

ESTATE PLANNING METHODS FOR IMPENDING DEATH

BY

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I. Review Non Property Disposition Documents

A. Is Living Will form current?

1. Specific direction regarding hydration and nutrition?
2. Coverage of anatomical gifts?
3. Should use be reconsidered if there is a tax or property protection interest in prolonging life? See Section XIV below.

B. Is Health Care Power of Attorney in place and current?

1. Cover anatomical gifts?
2. Consider use of a Five Wishes® form, an easy-to-use legal document that lets adults of all ages plan how they want to be cared for in case they become seriously ill. This form is available at www.agingwithdignity.org.

C. Does client wish to provide direction regarding disposition of bodily remains?

1. Funeral/memorial service arrangements.
2. See Wade Ash Woods Hill & Farley office form attached as **Exhibit 1**.

II. Review Basic Estate Plan

A. Do revocable documents such as wills and trusts still reflect client wishes?

1. With the passage of time, outright distribution to children may be more appropriate than trust distributions, since the character and abilities of the children may now be known.
2. With the unlimited marital deduction and the phased increase in the amount of the federal estate tax exemption equivalent, formula clauses may be out of date, and there may no longer be a need for use of trusts to achieve the intended tax savings.

¹The author wishes to thank his colleagues, David M. Swank and Thomas G. Hill, for their review and suggestions in connection with this paper.

- B. Are fiduciary designations current and sensible?
- C. Does will authorize disposition of tangible personal property by side memorandum? C.R.S. § 15-11-513
 - 1. Note need for authorizing language in will.
 - 2. Are memorandum contents current?
- D. Compare dispositive provisions of non probate instruments to see if they are coordinated with overall estate plan as reflected in the will or revocable trust.
 - 1. Life insurance.
 - 2. Annuity contracts.
 - 3. Payable on Death accounts. C.R.S. § 15-15-201.
 - 4. Transfer on Death security accounts. C.R.S. § 15-15-301.
 - 5. IRA/401(k) plan and other pension accounts.
 - a. Balance income tax deferral (which usually mandates outright disposition of account to surviving spouse) with estate tax minimization (which usually involves a QTIP or credit shelter trust).
 - b. If “required beginning date” has passed:
 - i. Review irrevocable elections already made by client; and
 - ii. Make sure they are consistent with beneficiary designations.
 - 6. Joint tenancies.
 - 7. Does the tax apportionment clause under the client’s will or revocable trust appropriately deal with non probate assets?
- E. Check title to assets.
 - 1. Recall tax free transferability of assets between spouses to balance estate to fully utilize both spouses’ estate tax exemptions in typical credit shelter trust planning.
 - 2. In particular, sever joint tenancies to free up assets to fund credit shelter trust.
 - 3. NOTE: Income tax basis issues if the death occurs within one year. See VIII A 2 below.
- F. Will versus revocable trust - Consider creation or shift to revocable trust.
 - 1. Real property (including mineral interests) in other states to avoid ancillary probate and administration.
 - 2. To protect privacy and avoid disclosure of the identity of beneficiaries in the dispositive provisions in the will.
 - 3. To provide for pre-death management of assets.

If a revocable trust has been executed but is unfunded, the trust should be funded (by an agent under a power of attorney if necessary) both to avoid probate and to provide for continuity and management of assets. Note, however, that, under state law, the transfer of the family residence into the trust may destroy the statutory homestead protection against creditor rights. See, *e.g.*, *Univ. Natl Bank v. Harsh*, 833 P.2d 846 (Colo. App. 1992).

G. Property management power of attorney. C.R.S. § 15-14-501, *et seq.*

1. Is designation of agent still appropriate?
2. If co-agents are appointed, clarify whether they act jointly or severally; consider consultation clause.
3. Add clause authorizing agent to prepare list of assets to attach as an exhibit to satisfy requirements of third parties that power of the assets be specific.
4. Under state law, the following powers may need to be specifically provided:
 - a. Power to revoke or amend trust; and
 - b. Power to require the principal's trustee to pay income or principal to the agent.
5. Note that the Uniform Statutory Form Power of Attorney Act provides that the above powers, together with the powers to make gifts are not statutory powers and must be individually and specifically included in the instrument.

