Estate Planning 101

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May 10, 2017
Louisville Public Library

May 16, 2017
Carbon Valley Library

WILLS AND TRUSTS

Estate plans are usually centered on a Will or a Revocable Living Trust.

A Will directs how your Personal Representative should distribute your assets after your death. Assets, including real estate, cars, business holdings, money, personal property, may be given to anyone you choose, with certain exceptions, after your estate debts are paid. A Will can set up a trust for long-term management of assets and the protection and security of family members. Through a Will, you can select the guardian for your minor children. However a Will does not allow for any disability planning while you are alive.

A revocable trust allows for both disability and death. A trust allows a Trustee to gain control in order to protect your assets and pay for your care upon mental or physical incapacity.

The right plan depends on your goals, assets, and personal and health issues. There are pros and cons to all options. Both types of plans are revocable, can be changed at any time, and should be reviewed either by you or with your attorney every few years.

Will Requirements

- Must be at least 18 years or older.
- Must have testamentary capacity and be of sound mind.
- No one is unduly influencing you to make the Will.
- The Will must be dated and signed.
- Two witnesses (disinterested persons) must sign the Will in your presence.
- Signatures should be notarized.
- Never make changes by writing on the original will itself as this could invalidate part of or all of your Will. Contact your attorney to make changes.

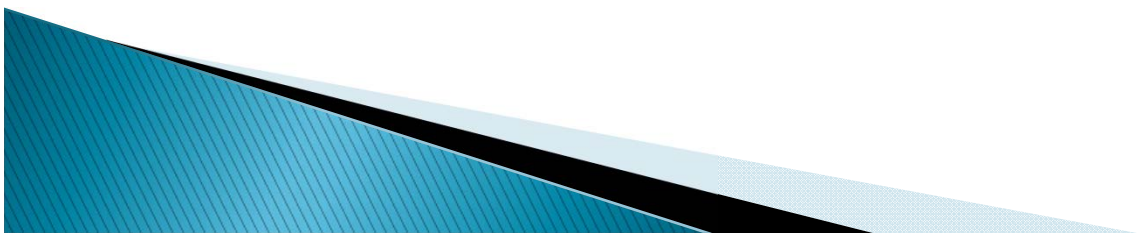
Who Can Receive my Estate?

You can give assets to whomever you wish except:

- Surviving spouse can choose to receive a percentage of the estate regardless of what the Will states, depending on the length of the marriage.
- An after-born child takes a share of the estate as if no Will existed, unless it's clear that you intended to exclude the child.

What about my personal property?

- A Personal Property Memorandum distributes personal property if a memorandum is specifically mentioned in your Will.
- The memorandum does not need to be witnessed or notarized, only signed, dated and kept with your Will.



State law determines what happens if you don't have a Will.

For example, if married, your spouse receives your estate.

If no spouse (or they predecease you), then your children share your estate equally.

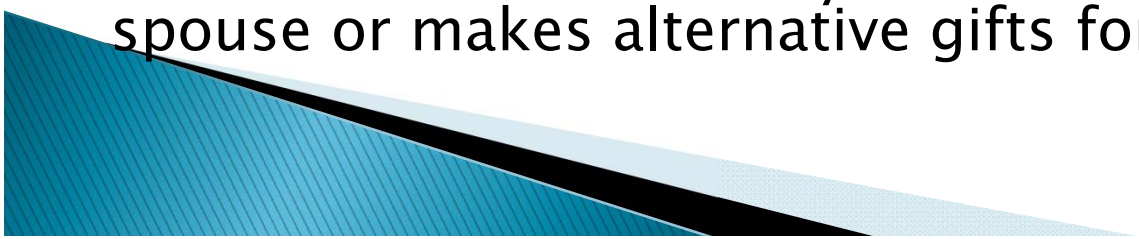
If no spouse or children, then your parents share equally.

If your parents are deceased, then your siblings or their children share equally.

What happens to my will if I get divorced or married?

If you get divorced after your Will was written, then the ex-spouse named in the Will is automatically eliminated as a beneficiary only when the divorce is final.

If you marry after you have written your Will, your spouse will receive the same share he or she would have received without a Will unless your Will intentionally omits your spouse or makes alternative gifts for your spouse.



