Chapter 9

Estate Planning: Wills, Trusts, and Your Property

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SYNOPSIS

Estate planning is a process designed to help people ensure their assets are distributed upon their death in accordance with their wishes. In some circumstances, when an individual has a taxable estate, complex planning is used to minimize the amount of estate tax due upon the person's death. Estate planning also allows clients to name people to act on their behalf in financial and medical situations when the client is unable to do so, and allows a client to name a guardian and/or conservator for a minor or disabled child.

Many options are available to you when planning how to pass on your estate. To plan the distribution of your assets, you must decide what to give away, when to give it, who will receive it, and when they will receive it. You also may want to consider some methods that are less expensive and others that will reduce any estate taxes.

This chapter addresses important estate planning issues, such as making a will, distribution of assets when there is no will, the probate process, bank account options, trusts, life insurance, and estate taxes.

Wills, trusts, and documents of ownership that transfer assets can be very complex. This chapter explains the basics of each of these choices, and some of the advantages and disadvantages they present. With this information, you will be able to seek further legal advice about the choices that would benefit you and your family the most. For many people, talking to a lawyer about end-of-life issues can be uncomfortable; however, most people who complete the process are rewarded with a sense of relief and certainty that their wishes will be carried out.

9-1. Overview of Lifetime and Post-Mortem Distributions of Your Assets

What if You Do Not Have a Will?

If you do not have a plan in place to give away your assets at your death, such as a will or a funded trust, your property will be disposed of through a process called intestacy or intestate succession. This, like probate, is a court proceeding wherein your estate is "administered." Colorado law dictates who will receive your property if you die without a will. For example, if you are married when you die and have no surviving issue (children or their descendants) or parents, your spouse will receive all of your estate.

If you are not married at the time of your death, any of your children (whether biological or adopted) will receive all of your property in equal shares. If you have no spouse or children, your parents will receive your property. If your parents have died, your brothers and sisters will receive your property. If you have no living family or relatives, then by default the State of Colorado will get your property.

What if You Do Have a Will?

If you have a will, a court proceeding is necessary to administer your estate. This process is called probate. Probate also happens if you die without a will. Probate is the legal process by which your property is collected and distributed according to your will or intestacy, as referenced above. During probate, your property is managed by an administrator called a "personal representative." Generally, a personal representative manages everything without extensive court involvement. You should appoint a personal representative in your will. If you do not have a will or if your will fails to appoint a personal representative, the court will appoint one for you. Similarly, if you have a minor or disabled adult child and do not have a will or your will fails to appoint a guardian, the court will appoint a guardian for your child. If the court appoints a personal representative or a guardian, the person named may not be the person you would have chosen; therefore, it is important to review your will to ensure you have a personal representative appointed.

If, at the time of your death, you own real property or if your estate includes personal property valued at more than $80,000 (for decedents dying in 2023), and if these assets do not pass to another person through a survivorship interest, then your will must be probated (or an intestate court proceeding must take place) to pass your property on to your heirs (see the discussion on "Survivorship Interests" in this chapter). The probate process usually takes about six to 12 months and is much simpler and less expensive in Colorado than in many other states. However, probate may take longer than 12 months, depending on the size and complexity of the estate.

Small Estate Affidavit

If your estate does not include any real estate interests, or more than $82,000 (for decedents dying in 2024) of property that does not pass through survivorship, your assets may be transferred through a small estate affidavit without any court involvement.

Transfer of Assets Other than Through Probate

The following is a list of legal techniques used to pass property to your intended beneficiaries. This section is meant to describe the different techniques and does not necessarily advocate for one over another.

Trusts

Property held in trust will pass under the terms of the trust rather than through probate. There are many different types of trusts. Trusts are discussed in greater detail in section 15-3, “Types of Estate Planning Techniques,” in this chapter.

Survivorship Interests

Holding property with another person under a survivorship interest, such as joint tenancy, is sometimes used as an inexpensive alternative to a will or trust. A survivorship interest may be applied to both real and personal property. However, there may be pitfalls to this transfer method both during life and at death, including problems with creditors, taxes, and the lack of control. Generally, attempting to use joint ownership to avoid having an estate plan is faulty logic, as there is substantial risk involved with this type of planning. Also, a will is still necessary in the event both joint owners die simultaneously. (See section 9-2 of this chapter, “Ownership of Property,” for more information on survivorship interests and alternatives to joint tenancy, such as life estates.)

Payable On Death (POD) and Trustee Accounts

POD and trustee accounts are other alternatives to wills and intestate succession for bank accounts. Such an account is treated like a normal bank account during the lifetime of the account owner, sometimes called the trustee. On the account owner’s death, any funds in the account will be automatically distributed to recipients, or beneficiaries, designated by the account owner. The beneficiaries have no control over the account during the owner’s lifetime. Contact your bank if you wish to set up an account in this manner. Before doing so, however, it is important to consider whether an outright distribution to the intended beneficiary is appropriate. In some cases, an outright distribution is inappropriate due to a creditor issue or special need of the beneficiary.

Securities Registered to Transfer On Death (TOD)

This device for transferring stocks and bonds at death to named beneficiaries works like a POD bank account. It has similar advantages and disadvantages.

