



WADE ♦ ASH ♦ WOODS ♦ HILL & FARLEY, P.C.

NEWSLETTER

August 2006

NEWS OF THE FIRM

All of the shareholders in the firm, James Wade, David Swank, Herb Tucker, Marc Darling and Laurie Hunter, were selected as *Colorado Super Lawyers* after peer nomination and a review process by Law & Politics, as published in the April 2006 editions of 5280 Magazine and Colorado Super Lawyers Magazine.

We are also pleased to announce that Karin L. Elsen has joined the firm as a Paralegal. Karin has been a Paralegal for 22 years, working both in Colorado and Washington. Karin will assist the Firm in the area of Estate Litigation.

Herb Tucker and Spencer Crona led a seminar discussion on issues and procedures involved in the pre-trial process for a will contest at the June 2006 Estate Planning Retreat in Vail, Colorado, sponsored by Continuing Legal Education in Colorado, Inc. This was the third year in a row that Herb and Spencer were invited to lead a discussion at the annual Estate Planning Retreat. James Wade was the "founding father" of the retreat in the 1970s when he was Denver Probate Judge, and the tradition continues for this popular gathering of lawyers, bankers and trust officers to this day.

Spencer Crona was also appointed as Adjunct Professor to the University of Denver College of Law to teach basic Trusts & Estates for the summer term.

J. Randolph Robida, P.C. is now sharing our office space. Randy focuses his legal practice on taxation (including representation before the IRS and tax courts), and small business tax and legal issues. Randy has degrees in Business (accounting), Law and Tax Law. He has over 20 years experience as an attorney and he is a CPA. Randy provides our firm with an excellent resource.

GIFTS TO MINORS

Enclosed is a chart that compares four of the most common methods of making gifts to minors that qualify for the \$12,000 per person per donee gift tax annual exclusion: (1) an UTMA gift is created under the Colorado Uniform Transfers to Minors Act by designating a custodian (who must be at least 21 years of age) to hold an asset for the benefit of a minor; (2) a Section 529 Plan is created, both under federal law and a particular state's law, for gifts for higher education expenses; (3) a 2503(c) Trust is created by a separate trust agreement written to comply with the requirements under Internal Revenue Code Section 2503(c) so that it qualifies for the gift tax annual exclusion; and (4) a *Crummey* Trust is created by a separate irrevocable trust agreement granting withdrawal powers to the beneficiaries (so-called "Crummey powers").

If funds are intended to be used for higher education, the Section 529 Plan has many advantages: no legal fees to create the account; income accumulates tax-free; qualified distributions for higher education remain free of income tax when paid; up to five years' worth of annual exclusion gifts may be made in one year; the donor can be the owner; the donor may take the funds back out (subject to penalty and income tax); the donor and the beneficiary have creditor protection; and the donor can change the beneficiary. Disadvantages include: the funds can only be used for higher education without penalty; and the investment is limited to certain mutual funds offered by each state.

The most flexibility can be achieved with the irrevocable "*Crummey*" Trust, including no mandatory distributions to the beneficiary at a particular age, more than one beneficiary may be included, any type of investment may be appropriate, and any purpose for distributions may be set out in the agreement.

We are prepared to discuss this area with you and to identify and implement the proper gifting program.

TRIAL AND ERROR

The following are from actual court reporters' transcripts:

ATTORNEY: Doctor, how many of your autopsies have you performed on dead people?

WITNESS: All my autopsies are performed on dead people.

ATTORNEY: What is your date of birth?

WITNESS: July 18th.

ATTORNEY: What year?

WITNESS: Every year.

ATTORNEY: Is your appearance here this morning pursuant to a deposition notice I sent to your attorney?

WITNESS: No, this is how I dress when I go to work.

SENIOR PROPERTY TAX EXEMPTION

In November 2000, Colorado voters approved a constitutional amendment creating a property tax exemption for qualifying seniors. Due to Colorado's budget problems, the program was never implemented. In response to last year's passage of Referendum C, the Colorado legislature restored the Senior Property Tax Exemption in 2006 for taxes payable in 2007.

