

## **A**

### **ABATE**

To put an end to; nullify.

### **ABATEMENT**

Cutting back certain gifts under a will when necessary to create a fund to meet expenses, pay taxes, satisfy debts, or to have enough to take care of other bequests that are given priority under law or under the will.

### **ABSTRACT OF JUDGMENT**

A written summary of a judgment which states how much money the losing party (judgment debtor) owes to the person who won a monetary award (judgment creditor). The abstract is issued by the court so that it can be recorded at the county recorder. The purpose of an abstract of judgment is to create a lien or claim on any real estate owned or later acquired by the debtor located in the county in which the abstract of judgment is recorded.

### **ACCOUNTING**

An act or system of making up or settling accounts; a statement of account, or a debit and credit in financial transactions.

### **ADEMPTION**

The failure of a specific bequest of property because the property is no longer owned by the testator at the time of his death.

### **AD LITEM**

For the suit; for purposes of the suit; pending the suit. (See *guardian ad litem*.)

### **ADMINISTRATOR**

A person (sometimes a family member) appointed by the court to administer the estate of a person who died without a will (i.e., a Personal Representative). (See also, *general administrator, public administrator, and special administrator*.)

### **ADMINISTRATOR WITH WILL**

### **ANNEXED**

A person appointed by the court to administer the estate of a person who died with a will, but the will either fails to nominate an executor or the named executor is unable to serve.

### **ADVERSE POSSESSION**

The actual, open, and notorious possession of real property, for a continued period of time, held adversely and in denial and in opposition to the title of any other claimant.

### **AFFIANT**

One who makes oath to a statement.

### **AFFIDAVIT**

A written statement made under oath.

### **AGE OF MAJORITY**

The age when a person acquires all the rights and responsibilities of being an adult. In California, as in most states, the age is 18.

### **AMENDED**

To add to or change a document that has been filed in court by replacing it in its entirety with a new version. In Probate, an Amended Petition will be given a new hearing date.

### **AMENDMENT**

To add to or change a portion of a document that has been filed in court. In Probate, an Amendment to a Petition will not be given a new hearing date.

## **ANCILLARY ADMINISTRATION**

Administration in a state other than the decedent's domicile, when there is also a known administration at the place of domicile.

## **ANNUITANT**

Beneficiary of annuity.

## **APPEARANCE**

The formal act of presenting oneself physically to the jurisdiction of a court; a document identifying representing counsel.

## **ASSETS**

All property other than income that is part of an estate.

## **ATTESTATION**

The act of witnessing the signing of a document by another, and the signing of the document as a witness. Thus, a will requires both the signature by the person making the will and attestation by at least two witnesses.

## **ATTESTATION CLAUSE**

The clause generally at the end of an instrument wherein the witnesses certify that the instrument has been executed before them, and the manner of the execution of same. A certificate certifying as to the facts and circumstances attending execution of a will.

## **ATTORNEY-IN-FACT**

The individual who is designated in the power of attorney document to act on behalf of another.

# **B**

## **BENEFICIARY**

An individual or organization to which a gift of property is made. Person (or organization) receiving benefits under a legal instrument such as a will, trust, or life insurance policy. Except when very small estates are involved, beneficiaries of wills only receive their benefits after the will is examined and approved by the probate court. Beneficiaries of trusts receive their benefits directly as provided in the trust instrument.

## **BEQUEATH**

The first-person legal term used to leave someone personal property in the will, e.g., "I bequeath my antique car to my brother Jody."

## **BEQUEST**

The legal term used to describe personal property left in a will.

## **BLOCKED ACCOUNTS**

Cash or securities that are placed in a bank, trust company, insured savings and loan or insured brokerage account, subject to withdrawal only upon court order or statute.

## **BOND**

A document guaranteeing that a certain amount of money will be paid to the victim if a person occupying a position of trust does not carry out his legal and ethical responsibilities. If an executor, trustee or guardian who is bonded wrongfully deprives a beneficiary of his/her property, the bonding company will replace it, up the limits of the bond.

## **BRIEF**

A written document that outlines a party's legal arguments in a case.

## **BYPASS TRUST**

A trust into which just enough of a decedent's estate passes, so that the estate can take advantage of the unified credit against federal estate taxes. Also known as credit-shelter trust, A-B trust, or marital life estate trust.

## **C**

### **CAPACITY**

Mental ability to make a rational decision, which includes the ability to perceive and appreciate all relevant facts. Capacity is not necessarily synonymous with sanity. Legal capacity is the attribute of a person who can acquire new rights, or transfer rights, or assume duties according to the mere dictates of his/her own will, as manifested in acts, without any restraint or hindrance arising from his/her status or legal condition.

