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FARMERS' LEGAL
ACTION GROUP,
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Glossary of Estate Planning Terms

© 2006 Farmers' Legal Action Group, Inc.
360 North Robert Street, Suite 500
St. Paul, MN 55101-1109
Phone: 651-223-5400

Farmers in Minnesota call toll free: 1-877-860-4349

Fax: 651-223-5335

E-mail: lawyers@flaginc.org

Web site: www.flaginc.org

Asset. Anything a person owns that has value.

Beneficiary. A person designated to receive the income or proceeds from an insurance policy, annuity, or retirement plan; to take assets under a will; or to receive benefits from a trust.

Claims. A decedent's creditors may file claims against the decedent's estate to collect on any remaining debts of the decedent. Typically, creditors collect on debts out of an estate before any remaining assets are distributed to the intended heirs or beneficiaries.

Codicil. A written amendment to an existing will. Depending on the applicable state laws, certain formalities may be required for a codicil to be valid. Typically, the terms of an existing will that are not changed by the codicil will remain in effect.

Decedent. The person who has died.

Estate. All the assets left by the decedent. The "probate estate" includes all of the estate assets that fall within the jurisdiction of a given probate court.

Estate Planning. The process by which a person plans for transferring his or her assets at death.

Executor. (Also called "personal representative.") A person appointed in a will to collect the estate assets, pay the decedent's outstanding debts and taxes, and ultimately distribute the assets of the estate to the beneficiaries. If there is no will, or the will does not name an executor, a probate court may appoint an "administrator" to perform this function.

Gift deed. (Also called "deed of gift" or "gift conveyance.") A mechanism used to give property during the giver's life to another person for little or no compensation.

Heir. A person entitled to inherit all or a portion of the estate of a person who has died without a will. Technically, beneficiaries are different from heirs. Heirs are people who could, or do, inherit assets from a decedent under the laws of intestacy. Beneficiaries take assets pursuant to a will.

Intestacy. The distribution of estate assets when the person dies without a will. In intestacy, a court with jurisdiction over property in the estate distributes a deceased person's assets by applying a single, one-size-fits-all formula. This is done according to the jurisdiction's law of intestacy or probate code. A person who dies without a will is said to be "intestate."

Joint tenancy with right of survivorship. A special form of co-ownership of property. In a joint tenancy with right of survivorship, co-owners share undivided, fractional interests in the whole property. As each co-tenant dies, his or her interest passes automatically to the surviving co-tenants. The last surviving joint tenant will own the entire interest in the land individually, and at that joint tenant's death, the property will be distributed pursuant to his or her estate plan. A co-owner's interest in a joint tenancy with right of survivorship is non-probate property.

Jurisdiction. The power or authority of a court to hear and decide a particular matter. Jurisdiction can be limited by geographic area or by the type of case being heard. For example, there may be a special probate court that has jurisdiction over specific probate matters only.

Life estate. A limited property interest that lasts only as long as the natural life of its owner. A person possessing a life estate has the right to use, occupy, or collect revenue from the property for the duration of his or her life. When the holder of the life estate dies, a full remaining ownership interest in the property transfers automatically to another designated person, called the "remainderman." For example, an estate plan may give a life estate in trust assets to a spouse, and provide that when the spouse dies, full title to the assets should pass to the children.

Non-probate property. Probate affects some, but not necessarily all, of a person's assets. Non-probate property includes things like annuities, life insurance policies, and payable-on-death (POD) bank accounts that are paid directly to a beneficiary other than the deceased person's estate. This non-probate property is said to transfer automatically at death, and therefore is not part of the decedent's estate that needs to be administered.

Power of attorney. A legal document that authorizes a person to act on another's behalf for specific purposes and under specific conditions.

Probate. The entire process of administering and distributing a deceased person's estate, whether by will or intestacy. Probate is typically supervised by a court and may include a determination of the validity of a will. Probate includes finding and collecting all of the decedent's assets, paying all of the decedent's outstanding debts and other obligations, and distributing the remaining estate assets to the decedent's heirs or beneficiaries.

Probate code. A package of laws that governs the entire process of settling a decedent's estate, whether intestate or testate.

Real property. Includes land and anything permanently erected on or attached to the land, such as a house or other building. Real property means the same thing as "real estate."

Tenants in common. In a tenancy in common, co-owners share undivided, fractional interests in property. Each co-owner has an individual, partial interest in the whole property. Their interests are undivided, which means no owner has a specific area or section of the property; instead, all co-owners must collectively share in ownership of the whole. Individual interests in jointly held tenancy-in-common property are subject to probate and do not pass automatically to anyone without additional legal steps.

Testate. Dying with a will. A person who makes or has made a will is a “testator.”

Trust. Generally, a trust is a legal mechanism in which property is held by one person or entity (the “trustee”) for the benefit of another person (the “beneficiary”) pursuant to the terms of a written trust agreement. There are many different kinds of trusts.

Will. A legally executed document that explains how a person wants his or her property distributed after death. This type of distribution in a will is called a “devise.” Rules for determining the validity of a will vary by jurisdiction.

