EXAMPLE - A Few Things to Think About

Leslie rang us to say she wanted a 'simple Will'. A well-organized young woman, Leslie confirmed that she and her husband had few assets and no children as yet, but wanted Wills just to be on the safe side.

'We want everything to go to one another and that's about it – a one-pager should be fine' she said. After a lengthy letter of advice from us Leslie started to realize that simple Wills are not as simple as they sound.

Here are some of the issues we raised with Leslie and her 'simple Will'.

1. She appointed her husband as her executor but made no allowance for an alternate executor. If she and her husband were involved in, say, a car accident then her husband may not be around to be her executor and a back-up executor needed to be included.

2. Similarly she made her husband the sole beneficiary but made no allowance for an alternate beneficiary in the awful but nonetheless possible situation of both her and her husband passing at the same time. A back-up beneficiary needed to be included.

3. She had not told us what was to happen with her superannuation benefits. She's been working for over 10 years and has amassed a material amount of super. Her Will cannot deal with that super initially so she had to consider a death benefit nomination. Decisions had to be then made about whether the nomination should be binding or non-binding and precisely how to deal with that super.

4. She had a small life insurance policy and we had to investigate precisely who was entitled to the policy proceeds on her death: her estate, her husband or someone else. The policy was 5 years old and she couldn't remember.

5. She had few debts but also few assets so it was important for her to consider precisely which of her assets should be used to pay those debts, particularly as some assets may be at least partially quarantined from such debt payments.

6. She wanted the Will to say that she did not want to be kept alive artificially. We had to point out that the Will only becomes relevant after death and nothing in the Will can deal with her situation before she actually dies. A separate document is needed to make known her wishes in that regard.

7. We advised her that many Wills these days provide the testator's directions on whether their remains are available for organ transplantation or medical research.

8. We advised her that many Wills these days provide the testator's directions on how their remains are to be dealt with (ie cremated , buried etc) and what sort of funeral service they would prefer.

9. We advised her of the need for an enduring Power of Attorney to enable her husband to deal with her assets if she became mentally unable to do so (for example if she were in a coma).

For Leslie with few assets and no children there were still a lot of things to think about when preparing a Will. Imagine how quickly things become more complicated when assets grow and kids come into the picture. Never prepare your own Will – see an expert.

https://townsendslaw.com.au/blb-news/221/there-s-no-such-thing-as-a-simple-will/

The Law Office of
Brown & Brown, P.C.

Estate, Trust, Tax and Long Term Care Planning

Why There Is No Such Thing as a Simple Will:

Estate Planning 101

1250 E. Sherwood Drive, Grand Junction, CO 81501

1825 East Main Street, Suite C, Montrose, CO 81401

Tel: (970) 243-8250 ♦ Fax: (970) 241-1144

www.brownandbrownpc.com

Attorneys at Law:

♦ Baird B. Brown ♦ Clara Brown Shaffer ♦ Shauna C. Clemmer ♦ Daniel F. Fitzgerald

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SPECIAL REPORT
- Wills vs Trusts -

We are often asked whether a person should use a will or a trust to pass their estate to their heirs upon their death. It is a question each of us should ask ourselves. The bottom line is that, in most cases, the answer is not clear but is a matter of choice. To understand the difference we must first look at the difference between a probate and a non-probate asset.

Probate Assets

A probate asset is an asset that passes when a person dies through a court process commonly referred to as probate. Probate usually takes about six months; a personal representative is appointed to handle the proceeding; creditors, if any, file claims in the proceeding; and ultimately, the assets of the probate proceeding are distributed to the individuals named in the will of the decedent. If the decedent did not leave a will the assets pass in accordance with a statute of the state in which the decedent lives on the date of the decedent's death. Dying without a will is commonly referred to as dying intestate.

There are advantages to having your assets pass through the probate process before being distributed to your heirs. The primary advantage is there can be court supervision. A court can help a personal representative sort through many issues that may arise during the administration of the estate including, but certainly not limited to, disputes amongst heirs, the nature and specifics of distributions, the validity of claims of creditors and many other matters in which a personal representative may simply need guidance.