H. Location of Important Documents.

The location of the client's estate planning documents should be determined, together with access to them. If the documents are located in the client's safe deposit box they will not be accessible following death by a deputy on the box (since agency agreements terminate at death) but only by a co-owner. Consider removing the documents now or confirming that there will be co-owner access.

III. Gifting in General.

Once the size of an estate exceeds the amount of the federal estate tax exemption equivalent (currently \$1,000,000), the initial estate tax bracket is 41% and it increases steeply through intermediate brackets to nearly 50%. (Between 2002 and 2009 the cap will incrementally decrease from 50% to 45%.) Therefore, a donee of a gift who is also a will beneficiary in a taxable estate receive 100¢ on the dollar or marginal rate assets as opposed to about 60¢ on the dollar post death. In all cases, however, consider the economic effect of the fact that the donee takes over the donor's income tax basis rather than obtaining a step-up in basis to date of death value. Note, however, that under current income tax law, capital gains are generally capped at 20%.

- A. Use of annual exclusion gifts (IRC § 2503(b)) in taxable estates to intended beneficiaries.
1. No contemplation of death rule.
 2. Make gifts early in the year rather than later.
 3. Can balance ultimate disposition among family branches by contemporaneous documentation that the effect of gifts are to be advances against the donee's share of the estate (ademption by satisfaction, C.R.S. § 15-11-609). Note that, under the statute, the written acknowledgment can be made by the donee and not the donor. C.R.S. § 15-11-609(1)(iii). This can be useful if the gift is made under a power of attorney provision on behalf of an incapacitated donor.

- B. Use of non taxable gifts in excess of annual exclusion limits.

1. By paying medical expenses directly. IRC § 2503(e).
2. By payment of tuition expenses directly. IRC § 2503(e).
3. Consider prepayment of younger generation tuition expenses which for college and private secondary school education may be substantial.

- C. Use of power of attorney.

The Internal Revenue Service has been successful in obtaining court rulings that gifts made under a power of attorney were unauthorized unless the agency agreement specifically included the power to make gifts. The result is that gifts are brought back into the donor's gross estate. See, *e.g.*, *Estate of Stimson*, TCM 1992-242.

In addition, note that the Internal Revenue Service previously disallowed transfers to third parties made by the trustee of the client's revocable trust as gifts by bringing them back into the estate for federal estate tax purposes under the three year rule of Code §§ 2035(d)(2) and 2038(a)(1). This result has been eliminated by Code § 2035(e).

- D. Hard to value assets.

The client may own assets which, although having only modest or nominal value, will be expensive to transfer or value at death. Non-producing small fractional interests in minerals (especially in non-domiciliary states) are a prime example. Consider transferring these by gift prior to death.

- E. Gifts with adverse income tax consequences.

1. Gift of an installment sale obligation is a disposition under Code § 453 B which triggers full recognition of gain or loss.

2. Gift of a US savings bond triggers recognition of all accrued interest not previously reported. Rev. Rul. 55-278, 1955-1, C.B. 471.

IV. Charitable Giving.

- A. Lifetime gifts of items disposed of by will or revocable trust to charity will produce a current year income tax deduction (subject to the percentage of income limitation and the alternative minimum tax computation) as well as a transfer tax deduction.
- B. Consider satisfying charitable bequests by beneficiary designation change on retirement benefits (or other income in respect of decedent assets). This will, in effect, eliminate the accrued income tax cost to the designated beneficiary upon liquidation of the asset.

V. Paying Gift Tax.

- A. Assume at death the client transfers \$2 million in assets and pays a \$500,000 estate tax. The estate tax is not deductible in computing the size of the estate upon which the tax is paid.
- B. If, on the other hand, the client made a \$2 million gift, which utilized his or her exemption during lifetime and paid \$500,000 in gift tax, both the \$2 million gift and the \$500,000 tax, subject to the limitations discussed below, are out of his or her estate.
- C. Thus, it is generally better to make large gifts and to pay a gift tax pre-death. The limitation is I.R.C. § 2035(b) which requires that the gift tax paid within three years of the donor's death be treated as a part of the decedent's taxable estate.

