

Special Note to Our Client Families

You, our clients, are the most important people in our business. You are not dependent on us – we are dependent on you. You are not an interruption of our work. You are the purpose of it.

You honor us when you bring us your estate design and business planning needs. It is our joy and privilege to handle them for you and in doing so, to help provide you, your family and your business associates with security and peace of mind.

Thank you for your trust and the confidence you place in us when you refer your family, friends, business associates, clients and loved ones to our practice. Your referral is the greatest “thank-you” that we can receive.

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**ARE YOU
HAPPY?**

YES

NO

**CHANGE
SOMETHING.**

**DO YOU WANT
TO BE HAPPY?**

YES

**KEEP DOING
WHATEVER
YOU'RE DOING.**

NO

**“What Do We Do Now?”
Successor Trustee Training**

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Article One Introduction and Overview

We have designed this workbook to provide you, your loved ones and trusted helpers (called “fiduciaries”) with basic instructions on their roles, duties and responsibilities upon your disability and after your death. The instructions included in this workbook are only a guide.

**NEITHER THIS WORKBOOK NOR THE ACCOMPANYING FORMS OR CHECKLISTS
ARE INTENDED TO TAKE THE PLACE OF LEGAL ADVICE.**

Keep in mind that these instructions are general in nature. If you have any specific questions regarding your individual circumstance, we encourage you to contact us.



Section 3.01 Who We Are



Now in our 37th year, Goldberg Law Center, P.C. provides state-of-the-art estate, business and tax planning advice, counsel and documentation to its clients. The firm is committed to leadership in innovative business and estate planning techniques, and is dedicated to assisting families and businesses, preserving wealth, and perpetuating philanthropy. Its philosophy is holistic and inclusive of the financial, physical, emotional and spiritual aspects of estate and business planning.

Section 3.02 Glossary



Throughout this workbook and seminar, we refer to many different legal terms. The following is a glossary of some of these terms.

- **Affidavit of Successor Trustee** - the document executed by the Successor Trustees after the disability or death of an Initial Trustee.
- **Agent** - a general term used to describe someone who acts on behalf of another (“Principal”). Depending on the documents, an Agent’s authority to act may not begin until the Principal becomes incompetent. Types of Agents include:
 - **Financial Agent** - the person who manages the Principal’s financial affairs according to the terms of a Durable Financial Power of Attorney
 - **Health Care Agent** - the person who manages the Principal’s medical affairs according to the terms of a Durable Medical Power of Attorney.
 - **Guardian** - see definition below.
 - **Conservator** - see definition below
 - **Trustee** - see definition below.

Normally, a third party will require all Principal / Agent relationships to be set forth in writing such as Power of Attorney, trust, Affidavit of Trust, Successor Trustee Affidavit Agent’s Affidavit, or court order.

- **Agent’s Affidavit** - a document the Agent executes (notarized) to give to third parties stating that a document is a true copy of the original, that the Agent has authority to act and that his or her powers have not been altered or revoked. The Agent’s Affidavit is similar to a Trustee Affidavit.

- **Ancillary Administration** – the probate and administration of a decedent’s estate performed in a jurisdiction other than the one in which the decedent lived at the time of death. Occurs if decedent owned real property in more than one state at death.
- **Annual Gift Tax Exclusion** – the federal gift tax exclusion of \$15,000 is the amount of gift of that you can make to any one person annually without any gift tax implications. For married couples who consent to split gifts, the exclusion is \$15,000 for each for a total of \$30,000 year.

Beneficiary (also, Heir) – person or charity who receives property according to a will, trust, insurance policy, individual retirement account, or other third-party beneficiary contract. There are three general categories of beneficiaries:

- **Primary** – your first choice to receive your property
 - **Contingent** – receives your property if a Primary Beneficiary can’t
 - **Remote Beneficiary** – receives your property if there are no surviving primary or contingent beneficiaries
- **Catastrophic Creditors** – a third party seeking to attach so much of your asset base to significantly deplete your estate to satisfy a debt. A good example of this would be a plaintiff in a lawsuit seeking damages for personal injury.
 - **Catastrophic Illness** – a medical condition so severe that costs for treatment would quickly deplete your assets such as being kept alive on life support systems or extended coma.
 - **Certificate of Trust** – a document stating that a copy of a trust is true and correct and that the trust is in full force and effect. Some institutions require this in place of or in addition to a Trustee’s Affidavit.
 - **Community Property** – an ownership designation whereby property acquired during marriage is deemed to be owned equally by both spouses. Community property states are Wisconsin, New Mexico, Louisiana, Nevada, Arizona, California, Idaho, Washington, and Texas.
 - **Competency** – a “state of mind” description of a person’s ability to understand the legal significance of signing legal documents and other actions.
 - **Conservator** – the person nominated by a Durable Power of Attorney or appointed by the Probate Court to manage another’s finances and assets. The power of attorney or court determines the length and scope of the Conservator’s authority and responsibility. Depending on the documents or court, the conservator and guardian may or may not be the same person.

- **Conservatorship action** - a proceeding that takes place in Probate Court to appoint a conservator for a disabled or incapacitated person or a minor. In some instances, minors cannot directly inherit from an estate or receive death benefits from an insurance policy and require a conservator. Conservator actions can be prevented with proper planning.
- **Creditor Period** - the period of time in which creditors can file claims against an estate to collect a debt owed by a decedent. In a probate action, the Colorado creditor period is four months from date of first publication of the notice. If there is no probate action, the period extends for one year from date of death.
- **Decedent** - someone who has died.
- **Disability (also, Incapacity)**- a physical or mental condition that makes it impossible for an individual to manage his or her own financial affairs or make their own medical decisions.
- **Disability Panel Member** - a person selected to help determine whether the Principal is competent to manage his or her own medical and financial affairs. A person serving in this capacity does not have any financial or medical decision-making authority.
- **Disclaimer** - a formal and most often written refusal by a beneficiary or other recipient to accept a gift or bequest from a trust or will. In other words, a legal “No thank you”.
- **Durable Medical Power of Attorney** - a document that nominates and appoints another (“Agent”) to make health care decisions for the Principal in the event the Principal is unable to make health care decisions, usually because of disability or incapacity.
- **Duress** - a wrongful (and usually unlawful) compulsion that induces a person to perform a certain act. Duress most often comes in the form of threats of abuse or physical violence against the person or someone close to the person being compelled to act.
- **Family Trust (also, Credit Shelter Trust, Bypass Trust or B Trust)** - a trust created at the Trustmaker’s death to take advantage of the Trustmaker’s estate tax exemption. It will often provide for income and discretionary distributions of principal to the surviving spouse and may be drafted so that when the surviving spouse dies, none of the trust assets are included in the surviving spouse’s estate.

- **Fiduciary** – a person or entity that is obligated to act on behalf of another. It also describes a relationship of confidence and trust between two people or a person and an entity. Typical fiduciaries are a Guardian, Trustee, Agent, Personal Representative and Conservator.
- **Fiduciary Duty** – the legal term that describes the manner in which an Agent or Trustee must act on behalf of the Principal. It requires the fiduciary to act with absolute honesty and loyalty and in a way consistent with the Principal's best interests. The Colorado Fiduciary Powers Act is the legal authority for fiduciary duty in Colorado
- **Funding** – the process of retitling property from an individual's name into the name of a trust or other legal entity and changing beneficiaries of life insurance policies, annuities and retirements to a trust or other legal entity.
- **Guardian** – a person appointed by a Power of Attorney, Durable Power of Attorney, other estate planning document or the Probate Court to take care of another person. The documents or court determines the length and scope of the Guardian's responsibility. A Guardian may have financial authority, medical decision-making authority, or both and is typically the individual who acts as Health Care Agent. Depending on the documents or court, the guardian and conservator may or may not be the same person.
- **Guardianship action** – a proceeding that takes place in Probate Court to appoint a guardian for a disabled or incapacitated person or a minor. Guardianship actions can be prevented with proper planning.
- **Intestate** – when a person dies without leaving any instructions regarding distribution of assets and care for minors.
- **Letters Testamentary (also, Letters)**– a document issued by the Probate Court once a probate estate has been opened giving the Personal Representative authority to act on behalf of the estate.
- **Living Trust** – a trust created during the trust maker's lifetime. A living trust can be revocable or irrevocable.
- **Living Will (Advanced Health Care Directive)** – a set of health care instructions or an expression of wishes and desires regarding the use or nonuse of medical treatments or procedures that would artificially prolong life. Colorado Revised Statutes §15-18-104 is the legal authority for living wills in Colorado.

- **Personal Representative** – the person appointed under a will to handle the probate of an estate upon death. The primary functions of a Personal Representative are to pay the decedent’s bills and transfer assets into testamentary trusts or distribute them to the named beneficiaries.
- **Principal** – a person who nominates and appoints someone else (“Agent”) to act for him or her, subject to his or her authority and control. Normally, a third party will require all Principal / Agent relationships to be set forth in writing such as Power of Attorney, trust, Affidavit of Trust, Agent’s Affidavit, or court order.
- **Pour Over Will** – a will that directs that all property you own in your own name at your death to be transferred to a trust.
- **Probate** – a court proceeding to determine whether or not a person is competent (conservatorship action, often referred to as *living probate*), to determine and order custodial rights (guardianship action often referred to as *living probate*), to determine the validity of a will and to oversee the administration of an estate to be sure debts are properly paid, assets are distributed according to a will or according to the law in an intestate estate (no will) and minors are cared for according to a will.
- **Testamentary Trust** – a trust that is created by a will or revocable trust that becomes effective after the death of the Testator / Testatrix or Trustmaker.
- **Testator** (male) or **Testatrix** (female) – the individual who makes a Will. Testator is often used for both masculine and feminine.
- **Trust** – a legal arrangement where one person (“Trustmaker”) gives another person (“Trustee”) the right to manage property (“Trust Assets”) for the benefit of one or more persons (“Beneficiaries”).
- **Trust Agreement** – the written document that formally creates the trust relationship. A properly drafted agreement gives powers and authority to Trustees, gives detailed instructions for Trustees and other helpers and advisors, restricts actions that others may take and sets forth the parameters within which a Trustee must operate.
- **Trust Estate** – the assets titled in the name of a trust such as real property, personal property, bank accounts, investment accounts, life insurance policies, stocks, bonds, vehicles, etc. and the contractual beneficiary designation from life insurance policies, annuities and retirements the trust is entitled to collect on the death of the Trustmaker and any assets the trust is entitled to receive as a distribution from the a probate estate or another trust.

- **Trustee** - the person who controls the administration of a trust. The Trustee serves subject to the instructions provided in the trust.
 - **Initial Trustee** - the person who is named initially to administer a trust. In a revocable living trust situation, the Trustmaker is usually an initial trustee.
 - **Disability Trustee** - the person or entity named to manage the trust assets if an Initial Trustee becomes disabled. Disability Trustees can also be referred to as Successor Trustees.
 - **Successor Trustees** - a person or entity that takes the place of another trustee, normally due to disability, incapacity, death or removal.
 - **Co-Trustees** - two or more persons serving jointly as trustees
- **Trustmaker, Grantor and Settlor** - the person who creates a trust.
- **Will** - a legal document containing the instructions for the disposition of a person's assets and appointing guardians for minor children after death.



SLIDE DECK
FOLLOWS THIS PAGE

Handouts



Should I Do A Will or Living Trust?

