

LEGAL WORDS

ADMINISTRATION OF THE ESTATE The settlement and distribution of the estate of a deceased person by the estate's personal representative.

ADMINISTRATOR A person appointed by the Supreme Court of Yukon to handle the estate of a person who dies without a will or whose will does not name an executor. The administrator is the personal representative of the estate and has a fiduciary relationship to the creditors and beneficiaries of the estate. Sometimes a female administrator is referred to as an administratrix, but the term administrator applies equally to men and women.

ADVANCE DIRECTIVE A legal document which is dated and signed by an adult giving the person named in the document (called a "proxy") the authority to make health care and end of life decisions for the adult, if the adult becomes incapable of expressing his/her wishes. This is sometimes called a "living will". An Advance Directive is a part of an "Estate Plan" to appoint people to make decisions when you are not able to yourself.

ALTERNATE EXECUTOR A person appointed by a will to handle the deceased person's estate in the event the original executor is unable or unwilling to do so.

ASSETS The things that you own such as land, vehicles, artwork, bank accounts.

BENEFICIARY A person (including an individual, an institution such as a charity or a corporate body) who inherits property from a deceased person under a will, or under the intestate rules of the *Estate Administration Act* or the *Indian Act*. A beneficiary is also the person who is named to receive the proceeds of an insurance policy or a retirement or pension plan.

BEQUEST A gift of a specific item or amount of money under a will.

CODICIL A document created to change a will. It must be signed, dated and witnessed by two adult witnesses with the same formalities as a will.

COMMON LAW Defined for estates as living in a marriage-like relationship for more than 12 months before death'

DEPENDENT Refers to a situation where someone depends upon another for maintenance and support. The relationship of dependent persons to a deceased person is defined in the *Estate Administration Act* and the *Indian Act*.

ENDURING POWER OF ATTORNEY A written legal document which is dated and signed by an adult (called a **donor**) giving the person named in the document (the **attorney**) the power to act on behalf of the adult with respect to his or her property and/or

finances; “enduring” means this power does not come to an end if the donor becomes mentally incapable of managing his or her own affairs.

ESTATE A general term used to mean all of the property owned (or interests held) by a person at the time of his or her death.

ESTATE ADMINISTRATION ACT (R.S.Y. 2002 C.77) Legislation passed by the Government of the Yukon in 2002, which describes how estates of deceased people are to be administered and who inherits if a person leaves no will.

ESTATE PLAN An overall plan for what happens to your estate when you die or if you become incapable. The plan can include your will, insurance policies, enduring powers of attorney and advance directives, and reviewing how jointly owned assets are held.

EXECUTOR A person appointed by a will to manage the deceased person’s estate, including arranging for the funeral, paying all debts and expenses, filing tax returns and transferring property to the beneficiaries. The executor is the **personal representative** of the estate and has a fiduciary (trust) relationship to the creditors and beneficiaries of the estate. Sometimes a female executor is referred to as an executrix, but the term executor applies equally to men and women.

FIDUCIARY Someone who is in a special position of trust, confidence and responsibility for another person or persons. An executor has a fiduciary duty to act for the benefit of the beneficiaries of an estate, to avoid conflict of interest and not to profit at the expense of a beneficiary.

GRANT OF ADMINISTRATION (also called LETTERS OF ADMINISTRATION) An order of the Supreme Court of Yukon appointing a person to administer the estate of a deceased person who died without a will, or who died without naming an executor in the will. This order declares that the person named administrator is authorized to administer the estate without further proof of his or her authority.

GRANT OF PROBATE (also called LETTERS OF PROBATE) An order of the Supreme Court of Yukon confirming that: (a) the will is valid; and (b) the person named as executor in that will is authorized to administer the estate of the deceased person without further proof of his or her authority.

GUARDIAN A person appointed by the court to make decisions on behalf of someone who is not mentally capable of making his or her own decisions or managing his or her own affairs.

HOLOGRAPH WILL A will written entirely in the handwriting of the deceased and signed by the deceased.

INTESTATE A person who dies without a will is said to die intestate.

