

# GLOSSARY

**1031 Exchange:** Also known as a “Like-Kind Exchange.” A structured exchange, enabled by the Federal Internal Revenue Code, whereby taxes on capital gains realized from the sale of property can be deferred when sale proceeds are used to purchase property of like kind.

**Accountant:** One who is skilled in the practice of accounting; a professional with skills in accounting, auditing, financial management and/or tax law.

**Acre:** A measure of land equaling 160 square rods, or 4840 square yards, or 43,560 square feet.

**Administrator:** A person appointed by the court to manage and settle the estate of a deceased person who died intestate (without a will). Also known as a *personal representative*.

**Ad valorem:** Literally, “according to value”, the designation of an assessment of taxes against property.

**Agricultural Conservation Easement:** Generally describes a voluntary agreement which restricts land to agricultural uses.

**Agriculture:** The science, art, or practice of cultivating the soil, producing crops, and raising livestock and in varying degrees the preparation and marketing of the resulting products; farming; the use of land for growing crops, livestock or timber.

**Alimony:** An allowance to a spouse for support given by another spouse due to a separation or divorce.

**Annexation:** The process by which land outside of any incorporated municipality is taken into the legal boundaries of a municipality.

**Appraisal:** An estimate or opinion of quantity, quality, or value. A documented opinion as to a property’s value, marketability, usefulness, or suitability for a purpose.

**Appreciation:** The increase in the value of property due to economic or related causes that may be temporary or permanent.

**Appurtenance:** A feature of a parcel of land, such as a right, privilege, improvement or fixture that passes with the land. For example, an easement is an appurtenance.

**Arbitration:** A process intended to settle disputed questions of law or fact, by one or more arbitrators by whose decisions the parties agree to be bound. An “arbitration clause” can be found in contracts between parties.

**Assessment:** A charge against real estate made by a unit of government to cover the proportionate cost of an improvement, such as a water line or sewer.

**Assignment:** the transfer of one’s rights under a contract to another person.

**Assignment of Lease:** A transfer by a lessee (tenant) of all interest under a lease for the balance of the term of the lease. May be restricted by the terms of a lease.

**Attorney:** A person licensed to practice law in a particular state.

**Attorney in Fact:** one who is authorized to perform certain legal acts for another under a power of attorney. See *Power of Attorney*.

**Bargain Sale:** The sale of property to a charitable organization for less than its fair market value. This approach gives the landowner the opportunity to exchange the value not received in cash for a reduction in state and federal income taxes.

**Basis:** the price paid for property or the fair market value of property when inherited, less accumulated depreciation, used to calculate capital gains on income from the sale of the property.

**Beneficiary:** One for whose benefit a trust is created, for whose benefit property or funds are placed in trust or the recipient of funds from an insurance fund or annuity contract.

**Boiler Plate:** Language considered standard to contracts and other written agreements. Paragraphs of boiler-plate can appear identical in any number of contracts.

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**Bundle of Legal Rights Concept:** Establishes real estate ownership; consists of rights to sell, to mortgage, to lease, to will, to regain possession at end of a lease (reversion); to build and remove improvements, to control use within the law. Such legal rights in land can be transferred in all or in part.

**Capital:** Accumulated wealth used for production of additional wealth.

**Capitalization:** A process used by appraisers to convert a property's actual or projected net income into an estimate of property's value.

**Capital Gain:** Profit that results from the sale or exchange of an asset.

**Caveat Emptor:** "Let the buyer beware," legal term to describe the duty of a buyer of property to examine the property, and the property purchase is subject to conditions which would be readily ascertainable upon inspection.

**Chain:** A surveyor term for a distance measuring sixty-six (66) feet. Commonly seen in property descriptions in older deeds.

**Chain of Title:** A history of conveyances and encumbrances affecting the title to particular real property, found in the deed registry of the county where the property is located.

**Charitable Deduction:** The value of a donation to a nonprofit organization, or public agency that can be used to decrease the amount of taxes that are due from an individual. An easement or land donation must be permanent to qualify as a charitable deduction.

**Charitable Gift Annuity:** A method of donating assets, including land, directly to a qualified conservation organization which is then responsible for making annual payments to the donor for a specified period of time. In one variant to this option, donors can defer their annuity payments to a later date, such as at the time of retirement.

**Charitable Remainder Trust:** A method of donating land to a third-party trust (managed by a bank or financial institution). The trust is responsible for handling the donor's annual payments and, upon his/her death, transfers the remaining assets to the designated conservation group.

