



THE COLORADO ESTATE PLANNING WORKBOOK

**Simple answers and solutions to your estate planning questions
Includes discussions of probate, wills, living trusts, estate taxes
and long term care—plus an estate planning checklist**

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INTRODUCTION:

WHAT YOU NEED TO KNOW ABOUT ESTATE PLANNING

Few of us get excited about estate planning --- after all, who wants to contemplate their own mortality? Given a choice, most of us would rather buy tires for the car or visit our "favorite" in-law. Almost anything sounds better than deciding what will happen to our property after we're gone.

But there are good reasons that you shouldn't put off establishing an *estate plan*. Perhaps the #1 Reason is that if you don't create a plan, the State of Colorado will create one for you. Not surprisingly, the state's plan may not express your wishes. Unfortunately, the state doesn't know that you have not spoken to your brother, Herb, for 20 years or that you would like a portion of your estate to go to the local art museum where you spent many enjoyable afternoons.

A second reason to have an estate plan is to minimize the expense and delay that is involved in transferring your assets at your death. Without a plan, the *probate* process often costs 2-5% of the value of your estate and takes 12 months or more --- **IF** everything goes reasonably well. Worse, it is emotional draining on your family. Maybe the idea of estate planning is beginning to sound more appealing.

By planning ahead, you can:

- Select the family members or charities that you want to benefit from your estate
- Determine when your beneficiaries will receive their inheritance
- Avoid burdening your family with the inconvenience and emotional toll of settling your estate
- Save thousands of dollars in probate fees
- Reduce or eliminate federal estate taxes
- Provide for minor children or grandchildren
- Provide for the management of your affairs if you become disabled
- Provide for children from prior marriages and children with disabilities or special needs

Estate Planning Obstacles

Because lifestyles and philosophies vary significantly, estate planning objectives differ from family to family and from generation to generation. What remains constant is the need to address and overcome (or at least minimize) the impact of the following obstacles:

- Probate
- *Living Probate* (Conservatorships, Guardianships, and Legal Incapacity)
- Federal Estate Taxes
- Long Term Health Care Costs

Using this Workbook

This **Workbook** is divided into four parts:

Article One discusses the four major obstacles to effective estate planning;

Article Two focuses on the basic estate planning tools that are available and their effectiveness in avoiding or overcoming the major estate planning obstacles;

Article Three deals with the practical aspects of estate planning - completing your estate plan and listing where important documents and information are kept;

Article Four is a glossary of estate planning terms. Terms included in the glossary are in bold and italicized the first time they appear in the text.

This workbook addresses basic estate planning concepts. Individuals of high net worth (in excess of \$5,000,000) will need more sophisticated estate planning tools such as an Irrevocable Life Insurance Trust, a Charitable Remainder Trust and a Family Limited Partnership.

This publication is distributed with the understanding that the author and distributors are not rendering any legal, accounting or other professional advice or opinions, and some of the information included is Colorado specific.

Please keep in mind that the information contained in this Workbook is intended only as a summary of estate planning concepts. The reader should never assume that this information applies to his or her specific situation or constitutes legal advice. Therefore, please consult competent counsel that practices in the subject area in your state and who is familiar with your specific facts and all of the circumstances.

ABOUT THE AUTHOR

Jim Littlepage is a 1969 graduate of the University of Colorado Law School and was admitted to the Colorado Bar the following year. After graduating from law school, he served as a lieutenant in the U.S. Army from 1970-1971 and then entered the private practice of law.

From 1976 to 1986 Jim was President and General Counsel for **Denver News**, at that time the 12th largest magazine and book wholesaler in the U.S.

Jim has offices in Denver and Grand Junction, Colorado and limits his practice to estate planning, probate, elder law and business matters. He is a member of the **Colorado Bar Association** and the **Trust and Estates, Elder Law and Agricultural and Rural Law sections**. Jim is the author of **“Protecting Your Estate - The Need for Long Term Health Care Planning.”**

A frequent lecturer on estate planning, he has conducted over 300 seminars for employees, customers and clients of the **American National Bank, American Red Cross, AT&T, BankOne, Citizens Bank of Naturita, the Colorado Association of Public Employees, Community First National Bank, Colorado State University Extension, Coors, Delta County Senior Resource Council, Delta Federal Savings, Edward Jones, First Federal, Grand Junction Daily Sentinel Senior Fair, Kansas City Life, Mature American Planning, the National Association of Federal Retirees, Wells Fargo Bank, Small Business Development Center of Colorado and U.S. West.**

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ARTICLE ONE

OBSTACLES

SECTION ONE - PROBATE

Probate is a court supervised procedure for distributing a deceased person's property after his or her death. If the deceased (*decedent*) had a **Will**, the persons or entities named in the Will (the beneficiaries) will inherit the property. However, if the decedent died intestate (without a valid Will), the laws of the State of Colorado determine who will inherit the property.