Seniors 65 and older (including couples where only one spouse is 65) can claim a 50% reduction on property taxes on the first \$200,000 of assessed value. Property taxes on any assessed value in excess of \$200,000 will remain at 100%. To qualify, you must have owned and lived in the residence for the last 10 years. To obtain this tax reduction, you must return a completed property tax exemption application form to your county assessor's office by July 15th in the year for which the exemption is requested. For 2006 taxes payable in 2007, that deadline was July 15, 2006. If you applied in the past, you do not need to complete another application. You should have received notice of the application with your Notice of Valuation that is usually mailed in May.

Once you have qualified for the exemption, it remains in effect for subsequent years without re-application. If a couple owns a house and the qualifying senior dies, the non-qualifying spouse must re-apply for the exemption to continue. The exemption will continue so long as the surviving spouse has not remarried and continues to occupy the residence.

This property tax exemption is distinct from the Colorado Homestead Exemption that protects the equity in a home from creditor claims up to \$45,000 in value.

STATUTORY UPDATE FROM 2006 COLORADO LEGISLATURE

In addition to reinstating the Senior Property Tax Exemption, the Colorado legislature passed several other bills that may affect your estate plan or administration of an estate. The creditor claims statutes were amended to clarify the manner in which a claim is presented. In addition, Colorado is now one of many states that have adopted a uniform law clearly to subject assets held in revocable trusts to creditor claims filed in a probate proceeding. One of the purposes of the new law was to level the playing field between wills and funded revocable trusts, and to give revocable trusts the benefit of a limited creditors' claim period. Certain other "nonprobate" transfers will also be subject to probate creditor claims and statutory allowances if the probate assets are insufficient. In the past, joint or "pay on death" bank accounts were subject to such claims, but now other revocable transfers occurring outside the probate estate will also be included. The new statute does not apply to certain nonprobate transfers, including: a survivorship interest in joint tenancy real estate; property transferred by the exercise or failure to exercise a power of appointment; life insurance, accident insurance, or annuity policy proceeds; and retirement plans, pensions, deferred compensation plans, IRAs, 529 Plans, and similar arrangements.

The legislature also amended the statutory rule against perpetuities to clarify how long a trust may exist. The rule now states that trusts may last for up to 1,000 years.

A credit was added to the income tax statutes so that trusts administered in Colorado (and therefore subject to taxation in Colorado) that may also be subject to tax under another state's law will not be subject to double taxation. The Colorado credit will be equal to the tax payable to the other state. This should make it more favorable to transfer trust administrations to Colorado.

FEDERAL TAX LAW UPDATE

One item of federal legislation to note is a little known provision buried within the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) signed by the President on May 17, 2006 which changes the income tax rules that apply to minors (a/k/a the "kiddie tax" rules) for 2006 and subsequent years. Previously, if a person under age 14 received unearned income, that income was taxed at the parent's rate. The new law provides that unearned income of more than \$1,000 received by a person under the age of 18 will now be taxed at the parent's rate. This change could create income tax liability for a parent who has structured investments held for the benefit of minors that mature before a child is 18. We understand that there may be a bill pending to repeal this provision of TIPRA, but to date that bill has not been passed by Congress nor signed by the President.

The fate of the federal estate tax is still uncertain. Under the current provisions, the exemption for 2006 is \$2 million, is scheduled to increase to \$3.5 million in 2009, is unlimited in 2010, and is reduced to \$1 million in 2011. The House of Representatives passed a bill that would increase the exemption to \$5 million in 2010, and reduce the top tax rate from 45% to 15% for estates up to \$10 million in value, and 30% for estates over that value. The Senate has not yet voted on that bill. Just a reminder: Colorado no longer has an estate tax.