The primary disadvantages of probate are that it can be somewhat more time consuming, usually adds cost to the administration of the estate (although not significant), can require administration in more than one state if an individual owns assets in more than one state, gives a forum or platform in which heirs can fight, requires a direct notice to known creditors and will usually require the disclosure of the decedent's estate plan to the public. Many clients simply want the privacy of a trust (in contrast to the will type of an estate plan) as disclosure to the public of the nature and timing of distributions to the decedent's heirs is not required. The fact your heir (often times children) might receive a distribution on their 20th or 30th birthday might be important to keep private.

Non-Probate Assets

Non-probate assets are those that pass to your designated heirs without the need of court administration or probate. Most clients already own non-probate assets. Non-probate assets include those such as retirement accounts, assets titled in joint tenancy and insurance. A non-probate asset passes directly to the intended beneficiary under a life insurance or annuity policy and a joint tenancy asset passes to the surviving joint tenant. For those individuals with a will estate plan it is important they coordinate how their estate will pass with both the probate and non-probate assets.

For example, let's look at life insurance. Let's assume a parent of three children names the surviving children (those living at the time of the parent's death), as the beneficiary of a life insurance policy on the parent's life. Let's also assume the parent's will leaves all of the parent's assets to the children equally and if one of the children predeceases the parent, the deceased child's share would then pass to the children of the deceased child, (the grandchildren).

Under the above scenario, if a child dies prior to the parent, the probate assets are still divided equally among each of the children with an equal share passing to the children of the deceased child. The proceeds of the life insurance policy will pass to the surviving two children and not to the children of the deceased child because the insurance policy required the proceeds be paid to the "surviving" children.

Will Estate Plan

With a will estate plan it cannot be emphasized enough how important it is to coordinate the assets passing pursuant to the will with those that pass outside the will. As we will see below the same holds true (the need to coordinate the ownership of assets as well as the beneficiaries named in non-probate holdings) for the use of a trust type of estate plan.

Trust Estate Plan

A trust estate plan is a process whereby the probate assets are essentially converted into non-probate assets. The type of trust we are referring to is commonly known as a "revocable," "living", "inter-vivos" or "loving" trust. We simply refer to them as "prepaid probate." The trust instrument sets forth the distribution plan of the estate. Upon the death of the person creating the trust (i.e. the Settlor) the successor trustee of the trust administers the trust, much like a personal representative who administers a probate estate, and then distributes the trust assets in accordance with the trust terms.

Under most circumstances, the terms of a trust remain private upon the death of the Settlor and the trustee then in charge of administering the trust distributes the assets of the trust or continues to hold the assets in trust for a stated purpose. As with a will, a trust continuing beyond the death of the Settlor can be incorporated into the distribution provisions of the trust.

The advantages of the trust are numerous. All of the assets titled in the name of the trust are non-probate assets and are not subject to the jurisdiction of the probate court. The provisions of the trust (which the Settlor may not want known to the public) usually can be kept free from public view and potential intervention. Where assets are in multiple states, the trust can be administered across state lines without the need for multiple court proceedings. If the Settlor becomes incapacitated, it is often easier for the successor trustee to handle the Settlor's financial affairs as a successor trustee rather than as an agent under a power of attorney (a document usually relied on to help the testator of a will). Lastly, there usually is not a need to commence a probate proceeding.

The disadvantage of a trust is it usually takes more work (resulting in a higher cost) to set up your estate plan. It requires monitoring by you as the Settlor and the Trustee to insure it is kept up to date (as does a will) and insuring all your property is constantly within the trust can be burdensome if you are not inclined to keep your house in order. Trusts and wills do not save estate taxes in and of themselves.

How to Decide Which Type of Plan?

So how does one decide the type of plan to use? We advise clients that there usually is no right or wrong decision. If a client owns property in multiple states subject to multiple probates or wishes to keep their plan of distribution from the public eye then I usually recommend a trust estate plan. If on the other hand, a client would rather not spend as much now on their estate plan or are not inclined to keep their assets titled into a trust, then we will recommend a will.