Purpose

In Colorado the purpose of Probate is twofold:

- Insuring that the property and assets of the decedent are distributed to the proper beneficiaries
- Insuring that the decedent's creditors are paid

Assets Subject to Probate

Under Colorado law the following assets (if titled in the name of the decedent or payable to his or her estate) are subject to Probate:

- Any real estate regardless of value
- Titled *personal property* (all property other than real estate) with a value in excess of \$60,000

Assets Not Subject to Probate

- Property (either real or personal property) held in *joint tenancy*
- Assets held in a *Living Revocable Trust*
- Life insurance proceeds payable to a named *beneficiary*
- Distributions from qualified retirement plans such as Keogh Plans, IRA's, 401-K Plans, and SEP's payable to a named beneficiary
- Annuity proceeds payable to a named beneficiary
- Stocks and mutual funds accounts payable to a named beneficiary
- Bank accounts payable to a named beneficiary
- *Real property* in which the decedent owns a "life estate"
- Personal property that is not titled

Advantages to Probate

There are 3 primary advantages to Probate:

- There are stringent court rules designed to protect the beneficiaries
- Creditors are required to file their claims within a limited period of time
- The rules of the court provide guidance in the event of a dispute or controversy

Disadvantages of Probate

There are 5 primary disadvantages to Probate:

- The process is burdensome and technical for most non-lawyers
- Costs for attorney fees, court costs, appraisal fees, publication fees, etc. typically run 2-5% of the value of the probate estate
- Probate is time-consuming --- often the process takes in excess of 1 year
- The sale or transfer of assets can be cumbersome
- The proceeding is public and most documents are open to public inspection

How to Avoid Probate

Probate can be eliminated by the use of a Living Revocable Trust or *Will Substitutes* See **Article Two, Sections II & III** respectfully.

SECTION TWO - LIVING PROBATE

Living Probate refers to court supervision and management of the estate of an individual who is legally incapacitated. The incapacity may be temporary or permanent and may be either mental or physical in nature.

A person appointed by a court to manage the financial affairs of the incapacitated person (known as the *Protected Person*) is referred to as the *Conservator*.

A person appointed by the court to insure that the incapacitated person (known as the Ward) has sufficient food, shelter, clothes and medical care is known as the *Guardian*.

Establishing a Conservatorship or Guardianship

Colorado District Courts (the Probate Court in Denver) have jurisdiction to decide matters pertaining to Conservatorships and Guardianships. An action to establish a *Conservatorship* or Guardianship is commenced by filing a Petition in the District Court (or Denver Probate Court). The Petition can be filed by a state agency (typically the Department of Social Services), family members, friends or even the incapacitated person. A hearing is held and the *Petitioner, Respondent* (the alleged incapacitated person) and other interested parties have the opportunity to call witnesses and present evidence.

At this hearing the Petitioner (the party seeking appointment as the Conservator and/or Guardian) must establish beyond a reasonable doubt that the person is legally incapacitated. If the Court finds that the person is legally incapacitated, a Conservator and/or Guardian is appointed. In most cases, the same person is appointed as Conservator and Guardian.

Who Will Be Appointed Conservator or Guardian

In Colorado a person can execute a Durable *Power of Attorney* designating someone to act as his or her Conservator or Guardian in the event of incapacity. Without this document, the Court has discretion to select the Conservator or Guardian. In most cases the Conservator or Guardian will be the spouse or children of the Protected Person or Ward.

Duties of the Conservator or Guardian

The Conservator's primary responsibility is to conserve, manage and use the Protected Person's property and assets for the Protected Person's benefit and the benefit of his or her legal dependents. Among the typical duties of a Conservator are paying bills and obligations; investing assets; buying and selling property; and overseeing the Protected Person's business interests.

The Guardian's primary responsibility is to insure that the Ward receives proper food, clothing, shelter and medical attention. Among the common duties of a Guardian are to find a suitable nursing home or care facility and select a physician for the Protected Person.

Advantages of a Conservatorship and Guardianship

Safeguards the assets of the Protected Person/Ward from unscrupulous persons and organizations

- Provides for the orderly management of the Protected Person's assets
- Insures that the Ward receives adequate medical care, food, shelter, and clothing

Disadvantages of a Conservatorship or Guardianship

- A conservatorship or guardianship proceeding is intrusive and expensive --- the initial legal expense can amount to several thousand dollars
- There is a significant emotional toll on the individual and his or her family
- Because of the stringent rules and reporting requirements, a substantial portion of the incapacitated person's estate may be devoured by administrative costs and attorney fees
- The proceeding, including the hearing, is public and most documents are open to public inspection

How to Avoid Living Probate

The need for a Conservator can be eliminated through the use of a Living Revocable Trust and/or a Durable Financial Power of Attorney. The need for a Guardian can be eliminated through the use of a Durable Medical Power of Attorney.

SECTION THREE - ESTATE TAXES

Estate taxes are imposed by the federal government on the decedent's assets. Unlike an *inheritance tax* that is imposed upon the beneficiaries, an estate tax is owed by the estate.

Estate taxes are based on the adjusted gross value of the estate. Under the current law the first \$5,000,000 of property is exempt from tax. However, the exemption (often referred to as the "*unified credit*") reverts to \$1,000,000 in 2013.

Unlimited Marital Deduction

When a single person dies, the *Federal Estate Tax* is due 9 months from the date of death. However, married couples can delay paying any estate taxes until the death of the second spouse by using a provision of the tax code known as the *unlimited marital deduction*.

Under this provision all assets left to the surviving spouse pass tax free at the time the first spouse dies --- regardless of the value of the assets. As a result, the surviving spouse has the opportunity to reduce the Estate Tax by making gifts during his or her lifetime to family members, friends, and charities. See **Gifts** below.