By: Douglas G. Goldberg

Which is better, a refrigerator or a gun safe? If you answered the question with a definite choice, chances are you already had something in mind – either keeping your beer and ham sandwich cold or protecting your firearms. For most people, however, the answer includes a blank stare, a raised eyebrow, or the comment, “it depends.” Interestingly, both responses are correct.

The thought process to answer the question is really a matter of determining your goals. While the refrigerator and the gun safe are both wonderful pieces of equipment, the choice of one versus the other really depends on what you want to accomplish. Then when you decide on the right tool, you still have to decide which type of tool you need. Color, size, style, cost, location, equipment (automatic ice maker, combination or keyed lock, etc.), and a myriad of other important decisions must be made to make sure you choose the right tool, and then get instructions to be able to use it properly. The bottom line is that the refrigerator is not the right tool for every job and neither is the gun safe. If your ultimate goal is to keep your beer and sandwich cold, even the finest, top-of-the-line gun safe with all the bells and whistles won't help.

Estate planning is like that. Everyone's planning goals are different and every goal requires very specific documents and strategies. Even when the goal is the same, for instance, avoiding probate, different strategies based on life experiences and long term family goals are appropriate. Some documents can achieve several objectives at the same time while others are designed for a definite purpose and can only accomplish one thing.

The second most frequently asked question in my practice (behind, “how much



will this cost?”), is “which is better, a will or a living trust?” The answer is, of course, “it depends.” Here's some basics to help you make the decision easier.

A Will does three things:

1. It directs how and to whom your assets will be distributed after you die.
2. It names who you want to act as guardian for a minor child or a disabled adult child.
3. It names a personal representative (“executor”) to handle your affairs after your death.

A Living Trust does three things:

1. It directs how your disability is determined and who will handle your affairs if you become disabled.
2. It directs how and to whom your assets will be distributed after you die.
3. It names a successor trustee to handle your affairs after your death.

Neither document resolves all your affairs. When you die, certain matters have to be taken care of by somebody, whether you have a Will, a Living Trust, both, or neither one. Funerals, burial, cremation, headstones, obituaries, bills, personal business, and insurance matters must be taken care of. Tax returns must

be filed. All of your property must be accounted for, secured, divided, and transferred as required by your planning documents. None of these chores can be avoided. A certain amount of time, effort, and expense is involved. Obviously, leaving all these details to an attorney can be expensive, but it is usually not necessary if your Personal

Representative and heirs can help. What time period are you planning for? If you are planning for what happens when you die, either a Will or a Living Trust will do. If incapacity is your concern, a Living Trust is generally a superior choice. Since assets in your Living Trust are already under the control of a Trustee that you named to take care of things upon your incapacity, your property can be managed quickly and smoothly for your benefit. A Living Trust can avoid months in a legal disability proceeding and will also avoid ongoing court supervision over financial decisions.

A living trust is the superior tool if you own a vacation home or other real estate in a state other than the one in which you live. A trust allows for immediate distribution of the property after death and avoids the probating of your will in each state in which you own property.

Just like the refrigerator or gun safe decision, a Will is not the right tool for every job and neither is a Living Trust. Talk with a qualified estate planning attorney to discuss your options and make the right decision for you and your family based on your planning goals. 

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"Your estate plan is the final conversation you'll have with your loved ones.

What do you want it to say?"

Custom, personal and unique. That's the hallmark of Goldberg Law Center, P.C. Our 23-year-old practice is limited to designing and implementing highly customized strategies and delivering workable solutions to individuals, families and entrepreneurs. If you are looking for generic documents or "one-size-fits-all" planning that you can get for the lowest possible price, with a minimum of commitment and involvement, we are not your answer. But, if you are looking for the ultimate peace of mind experience – one that's very hands-on, highly personalized, totally interactive and extremely rewarding – a plan that will accomplish each and every one of your goals for you, your family and your business, we may be just what you're looking for.



Douglas G. Goldberg, Esq.

- ◆ Estate Design
- ◆ Retirement Planning
- ◆ Asset Protection
- ◆ Business Entities
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Chapter 4

Our Final Conversation – Your Will and Living Trust

Dear Dad,

Bad news from the sports page today. After eighty-eight straight years, the National Hockey League season was cancelled yesterday. The players and owners have been in a dispute for more than 200 days over various labor issues. As you might imagine, the bottom line was money. Lots of it. Interestingly though, not much has been said about the impact on the fans, the sports bars and restaurants, or on the numerous other businesses that sell NHL related merchandise.

You understand all that employer–employee, labor relations stuff because that’s how you spent your career. As the Vice-President of Industrial Relations for Stanley Structures, you spent your life arguing with other people about money. “Negotiating” was what you called it, but it was still arguing. You loved the thrill of the process that helped keep the company profitable while paying wages and providing benefits for employees and their families.

You always told me it was not about greed. It was about being fair with people. In the process, you made both friends and enemies. You thrived on the challenge. It was all a big chess game to you and you won more than you lost. What I remember more than anything though, was that you earned respect. Even if the union representatives didn’t like you, they respected you. You were a man of your word. When you reached a deal, it was sealed with a handshake. Then the lawyers put it in writing while you took the union guys out for a beer. I learned much about dealing with people from you.

One of the things you left behind were the rights to buy the season tickets to our professional hockey team, the Colorado Avalanche. Not long after I paid for them, the owners locked out the players and the trouble began. Those tickets were my key into the Pepsi Center, where the Avalanche play, but I was locked out too. Like the rest of the fans, I was forced into a situation that I really didn’t want, expect or enjoy. Like the TV program “Let’s Make a Deal,” we had the ticket to Door Number One, yet we were forced to take what was behind Door Number Three. Your estate plan was like that. Your plan included a living trust and a family partnership. Those two planning tools were our ticket to what was behind Door Number One—a brand new Ferrari for each of us, fully paid for, gas and insurance for a lifetime, with a very detailed road map in each glove box. As it worked out though, for all of the reasons that are sprinkled throughout this book, we couldn’t use either one and were forced to use your Will, our ticket to Door Number Three. Unfortunately, behind Door Number Three were the IRS and the probate process—a nightmarish jungle full of traps and uncertainty. It’s been a horribly expensive and notoriously slow process and the experience has been cruel on the soul and harsh on the checkbook. Not quite the result any of us desired.

Introduction to Wills and Trusts

A Will is a legal document that does three things.

- It directs how and to whom your assets will be distributed after you die.
- It names who you want to act as guardian for a minor child or a disabled adult child.
- It names a personal representative (known as an “executor” in some states) to handle your affairs after your death.

Believe it or not, everybody will have a Will. If you don’t create one of your own, the state will create one for you. So, the real question here is, “Is my Will one that I designed or did I give up the control of these decisions to my beloved government?”

Although trusts come in many shapes and sizes, there are basically two types. A revocable trust is one that you can change, amend and revoke. This is the typical “living trust” that you hear so much about today. An irrevocable trust is just that – irrevocable. Once it’s signed, it can only be changed in very rare circumstances. Most irrevocable trusts are created for tax reasons.

The usual living trust is a legal document that does three things.

- It directs how your disability is determined and who will handle your affairs if you become disabled;
- It directs how and to whom your assets will be distributed after you die.
- It names a successor trustee to handle your affairs after your death.

Not everybody has a Trust. If you fail to plan, the government will create a will for you, but it won’t create a Trust. If you want the benefit of a Trust, you’ve got to have one created for you.

So what’s the big deal? Plenty! Wills and trusts are legal documents that accomplish very different goals and are administered in very different ways. Whether you should have a Will or a Trust depends on the goals you want to accomplish. This chapter will explode a couple of myths, drill down to the core of the Will versus. Trust debate and discuss the following concepts for each planning tool:

- Its characteristics;
- Its cast of characters;
- What it does;
- What it can’t do;
- The various types of each one;
- Its advantages;
- Its disadvantages; and
- Some general information regarding each tool.

Wills

The Legal Basics

To be valid, your Will must meet the following legal requirements:

- You must be at least eighteen years old;
- You must have “testamentary capacity,” sometimes called being “of sound mind.” That means that you must have the mental faculties to know what property you own, the legal effect of your Will, who the members of your immediate family are, and that your Will represents your desires.
- You must be making the Will voluntarily, not because someone else is forcing you to;
- The Will must be in writing;
- It must be dated and signed by you. If you are unable to sign your Will, you may direct that another person sign for you. However, he or she must sign your Will at your request and in your presence;
- If your Will is typed, it must be witnessed by two persons who are not beneficiaries of your Will and must be notarized.

You can change your Will at any time before you become mentally incapacitated or die. An amendment to your Will, called a Codicil, must meet the same formalities as your Will.

If you die without a valid Will, the law says you died “intestate.” In that case, your esteemed state legislature has already decided how your property will be distributed and who will be in charge of distributing it. In Colorado, the law that sets forth the procedure and priorities for intestate distribution is called the Colorado Probate Code and is your “default Will.” While the government’s choice of fiduciaries and plan for the distribution of your estate may be exactly who and what you would have chosen, the chances are remote that this will be true. The state’s plan reflects the legislature’s best guess as to how most people would dispose of their assets and builds in some basic protections for certain beneficiaries, particularly minor children. While such a plan may or may not reflect your actual wishes, some of the built-in protections may not be necessary or may prove inadequate depending on your family’s situation. A Will allows you to alter the state’s default plan to suit your personal preferences.

The Cast of Characters

Even though you’re the star of your Will, there’s a big supporting cast. Your Will should contain a list of people or institutions to do certain things for you. It should also identify people or organizations to receive your property. Your Will’s “cast of characters” will include the following:

- Testator. That’s you, the guy who makes the Will. If you’re a woman, you’re called a Testatrix. Yes, I’m serious. No, I don’t know why it’s that way.

- Beneficiaries. The people or organizations that will receive your assets. For an in-depth discussion of how your beneficiaries can inherit what you leave them, please check out Chapter **.
- Personal Representative. In some states this person is called an “Executor” or, if you’re a woman, an “Executrix.” No, I don’t make this stuff up. This is the person or the institution that will do the work to carry out your wishes as stated in your Will.
- Guardian. The person (or persons) who will take care of your minor children or disabled adult children.
- Trustee. The person or institution that will administer any trusts that you set up in your Will.

If you appoint a Personal Representative, a Guardian or Trustee in your Will, the person or institution you named will take care of the jobs assigned to them. If however, you do not appoint someone to fill these positions, or if you choose the government’s Will, the Court will appoint people or institutions to handle things for you. As you might imagine, if a Court appoints a Personal Representative, a Guardian or a Trustee, chances are very good that the persons or institution named may not have been *your* first choice.

For a detailed description of fiduciaries and their duties, go to Chapter **.

Types of Wills

Wills can be of various degrees of complexity and can achieve a wide range of family and tax objectives. If a Will provides for the outright distribution of your assets to your loved ones, it might be called a Simple Will. If it establishes one or more trusts for the benefit of a surviving spouse or a minor or disabled child, it is called a Will with Testamentary Trusts. If the Will leaves your assets to your living trust, it is called a Pour-over Will because on your death the Will “pours your assets” in to the trust. Many times, Trusts are included in the estate plan to ensure continued management of your property and creditor protection for your surviving family members, to provide for charities, and to minimize taxes.

If you handwrite your own Will, it is called a *holographic will*. Colorado recognizes holographic Wills. However, the drafting of a Will generally requires special knowledge and skills to achieve the desired end results. Holographic wills are frequently found to be ambiguous or legally defective, either of which causes unnecessary delays, expense and litigation. And while you’re not around to care, your loved ones are and do. That’s why the prudent strategy is to have a Will drafted by an attorney.