Within either a will or trust estate plan, tax savings planning can be utilized. At least in our office the cost to create a trust or a will (other than a simple will) is essentially the same. The only difference is that with a trust additional time is needed to "fund" the trust. Funding of the trust involves the re-titling of assets which can be anywhere from an hour or two to many hours of our time and cost to the client.

Each client is a bit different, and their specific facts and goals need to be taken into consideration. At our office, we find that an estimated 60% of the estate plans we create are trust estate plans. The rest of our clients choose a will estate plan.

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SPECIAL REPORT

- Asset Protection Trusts -

According to the Oxford University Press, a *Trust* is "an arrangement whereby a person (a trustee) is made the nominal owner of property to be held or used for the benefit of one or more others". In the practice of law there are numerous types of trusts which are commonly used to meet a variety of the needs of client [1].

An asset protection trust (APT), like the other specialty trusts, is designed to fit a particular need for our clients. A client who wishes to use an APT as part of their planning does so intending to insulate the assets within the trust from the claims of creditors of their intended heirs. In this day and age it seems litigation is the answer to so many problems facing clients and their heirs. As we lawyers know, a lawsuit is easy to start, but difficult to finish or extricate yourself from.

The APT is a technique which can be used to discourage creditors from seeking recovery of a judgment from the assets within the trust. Furthermore, if properly designed, an APT can protect the trust assets from claims of spouses and other dependents.

To understand the structure of an APT you have to first understand what it is not. Except in very limited circumstances, trusts are not a way for an individual to protect their own assets from their own creditors [2]. Such trusts are commonly referred to as self-settled asset protection trusts. Generally, the law prohibits an individual from transferring assets either outright or in trust to "hinder, delay or defraud a creditor". If you think a creditor might be seeking a recovery from you, it is probably too late to transfer your assets in hopes of protecting them. This APT is not about the protection of assets from your creditors.

The APT is about protecting <u>your</u> assets (which you leave to your heirs) from your heirs' creditors. It is not about protecting your assets from your creditors. Let's assume your heirs are your children. The APT is designed to protect your assets once they are inherited by your children from you. The APT can be presently funded with assets the parent generation gifts to their children during the parent or parents' lifetime. It can also be funded at death. Many clients create the APT as part of their estate plan and then fund it upon their death with their assets. The parent's estate pours over into the trust when the parent or parents are both deceased.

Case Study 1: Let's take John and Jane Doe, who have three children, Able, Ben and Cathy. John and Jane have a modest estate of around $600,000. Their estate plan, through the use of a will or revocable trust, provides for their estate to be divided equally between their children, Able, Ben and Cathy. As a small business owner, Able has creditor problems and probably always will. Ben on the other hand, is disabled, and has trouble keeping a job. He is not on public benefits but may be in the future. Cathy is married to a highly paid professional and money woes are not on the horizon. The marriage of Cathy is on the rocks and always has been and she may end up being the sole supporter of her two children, your grandchildren. On the other hand, her marriage may stay intact, and if so, she and her husband are likely to have a taxable estate.

How does an APT help John and Jane? First, let's look at the option of leaving their estate out right to Able, Ben and Cathy. If Able receives outright $200,000 as an inheritance, depending upon the way in which the business is organized, his creditors will likely be able to reach the inheritance to satisfy the claims of his business. In the case of Ben, although he has no current creditors, it is likely he will in the future as he turns to the safety net of public benefits to provide for his food and shelter.

In the case of Cathy, an inheritance itself would not be considered marital property (assuming she doesn't comingle her inheritance with marital assets), but the growth in the value of the asset could be considered a marital asset and subject to division in a divorce court. If Cathy and her husband stay married the value of the inherited assets would be subject to estate tax (if the estate exceeds the exemption amount) and the marginal rate on estate taxes in 2020 is 40%. Assuming any inheritance would be taxable along with their other assets, the additional $200,000 inheritance would potentially create an $80,000 additional estate tax on the death of Cathy and her husband.