### **CASE MANAGEMENT CONFERENCE**

A Case Management Conference (CMC) is a hearing between the judge and the parties. A CMC usually happens before a trial is scheduled. Witnesses do not need to attend and evidence is not presented. The main purpose of the hearing is to see if parties are willing to attempt to settle some or all of the issues in dispute before going to trial. If settlement is not likely and parties are unwilling to participate in mediation or a settlement conference, then a Trial Readiness Conference (TRC) and a Trial date may be set. Additionally, Discovery and Motion cut-off dates are generally given to the parties at the CMC.

### **CERTIFIED COPY**

An official copy of a particular document from a case file that is notated as a true, complete, and authentic representation of the original document.

### **CHANGE OF VENUE**

The transfer of a case from one judicial district to another.

### **CHATTEL**

Any tangible, moveable thing, personal as opposed to real property.

### **CITATION**

A court-issued writ that commands a person to appear at a certain time and place to do something demanded in the writ, or to show cause for not doing so. An order or summons notifying a proposed conservatee of the petition being made, and or commanding the person to appear in court.

### **CODICIL**

An amendment or supplement to an existing will. When admitted to probate, it forms a part of the will.

### **COMMISSIONER**

A person appointed by the court who is given the power to hear and make decisions concerning certain limited legal matters; e.g., traffic commissioner, small claims commissioner.

### **COMMUNITY PROPERTY**

Property acquired by a couple during their marriage except by gift or inheritance.

### **CONFIDENTIAL RECORD**

Any information introduced into a court proceeding that is not available to the general public.

### **CONFLICT OF INTEREST**

Refers to a situation when someone, such as a lawyer or public official, has competing professional or personal obligations or personal or financial interests that would make it difficult to fulfill his/her duties fairly.

**CONSENT FOR MEDICAL TREATMENT**

Power held by conservator of the person only if expressly granted by the court, after noticed motion and consideration of physician's declaration.

**CONSERVATEE**

A person determined by the court to be unable to protect and manage their own personal care or financial affairs, or both. And, for whom the court has appointed a conservator.

**CONSERVATOR**

A person or organization appointed by the court to protect and manage the personal care or financial affairs, or both, of a Conservatee. (See *LPS conservatorship*.)

**CONSERVATORSHIP**

A court proceeding to appoint a manager for the financial affairs or the personal care of one who is either physically or mentally unable to handle either or both.

**CONSERVATORSHIP ESTATE**

The conservatee's income and assets.

**CONTEMPT OF COURT**

An act or omission that obstructs the orderly administration of justice or impairs the dignity, respect or authority of the court. May be demonstrated by behavior which shows intentional disregard of or disobedience of a court order both of which may be punishable by fine or imprisonment.

**CONTESTANT**

A person who contests the eligibility of a will to be admitted to probate.

**CONTESTED**

To defend against an adverse claim made in a court by a plaintiff, petitioner or a prosecutor; to challenge a

position asserted in a judicial proceeding, as to contest the probate of a will.

**CONTINGENT BENEFICIARY**

Any person entitled to property under a will in the event one or more prior conditions are satisfied.

**COOGAN LAW**

In January 1, 2000, changes in California law affirmed that earnings by minors in the entertainment industry are the property of the minor, not their parents. Since a minor cannot legally control their own money, California Law governs their earnings and creates a fiduciary relationship between the parent and the child. This change in California law also requires that 15% of all minors' earnings must be set aside in a blocked trust account commonly known as a Coogan Account.

**COSTS**

An award of money for expenses in a civil suit or reimbursement for expenses in a probate matter.

**COURT INVESTIGATOR**

Conducts field investigations and assessments with individuals applying for a guardianship of the estate or conservatorship of the person and/or estate. The investigator interviews involved parties, relatives, attorneys, medical and psychiatric staff, various government agencies, and other concerned parties. The investigator obtains statements, affidavits, and other evidence to prepare detailed reports and make recommendations regarding the suitability of proposed guardian/conservator for judicial review as required under the Probate Code.

**CREDITOR**

A person (or institution) to whom money is owed.

**CREDITOR'S CLAIM**

A document wherein a creditor demands payment for debt owed by the decedent.

**D**

**DECEDENT**

A person who has died.

**DECISION**

The judgment rendered by a court after consideration of the facts and legal issues before it.