What Does a Will Do?

Your Will is a “death document.” It becomes effective when you die and directs to whom and how your assets will be distributed. Generally, you can give your money and your personal effects to whomever you want. However, there are a couple of notable exceptions. First, in Colorado, a surviving spouse can choose to receive a percentage of the estate regardless of what the Will states. Called, an “elective share,” it may not apply if your spouse receives property from another source, such as your life insurance policy. Second, a child born after you sign your Will is entitled to a share of your estate as if no Will existed unless you make absolutely clear that you intended to exclude the child.

Through your Will, you can also set up a trust for long-term management of assets and for the protection and security of your minor children and other family members. These trusts, called “testamentary trusts” are discussed in the next section.

Even if you intend to leave your estate to the same people who would receive it under the government’s plan, a Will can simplify administration and allow for different distributions and timing of your property. A well drafted Will can often reduce the time and expense of administering your estate.

Finally, depending on the size of your estate and how it is drafted, your Will can save your loved ones substantial income taxes, capital gain taxes and estate taxes. How much they will save depends greatly on the language of your Will and how you own your property. Suffice it to say that a Will has the *potential* to save taxes when properly prepared and adequately funded.

What a Will Cannot Do

If you don’t remember anything else about Wills, remember this.

Your Will can only control the assets you own in your own name when you die. It does not have the power to control any property you own in joint tenancy. Neither will it have any control over assets for which you have designated a beneficiary, like your IRA or your life insurance policy.

This is the overriding proviso of estate planning with a Will and it is the number one reason why Will-based estate plans fail to work as they are intended. If your property is not titled in your own name, your Will cannot determine where it goes. It does not matter what your Will says. It will pass automatically at your death according to your state law. For most people, this [what is “this” referring to?] is a relatively small portion of their estate.

Next, Wills cannot and do not avoid probate! That myth was dispelled in Chapter 2, however, it bears repeating here. Your Will, whether you handwrite it, your attorney drafts it or you opt for the government’s plan, is YOUR TICKET INTO PROBATE. As we’ll see in Chapter **, probate is a long, expensive, very public way to control and distribute your assets upon your death or disability.

Additionally, your Will cannot appoint people to take care of you. As we discussed, your Will is a death document. It can do absolutely nothing to help you or your loved ones if you become mentally or physically disabled, because it becomes effective only on your death. If a Will is the cornerstone of your estate plan, you absolutely must have advanced directives that plan for your disability. Look at Chapter ** on Advanced Directives for the specifics of these critical documents.

Advantages of a Will

- Wills have a couple of advantages over other estate planning devices. First, if you are not married, have no minor children and want specific people or charities to receive all of your property outright upon your death, Wills are relatively simple to create. Secondly, they are generally a bit less costly to create and fund.
- Under Colorado law, if you get divorced after your Will has been signed, your ex-spouse named in the Will is automatically eliminated as a beneficiary when your divorce is final. If you get married after you have signed your Will, your spouse receives the same share he or she would have received without a Will unless the Will makes clear the omission was intentional or if your spouse was provided for outside the Will. Intentionally omitting your spouse does not change his or her rights to take a fixed share of your estate unless those rights have been relinquished in a prenuptial agreement.

Disadvantages of a Will

- Probate of a Will takes time. In Colorado, even a well-drafted Will requires a minimum of six months. The average probate proceeding takes more like twelve to eighteen months. In the legal world, time is money. The longer a probate proceeding grinds on, the more expensive it becomes due to legal, accounting and other professional fees, filing and publication fees and real estate expenses.
- The complications of even “simple” Wills are legendary. They form the basis of exciting movies, dramatic newspaper stories and best-selling novels. If not prepared with all the legal requirements satisfied, if not signed properly, or if another Will is found, a Will could be declared invalid. In addition, it’s easy for someone who is unhappy about the provisions of a Will to find a reason to challenge it.
- The possibility of leaving assets outright to minor children may be the greatest disadvantage of the simple Will. Many simple Wills call for everything to go to the surviving spouse. That’s fine if there is in fact a surviving spouse. The problem is that most of “Simple Wills” name minor children as secondary beneficiaries, upon the death of the second parent, or in the event of a simultaneous death. If the parents die while the children are minors, a conservator must be appointed to manage the children’s inherited assets and a guardian must be appointed to care for the children. These people may be the same or they may be different. In either event, however, a Colorado conservatorship will end when the child is twenty-one years old and *all of the assets must be distributed outright to the child at that time.*

- Most people who hire an attorney to create a Will look to that attorney for guidance. When asked by the lawyer what they want their Wills to accomplish, the clients generally reply, “Leave everything to my spouse and then to my children equally.” The result is almost always a simple paragraph or two saying just that (with a little Latin thrown in) and nothing more. The rest of the document is bare–bones boilerplate and sterile legalese that has no loving instructions for the care of spouses, children, and grandchildren or the promotion of your family values.
- Every Will is a public document. When you die, your Will, together with an inventory of your assets, debts, and other personal information, becomes part of the public record. Some of this information is published in a local newspaper. With few restrictions, anyone can go to the courthouse and look at detailed court filings showing such things as your bank account numbers and balances, the value of your house and other property and see exactly how your estate is divided, down to the amount paid to each of your heirs. Like my Dad, most people don’t intend to make their family’s financial affairs this public.
- Wills don’t cross state lines very well. Colorado law states that a Will is valid if it was valid where it was signed, even though the Will would not have been valid if it had been signed in Colorado. Most states have similar laws, so your Colorado will would likely be valid in another state. Still, it is wise to have the Will reviewed when moving because of factors that could affect your Will. For example, community property states, differing rules about the disposition of personal and real property, local rules affecting marital rights, etc. can impact your Will. Having to rewrite your Will when you move may cost a few bucks, but *not* rewriting it can be even more expensive.
- Finally, if you own real estate in more than one state, it is possible that your estate may have to be probated in each state in which you own property. If you think probate costs in one state are expensive, just think how excited your family will be when they learn that they have to probate and pay administration expenses, court costs, attorney fees, and related expenditures in your home state, the state where the vacation home is located and the *country* where the time share is located.

Summary

So, now you’re convinced that a Will with Testamentary Trusts is the way to go for your particular situation. You named your Personal Representative, the Guardian for your minor children and you’re ready to deal with your property. Okay, so here’s your dilemma. For your Will to control your property, you must own it in your own name or have a testamentary trust named as the beneficiary of your IRA or life insurance policy. However, if you own property in your own name or name a testamentary trust as the beneficiary of your IRA or life insurance policy you must go through probate. Hmmm. As we’ll see in the next section, a living trust might be just the ticket for you to accomplish both control and protection without probate.

Trusts

A trust is simply an agreement for the control of property. Unlike your Will, which only controls your property when you die, your trust will provide for management of your property during your lifetime, provide assistance in the event of your physical or mental incapacity and provide for the disposition of your property after your death.

Trusts have been in existence even longer than Wills. Unfortunately, they are perceived as being only for the very wealthy and too complicated or unmanageable for the “average” person. Nothing is further from the truth. As you’ll see, trusts are superb planning vehicles that accomplish a multitude of goals.

The Legal Basics

To be valid, your Trust must meet the following legal requirements:

- You must be at least eighteen years old;
- You must have “testamentary capacity,” sometimes called being “of sound mind.” That means that you must have the mental faculties to know what property you own, the legal effect of your Trust and that your Trust represents your desires.
- You must be making the Trust voluntarily, not because someone else is forcing you to;
- The Trust must be in writing;
- It must be dated and signed by you. If you are unable to sign your Trust, you may direct that another person sign for you. However, he or she must sign your Trust at your request and in your presence;
- It must be notarized. In some states, it must be witnessed like a Will.

Changes or amendments to your Trust must meet the same formalities.

The Cast of Characters

Your Trust’s “cast of characters” will include the following:

- Trustmaker. That’s you, the guy or gal who makes the Trust. You may also be called the “Grantor,” “Trustor” or “Settlor” but they all mean the same thing.
- Trustee. The person or institution that controls the property owned by the Trust. With a typical living trust, the Trustmakers are the initial trustees. That way, you retain full control of your property. In most cases, even if your trust is an irrevocable trust, you may be the Trustee. There are a few instances where you either cannot or should not be the Trustee of the Trust.
- Successor Trustee. The persons you name to be Trustees if you become incapacitated or die.
- Beneficiaries. The people or organizations that will receive your assets. While you’re alive, you -- and if you’re married, your spouse -- are the initial beneficiaries. You can change beneficiaries if you become incapacitated or die.

- Disability Panel Member. The people that you want to be involved in the decision of whether you are incapacitated. You can name family members, physicians, trusted friends or a combination of these. Because you are automatically removed as a Trustee if you become incapacitated, this is an important job for someone.
- Trust Protector. A person you appoint to oversee the Trust on behalf of the beneficiaries. Generally, the Trust Protector's powers will only become effective after you die. These powers may include removal and appointment of a Trustee, approval of investment decisions and casting a tiebreaking vote in the case of multiple Trustees who can't agree on a particular issue.

For a detailed description of these fiduciaries and their duties, see Chapter **.

Types of Trusts

There are several varieties of trusts, each with its own subtleties. Trusts are generally categorized in a couple of different ways, depending on whether they can be changed after they are created and when they go into effect.

Revocable or Irrevocable

As the name implies, a *revocable trust* can be changed at any time prior to the Trustmaker's death. The most common type of estate planning trust is generally called a "revocable living trust" or something similar.

Conversely, an irrevocable trust generally cannot be changed once it is signed. For that reason, most irrevocable trusts are created for tax planning purposes, as transfers of property into this type of trust qualify for certain tax benefits. There are several types of irrevocable trusts, each designed to accomplish specific planning goals. The most widely used types of irrevocable trusts include the following:

- Life insurance trusts;
- Charitable trusts;
- Trusts for people with "Special Needs, that is, physical or mental disabilities;"
- Gifting trusts for minors;
- Grantor retained trusts; and
- Qualified personal residence trusts

Living v. Testamentary

Although most people today use the term "living trust" to refer to a specific type of trust, a living trust is simply a trust that becomes effective while you are alive. Conversely, a "testamentary trust" becomes effective only upon your death.

Many of the trusts listed above can be created during your lifetime or after your death depending on when you want the trust to become effective. While testamentary trusts are often thought of in connection with a Will, they are also frequently created by the

typical “revocable living trust.” Again, the word “testamentary” simply defines when the trust becomes effective.

What Can a Trust Do?

Properly designed and funded, a Trust, whether living or testamentary, will achieve several goals. Among them are the following:

- Depending on the type of trust you create, you can save thousands of dollars in federal and state estate, gift and income taxes during your lifetime and after your death.
- A Trust can receive life insurance benefits so that the proceeds can be invested, managed and distributed according to your wishes, rather than paid out in a lump sum to the beneficiaries. See the chapter on Life Insurance for an in-depth discussion of the treatment of life insurance benefits. Suffice it to say here that leaving life insurance proceeds in trust will help make sure that the money is used for the purposes you had in mind, rather leaving it up to the beneficiary.
- With a Trust, you can provide extensive, loving instructions for the guardians who will be caring for your minor children and children with special mental or physical needs. You can name panels of trusted family members and advisors to make sure your children are cared for the way you want. You can also determine at what age and under what conditions you want your children and other loved ones to inherit your property.
- Protective trusts for your minor children, disabled children and grandchildren, will free them from impersonal, expensive, and cumbersome court proceedings and supervision. These trusts will also protect your children’s inheritance from the claims of *their* creditors and from *their* ex-spouses.

