

# Legal Language for Property Owners

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Legal terms are used often in conversation and on radio and television programs. Though you may be acquainted with the words, it is the meaning that counts.

In buying, selling or willing property, either real or personal, legal terms are brought into use. Knowing some of the important ones can help in communications between the buyer and seller.

The language used in describing these transactions includes the following common legal terms:

**Abstract of Title** – A legal form giving a condensed history of the property. Ask to see it before you buy property. Previous owners, prices paid and any encumbrances against the property are listed.

**Amortization** – Paying off a loan by regular installments.

**Appraisal** – An estimate, often conservative, of the worth of the property based on market value.

**Certificate of Title** – A document usually provided by a title company or attorney which certifies current ownership of a piece of property.

**Closing Costs** – Sometimes called settlement costs, these are in addition to the cost of the house.

**Contract** – A legal written agreement that is binding when signed.

**Deed** – The document that conveys the title from one owner to another.



**Earnest Money** – Deposit money paid by the buyer to indicate that he is serious about wanting to buy. The amount may vary.

**Easement Rights** – The right an owner gives a person or company to use the property in a specified way. For example, a neighbor may be given the right to use a driveway.

**Escrow** – Money given a third party may be held *in escrow* for payment of conditions to be met, for example, to complete work on the house or yard. Money for taxes may also be held *in escrow*.

**Mortgage** – The written agreement pledging property to a creditor for a loan.

**Mortgagee** – Is the person to whom the property is mortgaged and who has loaned the money.

**Mortgagor** – Is the person who makes the pledge and is receiving the money.

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**Title Insurance** – Special insurance against loss due to a flaw in the title.

Closely related to real estate legal terminology are these terms used in estate planning.

**Adjudication** – The decision of a competent court with regard to matters in dispute; to be distinguished from arbitration.

**Administration** – The care and management of an estate by a trustee or a guardian; to be distinguished from the settlement of an estate by an executor or an administrator.

**Administrator (Administratrix)** – A person or institution appointed by the court to manage and distribute the estate of a person who dies intestate; a person appointed by the court to manage and distribute the estate of a person who dies testate, but who has not appointed an executor or whose executor has not qualified.

**Affiant** – A person who makes an affidavit or statement under oath or affirmation.

**Affidavit** – A document, sworn to and signed before a notary or other court officer, containing a specific statement.

**Agent** – A person who acts for another person by the latter's authority. The distinguishing characteristics of an agent are (1) that he acts on behalf and subject to the control of his principal, (2) that he does not have title to the property of his principal and (3) that he owes the duty of obedience to his principal's orders.

**Assets** – (1) The property of a deceased person subject to the payment of her debts and gifts. (2) The property in a trust account.

**Attest** – To serve as a witness to; as, to attest a will or other document.

**Attorney at Law** – A person who is legally qualified and authorized to represent and act for clients in legal proceedings; to be distinguished from attorney in fact.

**Attorney in Fact** – A person who, acting as agent, is given written authorization by another person to transact business for him out of court; to be distinguished from attorney at law.

**Beneficiary** – A person or institution named to receive property or property benefits.

**Bequest** – That which is left by will.

**Bequeath** – To transfer personal property by will.

**Bona Fide** (adj.) – In good faith; as, a *bona fide* transaction.

**Breach of Trust** – Violation of a duty of a trustee to a beneficiary.

**Burden of Proof** – The duty of proving a position taken in a court of law. Failure in the performance of that duty calls for judgment against the person on whom the duty rests. Thus, the *burden of proof* that the paper writing is not the valid will of the testator is upon the person who contests the will.

**Capital Gains (and Losses)** – The difference between purchase price and selling price in the sale of assets. The computation is used primarily in tax computations.

**Charity** – An agency, institution or organization in existence and operation for the benefit of an indefinite number of persons and conducted for educational, religious, scientific, medical or other beneficent purposes.

**Chattel** – Any property, movable or immovable, except a freehold estate in real property.

**Claims** – The right to any debts, privileges or other things in possession of another; also, the titles to anything which another should concede to, or confer on, the claimant.

**Codicil** – A supplement or addition to a will which is designed to change or add provisions to a will. It is treated as part of the will and executed with the same formality as a will.

**Common Disaster** – Sudden and extraordinary misfortune which brings about the simultaneous or near-simultaneous death of two or more associated persons.

**Contest of a Will** – An attempt by legal process to prevent the probate of a will or the distribution of property according to the will.

**Contingent Beneficiary** – Receiver of property or benefits if the first-named beneficiary fails to receive any or all benefits before his death.

**Court Order** – A written direction by a court or a judge not included in a decree or a judgment and not establishing the rights of parties.

**Creditor's Notice** – In probate the statement published stating the decedent's death and the name of the executor or administrator to whom claims should be presented for payment.

**Curtesy** – A widower's legal interest in his wife's real and personal property.

**Decedent** – A deceased person.

**Dependent** – A person who is dependent for support upon another; to be distinguished from one who merely derives a benefit from the earnings of another.

**Devise** – To give real property by will.

**Distribution** – The appointment of personal property (or its proceeds) among those entitled to receive the property according to the applicable statute of distribution or under the terms of the will or trust agreement; to be distinguished from disbursement.

**Donee** – The recipient of a gift or bequest.

**Donor** – One who makes a gift or transfer of property voluntarily.

**Dower** – A widow's legal interest in her deceased husband's real and personal property.

**Escheat** – Reversion of property to the state when a person dies without a will and with no legal heirs.

**Estate** – All real and personal property owned by a person.

**Executor (Executrix)** – A person or institution named in a testator's will to carry out the provisions and directions of the will.

**Fee Simple** – Absolute title to property with no limitations or restrictions regarding the persons who may inherit it.