**Codicil:** A written supplement or amendment to an existing will.

**Contingent Beneficiary:** The person to whom the proceeds of a life insurance policy are payable in the event that the primary beneficiary dies before the insured.

**Corporation:** A complex business entity owned by shareholders who bear no liability for business debts beyond the price paid for their shares of ownership.

**Conservation Easement:** A restriction on particular uses of land in order to advance specific goals to protect or preserve a parcel of land.

**Conservation Tax Credit:** A credit against state income tax owed, available to individuals and business entities, for the donation of real property, or a perpetual conservation easement, to a qualified entity.

**Conservation Values:** The aspects of a tract of land, such as scenic views, cultural resources, historic structures, wildlife habitat, water features and water quality benefits, agricultural use, rare plant species, wetlands and similar features worthy of long-term conservation and/or preservation.

**Contract:** A legally enforceable agreement between two or more competent parties supported by legal consideration to do or refrain from doing some act. Contracts for real property or for value above a certain amount must be in writing.

**Covenant:** A deed or land restriction that is intended to limit the use of the land by the current owner and all future owners. It is a non-possessory interest in land, such as an agreement between adjoining landowners to do something (affirmative covenant) or to refrain from doing something (restrictive covenant) with respect to the land. Each covenant has two sides: the burden and the benefit. The burden is the promisor's duty to perform the promise and the benefit is the promisee's right to enforce the promise. Some covenants may not be perpetual.

**Decedent:** A deceased person.

**Deed:** A signed writing under which an interest in real property is transferred from a grantor to a grantee upon delivery of the writing to the grantee.

**Deed Restriction:** A limitation in a deed to a parcel of property that seeks to limit the use of that parcel by the subsequent owner. Some deed restrictions may not be perpetual.

**Deed of Trust:** A recorded deed, held in place of a mortgage, to indicate in a chain of title that there is a lien on a property. A trustee holds legal title until the lien is paid.

**Development Rights:** The term applied to a landowners right, subject to governmental restrictions such as zoning, to develop property for non-residential uses.

**Devise:** A gift of real property by the will of a decedent.

**Devisee:** A person to whom lands or other real property are given by a will.

**Dominant Tenement:** A parcel of land that carries a right to use all or a portion of a neighboring parcel of land, such as an easement providing access across another's land.

**Durable Power of Attorney:** The durable power of attorney is identical to the regular power of attorney except for one crucial difference. The regular power of attorney ceases to be effective if you become disabled, whereas the durable power of attorney continues to be effective despite your subsequent disability.

**Easement:** An implied or express agreement (written or oral) creating a right, privilege or interest by one party in another party's parcel of land.

**Eminent Domain:** The right of a sovereign state to take private property for public use.

**Equity:** The interest or value an owner has in an asset over and above the debts against that asset.

**Escheat:** The reverting of property to the state when there are no persons legally entitled to hold title or when there are no heirs to inherit property.

**Estate Tax:** A federal tax on the value of all assets owned at the time of death. This tax is paid out of the estate of the deceased, before assets are transferred to the heirs (normally within nine months of date of death). The amount of the tax is based upon the total value of the estate less any applicable deductions.

**Executor:** A man chosen by the maker of a will to carry out the terms of the will.

**Executrix:** A woman chosen by the maker of a will to carry out the terms of the will.

**Extra Territorial Jurisdiction (ETJ):** The legal ability of a municipality to exercise authority beyond its normal boundaries.

**Fair Market Value:** The price that a willing buyer would pay a willing seller at a time when neither party is under any compulsion to buy or sell and both being fully informed of the relevant facts.

**Farmland Protection Program:** A program that uses public monies or public authority to prevent the development of farmland for non-agricultural purposes.

**Fee Simple:** The largest estate or ownership in real property, free from all manner of conditions or encumbrances.

**Fiduciary:** A relationship based upon trust or confidence. A person having a duty to act in the best interest of another.

**Right of First Refusal:** An agreement between a seller and a potential buyer allowing the buyer the option to purchase the seller's property within a specific time period by matching any other offers. It protects the buyer temporarily from losing the deal to another seller until the buyer decides on what to do.

**Fixture:** An item of personal property affixed to a building or structure on land in such a manner that it becomes a part of the building, structure or real estate. Fixtures affixed to real estate become appurtenances of that real estate, and thus pass with the transfer of that real estate. See *Appurtenances*.