What a Trust Cannot Do

If you don’t remember anything else about Trusts, remember this.

A Trust can only control the assets it owns and the assets that you make payable to the trust on your death. It does not have the power to control any property you own in joint tenancy. Neither will it have any control over assets for which you have designated an individual beneficiary, like your IRA or your life insurance policy.

A Trust, whether it becomes effective during your lifetime or after your death, is not a “magic document.” It cannot pay bills, transfer assets or care for people. Trusts are like any other tool. They require human beings to operate them. Don’t believe all the hype of those who wrongly claim that, “Once you’ve done a trust, everything is taken care of.”

The Revocable Living Trust

A comprehensive discussion of the advantages of using Trusts in your estate planning is well beyond the scope of this book. However, because Living Trusts are so widely used – and on occasion abused -- we will focus the balance of the chapter on their use.

The typical “revocable living trust” is a trust that you create during your lifetime for one or more of the following purposes:

- Holding ownership to your assets during your lifetime;
- Providing access to your property and assistance to your loved ones if you become physically or mentally incapacitated; and
- Distributing your assets to whom, when and how you want after you die.

You are the Trustmaker, the initial Trustee and the initial beneficiary. The Trust becomes effective when you sign it. However, for your Trust to achieve your planning goals, you **MUST** give it the ability to control your property. An unfunded trust is like a car without gas; neither will get you very far! You do this by “funding” the Trust. Funding is simply the process of transferring to the Trust the title and legal ownership of assets that you own. Funding a Trust is not terribly difficult but can be tedious. As you’ll see in Chapter **, this is the primary reason that we never used Dad’s revocable living trust. He never gave his trust the ability to control any of his property when he died!

If the Trust is properly designed and funded, a Trust will accomplish a variety of estate planning and asset protection and family goals. For example, a Trust will:

- Provide instructions for your care and the care of your loved ones in the event of your disability, eliminating Court proceedings to appoint a guardian or conservator for you. Court supervised conservatorship proceedings are expensive and often embarrassing to you and to your loved ones. Also, many transactions undertaken by a Conservator, including most sales of property, require Court approval requiring more time and expense. However, the successor trustees named in your Living Trust can manage your financial matters without the necessity of a Conservatorship.
- Avoid the entire probate process when you die. Assuming you properly and completely funded your Trust, you don’t own any property in your own name when you die. Therefore, none of your assets need to be retitled. This is especially important if you own property in more than one state. If all of your property, even property located in other states, is owned by your Trust, your loved ones will save untold hours and dollars dealing with it when you die.
- Keep your financial and family issues totally private. Because there are no court filings, all of your affairs are kept private.
- Make it difficult, though not impossible, for disgruntled heirs to contest your planning goals.

Other Advantages of a Trust

Easy to Create With the help of your advisors and your attorney, you can quickly and conveniently establish a living trust. Whether you have one living trust for both you and your spouse, or one for each of you, depends a great deal on your personal situation. However, In Colorado, if you are married, it is often recommended that you and your spouse have separate living trusts.

Easy to Change or Cancel Your living trust can be changed or canceled at any time. That's why it's called a *revocable* trust. You are not locked into a fixed position. After signing your name, you always have the option of "unsigning" it. In fact, you should regularly review and update all of your planning documents, including your living trust.

Easy to Control Your living trust receives its strength by becoming, for your benefit, the "owner" of your property. As the maker, trustee, and primary beneficiary, you control every aspect of how your property is to be used.

Easy to Appoint Trustees You name your own trustees. If you are married, both you and your spouse can be the original trustees of your separate trusts, or you can each be sole trustee for your own trust. You can specify different trustees to take care of your loved ones after your death. You can name as many or as few trustees as you like, and they can be different for each of you. You can determine how they may be terminated or replaced, and you can even name their replacements.

Can Be Created Quickly Creating a living trust can usually be created and signed in a few weeks. However, changing asset ownership and changing beneficiary designations may take a bit longer.

No Tax Consequences There are no income tax consequences to establishing a living trust either positive or negative. You do not need any special tax identification numbers nor do you need to file any special tax returns. You continue to file your individual tax returns just as you always have. The estate tax advantages to living trusts have been greatly overstated by "living trust salesmen" and attorneys alike. However, a qualified attorney will tell you that estate tax liability occurs when you die. Therefore, you can obtain *estate tax advantages with either a Will or a Living Trust*.

Inexpensive in the Long Run Settlement of a fully funded Living Trust upon death or disability costs significantly less than a probate or guardianship proceeding. In addition to the dollar cost of settlement, the time commitments are significantly reduced to settle a Living Trust versus probating a Will.

Enhanced Privacy Anytime you go to Court to seek solutions to legal issues, the Court's file is generally available for inspection and copying by anyone, without regard for their interest in the case. Probate proceedings upon death and guardianship and conservatorship proceedings upon disability are no exception. Names, addresses, ages of beneficiaries, as well as a complete inventory of everything you own and who gets it will become part of the Court file. Some people find this unacceptable.

In contrast, the provisions of a Living Trust are not normally matters of public record. Neither is the extent and disposition of assets nor the names and addresses of beneficiaries.

Disadvantages of a Trust

There are very few disadvantages of using a Living Trust to plan your estate. The most common criticism of a Living Trust is that you it must be funded. However, funding your Trust requires much less time and expense than a probated estate when you die. In addition, think how much easier it is for *you* to do this than for someone less familiar with your affairs, such as a family member or a close friend.

Complexity Certainly your Living Trust should include the latest and most sophisticated tax planning and everyone knows how complicated the tax laws are. However, if you want to save your heirs every tax dollar possible, some detailed tax planning is needed. However, once your Living Trust is created and funded, your day-to-day affairs won't be complicated at all. Often the only "complication" of handling an asset which has been transferred to your living trust is writing the title "Trustee" after your signature.

Higher Initial Legal Fees A Living Trust often costs more to create than a Will due in large part to the necessity of funding the Trust. However, because the costs to settle a Living Trust when you die are so much less than a probate proceeding, many people feel the higher initial cost is justified.

Difficulties in Borrowing Against Property While a Living Trust is a perfectly legal way to own property, some financial institutions train their personnel to deal only with *typical* situations. Most of the time, those *typical* situations don't include dealing with a Trust. Therefore, many times if you want to refinance property held in your Trust, the lender will require that you transfer it out of your Trust into your individual name. Sometimes it's just easier to "switch than fight." In that situation, you simply transfer your property out of the Trust, borrow the money and then transfer the property back into the Trust. It's not a big deal but may be annoying.

No Protection Against Creditors Contrary to one of the biggest myths about living trusts, transferring your property into one will NOT put it out of reach of the claims of your creditors, including claims of Medicaid, during your lifetime, or if you become incapacitated. Of course, neither will a Will or owning property in joint tenancy. However, you're not any worse off if you put your assets into a Living Trust. Every state's law provides certain exemptions from the claims of creditors. Putting your property into a living trust does not deprive you of any of those exemptions.

You Still Need a Will Even if you use a Living Trust in planning your estate, you will need a Will. If this is the case, your Will should be a simple, "pour-over" Will used to "pour over" or transfer any property that you own in your own name on your death to your Living Trust.

The use of a "pour-over" Will, together with a Living Trust ensures that any assets that are not owned by your Living Trust will be distributed in accordance with your wishes,

and not by your government's wishes. Be aware however, that a "pour-over" Will, like any other Will, must go through probate if you die owning assets in your own name.

A Word of Caution Proper estate planning revolves around your relationship with a qualified estate planning attorney. Unfortunately, there are many businesses and salespeople masquerading as estate planning professionals. They are inundating the public with sales schemes that involve selling wills, living trusts, and other estate planning documents without the involvement of attorneys in the design and drafting of the documents. In essence, these "plans" are nothing more than a very expensive set of pre-printed forms. In many instances, because everyone is sold the same package, the living trust itself may be ill-suited or even contrary to the individual's estate planning needs.

The bottom line is that Living Trusts are great tools IF they are properly counseled, expertly designed, skillfully drafted, fully funded and regularly maintained. But they are not the right tool for every person or family situation.

Will v. Trust

Nearly everybody has either asked or heard the question, "Which is better, a Will or a Trust?" The proper legal answer is, "That depends."

This question is a little like asking, "Do I need a refrigerator or a car?" Each does something different. The real question you should ask is, "Which is better *for me*?" The answer to this question requires some thought about your planning goals, your dreams and hopes for your loved ones after you're gone and a conversation or two with your family, friends and chosen charities. Following is a brief discussion and a couple of tables to help.

Neither document resolves all your affairs

When it comes to the "Will or Living Trust" decision, you must be realistic. When you die, certain matters have to be taken care of by *somebody*, whether you have a Will a Living Trust, both, or neither one. Funerals, burial, cremation, headstones, obituaries, bills, personal business and insurance matters must be taken care of. Tax returns must be filed. All of your property must be accounted for, secured, divided appropriately and transferred as required by your planning documents. None of these chores can be avoided. A certain amount of time, effort and expense is inevitably involved. Obviously, leaving all these details to an attorney can be expensive, but it is usually not necessary if your Personal Representative and heirs can help.

What time period are you planning for?

As we already discussed, Wills are death documents. If you are planning for what happens when you die, either a Will or a Living Trust will take care of things. If incapacity is your concern, you will need either a Living Trust or a set of very good Powers of Attorney and Advanced Directives in addition to your Will. See, Chapter ** for an in-depth discussion of how these tools work. In nearly every case, a Living Trust is a superior choice in the case of disability or incapacity. Since assets in your Living Trust are already under the control of a Trustee that you named to take care of things upon your incapacity, your property can be managed and used for your benefit quickly and smoothly. A good Living Trust can avoid

months in a legal disability proceeding to have a guardian or conservator appointed by the court. You also avoid ongoing court supervision over financial decisions.

Ownership of real estate in multiple states

You should definitely consider a Living Trust if you own vacation or rental real estate in states other than the one in which you live. This would allow for immediate distribution of the property after death, and avoid the probating of your Will in *each* state in which you own property.

Will or Living Trust – Which is Better?		
If this is your goal . . .	This is what happens with a Will	This is what happens with a Living Trust
Privacy	No privacy. All documents and proceedings after death are public.	Totally private unless court intervention is required, usually due to improper drafting or lack of funding.
Disability Planning	No provisions for mental or physical disability. The disabled person is subject to the court process for guardianship and conservatorship. Can also use powers of attorney.	Trusts privately handle assets upon disability without court intervention. Family members determine disability privately.
Tax Planning	Available only if assets are correctly titled to pass through the probate process. Funding of trusts through the probate process will generally take longer and cost more than funding a living trust.	If the trust is properly funded and continually updated for changes in the law and personal situations, tax planning is ensured. Funding of trusts is quicker and easier than trusts funded through the probate process.
Disposition of Assets	Can be used for disposition of assets upon death either outright to beneficiaries or in trust. This is done through the probate process and generally takes longer and costs more than a living trust.	Can be used for disposition of assets upon death either outright to beneficiaries or in trust. This is done privately and much faster because the probate process is totally avoided.

