

GUIDE TO LAST WILL AND TESTAMENT
DEFINITIONS AND USES FOR
HAWKINS ELDER LAW CLIENTS

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ARTICLE 1

PREFACE TO TERMINOLOGY DEFINITIONS AND USES

1.1. Application

1.1.1. This Guide to Last Will and Testament Definitions and Uses for Hawkins' Clients (the "Guide") is a supplement to last wills and testaments prepared by the lawyers of Hawkins Elder Law PC, an Indiana professional corporation engaged in the practice of law in the State of Indiana, which also engages in the practice of law in the State of Illinois as Hawkins Elder Law LLC, an Illinois professional limited liability company owned by Hawkins Elder Law PC (collectively, "Hawkins").

1.1.2. Each Testator of a last will and testament prepared by Hawkins incorporates this Guide by reference into the testator's last will and testament (the "Will"), and the testator incorporates any future version of the Guide published on the Internet by Hawkins on a webpage of the website presently identified as <https://www.hawkinselderlaw.com> (the "Updated Guide") after the latest date of the Will.

1.1.3. The Updated Guide will supersede this Guide unless the Testator expressly states an intent not to incorporate the Updated Guide in a future version of Will or another written instrument executed by the Testator.

1.2. Priority of Definitions in this Guide Versus Definitions in the Will

Each definition of a word or phrase in this Guide applies to the Will's use of the word or phrase unless the context or a provision of an article of the Will states that its provision defines or uses the word or phrase differently.

1.3. References to Plurality, Singularity, and Gender

1.3.1. The Will often uses singular references to persons and their respective roles regardless of whether the references concern one person or more than one person.

1.3.2. All references in the Will to the singular forms of nouns, pronouns, and verbs also apply to the plural.

1.3.3. Although the Will primarily uses gender-neutral terminology, all masculine forms of nouns, pronouns, and verbs also apply to the feminine or neuter forms as the context requires.

1.4. Surplus Terminology

1.4.1. Some words and phrases that this Guide defines may be surplus terminology remaining after the Will's preparer deleted provisions that used the defined words and phrases in earlier Will drafts.

1.4.2. Surplus terminology does not affect the meaning or construction of the Will.

ARTICLE 2

TERMINOLOGY DEFINITIONS AND USES

2.1. A Preface to this Article's Terminology Definitions and Usage Contexts.

2.1.1. Each definition of a word or phrase in this Article applies to this Last Will and Testament's use of the word or phrase unless a provision of another article of the Will states that the other article's provision defines or uses the word or phrase differently.

2.1.2. The Will often uses singular references to persons and their respective roles regardless of whether the references concern one person or more than one person.

2.1.3. All references in the Will to the singular forms of nouns, pronouns, and verbs also apply to the plural.

2.1.4. Although the Will primarily uses gender-neutral terminology, all masculine forms of nouns, pronouns, and verbs also apply to the feminine or neuter forms as the context requires.

2.1.5. Some words and phrases that this Article defines may be surplus terminology remaining after the Will's preparer deleted provisions that used the defined words and phrases in earlier Will drafts.

2.1.6. Although the remaining provisions of this Article feature alphabetized terminology definitions, any appearance in this Article of a term's definition out of alphabetical sequence is an unintended editorial result that does not alter the Settlor's intended definition or use of the term.

2.2. "Administer and Administration."

"Administer" includes a Fiduciary's management, investment, maintenance, disposal, sale, exchange, or distribution of an Estate or Trust Estate.

2.3. "Ancestor."

2.3.1. "Ancestor" means an parent or earlier generation of individuals related to a younger individual through a direct line of ascending family relationship through and from the younger individual's birth or adoption.

2.3.2. For example, an individual is an Ancestor of the individual's children and grandchildren.

2.4. "Assistance."

"Assistance" includes Medicaid, Supplemental Security Income (SSI), and other forms of need-based public assistance.