VI. Life Insurance.

- A. Transfer of ownership of the policy to a third party (including an irrevocable life insurance trust) is subject to a three year contemplation of death rule under Code § 2035(a). There is some authority for the proposition that this rule can be avoided if the client transfers the policy to a family limited partnership or a family limited liability company in exchange for units, and then gives the units rather than the policy itself.
- B. Check to be sure that the paperwork on irrevocable life insurance trusts (*e.g.*, processing and documenting notice of beneficiary withdrawal rights) is current.

- C. Note that life insurance which is without a beneficiary designation or otherwise payable to the client's probate estate will expose the proceeds to creditor claims.
- D. Some policies will allow a lifetime drawdown to pay medical, housing, and support costs. In addition, a secondary market is developing for larger face amount policies on insureds whose health condition is such that he or she will likely die short of the actuarial life expectancy. Where the client/ insured is short of cash, sale of the policy on this market may produce a substantially greater payment than would be received from the insurance company if the policy was turned in to the company for its cash surrender value.

VII. Issues Relating to Closely Held Business Assets.

- A. Check alienation provisions of stockholder and partnership agreements regarding:
 - 1. Pre death transfers.
 - 2. Post death distributions.
- B. Trusts can now be stockholders in Sub Chapter S corporations, but only if they have provisions which tend to provide for a single beneficiary with strong current rights. Residuary trusts may have to be modified or an asset specific trust created for the Sub S stock.
- C. There is a percentage of assets requirement under several Code Sections which provide specific beneficial estate tax treatment for estates with large concentrations of illiquid business or agricultural type assets. If qualification is important, rearrangement of the client's assets may be possible. The Sections include:
 - 1. § 303 (redemption of interest exceeding 35% of a gross estate allowed favorable income tax treatment, *i.e.*, capital gains and not ordinary income treatment).
 - 2. § 6166 (allowing deferral of payment of estate taxes, and at a low interest rate, where the interest exceeds 35% of the adjusted gross estate).
 - 3. § 2032(A) (reduced valuation of farm and small business property if assets exceed 50% of the value of the gross estate; available to the extent of \$750,000 worth of value, subject to a cost of living adjustment).
 - 4. § 2057 (deduction of up to \$675,000 worth of qualified family owned business interest if such property comprises more than 50% of the estate, provided that other requirements are met). Note that the applicable

exclusion amount is reduced so that a maximum of \$1,300,000 can be excluded from estate tax. See Code § 2057(a)(3).

- D. If the client owns a controlling interest in assets, especially including business assets (including those held in business entity format such as a family limited partnership or a limited liability company), consider having the client dispose of enough assets (by gift or sale) to put him or her in a minority position.
- E. If the client has been involved in a gifting program designed to reduce or eliminate his or her interest in a particular business asset or venture, consider accelerating the completion of the program (even involving utilization of a portion or all of the client's exemption equivalent) to remove the assets completely from the federal estate tax return schedules.
- F. Valuable stock options owned by a client may be exercisable only during the client's lifetime. An investigation should be made, and options exercised if appropriate and available.

VIII. Income Tax Aspects.

A. Basis Considerations.

1. Donees of lifetime gifts take over the donor's income tax basis. Recipients of the same property (with the exception of income in respect of a decedent asset, *e.g.*, a professional person's accounts receivable) at death get a stepped up basis. Therefore, all things being otherwise equal, make gifts of cash or high basis as opposed to low basis assets.
2. Can the client accept a gift of a low basis asset from a third party with the understanding that the asset will then be devised back to the donor so as to obtain step up in basis? This is often a common element in balancing the size of the estates of the client and his or her spouse. The limiting factor is IRC § 1014(e) which provides for no step up in basis regarding a devise of assets acquired by the decedent less than one year prior to the date of death. The rule does not apply, however, if the devisee under the will or trust is a person other than the original transferor.
3. If the client is the grantor of a trust which is treated as a grantor trust under the income tax rules, the grantor will be treated as the owner of the trust assets for income tax but not estate tax purposes. If the client purchases appreciated assets from the trust there should be no income tax consequence (Rev. Rul 85-13, 1985-1 C.B. 194), and the will beneficiaries (who may be the same as the trust beneficiaries) should receive a step up in basis in the assets.

