

THE GERMANY LAW FIRM FAQs FOR ESTATE PLANNING

1. How much is a Will or Trust?

The cost of a Will or Trust depends on the complexity of your estate and your personal situation. Please call our office to get a quote.

2. What is the difference between a Will and a Trust and do I need either or both?

| Plan Type | Pros | Cons |
|------------|--|---|
| Will Plan | <ol style="list-style-type: none"> 1. Less expensive to create. 2. You can create a Trust within your Will for the benefit of your children. 3. Survivor can change their Will at any time. 4. Documents included in this plan: Will, General Durable Power of Attorney, Medical Durable Power of Attorney, Advance Directive (Living Will), Declaration of Disposition of Last Remains, HIPAA Authorization and Personal Property Memorandum. | <ol style="list-style-type: none"> 1. More expensive to administer and must go through a probate process. 2. Surviving spouse can change Will at any time. (If the surviving spouse remarries, they can leave all assets to someone/ something that the deceased spouse didn't want) 3. Only effective upon your death. 4. Probate is a public process 5. Your estate is subject to creditors. 6. Takes a year to go through probate 7. No disability provisions |
| Trust Plan | <ol style="list-style-type: none"> 1. Less expensive to administer upon either death. Does not require a probate proceeding in the courts. 2. Works as a financial tool to protect assets and facilitate disability planning 3. Administered for your benefit during your lifetime. 4. Full control to manage your assets (except IRA's and automobiles). Think of it as a business entity. 5. Put as many of your assets as possible into trust which can avoid probate. 6. Is completely amendable and can be drafted to be <i>irrevocable</i> upon the death of the first spouse to die. 7. Keeps your assets more private and provides you with more anonymity. 8. Protects business assets rather than a business needing to go through business process. 9. No tax consequences until after death. 10. Helps to prevent elder fraud. 11. Documents included in this plan: Trust, Will, Certification of Trust, General Durable Power of Attorney, Limited Durable Power of Attorney, Medical Durable Power of Attorney, Advance Directive (Living Will), Declaration of Disposition of Last Remains, HIPAA Authorization, Personal Property Memorandum, and Deed titling your Colorado home into your Trust. | <ol style="list-style-type: none"> 1. More expensive to create at the beginning. 2. Initial funding of trust and titling of assets into the trust requires some work at the beginning. |

If you have a Trust, you will also have a Pourover Will which "pours" your assets into your trust at your death.

3. Why shouldn't I have Co-agents?

Disputes can arise when co-agents or co-fiduciaries are appointed. Since co-agents have equal decision-making abilities, they cannot act independently and must make all decisions together, which creates serious issues even among parties who typically get along and have no difficulty reaching consistent agreements. Often agents don't agree on how to handle financial matters. Sibling co-agents may disagree on how best to spend assets to cover their parent's long term care costs. If co-agents get into a dispute that interferes with their ability to represent you properly, they may need help which could mean submitting the dispute to mediation or arbitration or going to court to have a judge decide. This causes a lot of stress within a family and can be very expensive. In addition, naming more co-agents can get cumbersome and make communication difficult. The downside is not just the confusion and delays in handling your finances, but your estate will likely pay the costs of settling a dispute. In addition, multiple agents on financial powers of attorney can trigger fraud concerns and some institutions will not accept them. An alternative to naming co-agents is for the power of attorney document to name agents in sequence. The first-named agent acts alone, but if he or she cannot serve for some reason, the next person on the list will serve.

4. Can a trust protect my assets from Medicaid in 10 years?

The answer is maybe. It is very hard to have a crystal ball to know what Medicaid regulations will look like in 10 years. There may be trust planning we can do, but the ability to amend or change that trust may be somewhat limited. You should ask about special needs trusts and their features. If you do any special needs planning for yourself or someone else, it should be reviewed every 4 to 5 years or if there are major changes in your life. Laws and regulations change frequently, so you want to make sure the planning you may have put in place years ago is still applicable today.

5. What do revocable and irrevocable mean?

A REVOCABLE trust is a trust that can be amended at any time or even revoked by the Settlor. Any competent adult can establish a revocable living trust. Even though the Grantor places their assets into the trust, they still maintain control of those assets and may still receive any income earned by the assets.

An IRREVOCABLE trust is one that can't be amended. Once created, its terms are set in stone. A process known as Trust Reformation can be applied to make changes within an irrevocable trust under certain circumstances. The purpose of an irrevocable trust is that it creates greater protections for the assets involved, and it separates the relationship between those assets and the Grantor.

