



SENIOR LAW SOLUTIONS^{LLC}

LIFE CARE PLANNING

Glossary of Terms

Administrator

A person who takes care of the business (debts and assets) of the estate of a person who is deceased and left no Will. The administrator is appointed by a court upon a petition, usually by one or more of the heirs at law of the decedent. A female administrator is called an “administratrix.” An administrator is a personal representative.

Advance directive

A written instruction, such as a living will or medical power of attorney for health care, which guides care when an individual is terminally ill or incapacitated and unable to communicate his/her desires.

Advocate

A person who assists, defends, helps the right of or prosecutes for another.

Asset(s)

Property, including real property (land or buildings) and personal property (for example, cash, stocks, or vehicles) that belong to a person, corporation, estate, or other entity; a resource that has economic value to its owner such as cash, accounts receivable, inventory, real estate and/or securities.

Assisted Living Facilities (ALFs)

Assisted living communities provide supportive services in a home-like environment in order to meet the needs of residents who are unable to perform, or who need help in performing certain activities of daily living. These communities may provide assistance with meal preparation, household chores, dressing or bathing and managing medications. Most communities provide three meals a day in a dining room. Assisted living communities usually have a wellness coordinator on staff to coordinate resident care and supervise the certified nursing assistants, or CNAs, and other caregivers. Caregivers are available 24/7 onsite for the residents. Some communities specialize in serving residents with memory loss, and other communities have designated memory care units. These secure, specialized communities offer services and structure specially designed to accommodate those with various dementias. The staff has had specialized training in caring for those with dementia and related diseases. This level of care offers 24-hour supervision, secure units (locked), meals, activities, and care services specific to each resident.

Attorney-in-fact

The person or organization designated in a power of attorney to act for the principal. This person or organization is also referred to as an agent. The agent has whatever power the principal authorizes, and can act to benefit the of or bind the principal to the extent of that authority. The agent owes a fiduciary duty to the principal and could be liable to the principal or a third party for a breach of that duty.

Beneficiary

Person who is entitled to receive the benefits (usually assets) under a will or a trust.

Buy/Sell Agreement

A buy/sell agreement controls what happens to a business when a specified event occurs, such as a shareholder's death or disability.

Charitable Trust

Any trust designed to make a substantial gift to a charity and also achieve income and estate tax savings for the person who creates the trust (the grantor). There are various versions of Charitable Remainder Trusts and Charitable Lead Trusts.

Codicil

A supplement or addition to a will. A codicil may explain, modify, add to, subtract from, qualify, alter or revoke existing provisions in a will. Because a codicil changes a will, it must have the same signing formalities that are required of the original will.

Conservator

A court-appointed surrogate decision-maker with the authority to make decisions about property only. In some jurisdictions the term is used synonymously with the term guardian.

Contingent Beneficiary

An alternate beneficiary named in a will, trust or other document. This person or entity would only be entitled to a share if some named contingent event occurs.

Continuing Care Retirement Communities (CCRCs)

CCRC's are like little towns, with different kinds of housing and different levels of care. There are apartments, small houses, assisted living homes and nursing homes. Typically, you move in when you are healthy and active and stay for the rest of your life. You live in the place that provides the care you need at that moment.

Contract

An agreement between two or more competent parties in which an offer is made and accepted, and each party benefits.

Death Taxes

Taxes levied at death, based on the value of property left behind. Federal death taxes are called estate taxes. Some states levy inheritance taxes on people who inherit property and some have estate taxes.

Discharge Planning

This service is usually performed by a social worker on staff in connection with a discharge of a patient from a hospital, nursing home or like institution. Discharge planning involves the social worker assessing the patient's level of functioning and needs following his/her discharge, including a smooth transition in moving from one level of care to another, for example, from a hospital to a nursing home or from a hospital to home care. The discharge planner also contacts home health agencies to assist the patient in connection with his/her home care.

Durable Power of Attorney

A written instrument authorizing another to act as one's agent or attorney-in-fact that survives the subsequent incapacity or disability of the principal. An individual can have a financial durable power of attorney or a health care durable power of attorney, or both.