**Grantee:** Term used to describe the person or entity that receives a transfer of an interest in property by sale, gift or trade.

**Grantor:** Term used to describe the person or entity that relinquishes an interest in property by sale, gift or trade. For example, a grantor conveys land to a grantee by deed.

**Ground Lease:** The separation of ownership of land from ownership of buildings and improvements to the land. The lessee under a ground lease pays rent to the landowner but owns the improvements outright.

**Guardian:** A person appointed by a court who has custody and care of a minor child or incompetent adult. A guardian can be named in a will.

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**Healthcare Power of Attorney:** A written grant of authority from one individual to another to make decisions regarding significant health care decisions in the event the first individual is unable to express their wishes for care.

**Heir:** A person appointed by statute to succeed to the estate of a deceased person in the case of intestacy.

**Heir Property:** Land that is owned as tenants in common by two or more people who have inherited the land through intestacy. Heir property may have owners with varying fractional interests from several generations.

**Highest and Best Use:** That realistic potential use of property which will, as of the date of an appraisal, support the highest market value for the property, or that use which will produce the maximum net return on the property over the period encompassing the foreseeable useful life of the property.

**Impact Fees:** Fees required of a developer for land disturbing activities that are assessed by a governmental unit based upon a formula.

**Improvements to Land:** Any betterment to land that increases its value or use.

**Income Tax Credit:** A decrease in state income tax due in exchange for a permanent donation of an easement or land to a qualified land protection agency or nongovernmental organization.

**Income Tax Deduction:** A decrease in taxable income.

**Inherit:** To succeed in ownership of property by devise or law at the death of the property's owner.

**Inheritance Tax:** A tax paid by estate beneficiaries to the state and federal government. The percentage of tax paid is determined by the size of the inheritance, as well as the beneficiary's relationship to the deceased.

**Installment Contract:** Purchase of property by two or more payments over time.

**Inter vivos Trust:** A trust created while the creator (called a trustor or settlor) is alive, sometimes called a "living trust." The property is placed in trust with a trustee (often the trustor during his/her lifetime) and distribution will take place according to the terms of the trust — during the trustor's lifetime and/or upon the trustor's death.

**Intestate:** To die without a valid will. Property of the decedent is passed to heirs at law according to a statutory scheme.

**Irrevocable Inter vivos Trust:** A permanent trust created during a grantor's lifetime. Once it is created, it cannot be revoked, amended, or changed in any way.

**Joint Tenancy:** Property held by two or more persons together whereby the death of one owner transfers that interest to the other owner(s).

**Land Contract:** A contract for the purchase of real estate upon an installment basis, whereby the seller retains title until the last installment payment is made by the purchaser.

**Landowner:** An owner of land and its appurtenances.

**Lawyer:** A person licensed to practice law in a particular state.

**Lease:** A contract, written or oral, for the possession of property in return for payment of consideration, such as money (rent).

**Lease-Option Agreement:** An agreement to lease property that also extends to the lessee, an option to purchase the leasehold interest at a future date.

**Lease-Purchase Agreement:** An agreement to lease property that also binds the parties to complete a purchase and sale of the property at a future date.

**Leasehold:** The interest a lessee has in real estate by virtue of a lease.

**Legacy:** A disposition of personal property under a will.

**Legatee:** A person who receives personal property under a will.

**Lessee:** The person who leases property from the owner of the property.

**Lessor:** The person who owns property and leases it to a non-owner for use.

**Legal Description:** A description recognized by law which is sufficient to locate and identify real property.

**Letter of Last Instruction:** A letter of last instruction leaves basic information to survivors upon your death. Rather than forcing survivors to become

detectives and find all of your important papers, you can provide the details and instructions in one document. Always attach a copy of the instructions to your will.

**Liability:** In law, an obligation of one party to another, usually to compensate financially. It is an aspect of tort law that results from damage, injury, or a wrongful act.

**Life Estate:** An estate or interest held during the term of some certain person's life. With the creation of a life estate, there are two types of beneficiaries: a life tenant and a remainderman. When granting a life estate in a property you will also need to identify one or more remaindermen; those who will come into possession of the property at the life tenant's death by operation law.

**Life Insurance Trust:** A trust funded by life insurance. The grantor names the trust fund as the beneficiary of the life insurance policy. When the insured dies, the trust is funded by proceeds from the insurance.

**Life Tenant:** One type of beneficiary in the creation of a life estate. The life tenant has the right to use and possess the property for the life of a tenant or another person.