**DECLARATION**

A written statement that is unsworn but made under penalty of perjury. All declarations must be dated and signed by the declarant and must show the place of execution and name the state wherein the document was executed or otherwise, that the declaration is made under the laws of the state of California.

**DECREE**

A court order.

**DEED**

A written legal document that describes a piece of property and outlines its boundaries. The seller of a property transfers ownership by delivering the deed to the buyer in exchange for an agreed upon sum of money.

**DEMURRER**

A written response to a lawsuit which, in effect, pleads for dismissal on the point that even if the facts alleged were true, there is no legal basis for a lawsuit. Some causes of action may be defeated by a demurrer while others may survive. Some demurrers contend that the pleading is unclear or omits an essential element of fact. If the judge

finds these errors, he/she will usually sustain the demurrer (state it is valid), but "with leave to amend" in order to allow changes to make the original pleading good.

**DEPENDENT**

In family law, refers to a person who is financially supported by another person, usually the parent. In juvenile law, refers to a minor who is in the custody of the court because he or she has been abused, neglected, or molested.

**DEVELOPMENTAL DISABILITY**

Developmental disability is a mental disability that begins before an individual attains age 18, that continues indefinitely, and that is substantially handicapping. Developmental disabilities include, but are not limited to, intellectual disability (fka mental retardation), cerebral palsy and autism. Handicapping conditions that are solely physical, however, are not developmental disabilities. See "limited conservatorship".

**DEVISE**

A legal term that now means any real or personal property that is transferred under the terms of a will. Previously, the term only referred to real property.

**DEVISEE**

A person or entity who receives real or personal property under the terms of a will.

**DIRECTIVE TO PHYSICIAN**

A document which authorized termination of life support under specified conditions. California's variation of a Living Will.

**DISBURSEMENTS**

The act of paying out money, commonly from a fund or in settlement of a debt or account payable.

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*Disclaimer: The intent of this glossary is to provide the layperson with a general understanding of terms commonly used in Probate Law. The definitions within this document are not comprehensive and are not intended to serve as a substitute for independent research of the law.*

## **DISCHARGE**

The term used to describe the court order releasing the administrator or executor from any further duties regarding the estate being subjected to probate proceedings. This typically occurs when the duties have been completed but can also happen in the middle of the probate proceeding when the executor or administrator wishes to withdraw or is removed.

## **DISCLAIMER**

The repudiation or renunciation of a claim or power vested in a person or which he/she formerly alleged to have. The disavowal, denial, or renunciation of an interest, right, or property imputed to a person or alleged to be his/hers.

## **DISTRIBUTE**

Someone who receives property from an estate.

## **DONEE**

One who receives a gift. Thus, the beneficiary of a trust is generally referred to as the “donee.”

## **DONOR**

One who, while alive, gives property to another, in the form of a trust.

## **DURABLE POWER OF ATTORNEY**

A written legal document that lets an individual designate another person to act on his or her behalf, even in the event the individual becomes disabled or incapacitated.

## **DURABLE POWER OF ATTORNEY FOR HEALTHCARE**

A written legal document that allows an individual to designate another person to act on his or her behalf with regard to their healthcare decisions.

# **E**

## **ELECTIVE SHARE**

Refers to probate laws that allow a spouse to take a certain portion of an estate when the other spouse dies, regardless of what was written in the spouse’s will.

## **ELISOR**

When one of the parties is unable or refuses to sign documents necessary to execute a court order, the court may appoint the Clerk of the Superior Court or an authorized representative to act as an elisor to sign the documents.

## **ENCUMBRANCE**

Any claim or restriction on a property’s title, a debt.

## **EQUITY**

The difference between the fair market value of your real and personal property and the amount you still owe on it, if any.

## **ERRATA**

Errata refers to errors in printing or writing, such as misspellings, omissions, and other typographical errors. It is a means used to merely correct inadvertent errors, not to make substantive changes.

## **ESCHEAT**

A legal doctrine under which property belonging to a deceased person with no heirs passes to the state.

## **ESCROW**

Money or documents, such as a deed or title, held by a third party until the conditions of an agreement are met. For instance, pending the completion of a real estate transaction, the deed to the property will be held “in escrow.”

## **ESTATE**

A person's total possessions (assets), including money, jewelry, securities, land, etc. These assets are managed by a fiduciary subject to a court order (e.g., guardianship estate, conservatorship estate, or decedent's estate).

## **EXECUTOR**

The person named in a will to carry out the directions as set forth in the will. This person is the personal representative of the decedent's estate.