Protection from Creditors	None while alive. Creditors have only a specified amount of time to present claims or they are forever barred.	None while alive. No creditor claim “shutoff” period. However, most trusts provide that valid debts be paid.
Time and effort required	Less now unless you require tax planning and asset protection for your heirs. A great deal of work for your heirs after disability or death.	More effort on your part to properly design the trust to accomplish all of your goals today, upon disability and after death. Far less time and effort by heirs later.
Cost Now	Usually small	Moderate
Costs to Amend	Usually small	Usually small
Cost Later	Can be small, but generally extremely high due to probate court intervention.	Usually minimal if the trust has been fully funded and is properly maintained.

Will or Living Trust – Which is Better <i>for Me?</i>		
Planning Issue	Will	Trust
Limited cash flow	X	
Younger clients	X	
Older clients	X	X
Limited assets, including life insurance	X	
Large retirement plans (IRA, 401k, 403b, etc.)		X
High cost / difficulty death probate state		X
Low cost / difficulty death probate state	X	
High cost / difficulty living probate state		X
Low cost / difficulty living probate state	X	
Simple, outright disposition of assets at death	X	
More sophisticated disposition of assets at death		X
Privacy issues		X
Possible or probable mental disability		X
Desire to make everything easy and inexpensive for heirs		X
Out-of-state real estate or timeshares		X
Complicated disposition issues		X
Out-of-state executors, trustees or guardians		X
Tax planning		X
Protection of inheritance for spouse, children and grandchildren		X
Planning for couples on second or subsequent marriage		X
Medicaid planning or qualification issues		X
Planning for beneficiaries with “special needs”		X

So, Dad, while the battle for hockey dollars rages in the media and in law firm boardrooms around the country, I'm reminded of our final telephone conversation. It was late on the evening of the day before you died. You told me you were going to Copper Mountain that weekend with Carol, but that you were looking forward to seeing me on the following Tuesday to go over and sign your new estate planning documents. We were going to meet in the morning and then have lunch. You asked about my wife and my boys and told me you loved me. That was a ten-minute conversation that I will fondly remember the rest of my life.

I'm sorry to say that I also remember that your Will provided a one-way ticket into the Broomfield County Probate Court. The result was a brutal battle on a different kind of playing field with my brothers for opponents and a ruthless judge for a referee. One day, by the grace of God, I'll be able to forget that whole process. I know it wasn't your intent to leave that document as our final conversation. I'm looking forward to the day when we can talk face to face again. I'm also anticipating the day that I can once again melt into one of your famous bear hugs and listen to your gentle heartbeat.

*I love you,
Rock*



Who are these people and *what are they doing in my My Estate Plan?*

By: Douglas G. Goldberg, Esq.

Contrary to popular belief, effective estate planning is not a simple, one-time event. It is a complex and ever-changing process that involves several areas of law. Additionally, the participants involved and the tools used are many and varied, and they differ from family to family, depending on your planning goals.

In order to ensure your plan works the way you want, several things must happen. First, your planning documents must be legally and technically correct. Secondly, your assets must be titled correctly and your beneficiary designations properly named. Finally, the people you choose to act on your behalf must be trustworthy and properly trained to carry out the tasks assigned to them.

So, Who's Who?

The people involved in estate planning fall into three basic categories. Here's an overview.

I. The Principal

There is the principal—that's you—the person who names someone to act on your behalf in a particular circumstance. The authority and control that you give someone is documented in a written agreement. As the principal, you can play several roles. The most common are: **Trustmaker, Grantor, Settlor, or Trustor**, a person who creates a trust. The **Testator** (male) or **Testatrix** (female) is the person who makes a will. And the **Initial Trustee** is the person initially named to administer a trust. In a revocable living trust, the Trustmaker is usually an Initial Trustee. A **Principal under Power of Attorney** is a person who gives specific authority to someone else (the Agent) to perform acts for him or her by signing a written power of attorney.

II. The Fiduciaries

Then there are the fiduciaries. A fiduciary is a person who agrees to act on a principal's behalf. A person may serve in more than one fiduciary role, each of which involve following several important and stringent legal responsibilities and guidelines. Some typical fiduciary roles are: **Disability Panel Member**, a person named to help determine whether you are competent to manage your own medical and financial affairs. No financial or medical decision-making authority is given to someone serving in this capacity. **Health Care Agent** is a person named to manage your medical affairs and make medical decisions for you. Likewise the **Financial Agent** is a person named to manage your financial affairs and make decisions regarding your finances and assets.

Other fiduciaries include: **Guardian**, a person nominated in a power of attorney or appointed by the Probate Court to take care of your day-to-day personal needs. This person also typically acts as your Health Care Agent. A **Conservator** is a person nominated in a power of attorney or appointed by the Probate Court to manage your finances and assets. This person also typically acts as your Financial Agent.

A **Personal Representative** is the person appointed by your Will to handle the probate of your estate upon death. The primary functions of a personal representative are to pay your bills and transfer assets into testamentary trusts or distribute them to your named beneficiaries. A **Successor Trustee** is a person or entity that takes the place of another trustee, normally due to the initial trustee's disability, incapacity or death. And a **Trust Protector** is a trusted professional, generally an attorney, who is given powers to amend the terms of the trust due to constantly changing legal, tax, family and economic circumstances. Trust pro-

ectors provide increased flexibility in trust administration.

III. The Professionals:

Effective estate planning involves the efforts of a team of experts in their individual disciplines who come together to help in the design and implementation of your plan. Professionals include: An experienced **Estate Planning Attorney** understands the many issues, circumstances and planning options available when tax law, your family relationships, Medicaid issues and property law intersect. The attorney will counsel on the available options for your particular situation and draft your legal documents. Without expert legal guidance, your plan could become no better than the paper on which it's written. Paralegals and other legal assistants may also be involved to transfer title on assets and change beneficiary designations to ensure your plan works correctly.

Certified Public Accountants or CPAs prepare the accountings and income tax filings, and can be very effective in performing tax research and providing the team with unique insight into your business and family. The **Insurance Professional** keeps abreast of the new products that are continually being created by insurance companies. This person provides the products that many times are the "fuel" for the estate planning vehicles and will also help with re-titling assets and changing beneficiary designations as required. And **Financial Planners** are of considerable help in providing financial strategies for management of assets before, during and after death. Some financial planners may also provide insurance services and products. **§**

Leaving a legacy of value takes work and it takes commitment—from you, your advisors and your fiduciaries. When you're ready to talk, we're ready to listen. Call Goldberg Law Center at 719-444-0300.

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Douglas G. Goldberg, Esq.

- ◆ Estate Design
- ◆ Retirement Planning
- ◆ Asset Protection
- ◆ Business Entities
- ◆ Charitable Giving
- ◆ Real Estate



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Appendix



Article Four Appendix

Exhibit 1 Checklists

Exhibit 2 Sample Forms

Exhibit 3 Cowboy Wisdom

NOTE: All of these documents are included in this section.



**Additional Resources Available for Download or Purchase
on our Website**

www.GoldbergLawCenter.com

 **Successor Trustee Manual**

- Basic**
- Intermediate**
- Advanced**

 **Senior Magazine Articles**

 **Excerpt from the book in process,
*“What Were You Thinking?” Letters to Dad***

 **Getting Your Ducks in a Row (Paperback)**

 **Legacy Snapshot (Paperback)**



Exhibit

1



Checklists

While I'm Alive and Well

Here's some ideas to think about to make sure your estate plan continues to meet your needs and the needs of your family when it's needed most.

Does my plan need to be updated?

Even if you do not have changes to make, changes in the law, changes in your family and changes in your assets may suggest changes to your plan.

- r How long ago did I update my plan?
- r Have my needs and goals changed since then?
- r Have my family circumstances changed since then?
- r Have my financial circumstances changed since then?
- r What laws have changed since then?

Do I need to change my helpers?

Life happens to all of us. It moves us, puts new people in our lives, takes people out of our lives and changes our circumstances. The helpers you named a few years ago may not be the people you want or need to be your helpers today.

- r Who determines whether I am mentally incapacitated?
- r Who are my agents under my Healthcare Power of Attorney?
- r Who are my agents under my Financial Powers of Attorney?
- r Who are my disability trustees?
- r Who are my death trustees?
- r Who takes care of my minor children if I am disabled or die?
- r Who is my Personal Representative?
- r Who are my clergy and lay contacts?

Who inherits my estate, when, and how much?

No estate plan can consider every circumstance. But your plan should address the most likely circumstances for you and your beneficiaries and should do so in a way that compliments your needs and goals while considering their needs and goals. Only a qualified, counseling oriented, estate planning attorney can adequately help you design your plan.

- r Who are my named beneficiaries?
 - o Children, Grandchildren, Charities, Others
- r How have their circumstances changes since I last updated my plan?
- r Are the current distribution provisions for my beneficiaries still relevant?
- r Do the current distribution provisions for my beneficiaries match my needs and goals to theirs?
- r Are there asset protection possibilities that could enhance my plan for the benefit of my beneficiaries?
- r Have tax law changes made my current planning detrimental to my beneficiaries?

Is my plan properly funded?

Your plan will only work if it is properly funded. Assets come and go. Assets grow and shrink. Funding strategies change. Your funding strategy and status should be reviewed periodically to make sure your plan will continue to work the way you intended.

- r Who is the registered owner of my life insurance?
- r Who is the beneficiary of my life insurance?
- r Who is the primary beneficiary of my retirement plans?
- r Who is the registered owner of my investment accounts and financial assets?
- r Who owns my real estate? Have I recently refinanced any real estate?
- r Have I inadvertently left assets outside of my trust that should be retitled?
- r Have I left assets out of my trust on purpose?
- r Are my documents current?
- r Is my trust current with the new tax laws?
- r Are my medical directives and financial power of attorney still valid?
- r What other documents do I need to supplement my current plan?
- r Have I left detailed “Letters of Instruction” to my helpers?

Are my assets properly invested?

Your investment strategy needs to be reviewed and updated and coordinated with your estate planning strategy. This review should be done with your entire team of advisors – your attorney, your tax professional, your insurance professional and your financial professional.

_____ Date last reviewed with Financial Advisor
_____ Date last reviewed with CPA

Is my insurance proper for my family's needs?

Term life? Whole life? Variable universal life? Long-term care? Income replacement? What insurance you need depends on your family's needs and goals. Before you buy on-line, consider meeting with an insurance professional that will take the time to get to know you and develop an insurance plan based on your needs and goals and one that will be coordinated with your overall financial and estate plan.

_____ Date last reviewed with Insurance Advisor

Have I reviewed my plan with my immediate helpers?

News Flash! Just because you named them as helpers in your estate plan does not mean that they must help. Even if they agreed when you asked them, they can always change their mind when it comes time for them to act. You should regularly review your plan with your helpers and be prepared to ask and answer some tough questions. Make sure they still want to help and will follow your written directions. If your helpers cannot, will not or are unqualified to work your plan when needed, the plan will fail.

- Are my helpers willing to help?
- Are my helpers qualified to help?
- Do my helpers know where to look for my documents?
- Do my helpers know where to turn for more help?
- Will my helpers continue to work with my advisor team?

Conclusion

A comprehensive, personalized estate plan is vital to protect you and your family from unnecessary expenses, loss of control, disability, and high taxes. It is essential for providing that your unique and individual goals, values, dreams and expectations will be met how you want, when you want and the way you want. Good estate planning is an unselfish act of love that allows for a smoother transition for your loved ones when you die or become disabled. Every estate plan must be reviewed periodically so that it stays current with your intentions and desires. An out-of-date estate plan can be worse than no plan at all.