Encumber

To place a claim, lien, charge or liability on property (e.g., mortgage, judgement lien, mechanic's lien, security interest).

Estate

A term commonly used to denote the sum total of all types of property owned by a person at a particular time, usually upon his or her death.

Executor

The person or entity named in a will who has the responsibility of carrying out the terms of the will (that is, collecting the will maker's assets, paying the debts, and distributing the remaining assets to the beneficiaries).

Fiduciary

Normally, a fiduciary is synonymous to a trustee, which is the classic form of a fiduciary relationship. A fiduciary has rights and powers which would normally belong to another person. The fiduciary holds those rights which he or she must exercise to the benefit of the beneficiary. Fiduciary responsibilities exist for persons other than trustees such as between attorney and client.

Full Faith and Credit

A constitutional legal principle requiring judges to recognize and enforce valid decrees and judgments issued by courts in other states.

Grantor

A person who grants another person or entity (an agent) the authority and power to act on behalf of the grantor in accordance with the powers set forth in a power of attorney document; or the powers set forth in a trust document.

Guarantor

A secondary party who agrees to become obligated to repay a debt for the party primarily responsible if the party responsible fails to repay the obligation.

Guardian

An individual or organization named by order of the court to exercise any or all powers and rights over the person and/or estate of an individual. The term includes conservators and certified private or public fiduciaries. All guardians are accountable to the court.

Medical Power of Attorney

A medical power of attorney is more detailed than a living will. It allows you to appoint the person or persons you trust to make health decisions for you if you cannot. It also allows for more detailed advance care planning, letting you state your wishes about resuscitation, feeding tubes, antibiotics, hospital transfers, respirators, and more.

Holographic Will

An unwitnessed handwritten will. A few states allow such documents to be admitted to probate, but most courts are very reluctant to accept them.

Hospice

Hospice is a special concept of care designed to provide comfort and support to patients and their families when a life-limiting illness no longer responds to cure-oriented treatments. Hospice care neither prolongs life nor hastens death. Hospice staff and volunteers offer a specialized knowledge of medical care, including pain management. The goal of hospice care is to improve the quality of a patient's last days by offering comfort and dignity. Hospice care is provided by a team-oriented group of specially trained professionals, volunteers and family members. Hospice addresses all symptoms of a disease, with a special emphasis on controlling a patient's pain and discomfort. Hospice deals with the emotional, social and spiritual impact of the disease on the patient and the patient's family and friends. Hospice offers a variety of bereavement and counseling services to families before and after a patient's death.

Incapacitated

A term used to describe a person lacking the ability to make decisions concerning health care or, more generally, personal matters. The incapacity may be mental (i.e., Alzheimer's disease) or physical (i.e., the effects of a stroke). When a person has a guardian appointed, the person is often referred to as "incapacitated." Incapacity also describes a legal disability to perform a specific act or acts.

Intestacy

The state or condition of dying without having made a valid will, or without having disposed of a part of property by will.

Independent Living Communities

For seniors who want to (and can) live independently, prefer to live among their peers, desire additional security and no longer want to maintain a home. Independent senior housing is planned, designed and managed with the needs of older persons in mind and is conducive to comfort, security and safety. These housing arrangements offer an enriched lifestyle filled with recreational, educational and social activities. Although personal care services are not provided, it is common for meals, housekeeping, transportation and planned social activities to be offered.

Irrevocable Trust

An irrevocable trust is an arrangement in which the grantor departs with ownership and control of property. Usually this involves a gift of the property to the trust. The trust then stands as a separate taxable entity and pays tax on its accumulated income. Trusts typically receive a deduction for income that is distributed on a current basis. Because the grantor must permanently depart with the ownership and control of the property being transferred to an irrevocable trust, such a device has limited appeal to most taxpayers.

Irrevocable trusts, however, are useful in life insurance planning. For instance, a properly structured irrevocable life insurance trust can avoid probate costs and fees, and estate taxes on the insurance proceeds paid to the trust upon the grantor's death. Irrevocable trusts are also useful in providing children, especially those over age 14, with a fund for education or other specific planning purposes. Again, the trust is usually funded with "after-tax" dollars through a gift.