## **EXEMPLIFICATION**

A formal type of certification in which the Clerk of the Court signs the certification of the document or record. The Presiding Judge then signs attesting to the fact of the identity of the Clerk of the Court, and that the signature is authentic. Finally, a Clerk of the Court signs again, this time attesting to the fact that the judge is a judge of that county's superior court, and that his/her signature is authentic.

## **EXHIBIT**

Any physical object introduced and identified in court and received by the judge as evidence in a case.

## **EX PARTE**

Latin that means "*by or for one party.*" Refers to situations in which only one party (and not the adversary) appears before a judge.

## **EXPENSES OF ADMINISTRATION**

The expenses incurred by an executor or administrator in carrying out the terms of a will or in administering an estate. These include probate court fees, fees charged by an executor or administrator, attorney's fees, accountant fees, and appraiser's fees.

## **F**

### **FAIR MARKET VALUE**

That price for which an item of property would be purchased by a willing buyer, and sold by a willing seller, both knowing all the facts and neither being under any compulsion to buy or sell.

### **FIDUCIARY**

A person or organization that manages property for a person, with a legal responsibility involving a high standard of care (e.g., conservators, guardians, personal representatives, agents, or trustees).

### **FIDUCIARY DUTY**

An obligation to act in the best interest of another party. For instance, a corporation's board member has a fiduciary duty to the shareholders, a trustee has a fiduciary duty to the trust's beneficiaries, and an attorney has a fiduciary duty to a client.

### **FINDING**

A determination of fact by a judicial officer or jury.

## **G**

### **GENERAL ADMINISTRATOR**

One who is appointed to generally administer the entire estate.

### **GRANTOR**

The person who transfers assets into a trust for the benefit of another. (Also known as a *trustor*.)

### **GUARDIAN**

A person appointed by the court to protect and manage the personal care or financial affairs, or both, of a minor (ward).

## **GUARDIAN AD LITEM**

Latin for “*guardian at law.*” A person appointed by a court to represent the interests of an incapacitated, mentally handicapped, or minor person in a court case.

## **GUARDIANSHIP**

The office, duty, or authority of a guardian. Also, the relation subsisting between guardian and ward.

# **H**

## **HEIR**

A person who would naturally inherit property through a will, or from another who died without leaving a will.

## **HOLOGRAPHIC WILL**

Generally, a will that is completely handwritten, dated and signed by the person making the will.

# **I**

## **IN FORMA PAUPERIS**

From the Latin: “*in the way of a pauper.*” The official waiver of court costs due to the insolvency of a filer

## **IN PROPRIA PERSONA (IN PRO PER)**

From the Latin: “*in one’s own proper person.*” A case heard in which a party represents himself or herself without benefit of any attorney; same as “*in pro per.*” A person who represents himself or herself in a court alone without the help of a lawyer is said to appear in pro per.

## **INCAPACITY**

The lack of ability to act on one’s own behalf.

## **INHERITANCE TAX**

California law no longer has a state inheritance tax as such. But if federal estate tax is owed, some of the amount is paid to the state and allowed as a credit on the amount of federal tax owed.

## **INTERLINEATION**

The act of writing between the lines of an instrument.

## **INTER VIVOS TRUST**

A trust set up during the lifetime of a person to distribute money or property to another person or organization (as distinguished from a person who transfers money or property after death).

## **INTESTATE**

Without a will. Opposite of *testate.*

## **INVENTORY AND APPRAISAL**

A list of all assets in the estate at the beginning of the guardianship, conservatorship, or at the decedent’s death. Cash items are valued by the fiduciary; the probate referee values all other items at their fair market value.

## **IRREVOCABLE LIVING TRUST**

A trust created during the maker’s lifetime that does not allow the maker or anyone else to change it.

## **ISSUE**

A term generally meaning all natural children and their children down through the generations. Adopted children are considered the issue of their adoptive parents and the children of the adopted children (and so on) are also considered issue. A term often used in place of issue is “*lineal descendants.*”

## **J**

### **JOINDER**

A legal term that refers to the process of joining two or more legal issues together to be heard in one hearing or trial. It is done when the issues or parties involved overlap sufficiently to make the process more efficient or fairer. It helps courts avoid hearing the same facts multiple times or seeing the same parties return to court separately for each of their legal disputes.

### **JOINT TENANCY WITH RIGHT OF SURVIVORSHIP**

Property that names a co-owner on its deed or title. At the death of one of the co-owners, the other will become the sole owner of the property, regardless of what may be conveyed in the will.

### **JUDGMENT**

A court's official decision on the matters before it.