2.5. "Beneficiary."

2.5.1. A "Beneficiary" is a person or entity named or otherwise designated to receive an Income or Principal distribution under the Will.

2.5.2. In some instances, references to a Beneficiary in the Will also refer to the Beneficiary's Dependents.

2.6. "Decedent."

"Decedent" means a person who has died.

2.7. “Dependent.”

“Dependent” means a Beneficiary’s child who is:

2.7.1. legally disabled under the eligibility requirements for SSI or other disability-based benefits programs, regardless of whether the programs are need-based;

2.7.2. younger than 18 years of age; or

2.7.3. 18 years of age or older, and 26 years of age or younger,

2.7.3.1. who is enrolled as a full-time or part-time student in an Education program or curriculum; and

2.7.3.2. whose eligibility for need-based grants, scholarships, loans, and other forms of student financial aid depends on the Beneficiary’s wealth or income, or requires disclosure of the Beneficiary’s wealth or income.

2.8. “Descendant.”

2.8.1. “Descendant” means an individual who follows an older individual in a direct line of descending family relationship from the younger individual’s birth or adoption.

2.8.2. For example, an individual is a Descendant of the individual’s parents and grandparents.

2.9. “Disabled Beneficiary.”

A Beneficiary under the Will is a “Disabled Beneficiary” if the Beneficiary is:

2.9.1. a person who has an Adjudged Incapacity;

2.9.2. a person lacking an Adjudged Incapacity, but who, because of illness or mental or physical disability, in the Trustee's Discretion, will be unable to use or disburse the payment or distribution wisely; or

2.9.3. a person who would or could qualify for "Assistance," as this Article defines that term if the payment or distribution is not delivered.

2.10. “Disabled Fiduciary.”

A "Disabled Fiduciary" is a Fiduciary whose physician has issued a written opinion that the Fiduciary's injury or otherwise degraded health condition has physically or mentally impaired the Fiduciary's ability to consistently, prudently, and timely participate in important personal or business transactions, including without limitation monitoring account balances, paying bills as they become due, and maintaining property of which the Fiduciary is the owner or for which the Fiduciary is responsible as a Fiduciary.

2.11. “Discretion.”

Except as the Will expresses a different standard or meaning, all references in the Will to “Discretion” mean that a person has sole Discretion to determine facts and circumstances relevant to a decision or factual determination in the administration of my Estate or a Trust established under the Will.

2.12. “Discretionary Authority.”

“Discretionary Authority” means a Trustee’s authority to exercise Discretion in a decision or action.

2.13. “Domicile.”

“Domicile” means the place I occupied during my life as my primary legal residence.

2.14. “Education.”

“Education” includes preschool, kindergarten through high school, remedial, therapeutic, vocational, technical, college, professional, and graduate Education.

2.15. “Estate.”

2.15.1. “Estate” means all the real and personal property, including without limitation intangible property, rights, and privileges, that I may own at the time of my death without legal provisions or arrangements for the property ownership to pass automatically by operation of law upon my death to persons having rights of survivorship.

2.15.2. Examples of property excluded from my Estate include without limitation:

2.15.2.1. Retirement Assets, life insurance policies, or annuities for which I have designated Beneficiaries to receive distributions of income or principal after my death;

2.15.2.2. property other than Retirement Assets, life insurance policies, or annuities for which I have designated Beneficiaries to receive the property or interests in the property after my death through transfer on death (commonly designated "TOD") or pay on death (commonly designated "POD") ownership provisions or arrangements under my state's pay on death and transfer on death laws;

2.15.2.3. property that I have transferred to a trust established during my life or that I have arranged to transfer after my death through either of the preceding asset transfer examples to a trust that I have established during my life or that is established under the Will;

2.15.2.4. accounts or other property owned by a one or more people and me as joint tenants with rights of survivorship; and

2.15.2.5. real property that I may own with my spouse as tenants by the entirety if I am married at the time of my death.

