



SCHELL BRAY PLLC
Attorneys and Counselors at Law

ESTATE ADMINISTRATION GLOSSARY

Note to User: Many, but not all, of the definitions below are specific to North Carolina law.

What is estate administration? Estate administration is the process by which (1) the decedent's assets are inventoried, valued, and reported to the court (as appropriate), (2) claims and expenses are paid, (3) income and estate tax returns are filed (as appropriate), and (4) the assets are distributed to the beneficiaries.

90-Day Inventory - Formally referred to as the "Inventory for Decedent's Estate," the 90-Day Inventory must be filed by the personal representative of the estate within three months after qualification. The 90-Day Inventory is a form on which the personal representative itemizes and values (as of date of death) the real and personal property of the decedent which has come into the hands of the personal representative.

Account (Annual and Final) - The personal representative must file an accounting annually with the Clerk of Court for as long as the estate remains open, reporting receipts, disbursements, distributions and any other transactions of the estate. The last accounting, called the final account, effectively closes out the estate with the Clerk of Court.

Administrator - A person or entity appointed by the Clerk of Court to manage the estate of a person who has died without a Will. Administratrix is the feminine form of Administrator.

Administrator CTA - A person or entity appointed by the Clerk of Court to carry out the provisions of a Will when the testator has named no executor, or the executors named in the Will refuse to serve, are incompetent to act, or have died before performing their duties.

Administrative Expenses - Expenses associated with administration of the estate, including probate filing fees, personal representative commissions, notice to creditors publication fees, appraisal fees, attorney's fees, etc.

Alternate Valuation - Generally, for federal and state estate tax purposes, the decedent's assets are valued as of the date of his or her death. However, the personal representative/trustee may elect to value the estate on a date that is six months after the date of death (the "Alternate Valuation Date"). The election is irrevocable and can only be made if the value of the gross estate and the estate and generation skipping transfer tax liability are less using Alternate Valuation Date values than if the estate were valued as of the date of death.

Ancillary Administration - The administration of the decedent's estate in a state other than the decedent's primary state of residence at his or her death. Ancillary administration is necessary when the decedent owns property in a state other than that of his or her primary residence. For example, if the decedent lived in North Carolina at his death, but he owned real estate in South Carolina, it would be necessary to have an ancillary proceeding in South Carolina.

Applicable Exclusion Amount (Applicable Credit Amount or Exemption Exclusion)- This is the cumulative amount that an individual may transfer either during life or at death which is not subject to federal estate tax. In 2009, the Applicable Exclusion Amount for federal estate taxes was \$3,500,000. Because there is no federal estate tax in 2010, there is no Applicable Exclusion Amount. In 2011, the Applicable Exclusion Amount is scheduled to be \$1,000,000. The Applicable Exclusion Amount for federal gift taxes is \$1,000,000. This amount is in addition to the annual gift tax exclusion.
taxes at his or her death (often referred to as the "applicable credit amount").

Beneficiary - A person or organization who receives property under a legal document such as a Will, trust, retirement plan or insurance policy.

Bequest - A gift of property from the estate of the decedent as directed in the decedent's Will (or living trust). A bequest may be specific or general. A specific bequest is a gift of an identifiable piece of property (i.e., a car or home). A general bequest is a gift from the general assets of the estate.

Caveat Proceeding - Also known as a "will contest," a caveat proceeding allows a person(s) to formally claim that a Will has not been executed according to North Carolina law or is not the decedent's most recent Will. If the person contesting the validity of the Will succeeds, then the Will is treated as if it never existed.

Claims - Liabilities of the decedent or the decedent's estate, including funeral expenses.

Codicil - An amendment to a Will that must be executed (signed) with the same formalities as a Will.

Commissions – Fees paid to a personal representative or trustee for its services.

Decedent - The person who has died.

Descendants - Persons who are related in the descending line, such as child, grandchild, great-grandchild, etc. Also referred to as "issue."

Disclaimer (also known as a Renunciation)- A beneficiary's refusal to accept property to which he is entitled from a transfer during life or at death, including property inherited under a Will, by intestacy, under a trust, by survivorship, by beneficiary designation, etc. If properly done, the Disclaimer will result in the disclaimed property passing to other beneficiaries as if the person who disclaims had predeceased the original transferor. Often, persons disclaim to save estate and/or gift taxes. In order for a disclaimer to be "qualified" for estate and gift tax

purposes, the Disclaimer must be carried out in accordance with Chapter 31B of the North Carolina General Statutes and Section 2518 of the Internal Revenue Code.