### **JUDICIAL COUNCIL**

The Judicial Council of California is the constitutionally mandated body responsible for improving the administration of justice in the state. The council is made up of judges, court executives, attorneys, and legislators. It was established to standardize court administration, practice, and procedure by adopting and enforcing court rules.

### **JUDICIAL COUNCIL FORMS**

The Judicial Council of California has created many forms (called "Judicial Council forms") to standardize the preparation of court documents. People involved in lawsuits (also called "litigants") **must** use Judicial Council forms that are labeled "mandatory" and **may** use forms that are labeled "optional."

### **JUDICIAL OFFICER**

An official of the judicial branch of government with authority to decide matters brought before the court. The term "judge" may also refer to all judicial officers, including Supreme Court justices.

### **JURISDICTION**

A court's authority to rule on the questions of law at issue in a dispute, typically determined by geographic location and type of case.

## **K**

### **KINDRED**

All persons described as relatives of the decedent under the California Probate Code.

## **L**

### **LAPSE**

The failure of a gift of property left in a will because when the testator dies the beneficiary is deceased and no alternate has been named. California has a statute (termed an "*anti-lapse*" statute), which prevents gifts to relatives from lapsing unless the relative has no heirs of his or her own.

### **LEGACY**

An old legal word meaning a transfer of personal property by will. The more common term for this type of transfer is bequest or devise.

### **LEGATEE**

Also known as beneficiary. Person named in a will to receive property.

## **LETTERS**

The court document that establishes the authority to act as a guardian, conservator, or personal representative (executor or administrator). In decedent's estates, an executor's letters are designated "*letters testamentary*," and an administrator's letters are "*letters of administration*."

## **LIFE ESTATE**

The type of ownership a person possesses in real estate when he/she has only the right of possession for his/her life, and the ownership passes to someone else after his/her death.

## **LIMITED CONSERVATORSHIP**

A type of conservatorship for developmentally-disabled adults.

## **LIVING TRUST**

A trust set up while a person is alive and which remains under the control of that person during the remainder of her life. Also referred to as "*inter vivos trusts*."

## **LIVING WILL**

Also known as a medical directive or advance directive. A written document that states a person's wishes regarding life-support or other medical treatment in certain circumstances, usually when death is imminent.

## **LODGMET**

A lodgment is a means of submitting documents to the court temporarily. Generally this practice is reserved for a large number of exhibits that have either been deemed too large for the court's file or are needed on a limited basis. Another example of when documents should be lodged rather than filed is in the instance of original documents, such as bank statements, that are

submitted in support of a one-time hearing, such as an Accounting.

## **LPS CONSERVATORSHIP**

A specific type of conservatorship, under the Lanterman-Petris-Short (LPS) Act, which allows for involuntary detention and treatment of a person (the conservatee). This conservatorship is a result of mental disorder and the conservatee appears to be a danger to himself/herself or others, or is gravely disabled. (See *conservator* and *conservatee*.)

# **M**

## **MARITAL DEDUCTION**

A deduction allowing for the unlimited transfer of any or all property from one spouse to the other generally free of estate and gift tax.

## **MINOR**

A person under the age of 18. A minor is usually defined as someone who has not yet reached the age of majority. The term does not apply to an emancipated youth. As used in the context of a guardianship, a person under the age of 18 years of age who is placed in the care of a court-appointed guardian.

## **MOTION**

A motion is a formal request made to a judge for an order or judgment. Motions can be filed for many purposes, such as: to continue a trial to a later date, to get modification or clarification of an existing order, for a judgment, for discovery issues, for a rehearing or reconsideration, for sanctions, or for many other purposes. Most motions require the underlying motion to be made in pleading, and a brief of legal reasons for granting the motion (often called "points and authorities"), written notice to the opposing party and a hearing before a judge.

## **MOTION IN LIMINE**

A motion made before a trial begins asking the court to decide whether particular evidence will be admissible. A motion in limine is most often made to exclude evidence by a party who believes that evidence would prejudice the jury or judge against him or her. For example, a defendant in a criminal trial might make a motion in limine to exclude evidence of previous crimes.

## **N**

### **NET ESTATE**

The value of all property owned at death less liabilities.

### **NEXT OF KIN**

The closest living relatives of a decedent, under the California law governing intestate succession.

### **NOTICE**

Information given to a person or entity of some act done, or about to be done.

### **NUNC PRO TUNC**

From the Latin: “*now for then*”, used when an order is issued on one date but is effective retroactively.

### **NUNCUPATIVE**

Oral, not written, form of will – not valid in California.