Gifts

During his or her lifetime a person can give away \$13,000 annually to an unlimited number of individuals (including non-family members) without "drawing" against the life time *gift tax exemption* (\$5,000,000 per person) or filing a gift tax return. However, if he/she gives away more than \$13,000 per year to any one

person, a gift tax return must be filed — although no gift tax will be owed until the entire \$5,000,000 exemption is used. However, like the Estate Tax exemption, the life time gift tax exemption will revert to \$1,000,000 in 2013.

How to Eliminate or Reduce Estate Taxes

For a married couple with an estate over \$5,000,000 the use of Living Revocable Trusts (see **Article Two, Section Two**) can eliminate any estate taxes on the first \$10,000,000 of assets. Married couples with an estate of more than \$10,000,000 (\$2,000,000 in 2013 and thereafter) should consult a knowledgeable estate planning attorney for additional ideas on reducing or eliminating estate taxes.

SECTION FOUR - LONG TERM CARE

Most of us have done some estate planning for our retirement years - typically by opening an IRA or a 401-K Plan or by purchasing life insurance. However, one item that frequently is overlooked is the need for Long Term Health Care Planning.

Historically, long term care of the elderly or infirm was provided by family members. However, that is no longer the case, as today's families are transient and the traditional primary care providers --- mothers and daughters --- often have full time careers outside the home.

These sociological changes, together with the fact that the largest demographic group in the country is 65 years or older, have fueled the need for convalescent centers and nursing homes to care for senior citizens. The disturbing facts are:

- 4 out of every 10 Americans will require some form of daily care through a convalescent center or nursing home
- The average cost in Colorado for nursing home care is just under \$5,000 a month
- A recent national study shows that 37% of all nursing home residents who are over 66 are impoverished after just 13 weeks

Long Term Care Options

How can an individual provide for the cost of long term care? There are three primary means available:

- **Self-insurance** - Using one's own resources and assets to pay the cost of long term care
- **Medicaid** - A state administered program funded by the federal government that pays for the cost of long term care for persons with limited financial resources
- **Long-term Care Insurance** - A number of different *long term care insurance* plans and programs are available to cover nursing home or home health care costs

Of these alternatives long term care insurance is the best option for most individuals because self-insurance requires a huge cash reserve and *Medicaid* is only available to those with very limited financial resources (only about 2% of the population qualifies).

ARTICLE TWO

ESTATE PLANNING TOOLS

SECTION ONE - WILLS

A Will is a legal instrument that provides for the disposition of a person's assets and property after his or her death. Generally speaking, it should be signed, witnessed by two people and notarized.

The person executing the Will is known as the *Testator* (a male) or the *Testatrix* (female). The person who supervises the administration of the estate is known as the *Personal Representative*. While the Personal Representative is designated in the Will, this appointment is subject to court approval.

A Will designates who is to receive the decedent's property. That person is known as a "beneficiary" although he or she often is referred to as an "*heir*."

Preparing a Will

In Colorado anyone who is over the age of 18 and of sound mind can execute a Will. While most Wills are drafted by attorneys, the only legal requirement is that the Will is signed, dated, and notarized. The only exception is a Holographic Will (a signed hand written Will) which does not have to be witnessed or notarized.

Those who opt to use an attorney will find that fees vary depending upon the complexity of the document. For example, a simple Will for a single individual may cost as little as \$350. On the other hand a married couple with minor children can expect to spend in excess of \$1,000 for two wills with a Contingent Trust for their minor children.

Reasons for Having a Will

The primary reasons to have a Will are:

- To designate beneficiaries
- To appoint a Guardian/Conservator for minor children
- To appoint a Personal Representative to administer the estate

Advantages of Wills

- Simple to obtain
- Inexpensive
- Insures that the decedent's property is transferred to those whom he or she designates
- The best means of appointing a Guardian for minor children

Disadvantages of Wills

- Does not avoid Probate
- Does not avoid Living Probate (Conservatorships and Guardianships)
- Often complicates Estate Tax issues and may result in **increased** estate taxes

The Importance of How Property is Titled

A common misconception is that the disposition of a person's property is determined by his or her Will. As a result, many individuals prepare a Will disposing of their property while totally ignoring how the property is or should be titled.

In fact, a Will has absolutely no effect on property held in joint tenancy; the proceeds of life insurance; bank accounts with a *Payable on Death* (POD) designation; stocks and bonds with a *Transfer on Death* (TOD) designation; and annuities. Rather, these assets pass to the beneficiaries (those individuals or organizations named by the owner on a designated beneficiaries form). The only exception is property held in joint tenancy which automatically passes to the surviving joint tenant.

The lesson here is that preparing a Will is merely the first step --- it is equally important to insure that the property is titled in a manner that is consistent with the Will.

SECTION TWO - LIVING REVOCABLE TRUSTS

A Living Revocable Trust (also known as an *Inter Vivos Trust*) is a document which transfers legal title of property to a separate legal entity (a Trust) for the benefit of the persons or organizations designated in the Trust. While a Will only provides for the distribution of assets at the time of death, a Trust also can provide for the distribution of assets during the Grantor's lifetime.

The person who establishes a Living Revocable Trust is known as the Settlor or *Grantor*. The person who manages or administers the Trust is known as the *Trustee*.

This type of Trust is called a "Living" Trust, because the Trust is created and takes effect during the Grantor's lifetime. And since the Grantor can modify or revoke the Trust at any time, the Trust is "revocable" as opposed to "irrevocable."