2.16. "Fiduciary."

2.16.1. A "Fiduciary" is an individual or organization that acts on behalf of another person or persons, putting their clients' interests ahead of their own, with a duty to preserve good faith and Trust.

2.16.2. References in the Will to a Fiduciary include a Trustee or any similar or related role of authority or responsibility established or referred to under the Will, including without limitation the roles of Trustees, Trust Protectors, Beneficiary Representatives, Custodians, and Personal Representatives.

2.16.3. A reference to a Fiduciary may refer to an original or successor Fiduciary, as the context may indicate or require.

2.16.4. Each reference to a Fiduciary concerns one or more persons having the authority to act in circumstances when a Fiduciary may exercise a power or perform a duty.

2.17. “Financial Resources.”

“Financial Resources” include all assets, Personal Income, inheritances, distributions, and Assistance reasonably available for a Beneficiary’s benefit.

2.18. “Health.”

2.18.1. “Health” includes all medical, dental, aural, and optical care.

2.18.2. Expenditures concerning a Beneficiary’s health include the payment of premiums required to maintain insurance policies, including policies of disability, long-term care, life, and Health insurance.

2.19. “Incapacity,” “Incapacity Proceeding,” “Incapacitated,” and “Adjudged Incapacity.”

2.19.1. “Incapacity” means an individual’s insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity makes the individual is unable to manage either or both of:

2.19.1.1. in the individual’s self-care; or

2.19.1.2. all or part of the individual’s property.

2.19.2. An “Incapacity Proceeding” is a hearing or series of hearings held by a court to determine whether an individual is legally incapacitated.

2.19.3. For purposes of the Will, “Incapacitated” and “Adjudged Incapacity” referred to an individual’s status as legally incapacitated that a court has established by factual findings in an Incapacity Proceeding.

2.19.4. An individual has an Adjudged Incapacity if:

2.19.4.1. the individual has a statutorily defined developmental disability;

2.19.4.2. a court has determined that the individual cannot be located upon reasonable inquiry; or

2.19.4.3. a court has made actual findings in an Incapacity Proceeding that the individual has a sufficient extent of incapacity that the Individual is legally incapacitated.

2.20. “Income.”

2.20.1. “Income” is money or money’s value paid to an Estate or Trust as:

2.20.1.1. profit from a business interest that is part of the Estate or Trust Estate;

2.20.1.2. rent from the lease of real or personal property by the Estate or Trust Estate;

2.20.1.3. interest paid to the Estate or Trust Estate on the funds deposited in financial institutions, or on bonds, loans, or installment sales payable to the Estate or Trust Estate;
and

2.20.1.4. dividends paid by any business entity in which the Estate or Trust Estate holds an ownership interest.

2.20.2. Income does not include the proceeds from the sale of property that is part of a Trust Estate.

2.21. “Insecure.”

“Insecure” means a Beneficiary’s Financial Resources are insufficient to pay the Beneficiary’s reasonable costs of housing, Utility services, food, clothing, Health, and Education.

2.22. “Instrument.”

“Instrument” means a written agreement, notice, or other document signed by a person that the Will says may act by making or delivering an Instrument.

2.23. “IRC.”

“IRC” means the United States statutes governing United States taxes and other kinds of federal revenue codified in Title 26 of the United States Code and commonly known as the “Internal Revenue Code.”

2.24. “Kinship.”

“Kinship” means an individual’s family relationship to me through our common ancestors by birth or adoption.

2.25. “Legal Representative.”

“Legal Representative” means a person authorized to represent a Beneficiary under the laws of the state where the Beneficiary resides or the laws of the state that governs the Will.

2.26. “Net Income.”

“Net Income” is Income remaining after payment of expenses, other than payment of distributions to Beneficiaries, that the Trustee may deduct from gross Income in the calculation of Income tax imposed upon the Trust under the IRC and Regulations.

