Glossary of Legal Terms

Affidavit: A sworn statement.

Allotted Land: Reservation land the federal government distributed to tribal members, generally in 40-, 80-, and 160-acre parcels.

Allottee: An individual who owns an undivided interest in a parcel of allotted land.

Appurtenance: Fixed or immovable structure, such as a barn or a shed, which is passed along with the sale or transfer of a property.

Assessed value: The value of the land and buildings/structures used to calculate property taxes.

Asset: Anything of value. In financial terms, an asset is a resource with economic value that is reported on a balance sheet including, but not limited to, cash, savings and investments, land, buildings, equipment, crops and livestock, inventories, and prepaid expenses. In legal terms, an asset is property that can be sold, gifted, or made available to pay off debts. Personal or human assets include things like training or education, skills and experience, intelligence, health, and values such as loyalty and accountability.

Beneficiary: The person or people named to receive a benefit from someone else in a will, trust, or insurance policy.

Bequest: A financial term for a gift made as part of a will or trust that transfers at death. Bequests can be of any kind of asset and made to a person or to a nonprofit organization, charity, or other institution. (Note: real estate given through a will is called a devise.)

Buy/Sell agreements: Formal agreements that spell out terms of ownership transfers in the case of death, divorce, disability, dissolution, or disaster. They often address valuation, discounts, terms of sale, and possible restrictions on asset transfers.

Capital gains income: The net of all capital gains and losses during the year resulting from the sale of a capital asset, such as land, equipment, or livestock. Capital gains are taxed at a different rate than other income. The gain is calculated based on the difference between the "basis"—or the cost or value when acquired—and the sale price.

Certificate of title: A legal statement supplied by a title company or the buyer's attorney stating that the title to the real estate or vehicle is legally held by the current owner and is free and clear of any encumbrances.

Comparative market analysis: A comparative market analysis is conducted by a realtor to estimate the probable sales price of a property. It reviews various factors including recent sales of comparable properties, pending sales and listings that have similar features to the subject property. This "probable price" is often referred to as the "Fair Market Value or FMV.

Conservation easement: A deed restriction a landowner voluntarily places on a property to limit development and to conserve natural resources such as productive farmland, wetlands, wildlife habitat, or scenic views. An **agricultural conservation easement** is specifically designed to protect farmland and ranchland for working farms and ranches.

Corporation: An organization that is recognized as a separate legal entity and distinct from its owners. There are six kinds of corporations including nonprofits and cooperatives (see Business Structure Information Sheet).

Deed: A legal document that conveys—or gives title (ownership) to real property including land and any buildings or structures that are attached to it.

Deed restrictions: Provisions placed in deeds to control how future owners may or may not use the property.

Encumbrance: A claim against real estate or other assets by a person or entity that does not own the asset. Encumbrances can affect the transfer and/or use of the property. Common real estate encumbrances include liens (often for debts owed), easements, leases, mortgages, deed restrictions or restrictive covenants.

Estate: Everything of value (all property) that a person owns while living or at the time of death.

Estate plan: A plan to transfer an individual's assets upon their death.

Estate settlement: Also referred to as the probate process. This is the process of settling the affairs of a deceased person. Key terms related to estate settlement or probate may include the following:

> **Administrator:** The person appointed by a court to carry out the instructions found in a will. Depending on the state, this may be referred to as the executor or personal representative.
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> **Curtesy:** The legal right of a widow to a portion of their deceased spouse's real property.
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> **Devise:** The transfer of real property through a will.
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> **Dower:** The legal right of a widow to a portion of their spouse's property to support themselves and their children. This also may be referred to as the elective share of a surviving spouse.
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> **Estate tax:** Also known as inheritance or death taxes, estate taxes are assessed by the state and/or federal government upon a decedent's right to transfer property at death.
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> **Executor:** A person named in a will to carry out its instructions; if male, the person is called an executor, and if female, the person is called an executrix. Depending on the state, this may be referred to as the administrator or personal representative.
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> **Heirs:** Those designated by law to receive the property of the deceased either by the terms of a will or state law.
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> **Personal representative:** A person appointed by a court to carry out the instructions found in a will. Depending on the state, this may be referred to as the executor or administrator.

Probate court: A court of law with the authority to verify the legality of a will and carry out its instructions.

Equity: In real estate, equity refers to amount of the property the holder actually owns, or the difference between the property's market value and the amount owed on a mortgage or other loans. In business, it refers to the value of shares issued by a corporation and is calculated by the company's total assets minus its total liabilities. In terms of estate or succession planning, or even society at large, it refers to the qualities of being fair and just.

"Fair vs. Equal" distribution: In farm/ranch transfer or estate planning, an "equal" distribution means that property is divided in equal percentages among heirs. In a "fair" or equitable distribution, property may be divided based upon the contributions and needs of the beneficiaries, and the economic values of the shares may be different.

Farm succession: The process of transferring ownership from one generation to the next. The elements of a comprehensive plan for succession include: financial security, management continuity, ownership transfer, leadership development and estate planning.

Fractionated Ownership (Fractionation): When a trust parcel is owned by more than one owner as undivided interests. Fractionated ownership results from ownership interests being divided again and again when an owner of the interest dies without a will. Trust parcels with fractionated ownership may have hundreds, even thousands, of owners. By law, a majority of owners must agree to a particular use of the land, making it difficult for any one of the owners to use the land.