## **O**

### **ORDER TO SHOW CAUSE**

Court order commanding a person to appear in court at a specific date and time, and to show cause to the court’s satisfaction why he or she should not be compelled to perform a certain act (or cease a certain act).

## **P**

### **PECUNIARY**

Monetary; relating to money; financial; consisting of money or that which can be valued as money.

### **PER STIRPES**

By right of representation; made of distribution in which the issue of a deceased devisee collectively take only the share which their parent would have taken if living.

### **PERSONAL EFFECTS**

Belongings of a personal nature, such as clothes and jewelry.

### **PERSONAL PROPERTY**

All items, both tangible and intangible, that are not real property. Anything owned by a person that can be moved such as money, securities, jewelry, etc. (As opposed to real property e.g. house, land, crops, cabin, etc.)

### **PERSONAL REPRESENTATIVE**

The generic title applied to the person who is authorized to act on behalf of the decedent’s estate. Almost always, this person is either an administrator or executor appointed by the court to administer a decedent’s estate.

### **PETITION**

A written, formal request, properly filed with the court, for a specific action or order. The petition is a pre-printed court form in some cases, or written in proper format on pleading paper in others (e.g., petition for probate, petition for conservatorship, etc).

### **PETITIONER**

One who presents a petition to a court. The person who opposes the prayer of the petition is called the “*respondent*.”

## **PLEADINGS**

In a civil case, the allegations by each party of their claims and defenses.

## **POINTS AND AUTHORITIES**

Also referred to as “*P’s and A’s*.” Points and authorities refer to the written legal argument given to support a request for a motion. It includes references to past cases, statutes, and other statements of law to give added emphasis to the legality of the motion being requested.

## **POWER OF ATTORNEY**

A written legal document that gives an individual the authority to act for another.

## **PRAYER**

That portion of a petition or complaint that sets forth the requested relief or damages to which the petitioner or plaintiff deems himself/herself entitled.

## **PREDECEASED SPOUSE**

The term applied to a spouse who has died before the decedent while married to him or her.

## **PRETERMITTED HEIR**

A child or spouse who, under certain circumstances, is not mentioned in the will and who the court believes was accidentally overlooked by the testator when making his/her will. If the court determines that an heir was pretermitted, that heir is entitled to receive the same share of the estate as he/she would have had the testator died intestate.

## **PROBATE**

The judicial process in which an instrument purporting to be the will of a deceased person is proven to be genuine or not; lawful distribution of the decedent’s estate. The legal process of administering a will. Also, the judicially supervised process for marshaling a decedent’s assets, paying proper debts, and distributing the remaining assets to the persons or entities entitled to them. An estate may be probated even if there is no will.

## **PROBATE ESTATE**

All the assets owned at death that require some form of legal proceeding before title may be transferred to the proper heirs. Property that passes automatically at death (property in trust, life insurance proceeds, property in a “*pay-on-death*” account or property held in joint tenancy) is not in the probate estate.

## **PROBATE EXAMINER**

The Probate Examiner examines files and documents in pending probate matters set for hearing, providing technical, procedural and legal review to ensure that matters before the court have proper notice and complete documents for a court ruling. The Examiner’s work-product is then posted prior to the hearing date for the parties to review and correct deficiencies (or defects) prior to the hearing.

## **PROBATE REFEREE**

An official appointed by the California State Controller to value all property (except for cash type items) in probate, small estate petitions, conservatorship, and guardianship matters filed with the court. Probate Referees also assist trustees in valuing assets in non-probate matters.

## **PROOF OF SERVICE**

The form filed with the court that proves the date on which documents were formally served on a party in a court action.

**PRO TEMPORE**

From the Latin: “for the time being” or “temporarily;” a referee or commissioner sitting temporarily and provisionally for a judge; same as *pro tem*.

**PUBLIC ADMINISTRATOR**

A publicly appointed person who handles the administration of an estate when no other person has been appointed as executor or administrator.

**PUBLIC GUARDIAN (PUBLIC CONSERVATOR)**

An appointed or elected county officer (and staff) authorized by law to serve as guardian or conservator.

**PUBLIC RECORD**

A court record available for inspection by the general public. (Compare *confidential record, sealed record*.)

**R**

**REAL PROPERTY**

Land and all the things that are attached to it. Anything that is not real property is personal property and personal property is anything that isn’t nailed down, dug into or built onto the land. A house is real property, but a dining room set is not.

**RECEIPTS**

All cash or other assets of the estate received by the fiduciary, other than those listed on the inventory and appraisal. Receipts must be reported to the court on a schedule in the periodic accounting.