Irrevocable Life Insurance Trust (ILIT)

An irrevocable life insurance trust (an "ILIT") is an irrevocable trust created for the principal purpose of owning a life insurance policy. As with any other trust, the insurance trust is a contract between a grantor and a trustee to administer certain property, in this case an insurance contract, for the benefit of named beneficiaries. The insurance trust, like other irrevocable trusts, cannot be rescinded, amended, or modified in any way after it is created. Once the grantor contributes property to the trust, he cannot later reclaim ownership of the property or change the terms of the trust.

One of the primary reasons executing a life insurance trust is estate tax considerations. If an ILIT is properly structured, the death benefits paid to the trust will be free from inclusion in the gross estate of the insured. In addition, the ILIT can also be structured so that the trust will provide benefits to the insured's surviving spouse without inclusion in the surviving spouse's gross estate either.

Joint Trustees

Two or more persons who are entrusted with property for the benefit of one or more others. Unlike joint executors, joint trustees cannot act separately, but must both join in conveyances and receipts, for one cannot sell without the others, or receive more of the consideration money, or be more a trustee than his or her partner.

Legatee

Also known as a beneficiary. A person named in a will to receive property. A legatee is a person to whom a legacy is given by a last will and testament.

Litigation

A case, controversy, or lawsuit. A contest authorized by law, in a court of justice, for the purpose of enforcing a right. Participants (plaintiffs and defendants) in lawsuits are called litigants.

Living Trust

A trust created during the maker's lifetime. Some living trusts are set up so that they can be

changed during the maker's lifetime. These are called "revocable" trusts. Others known as "irrevocable," are set up so that they can't be touched.

Long-term Care Facility

Generally synonymous with a nursing home, but could also describe any residential facility which is considered a permanent home (such as a board and care home), and in which some degree of medical attention is provided.

Medicare

The Federal Health Insurance Program for almost everyone 65 or older, regardless of income.

Medicare Hospital Insurance

A federal program that is financed by payroll contributions from working people. It provides basic help with costs of: inpatient hospital care, home health care, hospice care and post hospital skilled nursing facility care.

Medicare Medical Insurance

A federal program that is financed by monthly premiums paid for by the insured person and the federal government. The government pays about 80% of the costs of: physicians' services, medical services and supplies, home health care services, outpatient hospital services, therapy and other services.

Medicaid

Medicaid is a federal-state partnership. The federal government contributes around 2/3 of the medical care costs. States pay the rest, often with help from local governments. It provides basic help with costs of: inpatient hospital care, outpatient hospital care, laboratory, x-ray, skilled nursing facility care, physicians' services and home health care.

Negligence

People are responsible for the intentional harm they cause. They are also responsible for their failure to act as a reasonable person would be expected to act in similar circumstances (i.e. "negligence"). Negligence, if it causes injury to another, can give rise to a liability suit under tort. Negligence is always assessed having regards to the circumstances and to the standard of care that would reasonably be expected of a person in similar circumstances. Between negligence and the intentional act there lies yet another, more serious type of negligence which is called gross negligence. Gross negligence is any action or an omission in reckless disregard of the consequences to the safety or property of another.

Nursing Homes (NHs)/Skilled Nursing Facilities (SNFs)

NHs provide 24-hour skilled nursing. Some residents will return home after a short rehabilitation stay, following hospitalization for an illness or accident. Others may require care for an extended period, due to the chronic nature of their illness or disabilities. Some facilities offer specialized programs for residents suffering from advanced stages of Alzheimer's disease. Facilities vary from hospital-like settings to more home-like residences. Strict safety regulations are adhered to within these facilities to accommodate the physical and mental disabilities of their residents.

Personal Care Homes (PCHs)

PCHs provide a safe and supportive environment for the semi-independent senior. The range of care (and cost) depends on the needs of the person. PCHs are for people who need assistance with personal care or who cannot safely stay by themselves. They provide residents with a sense of control, independence and privacy by allowing them to make choices for themselves. This type of facility is good for people with good mental function. However, many PCHs provide some level of dementia care.

Personal Representative

A person who manages the legal affairs of another, such as a power of attorney or executor.