If John and Jane were to transfer the inheritance to be received by each of their children to an APT for their benefit, rather than giving the inheritance outright to their children, the trust would limit their access to the funds within the trust. In fact, it is important to note their interest in the trust is not intended to be a "property interest" at all. Only if you have a property interest is a creditor, including a spouse, able to reach it to satisfy any claims they may have to marital property.

To accomplish its goals of insulating the assets within the trust from the claims of creditors, including spouses and taxing authorities, the trust must be designed with very special limitations. More specifically, the trust must be designed as a fully discretionary trust. This requires any distributions made from the trust to be approved by a totally independent person who is a co-distribution trustee along with the trust beneficiary or beneficiaries. (The independent person/trustee can be a close friend). Although the trust beneficiary can be the management trustee in charge of all investment decisions it is important the trust beneficiary is not able to control the distributions based on any type of ascertainable or enforceable standard.

To provide flexibility in the trust it is important to appoint a trust protector to be able to make technical changes to the trust. The trust protector must also be an independent person who is not related or subordinate to the interests of the trust beneficiary. As an additional safeguard, the trust is designed to have a trustee remover and appointer able to provide for continuity of management of the trust assets. The same person can wear many hats!

John and Jane will likely want to have a separate trust for each child which provides for each child to be the management trustee to manage the trust assets but have an independent party or institution act as the co-distribution trustee along with the trust beneficiary child and as the trust protector. Should any creditor try to reach the assets of the trusts established for the benefit of Able, Ben or Cathy, the distribution trustee would simply say no to any requests for payment or satisfaction of a creditor claim.

Case Study 2: Fred, who is 83 years old, managed to accumulate an estate of over $14 million. Additionally, his only child, Freida, is a specialist physician and has her own estate in excess of $12 million. Freida has two children and intends on leaving her estate to those children.

The problem is both Fred and Freida have taxable estates. If Fred leaves his estate to his daughter Freida, and she dies with a $15 million estate of her own, her estate will be taxed at a 40% tax rate over and above the

exclusion amount available at the time of her death. Currently, for decedents dying in 2020 the exclusion amount is $11,580,000.

Through the creation of an APT, to be funded at his death, Fred can place his entire estate into the trust and provide asset protection benefits for Freida and her children. Furthermore, the trust does not have to be funded until the death of Fred. It can simply be standing by and his current estate plan can pour his assets into the trust upon his death. The trust can provide for a portion of the trust assets to be removed from ever being subject to the estate tax in the future by allowing the trustee to allocate a portion of the distribution by Fred to be exempt from the generation-skipping tax and the estate tax for the benefit of Freida and her children.

Who should consider the use of an APT?

Almost anyone, really. If you have an estate and you want to leave it to individual heirs, as opposed to a charitable entity, you have the choice of leaving the inheritance outright to the heir or leaving it in trust. Leaving it in trust can still protect the assets to be used for the benefit of the heir, subject to the restrictions contained within the APT. Almost any value of inherited assets can be considered for placement into an APT. If you choose to leave the inheritance you plan to leave to an heir in trust, a trust other than an APT may be the better choice depending upon your circumstances and requires careful consideration.

Family Wealth Preservation
Accumulating wealth is one thing. Preserving it is another.
Let our family help yours.

Footnotes:

[1] For example, you probably have heard of the revocable trust, irrevocable life insurance trust (ILIT), grantor retained annuity trust (GRAT), special needs trust (SNT), qualified personal residence trust (QPRT), dynasty trust and the charitable remainder trust (CRT) to name a few.

[2] It is possible to transfer assets to a trust and shelter those assets from claims of creditors in the situation of public benefit planning. The two types of trusts commonly used in the area of public benefit law are referred to as the d4a trust and the pooled trust. These trusts are created by Federal law and are designed to protect assets for individuals with special needs and seeking public benefit assistance generally through the Medicaid program. Also, there are off-shore trusts and domestic asset protection trusts allowed in certain states (not Colorado) which can be utilized to shelter assets.

[3] Currently, for decedents dying in 2020 the exclusion amount is $11,580,000.