What if my Will was prepared in another state? Is my Colorado Will valid in other states?

Colorado law states a Will is valid if it's valid where it was signed.

Most states have similar laws and Colorado Wills are valid in other states.

Your Will should be reviewed when you move as other factors can affect your Will as laws differ from state to state.

Does a will dispose of all property?

Non-probate assets automatically pass at death.

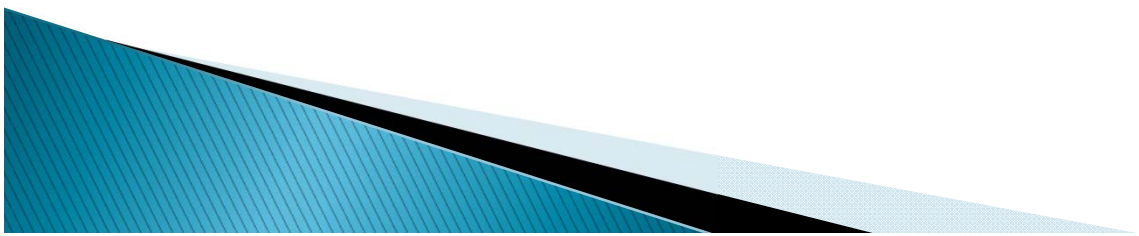
A Will cannot give away property owned in joint tenancy with right of survivorship if the other joint owner survives.

Your Will cannot give away property with a named beneficiary, such as a life insurance policy.

Consider using a professional personal representative or trustee.

Special Needs Trusts

- Safeguards that the portion of the parents' estate which passes to their special needs child at the time of their death.
- Special needs planning works to preserve public benefits for the disabled.
- The goal is always to utilize the estate to enrich and improve the life of the special needs child while maintaining enrollment in public benefits programs.



Joint Tenancy

Many people use joint tenancy as a means of avoiding probate.

Joint tenancy can affect Medicaid eligibility and subject your property to liens, judgments or unintended consequences.

Joint tenancy can be a useful legal tool in some limited circumstances. However, speak with a qualified attorney before changing the title to your property.

PAYABLE ON DEATH (POD)

- Designates beneficiaries to receive the account holder's assets upon their death.
- The transfer of assets is triggered by the death of the account holder.
- As long as the account holder is alive, the person you name as POD has no rights to the money.
- A beneficiary is NOT the same as an account signatory. A beneficiary receives the sum on deposit in an account AFTER the death of the account holder.
- An account signatory is an agent of the account holder and is NOT the owner of the account NOR a beneficiary. They are authorized to make account transactions for the account owner. Upon the death of the account holder, the agent's authority is terminated.

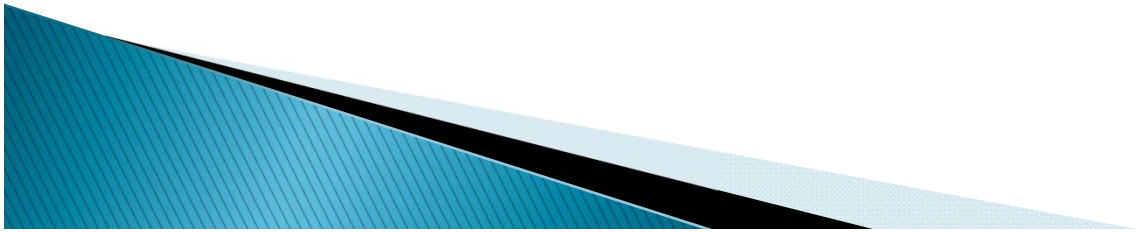
GUARDIANSHIP

Guardians have authority to make decisions regarding a Ward's support, care, education, health, and welfare.