B. Gain in United States Government Bonds.

Under IRC § 454(a) the untaxed gain inherent in United States government bonds can either be:

1. Realized by the decedent at any time during lifetime;
2. Realized in the decedent's final personal income tax return;
3. Realized on the estate's fiduciary income tax return; or
4. Passed out to the estate beneficiary.

It may be advantageous to realize the gain on the decedent's final Form 1040 if the income tax rate is clearly the lowest possible rate. Note above that, if the bonds are gifted prior to death, the accrued interest will be taxed.

C. Losses.

There are certain income tax losses which must be realized on the client's personal income tax return and which cannot be carried over to his or her estate. These include:

1. Capital losses.
2. Charitable deduction carry forward.
3. Suspended passive activity losses.
4. Net operating losses.

IX. Leveraging Gifts.

- A. Gifted property is valued, for transfer tax purposes, at its fair market value. If the transferability of otherwise marketable assets is burdened by restrictions and the assets consist of only a minority interest, then the market for such an interest is limited, and the pro rata value of the underlying asset may properly be discounted.
- B. By "wrapping" an asset (or an assemblage of assets) in a business entity such as a limited liability company or a family limited partnership, the gift of a partnership or a limited liability company interest (as opposed to a gift of an undivided interest in the underlying asset) should be worth 25%-40% less on the market. The Internal Revenue Service has been unsuccessful in applying family attribution rules to value the interests and, at least at the estate tax audit appellate level, the taxpayers have been successful in defending substantial discounts.
- C. The Internal Revenue Service has, however, been successful in disregarding the "wrap" and therefore the discount in the case of death bed or near death bed creations of business entities and gifting of interests, especially where the arrangement was created under a power of attorney for an incapacitated taxpayer.

See T.A.M. 9723009; T.A.M. 9719006; and T.A.M. 9725002. The present IRS attack is to claim that the donor retained too much control, thus subjecting the transfer to IRC § 2036.

X. The Incapacitated Client.

A basic question is whether a client should be denied the benefit of near death estate planning techniques solely because of his or her incapacity. The answer, from a policy perspective, should be no, and fortunately under Uniform Probate Code law and practice and the new Colorado Uniform Guardianship and Protective Proceedings Act most of the appropriate strategies can be achieved.

A. Power of Attorney.

1. The agency must be “durable”, that is, be designed so that it continues to be effective upon the incapacity of the principal. Recall that, under common law, agencies became ineffective upon the incapacity of the principal. Under UPC. §§ 5-501, *et seq.*, property management powers of attorney can be durable.
2. Recall that under the position of the I.R.S. federal tax law the power to make gifts must be specific in the power of attorney.
3. As indicated above, under prior law a trustee of a revocable trust could not, in effect, make gifts by making gratuitous distributions, on behalf of an incapacitated settlor, to persons other than the settlor. This result was, however, reversed under Code § 2035(e).
4. Further, under state law provisions, the powers must be specifically provided to be effective, *e.g.*:
 - a. Power to revoke or amend a trust; and
 - b. Power to require the principal’s trustee to pay income or principal to the agent.

B. Court Proceedings.

Under the Colorado Uniform Guardianship and Protective Proceedings Act, the Court may either (1) appoint a conservator for a “protected person” or approve some other protective arrangement; or (2) approve a single transaction. C.R.S. §§ 15-14-401 through 411 and 15-14-412.

1. Conservatorship. Under C.R.S. § 15-14-411, after giving notice to all interested persons and after receiving authorization from the Court, a conservator may do the following:

- a. Make gifts, except as otherwise provided in section 15-14-427(2);
- b. Convey, release, or disclaim contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entireties;
- c. Exercise or release a power of appointment;
- d. Create a revocable or irrevocable trust of property of the estate, whether or not the trust extends beyond the duration of the conservatorship, or revoke or amend a trust revocable by the protected person;
- e. Exercise rights to elect options and change beneficiaries under retirement plans, insurance policies, and annuities or surrender the plans, policies, and annuities for their cash value;
- f. Exercise any right to an elective share in the estate of the protected person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by transfer inter vivos; and
- g. Make, amend, or revoke the protected person's will.