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SPECIAL REPORT

- Outright vs. In-Trust Distribution to Heirs -

In each estate plan, the decision must be made whether the recipient of the inheritance is to receive their inheritance outright or if it is to be held for the recipient's benefit in some type of trust arrangement. In looking over the last decade, it seems to us leaving assets outright to an heir has become much more risky as divorces, lawsuits and financial hardship have fallen on many Americans. Additionally, taxes are becoming an even greater threat to many as inheritances are reduced by estate taxes over one or more generations. Here are a few statistics worth pondering:

Divorce rates:[1]

- Almost 49 percent of marriages end in divorce.
- First marriages ending in divorce have an average duration of just under 8 years.
- 60 percent of all divorces are related to individuals age 25 to 39.
- There were more than 21 million divorces in the year 2000. In the same year, 58 million couples were married and lived in separate households.
- In 1990, the average age for a male in a second divorce was 40.4 years; for a female in a second divorce the average age was 37.3 years.
- The divorce rate of first time marriages is almost 10 percent less than the divorce rate for second marriages. Nearly 60 percent of second marriages end in divorce.
- Over a 40 year period, 67 percent of first marriages terminated in a divorce and 50 percent of these divorces took place within the first 7 years.
- Every year more than 1 million children are affected by divorce.

Bankruptcy statistics:[2]

Year	*Total*	*Business Filings*	*Non-Business Filings*	*Consumers as a % of total*
2002	1,577,651	38,540	1,539,111	97.56
2003	1,660,245	35,037	1,625,208	97.89
2004	1,597,462	34,317	1,563,145	97.85
2005	2,078,415	39,201	2,039,214	96.81
2006	617,660	19,695	597,965	96.81
2007	850,912	28,322	822,590	96.67
2008	1,117,771	43,546	1,074,225	96.10
2009	1,473,675	60,837	1,412,838	95.87
2010	1,593,081	56,282	1,536,799	96.47

- Outright vs. In-Trust Distribution to Heirs -

Civil lawsuits are prevalent throughout our country. According to one Internet post[3], your chances of being sued are 1 in 4 and there are 80-90 million lawsuits (of all types) being filed every year.

Americans with disabilities who rely on asset-based assistance, such as Supplemental Security Income (SSI) and Medicaid are substantial. In fact, 54 million Americans suffered from a disability in 2010.[4] Of those, 11 million need assistance daily to meet their living needs.

Between lawsuits from creditors of all types, as well as divorces, any inheritance you consider leaving to an heir is subject to the risk of being depleted, either voluntarily or involuntarily by the heir. In the case of a divorce, an inheritance can be treated as separate property and not subject to division by a Court, but the appreciation in the inherited assets can be considered marital property, causing complications when the divorce court is forced to intervene to divide the couple's assets.

In more and more estate plans, we are recommending the assets not be distributed to the heir outright, but instead leaving all or a large portion of any distribution to an heir in trust.

What does leaving a distribution in a trust mean? A trust is a legal arrangement wherein a Trustee (who is an individual or financial institution) manages the assets for the Trust Beneficiary or Beneficiaries, and distributes them in accordance with the wishes of the trust creator (sometimes referred to as the Settlor). The creator can place whatever restrictions he or she wishes to make regarding distributions from the trust.

There are a multitude of types of trusts to choose from depending upon your circumstances. Here are a few types:

- Trust with inherited assets that are established to avoid having the inheritance considered as an available resource for public benefit purposes (Special Needs Trust).
- Trust used to help manage assets for those recipients who are not financially savvy and perhaps subject to being easily influenced by "friends" or business associates (Asset Protection Trust).
- Trust established to protect assets from being subject to future estate taxes (Dynasty Trust).
- Life Insurance Trust (ILIT) used to keep insurance proceeds from being included in the decedent's estate as well as the future beneficiary's estate.

The type of trust you may wish to create for your heir or heirs depends upon his or her needs. An estate does not have to meet a threshold size for qualifying to set up a trust. We have established trusts to hold assets valued at under $5,000, with a family member as a trustee to protect assets for the heir and to ensure the assets are being used as the trust creator wishes.