**REGIONAL CENTER**

Private, nonprofit agencies that contract with the state to provide services to persons with developmental disabilities, including assessment, individual program planning, case management, purchase of services, and

advocacy. There are 21 regional centers throughout the state.

**RESIDUARY ESTATE**

Also known as residue of the estate. Portion of the estate left after bequests of specific items of property are made. Often the largest portion.

**RESIDUARY LEGATEE**

The person or persons named in a will to receive any residue left in an estate after the bequests of specific items are made.

**RESPONDENT**

The person against whom an appeal is made; the responding party in a dissolution, nullity, adoption, or probate matter.

**REVOCABLE LIVING TRUST**

A trust created during the maker’s lifetime that can be changed. Allows the creator to pass assets on to choose beneficiaries without going through probate.

**RIGHT OF SURVIVORSHIP**

In a “joint-tenancy” or “community property with right of survivorship,” the property automatically goes to the co-owner if the other co-owners dies.

**S**

**SEALED RECORD**

A record closed by a court to further inspection by anyone unless further ordered by the court (compare *confidential record, public record*).

**SELF-PROVING WILL**

A will accompanied by a sworn statement signed by the witnesses under penalty of perjury. Many states accept such wills in order to avoid the cumbersome process of requiring an executor to track down the witnesses.

### **SPECIAL ADMINISTRATOR**

A person appointed to be responsible for a deceased person's property for a limited time or during an emergency, such as a challenge to the will or to the qualifications of the named executor. In such cases, the special administrator's duty is to maintain and preserve the estate, not necessarily to take control of the probate process.

### **SPECIAL IMMIGRANT JUVENILE STATUS**

In 1990, Congress enacted federal law to assist certain undocumented children in obtaining lawful permanent residence through a special immigrant visa category known as Special Immigrant Juvenile Status (SIJS). This law helps certain undocumented children in the state juvenile system to become Lawful Permanent Residents. Children involved in adoption or guardianship proceedings who have been abandoned, abused or neglected may be able to obtain Special Immigrant Juvenile Status and, based on that, apply to become a Lawful Permanent Resident.

### **SPECIAL NEEDS TRUST**

A Special Needs Trust enables a person under a physical or mental disability, or an individual with a chronic or acquired illness, to have, held in Trust for his or her benefit, an unlimited amount of assets. In a properly-drafted Special Needs Trust, those assets are not considered for purposes of qualification for certain governmental benefits.

### **SPECIFIC BEQUEST**

A specific item, distinguished from all others of the same kind belonging to the testator that is designated in the will as going to a specific beneficiary. If the specific item is no longer in the estate when the decedent dies, the bequest fails and resort cannot be made to other property of the decedent.

### **SPENDTHRIFT TRUST**

A trust designed to keep money out of the hands of creditors. Often established to protect someone who is incapable of managing his or her financial affairs.

### **STANDING**

The legal right to initiate a lawsuit. To possess standing, a person must be sufficiently affected by the matter at hand, and there must be case or controversy that can be resolved by legal action.

### **STATUTE**

Any written law passed by a state or federal legislative body.

### **STATUTORY WILL**

California form will.

### **STIPULATION**

An agreement between parties or their attorneys.

### **SUA SPONTE**

From the Latin: *"of its own will."* Commonly used when a judge does something not specifically requested by either party in a case.

### **SUBSTITUTED JUDGMENT**

A legal doctrine by which the court may authorize or direct the conservator to take certain actions relating to the conservatee's estate. This may include making gifts or transferring assets to trusts.

### **SUCCESSOR FIDUCIARY**

The next person, or organization, appointed as when a vacancy arises in a conservatorship, guardianship, or decedent's estate because of the fiduciary's death, removal, or resignation.

## **SUPPLEMENT**

Something added to complete a thing, make up for a deficiency, or extend or strengthen the whole. In Probate, these are generally filed to correct defects noted by the Probate Examiner.

## **SURCHARGE**

A money judgment which the court can impose on the fiduciary if the fiduciary's improper acts cause a loss to the estate.

## **SURETY**

One who undertakes to pay money or do any other act in the event that his principal fails therein. One bound with his/her performance of some duty or promise and who is entitled to be indemnified by someone who ought to have paid or performed if payment or performance be enforced against him/her.

## **SURETY BOND**

See *bond*.

## **SURETY BOND RIDER**

A surety bond rider, also called a superseded suretyship rider, is an addendum which the surety attaches to a surety bond in order to lengthen the discovery period beyond the span of time originally indicated in the bond's terms.