**Limited Liability Company (LLC):** A form of business entity often referred to as a "hybrid" of the corporation and partnership forms of business entity. Owners are generally referred to as members. An LLC is governed by written *Operating Agreement*.

**Limited Partnership:** A partnership in which at least one partner has his or her liability limited to the loss of the capital contribution that he has made to the partnership. A limited partnership requires the execution of a written partnership agreement.

**Living Trust:** See *inter vivos* trust.

**Living Will:** A notarized and witnessed document that expresses the creator's wishes that he or she not be subject to extraordinary medical procedures that prolong the dying process.

**Marital Property Agreement:** State laws empower and restrict the actions of married persons. Real and personal property of any married person that is acquired before the marriage, or which he or she may become entitled to after marriage, remain the sole and

separate property of that married person. A marital property agreement clarifies the rights and obligations of each spouse with respect to such property.

**Market Value:** The highest price which a willing buyer would pay, and the lowest a willing seller would accept.

**Mediation:** A process whereby a third party assists two contending parties in voluntarily settling their dispute(s).

**Metes and Bounds:** A description in a deed of the location of a parcel of land where the boundaries are defined by directions and distances.

**Mineral Deed:** A deed transferring mineral rights, severed from surface rights, to a grantee.

**Mineral Lease:** A lease entitling the lessee to explore for minerals and mine them if discovered.

**Nonconforming Use:** A use of land that predates zoning, and is not in accordance with the uses prescribed for the area by a zoning ordinance. Such a use may be continued, but generally not expanded.

**Nongovernmental Organization (NGO):** A charitable organization that is committed to one or more causes that address and improve the world around us.

**Nonprofit:** An organization that operates for the purpose of assisting other individuals, groups, or causes rather than garnering profits for themselves.

**Nuncupative Will:** An oral will declared and dictated by a testator in his or her last illness in front of witnesses and thereafter reduced to writing.

**Open Space:** Public and private undeveloped land such as a park, farm and forest land

**Option:** The right to purchase or lease a property at a certain price for a certain designated period of time, for which right consideration is paid.

**Partition:** A division made of real property among those who own it. Can be voluntary or court ordered by a special proceeding.

**Partnership:** A voluntary contract between two or more persons combine money, labor, and/or skill for the purpose of making a profit, with the

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understanding of a proportional sharing of profits and losses between or among them. Partnerships can be created under written contract or implied by law due to actions of the parties.

**Partnership Agreement:** A document which embodies the terms and conditions of a partnership.

**Percentage Lease:** A lease of commercial business property in which the rental is based upon the volume of sales made upon the leased premises.

**Permanent or Perpetual Conservation Easement:** A conservation easement that is written so that it does not expire. Only a permanent easement qualifies a landowner for tax breaks.

**Personalty:** Personal property (i.e., not real estate)

**Pour Over Will:** The will of a person who has already executed a trust wherein all property is designated to be distributed or managed upon the death of the person whose possessions are in trust, leaving all property to the trust. A pour over will assures that any assets that somehow were not included in the trust become assets of the trust upon the party's death.

**Power of Attorney:** A written instrument authorizing a person to act as the agent or attorney in fact of the person granting it; such power may be limited or general according to the terms of the instrument, and need not be given to a lawyer.

**Premarital Agreement:** An agreement between prospective spouses made prior to a planned marriage. The agreement becomes effective upon marriage. Agreements between people living together but not contemplating marriage, and post-nuptial or separation agreements are not included in this law. A premarital agreement must be in writing and signed by both parties -oral agreements cannot constitute premarital agreements.

**Present Use Value:** The term used to describe the alternate tax valuation placed on land used for farm, forest and horticultural production under certain statutory restrictions.

**Preservation:** Leaving a resource undisturbed and free from harm or damage, such as preserving wetlands by forbidding development on or near them. Permanently retaining land in agricultural or forest uses.

**Probate:** The judicial process by which the validity of a will is formally determined, and that oversees the carrying out of the testator's expressed wishes.

**Property:** The right or interest which an individual has in lands and chattels to the exclusion of others; land and the improvements thereon.

**Purchase of Development Rights:** A term that commonly describes the cash purchase of a landowner's right to develop real property for non-agricultural uses. Cash is paid for all or a portion (as negotiated) of the difference between the value of a parcel with a conservation easement and the same parcel if there were no conservation easement.

**Quit Claim Deed:** A deed whereby the grantor conveys any and all its rights in a parcel of land to another without any warranty that any rights are owned.