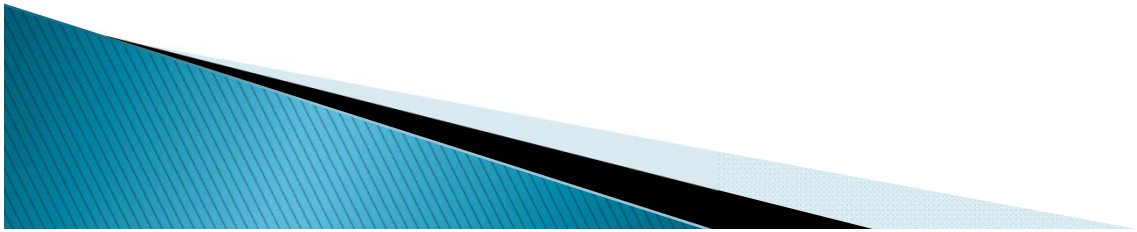
Consider using a professional guardian.

Guardians must become/maintain sufficient contact with the Ward and the significant people in the Ward's life (family, doctors, nurses, friends, case workers, employers, therapists, teachers, neighbors) to know of the Ward's capacities, limitations, needs, opportunities, and physical and mental health.

Make arrangements for, keep informed about, and maintain documentation of the Ward's current situation regarding:



- Finances
- Living arrangements/care givers
- Health and medical care
- Education & training
- Personal needs
- Preferences and desires
- Employment, recreation, leisure time
- Take care of the Ward's personal effects.
- Inform Court of changes in the Ward's residence.
- Bring protective proceedings, if necessary, to protect the property of the Ward (conservator).
- If no conservator appointed, spend the Ward's money that is in the guardian's control for the Ward's support, care, education, health, and welfare.
- Save the Ward's excess money for the Ward's future needs. If there are substantial assets, a conservator should be appointed.
- Notify the court if the Ward's condition changes –if guardianship is no longer necessary.
- Notify Court of the Ward's death.



CONSERVATORSHIP

A Conservator is:

responsible for managing, preserving and administering assets owned by/for the benefit of a Protected Person

a fiduciary and held to a very high standard of care

accountable to the Protected Person, other interested persons, and the Court

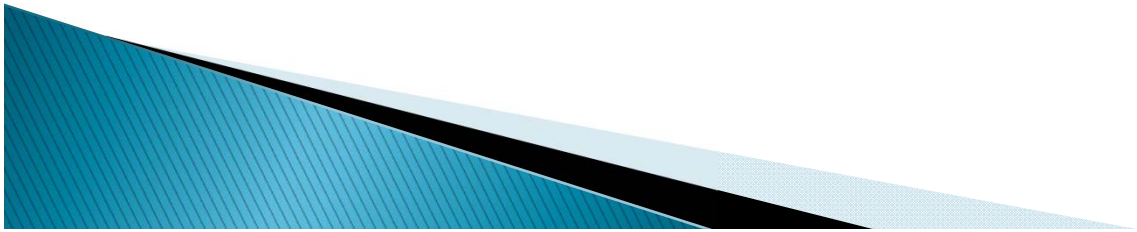
expected to act prudently and in the best interests of the Protected Person at all times

may be personally liable to the protected person or a third party

Consider using a professional conservator

A Conservator:

- is a fiduciary and must act in the best interest of & with undivided loyalty to protected person.
- doesn't enter into transactions in which they benefit at the expense of the protected person.
- keeps the conservatorship estate separate from their own assets.
- manages the conservatorship estate as a prudent person would in similar circumstances.
- submits Inventory & Financial Plan to Court w/budget & inventory of protected person's assets.
- submits annual Conservator's Report w/complete accounting of all financial transactions.
- sets up and keeps complete financial records and all supporting documentation.
- files any required tax returns.
- keeps the conservatorship's assets invested.
- makes distributions to the Protected Person for their care and expenses or to third parties directly who provide some beneficial service to the Protected Person.
- entitled to reasonable compensation/reimbursement for out-of-pocket expenses from conservatorship for acts on behalf of the protected person.



FINANCIAL POWER OF ATTORNEY.

- Gives a named agent authority to manage your finances and property, and to transact business on your behalf.
- Gives your agent authority to make decisions based upon your preferences.
- Your agent may not override your wishes.
- Your agent has authority to do whatever you would do – withdraw funds from bank accounts, trade stock, pay bills, cash checks, etc.
- If you become incapacitated (accident or illness), your agent can immediately step in and make decisions for you without going to court to obtain a conservatorship which is expensive, public and time consuming.
- Doesn't take away your rights to make decisions, but gives your Agent the power to act along with you in accordance with the authorization set forth in the document.
- A Power of Attorney is valid in any state, regardless of where you lived when the Power of Attorney was created.
- Should not be granted without serious consideration of the agent's qualifications, financial history, personal financial management abilities and willingness to work with counsel and bring in professionals to assist.