6. Can I put my car or IRA in a trust?

- *You cannot put your individual retirement account (IRA) in a trust while you are living. You can, however, name a trust as the beneficiary of your IRA and spell out how the assets are to be handled after your death. This applies to all types of IRAs, including traditional, Roth, SEP, and SIMPLE IRAs.*
- *Vehicles should not be placed in a trust. If the trust is the vehicle's owner, the trust will be responsible in the event the vehicle is involved in an accident, exposing trust assets to liability claims that aren't covered by insurance. Vehicles can bypass the probate process by completing a transfer form with the Colorado Department of Motor Vehicles.*

7. What does "by representation" mean?

"By representation" means "by generation." If your children are your beneficiaries and a child predeceases you, the deceased child's children (your grandchildren) would equally inherit the share of your predeceased child (their respective parent). In the event more than one child predeceases you leaving children (your grandchildren from more than one child), all of your grandchildren, as a generation, would receive an equal inheritance. Shares of all of your predeceased children would be combined and divided equally among the next generation, not just their respective children.

8. The Germany Law Firm naming conventions to provide format and list of all names.

Your draft documents will include your basic name (first name, middle initial, last name) and then list all other names you may have used, including nicknames and maiden names. This is done in case an asset you own is potentially listed under one of your names.

9. What is the difference between JT and TIC?

The main difference between joint tenancy/joint tenancy with the right of survivorship (JT or JTWRROS) is that JT or JTWRROS passes to the surviving owner named on the deed. In Tenancy in Common (TIC), the ownership portion passes to the individual's estate or heirs at death. In Joint Tenancy, the title of the property passes to the surviving owner. If a deed is silent on this matter and does not outline how ownership is held, it is assumed that it is held as tenants in common.

10. Notarization block – county of signing NOT county of residence.

To clarify, notarization blocks on our estate planning documents will reflect Boulder County as notarial certificates always indicate the county where the notarization was performed.

11. No modifications of documents by client & docs not provided in WORD format to clients.

We do not provide editable documents to our clients in order to protect our work product. When reviewing draft documents, please do not write on the document. Please contact our office to schedule a phone conference to discuss your revisions with an attorney or paralegal.

12. Should I help write my will or help edit the drafts?

No, this is considered legal writing. Attorneys have doctorates in law for a reason. If you have changes to your documents, please go over them with your attorney and the attorney will make drafting changes to documents.

13. What is a COLTAF account?

A COLTAF account is an interest earning checking account for use by attorneys and law firms to hold client funds. These accounts are required by state law and all interest earned on the account is paid to the Colorado Lawyer Trust Account Foundation to fund various programs to provide legal services. Your retainer is kept in our COLTAF account until the drafts are provided to you at which time the fee is considered earned.

14. Can I download a form Power of Attorney, Will or Trust I obtained from the internet and bring it to your office to have it notarized and reviewed?

We do not review or notarize documents that have been downloaded off the internet. As the saying goes “you get what you pay for.” Online forms come with many risks, including the following:

- *Some websites provide forms that are not truly tailored to Colorado laws, and they may be outdated.*
- *Colorado has laws regarding the proper execution of the documents, such as how many witnesses you need, who can be a witness, getting signatures notarized, etc. and if not properly followed, your document may not be valid or may become problematic.*
- *Executing a document may not be enough. You may need to take additional steps to implement your estate plan, such as properly transferring and retitling assets for a trust.*
- *You may think you just need a “basic” will, but you are not likely aware of other options or how to tailor language to best suit your needs. For example, if you have minor children, an adult child with financial problems, children from a prior marriage, potential tax liabilities, estate tax, or long-term care concerns, there are estate planning strategies that should be included in your documents.*
- *As part of your estate planning, you may name personal representatives, trustees, guardians, agents, and others responsible for handling your affairs and implementing your wishes. Online forms provide No guidance on these persons. These roles are very important roles and should be given to people you trust and who are ready, willing, and able to do the job. These positions also carry legal liability if someone does not act appropriately. An attorney can advise you on the types of representatives you will need to name, their duties, limits on their powers, protecting your interests, and other relevant issues.*

15. What does this process look like?

Please refer to our EP Process Sheet which is also online at coelderlaw.com.

16. How do I learn more about my role as a trustee?

Attend one of our classes to obtain even more in-depth information. Check our website for dates.

If you still have questions AFTER reviewing the EP Process Sheet, these FAQs, your legal services agreement, and all brochures and handouts we have provided to you, please write them down to be discussed when your drafts are reviewed with an attorney or paralegal.