If I'm Alive But "Not So Well" (My Checklist)

If I know I am becoming "not so well," have I contacted my helpers?

If you see the signs that you may need help, think about enlisting the help of your helpers now so that they will be better prepared when you can no longer work with them.

- r Do my helpers know my advisor team?
- r Do my helpers know where to find my important papers?
- r Do my helpers understand my needs and goals?
- r Are my helpers willing to help?
- r Are my helpers qualified to help?
- r Do my helpers know where to turn for more help?
- r Do my helpers need encouragement, apologies or forgiveness now for what lies ahead?

If I know I am becoming "not so well," have I reviewed my planning documents to make sure they do what I want?

Maybe your helpers aren't as qualified or willing as you previously thought. Perhaps you want to change the provisions you've made for your care. If you start to involve your helpers now, you will have the opportunity to make changes to your plan so that it will best meet your needs and goals.

- r Do I need to change my helpers?
- r Do I need to change my medical care instructions?
- r Do I need to change provisions or distributions to my beneficiaries?
- r Am I providing for my spouse? Children? Grandchildren? Charities? Pets?
- r Am I providing for my ex-spouse or their children, either by design or by default?
- r Does my plan exclude anyone, either by design or by default?

Alive and “Not So Well” Checklist (*My Helpers’ Checklist*)

Locate original documents

Properly designed and drafted trusts and powers of attorney will include instructions on how to determine and document incapacity as well as instructions for providing for the incapacitated person and other family members. A well-rounded plan will also include instructions for “What if...”

- r How do I determine my Principal’s incapacity?
- r How do I provide for my Principal?
- r How do I provide for my Principal’s family members?
- r Who are my Principal’s other helpers?
- r Who are my Principal’s trusted medical, financial and personal advisors?

Execute necessary documents

Authority to act is not automatic. Banks, investment institutions, courts, government agencies and private care providers all have requirements that must be met to ensure that you are acting with the proper authority under the proper circumstances.

- r Get legal guidance on the do’s and don’ts of your appointment and authority.
- r Get certification of my Principal’s disability in accordance with the plan and applicable laws.
- r Get certification of my authority to act.
- r Accept jurisdiction of the court if I am a serving as guardian or conservator.
- r File and record documents if required to do so.
- r Execute documents to undo everything if my Principal recovers.

Provide for your Principal

Your Principal's written documents are your guide. If you cannot or will not follow them, not only to the letter but also in the spirit and intention of the entire document, **DO NOT ACCEPT THE APPOINTMENT**. If you cannot continue to serve once you have accepted the appointment, renounce the appointment. Legal documents have legal consequences.

- r Follow the instructions given, regardless of how I feel.
- r Know whether I must provide my Principal with home care, hospice care or hospital care.
- r Enforce or withhold medical procedures and medication when necessary.
- r Enforce **DO NOT RESUSCITATE** orders (DNR).
- r Enforce advanced healthcare directives ("Living Will") when necessary.
- r Ensure that my Principal has proper safety, security and medical and personal care.
- r Put long-term healthcare plans into action.
- r Ensure that my Principal's spiritual and religious needs are met.

Provide for dependents and family members

Properly designed and drafted trusts and powers of attorney will include instructions on how to care for family members when a person is incapacitated. These are legal documents with legal consequences.

- r Place minor dependents placed with guardians.
- r Place other incapacitated family members with guardians or institutions.
- r Provide for the health, education, maintenance and support of family members.
- r Be aware of health concerns of my Principal's family.
- r Care for my Principal's pets
- r Provide for clergy or other counseling for family members.

Provide financially for your Principal and the family

Develop and revise your Principal's financial plan based on the continuing prognosis of your Principal using your Principal's advisor team. Planning mistakes at this stage may have long-term adverse consequences and may affect qualifications for entitlement programs. One of your fiduciary duties is to protect the best interests of your Principal. Part of that duty includes ensuring assets are properly utilized and protected.

- r Use my Principal's advisor team to develop and revise the financial plan.
- r Apply for third party insurance benefits.
- r Apply with local, state and federal entitlement programs such as Social Security and Medicaid, Veterans Administration, etc.
- r Apply for assistance from organizations that specialize in my Principal's incapacity.
- r Pursue compensation and restitution from responsible parties if applicable.
- r Do not disrupt productive investments.
- r Do not disrupt assets that are excluded for qualification for entitlement programs.
- r Maintain accurate and detailed records of transactions.
- r Do not co-mingle my Principal's assets with my assets at any time.
- r Pay bills that need to be paid to protect assets.
- r Postpone payment of bills when it is appropriate to do so.

Help for me and the other helpers

Being a fiduciary for an incapacitated person can be very demanding and stressful, even when duties are spread out among several helpers. To compound matters, not only do you have additional demands on your time, you are likely to be feeling and dealing with a certain amount of grief. Don't feel like you have to do it all yourself. In the end, even though it is painful for you, you will be blessed for being a part of your Principal's life, honored to be chosen to help and at peace for giving them what they wanted.

- r Enlist the help of others.
- r Monitor my mental health and that of the other helpers.
- r Use my Principal's team of advisors.
- r Do not cause my family to suffer unduly.
- r Ask for help and information from people and institutions that specialize in my Principal's incapacity or condition.

First Steps When Your Loved One Dies

Immediate Action – The First 5 days

- r Contact a relative or friend who can spend the next few days with you if you are alone.
- r Notify relatives and close friends
- r Review organ donation and other anatomical gift instructions and comply with wishes
- r Find and review memorial instructions and known funeral and burial / cremation wishes and make those arrangements
- r Check for prepaid funeral plans
- r See, checklist for funeral home / information for death certificate
- r Arrange for care of dependents – guardians, babysitters, helpers
- r Arrange for pet care
- r Locate important papers. They will be very useful to you
- r Read the Will and Letters of Instruction
- r Notify clergy
- r Inform family members of your new role
- r Contact decedent's employer to check on expected death benefits (life insurance, pension, 401(k), accidental death insurance, etc.). Obtain policy numbers.
- r Contact business associates regarding continued operation of business if applicable
- r Notify landlord, if any
- r File mail forwarding notice with Postmaster
- r Stop newspaper and magazine delivery
- r Arrange for lawn care and other home maintenance items
- r Review automobile insurance for coverage
- r Make an appointment to meet with your attorney – Probate, Settlement or both?
- r Notify newspaper – Obituary
- r Locate military papers (VA provides certain benefits, including an American flag)
- r Keep good records of all expenses for funeral and last illness

Shortly after Death – The First 2 Weeks

- r Locate and review estate planning documents
- r Prepare and sign Successor Trustee Affidavit
- r File original Will with county probate clerk
- r Remove valuables from the residence and place of business and store safely
- r Consider changing locks on real estate if not occupied by a spouse or primary beneficiary
- r Determine immediate cash needs for beneficiaries. Identify accounts where cash is immediately available
- r Check safe deposit box for important papers. Inventory the property in the box in the presence of a bank officer. Then remove the contents and close the box.
- r Obtain extra copy of Affidavit for management purposes
- r Obtain Federal Tax ID number
- r Open checking account in name of Trust with new ID number
- r Contact bank for check writing authority on open accounts
- r Notify insurance companies / agents. Check credit cards and clubs in which deceased was a member for additional insurance
- r Notify company personnel department
- r Notify Social Security Administration and VA (if applicable)
- r Hold Social Security Checks received after date of death
- r Notify all advisors (Legal, Financial & Tax)
- r Order death certificates
- r Collect and cancel credit cards, newspapers, magazine subscriptions, etc. Ask for refunds if applicable

Within 30 days

- r Identify, notify, and make claims to parties that may pay burial and/or death benefits
- r Social Security
- r Pension funds
- r VA benefits
- r Life insurance payable to the trust
- r Locate all assets and prepare inventory
- r Review how assets are titled
- r Liabilities and due dates
- r Check to make sure insurance liability coverage on residence, automobiles, personal property in storage, etc. is adequate
- r Review business agreements and business operations

Within 60 days

- r Provide written notice to heirs and beneficiaries
- r Meet with advisors regarding distribution of property and tax returns
- r Obtain tax identification number for new trusts
- r Review with tax preparer, necessity of income tax returns

Within 9 months

- r Review the Memorandum for Distribution of Personal Property
- r Review the allocation and distribution of remaining assets
- r Determine if disclaimers are to be prepared and filed
- r Determine if there are assets or life insurance to be disclaimed
- r Do not apply for or accept any assets to be disclaimed
- r File Federal Estate Tax Form 706 and Colorado Estate Tax Return
- r Distribute Assets either into trusts or to beneficiaries

Exhibit 2



Sample
Forms

Certificate of Disability

To Whom It May Concern:

Pursuant to Article Four, Section 4.01 of the Jane C. Doe Living Trust, u/a January 1, 2007, the undersigned hereby certify that they have received the opinion of _____, M.D., (primary care) (attending) physician for Jane C. Doe. Accordingly, it is the undersigned's opinion that Jane C. Doe is incapacitated or disabled, resulting in her inability to effectively manage her health care, property and financial affairs.

Date: _____

Wilma J. Doe

Date: _____

John R. Doe

Date: _____

Barney A. Rubble

[JURATS ON FOLLOWING PAGE]

**CERTIFICATION OF RECOVERY BY
PERSONAL or ATTENDING PHYSICIAN**

TO WHOM IT MAY CONCERN:

I, _____, certify that:

1. I am the attending physician for Jane C. Doe;
2. I have personally examined Jane C. Doe; and
3. In my medical opinion, Jane C. Doe has, to a reasonable degree of medical certainty, recovered from her previous incapacitated and disabled state, resulting in her ability to effectively manage her personal or financial affairs.

Dated: November _____, 2006

Signature of Attending Physician

Printed Name of Attending Physician

STATE OF COLORADO)
) ss:
COUNTY OF EL PASO)

Before me, a Notary Public in and for said County and State, personally appeared _____, who acknowledged the execution of the above and foregoing Certification, and stated that any representations therein are true.

Witness my hand and seal on November _____, 2006.

Notary Public

My Commission Expires:

John & Jane Doe Asset Summary

Updated on October 1, 2009

Category	Asset Description	Funding action	Status	John's Trust	Jane's Trust	Remarks
Life Insurance	Midland Life Insurance - John - VUL - 1502822783	Owner and Primary Beneficiary is RLT	Funded	\$ 500,000.00		
Life Insurance	Midland Life Insurance - Jane - VUL - 1502822784	Owner and Primary Beneficiary is RLT	Funded		\$ 500,000.00	
Investment	Scottrade - 35579984		Funded	\$ 65,000.00		
Retirement	Sun America Simple IRA - John - 9192382	Beneficiary is RLT	Funded	\$ 74,100.00		
Retirement	Sun America Simple IRA - Jane - 9206503	Beneficiary is RLT	Funded		\$ 35,250.00	
Real Estate	1234 Main Street	Deeded to Trusts	Funded	\$ 125,000.00	\$ 125,000.00	FMV = 450; Mtg = 200
Bank Account	Garden of the Gods Checking John 3052559	Registered in RLT	Funded	\$ 16,525.00		
Bank Account	Garden of the Gods Checking Jane 3052570	Registered in RLT	Funded		\$ 27,000.00	
Bank Account	Garden of the Gods - Joint - 3052746	JTWROS	Don't fund			Avg Bal = \$3,000
Bank Account	Peoples Bank CA - Jane and Jimmy - 6410326	Don't fund	Don't fund			Joint with minor child
Bank Account	Pentagon FCU - John and Jane	Don't fund	Don't fund	\$ 50.00		John's individual name
Motor Vehicle	2004 Ford Explorer Sport Trac	Not fundable	Not fundable			Lien at ENT; FMV ~ 11,000
Annuity	AIG - Contract 123990 - Jane	Primary Beneficiary changed	Funded		\$ 85,000.00	
Misc.	Personal Property		Funded	\$ 25,000		
Total trust value				\$ 805,675.00	\$772,250.00	

<input type="checkbox"/> District Court <input checked="" type="checkbox"/> Denver Probate Court _____ County, Colorado Court Address: _____		
In the Matter of the Estate of: Deceased		▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): _____ Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____		Case Number: _____ Division Courtroom
DECEDENT'S ESTATE INVENTORY		

Within three months after appointment, a Personal Representative shall prepare an Inventory of property owned by the Decedent that is subject to disposition by Will or intestate succession. The Inventory must list the property with reasonable detail, indicate the Decedent's interest in the property, and include the fair market value as of the Decedent's date of death. The type and amount of any liens and encumbrances on the property must also be listed. If additional property is discovered after the initial inventory has been completed, a supplemental inventory listing the newly discovered property shall be completed.