2.27. “Personal Income.”

“Personal Income” under the Will is money or money’s value that a Beneficiary may receive as wages, salaries, interest, dividends, rent, royalties, business profits, earnings, pensions, distributions from Retirement Assets, Assistance payments, Social Security retirement benefits, or other payments that are not proceeds from the Beneficiary’s sale or assignment of the Beneficiary’s assets.

2.28. “Personal Representative.”

A “Personal Representative” is an individual or organization appointed by a court to Administer a Decedent’s Estate as the executor nominated by a Decedent under the Decedent’s Last Will and Testament or as an administrator of a Decedent, who died without a Last Will and Testament.

2.29. “Per stirpes.”

2.29.1. “Per stirpes” means that an Estate, Trust Estate, or share of an Estate or Trust Estate (Estates and Trust Estates being referred to collectively in this Section 2.29 as “Estates”) divides and passes in equal shares apportioned to or through a Decedent’s living or deceased Descendants sharing the nearest degree of Kinship to the Decedent.

2.29.2. A Decedent's deceased Descendant's share of the Decedent's Estate further divides and passes in equal shares apportioned to the deceased Descendant's living and deceased Descendants having the nearest degree of Kinship to the deceased Descendant.

2.29.3. The division and passage of shares continues through successive generations of a Decedent's deceased Descendants to each of the Decedent's living Descendants having the nearest degrees of kinship to the Decedent through the Descendants' respective ancestors.

2.29.4. The share apportioned to a Decedent's deceased Descendant having no living Descendants divides and passes in equal shares to or through the Decedent's other living and deceased Descendants having a degree of kinship to the Decedent equal to the deceased Descendant lacking living Descendants.

2.29.5. Assume for the following example of distribution *Per Stirpes* that three of a Decedent's children, Child 1, Child 2, and Child 3, survived the Decedent, Child 4 predeceased the Decedent, and three of Child 4's children, Grandchild 4A, Grandchild 4B, and Grandchild 4C, survived the Decedent:

2.29.5.1. the Estate would divide and pass in a 1/4 share to each of Child 1, Child 2, and Child 3, and a 1/12 share to each of Grandchild 4A, Grandchild 4B, and Grandchild 4C; and

2.29.5.2. if Grandchild 4C also predeceased the Decedent, leaving three surviving children, Great-Grandchild 4C1, Great-Grandchild 4C2, and Great-Grandchild 4C3, each of Child 1, Child 2, and Child 3 would still receive a 1/4 share, each of Grandchild 4A and Grandchild 4B would each receive a 1/12 share, and each of Great-Grandchild 4C1, Great-Grandchild 4C2, and Great-Grandchild 4C3 would receive a 1/36 share of the Decedent's Estate.

2.30. "Principal."

"Principal" is the real or personal property entrusted to a Fiduciary as part of my Estate or the Trust Property of a Trust Estate and any Net Income that the Fiduciary invests instead of distributing the Net Income to Beneficiaries.

2.31. “Probate Estate Administration.”

“Probate Estate Administration” means Administration of an Estate under the laws of the state of my Domicile.

2.32. “Protective Trust.”

A "Protective Trust" is a Discretionary Trust established under the Will to Administer a distribution that the Will directs a Trustee to Administer for a Specified Beneficiary, a Disabled Beneficiary, or an Age-Limited Beneficiary.

2.33. “Protective Trust Estate.”

A “Protective Trust Estate” is the Trust Estate of a Protective Trust.

2.34. “Protective Trust Income.”

A “Protective Trust Income” is Income payable to a Protective Trust concerning that Trust’s Protective Trust Property.

2.35. “Protective Trust Property.”

A “Protective Trust Property” is the Trust Property of a Protective Trust.

2.36. “Regulations.”

2.36.1. "Regulations," commonly known as "Treasury Regulations," are the administrative rules issued by the United States Department of Treasury to Administer the IRC.

