

## **PRACTICE AREAS >>ESTATE PLANNING**



Wade Ash offers a wide range of estate planning services, including the preparation of wills, trusts, marital agreements, family business planning, and the creation of charitable organizations. Our focus is on the achievement of the client's overall goals in providing for his or her family at the client's death, as well as minimizing taxes at each level: income, gift, estate, and generation-skipping transfer taxes. We also plan for the client's lifetime needs in the event of incapacity, including the preparation of advance medical directives, medical powers of attorney, and HIPAA authorization forms. And finally, we assist our clients with preparation of documents to care for minor or disabled adult children, including Special Needs Trusts and the designation of guardians.

### **Estate Planning Generally**

Our usual process is to begin with sending our Questionnaire ([Single](#), [Married](#), [Life Partner](#)) to the client to facilitate the gathering of basic information about the client, the client's family members, advisors, assets (including estimates of value and manner of titling), and other information about potential beneficiaries in the estate plan. We believe it is very important to coordinate the estate plan with the client's other financial advisors so that we are working as a team to achieve the client's goals.

We then meet with the client(s) to discuss their goals in detail, and our suggested alternatives for meeting those goals, including ways to minimize taxes. Tax objectives should not be the driving force in an estate plan; family goals are paramount, but the tax objectives are important and often affect the specific documents to be created in meeting the goals.

The estate plan documents create a framework that will help to effectuate the plan at the client's death or incapacity, hopefully in the most efficient way. Usually those documents include the following:

*A Will.* This document (a) names a personal representative (Colorado's term for executor) to carry out the estate administration with the help of advisors, (b) names guardians for minor children, if necessary, and (c) designates the beneficiaries of the client's probate assets (assets titled in the client's name alone at death, not joint tenancy, with a beneficiary designation, or in a trust). Designating the beneficiaries can include the creation of testamentary trusts for family members or others.

*One or more Trusts.* If a [Revocable Trust](#) is used as the primary dispositive document in the plan, then the Will is usually a "Pourover" Will to simply transfer probate assets to the trust at the client's death. The Revocable Trust then designates the beneficiaries, including the creation of continuing trusts for family members or others, and to carry out the tax minimization goals of the client. Reasons to use a Revocable Trust instead of a Will as the primary dispositive document include (a) privacy; (b) avoiding probate in states other than Colorado by titling real property in those states in the name of the

Revocable Trust; and (c) giving the client possibly better management in the case of incapacity (than relying on a General Power of Attorney). However, because of Colorado's relatively efficient and inexpensive probate system, we do not usually use fully funded Revocable Trusts as a method just to avoid Colorado probate.

Other trusts commonly used in an estate plan can include:

- [Irrevocable Trust](#)
- [Irrevocable Life Insurance Trust](#) (With [Checklist](#))
- [Charitable Remainder Trust](#)
- Charitable Lead Trust
- [Grantor Retained Annuity Trust](#)
- [Trust for Minor Grandchildren or Children](#)
- [Qualified Personal Residence Trust](#)
- Intentionally Defective Grantor Trust

*[General Durable Power of Attorney](#)*. This document is intended to avoid a court-supervised conservatorship proceeding in the event of the client's incapacity by the client designating an agent for financial purposes. The Power of Attorney is often effective on incapacity, but can also be currently effective.

*Limited Durable Power of Attorney*. This is not as common a document as the General Durable Power of Attorney, but is used in specific circumstances, such as for the limited purpose of funding a trust, or to handle specific real estate transactions.

*[Medical Durable Power of Attorney](#)*. This document is intended to avoid a court-supervised guardianship proceeding in the event of the client's incapacity, or more generally, if the client is unconscious and a medical decision is necessary. The client designates an agent to make medical decisions for the client in that situation.

*HIPAA Authorization Form*. The client can authorize health care facilities and practitioners to release protected medical information to designated persons, such as family members and agents under powers of attorney.

*Instructions about Disposition of Last Remains*. The client can give specific or general instructions about burial, cremation, type of service, etc. so that the family members are aware of the client's wishes.

*Tangible Personal Property Writing*. The Will often refers to a separate list that can be prepared to give household and other personal tangible personal property items.

*Marital Agreements*. These types of agreements serve to define the property rights of married couples during marriage, as well as at death or on divorce. Colorado law gives surviving spouses certain rights in the deceased spouse's estate that may be altered in a marital agreement, and the definition of "marital property" subject to division on divorce may also be changed.

*Cohabitation Agreements*. For non-married couples, because there are no statutes defining property rights in the event of death or divorce, these agreements can be particularly important to establish those rights, especially for joint purchases of the

residence.

*[Family Business Entities](#)*. We often create a family business entity, if appropriate, to own family assets. These can include limited liability companies, limited partnerships, or corporations. We also assist with family business planning, to transfer ownership or management of the business entity at the client's retirement, incapacity, or death, or to facilitate gifting.

*Charitable Planning*. As mentioned above, an estate plan may include a charitable remainder trust or charitable lead trust, if appropriate. We also may assist the client with the creation of a [private foundation](#), or a donor advised fund at a public charity.

*Installment Sales; Other Dispositions of Assets*. As part of the estate plan, we may recommend the sale of assets by the client to other family members, or to trusts. We also may assist with leases of assets between family members or family business entities.

After we meet to discuss the client's goals and decide upon the documents to be created, we prepare the draft documents and send them to the client for review. After further discussions about any changes to the drafts or questions, and a review with the client of the documents and an explanation of their material terms, the documents will be finalized for signing. We prefer that the documents be signed in our office so that we can be sure they are properly executed. Certain documents require two witnesses, and most must be notarized.

We usually return the client's original documents (and possibly additional signed copies) to the client for safekeeping. We also will usually retain a signed duplicate of all documents except the Wills (only one Will is signed).

We often prepare the U.S. Gift Tax Returns, if necessary, to report gifts in excess of the annual exclusion (\$13,000 per donee per year in 2011), or we will work with the client's accountant to do so. Such returns are usually necessary if gifts are made to [Irrevocable Trusts](#).

Our paralegals are knowledgeable in the preparation of fiduciary income tax returns (U.S. Form 1041) for irrevocable trusts, and we often prepare those returns, or work with the client's accountant.

For more information about the Estate Planning area of law, please visit our [Publications](#) page.

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