How a Living Revocable Trust Works

The Grantor transfers the property to the Trust during his or her lifetime and appoints a Trustee to oversee and manage the Trust. Typically, married Grantors appoint themselves as Co-Trustees and one or more of their children as Successor Trustee. If the Grantor is single, he or she usually appoints himself or herself as Trustee and one or more of the primary beneficiaries as Successor Trustee(s). In some cases a corporate trust department (often a bank) is named as Trustee or Co-Trustee.

If the Grantor appoints himself or herself as Trustee, no one else is involved in the management of the Trust until the Grantor dies or becomes legally incapacitated. Assets can be bought and sold by the Trust in the same manner as before and all income earned by the Trust belongs to the Grantor. The only difference is that legal title of the assets is vested in the Trust.

At the Grantor's death the Co-Trustee (or Successor Trustee) gathers the Trust property and distributes it to the named beneficiaries. In this respect, the Successor Trustee's duties are similar to those of a Personal Representative. The difference is that the assets can be transferred to the beneficiaries in a fraction of the time and cost since there is no Probate.

Characteristics of a Living Trust

- Established during Grantor's lifetime
- All income generated from the Trust can be paid to Grantor or to whomever is designated by Grantor

- Can be modified or revoked prior to Grantor's legal incapacity or death
- Assets can be transferred into or out of the Trust with ease
- Grantor does not have to file a separate income tax return for the Trust

Advantages of a Living Revocable Trust

A Living Revocable Trust is an extremely attractive alternative to a Will since it:

- Eliminates expense and the delays of Probate
- Eliminates the need for a Conservatorship if the Grantor becomes incapacitated
- Avoids estate taxes on the first \$10,000,000 of a married couple's estate
- Maintains family privacy and confidentiality
- Provides a flexible means of providing for children from prior marriages and children with disabilities or special needs

Disadvantages of a Living Revocable Trust

- Initially, a Trust is more expensive to obtain than a simple Will
- Creditors may have a longer period to file claims against a Trust
- Prior to the distribution of the assets to the beneficiary, the income tax rate for a Trust is greater
- Major assets must be retitled in the name of the Trust

Funding the Trust

The comments made earlier on the importance of how assets are titled (see **Article Two, Section One**) are equally applicable for Trusts. How property is titled --- not what is stated in the Trust --- determines who will receive the property; whether the property will be subject to Living Probate and/or Probate; and whether the property transferred at the death of the Grantor will be subject to the federal estate taxes.

Surprisingly, funding the Trust is less complicated and time-consuming than you might think. Real estate is transferred by a deed; CD's and bank accounts by filling out a new account ownership card; stocks and bonds by completing a form provided by your stockbroker; and life insurance by submitting a change of ownership and beneficiary form.

Commonly Asked Questions

Is a my Trust valid if I move to another state? Can I change the terms of the Trust? Can I remove assets from the Trust? Can I borrow against assets held by the Trust?

The answer to these questions is "yes." However, a Trust does not enable the Grantor to qualify for Medicaid since he or she owns the Trust that holds the assets. Further, a Trust does not protect assets from the IRS or other creditors.

SECTION THREE - NON-TRADITIONAL ESTATE PLANNING: WILL SUBSTITUTES

While estate planning traditionally involves the drafting of a Will or a Trust, it is possible to transfer assets at the time of your death without using either of these means. Often referred to as "Will Substitutes" this involves changing the title of assets so that the asset passes directly to the intended beneficiary. Among the assets that can be transferred at death through a beneficiary designation are:

- Life insurance proceeds

- IRA's, Keogh Plans, 401-K and SEP's
- Annuity proceeds
- Stocks, bonds, and mutual funds
- Bank accounts, C.D.'s and Money Market Accounts
- Real property (through the use of a *beneficiary deed*)

In addition, real and personal property held in joint tenancy qualifies as a Will Substitute since it passes automatically to the surviving joint tenant.

Advantages of Will Substitutes

- Eliminates Probate
- Requires a minimum of paperwork and effort
- Inexpensive to set up
- Insures that the decedent's property is transferred to those whom he or she designates

Disadvantages of Will Substitutes

- Often complicates Estate Tax issues and may result in increased estate taxes - particularly for a married couple with an estate that would be subject to the Federal Estate Tax
- Lacks the versatility of trusts in dealing with complicated family situations such as remarriage, legal incapacity, providing for minor children, spendthrift heirs, and assisting disabled adult children
- The estate may be subject to Probate, if a beneficiary predeceases the Grantor
- The use of a *life estate deed* limits the Grantor's ability to sell the property since the beneficiaries must consent to the sale.

Example of An Estate Plan Using Will Substitutes

Let's assume that Mr. and Mrs. Smith: (1) are married and have two adult children; (2) own a house, several bank accounts and CD's, and a life insurance policy; (3) have a qualified retirement plan; (4) have a non-taxable estate; and (5) want their estate distributed equally to their children upon the death of the surviving spouse.

The first thing to note is that all of the Smith's assets (with the exception of the house) can be converted to Will Substitutes just by naming their children as beneficiaries. The process is as simple as obtaining the necessary forms from their bank, life insurance agent, and retirement plan administrator and designating the Smith children as beneficiaries.

The critical issue is how to title the house so as to avoid Probate. There are three options.

Option #1 is to title the property so that the Smiths and their children own the property in joint tenancy. The problem with this is that, depending upon the value of the house, the Smiths may have to file a gift tax return. Even worse, the house could be subject to the claims of the Smith children's creditors.