# **T**

## **TANGIBLE PERSONAL PROPERTY**

Personal property that takes a tangible form, such as automobiles, furniture and heirlooms. Although such items as stock ownership and copyrights may be represented in the form of paper certificates, the actual property is not in physical form and therefore considered intangible personal property.

## **TAXABLE ESTATE**

The fair market value of all assets owned by a decedent at date of death (gross estate) less certain allowable deductions, such as debts of the decedent, last illness and funeral expenses, and expenses of administering the decedent's estate (attorney's fees, court costs and newspaper publication fees).

## **TENANCY IN COMMON**

A type of joint ownership that allows a person to sell his share or leave it in a will without the consent of the other owners. If a person dies without a will, his share goes to his heirs, not to the other owners.

## **TESTAMENTARY DISPOSITION**

A disposition of property in a will.

## **TESTAMENTARY TRUST**

A trust created by the provisions in a will. Typically comes into existence after the writer of the will dies.

## **TESTATE**

A person who has made a will or who has died leaving a valid will; opposite of intestate.

## **TESTATOR**

The person who makes a will.

## **TITLE**

Ownership of property.

## **TOTTEN TRUST**

A bank account in your name for which you name a beneficiary. Upon the death of the named holder of the account, the money transfers automatically to the beneficiary.

## **TRANSFER AGENT**

A representative of a corporation who is authorized to transfer ownership of a corporation's stock from one person to another. An executor or administrator must use a transfer agent when passing title to a decedent's stock to an heir or beneficiary.

## **TRIAL**

In the United States, the trial is the principal method for resolving legal disputes that parties cannot settle by themselves or through less formal methods. The chief purpose of a trial is to secure fair and impartial administration of justice between the parties to the action. To provide a final legal determination of the dispute between the parties. The cornerstone of the legal system in the United States is the jury trial. However, not all trials are jury trials. A case may also be tried before a judge. This is known as a court trial or a bench trial. A court trial is basically identical to a jury trial, except the judge decides both the facts and the law applicable to the action.

## **TRIAL READINESS CONFERENCE**

A Trial Readiness Conference (TRC) is a hearing scheduled before the trial date. It may be conducted for several reasons: (1) expedite disposition of the case, (2) help the court establish managerial control over the case, (3) discourage wasteful pretrial activities, (4)

improve the quality of the trial with thorough preparation and (5) facilitate a settlement of the case.

## **TRUST**

A written legal instrument created by a grantor during his or her lifetime or at death for the benefit of another. Property is given to a trustee to manage for the benefit of a third person. Generally the beneficiary gets interest and dividends on the trust assets for a set number of years. A legal arrangement under which one person or institution (called a "trustee") controls property given by another person (termed a "trustor", "grantor" or "settler") for the benefit of a third person (called a "beneficiary"). The property itself is sometimes termed the "corpus" of trust.

## **TRUSTEE**

The person named in a trust document who will manage the property owned by the trust and distributes any income according to the document. A trustee can be an individual or a corporate fiduciary.

## **TRUSTOR**

The person who transfers assets into a trust for the benefit of another. (Also known as a "grantor.")

# **U**

## **UNIFORM TRANSFERS TO MINORS**

### **ACT**

California law, which provides a way for someone to give or leave property to a minor by appointing a "custodian" to manage the property for the minor.

## **V**

### **VENUE**

The geographical limits of court's jurisdiction (usually a county, or a division within a county).

### **VERIFICATION**

An oral or written statement that something is true, usually sworn to under oath.

### **VESTING**

Expression of the form of legal title by which property is held. Fiduciaries generally should vest legal title in themselves expressly in their fiduciary capacity. (E.g., "John Smith, as Conservator of the Estate of Bill Jones.")

### **WARD**

A person, especially a child, placed by the court under the care of a guardian.

### **WILL**

A legal document directing the disposal of the testator's property after their death. A will is revocable during the maker's lifetime.

### **WRIT OF EXECUTION**

A court order to a sheriff to enforce a judgment by levying on real or personal property of a judgment debtor to obtain funds to satisfy the judgment awarded to the judgment creditor. A Writ of Execution is issued by the court clerk.

## **WILL CONTEST**

A proceeding peculiar to probate for the determination of questions of construction of a will or whether there is or is not a will. Any kind of litigated controversy concerning the eligibility of an instrument to probate as distinguished from validity of the contents of the will. (Will contests are in rem proceedings in that the contest is brought against the thing, the will, as opposed to in personam proceedings, which are brought against a person.)