

Estate Planning

What is an Estate Plan?

An estate plan is a series of documents in which you provide instructions and declarations in the event that you become incapacitated or die. Estate planning documents can address the following goals:

- Direct who should speak for you or care for you when you are unable to;
- Direct who should protect and manage your assets while you are alive but unable to do so;
- Direct your medical or health treatment if you are unable to communicate your wishes later;
- Minimize tax liabilities during your life or upon your death;
- Direct who should inherit from you after your death; and
- Nominate someone to administer your assets after your death.

How Does an Attorney Create an Estate Plan?

An attorney will schedule multiple meetings with you to counsel you through a variety of issues and ask a series of questions that will help them analyze your assets and your goals and recommend an estate plan that is designed for you. In the end, you should be able to identify your options, the scope of the proposed plan, the purpose of all the documents and how they are to be used.

Be prepared to ask the attorney about their fees for designing your plan, their experience, and their approach to estate planning. Working with an estate planning attorney involves spending a significant amount of time and placing a significant amount of trust in the attorney, so you should make sure you are comfortable with the attorney you choose. In addition, you may have an ongoing relationship with the attorney if you need to update or change your plan later or need help understanding or using the finished documents.

Estate Planning Documents

There are a number of documents that may be part of your estate plan. Those documents may include:

- **Will:** A Will provides instruction for how you want your assets to pass after your death and who you want to administer your estate. In Colorado, the individual who administers your probate estate is called the “Personal Representative.” You may know the Personal Representative as the “Executor.”
- **Revocable Living Trust (RLT):** A RLT is one common type of trust. A RLT can provide instruction for how your

assets are managed during your lifetime, as well as after you die. The person in charge of your trust is called a “Trustee.” Normally under an RLT, the person who creates the Trust, or “Settlor,” manages their own assets during their lifetime. If the Settlor is unable to manage his assets during his life or the Settlor dies, the person named as the successor trustee can step forward to manage the assets in the Trust. An estate planning attorney will talk with you to determine if a RLT or another type of trust is appropriate for your estate planning needs.

- **Financial Power of Attorney:** A financial power of attorney, sometimes called a “General Durable Power of Attorney,” is a document in which you give another person the authority to act on your behalf with respect to your finances. That person is called your “Agent.” The document is intended to allow your Agent to manage your personal finances for you when you are living but not able to do so yourself. A financial power of attorney can become effective immediately upon signing or after doctors certify in writing that you lack the ability to manage your own finances. An Agent has no authority after your death.
- **Medical Power of Attorney:** A medical power of attorney is a document in which you nominate an Agent to make health care decisions on your behalf while you are living but unable to do so yourself. A medical power of attorney can also become effective immediately upon signing or at a later time.
- **Advanced Medical Directive/Living Will:** A Living Will is entirely different from the Will document described above. In a Living Will you can choose whether you would like to receive heroic measures, artificial nutrition, or artificial hydration should you become unable to communicate your wishes, and you (1) have a terminal condition or (2) are in a persistent vegetative state.
If you do not have a Living Will and your family members disagree about what the doctors should do, the decision might be left to a court.
- **Declaration of Disposition of Last Remains/Burial Instructions:** A Declaration of Disposition of Last Remains provides instruction for your remains after you die: do you want to be buried or cremated? Do you want a funeral or memorial service? If you have a pre-paid burial or cremation plan, this document may still be necessary in your estate plan.

Besides a will or trust, your heirs can also inherit your property after your death by other methods, including beneficiary designations, payable-on-death (POD) design-

nations, transfer-on-death (TOD) designations, and joint tenancy. For further information about your estate planning options, contact an attorney, reference the Colorado Senior Law Handbook, or reference the following CBA brochures: *Joint Tenancy* and *Probate in Colorado*.

Taxes

A comprehensive estate plan may also include tax planning. Estate tax liabilities can be reduced and, in some cases, eliminated through some advanced estate planning techniques. In addition, some estate plans may reduce income tax liability during your life.

Business Succession Planning

If you own a business or have an interest in a business, it is important to understand what may happen after your death. Business succession issues may be addressed in your estate plan, but business succession also depends on the structure of the business and its operating agreements. Therefore, business succession may be a component of your estate plan but will need to be addressed separately from your personal assets.

Team of Professionals and Advisors Involved in Your Estate Plan

With your consent, your attorney may work closely with or consult with your professionals or advisors to coordinate and implement your estate plan. Those professionals or advisors may include:

- **Life Insurance Agent:** Life insurance may be a tool utilized in your estate plan, whether it is the purchase of policies or the coordination of your existing policies into your estate plan. The most important consideration is the beneficiary designation on existing policies. Current designations may need to be changed in order for your estate plan to work.
- **Financial Advisor:** Many Financial Advisors manage investment and retirement accounts for individuals. Your financial advisor plays an important role in implementing your estate plan by structuring and titling account ownership and can help ensure beneficiary designations on your retirement accounts are properly stated.
- **Certified Public Accountant (CPA):** Your attorney may consult with your CPA or other tax advisor for the purposes of tax planning or minimizing income and/or estate tax liabilities.

Conclusion

The right type of estate plan for you depends on your goals, assets, and personal and health issues, and there are pros and cons to all options. Your estate plan should be reviewed by you or with your attorney every few years in case changes in your life or in the law necessitate changes to your current plan.

Estate planning documents are important documents for every Colorado resident, no matter his or her economic circumstances. Hiring an attorney to draft your estate planning documents is one alternative to accomplish your estate plan.

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