

## ESTATES TERMINOLOGY

<b>Term</b>	<b>Definition</b>	<b>Code §§/pg #s</b>
<b>Administrator</b>	Personal representative not named in will; appointed by court according to a statutory list of preferences; must give bond	p. 31
<b>Advancement</b>	Inter vivos gift that counts as portion of ultimate inheritance	p. 114; UPC § 2-109; 14 VSA § 1723
<b>Ambulatory document</b>	Subject to modification or revocation by † during †'s lifetime (e.g., will; revocable trust)	p. 251
<b>Ancillary jurisdiction</b>	Required when testator has real property in a jurisdiction other than the domicile at time of death	p. 34
<b>Bequeath</b>	Traditional term for method by which a testator transfers personal property (T <i>bequeaths</i> his car to X); X is <i>legatee</i>	p. 32
<b>Codicil</b>	A supplement to a will in a separate writing; need no explicit reference to the previously executed will	p. 252; UPC § 2-507(b)–(d)
<b>Collection statutes</b>	Affidavit procedure provided by some states to give <i>possession</i> , but not <i>title</i> , to “those presumptively entitled to the decedent’s property”	p. 38
<b>Common form</b>	English method of probate: ex parte; no notice or process to anyone; due execution of will proven by oath of executor or other required witnesses; estate administration begins if no one objects	p. 34
<b>Conservatorship</b>	Arrangement for management of a child’s property; more flexible than guardianship of property	p. 118
<b>Custodianship</b>	Custodian holds property for benefit of a minor; ideal for small gifts; large gifts → trust	p. 118–19
<b>Descendant</b>	Same as “issue” or “heirs of the body”	
<b>Cy pres</b>	When a gift is made by will or trust, usually for charitable or educational purposes, and the named recipient of the gift does not exist or no longer conducts the activity for which the gift was made, the estate or trustee must make the gift to the organization that comes closest to fulfilling the purpose of the gift.	
<b>Devise</b>	Traditional term for method by which a testator	p. 32, 405

	<p>transfers real property († <i>devises</i> Blackacre to X); X is <i>devisee</i></p> <p>Rest. of Property uses “devise” for both real and personal property</p> <p><b>Specific devise:</b> gift of particular property (e.g., Blackacre to X)</p> <p><b>General devise:</b> general benefit, not particular asset (e.g., \$100,000 to X)</p> <p><b>Demonstrative devise:</b> general but payable from a specified source (e.g., \$100,000 from proceeds of sale of GM stock to X)</p> <p><b>Residuary devise:</b> gift of property not otherwise devised</p>	
<b>Disclaimer</b>	Refusal to accept property: disclaimant treated as if he predeceased the decedent	
<b>Disinheritance</b>	Negative provisions in a will, saying that the named person will receive nothing; not always effective (see pp. 77–78; 14 V.S.A. § 551)	p. 77–78
<b>Dispensing power</b>	Allows a court to dispense with the formal requirements if there is clear and convincing evidence that the † intended the document to be his will	p. 225; UPC § 2-503
<b>Domiciliary jurisdiction</b>	Jurisdiction where decedent was domiciled at time of death (also <i>primary jurisdiction</i> )	p. 34
<b>Durable power of attorney</b>	Appoints attorney-in-fact; durable = does not end if principal becomes incompetent	p. 346
<b>Escheat</b> (es-'cheet)	Reversion of property, esp. real property, to the state upon the death of an owner who has neither a will nor any legal heirs	
<b>Executor</b>	Personal representative named in will	p. 31
<b>Formal probate</b>	UPC system; modern equivalent to solemn probate; proceedings only after notice	p. 35
<b>General power of appointment</b>	exercisable in favor of the decedent [donee], his estate, his creditors, or the creditors of his estate	p. 589
<b>Grantor trust</b>	Trust over which grantor retains substantial control	p. 516