**Real Property:** Lands and tenements, including the earth's surface, the air above, the ground below, and all improvements and appurtenances to the land, including the rights, interests and benefits inherent in ownership (see Bundle of Rights Concept).

**Remainder Interest:** An estate in property created at the same time and by the same instrument as another estate and which becomes effective immediately upon the termination of the other estate.

**Remainderman:** The one taking title upon the expiration of a life estate.

**Residuary Estate:** The net estate which remains of an estate after debts, administrative expenses, legacies and devises have been satisfied.

**Revocable Living Trust:** A trust that may be altered as many times as desired in which income-producing property passes directly to the beneficiaries at the time of the grantor's death. Since the arrangement can be altered at any time, the assets are considered part of the grantor's estate and they are taxed as such.

**Right of First Offer:** A right granted by the owner of property to another whereby if the owner desires to sell the property, she must first notify the other person, who may then make an offer to purchase the property. If the owner refuses the offer to purchase, she may not sell the property to a third person

on terms less favorable to the owner than those contained in the first offer.

**Right-of-Way:** A right whereby the owner of land has given another the right to pass over the land, such as constructing and using a roadway, on a specific part of land without transferring ownership of the land itself.

**Riparian:** Pertaining to the banks of a river, stream, or other body of water.

**Riparian Owner:** One who owns lands bounding upon a river, stream, or other body of water.

**Settlor:** A person who creates a trust by a written trust declaration, called a “Trustor” in many (particularly western) states and sometimes referred to as the “Donor.” The settlor usually transfers the original assets into the trust. (See Trust, Trustor)

**Share Lease:** A type of farm lease whereby the landlord and tenant share production expenses and divide income on an agreed basis.

**Sole Proprietorship:** A form of business in which one person owns all the assets of the business, and is solely liable for all the debts of the business.

**Statute of Frauds:** A state law that provides that certain contracts, including contracts for the sale of land and leases of more than one year, must be in writing in order to be legally enforceable.

**Survey:** The process by which the quantity and boundaries of a piece of land are ascertained, resulting in a statement of the courses, distances, and quantity of land. A survey can include grades, contours, structures and other physical features of the land.

**Tax Credit:** A dollar-for-dollar reduction in the income tax payment required of a person.

**Tenancy at Will:** A license to use or occupy lands at the will of the owner that can be cancelled at any time.

**Tenancy for Years:** The leasing of property for any fixed, definite period of time, whether such period be one week, one month, one year, ten years, or any other definite period of time.

**Tenancy in Common:** A form of property ownership held by two or more persons, each of whom is considered to have rights in the entire property.

**Tenant:** A person who holds real estate under a lease.

**Testamentary Trust:** A trust created by a person’s will, thereby not effective until the death of the testator. Testamentary trusts are used chiefly by individuals who are concerned about their beneficiaries’ ability to administer large amounts of assets.

**Testate:** Leaving a valid will at death.

**Testator:** A person who makes a will is called a testator (male) or testatrix (female).

**Tort Liability:** A “tort” is an injury to another person or to property, which is compensable under the law. Categories of torts include negligence, gross negligence, and intentional wrongdoing. Negligence is the most common type of tort. To give rise to a legal claim in negligence, an act (or inaction) must satisfy four elements:

1. there must be a legal duty of care to another person;
2. there must be a breach of that duty;
3. the claimant must have suffered damages, and
4. the damages must have been proximately caused by the breach of duty.

**Trust:** A legal arrangement, evidenced by a written instrument, whereby a grantor transfers the legal title of property to a trustee to hold and manage that property for the benefit of a third person (a beneficiary).

**Trustee:** An individual or corporation named by an individual, who sets aside property to be used for the benefit of another person, to manage the property as provided by the terms of the document that created the trust.

**Undivided Ownership:** Ownership of a fractional interest in property by sharing possession of the whole (undivided) property with one or more co-owners (co-tenants).

**Will:** A written document which, when properly executed (signed and witnessed) is effective at the death of the maker to dispose of property according to the terms of the document.

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**Working Lands:** Term of art describing farm, forest and horticultural land that is kept in its intended use for the purpose of generating income.

**Zoning:** The exercise of police power of a municipality or county in regulating and controlling the character and use of property. Zoning commonly includes regulation on the kinds of activities which will be acceptable on particular lots (such as residential, agricultural, commercial or industrial) and the densities at which those activities can be performed.