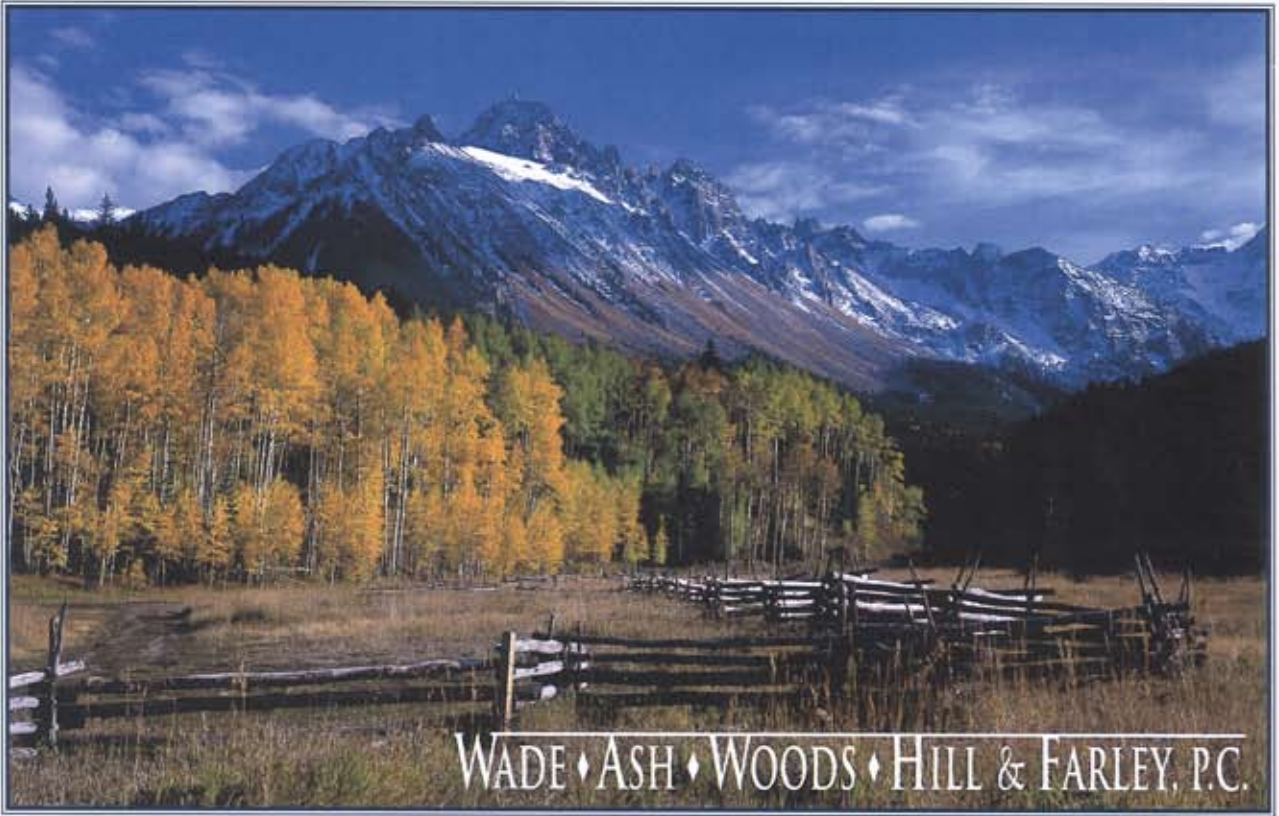
PROBATE: FORMAL OR INFORMAL?

Contrary to representations in the media and some seminars, Colorado has a streamlined and efficient process for informal probate of estates under the Uniform Probate Code. Generally, if there are no controversies related to the estate, the standard forms approved by the Colorado Supreme Court are properly completed, they have been submitted to the correct court and there are no ambiguities or issues requiring a judicial decision, the court's "Probate Registrar" (often a senior clerk), can appoint the personal representative and admit the will to probate without any court hearings. This is known as "informal probate." This process is effected by mail to the court and no appearances of witnesses or lawyers is required.

Despite the ease and simplicity of informal probate in Colorado, there are circumstances where formal probate might be the more prudent process, even when there is no indication at the time of any controversy regarding the estate. Such issues may involve complex or significant decisions about assets, or interpretation of an ambiguous provision in a will. In formal probate, an issue in estate administration can be submitted in a petition to the probate judge, with all the related information pertinent for consideration and with notice to persons interested in the estate, for review and approval. If the issue is "noncontroversial" then it may be set for a nonappearance hearing. If no objections are filed, the court will generally issue the order. Such a court order provides a significant measure of protection against "Monday morning quarterbacking" of, and later challenge to, the personal representative's decision.

