoids incurring a gift or estate tax at each generation level. Each taxpayer currently possesses a $5,000,000 exemption from the generation-skipping tax. Only aggregate gifts and bequests to grandchildren or younger beneficiaries in excess of $5,000,000 ($10,000,000 for a married couple).

Gift tax exclusion: Federal law currently permits you to make tax-free gifts of up to $13,000 per individual each year. Married couples may jointly give tax-free gifts of up to $26,000 per individual per year. You may make these gifts to as many individuals as you want in a given year. Gifts made under this provision do not count against your **Exemption Amount**.

Grantor. The creator of a lifetime trust.

Grantor Retained Trust. A trust in which the person establishing the trust retains enough "ownership rights" or "incidents of ownership" that the person is treated by the IRS as the owner of the trust assets for tax purposes. The right to revoke the trust is sufficient to make the trust a grantor trust. Also, Grantor Trust.

GRIT – Grantor Retained Income Trust

GRUT – Grantor Retained Uni-Trust

GRAT – Grantor Retained Annuity Trust

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 is deemed to have controlled or received the benefit of at the time of death.

Guardian. Another category of fiduciary. A person who has the legal custody of an infant or a person with severe disabilities or one who has the authority to manage their property.

Holographic will. A will entirely in the handwriting of the testator

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.

Inclusion Ratio. A mechanism by which the GST exemption is allocated.

Independent Trustee. A trustee who is unrelated to the person who establishes a trust (the grantor) and the beneficiaries of the trust. Unrelated attorneys, banks, corporations, etc., are usually chosen to act as independent trustees. The IRS requires a trust to have an independent trustee if the trust is to achieve certain estate tax and income tax benefits available to irrevocable trusts (not living trusts).

Infant. Any person under the age of eighteen years; provided, however, that for purposes of appointment of a guardian of an infant, the term infant also shall include a person who is under the age of twenty-one years who consents to the appointment of a guardian after the age of eighteen.

Inter Vivos Trust. Another name for a living trust. A trust created by a person during his or her Lifetime, as distinguished from a “testamentary trust” which is created by will.

Intestate. Describes one who dies without a will. Typically, state statutes will then dictate the distribution of assets.

Irrevocable Trust. A trust that cannot be changed, canceled, or "revoked" once it is set up unless the creator of the trust and all persons interested consent. A "living trust" is not an example of an irrevocable trust. Insurance trusts and "Children's Trusts," or "2503 Trusts," are examples of irrevocable trusts. Irrevocable trusts are treated by the IRS very differently than revocable trusts.

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

Key person insurance. Protection of a business firm against the financial loss caused by death or disability of a vital member of the firm; a means of protecting the business from the adverse results of the loss of an individual possessing special skills or experience

Legacy. A transfer of personal property by will.

Legatee. A person named as a beneficiary in a will.

Letters. A certificate issued by the court to a fiduciary as proof that he or she has the authority to act on behalf of an estate, a trust, a minor, or an incapacitated adult. Letters testamentary refer to the power of an executor to act under a will; letters of administration refer to the power of an administrator to act on behalf of an intestate estate; letters of guardianship refer to the power to act as a guardian; letters of trusteeship typically refer to the power to act under a testamentary trust.

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

Life insurance trust: A type of irrevocable trust used to hold life insurance. When a life insurance policy is held in an insurance trust, it is protected from estate taxes when the insured dies; provided the trust is established properly, managed properly, and the insured does not retain any "incidents of ownership."

Intestate: a person who dies without leaving a valid will.

Living Trust. A trust created by a person during his or her lifetime.

Marital Deduction (Gift): Allows married persons to make lifetime gifts to each other in unlimited amounts and claim
a marital deduction incurring no gift tax.

Marital Deduction (Estate): The unlimited deduction allowed under federal estate tax law for all qualifying property passing from the estate of the deceased spouse to the surviving spouse. The value of the property passing to the surviving spouse under the marital deduction is "deducted" from the deceased spouse's estate before federal estate taxes are calculated on the estate. Proper planning and use of the deduction allows more property to pass estate tax free to the family.

Marital Deduction Trust. The trust which "receives" the property passed under the marital deduction laws, from the deceased spouse's estate to the surviving spouse. Property in the marital deduction trust will be included as part of the surviving spouse's estate (for estate tax purposes) when he or she dies. The “A” trust of the A/B trust description.

Net Value. The value of an estate after all debts and administration expenses have been paid. (Federal estate taxes are based on the net value of an estate.)

Net Taxable Estate. The value of an estate upon which the federal estate tax is levied. The net taxable estate or "net value" is the total or "gross value" of the estate less liabilities, expenses and other deductions allowed by the tax laws.

Personal Representative. Another name for an executor or administrator.