Bottom line: Before you decide to distribute assets outright to any heir, review the types of trusts you could create to hold the inherited assets. It is important to select the most appropriate type of trust to ensure your wishes are fulfilled and the inherited assets are not dissipated against your wishes, either voluntarily or involuntarily by your heir.

[1] Divorce Rate 2011 (http://divorcerate2011.com/divorce-statistics/) 9/23/2011

[2] American Bankruptcy Website (www.abiworld.org) 9/23/2011

[3] Glyn Norman (www.glynnorman.articlealley.com)

[4] U.S. Census Bureau (http://www.census.gov/prod/3/97pubs/cenbr975.pdf)

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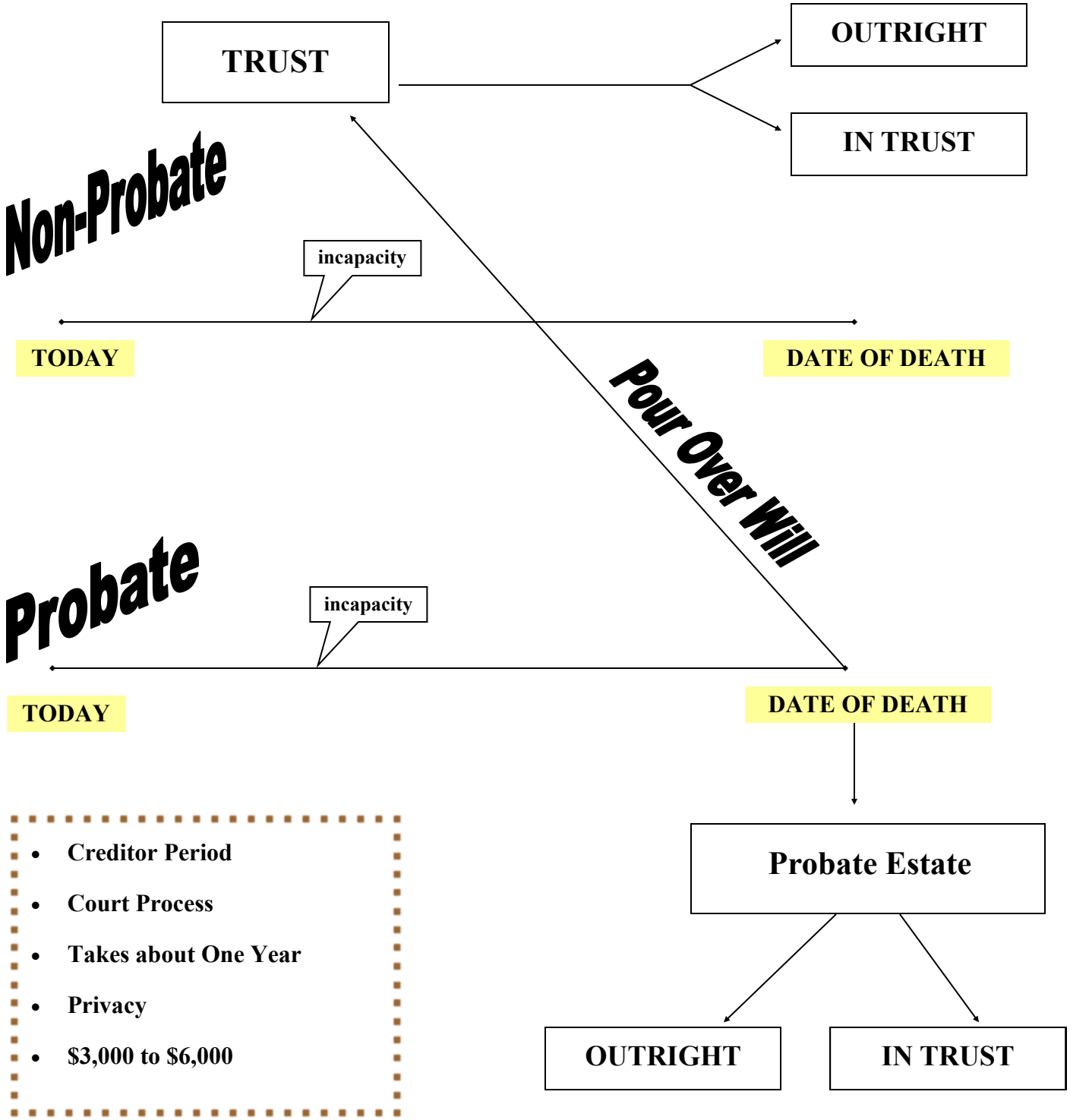
- Probate and Non-Probate Flow Chart -