Also, an order of formal probate of a will or a formal order determining heirship in an intestate estate will trigger the running of a probate "statute of limitations" against an attempt to have such order set aside. Generally, the maximum time limit for an action to set aside such a formal order is one year, and Colorado case law has been stringent in enforcing that limitation. Thus, formal probate provides a reassuring measure of protection and certainty for the most important determinations in administration and settlement of a decedent's estate.

A formal closing by filing a petition and full accounting will result, after notice, hearing and entry of the court order, in an immediate discharge of the personal representative from his or her duties, rather than waiting for one year in the filing of a Verified Statement in an informal closing. In the course of estate administration, one may go back and forth between formal and informal proceedings.



WADE ♦ ASH ♦ WOODS ♦ HILL & FARLEY, P.C.

Please visit our website at www.wadeash.com regularly for more information on our firm, lawyers and publications. This newsletter is for general information purposes. It is not legal advice. If you have questions about your specific situation, please call (303) 322-8943 and reference this newsletter.

WADE ♦ ASH ♦ WOODS ♦ HILL & FARLEY, P.C.
(303) 322-8943 Office • (303) 320-7501 Fax
www.wadeash.com
360 South Monroe Street, Suite 400
Denver, Colorado 80209

COMMON METHODS OF MAKING GIFTS TO MINORS

Description	UTMA	§529 Plan	§2503(c) Trust	Crummey Trust
Creation	Open account; title asset in name of custodian for benefit of beneficiary under UTMA	Open account on-line or with investment advisor	Attorney draft trust agreement	Attorney draft trust agreement
Mandatory distribution to beneficiary?	Yes, at age 21	No; account owner controls	Yes, at age 21	After withdrawal right lapses, depends on trust terms
Control/management	Custodian	Account owner	Trustee	Trustee
Federal taxation of income	Beneficiary	Accumulates income tax free; no tax on qualified distributions	Trust, unless distributions carry out taxable income to beneficiary	Trust, unless distributions carry out taxable income to beneficiary or grantor trust rules tax income to beneficiary with <i>Crummey</i> power
State income tax deduction for contributions?	No	Yes, Colorado plan gives Colorado income tax deduction	No	No
Higher education financial aid characterization	Asset of minor	Asset of account owner	Federal handbook: compute present value of distributions to beneficiary	Federal handbook: compute present value of distributions to beneficiary
Subject to beneficiary's creditors?	Yes	No in Colorado; other plans depend on state law or new federal bankruptcy law	No usually (because of spendthrift clause)	No usually (because of spendthrift clause)

Description	UTMA	\$529 Plan	\$2503(c) Trust	Crummey Trust
Type of investment asset	Any kind of asset, subject to prudent investor rule standard	Restricted to mutual funds offered by state plan	Any kind of asset, subject to prudent investor rule standard	Any kind of asset, subject to prudent investor rule standard
Qualify for \$12,000 gift tax annual exclusion?	Yes	Yes, and can front-load up to five years	Yes	Yes
Generation-skipping transfer tax exempt?	Yes	Yes	Yes, if qualifies under Code §2642(c) or allocate exemption	Yes, if qualifies under Code §2642(c) or allocate exemption
Ability to change beneficiary after gift?	No	Yes, by account owner	No	Depends on trust terms (someone could have a limited power of app'l)
Ability to withdraw assets by donor?	No	Yes, by account owner	No	No
Donor as trustee/custodian/owner	No (would be included in donor's estate)	Yes	No (would be included in donor's estate)	Possibly, if careful with trustee powers
Taxed in donor's estate?	No, unless donor is custodian	No, unless Donor dies within five years and front-loaded gift	No, unless donor is trustee	No, unless donor is trustee and has too much power
Taxed in beneficiary's estate?	Yes	Maybe (a completed gift, but beneficiary has no authority over it)	Yes (beneficiary must have general power of appointment)	Maybe (if have or released a general power of appointment)
Subject to donor's creditors?	No	No in Colorado; other plans depend on state law or new federal bankruptcy law	No	No