Without further Court order, a conservator may make gifts on behalf of the protected person, under C.R.S. § 15-14-427(2), as follows:

If an estate is ample to provide for the distributions authorized by subsection (1) of this section, a conservator for a protected person other than a minor may make gifts that the protected person might have been expected to make, in amounts that do not exceed in the aggregate for any calendar year twenty percent of the income of the estate in that year.

2. Single Transactions. In addition, if the grounds for Conservatorship are established, the Court, with or without appointing a Conservator, can approve a “single transaction” under C.R.S. §15-14-412 such as the following:
 - a. Authorize, direct, or ratify any transaction necessary or desirable to achieve any arrangement for security, service, or care meeting the foreseeable needs of the protected person, including:
 - i. Payment, delivery, deposit, or retention of funds or property;
 - ii. Sale, mortgage, lease, or other transfer of property;
 - iii. Purchase of an annuity;
 - iv. Making a contract for life care, deposit contract, or contract for training and education; or
 - v. Addition to or establishment of a suitable trust, including a trust created under the "Colorado Uniform Custodial Trust Act", article 1.5 of this title; and

- b. Authorize, direct, or ratify any other contract, trust, will, or transaction relating to the protected person's property and business affairs, including a settlement of, and distribution of settlement of, a claim, upon determining that it is in the best interest of the protected person.

With respect to the power to amend a will or create a will substitute, see Wade/Parks, *Colorado Law of Wills, Trusts, and Fiduciary Administration*, § 44.24.

XI. Creation of Split Interest Gifts.

- A. The Code provides for certain gifts in split interest form, *e.g.*, the retention of an interest, either of a current income interest or a remainder interest, by the creator of a trust. If the actual life expectancy is substantially shorter than the life expectancy assumed by the valuation tables, then an interest can be given at an artificially low valuation.
- B. To prevent abuses I.R.C. regulations § 25.7520-3(b)(3) provide that the normal mortality tables are not applicable in valuing gifts made after December 13, 1995, if the individual, who is measuring life, is terminally ill at the time of the transfer. The regulations define terminal illness as an incurable illness or other deteriorating physical condition where there is at least a 50% probability that the individual will die within one year.
- C. This section has applicability in the following cases:
 - 1. Private annuities.
 - 2. Charitable lead trusts.
 - 3. Sale of remainder interests.

These devices are discussed in detail in Harris, *Even the Blackest Cloud Has a Silver Lining: Wealth Transfer Planning for the Terminally Ill Client*, 32nd Annual Miami Institute on Estate Planning Proceedings, (1998, Chapter 6), modified and reprinted in 24 ACTEC Notes 243 (1998).

XII. Third Party Rights - Family Protection Issues.

- A. C.R.S. § 15-11-202 provides strong protection to a surviving spouse who has otherwise been substantially disinherited by his or her spouse. In broad outline the spouse is granted a share of the estate measured in terms of an amount which is a sliding scale percentage of the decedent's assets, the percentage based upon the length of the marriage. There is a guaranteed minimum or floor of \$50,000. Beyond that the spouse is entitled to the following schedule:

If the decedent and the spouse were married to each other:	The elective-share percentage is:
Less than 1 year	Supplemental amount only
1 year but less than 2 years	5% of the augmented estate
2 years but less than 3 years	10% of the augmented estate
3 years but less than 4 years	15% of the augmented estate
4 years but less than 5 years	20% of the augmented estate
5 years but less than 6 years	25% of the augmented estate
6 years but less than 7 years	30% of the augmented estate
7 years but less than 8 years	35% of the augmented estate
8 years but less than 9 years	40% of the augmented estate
9 years but less than 10 years	45% of the augmented estate
10 years or more	50% of the augmented estate