- Creditor Period
- Court Process
- Takes about One Year
- Privacy
- $3,000 to $6,000

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SPECIAL REPORT

- Uniform Power of Attorney Act -

The Colorado legislature passed the Uniform Power of Attorney Act and with Governor Ritter's signature, the Act became effective January 1, 2010. The Act applies to all powers of attorney signed after the effective date as well as all valid powers of attorney in place prior to the effective date. Several provisions of the new Act changed the provisions in the prior statutes. The most notable changes are the following:

The Super Powers. The Act creates different classes of powers. The general powers (i.e. real estate, banking, stocks and bonds, etc.) are available to principals to grant their agent as they were prior to the effective date. The Act also creates Super Powers which must be specifically granted by the principal to the agent. These Super Powers include the gifting provisions, exercise of power of appointment, disclaimer powers, assignment of authority, creating trusts on behalf of the principal, changing beneficiary designations and altering survivorship rights.

The gifting provisions have changed. Unless specified by the agent, any gifting authority will be limited to the federal gift tax exclusion gift amount per person. This even includes gifts to spouses and charities. Because of this new rule, even broad gifting authority in a power of attorney may fall under this limiting provision. It is important to draft around this provision if the principal wants their agent to make larger gifts to beneficiaries or to make gifts as part of a plan to qualify for public benefit programs.

Provisions in the Act also address the issue of agents dealing with third parties. Third parties can request a certification, translation or certification by an attorney from the agent along with the power of attorney and rely on the agent's authority. Similar to the prior statute, a third party refusing, unreasonably, to accept a power of attorney may be subject to paying attorney fees and costs if the agent must obtain a court order for the third party to accept the power of attorney.

The Act also provides for a judicial avenue to address financial abuse or exploitation of a principal by the agent. The Act specifies who has standing to petition the court to review the agent's behavior. Prior to this Act, it was unclear who had the standing to involve the court. This provision was specifically added to protect the principal from financial abuse.

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SPECIAL REPORT

Top 10 Points to Remember

- Advance Directives -

1. A Financial Power of Attorney allows you to choose the person who can pay your bills and manage your assets if you become incapacitated. This person is called your "Financial Agent." Without a Financial Power of Attorney, your spouse or heirs may not have any access to your financial assets if you become disabled.

2. A Financial Power of Attorney can avoid the need for a costly and possibly contentious Conservatorship court proceeding to protect your assets if you become incapacitated.

3. A Financial Power of Attorney is usually a better choice than naming your adult children or friends as joint signors on your bank accounts.

4. It is very important to chose your agent carefully. A Financial Power of Attorney can be misused by an unscrupulous agent.

5. A Medical Power of Attorney allows you to tell your doctor who will make decisions about your health care, including hospital, hospice, and nursing home care, if you are not able to make those decisions yourself. This person is called your "Medical Agent."

6. If you have wishes about organ or tissue donation, you can express those wishes in your Medical Power of Attorney.

7. A Medical Power of Attorney can specify religious or other beliefs that guide your medical decision making.

8. A Medical Power of Attorney can avoid the need for an expensive and time consuming Guardianship court proceeding if you become incapacitated.

9. An Advance Medical Directive allows you to express your values and wishes with regard to life-prolonging medical treatment such as ventilators, artificial nutrition, artificial hydration, and dialysis.

10. A Living Will is another type of Medical Directive. Medical Directives and Living Wills can guide and support your medical agent in deciding what kind of care you would want to receive.