2.36.2. The Will’s references to Regulations includes the various published orders, opinions, and memoranda interpreting the IRC issued by the United States Department of Treasury and the United States courts that preside over IRC-related matters.

2.37. “Residuary Estate.”

“Residuary Estate” means the last portion of an Estate or Trust Estate that the Will directs a Fiduciary to distribute to Beneficiaries after the Fiduciary has completed distributions of specifically described property or specified values of money to Beneficiaries designated to receive those distributions under the Will.

2.38. “Retirement Assets.”

“Retirement Assets” are governed by IRC Sections 401-408A and Regulations as tax-deferred and tax-free retirement accounts or plans that are commonly known as “individual retirement accounts,” “IRAs,” 401(k) plans, 403(b) plans, “SEPs,” “defined benefit plans,” “defined contribution plans,” “Roth IRAs,” “IRA annuities,” “qualified annuities,” “qualified plans,” “qualified accounts,” and “qualified assets.”

2.39. “Secure.”

“Secure” means a Beneficiary’s Financial Resources are sufficient to pay the Beneficiary’s reasonable costs of housing, Utility services, food, clothing, Health, and Education.

2.40. "Self-Interested Conduct."

"Self-Interested Conduct" is any action or conduct by a Fiduciary in a matter or transaction in which the Trustee may have an interest.

2.41. “Specified Beneficiary.”

A “Specified Beneficiary” is a person whom the Will identifies by the person’s name as a Beneficiary and specifies that a distribution to the Beneficiary is subject to the provisions of the Article identified by the heading “Protective Trusts.”

2.42. “Testamentary Trust.”

A “Testamentary Trust” is a Trust that:

2.42.1. I have established under the Will;

2.42.2. has no “Trust Agreement” stating the Trust’s terms and conditions other than the provisions of the Will; and

2.42.3. takes effect after my death when a person submits the Will with a petition to the court having Probate Estate Administration jurisdiction in the county and state of my Domicile and the court enters an order admitting the Will as my Last Will and Testament in the court’s records of Probate Estate Administration proceedings.

2.43. “Testator.”

A “Testator” is a person who makes a will as I am making the Will.

2.44. “Transfers Outside Probate Administration.”

“Transfers Outside Probate Administration” are transfers of real or personal property by operation of law upon my death to persons having rights of survivorship, thereby excluding the transferred property from my Estate.

2.45. “Trustee.”

2.45.1. A “Trustee” Administers the Trust Estate of a Trust established under the Will for the benefit of a Beneficiary as a Fiduciary.

2.45.2. A Trustee is not a Personal Representative.

2.46. “Trust Estate.”

“Trust Estate” is Trust Property and Net Income held, invested, or distributed by a Trustee.

2.47. “Trust Property.”

“Trust Property” is any Principal that a Trustee receives from my Estate or any other source for Administration in a Trust as Trust Property.

2.48. “Utility.”

“Utility” means any good or service that a person may acquire, receive, or use by purchase or subscription to communicate or use as part of the person’s housing, including without limitation heating oil, natural and liquid propane gas, electricity, water, sewage disposal, solid waste disposal, Internet access furnished through any Internet access medium, television programming furnished through any television media delivery source, and telephone or other comparable telecommunication access furnished through any telecommunication media delivery source.

ARTICLE 3
GUIDE PREPARATION, UPDATES, AND COPYRIGHT

3.1. Preparation.

This Guide is prepared and updated periodically as the Updated Guide by Hawkins, and Hawkins may publish the Updated Guide on a webpage of <https://www.hawkinselderlaw.com>.

3.2. Copyright.

3.2.1. Hawkins reserves all copyrights to this Guide and the Updated Guide, beginning with Hawkins' copyright to the Guide first published in 2023.

3.2.2. In most cases, Hawkins will license the royalty-free use of this Guide and the Updated Guide upon request.