ADVANCED DIRECTIVES

Legal documents that allow you to spell out decisions about end-of-life care ahead of time.

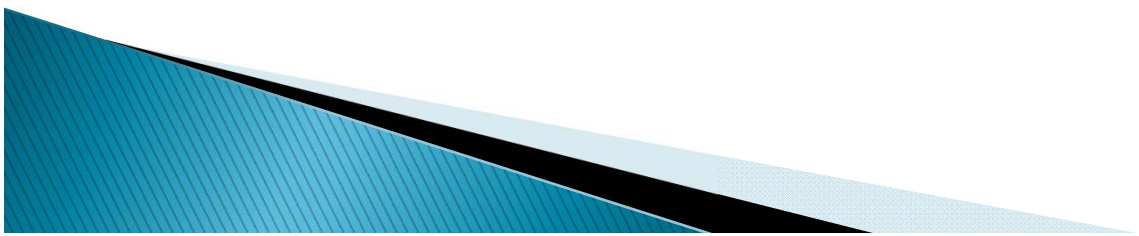
They provide a method to advise family, friends, and health care professionals of your wishes.

Becomes legally valid as soon as you sign them in front of the required witnesses.

Advance directives are legally valid throughout the United States. However, laws differ from state to state.

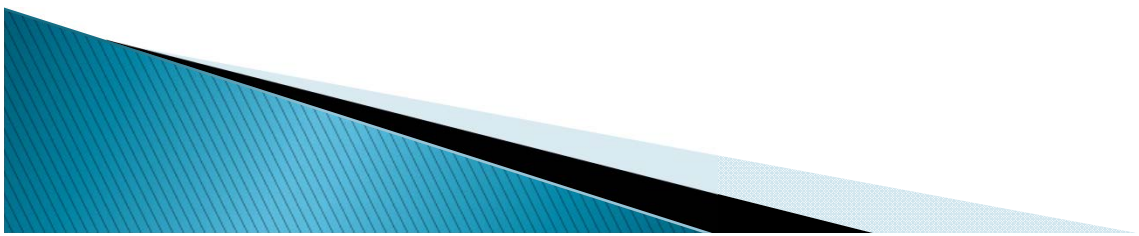
Advance directives do not expire. An advance directive remains in effect until you change it. If you complete a new advance directive, it invalidates the previous one.

Can be revoked orally or in writing.



Medical Power of Attorney.

- Allows you to appoint a person you trust as your healthcare agent.
- Authorized to make medical decisions on your behalf.
- Before a medical power of attorney goes into effect a person's physician must conclude that they are unable to make their own medical decisions.
- If a person regains the ability to make decisions, the agent cannot continue to act on the person's behalf.
- Old medical powers of attorney may not have HIPAA language.



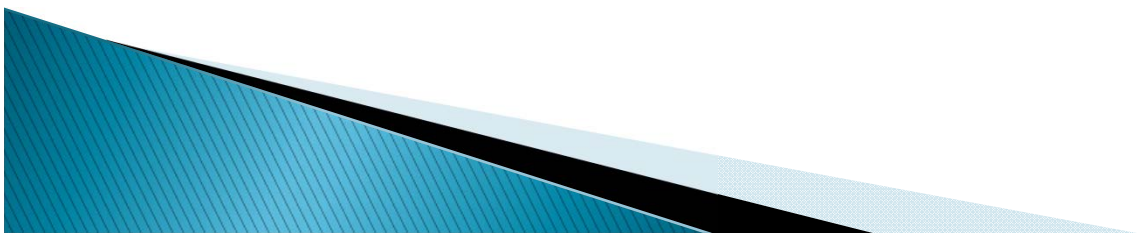
Living Will

- Allows you to document your wishes concerning medical treatments at the end of life.