	over trust assets, so grantor treated as owner (e.g., revocable trust); income taxable to grantor	
<b>Guardian</b>	<b>of person:</b> has legal custody of a child <b>of property:</b> manages property of child, but is undesirable (little freedom to act without court approval)	p. 118–19
<b>Heir</b>	One entitled to take a share of a decedent’s estate in intestacy (kids, parents, siblings, spouse, etc.) ( <i>as distinct from heir apparent or descendant</i> )	p. 62
<b>Heir apparent</b>	Those expected to be the heirs upon the death of an individual	p. 62
<b>Holographic will</b>	Will written and signed entirely by the testator; not witnessed or notarized.  <b>First-generation statutes:</b> whole document must be in †’s handwriting; † must sign; some jx require date ( <i>241 n.1</i> )  <b>Second-generation statutes:</b> material provisions in †’s handwriting; † must sign ( <i>241 n.2</i> )  <b>Third-generation statutes:</b> material <i>portions</i> in †’s handwriting; extrinsic evidence admissible. ( <i>241 n.3</i> )	p. 236
<b>Honorary trust</b>	Often for care of pets, but not always; may be for “any specific, designated purpose that is not capricious”; not legally enforceable, but if transferee doesn’t carry out the purpose → transferee holds in resulting trust for settlor or settlor’s successors	p. 526
<b>Incorporation by reference</b>	Allows a document not duly executed and in existence at the time of a duly executed document (will, codicil) to be incorporated into the will	p. 273; UPC § 2-513
<b>Independent significance, acts of</b>	Beneficiary or property identified in a will by acts or events that have a “lifetime motive” and significance apart from their effect on a will	p. 285; UPC § 2-512
<b>Informal probate</b>	UPC system; modern equivalent to common probate; ex parte proceedings; no notice	p. 34–35; UPC § 3-301
<b>Insane delusion</b>	False conception of reality; if shown, invalidates any part of the will that <i>might have been</i> affected by the insane delusion  Majority view = delusion is insane even if there is	p. 148; <i>In re Honigman</i> , N.Y. 1960 ( <i>152</i> )

	some factual basis for it if a rational person in the testator's situation could not have drawn the conclusion reached by the testator	
<b>Integration</b>	All papers present at the time of execution of a will, intended to be part of the will, are integrated into the will	p. 271
<b>Lapse</b>	If a devisee does not survive †, the devise lapses (fails), unless † states otherwise, or antilapse statute (providing substitute beneficiary) applies	p. 387
<b>Letters of administration</b>	Authorizes administrator to act on behalf of the estate	p. 34
<b>Letters testamentary</b>	Authorizes executor to act on behalf of the estate	p. 34
<b>Lucid interval</b>	Period of time in which an individual under a conservatorship is found to have capacity to execute a will	p. 146
<b>Merger</b>	If trustee and beneficiary are one and the same person → trust dissolves; title in fee simple. Trustee cannot be sole beneficiary.	p. 304 n.1
<b>No-contest clause</b>	Provides that a beneficiary who contests the will shall take nothing, or a token amount, in lieu of the provisions made for the beneficiary in the will; usually enforced absent probable cause for contest	p. 167
<b>Nonclaim statutes</b>	Statutes requiring creditors to file claims against the estate within a specified period of time	p. 35
<b>Nonprobate property</b>	Property that passes under an instrument other than a will; most property passes via nonprobate methods (see list of examples, 30–31)	p. 30
<b>Personal representative</b>	Oversees winding up of decedent's affairs when property goes through probate	p. 31
<b>Precatory language</b>	Unenforceable language in will or trust that expresses a "wish," "hope," or "recommendation" that devisee use property be used in a certain way (but circumstances sometimes lead to enforcement)	p. 501
<b>Primary jurisdiction</b>	Jurisdiction where decedent was domiciled at time of death (also <i>domiciliary jurisdiction</i> )	p. 34
<b>Probate court</b>	Appoints, controls, and holds accountable personal representatives	p. 31
<b>Probate property</b>	Property that passes under the decedent's will or by	p. 30

	intestacy	
<b>Representation</b>	<p><b>English per stirpes:</b> A's property divided at level of A's children, and so on down the line (74)</p> <p><b>Modern per stirpes:</b> Division at first generation of descendants with survivors (74)</p> <p><b>UPC distribution (per capita at each generation):</b> Division at first generation with survivors; pooled before distribution to next generation (75)</p> <p><b>Per capita:</b> all living descendants share equally</p>	p. 73–75
<b>Resulting trust</b>	Equitable reversionary interest that arises when (1) express trust fails or makes incomplete disposition <i>or</i> (2) when A pays for property and B, not natural object of B's bounty, takes title	p. 511
<b>Revocation</b>	A writing or action (e.g., mutilation or defacement) that renders a previously executed will null and void	p. 258; UPC § 2-507; 14 V.S.A. § 11
<b>Rule of repugnancy</b>	"[I]f a deed or will conveys an absolute title in fee simple, an inconsistent clause in the instrument attempting merely to limit that title or convey to the same person a limited title in the same land will be disregarded."	p. 600
<b>Seise</b>	Establish a holder in fee simple	
<b>Solemn form</b>	English method of probate: notice given to interested parties; due execution of will proven by testimony of attesting witnesses; greater participation of court	p. 34
<b>Special power of appointment</b>	Any power of appointment not a general power	p. 589–90
<b>Undue influence</b>	Coercion of testator to make a disposition against his wishes	p. 158–59, 160
<b>Universal succession</b>	Used in Louisiana and continental Europe; heirs or residuary devisees succeed to title of all of decedent's property; no personal representative	p. 39–40; UPC §§ 3-312–3-322 ( <i>UPC unadopted</i> )