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Estate Planning Lets You Call the Shots

One of the best things you can do for your family is to plan your estate—now. You can work with your lawyer to create a will or trust that assures your family will be provided for if something happens to you. This article will give you some ideas about how to ensure your estate plan will carry out your wishes and distribute your property exactly as you want.

Statistics show that fewer than half of American adults have wills. If you haven't gotten around to drafting a will yet, you run the risk of dying **intestate**, which means the state would step in to make the decisions you didn't.

When the State Decides

State law specifies how your property is to be divided if you don't have a will or trust. The specifics vary by state, but the principles largely are the same: the state will assume you wanted a portion of your property to go to your spouse, a portion to your parents and so on.

That may work if the state's assumptions happen to match yours, but they probably don't. Maybe you wanted to apportion the amounts differently or give property to a non-relative or to a relative who is not in the immediate family (a favorite niece, for example). And maybe you wanted certain items—a car, a family heirloom—to go to certain people. None of this will happen if you don't leave directions.

If you have minor children, your will can specify who is to be in charge of their upbringing. If you don't have a will, a court will have to decide, and that not only complicates the process, but opens the possibility that your children may be placed in the care of someone you wouldn't have chosen.

Finally, if you don't have a will or trust, you'll probably complicate the whole process of **probating your estate** (paying debts and taxes, distributing bequests and wrapping up your affairs). You open the very real possibility of increased expense and delays in distributing your property, which could be harmful to your family.

Contact Us

Denver

P: 303.741.6410
F: 303.741.6512

280 E. 20th Ave.
Denver, CO 80205

Breckenridge

P: 970.390.6587
F: 707.922.1047

291 Gold King Way
Breckenridge, CO 80424

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When You Decide

There's no set formula for what goes into a will or trust. You and your lawyer should discuss what works for your situation.

Here are some suggestions about how to handle the more common clauses of a basic will or trust, assuming the trust contains all or most of your property. This list is far from complete, but it will help you begin to plan.

Gifts of Property

The core of most wills or trusts is the section where you specify which recipients are to receive your property. Be sure to identify recipients carefully, including their addresses and relationship to you, because the last thing you want is confusion about who is to receive a gift.

Be sure to anticipate changes that might take place between when you write the document and when it comes into effect. What if one of your beneficiaries dies before you? Do you want that person's gift to go to his heirs or to someone else you specify? Your will or trust can handle either alternative—but your lawyer has to know what your wishes are.

Also try to anticipate any confusion that might occur because of how you describe the gifts you're making. For example, if the specific item of property might change between the time you write the document and the time you die, you might want to be general in your phrasing. Don't specify that you're giving someone 500 shares of a particular stock (you may sell it before you die and buy something else) but rather "my stock portfolio," or a specified percentage of it, or a dollar amount of the stock you own at death.

Remember also that your property may include intangible assets such as insurance policies, bank accounts, certain employee benefits and stock options. Some of these may pass outside of your will or trust, because of how they are held (in other words, if held in **joint tenancy with right of survivorship**, the property will pass automatically to the other owner on your death). Some may pass through **beneficiary designations** (in other words, employment benefits that go to your spouse). But some may pass through your will or trust. It's important for you and your lawyer to have a complete list of all the property you own and coordinate how all of it is to be passed.

You can save on taxes by using gifts wisely. This section of your will or trust can be used to give gifts to institutions, charities and people.

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Gifts of Real Estate

Most people prefer that their spouses receive the family home. If it isn't held in joint tenancy, you should have instructions about what will happen to it in your will or trust.

If you die before you've paid off the mortgage on your house, your estate will normally have to pay it off. If you're afraid this will drain the estate, or if you want the recipient of the house to keep paying the mortgage, you must specify that in your will or trust.

Executors / Trustees

Your will should designate an executor and a successor in case he or she is unable to serve. (Your trust should do the same regarding its trustee.) It helps to spell out certain powers the executor can have in dealing with your estate: to buy, lease, sell and mortgage real estate; to borrow and lend money; to exercise various tax options. Giving the executor this kind of flexibility can save months of delay and many dollars by allowing him or her to cope with unanticipated situations.

Residuary Clauses

This is one of the most crucial parts of a will, covering all the assets not specifically disposed of in the will or elsewhere. This is important because you may accumulate assets after you write your will, and if you haven't specifically given an asset to someone, it won't pass through the will. A **residuary clause** can give all such property to one or more beneficiaries. (If your will omits a residuary clause, the assets not left specifically to anyone would pass on through the intestate succession laws – often after long delays and extensive court involvement.)

Testamentary Trusts

You can set up a trust in your will (a **testamentary trust**), or have your will direct funds from your estate into a trust you had previously established (your will would then be a **pourover will**). You would normally do so in a separate clause in your will.

Will or Trust?

You probably have a pretty good idea of what a will does. In legal terms, it's a revocable document—which means that it can be altered as circumstances or your mind change—by which you transfer your property at death and designate someone to carry out your wishes. Wills have been around at least since the time of the ancient Egyptians.

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Trusts are newer and are gaining in popularity. Like a will, they permit you to dispose of your property at death, but they have a number of advantages that might be important to you. For example, **bypass trusts** are very useful in estate planning to lower taxes.

Revocable **living trusts** may not have tax advantages but are helpful in several ways.

They:

- are relatively easy to set up and change (wills have more formalities)
- enable you to eliminate or minimize the probate process
- protect your privacy (unlike wills, they usually require no public record)
- help you manage your affairs while living (a trustee can take care of your investments and other property if you're incapacitated), or if you simply prefer to let someone else do it.
- permit you to direct how your property is to be distributed for a number of years (unlike wills, which make a gift of property at one time, trusts can last many years and enable your wishes regarding how your property is distributed to continue long after you die)

Your lawyer can help you assess whether a living trust or some other trust is appropriate for your circumstances.

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