Option #2 is to title the house so that the Smiths would have a "life estate" subject to their children's right to the property at the death of the surviving parent. This plan would accomplish the same objective as joint tenancy - avoiding Probate - without exposing the Smiths to any unnecessary risks. **NOTE:** Regardless of which of these options the Smiths select, the house cannot be sold without the consent of their children.

Option #3 is to convey the house to the children using a "beneficiary deed." This deed transfers the property to the Smith children after the death of the surviving parent. The advantage is that the deed may

be changed at any time prior to the death of the surviving parent, and the house would not be subject to the claims of the Smith children's creditors.

SECTION FOUR - POWERS OF ATTORNEY

A Power of Attorney (POA) is a legal document that appoints a person or entity to act on behalf of the person granting the Power of Attorney. The Grantor of the (POA) is known as the **Principal** and the Grantee is known as the **Agent**.

Why You Need a Power of Attorney

A Power of Attorney is commonly used in business to enable a person or entity to complete a business transaction for another person. For estate planning purposes, a POA is advisable so that a spouse or family member can make medical and/or financial decisions for a spouse or parent who becomes legally incapacitated. This eliminates the need to seek court appointment of a Conservator and/or Guardian.

Even those who already have a Living Revocable Trust should have a medical power of attorney since a Trustee (or Successor Trustee) can only manage assets - not people. In other words, the Trustee does not have the authority to make medical decisions for you or to apply for health benefits.

Types of Powers of Attorney

A Power of Attorney may be:

- **General** - A POA in which the Agent is granted the authority to perform any act which the Principal could perform.
- **Special** - A POA in which the Agent is granted the power to conduct only one transaction or perform one specific task, e.g. sell the Principal's automobile
- **Durable** - Does not lapse if the Principal becomes incapacitated
- **Non-Durable** - Lapses if the Principal becomes incapacitated
- **Medical** - Allows the Agent to make medical decisions for the Principal
- **Financial** - Allows the Agent to make financial decisions for the Principal

When Does the Power of Attorney Take Effect? Lapse?

A Power of Attorney can be drafted so that it takes effect immediately or upon the occurrence of a certain date or event.

Unless otherwise stated a POA lapses upon the incapacitation of the Principal. A POA that does not lapse upon the incapacity of the Principal is known as a Durable Power of Attorney as opposed to a Non-Durable Power of Attorney.

From an estate planning standpoint, a Durable Financial General Power of Attorney and a Durable Medical General Power of Attorney are preferable. The reason for this is that the Agent can continue to act on behalf of the incapacitated Principal without the expense and aggravation of establishing a Conservatorship or Guardianship.

Regardless of whether the power of attorney is Non-Durable or Durable, it terminates upon the death of the Principal; when the power of attorney is revoked by the Principal; or in the case of a Special Power of Attorney when the Agent has completed the task(s) assigned to him or her.

Who Can Be Appointed as Agent?

In Colorado anyone over the age of 21 who is legally competent can act as an Agent even if he or she is a non-resident.

In most instances, the Principal names his or her spouse as Agent. It also is a good idea to name one or more persons, typically a family member, as Successor Agent(s) in case the Agent dies or becomes incapacitated.

Advantages of Powers of Attorney

- Eliminates the need for a Conservatorship and/or Guardianship
- Enables the Agent to carry out the Principal's wishes regarding medical treatment, life support, etc.
- Enables the Agent to transfer assets into the Principal's Living Revocable Trust

Disadvantages of Powers of Attorney

- Can result in unauthorized transfers, fraud, etc. by the Agent
- There is a legal question as to whether an Agent is bound by the same strict ethical standards as a Trustee and Personal Representative
- Some institutions, including banks, brokerage firms, and title companies refuse to honor a Power of Attorney that is more than a year old

SECTION FIVE - LIVING WILLS (MEDICAL DIRECTIVES)

A *Living Will* is not really a Will - it is a written directive to an individual's physician containing instructions regarding intravenous feedings and other life support measures. However, a Living Will takes effective only if: (1) the individual is **terminally ill**; and (2) has been **comatose for seven consecutive days**.

Pros and Cons of Living Wills

The only real benefit of having a Living Will is to communicate that individual's wishes to his or her friends, family, and physician.

One major drawback is that Living Wills do not provide for situations where the declarant **HAS NOT** been comatose for seven consecutive days or **IS NOT** terminally ill. Even worse, physicians and hospitals often ignore Living Wills, since there are no penalties or sanctions for failing to abide by the declarant's instructions. In other words, if the physician ignores a Living Will, the declarant's family must seek appointment of a Guardian. At best, such a proceeding will be time consuming and expensive, not to mention stressful.

ARTICLE THREE

PRACTICAL ASPECTS OF ESTATE PLANNING

SECTION ONE - COMPLETING THE PLAN

The old Chinese proverb "A journey of 1,000 miles begins with one step" is an apt description of estate planning. The process requires a systematic approach as well as perseverance.

The objective is to create a plan that accomplishes one's estate planning goals while eliminating the four major obstacles to estate planning - Probate, Living Probate, Estate taxes, and the cost of Long Term Care. Accomplishing this requires a frank evaluation of your present situation as well as your short-term and long-term goals.

The checklist below will assist with this evaluation and will enable you to monitor your progress. When the list is completed, you will have a comprehensive, up-to-date plan that takes into account all potential tax savings strategies and affords maximum protection to you and your family.