**Fiduciary** – A person or institution given legal responsibility to act on behalf of an individual to perform certain tasks. For example, a trustee (see definition) serves as a fiduciary when she manages real or personal property in an individual's trust. An executor/executrix (see definition) of an estate serves as a fiduciary when he/she manages real or personal property of that estate. A guardian (see definition) serves as a fiduciary when he manages either "the physical care" or "real or personal property" or both for the benefit of a minor or an incapacitated person.

**Gift** – A voluntary transfer or conveyance of property without consideration or for less than full and adequate consideration based on fair market value.

**Guardian** – An individual or a trust institution appointed by a court to care for the property or the person (or both) of a minor or an incompetent person. When the guardian's duties are limited to the property, she is known as a *guardian* of the property; when they are limited to the person, she is known as a *guardian* of the person; when they apply both to property and to the person, she is known merely as a *guardian*. In some states the term committee, conservator, curator or tutor is used to designate one who performs substantially the same duties as those of a *guardian*.

**Heir** – A person who succeeds the decedent in ownership of the decedent's property where there is no will.

**Holographic Will** – A will entirely in the handwriting of the testator.

**Intestate** – Having no valid will; a person who dies without having executed a valid will.

**Joint Tenancy** – A form of property ownership in which two or more parties hold an undivided interest in the same property which was conveyed under the same instrument at the same time. *With rights of survivorship* – a joint tenant can sell his interest, but he cannot dispose of it by will; upon the death of a joint tenant, his undivided interest is distributed among his surviving joint tenants.

**Kin** – Persons of the same blood or members of the same family.

**Kind** – In the phrase "distribution in kind," distribution of the property itself and not the cash value of the property.

**Last Will and Testament** – A legally enforceable declaration of a person's wishes regarding matters to be attended to after her death and not operative until her death; usually but not always relating to a property; revocable (or amendable by means of a codicil) up to the time of her death or loss of mental capacity to make a valid will. Originally, "*will*" related to real property; "*testament*" to personal property; but at the present time, "*will*" is equally applicable to real and personal property.

**Laws of Descent** – Laws governing the descent of real and personal property from ancestor to heir; to be distinguished from laws, rules or statutes of distribution governing the disposition of property by will.

**Legacy** – A gift, usually of personal property, made by will.

**Lien** – A claim against property, real or personal, for satisfaction of a debt.

**Marital Rights** – The rights that husband and wife have in each other's property.

**Non Compos Mentis (Not of sound mind)** – A term that includes all forms of mental unsoundness.

**Per Capita (By the head)** – A term used in the distribution of property; distribution to persons as individuals (*per capita*) and not by representation or through an ancestor (*per stirpes*). For example, "I give my estate in equal shares to my son A and to my grandsons C, D and E (the sons of my deceased son B) *per capita*." C, D and E take as individuals (not as the sons of B), each taking the same share as A, namely, one-fourth of the estate.

**Personal Property** – Tangible property such as clothing, furniture and automobiles; and intangible property such as stocks, bonds, life insurance and bank accounts.

**Per Stirpes** – By right of representation. The legal means by which the children of a descendant, upon the death of an ancestor, receive the share of the ancestor's estate which their parent would have received if living.

**Petition** – A written prayer or request to a court or to a judge for the granting of some remedy for relief.

**Probate** – Official proof of the validity of a will; the legal process designed to protect and administer a decedent's estate.

**Real Property** – Land and things attached thereto, such as buildings.

**Sibling** – Children of the same parents.

**Statute** – A law.

**Statute of Limitations** – A statute which bars suits upon valid claims after the expiration of a specified period of time. The period varies for different kinds of claims. Each state has its own *statute of limitations*.

**Succession** – The act or fact of a person's becoming entitled to property of a deceased person, whether by operation of law upon his dying intestate or by taking under his will.

**Tenancy-by-the-Entirety** – A type of joint tenancy between husband and wife which is recognized in some states, including Arkansas. This type of ownership is characterized by the fact that neither party can sever the joint-tenancy relationship. Upon the death of one spouse, the survivor acquires title to the property.

**Tenancy-in-Common** – A type of property ownership in which two or more persons hold undivided interests in the same land with no right of survivorship. However, each tenant-in common can sell or divide his share.

**Testate** – To die leaving a valid will.

**Testator (Testatrix)** – A person who makes or has made a will.

**Transfer on Death (TOD) or Payable on Death (POD)** – A TOD designation for property that shows sole ownership, multiple ownership with right of survivorship (see *joint tenancy*), tenancy-by-entirety (see *tenancy-by-entirety*) or community property ownership can be registered in beneficiary form. The owner names person(s) to inherit the securities upon his or her death and title transfers avoid probate. Security means a share, participation or other interest in real or personal property, a business, an enterprise obligation or other issuer and includes both certified and uncertified securities or security accounts. A **POD designation** avoids probate for bank accounts and government bonds. To create a POD designation, you name person(s) on the ownership document, such as on the registration card for a bank account, to inherit the property at your death. In both TOD and POD designations, owner(s) retain complete control of the property while living and can change beneficiary designations at any time.

**Trust** – An arrangement made during life or under the terms of a will by which a property interest, real or personal, is held by one person for the benefit of another.

**Trustee** – A person or institution holding and administering property in trust.

**Trustor** – A person who makes or creates a trust. Also known as the grantor or settlor.

**Will** – A legal declaration of the manner in which a testator wishes to distribute her estate after death.

Just as one grain of sand does not make a beach, knowing the meaning of a list of legal terms does not make one a lawyer. Recognizing some of the implications of these legal terms should sharpen one's awareness of the complications of the family's legal affairs.

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