- B. The decedent's augmented estate, in broad outline, consists of (a) the decedent's probate assets, plus (b) the decedent's non-probate assets as to which he or she retained controls (a and b roughly approximating the decedent's estate for federal estate tax purposes), plus (c) assets which would have comprised the spouse's augmented estate if he or she died at the same time. See generally Wade/Parks, *Colorado Law of Wills, Trusts, and Fiduciary Administration*, Section 13.2, pages 13-2 - 13-8; see also *The Reporters Notes to UPC §2-202, et seq.*
- C. What strategies are available properly to reduce the amount of the spouse's forced share right? Under some state statutes, life insurance, accident insurance, pension, profit sharing, retirement, and other benefit plans payable to persons other than the decedent's surviving spouse or the decedent's estate are excluded from the augmented estate.
1. In states where the augmented estate excludes pension benefits – To the extent that such benefits are payable to a non spouse beneficiary (generally having required a prior spousal consent) the beneficiary designation may be changed.
 2. In states where the augmented estate also excludes life insurance payable to non spouse third parties – Consider changing life insurance beneficiary designations or, better still, purchasing new life insurance (perhaps of the single premium variety) naming a non spouse beneficiary.

3. Note that completed gifts to third parties in excess of \$10,000 are excluded from the augmented estate but those made within 2 years of death will be brought back in for computation purposes. C.R.S. § 15-11-202(2)(b)(III)(C).
4. Note also that an incapacitated surviving spouse does not take a full statutory share. Instead his or her share is held in trust with a limited life interest, with the remainder passing, not pursuant to the surviving spouse's will, but rather under the residuary provisions of the original decedent's will. C.R.S. § 15-11-206(2). Wade/Parks, *Colorado Law of Wills, Trusts, and Fiduciary Administration*, Section 13.3, page 13-8.

D. Spousal status.

1. There are a number of important rights and obligations which depend upon spousal status. These include:
 - a. Availability of the federal estate tax marital deduction.
 - b. Entitlement to the exempt property and family allowances under C.R.S. §§ 15-11-403 and 404.
 - c. Entitlement to the spouses augmented estate elective share under C.R.S. § 15-11-201, *et seq.*
 - d. Intestate estate inheritance rights under C.R.S. § 15-11-102.
2. Note, in addition, that spousal rights may differ substantially in the context of a termination of a marriage depending upon whether the terminating event is (1) death or (2) dissolution of marriage. In the dissolution context only marital property (as opposed to separate property) is subject to division. In the death context, however, there is no such distinction, and the surviving spouse's forced share rights extend to both marital and separate property.
3. Therefore, in unusual and extreme cases there may be an opportunity and need to determine, and possibly change, the client's marital status prior to death. There are increased uncertainties in states which recognize common law marriage, and it may not otherwise be possible to determine marital status until it is put into issue and litigated post-death. Wade/Parks, *Colorado Law of Wills, Trusts, and Fiduciary Administration*, § 12.5.

XIII. Third Party Rights - Creditor Rights.

- A. In general both probate and revocable trust assets are subject to the rights of the decedent's creditors.

- B. Certain assets subject to non probate transfers may, on the other hand, not be subject to creditor claims. These include:
1. Life insurance proceeds.
 2. Possibly joint tenancy assets. *Park State Bank v. McLean*, 660 P.2d 13.
 3. Pension assets protected by ERISA.
- C. Several states, including Alaska and Delaware, by statute have reversed the common law rule that a spendthrift clause is not effective to bar the creditors of the beneficiary of a qualifying self-settled trust. The possible benefits of creation of a trust in one of those jurisdictions are diminished, in the immediate pre-death planning context, by the general provisions that the protective provisions of the statutes are not available as to creditors whose rights existed at the time of the creation of the trust. This rule may be similar to typical state statutes which provide:

Trusts for use of grantor void against creditors. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of goods, chattels, or things in action, or real property, made in trust for the use of the person making the same shall be void as against the creditors existing of such person. C.R.S. §30-10-111.

XIV. Time Sensitive Dates.

The following is a partial list of time sensitive dates measured from date of death. To the extent that any of these are important, consideration should be given to the question of full utilization of life prolonging (life support) medical apparatus. Note that the use of a living will may be contraindicated in such a case.

- A. IRS § 2035(d) (3 year rule regarding transfers of existing life insurance policies to be removed from the federal taxable estate).
- B. Survival of the term of years reserved in a qualified personal residence trust is necessary to remove the qualified personal residence trust property from the taxable estate.
- C. C.R.S. § 15-11-202(b)(III) (2 year period for completed gifts to be removed from the decedent's augmented estate for spousal elective share purposes).
- D. Calendar year end date to determine:
1. The availability of an additional year for income tax purposes.
 2. The availability of an additional year for annual exclusion gift purposes.