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- Colorado Firearm Legislation in 2013 -

In 2013, the Colorado Legislature enacted two significant bills affecting Colorado firearms owners.

Large-Capacity Ammunition Magazines

Effective July 1, 2013, it became a class two misdemeanor offense to sell, transfer or possess a large-capacity magazine in the state of Colorado.

How is large-capacity magazine defined?

(1) a magazine, drum, box, feed strip or similar device capable of accepting more than fifteen rounds of ammunition, or any such device "designed to be readily converted to accept" more than fifteen rounds of ammunition.

(2) a fixed, tubular shotgun magazine that holds more than twenty-eight inches of shotgun shells, including any extension device that is attached to the magazine.

(3) a non-tubular, detachable magazine, box, drum, feed strip or similar device capable of accepting more than eight shotgun shells when combined with a fixed magazine.

What if I already own a large capacity magazine?

Current owners are "grandfathered." You may continue to possess a large capacity magazine if you already own it on July 1, 2013, and you maintain it in your "continuous possession." You will not be able to loan, sell, gift or otherwise transfer a large capacity magazine to anyone inside the state of Colorado.

Universal Background-Checks for Transfers of Firearms

Effective July 1, 2013, transferring a firearm without going through a required background check will be a class one misdemeanor for both the person transferring the firearm and the person receiving it. Anyone convicted of this offense will be barred from possessing a firearm for two years. A person who transfers a firearm without complying with the background check may be jointly and severally liable for any civil damages caused by the transferee's use of the firearm.

What is a firearm for purposes of the background check?

Any weapon including a starter gun, which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, the frame or receiver of any such weapon, any firearm muffler or firearm silencer, and any destructive device (defined as: a bomb, grenade, rocket with propellant charge of more than
4 oz., missile having explosive or incendiary charge of more than 1/4 oz, mine, any weapon with barrel bore of more than ½ inch, and similar devices). An antique firearm is not included in the definition of a firearm.

Are there any exceptions to the background check requirements?
Yes. A background check is not required for the following transfers:

(1) Antique firearms as defined in 18 USC §921(a)(16)
(2) Curio or relic firearms as defined in 27 CFR 478.11
(3) Gift or loan to an immediate family member - spouse, parent, child, sibling, grandparent, grandchild, niece, nephew, first cousin, aunt, uncle.
(4) Transfers by operation of law
(5) Transfer occurring because of the death of a person for whom the transferor is an executor or administrator of an estate, or trustee of a trust created in a will.
(6) Temporary transfer in the home of the transferee to prevent imminent death or serious bodily injury
(7) Temporary transfer of possession without transferring ownership at the following locations:
(a) shooting range
(b) premises of a corporation organized for conservator purposes or to foster proficiency in firearms;
(c) shooting competition authorized by a state agency or non-profit organization.
(d) while hunting, fishing, target shooting or trapping, if the activities are legal in the location the firearm is possessed, and the transferee holds any required license for the activity.
(8) Transfer made to facilitate repair or maintenance of a firearm so long as all parties who possess the firearm may legally possess a firearm.
(9) Any temporary transfer that occurs in the continuous presence of the owner.
(10) 72 hour temporary transfer - however the owner is jointly and severally liable for any damages caused by any unlawful use by the transferee.
(11) Transfer by member of US armed forces who will be deployed within 30 days to any immediate family member.

How do I arrange for a background check when I want to transfer a firearm?
You must arrange for a licensed gun dealer to conduct the Instacheck. Licensed gun dealers may charge a $10 fee for conducting the Instacheck. The Colorado Bureau of Investigation charges the dealer $10 to conduct the Instacheck.

How does this affect my estate plan?
If you own firearms or large-capacity magazines, you should speak with your estate planning attorney to discuss your wishes with regard to legally transferring these items at your death. If you own any of these items and have a revocable or living trust you should speak with your estate planning attorney, because the new background check law could affect your ability to transfer these items. There may be significant advantage to holding some of these items in a trust, while other items are best held in your individual name. Some transfers will be impossible to accomplish after July 1, 2013.