To start the process fill out the **Now** column of the **Checklist**. This will identify areas to target. After the plan is completed, all of the applicable questions should be answered "**yes**". Because estate planning tends to drag on, it is wise to establish deadlines for completing each facet of the plan.

CHECKLIST	Now		After Planning	
	Yes	No	Yes	No
Do you (and your spouse) have a Will?				
Does your Will name a Guardian for your minor children should both you and your spouse die?				
Do you have a Power of Attorney that enables a family member or friend to make medical decisions for you if you become incapacitated?				
Do you (and your spouse) have a Living Revocable Trust?				
If you have a Living Revocable Trust, have you transferred your assets into the Trust?				
Does your Will or Trust make proper use of the Unlimited Marital Deduction				
Does your estate plan (and your spouse's plan) take advantage of the \$5,000,000 Estate Tax exemption?				
Are your assets (and the assets of your spouse) titled so that both of you can take advantage of the \$5,000,000 per person Estate Tax exemption?				

CHECKLIST	Now		After Planning	
	Yes	No	Yes	No
Have you utilized an Irrevocable Life Insurance Trust so that the insurance proceeds are not subject to estate tax?				
Do you (and your spouse) completely understand how your estate plan works?				
Does your estate plan (and your spouse's estate plan) accomplish your goals and objectives?				
Is your estate plan (and your spouse's estate plan) simple and straightforward?				
Does your estate plan (and your spouse's estate plan) address the 4 major obstacles to effective estate planning: Probate, Living Probate, Estate Taxes, and the cost of Long Term Care?				
Have you considered creating a Charitable Remainder Trust to provide income for you or your beneficiaries for a period of time with the remaining principal passing to charity?				
Have you considered creating a Charitable Income Trust to provide income to a charity for a period of time with the remaining principal passing to your beneficiaries?				
Are you taking advantage of the \$13,000 annual gift tax exclusion?				
Have you made gifts of assets that have a strong possibility of future appreciation?				
Do you have a management succession plan for your business?				
Does your plan provide a means of enabling your spouse or one or more of your children to continue your business after your death?				
Do you have a Buy/Sell Agreement for your family business interest?				
Is there a means, e.g. life insurance, to provide the funds needed under the Buy/Sell Agreement?				

CHECKLIST	Now		After Planning	
	Yes	No	Yes	No
Have you provided a cash reserve (or a life insurance policy) to pay for burial expenses, estate taxes, and day-to-day living expenses for family members, etc.?				
Do you have the right type and amount of life insurance?				
Do you have the right type and amount of long term care insurance?				
Have you completed the Important Papers Checklist in the next Article?				

NOTES:

SECTION TWO - PERSONAL INFORMATION

In the event of a medical or family emergency it is critical to have important personal information readily available. By completing this **Directory** you can insure that your family members and/or Agents, Trustees and Personal Representatives are able to quickly locate other family members as well as your physician, attorney, financial planner, accountant, etc. Please take the time to complete the **Directory** - you may not be able to provide this information if a crisis occurs.

PERSONAL INFORMATION DIRECTORY

Full Name: _____

Date of Birth: _____

Birthplace: _____

Social Security #: _____

Spouse's Full Name: _____

Date of Birth: _____

Birthplace: _____

Social Security #: _____

Date and Place of Marriage: _____

Your Place of Employment: _____

Key Contact Person at Work: _____

Telephone # of Contact Person: _____ Email: _____

Spouse's Place of Employment: _____

Key Contact Person at Work: _____

Telephone # of Contact Person: _____ Email: _____

Children

Name: _____

Telephone: _____ Email: _____

Name: _____

Telephone: _____ Email: _____

Name: _____

Telephone: _____ Email: _____

Name: _____

Telephone: _____ Email: _____

Names and Telephone Number of Parents:

Names: _____

Telephone: _____ Email: _____

Names and Telephone Number of Spouse's Parents:

Names: _____

Telephone: _____ Email: _____

Minister/Priest/Rabbi:

Name: _____

Telephone: _____ Email: _____

Spouse's Minister/Priest/Rabbi:

Name: _____

Telephone: _____ Email: _____

Physician:

Name: _____

Telephone: _____ Email: _____

Spouse's Physician:

Name: _____

Telephone: _____ Email: _____

Attorney:

Name: _____

Telephone: _____ Email: _____

Life Insurance Representative:

Name: _____

Telephone: _____ Email: _____

Financial Planner:

Name: _____

Telephone: _____ Email: _____

Stock Broker:

Name: _____

Telephone: _____ Email: _____

Other Key Contact Person:

Name: _____

Relationship: _____

Telephone: _____ Email: _____

NOTES:

SECTION THREE - IMPORTANT PAPERS CHECKLIST

When the eccentric billionaire, Howard Hughes, died, large sums of money changed hands - but it didn't all go to the heirs. A large chunk of it went to lawyers, accountants, and private detectives who spent thousands of hours locating estate planning documents, assets, titles/deeds, tax returns, and related business documents.

While most of us would like to have Mr. Hughes' wealth, we would also like to avoid having family members spend hours searching for documents and records when we die. Fortunately, this problem is easily solved. Just complete the checklist, detach it from this Workbook, and place it in a safe place --- a fire proof safe in your home or a safe deposit box in your bank or savings & loan. Finally, make sure to notify your Personal Representative or Trustee of the whereabouts of the checklist.