Power of Attorney

A written document in which a mentally competent adult (called the “principal”) appoints another mentally competent adult or a corporation (called the “agent” or “attorney-in-fact”) to act on the principal’s behalf. The attorney-in-fact may perform any legal function or task which the principal has a legal right to do for him or herself.

Principal

The individual authorizing another individual or organization to act in his or her place in a power of attorney.

Probate

The court process in which a will is determined to be valid and a deceased person’s estate is distributed in accordance with the terms of the will or the state’s law of intestate succession. From Latin meaning to prove.

Property

In addition to money and other tangible things of value, property also includes any intangible right considered as a source or element of income or wealth. Property is divided into real property, and personal property.

Proxy

A person, appointed in the place of another, to represent him. The instrument by which a person is appointed, is also called a proxy.

Remainderman

The person who inherits property when someone passes away, and has executed a “life estate deed.” For example, John owns a house. He deeds it to himself for life, and then to Jane upon his death. Jane is the remainderman.

Renunciation

The act of giving up a right, usually to property due to be inherited.

Respite Care

Respite care is temporary relief for caregivers and families who are caring for those with disabilities, chronic or terminal illnesses, or the elderly.

Reverse Mortgage

A reverse equity mortgage allows senior citizens who are house rich and cash poor to obtain a loan based on the equity on their home. They retain title to their home as long as they continue to live there and receive nontaxable income which they can flexibly use for their own needs.

According to the terms of most mortgages currently available, the loan, interest and other costs such as origination fees do not have to be paid back until the owner vacates the property through a move or death. Almost all reverse mortgages now provide a guarantee of lifetime tenancy. Most reverse mortgages are nonrecourse loans which means the lender can look only to the value of the home for repayment. Payments to a home owner from a reverse mortgage can be in the form of a lump sum of cash, regular monthly advances or a line of credit. New mortgage plans allow a combination of payment methods. The amount of the loan is seldom for the full value of the property; most lenders place minimum and maximum limits on the size of mortgages they are willing to establish. Loan periods can vary. Some mortgages combine a reverse mortgage with an annuity, thereby guaranteeing individuals monthly income for their lifetime regardless of whether they continue to live in their homes or not. The monthly payments are considered annuity advances and thus partially taxable. For purposes of Medicaid eligibility these payments may be counted as income.

Revocable Living Trust

A revocable living trust is an arrangement a person makes for management and distribution of property. Like a will, the trust is “revocable,” meaning that it can be modified or eliminated at any time that the Grantor is both alive and competent. These trusts are established by a written agreement or declaration which appoints a “trustee” to administer the property, and which gives detailed instructions on how the property is to be managed and eventually distributed. If you want your trust to substitute for probate (court administration of property after death) or for guardianship (court administration after incapacity), you must give the trustee detailed instructions about how to handle these situations, and you should legally transfer substantially all of your property to the trustee.

Right of Survivorship

A method of joint ownership where the surviving joint owner(s) gets title to the deceased’s interest.

Simple Will

A simple will provides for the outright distribution of all assets in an uncomplicated estate and includes no itemized gifts to specific individuals. A simple will generally leaves everything to a spouse or grown children. Many wills are not simple and an attorney will charge more for a more complicated will.

Supplemental Security Income (SSI)

SSI, is a federal cash payment program which provides monthly payments on the basis of need to poor persons who are aged, blind, or disabled.

Testamentary

Providing for the disposition of property after death by a will and, therefore, in accordance with the personal desires of decedent. Formalities in the state statute must be complied with in order for the disposition to be approved and not subject to challenge.

Testator/Testatrix

One who makes or has made a will.

Testamentary Trust

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

Totten Trust

A bank account with a named death beneficiary. Upon the death of the named holder of the account, the money transfers automatically to the beneficiary. Also referred to as P.O.D. (payable on death accounts).

Trust

Property 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. An agreement under which one person transfers title to specific property to another who agrees to hold or manage it for the benefit of a third person.

Trustee

Person or institution that oversees and manages a trust. One to whom an estate has been conveyed in trust. The trust estate is not subject to the debts of the trustee.

Will

A written and signed statement, made by an individual, which provides for the disposition of their property when they die.