Elective Share - A surviving spouse has the right, within six months of the issuance of letters testamentary or letters of administration, to claim a certain amount of the assets of the decedent (calculated pursuant to state statutes) when the surviving spouse will receive a lesser amount by virtue of the decedent's death (including gifts during lifetime acknowledged by the spouse).

Estate Tax - A tax imposed on the transfer of property at death.

Executor - The person(s) or entity named in the decedent's Will to manage the decedent's affairs and settle the decedent's estate pursuant to the terms of the decedent's Will. Executrix is the feminine form of Executor.

Family Allowances - A decedent's spouse and dependent child(ren) are entitled to an allowance of a certain amount for their support for one year after the death of the decedent. The amounts of the allowances are set by law and free from creditors' claims. Application must be made within one year of the decedent's death.

Fiduciary- A person or entity legally and ethically obligated to act in the best interests of another person. A trustee, personal representative, attorney-in-fact, custodian and guardian are all fiduciaries.

Fiduciary Income Tax Returns - Income tax returns that must be filed on behalf of a trust or an estate.

Form 706 – See definition of Estate Tax. Form 706 is the United States Estate (and Generation-Skipping Transfer) tax return.

Form 712 – Form 712 is an Internal Revenue Service form by which a life insurance company provides information regarding a life insurance policy, including benefits paid.

Form 1041- See definition of Fiduciary Income Tax Returns. Form 1041 is the United States Income Tax Return for Estates and Trusts.

Form W-9 - The Internal Revenue Service form used by a third party to request a taxpayer identification number for an estate and/or trust. By submitting a W-9 to a third party, the personal representative or trustee is certifying that the tax identification number that he or she is providing is correct and accurate.

Gross Estate - A federal estate tax concept that means the total value of all of the property included in the decedent's estate for federal estate tax purposes, including (among other things) life insurance proceeds when the decedent is the owner and insured and property held in certain trusts created by or for the benefit of decedent.

Heir - A person legally entitled to receive property from a family member who died without a Will. In popular or slang terms, an heir is anyone who inherits something from a decedent's estate or living trust.

Income in Respect of Decedent ("IRD") - Income that is earned by the decedent prior to death but that is not included in his or her income (i.e., not yet paid). These amounts are subject to income tax and estate tax. Typically, IRD items include unpaid compensation, retirement plan distributions, dividends and interest. A beneficiary who receives an IRD item is entitled to an income tax deduction in the amount of the estate tax attributable to the IRD item.

Intestate - A person dies intestate when he or she dies without a valid Will or dies with a Will that does not dispose of all of his or her property. The intestate succession laws determine who is entitled to take the decedent's property and also the share that each beneficiary is entitled to receive.

Joint Tenants With Right of Survivorship- A form of property ownership (including bank and investment accounts) by two or more persons whereby when one joint tenant dies, the joint tenant's interest in the property automatically passes to the surviving joint tenant(s). Property held as joint tenants with rights of survivorship does not pass under a person's Will nor does it pass to a decedent's heirs if the decedent dies without a Will. Property owned in this form avoids probate.

Letters Testamentary or Letters of Administration - Document by which the Clerk of Court authorizes the personal representative(s) to act on behalf of the estate. Letters Testamentary or Letters of Administration CTA are issued when the decedent dies with a Will. Letters of Administration are issued when the decedent dies intestate.

Marital Deduction- A deduction allowed in computing estate and gift taxes when property is transferred to a spouse. Under current federal tax law, the marital deduction is unlimited for transfers to a spouse who is a United States citizen.

Notice to Creditors - Written notice published in a newspaper meeting certain criteria (and sent to certain known creditors) asking creditors of an estate to present their claims to the personal representative for payment. Claims will not be paid by the estate if not submitted for payment within the period set forth in the notice (as long as the notice period is sufficient under the law).

Personal Property - Property other than real property that can be owned. Personal property may be tangible (furniture, jewelry, clothing, art, etc.) or intangible (stocks, bonds, notes, etc.).

Personal Representative - The person(s) or entity appointed by the Clerk of Court to administer the decedent's estate. Personal representatives include Administrators, Administrators CTA, Executors and Executrices.

Probate - The estate administration process supervised by the Clerk of Court. See "[What is estate administration?](#)" above and definition of [Probate Estate](#) below. Not all assets are subject to the probate process (for example, assets titled in living trust, held as joint tenants with rights

of survivorship, or passing by beneficiary designation to named beneficiaries other than the estate).