IMPORTANT PAPERS CHECKLIST

Estate Planning Documents

Location

- Will
- Spouse's Will
- Trust
- Spouse's Trust
- Power of Attorney
- Spouse's Power of Attorney

Burial Documents

Location

- Instructions
- Cemetery Plot Deed
- Burial Insurance

Insurance Policies

Location

- Life
- Health
- Long Term Care
- Accident
- Homeowners
- Business
- Automobile

Personal Papers and Information

Location

- Birth Certificates
- Children's Birth Certificates

- Social Security Cards _____
- Citizenship Papers _____
- Adoption Papers _____
- Divorce Records _____
- Military Discharge _____
- Safety Deposit Box _____
- Key to Safety Deposit Box _____
- Safe Combination _____
- Credit Card List _____

Tax Information

Location

- Income Tax Returns - Federal _____
- Income Tax Returns - State _____

Banking Information

Location

- Account Names/Account #'s _____
- Bank Statements _____
- Savings Pass Book _____
- Check Book _____

Business Documents

Location

- Incorporation Papers _____
- Partnership Agreements _____

Assets/Investments

Location

- Stock Certificates _____
- Mutual Funds _____
- Bonds _____
- Keogh and IRA Contracts _____
- Annuity Contracts _____
- Retirement Plans _____
- Profit Sharing Plans _____
- Stock-Option Plans _____
- Other Investments _____
- Notes and Loans _____
- Rental Property Records _____

Deeds and Titles

Location

- Real Estate
- Motor Vehicles
- Other Personal Property

NOTES:

ARTICLE FOUR

ESTATE PLANNING TERMS

Agent — A person or entity who has been appointed by an individual to act on his or her behalf. See **Power of Attorney**.

Ancillary Probate - Probate proceedings in more than one state. This occurs when the decedent owns property (that is subject to Probate) in more than one state. Also called Multiple Probate Proceedings.

Beneficiary — A person or entity designated to receive money or property under the terms of a Will or Trust.

Beneficiary Deed — A real estate deed which names the person(s) who is/are to receive the property upon the death of the owner. The purpose of the deed is to avoid Probate.

Capital Gains Tax — A tax on the sale of appreciated real or personal property. The tax is calculated by subtracting the cost basis of the property (purchase price + improvements - depreciation) from the net sales price multiplied by the tax rate.

Codicil — An amendment to a Will. A codicil must be signed, witnessed by two individuals and notarized.

Conservator — The person or entity appointed by a court (the Probate Court in Denver County; the District Court in other counties) to manage the financial affairs and assets of a person who has been declared legally incapacitated. Children under the age of 18 are legally incapacitated by law. Adults may be incapacitated due to mental or physical ailments such as dementia, mental illness, a stroke, etc.

Conservatorship — Court supervision of the management of an individual's assets due to his or her incapacity.

Decedent — A deceased person.

Devisee — A person designated to receive real or personal property (a devise) under the terms of a Will. Also, in the case of a devise to an existing Trust or trustee, or to a trustee in Trust described by will, the Trust or trustee is the devisee and the beneficiaries are not devisees.

Estate Plan — A plan for the preservation and use of assets during the planner's lifetime and the transfer of those assets to designated beneficiaries either before or after the planner's death.

Executor — A person or entity appointed in a Will to manage or administer the Probate estate of the Testator or Testatrix. Also known as the Executrix (female) or, in Colorado, the Personal Representative.

Federal Estate Tax — The tax imposed on the transfer of assets at the time of death. In 2011 and 2012 the Federal Estate Tax exemption is \$5,000,000. After that Congress will "revisit" this issue. The excess above the exemption will be taxed at a graduated rate that starts at 38% and increases to 45%.

Fiduciary — A person or entity that owes the highest legal duty of care to the individual or entities that he or she represents. A fiduciary cannot self-deal or benefit in any way at the expense of those that he represents. Examples: Trustees, Personal Representatives, Conservators, Guardians, Attorneys, Certified Public Accountants, Dentists, and Physicians.

Funding a Trust — The process of transferring assets into a Trust so these assets will pass directly to the beneficiaries upon the death of the Grantor without being subject to Probate.

Grantor — The individual who establishes a Trust. Also known as the Settlor, Trustor, and Donor. Also, the person who transfers property to another through a deed.

Gift Tax Annual Exemption — Tax free gifts that can be made every year. Currently, every individual can gift \$13,000 annually to an unlimited number of donees without using any portion of his or her \$5,000,000 life time gift tax exclusion and without filing a gift tax return. A husband and wife can make a joint annual gift in the amount of \$26,000 to an individual donee without having to file a gift tax return.

Guardian — A person or entity appointed by a court (the Denver Probate Court in Denver County; the District Court in other counties) to manage the personal needs, i.e. food, shelter, clothing, and medical care of an incapacitated individual. Children under the age of 18 are legally incapacitated by law. Adults may be incapacitated due to mental or physical ailments such as dementia, mental illness, a stroke, etc.

Heir — Individuals, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

Inheritance Tax — A state tax levied against the beneficiaries of an estate on the value of the property that they inherited. Colorado does not have an inheritance tax.

Inter Vivos Trust — The Latin term for a Living Revocable Trust. It is established and takes effect during the Grantor's lifetime as opposed to a Testamentary Trust which takes effect upon the death of the Grantor.

Issue — The children of a Testator, Testatrix, or Grantor.

Joint Tenancy — A form of property ownership in which the owner automatically inherits the property upon the death of the co-owner. This form of ownership takes precedence over a joint tenant's Will or Trust. Also called **joint tenancy with the right of survivorship**.