- Before your living will can guide medical decision-making, **two physicians must certify** that you are unable to make medical decisions, AND that you are in the medical condition specified in the state's living will law (such as "terminal illness" or "vegetative state").

(DNR) Do Not Resuscitate order

- A DNR is a request not to have cardiopulmonary resuscitation (CPR) if your heart stops or if you stop breathing.
- Unless given other instructions, emergency personnel and hospital staff will try to help any patient whose heart has stopped or who has stopped breathing.
- **Only a doctor can prepare a DNR.** Your medical power of attorney should have authority on this issue.
- If you have a DNR, put it in your medical chart and display it prominently such as on the refrigerator of your home.

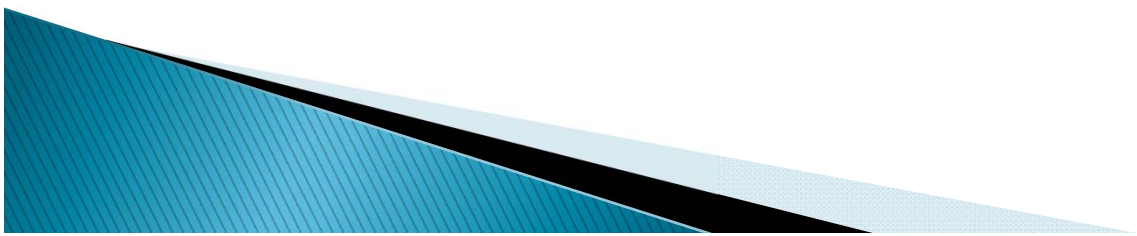


Organ and tissue donation

Organ and tissue donation instructions can be included in your advance directive.

Many states also provide organ donor cards or add notations to your driver's license.

For Colorado, refer to the Donor Alliance website: www.donoralliance.org



PROBATE IN COLORADO

What are the steps after death?

Probate is the legal process used to transfer title of assets from the decedent to his or her devisees or heirs.

All testate (have a Will) and intestate (no will) estates must be probated if there is real property or over $66,000 (for 2017) in assets.

If you have less than **$66,000 (2017)** in personal property (including bank accounts and cash) and no real property, your devisees or heirs may collect your assets by using a Small Estate Affidavit and not have to open a probate action through the court, even if you have a Will,

The degree of court involvement and complexity range from simple and inexpensive to complicated and costly.

Your assets are managed by your personal representative. If you don't leave a Will, the court appoints a personal representative for you.

If you appointed a guardian, they will take care of your child. If you don't appoint a guardian or if you don't leave a Will, the court will appoint a guardian for your child based upon a best interests standard.

Note: Colorado law requires that a decedent's Will be filed (lodged) with the District Court in which the decedent was domiciled within ten days of the decedent's passing, even if no probate administration is expected.

Consult counsel to determine if your estate will need to go through the probate process since your Will may not control the distribution of some or all of your assets.

Only assets that were owned by you in your individual name (with NO beneficiary designation) are controlled by your Will.

Assets owned in joint tenancy, or assets that have a beneficiary designation (life insurance policy, IRA) are not subject to the provisions of your Will or the probate process and pass directly to the beneficiaries.

If an estate is insolvent, creditors may be able to pull non-probate assets back and open an estate.

The Probate Process

The court appoints a personal representative who has the authority to wrap up their business affairs and distribute their assets.

The personal representative is considered a fiduciary and must act impartially in regards to all parties to the estate, to administer the estate with care and prudence, to put the interests of the estate in front of the personal representative's own interests and to be loyal and treat each party the same.

The personal representative publishes notice in a local newspaper for any possible/known creditors of the decedent.

The personal representative handles valuing, consolidating, and/or liquidating the estate's assets.

After the creditors' period is over, the personal representative makes distributions to creditors, devises, and/or heirs.

A probate case typically closes one year and one day after the date of death.

The personal representative must:

Prepare an estate inventory of all of the decedent's assets (real and personal).

Manage estate assets until the estate is closed.

Keep accurate records of the estate's transactions for the estate accounting.

Make distributions to creditors, devisees, and/or heirs.

The personal representative should keep track of the time they spend working on the administration of the estate whether or not they elect to take a fee.