

Dictionary of Legal Terms

ADMINISTRATOR: In the most usual sense, is a person to whom letters of administration — that is, an authority to administer the estate of a deceased person — have been granted by the proper court. He or she resembles an executor, but is appointed by the court, without any nomination by the deceased. An administrator of the estate is appointed if the deceased has made no will or has named no executor in his or her will.

ARBITRATION: The process by which parties to a dispute submit their differences to the judgment of an impartial person or group appointed by mutual agreement or a statutory provision. Arbitration may be binding or non-binding. Arbitration differs from mediation in that in arbitration, the arbitrator decides the outcome, whereas in mediation, the parties themselves decide and agree on the outcome.

ATTESTATION: The act of witnessing an instrument in writing, at the request of the party making the same, and subscribing it as a witness. Execution and attestation are formalities clearly distinct from each other: the former being the act of the party, and the latter of the witnesses only.

BENEFICIARY: (1) A person having the enjoyment of property of which a trustee, executor, etc., has the legal possession. (2) The person to whom a policy of insurance or other financial instrument is payable.

BEQUEATH: To give personal property by will or testamentary trust to another.

BEQUEST: A gift by will of personal property; a legacy. (A gift of real property by will is a **devise**.)

CONSIDERATION: The inducement to a contract. The cause, motive, price or impelling influence that induces a contracting party to enter into a contract. The reason or material cause of a contract. Note that doing only what one already was obligated to do is not consideration for a new contract.

CORPORATION: An artificial person or legal entity, created by or under the authority of the laws of a state or nation. It ordinarily consists of an association of numerous individuals, who subsist as a body politic under a special denomination, which is regarded in law as having an existence distinct from that of its several members, and which is, by the same authority, vested with the capacity of continuous succession, within the scope of the powers and authorities conferred upon such bodies by law.

DEED: A written instrument conveying or transferring land or realty, signed by the grantor, whereby title to realty is transferred from one to another. A warranty deed is one in which the grantor promises good, clear title. A quit claim deed is one in which the grantor gives all interest that the grantor has but under no warranty as to good title.

DEVISE: A testamentary disposition of land or realty, a gift of real property by the last will and testament of the donor. (A gift by will of personal property is a **bequest**.)

ESCROW: The state or condition of a deed that is conditionally held by a third person, or the possession and retention of a deed by a third person pending a condition, as when an instrument is said to be delivered “in escrow.”

ESTOPPEL: A bar or impediment raised by the law, which precludes one from alleging or denying a certain fact or facts, as a result of his or her previous allegation, denial, conduct, admission, or in consequence of a final adjudication of the matter in a court of law or equity.

FEE SIMPLE: An absolute or fee simple estate is one in which the owner is entitled to the entire property, with unconditional power of disposition during his or her life, and descending to the owner's heirs, legatees and legal representatives at death. Unlimited as to duration, disposition and descendability.

FIDUCIARY: As a noun, a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith, loyalty and candor it requires. As an adjective it means of the nature of a trust, having the characteristics of a trust, analogous to a trust, relating to or founded upon trust or confidence.

HEIR: At common law or by state statute the person(s) named by law to succeed to the estate in case of intestacy. Heirs are not determined until the death of the intestate, because they must survive the intestate.

INDEMNITY: An indemnity is a collateral promise or assurance, by which one person engages to secure another against an anticipated possible loss or to prevent him or her from being harmed by the legal consequences of an act or forbearance on the part of one of the parties or of some third person.

INJUNCTION: A prohibitive writ issued by a court of equity, at the suit of a party complainant, directed to a party defendant in the action, or to a party made a defendant for that purpose, forbidding the latter to do some act, or to permit his or her employees or agents to do some act, which he or she is threatening or attempting to commit, or restraining him or her in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and not such as can be adequately redressed by an action at law.

INTESTATE: Without making a will. A person is said to die intestate when he or she dies without making a will. The word is often used to signify the person himself or herself.

LEASE: A conveyance of lands or tenements to a person for life, for a term of years, or at will, in consideration of a return of rent or some other payment. The person who so conveys such lands or tenements is termed the "lessor," and the person to whom they are conveyed, the "lessee." When the lessor so conveys lands or tenements to a lessee, s/he is said to rent, lease, demise, or let to them.

LEGACY: A bequest or gift of personal property by last will and testament.

LETTERS OF ADMINISTRATION: The formal instrument of authority and appointment given an administrator by the proper court, empowering him or her to enter upon the discharge of his/her duties as administrator of an estate. These normally involve collection, management, and distribution of the estate, including whatever legal proceedings are required to satisfy creditors and other parties who may have a claim on a deceased's property.

LETTERS TESTAMENTARY: The formal instrument of authority and appointment given to an executor by the proper court, empowering him or her to enter upon discharge of his/her office as executor, similar to those of an administrator, but as directed by the will.

LIEN: A qualified right of property that a creditor has in or over specific property of his or her debtor as security for the debt or charge or performance of some act.

LIFE ESTATE: An estate whose duration is limited to the life of the party holding it, or of some other person.

LIFE TENANT: One who holds an estate in lands for the period of his or her own life, or that of another certain person.

LIVING TRUST: Sometimes also named Revocable Living or Inter-vivos **Trusts**. These trusts are set up during an individual's lifetime to hold certain property during the lifetime and contain provisions on how the property should pass at death. It is necessary to transfer property into the name of the trust or trustee and have a successor trustee to administer the trust. By definition a revocable living trust can be revoked and canceled during the lifetime of the settlor (the person who creates the trust). It also can be amended to change trustee, property held, and how the property is to be administered and distributed.