Power of appointment. A right given to a person to dispose of property which he does not fully own. A power of appointment may be general or special. Under a general power the donee may exercise the right as he sees fit. A special power limits the donee as to those in favor of whom he may exercise the power of appointment. A wife who is given the power to appoint among her children has a special power of appointment.

Power of Attorney. A legal document that gives someone else full legal authority to sign on your behalf in your absence (different from the fiduciary duty of a trustee). Ends at your disability or death. Some states permit a durable power of attorney that is valid through disability and ends at death. Limited powers of attorney give someone else only limited authority for a very specific purpose.

Preliminary executor. Any person to whom preliminary letters testamentary have been issued before the will is admitted to probate.

Probate of will. Presentation of proof before the proper officer or court that the instrument offered is the last will of the decedent.

Qualified domestic relations order ("QDRO"). An order, issued by court in a divorce, legal separation, or separate maintenance proceeding, which relates to child support, alimony or the division of marital property. In general, a qualified domestic relations order is required for the assignment of an employee's benefits under either a qualified or non-qualified retirement plan in a divorce to be valid. [I assume you are entirely correct—but I don't know this myself]

Qualified terminable interest property ("QTIP") trust: A Qualified Terminable Interest Trust (Q-Tip) is a type of trust under a will that provides an unlimited marital deduction for qualified property placed into the trust. However, rather than permitting the surviving spouse to have full power to distribute the property to anyone he or she wishes, the trust restricts the ability of the surviving spouse to distribute the property in the trust to a select group of individuals, such as the children, as agreed when both spouses were alive. Without the new QTIP laws, any attempt to "tie down" the property and restrict the surviving spouse's rights to transfer the trust property would have resulted in the property not qualifying for the marital deduction tax benefit.

Residuary clause. The provision in the Will or trust agreement that disposes of all of the decedent's property remaining after the payment of all taxes, debts, expenses, and charges and the satisfaction of all other gifts in the Will or trust agreement

Revocable Trust. 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 right of a surviving husband or wife, under New York law, to take a share of the estate in preference to the provision made in the deceased person's will. In other words, New York prohibits a spouse from disinheriting a spouse, unless there is an agreement to the contrary. The relevant statute entitles the disinherited spouse to one-third of the estate, including testamentary substitutes such as joint accounts with right of survivorship.

Split Gift. The right of a gift made entirely by one spouse to attribute ½ of that gift to the other spouse. If a married couple tries to give more than the annual exclusion amount to an individual, they must file a gift tax form declaring that the gift is split between them. If the form is not filed, the IRS cannot determine who gave the gift or gifts, and one member of the couple may be allocated the entire gift amount. Thus, he or she might actually owe a gift tax because his or her gift was over the annual exclusion amount.

Sprinkle or Sprinkling Power. The power given a trustee to decide how, when and why to distribute trust income to the trust's different beneficiaries. The sprinkling power allows the trustee to "sprinkle" the trust's income over the beneficiaries. It is a valuable power to give the trustee in irrevocable trusts because is allows the trustee to distribute income to the beneficiaries who will pay the smallest amount of income tax on the distribution.

Taxable Distribution. In the context of the GST Tax, a taxable distribution occurs prior to termination of the trust by a distribution to a skip person.

Taxable Termination. In the context of the GST Tax, a taxable termination arises when a trust terminates by it terms and the remainder is to be paid out to the remainder beneficiaries.

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.

Tenancy-by-the-Entirety. Ownership must involve a husband and wife. Termination of the account requires joint action by both spouses (i.e., divorce), by contrast with joint tenancy.

Testator. One who creates a will.

Testamentary Trust: A trust, set up in a will, which does not become effective until the death of the testator and the admission of the will to probate.

Totten Trust. A form of bank account that passes by operation of law at the death of the depositor. Commonly regarded as a technique to pass property without probate.

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

Right of Election: The surviving spouse’s right to a share of the deceased spouse’s estate, as “estate” is defined by statute.

Unified Tax Credit: A tax credit is given to each person by the IRS to be used during his or her life or after his or her death. The tax credit equals the amount of tax (gift or estate) which is assessed on the exemption equivalent value of property. It is considered the "unified" credit because it applies to both gift taxes and estate taxes and results from the IRS's effort to unify these two taxes or make them consistent. See also **Applicable Credit Amount**.

Uniform Gift to Minors Act, or Uniform Transfers to Minors Act. A series of state statutes that provides a method for transferring property by gift to minors who cannot legally manage the property for themselves. The laws allow an adult to manage the property and yet not have it owned by the adult.

Unlimited Marital Deduction. The tax law that allows a person to give an unlimited value of property as a gift, or leave an estate of unlimited value to his or her spouse without a gift or estate tax being assessed.

Will. A written instrument as prescribed by law to take effect upon death whereby a person disposes of his or her property.