If additional space is needed, separate sheets may be used. The Inventory shall be sent to interested persons who request it or it may be filed with the Court.

INVENTORY SUMMARY		
Schedule	Asset Category	Value
1	Real Estate	
2	Stocks, Bonds, Mutual Funds, Securities and Investment Accounts	
3	Mortgage, Notes and Cash	
4	Life Insurance	
5	Pensions, Profit Sharing Plans, Annuities and Retirement Funds	
6	Motor and Recreation Vehicles	
7	Other Assets	
Total Gross Value		
8	Liens and Encumbrances on Inventoried Assets	
Total Net Value		

Schedule 1 – Real Estate (List complete addresses.) <input type="checkbox"/> None	Type of Property (Home, Rental, Land, etc.)	Estimated Value (what you could sell it for in its current condition)
		\$
Total (also enter this total on the Inventory Summary on page 1)		\$

Schedule 2 – Stocks, Bonds, Mutual Funds, Securities and Investment Accounts <input type="checkbox"/> None	Number of Shares or Account Number (last 4-digits only)	Value
		\$
Total (also enter this total on the Inventory Summary on page 1)		\$

Schedule 3 – Mortgages, Notes and Cash (Mortgages and notes payable to the Decedent, cash on hand, checking and savings accounts and certificates of deposit.) <input type="checkbox"/> None	Type of Account	Account Number (last 4-digits only)	Balance
			\$
Total (also enter this total on the Inventory Summary on page 1)			\$

Schedule 4 – Life Insurance (Include only those items payable to the estate.) <input type="checkbox"/> None	Type of Policy	Face Amount of Policy	Cash Value
			\$
Total (also enter this total on the Inventory Summary on page 1)			\$

Schedule 5 – Pensions, Profit Sharing Plans, Annuities and Retirement Funds (Include only those items payable to the estate.) <input type="checkbox"/> None	Type of Plan (401(k), IRA, 457, PERA, Military, etc.)	Account # (last 4-digits only, if applicable)	Value
			\$
Total (also enter this total on the Inventory Summary on page 1)			\$

Schedule 6 – Motor and Recreation Vehicles (Including motorcycles, ATV's, boats, etc.) <input type="checkbox"/> None	Year	Make and Model	Estimated Value (what you could sell it for in its current condition)
			\$
Total (also enter this total on the Inventory Summary on page 1)			\$

Schedule 7 – Other Assets <input type="checkbox"/> None	Estimated Value (what you could sell it for in its current condition)
	\$
Total (also enter this total on the Inventory Summary on page 1)	\$
Total Assets (also enter this total on the Inventory Summary on page 1)	\$

Liens and Encumbrances on Inventoried Assets

If any asset listed in this Inventory has a secured associated debt, such as a mortgage or a car loan, indicate below.

Schedule 8 – Description of Liability/Debt	Name of Financial Institution	Account Number (last 4- digits only)	Balance
Mortgages			\$
Mortgages			
Motor Vehicle Loans			
Other Secured Debt			
Other Secured Debt			
Total Encumbrances on Inventoried Assets (also enter this total on the Inventory Summary on page 1)			\$

I state under penalty of perjury that this is a true and complete Inventory of this estate to the best of my knowledge, information and belief. I understand that this Inventory is subject to audit and verification.

Date: _____

Signature of Personal Representative

Address

City, State and Zip Code

CERTIFICATE OF SERVICE

The Inventory shall be sent to interested persons who request it or the original Inventory may be filed with the Court.

I certify that on _____ (date) a copy of this Inventory was served on each of the following:

Name of Person to Whom you are Sending this Document	Relationship to Decedent	Address	Manner of Service*

*Insert one of the following: Hand Delivery, First-Class Mail, Certified Mail, E-Served or Faxed.

Signature

INSTRUCTIONS FOR COMPLETING AFFIDAVIT FOR THE COLLECTION OF PERSONAL PROPERTY

**These standard instructions are for informational purposes only and do not constitute legal advice.
If you do not understand this information, please contact an attorney.**

This type of Probate Administration is handled exclusively between the person holding the Decedent's property and the person(s) entitled to the property. This process does not require a filing with the Court.

GENERAL INFORMATION

- u Any interested person can collect all of the assets, take care of any obligations outstanding at the time of the Decedent's death, and distribute the remaining assets to the persons entitled to receive distributions. All of this can be done without seeking court appointment as personal representative for the estate.
- u The Affidavit can be completed at any time ten or more days after the date of death of the Decedent.
- u You can complete the Affidavit (JDF 999) if the estate is less than \$50,000.00 and does not contain real estate, regardless of the value.
- u If you complete the Affidavit, you are responsible for distributing the property in the proportion as identified in the Affidavit.
- u You cannot use the Affidavit (JDF 999) if there is an appointment of a Personal Representative pending or an appointment of Personal Representative has been granted, by a Court in this, or any other State.
- u The Affidavit is not filed with the Court.
- u For additional information, please review §15-12-1201, C.R.S. and §15-12-1202, C.R.S.
- u A sample completed Affidavit is identified on page two of the instructions.

COMMON TERMS

- Affiant: A person who is making a sworn statement, e.g. the person(s) signing an Affidavit.
- Estate: All of the property (real or personal) owned by a person on the date of death.
- Personal Representative: A person at least 21, resident or non-resident of Colorado, who has been appointed to administer the estate of the Decedent.
- Small Estate: Estate with a value, less liens and encumbrances, that is not more than \$50,000.00.
- Successor: Persons other than creditors, who are entitled to property of a Decedent under a Will or by statute, e.g. spouse, children. (§15-10-102(51), C.R.S.)
- Tangible property: Property which can be possessed physically, such as goods, wares and merchandise.

FEES

No filing fee is required, as this document is not filed with the Court.

COMPLETE AFFIDAVIT

To access the Affidavit form online go to www.courts.state.co.us and **click on the "Forms" tab**. The Affidavit is available in PDF or WORD by selecting **Probate (Decedent Estate – Affidavit for Collection of Personal Property)**. You may complete a form online or you may print it and type or print legibly in black ink.

- Q Complete the Affidavit.
- Q Sign the Affidavit before a Notary Public. Each entity you work with will keep a copy of the Affidavit. You may wish to have your signature notarized on several copies.
- Q Attach a copy of the death certificate. Some entities may require a certified copy of the death certificate.
- Q Present the Affidavit and death certificate to the holder of the assets, e.g. bank. You may wish to have a copy of these instructions to present to the bank identifying the authority to file the Affidavit.

District Court, Douglas County, Colorado 4000 Justice Way Castle Rock, CO <hr/> In the Matter of the Trust created by: George G. Jetson Settlor	▲ COURT USE ONLY ▲
Douglas G. Goldberg, Esq. GOLDBERG LAW CENTER, P.C. 629 North Weber Street, Suite 1 Colorado Springs, Colorado 80903 Phone Number: (719) 444-0300 E-mail:doug@goldberglawcenter.com FAX Number: (719) 444-0342 Atty. Reg.#: 015013	Case Number: Registration Number: Division Courtroom
TRUST REGISTRATION STATEMENT	

Important Notice

The Court will not routinely review or adjudicate matters unless it is specifically requested to do so by a beneficiary, creditor, or other interested person. All interested persons, including beneficiaries and creditors, have the responsibility to protect their own rights and interests in the estate or trust in the manner provided by the provisions of this code by filing an appropriate pleading with the Court by which the estate or trust is being administered and serving it on all interested persons pursuant to §15-10-401, C.R.S.

1. Information about the Trustee:

Name: Jane L. Jetson
 Address: 4943 Astro Highway
 City: Starwatch State: CO Zip Code: 82598
 Email Address: janejetson@aol.com Phone #: (909) 158-6748

2. The records of this Trust are kept at the principal place of administration, which is in Starwatch, Douglas County (City/County) at the following address: 4943 Astro Highway; Starwatch, Co 82598

3. This Trust

has not been registered elsewhere.
 has been registered previously on _____ (date) with the _____
 (name of Court) in the State of _____ pursuant to §15-16-102(3), C.R.S.

4. This is

a Testamentary Trust established by the Will of _____
 which Will was admitted to probate on _____ (date), in _____ (name of Court) in the State of _____ in case number: _____ .
 an Inter Vivos Trust established by George G. Jetson (name of Settlor) dated October 20, 2006 named the George G. Jetson Living Trust

5. The original Trustees were George G. Jetson and Jane L. Jetson.
6. If multiple trusts are registered on this date, provide additional identifying information:
N/A

The undersigned trustee acknowledges the existence of this Trust and submits to the jurisdiction of this Court in any proceeding relating to this Trust. Within 30 days of registration, the Trustee represents that the Trustee shall comply with §15-16-303(2), C.R.S.

Date: _____

Signature of Trustee

INFORMATION OF TRUST REGISTRATION

It is not necessary that the Information portion of this form be completed on the copy of the Statement filed with the Court.

TO:

Eloy Jetson _____
8850 Milky Way Blvd. _____
Universe, CO 90215 _____

Judy Jetson _____
2698 Galaxy Ave. _____
Planet, CO 55667 _____

You are a beneficiary with a present interest or you represent a beneficiary with a future interest, in the Trust(s) described in the above Trust Registration Statement.

The name of the Trust(s) is/are: _____

Upon reasonable request, you are entitled to information about this Trust and its administration pursuant to C.R.S. §15-16-303.

Date: _____

Signature of Trustee

Note:

- ⊔ File this Registration Statement in the County where the Trust is being administered pursuant to §15-16-101(1), C.R.S. For further requirements, see §15-11-901, C.R.S. and §15-16-101, C.R.S. and Colorado Rules of Probate Procedure Rule 8.6.
- ⊔ The requirements of §15-16-303(2), C.R.S. may be satisfied by mailing a copy of this statement to entitled persons. See also §15-10-403, C.R.S.

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court _____ County, Colorado Court Address: _____ _____	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<input type="checkbox"/> In the Interest of: <input type="checkbox"/> In the Matter of the Estate of:	
Attorney or Party Without Attorney (Name and Address): _____ Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg. #: _____	Case Number: _____ Division _____ Courtroom _____
RECEIPT AND RELEASE	

Received from _____, Personal Representative Conservator
 partial full payment and satisfaction of the following:

- the devise to me in the Will under article(s) _____.
- my share of the estate as a devisee in the Will.
- my share of the estate as an heir.
- my distribution from the conservatorship case.
- Other: _____

Cash in the amount of \$ _____.