LIVING WILL: This is a document which, in the event of a person's incapacity, allows the person's health care provider or other designated person(s) make certain life support and health care decisions.

MECHANIC'S LIEN: A type of lien created by statute in most of the states, which exists in favor of persons who have performed work or furnished material in and for the erection or remodeling of a building. Their lien attaches to the land as well as the building, and is intended to secure for them a priority of payment.

MEDIATION: Mediation is a constructive strategy of conflict management, facilitated by an impartial participant, the mediator. Mediation is voluntary. Those involved in the conflict direct the process and have control over whether and what kind of agreement they may reach. The mediator guides the participants in collaborative discussion toward a mutual agreement.

MORTGAGE: (1) An estate created by a conveyance absolute in form, but intended to secure the performance of some act, such as the payment of money, by the grantor or some other person, and to become void if the act is performed agreeably to the terms prescribed at the time of making such conveyance. (2) A conditional conveyance of land, designed as a security for the payment of money, the fulfillment of some contract, note or the performance of some act, and to be void upon such payment, fulfillment, or performance. In many states, in modern time, it is regarded as a mere lien, and not as creating a title or estate.

PERPETUITY: Any limitation or condition that may take away or suspend the power of alienation for a period beyond life or lives in being plus twenty-one (21) years. Under common law, the Rule Against Perpetuities requires that for an interest in property to be good, it must vest not later than twenty-one (21) years after a life or lives in being at the creation of the interest.

POWER OF ATTORNEY FOR HEALTH CARE: This is a form, available in most states, that enables a person to appoint an agent, who may be a relative or friend, who in the event of illness and incapacity, is empowered to make health care and life support decisions.

POWER OF ATTORNEY FOR PROPERTY - This legal form, created by most states, allows designation of an agent to act on an individual's behalf in financial matters in the event of his or her incapacity or at any specific given time.

PROBATE: The process whereby the court appoints an executor under a will or an administrator to collect and determine how the property owned by a deceased person should be distributed and the distribution of the property held in the probate estate.

REMAINDER: An estate limited to take effect and be enjoyed after another estate is determined. If someone holding title in fee simple grants lands to A for twenty years, and then to B and B's heirs forever, A is tenant for only twenty years, and a remainder fee simple interest is granted to B.

RESIDUARY DEVISEE: The person named in a will, who is to take all the real property remaining over and above the other devisees.

RESIDUARY ESTATE: The remaining part of a testator's estate, after payment of debts and legacies; or that portion of the estate that has not been particularly devised or bequeathed.

RESIDUARY LEGATEE: The person to whom a testator bequeaths the residue of his or her personal estate, after the payment of such other legacies as are specifically mentioned in the will.

REVERSIONARY INTEREST: The interest that a person has in the returning of lands or property. For example, a devise to the church "so long as the property is used as a place of worship and if not to my then living descendants." Many states have "sunset laws" that put a cap on the number of years a reversionary interest may remain in effect.

SURETY: A surety is one who at the request of another, and for the purpose of securing to him or her a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or pledges property as security therefore.

TENANT: In the broadest sense, one who holds, occupies or possesses lands or tenements by any kind of right or title, whether in fee, for life, for years, at will, or otherwise.

In a more restricted sense, one who holds lands of another; one who has the temporary use and occupation of real property owned by another person, the duration and terms of his or her tenancy being usually fixed by an instrument called a "lease."

TESTATOR: One who makes or has made a testament or will; one who dies leaving a will.

TITLE: The means whereby the owner of lands or of personal property has the just possession of his or her property.

TITLE INSURANCE: A policy of insurance obtained to guarantee good title to land by a grantor to the grantee or good title to the owner of record.

TRUST: A right of real or personal property, held by one party for the benefit of another. A trust can be created for any purpose that is not illegal and is not against public policy. The essential elements of a trust are designated beneficiary and trustee, fund or property sufficiently identified to pass to the trustee, and actual delivery of the property to the trustee with intent to transfer title. The legal title on ownership is held by the trustee for the benefit of another, known as the beneficiary, who as a result will receive income derived from the property.

TRUST CLAUSE: In United Methodism, one of the clauses in ¶ 2503 of the *Discipline* that establishes the principle that property held by denominational units is to be held on behalf of the entire connection and may not be diverted to non-denominational purposes or interests.

TRUST DEED: An instrument in use in many states, taking the place and serving the uses of a common-law mortgage, by which the legal title to real property is placed in one or more trustees, to secure the repayment of a sum of money or the performance of other conditions.

TRUSTEE: The person appointed or required by law, to follow the terms of a trust; one in whom an estate, interest, or power is vested, under an express or implied agreement to administer or exercise it for the benefit or to the use of another.

WARRANTY: In real property laws a real covenant by the grantor of lands, for the grantor and his or her heirs, to warrant and defend the title and possession of the estate granted to the grantee and his or her heirs. Where the grantee is evicted by someone with better title to the property, the grantor would be required to reimburse the grantee with property of equal value at common law. Warranty deeds contain a covenant of warranty whereby the grantor assures the grantee that the grantee's enjoyment of the property shall not be interrupted by paramount title to the same property.

WILL: A will is the legal expression of a person's wishes as to the disposition of his or her property after his or her death. It is an instrument in writing, executed in form of law, by which a person makes a disposition of his or her property, to take effect after his or her death.

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