Gift: A transfer of an asset without any payment, or where the payment is less than full market value**.**

Ground Lease: A long-term lease agreement where the tenant is allowed to "own" any improvements they make on a piece of property but not the property itself. Typically used in commercial real estate, it is a becoming more widespread as a path to land access for farmers. In a farming context, the farmland is held by another party, usually a nonprofit entity, and leased to the farmer usually for anywhere from 20 to 99 years. While the tenant farmer rents the land, they may buy buildings and/or make improvements which they can own. This allows them to build equity on the rented land over time.

Heirs' property: When an owner dies without a will their land is owned "in common" by all the heirs and state law decides who will inherit the land. When land is passed down through the generations without a will, each of these co-owners own a fractional (or partial) interest in the land. Because these interests are undivided no co-owner can claim ownership of a specific portion of the land.

Inheritance tax: A state or county tax levied on a person who inherits. The rate of taxation depends on the size of the inheritance and the relationship between the person who inherits and the deceased. Inheritance tax laws vary state by state. Some states have no inheritance tax, and some states have county inheritance taxes. In contrast to inheritance tax, an estate tax is levied on the estate before passing to heirs or beneficiaries.

Intestate: Leaving no legally valid will.

Intestacy Laws: State laws that decide how an estate is distributed among surviving heirs when the owner dies without a will. "Intestacy laws" mean the laws of descent and distribution.

Joint Tenants with Survivorship Rights: Undivided joint ownership but with the ownership passing to the survivor or survivors at death. Often used as a “will substitute” for married owners (referred to as “Tenants by the Entirety” for married couples).

Joint Tenants, or Tenants by the Entirety (Joint Tenancy): This type of ownership is often used by married couples. At the death of one owner, the property passes to the surviving owner. There is a high degree of certainty associated with this type of ownership. All the ownership will pass to the survivor regardless of what is in the will. Tenants by the entirety is specific to married couples.

Limited Liability: A form of legal protection for owners or shareholders so they are not held personally responsible for their business’ debts or losses and their personal assets are not at risk if their company is sued or fails financially.

Limited Liability Company (LLC): A business structure that combines the limited liability feature of a corporation with the pass-through feature of a partnership or sole proprietorship.

Option to Purchase: An agreement which gives a buyer the sole right to buy property within a set time period for a fixed or sometimes variable price. During the option period, the seller is not allowed to work with any other potential buyers.

Pass Through (or Flow Through) Entity: A business whose income “passes through” to its owners or shareholders and is taxed under their individual income tax. This avoids double taxation, since only individuals, but not the business, are taxed on the revenues. Pass-through entities include sole proprietorships, partnerships, LLCs and S-corporations.

Real Property: Land and everything that is fixed or permanently attached to it including buildings and other structures.

Sale: A transaction between two or more parties where assets are exchanged for a price. Sales can happen all at once, through installment payments over time, or phased by selling portions of the assets.

Tax basis: The amount of the landowner’s capital investment in property (including value or cost when acquired) for tax purposes and is used to figure depreciation, amortization, depletion, casualty losses and any gain or loss on the sale, exchange or other disposition of the property.

Tenancy in Common: Tenants in common have “unity of possession”, which means that every owner has an equal right with their co-owners to the land as long as they live. A tenant in common has an undivided interest in the whole property as if they were the sole owner, so they can transfer their interest by gift, sale or will, and decide who will own their interest when they pass away. Tenancy in common is often used for land held in trust for Native Americans.

Testate: Having made a legally valid will.

Title: The right to or ownership of something. Key terminology related to title may include:

> **Deed:** A written document that, when properly executed and delivered, conveys title to real property

Marketable title: Title that is free from encumbrances and any reasonable doubt as to the owner. Property with marketable title can be sold or mortgaged readily

Title by descent: Laws that direct how a deceased's assets shall be divided to heirs when no will exists.

Transfer on death (TOD): Designation on securities, life insurance, bank accounts or retirement accounts that allows the naming of a beneficiary to receive them upon the death of a party.

Outright bequest of property: Through sole or joint ownership (usually with siblings, or siblings and the surviving spouse)

Right to purchase at a specified price: Either pursuant to the will or a buy/sell provision

Transfer upon death (ToD): Upon death, the property of the person who died transfers to someone else according to the terms of the deed, will or trust documents left by the decedent, or "intestate" for someone who dies without a will. It is common for property that passes intestate to pass to multiple heirs and thus the title becomes fractionated.

Trust: Ownership and control of assets by a third party who manages the property and pays its income to a named person or people—or beneficiary—according to instructions given by the person who set up the trust. Key terminology related to trusts includes the following:

Fiduciary: A person or organization in a position of trust who acts on behalf of another person or people usually in ways related to financial management, including trusts.

Trustee: A person or institution who holds property in trust for another.

Trustor: Maker of a trust.

Trust Land: Land owned either by an individual tribal member or a tribe where the title to the property is held by the federal government. Most trust land is within reservation boundaries, but trust land can also be off or outside the boundaries of a reservation.

Undivided Interest: A share of the ownership interest in a parcel of trust land, where each owner owns a share of the whole, but not a specific physical section of the parcel. The number of interests grows with the division among heirs of these interests according to federal or tribal.

Will: A legal document directing the disposal of one's property after death