



# Estate Planning Fundamentals

By

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**Wills**

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## Estate Planning Fundamentals

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### Wills

A Will is a formal legal document that instructs the survivors in the settlement of the decedent's estate. Even if the estate is not large enough to benefit from tax planning, a will is still crucial. A person who dies without a will leaves it to the state to determine how his or her assets will be distributed.

A Will allows parents to name a Guardian for their young children.

Consideration should be given to revising a will when a client marries, divorces, remarries, has a new child or grandchild, adopts a child, receives an inheritance, suffers a disability or major illness, suffers the death of a spouse, retires, changes state residency, wins the lottery, and so on. In other words, the provisions of a will should be reviewed frequently for any potential changes.

### Trusts

Trusts are a special form of ownership designed to transfer ownership to another party, but allowing the grantor to retain control of the assets. The owner of the assets, the grantor, transfers assets to the trust and appoints a trustee, which can be himself, a spouse, a friend, a business associate, or a financial institution, to manage the trust. The income and remainder (what's left at the end of the trust's term) are reserved for the benefit of the beneficiaries.

#### **Reasons for establishing a trust:**

- To allow for tax planning.
- To create a multigenerational legacy for your family.
- To transfer property to your beneficiaries with specific payout provisions based upon **your** objectives and **your** criteria.
- To protect your heirs from predators and creditors.
- To transfer the management of assets to a third party if the grantor should become incapacitated.
- To transfer assets more quickly to your beneficiaries.
- To protect the grantor's and inheritors' privacy.
- To avoid probate.



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### Trust Options

1. A “Credit Shelter Trust” allows for tax planning advantages for a married couple. Every person can shelter \$2,000,000. With proper planning and with the correct titling of assets, a “Credit Shelter Trust” allows a couple to shelter a total of \$4,000,000 which can then pass to their beneficiaries estate tax free. Without proper planning, correct titling of assets, funding, and the use of a “Credit Shelter Trust”, a married couple could easily lose a \$2,000,000 tax break given by the government and saddle their beneficiaries with a 46% estate tax on a large portion of the estate.
2. A “Spendthrift Trust” can safeguard your beneficiaries from themselves if they have unwise and wasteful spending habits.
3. A “Special Needs Trust” can protect an inheritance for a disabled child to be used for enhancing that child’s life rather than paying back the government for benefits received.
4. An “ILIT” (an Irrevocable Life Insurance Trust) uses life insurance policies to pass large sums of money to beneficiaries income tax and estate tax free.
5. A “Charitable Remainder Trust” is a creative way to provide a lasting legacy in your name and receive income from the trust for life or for a specified number of years. Upon expiration of the term, the remainder of the trust goes to your favorite charity.

The benefits to you are: Annual income for you, a spouse or someone you designate; an immediate tax deduction at the time the trust is created; no immediate capital gains tax on the transfer of appreciated assets; and estate tax savings when these assets are removed from your taxable estate.

6. A Charitable Lead Trust” minimizes estate taxes on assets you intend to leave to your children or grandchildren, particularly when those assets are expected to appreciate.

After transferring your assets, the charitable lead trust provides fixed amount payments to your favorite charity for a specific term of years or for your lifetime. Thereafter, the trust's principal passes on to your heirs or beneficiaries. Additional appreciation of assets is not subject to estate taxes for the term of the trust.

**Trusts allow for a great deal of flexibility and creativity.  
They are the ultimate planning tool in Estate Planning.**



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### Durable Power of Attorney

A Durable Power of Attorney is used to give legal rights and powers from one person to another. A common scenario is that one person, the “Principal” appoints another person, the “Agent” under a general power of attorney. In effect, the agent stands in the shoes of the principal and can act for the principal on financial and business matters. The agent can do whatever the principal may do – withdraw funds from bank accounts, trade stock, pay bills, cash checks – with any exceptions being listed in the power of attorney. This doesn’t mean the agent can take the money and run. The agent must use the principal’s finances as the principal would, for his or her benefit.

Good estate planning will have a Durable Power of Attorney for property as part of the plan. If you were incapacitated in a car accident, had a debilitating physical or mental disease, your agent could handle your finances and pay your bills without having to go to court to seek a Conservatorship.

### Medical Durable Power of Attorney

A Medical Durable Power of Attorney allows you to establish a process so that medical care decisions can be made which are consistent with your wishes, when you are no longer able to express those wishes directly to your doctor or family.

It is a legal document in which you name someone else called a “Healthcare Agent” to make health care decisions for you if you can’t make them, even if you are not terminally ill. The HIPAA provisions, (Health Information Portability and Accountability Act) allow your agent to get copies of your medical records and other information in order to make medical decisions for you.

You may appoint anyone to be your Health Care Agent so long as that person is at least 18 years old, mentally competent and willing to serve as your agent. Your agent doesn’t need to live in Colorado, but it usually makes things more convenient. You should also name a second person to serve in case the first person cannot.

It’s important to talk with your agent, your doctor and your family about what you would want, in the event you are incapacitated, about your medical care choices and your Medical Durable Power of Attorney.



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Your Medical Durable Power of Attorney may contain instructions to your agent about specific medical treatments, such as decisions about surgery, diagnostic tests or procedures. It may include a specific course of treatment for a known disease or condition, or a decision regarding nursing home care or other out-of-home placement. You can name an agent without giving specific instructions to that person.

Good estate planning will have a Medical Durable Power of Attorney for health care as part of the plan. If you were incapacitated in a car accident, had a debilitating physical or mental disease, your agent could handle your health care needs and wishes without having to go to court to seek a Guardianship

### Living Wills

A living will states the maker's wishes to refuse treatment that artificially prolongs their life when they have a terminal condition. A living will is a document, signed and witnessed, directing the physician to avoid such procedures. It permits an individual to direct his or her own terminal care and protects the physician from liability.

For stronger protection, a health care durable power of attorney appoints someone else to make health care decisions, including the use of life-sustaining treatment, for you.

### Maintenance

Estate Plans can become outdated and Durable Powers can grow stale over time. You should therefore, review your estate plan from time to time. You and your attorney should review it approximately every one to three years. This will insure that your wishes will be carried out; that your Agents and your Guardians are current (and still alive!); that your Durable Powers remain strong; and that your tax planning and your Durable Powers are updated to the current tax and legal standards.

**Please feel free to contact me at (719) 686-9700  
if I can be of further assistance.**

**Office appointments available in Woodland Park  
and Colorado Springs**