

# Estate Panning

The term “Estate Planning” refers to how you plan for your assets after death. Everyone who is at least 18 years of age should conduct some sort of estate planning, if only to make matters easier on family and friends when you are no longer here. Now that you are an adult, you might also want to discuss these matters with your parent(s) so that you can be sure they also are prepared. By the time you become a parent, you should be especially concerned with selecting, notifying, and documenting decisions as to who would be guardians for your children. You may also need to plan the best situation for minimizing income taxes, gift taxes, and estate taxes at your death. Other matters addressed during estate planning are wishes for medical care (“advance directives”), potential disability and the orderly transfer of a business or care of pets. A “will” may be the most familiar document in estate planning. Other documents used include trusts, living wills, and medical and financial powers of attorney.

## YOUR WILL



A Will allows you to leave your property (which includes money) to persons or charities in specific amounts or percentages, as you wish. It also names guardians for your minor children, trustees for any trust you create, and a personal representative to handle matters in your absence. A Will does require two witnesses, but can be as simple as “at my death, I leave all of my property to my spouse.” Most likely it will be more involved, especially if you have children, a large estate, or are in a second marriage.

Certain categories of property are not included in your Will:

### Retirement Plans

Retirement Plans, such as a personal Individual Retirement Account (IRA), and those you receive or participate in through your job (including pension, 401(k) Plans, IRAs, SEPs, Keoghs, Profit Sharing, money purchase plan, and other qualified retirement plans, will require you to complete a Beneficiary Form. This form will determine the beneficiary to receive plan benefits upon your

death. Once you are married, your spouse must sign an agreement before you may name anyone other than your spouse as beneficiary. In Colorado, if you do not complete a Beneficiary Form with your plan, the benefit is generally payable to your estate.

### **Life Insurance**

Life insurance benefits also are paid to the beneficiary you name on the life insurance Beneficiary Form.

### **Joint Tenancy Items**

Upon the death of one joint tenant, the law automatically transfers the property to the surviving joint tenant. Joint tenancy items include most checking and savings accounts, your Transfer on Death (“TOD”) brokerage accounts, if any, and your home and other real estate, if titled as joint tenants. (If your home is titled in something other than Joint Tenancy, it would pass under a Will).

### **Trusts**

A trust is a triangle-like relationship. You, as its creator, appoint the trustee, who holds title to the assets and manages them for the benefit of the beneficiary(ies). You name those who will receive your property (called the beneficiary (ies)) and when the trust will end. Colorado has passed a statute that allows you to create an Honorary Pet Trust to set up care for your pet(s) after your death.

### **Probate**

Probate is the name given to the process where, after death, your property is identified, collected, debts and taxes are paid, and your assets are distributed according to your will (or, if you have no will, according to Colorado’s laws for “intestate succession”). Probate in Colorado does not have to be complex if you do not have a sizable estate. It is often completed in one year or less. Wills are subject to probate, but the four categories described above are not (and so are called “non-probate property”).

### **Living Trust**

You may hear advertisements for setting up a Living Trust. These tend to cyclically become popular and unpopular, or preferred or opposed by various experts. The fact is that there are some distinct advantages and disadvantages to establishing a Living Trust. Should you have any interest in establishing one, be sure you do so only with or under the guidance of a licensed attorney. This is for your own protection.

## OTHER ESTATE PLANNING DOCUMENTS

### **Living Will**

A Living Will states that you do not want to be kept alive by artificial life support systems if you are terminally ill, comatose, and beyond hope of recovery. In Colorado, the law addresses life support (i.e., respirators, heart machines etc.), as well as whether food and water are withheld. A Colorado doctor must follow its instructions.

### **Medical Power of Attorney/Health Care Proxy**

This names another person to act for you in making medical decisions. It is used if you are unable to make decisions for yourself. It can be a simple appointment for a person to make all decisions, or you can customize it by listing each specific procedure to be given or withheld.

Note that certain medical institutions and certain religious institutions also offer assistance with approving or preparing these documents.

### **Do Not Resuscitate Order/Advanced Medical Directive**

While you may be young and healthy, your parents, the elderly or the terminally ill of any age may desire a document or medical bracelet or necklace that directs medical personnel not to give CPR, or not to give it under certain circumstances. Your doctor can provide you, a friend, or family member with the appropriate bracelet or necklace.

### **Anatomical Gift**

There is a provision on the Colorado driver's license to indicate whether you choose to be an organ donor. Additionally, you can designate any part of your body for transplant or research by adding a provision in your Living Will or your Medical Power of Attorney.

### **Financial Power of Attorney**

This is a document used to name another person (your agent) to act on your behalf for legal and financial matters (such as selling your car). By appointing an agent, you can avoid a court procedure to appoint a conservator in the event you become disabled or unable to make your own decisions. You can write the Power of Attorney broadly to cover all acts, or you may specify and limit the acts you authorize.