Tangible personal property described as: * _____

Real property described as: * _____

The following securities: * _____

Q Other (describe): * _____

Q I grant a partial release and satisfaction to the estate and to the fiduciary as to the above partial distribution.

Q I grant a full and final release and satisfaction to the estate and to the fiduciary and his or her successors for any liability in connection with my interest in the estate.

VERIFICATION

I, verify that the facts set forth in this document are true as far as I know or am informed. I understand that penalties for perjury follow deliberate falsification of the facts stated herein. (§15-10-310, C.R.S.)

Signature of Person Signing Receipt and Release Date

*** Attach additional sheets as necessary.**

<input type="checkbox"/> District Court <input type="checkbox"/> Denver Probate Court _____ County, Colorado Court Address: <hr/> In the Matter of the Estate of: Deceased	▲ COURT USE ONLY ▲
Attorney or Party Without Attorney (Name and Address): Phone Number: _____ E-mail: _____ FAX Number: _____ Atty. Reg.#: _____	Case Number: Division _____ Courtroom _____
<input type="checkbox"/> INTERIM <input type="checkbox"/> FINAL ACCOUNTING FOR PERIOD: FROM _____ TO _____ PURSUANT TO COLORADO RULES OF PROBATE PROCEDURE RULE 31	

This Accounting shall be typed or prepared by automated data processing.

SUMMARY OF RECEIPTS AND EXPENDITURES ONLY

Balance on hand at the beginning of this accounting period	\$ _____
Add: Total funds received or collected during this accounting period from page 2	\$ _____
Less: Total payments during this accounting period from page 3	\$ _____
Balance on hand at the end of this accounting period	\$ _____

SUMMARY OF ASSETS REMAINING AT END OF ACCOUNTING PERIOD

Asset Category	Value
Cash, Bank, Checking, Savings, Certificates of Deposit and Health Accounts	
Stocks, Bonds, Mutual Funds, Securities and Investment Accounts	
Life Insurance	
Pension, Profit Sharing, Annuities and Retirement Funds	
Motor Vehicles and Recreation Vehicles	
Real Estate	
General Household and Other Personal Property	
Miscellaneous Assets	
Total Assets	

- Article One**
- Creation of My Trust
 - Initial Funding
- Administration – Alive & Well

Initial Trust Funding
 Asset ownership / beneficiaries changed – See, Funding Summary

James J. Doe
 Living Trust

Initial Trustees
 Jim & Jane, jointly

- Article Two**
- My Family

- Article Three**
- Trustees
- Trust Protectors

Article Four
 Administration Upon Disability

- Disability Determination**
- Private panel
 - Court determination
 - Unexplained absence

James J. Doe
 Living Trust

Disability Trustees
 Jane as sole Trustee
 Backup: Jessica, then Diane

Durable Power of Attorney
 Effective upon signing
 Agent: Jane
 Backup Agents: Jessica, then Diane

HIPAA Authorization and Release
 Jane, Jessica, Shannon,
 Diane, Margaret, Martha

Health Care Power of Attorney
 Effective upon signing
 Agent: Jane
 Backup Agents: Jessica, then Diane

“Living Will”
Advance Health Care Directive
 Remove from life support
 Discontinue artificial nourishment

1st Death

- Article Five**
- Administration Upon 1st Death
- Trust becomes irrevocable
 - Collect the assets
 - Pay the bills
- File the tax returns

- Article Six**
- Specific cash & charitable gifts
- Personal property issues

Personal Property Memorandum
 Your “special stuff”

Anatomical Gift – “Organ Donation”
For transplant purposes only

Pour – Over Will
Transfers individually owned assets to the Trust

Article Seven – Creation & Funding of Marital and Family Trusts

- Clayton Election – All to Marital Trust; Non-QTIP property to Family Trust

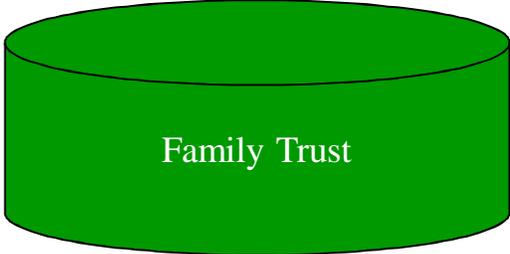
Article Eight – The Marital Trust



Trustee: Jane as sole Trustee
Backup: Jessica, then Diane

- Marital Trust Distributions**
- Annual income
 - Discretionary principal; 5x 5 power
 - Limited Power of Appointment
 - Remarriage restrictions

Article Nine – The Family Trust



Trustee: Jane as sole Trustee
Backup: Jessica, then Diane

- Family Trust Distributions**
- Discretionary income
 - HEMS principal; 5 x 5 power
 - Limited Power of Appointment
 - Remarriage restrictions

Administration Upon 2nd Death

Article Ten – Remaining Trust Property

Fred
Equal share

Wilma
Equal share

Betty
Equal share

Barney
Equal share

General Needs Trusts
Discretionary income and principal distributions;
Predeceased Heir –Bloodline; then to sibling

Trustee: Exit Strategies Institute, LLC

Trust Protector: Goldberg Law Center, P.C.

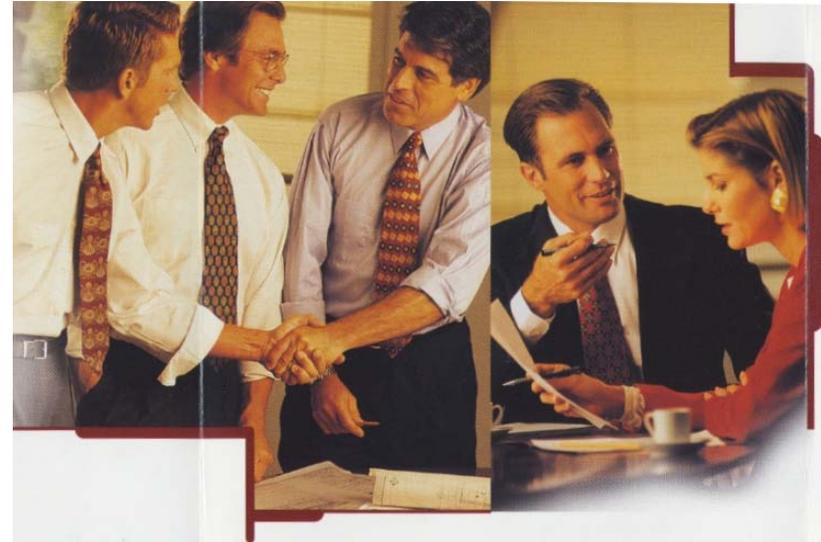
Article Eleven – Remote Beneficiaries

50% each to Focus on the Family, 12.5% each to Nancy, Martha, Gabriel and Donald

Funding Reference Card

Titles

Checking Accounts
Money Market Accounts
Savings Accounts
Ed Vest Accounts (529 Plans)
Certificates of Deposit
Safe Deposit Boxes
Securities
Stocks
Bonds
Mutual Funds
Brokerage Accounts
Real Estate
Vehicles
Business Interests



Beneficiaries Designations

Life Insurance Policies
IRAs
Annuities
401(k)
403(b)
Keogh Accounts
Other Retirement Accounts

Exhibit 3



Cowboy Wisdom

Cowboy Wisdom

- Don't squat with yer spurs on.
- You might give some serious thought to thankin' yer lucky stars yer in Texas.
- Never follow good whiskey with water, unless you're out of good whiskey.
- Cowboys dance *every* dance as long as their bladders and feet hold out.
- Genius has its limits. Stupidity knows no bounds.
- A smile from a good woman is worth more'n a dozen handed out by a bartender.
- *Real* cowboys don't line dance.
- There is a fine line between fishing and standing on the shore like an idiot.
- Ridin a bronc is like dancin with a girl. The trick is matchin yer partner's rhythm.
- Cowboy dress is determined by three factors: weather, work, and vanity.
- Reciting poetry is like a haircut. If it's good, ya feel like a million bucks. If it's bad, ya hide yer head under yer hat.
- A bronc rider should be light in the head and heavy in the seat.
- It takes a big man to cry... but it takes a bigger man to laugh at that man.
- Don't interfere with something that ain't botherin' ya none.
- Some men talk 'cause they got somethin' to say. Others talk 'cause they got to say somethin.
- Never wrestle with a pig, You both get all dirty, and the pig likes it.
- Careful is a naked man climbin' a bobwire fence.
- If you can't sing -- dance.
- Broke is what happens when a cowboy lets his yearnin's get ahead of his earnin's.
- Bein' too positive in your opinions kin get you invited to a dance -- in the street, to the music of shots, nicely aimed.
- It takes fewer muscles to smile than to frown... and fewer still to ignore someone completely.
- Timing has a lot to do with the outcome of a rain dance.
- Never trust a man who agrees with you. He's probably wrong.
- The easiest way to eat crow is while it's still warm. The colder it gets, the harder it is to swallow.
- If you find yourself in a hole, the first thing to do is to stop diggin'.
- Ride the horse in the direction it's goin.
- If it don't seem like it's worth the effort, then it probably ain't.
- An old timer's a man who's had a lot of interesting experiences -- some of 'em true.
- There's two theories to arguin' with a woman. Neither one works.
- It don't take no genius to spot a goat in a flock of sheep.

- The biggest troublemaker you'll probably ever have to deal with watches you shave his face in the mirror every morning.
- Never ask a barber if ya need a haircut.
- Never slap a man who's chewin' tobacco.
- Never kick a cow chip on a hot day.
- If ya git ta thinkin' yer a person of some influence, try orderin' somebody else's dog around.
- Tellin' a man to git lost and makin' him do it are two entirely different propositions.
- Don't worry about bitin' off more'n you kin chew; your mouth is probably bigger'n you think.
- Always drink upstream from the herd.
- Startin' a rumour is like shakin' the feathers out of a pillow case in a wind storm. It's a heck of a lot easier to git rid of 'em than it is to collect 'em back.
- If you're ridin' ahead of the herd, take a look back every now and then to make sure it's still there with ya.
- Never ask a man the size of his spread.
- If you come to a fork in the road, take it.
- Good judgement comes from experience, and a lotta that comes from bad judgement.
- When you give a personal lesson in meanness to a critter or to a person, don't be surprised if they learn their lesson.
- Generally, you ain't learnin' nothing when your mouth's a-jawin'.
- When yer throwin' your weight around, be ready to have it thrown around by somebody else.
- Lettin' the cat out of the bag is a helluva lot easier than puttin' it back in.
- Always take a good look at what yer about to eat. It's not so important to know what it is, but it's sure crucial to know what it was.
- The quickest way to double yer money is to fold it over and put it back in yer pocket.
- There are three kinds of men, The one that learns by reading, The few who learn by observation, and the rest of them have to pee on the electric fence for themselves.
- Never drop your gun to hug a grizzly.
- A good horse never comes in a bad color.
- Any cowboy can carry a tune. The trouble comes when he tries to unload it.
- Behind every successful rancher is a wife who works in town.
- You can't hide a piece of broccoli in a glass of milk.
- You can't trust your dog to watch your food.
- Never approach a bull from the front, a horse from the rear or a fool from any direction.