ISSUE The direct descendants of a person, including children, grandchildren, great-grandchildren, and so on.

JOINT TENANCY A type of co-ownership of property by more than one person, when there is a "right of survivorship." Each owner holds an equal interest in the entire property. On the death of an owner his or her share or "interest" in the property passes to the surviving owners. See the definition for "tenancy in common" which is a different kind of co-ownership.

LETTERS OF ADMINISTRATION See "grant of administration."

LETTERS OF PROBATE See "grant of probate."

LIFE INTEREST An interest in a property that only lasts as long as you are alive. A person who holds a life interest in a property cannot dispose of the property in his or her will.

LIVING WILL see "advance directive"

MENTALLY CAPABLE A person's ability to make decisions that may have legal or other consequences. A capable adult must be able to understand information and appreciate the consequences of decisions. "A judge can declare that an adult is incapable, based on evidence. A person may be incapable of some decisions or types of decisions. For example, a finding of incapacity may be limited only to financial matters or a particular subset of personal care decisions." (From *A Practical Guide to Elder Abuse and Neglect Law in Canada*, January 2011, Canadian Centre for Elder Law, B.C. Law Institute, UBC.)

PASSING ACCOUNTS This is the process by which a personal representative or a trustee brings an accounting to the Supreme Court for review and approval. This is not necessary if all beneficiaries or other parties with rights in an estate agree to the accounting.

PER STIRPES A type of distribution that results in a beneficiary's share being transferred to the beneficiary's issue if the beneficiary dies before the maker of the will dies. This distribution is alternative to the beneficiary's share being divided amongst only the other named beneficiaries under the will (called per capita). For example, if the maker of the will leaves all of his or her property to his or her issue (three children, A, B and C) per stirpes, but C dies before the maker of the will, then C's one-third share is to be divided amongst C's issue rather than being split between A and B. The presence or absence of this technical term and the way in which it is used in a will has very significant consequences and it is wise to seek a lawyer's advice about its use.

PERSONAL REPRESENTATIVE This is the person with legal authority to administer the estate of a deceased person. The personal representative is the executor if appointed

by a will or an administrator if appointed by the court (where there is no valid will, or no executor was appointed in the valid will). If a person is still alive but incapable of managing his or her affairs, a guardian may be appointed as a personal representative.

PROBATE The process of proving a will by filing the will and other necessary documents in the Supreme Court of Yukon to establish that the will meets all legal requirements, and is the last will of the deceased.

PROPERTY A general term used to mean everything owned by a person. This includes real property (land and buildings) as well as personal property (all other assets, such as money, investments and moveable items).

PUBLIC GUARDIAN AND TRUSTEE A government-appointed official authorized by law to act as the personal representative of a deceased person who dies without a will, if no competent Yukon relative or creditor applies to the court to act as administrator. The Public Guardian and Trustee cannot be ordered to act and it is at the Public Guardian and Trustee's discretion whether it will handle an estate.

RESIDUAL ESTATE Property remaining in the estate after debts and taxes have been paid and special bequests have been distributed to designated beneficiaries. Also called the residue, or remainder.

RESIDUARY BENEFICIARIES The beneficiaries who are to receive all the property remaining in the estate (the residual estate) after debts and taxes have been paid and bequests have been distributed. Also called "remaindermen".

TENANCY IN COMMON A type of co-ownership of property by more than one person with no "right of survivorship" for the remaining owners after one of the owners dies. This means that the deceased person's share in that property is part of the deceased person's estate, and can be transferred or given to a beneficiary in a will or by the laws of inheritance. See also the definition for "joint tenancy," which is a different kind of co-ownership.

TESTATOR A person who makes a will. Sometimes a female testator is referred to as a testatrix, but the word testator properly applies equally to men and women.

TRUSTEE A person who holds property on behalf of another person. An executor is a trustee because he or she holds the property of a deceased person in trust for the beneficiaries and creditors of the deceased. A trustee is also the name for a person who is required to manage a child's inheritance or the inheritance of any person who is not to receive his or her part of the estate for some time.