3. The availability of scheduled increases in the amount of the federal estate tax exemption equivalent.
 4. Changes in dollar amounts indexed under federal tax statutes.
- E. If the client has a remainder interest in a trust which will not vest until a time certain, if the death occurs before that time, the value of the trust assets will not be included in his or her gross estate; if, however, the death occurs just following the termination date, the assets will be included.

XV. Conclusion.

Dealing with a terminally ill client and his or her family can be challenging. A review of the existing estate plan will suggest the need for modification, as in other cases, although the time frame for review will be compressed. In addition, there are a number of techniques, such as acceleration of family gift giving and charitable devises under the will which may be useful in a broad range of cases. Further, there are a handful of more sophisticated techniques, such as those designed to obtain a step-up in income tax basis and through aggressive use of the mortality tables which may be available on a more limited basis. Finally, in many cases the greatest service will be in working with the client and his or her family in connection with advance directives, including both living wills and health care powers of attorney.

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EXHIBIT 1

Instructions for the Disposition of My Body and My Funeral or Memorial Service

I, _____, of _____, Colorado, make these instructions for the disposition of my body and for my funeral or memorial service, and I revoke any prior instructions for the disposition of my body or for my funeral or memorial service.

1. **Disposition of My Body.** I direct that, after my death, my body be disposed of as provided in this section.

(Initials) **Burial.** I direct that my body be buried at: _____

(Initials) **Cremation.** I direct that my body be cremated and that my cremated remains be disposed of as follows: _____

(Initials) **Entombment.** I direct that my body be entombed at: _____

(Initials) **Other.** I direct that my body be disposed of as follows: _____

(Initials) **As Determined by My Designee.** I direct that my body be disposed of as determined in writing by my designee:

If he or she is unable or unwilling to act, then my body will be disposed of as determined in writing by my alternate designee:

2. **Funeral or Memorial Service.** I request that arrangements be made for my funeral or memorial service as provided in this section. (List songs, clergy, location, music, pallbearers, for example.)

(Initials) **Funeral.** I request that the following arrangements be made for my funeral:

(Initials) **Memorial Service.** I request that the following arrangements be made for my memorial service: _____

(Initials) **Arrangements to Be Made by Designee.** I request that all arrangements for my funeral or memorial service be made by my designee:

If he or she is unable or unwilling to act, then arrangements for my funeral or memorial service will be made by my alternate designee:

(Initials) **No Service.** I request that there be no funeral or memorial service.

3. **Additional Instructions.** (On the following lines you may indicate any additional requests or instructions, such as information for the obituary, or charities for donations in your memory.)

Note: Those asked to carry out your instructions concerning the disposition of your body and funeral or memorial service arrangements may disregard your instructions if they are not reasonable. "Reasonable" means that your instructions are appropriate in relation to your finances, cultural or family customs, and religious or spiritual beliefs.

4. **Reliance by Third Parties.** I agree that any third party may follow my instructions as set out in this instrument, and I direct that my estate will indemnify any third party for any costs that result from the third party's good faith reliance on my instructions.

5. **Right to Revoke or Amend.** I may revoke or amend these instructions at any time. A revocation or amendment will not be effective as to a third party until the third party learns of the amendment or revocation.

_____ Date

_____ ***NAME OF CLIENT***

The following information is needed for a Colorado death certificate:

Full name: _____ Sex: _____

Address: _____

Date of birth: _____ Place of birth: _____

Marital status: _____ Spouse's (maiden) name: _____

Father's name: _____

Mother's maiden name: _____

Social Security Number: _____

Race (*specify* African-American, Caucasian, Hispanic, Native American, etc.): _____

Usual occupation: _____ Business/Industry _____

Were you ever in U.S. Armed Forces? _____ Date enlisted: _____

Location of discharge papers: _____ Date discharged: _____

Service number: _____ Name of war: _____

Do you wish to be buried in a military cemetery? _____ With military ceremony? _____