Beneficiary Deed

Title to an interest in real property may be transferred on the death of the owner by recording, prior to the owner’s death, a beneficiary deed designating a beneficiary for the property. The transfer is effective only on the death of the owner, and the owner can revoke or cancel a beneficiary deed by recording a proper revocation prior to his or her death. The advantage of using such an instrument is that the designated transferee, or the person you wish to transfer the property to, can be changed during your lifetime, and creditors of the proposed transferee cannot attach the property during your lifetime. There can be disadvantages to beneficiary deeds in the context of Medicaid planning. It is important to talk to an attorney prior to using a beneficiary deed.

Life Insurance

Life insurance proceeds pass to whomever you have named to receive those benefits; that person is the beneficiary. The insurance company will have a record of the beneficiary you chose when you purchased your policy. You also should keep a record of the current beneficiaries of each life insurance policy for your own files.

You have the option to change the beneficiary at any time. You must tell your insurance company in writing if you wish to do this. Most insurance companies provide a form to change the beneficiary. It is also wise to name another person as an alternate, or contingent, beneficiary in case your first beneficiary dies before you do. A beneficiary may be the personal representative of your estate, though this can have unfavorable consequences if your estate has a substantial number of creditors; or the trustee of a living trust, which is sometimes referred to as a revocable or *inter vivos* trust. All beneficiary designations should be coordinated with your overall estate plan since the insurance company will pay the policy proceeds to the named beneficiary, even if your will says someone else should receive the money.

Retirement Accounts

There are numerous types of retirement accounts. There are IRAs, 401(k) and 403(b) accounts, and others. With these types of accounts, the proceeds pass upon your death in accordance with the beneficiary designation you create with the holder of the account. The beneficiary designation rules are similar to those with life insurance as discussed above. It is important to note that some beneficiary designations could have unfortunate tax consequences. It is important to consult with an attorney if you intend to name a trust or other entity as a beneficiary.

Estate Taxes

At the end of 2017, Congress passed sweeping tax reform called the Tax Cuts and Jobs Act. The president signed the act on December 22, 2017. The unified gift and estate tax exemption amount was changed by this legislation, which greatly increased the amount an individual can pass to his or her heirs tax-free. The adjusted amount for 2024 is $13,610,000 for individuals and $27,220,000 for a couple. This amount will continue to be adjusted annually for inflation, and, if Congress does not act prior to the end of 2025, the exemption amount will sunset back to the 2017 amount, adjusted for inflation. Those individuals with moderate wealth should review their estate plan to determine how the Tax Cuts and Jobs Act affects their planning.

Additionally, Congress decided to continue the availability of portability, which allows a surviving spouse to use the exemption of the first spouse to die. While portability sounds like a panacea, it is not without confusion and potential problems. Portability is still relatively new and can be a potential minefield for the unwary. It is important for a surviving spouse to seek legal counsel within nine months of his or her spouse’s death to discuss how portability may be applicable to his or her situation.

Gifts

You can make a gift to be effective during your lifetime, called an *inter vivos* gift, and one that is effective upon death, called a testamentary gift. A lifetime gift is a voluntary transfer of personal or real property. The person giving the property, called the donor, receives nothing in return. The donor must intend to make the gift. For a lifetime gift to be completed under the law, the gift must be delivered and the person receiving the gift must accept the gift. You cannot force a person to accept a gift he or she does not want.

Once a lifetime gift is given, it cannot be taken back unless the person receiving the gift agrees and actually returns it. To make a gift that is to become effective upon death, you may use a will, trust, or other special mechanism, such as a beneficiary deed or payable on death account.

A lifetime gift must be delivered to be valid. For example, suppose you want to give a special ring to your niece. If you put a note on it saying, "this ring is for my niece when I die," the gift will not be valid because it was not delivered to your niece during your lifetime.

If you want to give something that is very large, such as a piano, you may do so by symbolic delivery. Symbolic delivery occurs when you give something that represents what you actually want to give, such as a written description of the item or a model of it. To make a lifetime gift when you are unable to physically transfer the possession of the gifted item, you need to document the gift in writing.

Sometimes a person may be too sick to give the actual gift item. In this situation, a constructive delivery means the person receiving the gift is given the means of receiving the gift. For example, you may give that person the keys to a safety deposit box or to a car.

If there is a dispute, the court will decide whether the donor intended to make a gift, whether there was delivery, and whether the gift was accepted. Again, putting your intentions in writing is always a good idea.

When giving a gift of personal property, real property, or money, you may need to file a gift tax return. In 2024, you can give $18,000 to any one person per year without paying a gift tax. If you give more than $18,000 to one person in a year, you may have to report the gift on a gift tax return. Whether you are required to file a gift tax return depends upon your other assets, prior gifts, etc. Most likely you will not have to pay tax on the gift; however, you should consult your attorney or your accountant if you make a large gift to an individual or group of individuals in any single year. If you have questions, speak with an attorney or accountant prior to making the gift.