Probate Estate - Property passing under the decedent's Will or by intestacy. See definition of Intestate.

Qualification - Process by which the personal representative is appointed by the Clerk of Court to act on behalf of the decedent's estate. See definition of Letters Testamentary or Letters of Administration.

Real Property - Land and land improvements (as opposed to personal property).

Receipt and Refunding Agreement - Document by which a beneficiary who receives a distribution from the estate or trust receipts for the distribution and declares that if there are any claims or expenses of the estate chargeable to that property, that he or she will return the property to the personal representative/trustee.

Renunciation - Renunciation may take two forms. First, renunciation is the process by which the personal representative, who is either named in the decedent's Will or who is the proper person to serve when the decedent dies intestate, represents to the Clerk of Court that he or she does not wish to serve. Second, an individual may also renounce (give up) his or her interest in an estate. The person renouncing must follow certain formalities in order for the renunciation to be valid and to be qualified. See definition of Disclaimer.

Resident Process Agent - A North Carolina resident appointed by a personal representative who is not a North Carolina resident to receive service of citations, notices and processes in all actions or proceeding with respect to the estate.

Residuary Estate - The remaining part of an estate after debts, taxes, expenses of administration and any special/specific bequests.

Revocable Trust- Also known as a Living Trust, a revocable trust is a trust that may be modified or terminated by the grantor (creator) at any time during his or her life. Upon the death of the grantor, the trust becomes irrevocable, generally provides for the disposition of trust property, and acts as a "Will substitute" so that no probate of the trust assets is required. Commonly, the assets of the decedent that are not in the name of the revocable trust at the time of his or her death will "pour-over" into the revocable trust at death pursuant to directions in the decedent's Will.

Summary Administration - Alternative for administering an estate when the surviving spouse is the sole intestate heir or sole beneficiary under the decedent's Will. If the Clerk of Court grants the petition for summary administration, the spouse assumes all of the liabilities of the decedent to the extent of the value of the probate property received by the spouse.

Small Estate Administration - Procedure for abbreviated administration of an estate when the personal property of decedent, less liens and encumbrances, does not exceed \$20,000.00 (or

\$30,000.00 if the surviving spouse is the sole heir). This procedure is commonly referred to as Administration by Affidavit.

Taxable Estate - The total value of the decedent's estate (gross estate) less deductions. The taxable estate is subject to federal and state estate taxes (subject to adjustments provided by state law). See Applicable Exclusion Amount and Marital Deduction definitions.

Tax Identification Number ("TIN") - Also known as an Employer Identification Number ("EIN"). The TIN/EIN is a tax processing number issued by the IRS to identify tax accounts of trusts and estates (as well as other entities). See definition of Fiduciary Income Tax Returns.

Tenants in Common - Way of holding title (owning) property by two or more individuals. Tenants in common have equal rights to possession of the property. Ownership as tenants in common may be unequal (for example, 50%, 25% and 25%). Upon the death of a co-tenant, the interest of the deceased co-tenant will pass to his or her heirs.

Trust - Arrangement by which one or more persons (a grantor) transfer legal ownership of property to a trustee for the benefit of one or more beneficiaries. A trust may be created during the grantor's life (revocable or irrevocable) or after death in accordance with the terms of the decedent's Will or living trust.

Trustee- The person or entity that holds legal title to assets that are held in trust and who manages and distributes the trust assets according to the terms of the trust. The trustee has a fiduciary duty to the beneficiaries of the trust. See definition of Fiduciary.

Uniform Transfers to Minors Act - This Act that provides a mechanism under which gifts (lifetime or at death) can be made to a minor without requiring court-appointment of a guardian for the minor. The property is managed and invested by a custodian until the minor reaches a certain age, at which time the custodianship ends. In North Carolina, the custodianship terminates at either age 18 or age 21, depending on how the property was transferred.

Will- A document executed for the purpose of directing the disposition of an individual's property upon his or her death. The Will generally names an executor, names a guardian for minor children/dependents, and directs the distribution of one's property. A Will must be executed with certain formalities in order to be valid. A Will generally controls the disposition of property owned in the name of the testator at his or her death, but a Will does not control the disposition of property that is owned as joint tenants with right of survivorship or property which passes by contract to a designated beneficiary (i.e., life insurance or retirement accounts).

IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, unless specifically indicated otherwise, any tax advice contained in this communication or in any attachment is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or tax related matter addressed in this communication or any attachment.