Life Estate Deed — A deed which transfers property to another while reserving the Grantor's right to use the property during his or her lifetime. This type of deed is an example of a Will Substitute and is used primarily to avoid Probate.

Living Probate — Another term for a conservatorship.

Living Revocable Trust — A document that transfers legal title of property to a separate legal entity (a Trust) for the benefit of the persons or organizations designated by the Grantor. During his or her lifetime the Grantor typically is the beneficiary and the Trustee. This type of Trust is commonly used to avoid Probate and Living Probate and to reduce or eliminate estate taxes.

Living Will — A written directive from an individual to his or her physician containing instructions regarding life support and medical treatment in the event of a terminal illness.

Long Term Health Care Insurance — Insurance that is designed to pay the cost of extended care in a nursing home facility.

Medicaid — A federal program which provides the funds for long term health care costs for indigent persons. The program is administered by state governments under rigid federal guidelines and standards.

Multiple Probate Proceedings — Probate proceedings in more than one state. This occurs when the decedent owns property (that is subject to Probate) in more than one state. Also called Ancillary Probate.

Net Value — The value of an estate after the debts, including mortgages, estate administration costs, etc. are paid. Also called **adjusted gross estate**.

Payable on Death (POD) — A designation on a bank account or CD which designates the party who is to inherit the account upon the death of the owner.

Personal Property — All property other than real property. Personal property includes stocks, bonds, mutual funds, automobiles, art, furniture, cash, and mobile homes (not permanently affixed to the land).

Personal Representative — Another term for an Executrix or Executor.

Petitioner - A person who files a petition for appointment as a Guardian or Conservator.

Pour Over Will — A Will that specifies that the Testator's (or Testatrix's) property is to be distributed in accordance with the terms of the Testator's Trust. The purpose of this type of Will is to insure that assets, not owned by the Trust will be distributed under the terms of the Trust.

Power of Attorney — A written instrument that appoints a person or entity (Agent) to act on behalf of the person (Principal) making the appointment. The power of attorney can pertain to **medical matters, financial matters**, or both. A power of attorney may be **general** or **special**.

A **general power of attorney** grants the Agent authority to perform any act which the Principal could perform. A **special power of attorney** grants the Agent authority to perform only certain tasks or functions, e.g. selling the Principal's automobile.

Finally, a power of attorney may be **durable** or **non-durable**. A durable power of attorney becomes effective upon execution and is not affected by incapacity. A non-durable power of attorney lapses if the Principal becomes incapacitated.

Probate — A court administered procedure for transferring legal title of assets to the heirs, beneficiaries and devisees upon the death of the Testator or Testatrix and for payment of his or her debts. In Denver County the Denver Probate Court oversees all Probate matters. In all other counties the District Court has this responsibility. Probate typically takes a year to complete and typically costs anywhere from 1%-5% of the Probate estate.

Qualified Terminable Interest Property (Q-Tip) Trust — A Living Revocable Trust which provides that the surviving spouse shall receive income from the Trust for his or her life but preserves the principal for other beneficiaries named by the Grantor.

Quit Claim Deed — A deed that conveys the seller's interest in real property to another person or entity with no representations or warranties.

Protected Person — A person who has been declared legally incapacitated.

Real Property — Land or personal property that is permanently affixed to the land.

Respondent - The person who is the subject of a guardianship and/or conservatorship petition.

Revocable Trust — A type of Trust, used primarily as an alternative to a Will, that can be modified or revoked at any time prior to the Grantor's legal incapacity or death.

Testator — A man who has executed a Will.

Testatrix — A woman who has executed a Will.

Transfer on Death (TOD) — A designation on a stock brokerage account or mutual fund account which designates the party who is to inherit the account upon the owner's death. This designation is legal in Colorado, but is not used or accepted by some brokerage firms.

Trust — A document that transfers legal title of property to a separate legal entity (a Trust) for the benefit of the persons or organizations designated by the Grantor. A Trust can take effect during the lifetime of the Grantor or at his or her death. A **Living Revocable Trust** takes effect during the Grantor's lifetime, while a Testamentary Trust takes effect upon the death of the Grantor. Trusts also vary in terms of whether they can be altered. A Revocable Trust can be modified at any time prior to the death of the Grantor, but an **Irrevocable Trust** cannot be modified or changed in any way that would benefit the Grantor except by order of court.

Trustee — The person or entity that manages or controls the assets of the Trust.

Trustor — Another term for the Grantor or Donor of the Trust.

Unified Credit — Another term for the Federal Estate Tax exemption. The unified credit (or any portion of it) can be used during the individual's lifetime or upon death.

Unlimited marital deduction — A Federal Estate Tax deduction that defers any Estate Tax upon assets left to the surviving spouse by the deceased spouse. In effect this postpones or defers the Estate Tax until the death of the surviving spouse.

Will — A legal instrument that provides for the disposition of a person's assets and property after his or her death. A Will that is entirely written in the Testator's own handwriting is known as a **Holographic Will**.

Will Substitutes — A means of avoiding Probate by titling real or personal property in a manner so that the property is not subject to Probate. Examples: (1) personal or real property held in joint tenancy; (2) life insurance left to a named beneficiary; (3) bank accounts with a POD designation; (4) stocks and bonds held in a brokerage account with a TOD designation; (5) beneficiary deeds, life estate deeds; and (6) annuities left to a named beneficiary or beneficiaries.

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