

ESTATE PLANNING

What is an Estate Plan?

An estate plan is a series of documents in which you provide instructions and declarations regarding your care if you were ever mentally or physically incapacitated and how your assets should be distributed upon your death. A good estate plan provides both financial and personal benefits.

- Financial benefits will address the preservation and growth of your assets both while you are alive and for your beneficiaries after your death, and should include legal strategies to minimize tax liabilities upon your death.
- Personal benefits can include the preparation of documents such as powers of attorney and advanced medical directives that allow you to document and control decisions with regard to who should speak for you and who should care for you when you are unable to and who should be responsible for managing your finances.

How is an estate plan created?

An estate plan is usually created with an attorney and may involve several meetings where an attorney will ask a series of questions designed to gather information about your financial, medical and familial issues to prepare your estate planning documents. The estate planning process also involves a careful analysis of how you own your assets and the implications that you should consider in the event of mental or physical incapacity and death. An attorney may ask you several questions related to your retirement goals and plans, Social Security and other benefit and pension programs, and any special requests you may have for your family, including care for your children. An attorney may also consult with any advisors (e.g., Certified Public Accountant, Financial Advisor, Insurance Agent) to ensure that your assets are titled and your estate plan is set up in a way that maximizes your ability to achieve your goals.

Many estate plans incorporate a combination of the ways that your property can pass to your beneficiaries. An attorney will need to get a

thorough understanding of what you currently own and how your assets are titled to figure out the best way to structure the ownership of your assets. How the property is titled (in your individual name, in joint tenancy, etc.), dictates who it will pass to and when and how it will be transferred. At death, assets are transferred in three primary ways:

1. Through the probate of a will;
2. If you die without a will, through the court and Colorado statutes; or
3. Through a contract agreement, such as a living trust, beneficiary designation, or joint tenancy ownership. (*Please see CBA pamphlet on Joint Tenancy).

Getting started and Working with an Attorney

While you will be very involved in the development of your estate plan, estate planning is a complicated area of law and most attorneys do not expect you to come into their office ready to tell them what you want. Instead, a good estate planning attorney will counsel you through a variety of issues and ask a series of questions that will help them understand your goals and recommend an estate plan that is designed for you. In the end, you should understand your options, the scope of the proposed plan, the purpose of all the documents and how they are to be used.

You should 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 often involves spending a significant amount of time and having a significant amount of trust in the attorney, so you should make sure you find the right attorney. In addition, you will likely have an on-going relationship with the attorney since there may be times that you need to update or change your plan or need help understanding and using the documents.

There are many ways to find an attorney, including through referrals from friends and family. The Colorado Bar Association offers several tools for finding an attorney that are available at www.cobar.org.

Estate Plans: Will-Based and Trust-Based

While your estate plan will likely include several documents, estate plans are usually centered on a Will or a Revocable Living Trust (“RLT”). While both types of plans utilize similar documents, the use of these documents may be different.

- **Will-Based Plans:** A Will-based plan uses a Will as the primary set of instructions for the Personal Representative to follow to settle your estate when you die; however, it does not allow for any disability planning while you are alive. Therefore, under a Will-based plan, it is necessary to prepare separate documents for powers of attorneys and advanced medical directives to address pre-death mental or physical incapacity issues.
- **Revocable Living Trust (RLT)-Based Plans:** An RLT-based plan generally uses the living trust as the primary set of instructions for both disability and death. While an RLT may be sufficient to allow a Trustee to gain control in order to protect your assets and pay for your care upon mental or physical incapacity, it generally does not contain advance medical directives or grants of authority to make medical decisions, and therefore powers of attorneys may also be used. It is important to note that in an RLT-based plan, an attorney may also have you execute a Will that directs any assets not properly titled in the name of the trust be given to your trust (this is called a “pour over” Will) and names guardians for minor children.

The right type of plan for you depends on your goals, assets, and personal and health issues, and there are pros and cons to all options. Both types of plans are revocable and can be changed at any time, and should be reviewed either by you or with your attorney every few years. There are many changes in your life, the law, and your attorney’s experiences that may affect your estate plan and amending, restating, or redoing your estate plan may be necessary in order to achieve your goals.

Taxes

While the most important feature of an estate plan should be peace of mind that your family has the proper tools to take care of you if you become mentally or physically incapacitated and to settle your estate in the most efficient manner, a comprehensive estate plan also includes 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.

Team OF Professionals and Advisors Involved in Your Estate Plan

With your consent, your attorney may work closely with or at least consult with any professionals or advisors you have to coordinate your estate plan and make sure your goals are achieved. Beyond the design of your plan, your attorney may consult with this team of other professionals or advisors going forward in the implementation of your plan. This team of professionals and advisors include:

- **Life Insurance Agent:** Life insurance may be an extremely important 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, and current designations may need to be changed in order for your estate plan to work.
- **Financial Advisor:** In addition to structuring the ownership of existing and future accounts with the advisor, many Financial Advisors manage retirement accounts for individuals, and the beneficiary designations that are usually associated with retirement accounts can have a big impact on the overall function of your estate plan.
- **Certified Public Accountant (CPA):** Your attorney may consult with your CPA or other tax advisor as many estate planning techniques are associated with tax planning, and your CPA

may be consulted in order to minimize income and/or estate tax liabilities.

- **Primary care or attending physician:** Especially when using the estate planning documents related to health care, your attorney may need to consult with your primary care and/or attending physician to understand your current condition and prognosis, as these factors may invoke the use of certain documents and alternate decision-makers.

Business Succession Planning

One of your assets may be a business that you have an interest in. Generally, business interests are owned in four primary ways:

1. Individually (e.g., as a sole owner or proprietor);
2. Joint partnership;
3. Shareholder of a corporation; or
4. Member of a limited liability company

While it is sometimes appropriate to address business succession issues in typical estate planning documents, business succession, like the transfer of other assets, often depends on the structure of the business and the agreements related to the business. Therefore, business succession may be a component of your estate plan, but may be addressed separately from your personal assets.

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