9-2. Ownership of Property

In Colorado, you may hold title to real property in several different ways. Real property refers to land, as well as to whatever is erected or growing upon or affixed to that land. Ownership of what lies underground, such as mineral rights, water, oil, mining rights, etc., may or may not be a part of the real property interest you own. You can actually separate the rights to the property above ground from the rights of the property interest below ground. You can even restrict the use of the above-ground property rights through easements.

The way property is titled is important because it affects what happens to the property during your lifetime and upon your death. The principal types of ownership are:

1) Sole ownership;
2) Tenancy in common;
3) Joint tenancy (with right of survivorship); and
4) Life estate.

You should know what type of ownership you have for all of your property. This will tell you what your rights are concerning property that you fully or partially own.

Sole Ownership

If you own property solely in your name, you own all of the rights to that property. You can use it, rent it, sell it, or give it away. If you want to transfer property that is solely in your name to a person or entity on your death, then you may do so by a will, trust, or beneficiary deed. If you do not designate whom you want to receive your property (through a will, trust, or beneficiary deed), the property will pass to your legal heirs at your death by the laws of intestacy.

Tenancy in Common

If you own property with another person, then by law you own that property as a tenant in common unless the ownership document states otherwise. A tenant in common is a person who owns a percentage of the entire property. For example, if two parties purchase property, and each has contributed equally to the purchase, then the parties can agree that each owns one-half, or 50 percent, of the property. You may sell or gift this one-half interest to others. You also may transfer this interest upon your death to others through a will or trust.

If you are a tenant in common, you may appoint a specific person or persons in your will to receive your interest or it will become part of the residuary or balance of the estate. If your interest does not pass under the terms of your will, then your interest will pass to your heirs by the laws of intestacy. The other tenants in common do not become the owners of your interest on your death. Upon your death, the person(s) appointed receives your interest in the property from your estate. That person(s) will then hold your interest in the property with the other tenants in common.

Tenants in common who cannot agree on how to sell or manage the property usually have to go to court to settle their differences.

Joint Tenancy (with Right of Survivorship) for Real and Personal Property

In Colorado, persons may hold real and personal property with a right of survivorship. Usually, joint tenancy is used to hold real property, but sometimes people use it for personal property such as in bank and investment accounts. Creating a right of survivorship is a way of managing property. A right of survivorship ensures that when the owner dies, the remaining co-owner(s) will automatically receive the deceased owner's share of the property. For example, a husband and wife often hold property together in joint tenancy with this right of survivorship. Upon the death of either the husband or wife, the survivor will be the exclusive owner of the property.

You also may hold title with someone other than your spouse. You and the other owner will hold property with the right of survivorship. Friends, relatives, and business partners use this form of ownership when they want to own property jointly, but ensure the survivor will receive the interest in the property to the exclusion of the deceased owner's relatives or heirs. This allows the property to pass to the survivor(s) on death.

The party who dies first cannot transfer by will the property that is held subject to a right of survivorship. Holding title in joint tenancy will supersede the provisions in the will, which may try to dispose of the property interest. If you own property in this manner and you want to pass that property to a particular person (other than the person with whom you hold the property in joint tenancy) or entity, you will need to sever the joint tenancy.

Creating a right of survivorship requires special language when used in a deed, trust, or will. Creating a right of survivorship in a deed has many possible legal consequences. Some of the legal consequences are the following:

- ► If you sign a deed transferring real property to yourself and someone other than your spouse, and you and this other person have the right of survivorship, then you may have made a gift. This may require you to file a federal gift tax return.
- ► Once you sign the deed, you cannot take the property back. You will have trouble selling or mortgaging the property without the agreement and signature of the other person you have named on the deed.
- ► The property held with a right of survivorship passes to the survivor. Even if you name someone else to receive property in your will or trust, the titling of the property will control who receives it.

There are also some risks in creating a right of survivorship:

- ► If you name someone as a joint tenant with the right of survivorship on a bank account, then that person can take part or all of the money out of the account without your permission.
- ► A right of survivorship may cause the property to go to someone other than your intended heirs.
- ► Sometimes a creditor of the other person you named on your property with a right of survivorship can take all or part of that property to pay debts.
- ► There may be adverse gift and/or estate tax consequences to titling property in joint tenancy.

It is also important to point out that titling property in joint tenancy as an alternative to an estate plan is generally not a good idea. An estate plan encompasses more than simply passing property; however, joint tenancy can be used as a technique within the estate plan.

Life Estate for Real Property

If you own a life estate interest in real property, then you are one of the owners of the property, together with the person or persons who own the interest after you die. This other person is referred to as the remainderman. Owning a life estate interest means you can live in or possess the property until you die, although you have the responsibility to take care of the property, pay the taxes, etc. When you die, the property passes to the remainderman. You may create a life estate by transferring the property to a third party and retaining the right to live on the property for your lifetime and receive any income generated by that property during your lifetime.

For example, if you want to give your property to a friend or to your child, but you want to live on that property or receive income from that property until your death, then you would create a life estate. You would do so by deeding the property to your friend or your child, the remainderman, to have it upon your death, and reserving a life estate to yourself in the deed.

You also may create a life estate by a will or trust. For example, suppose you want your friend, Harry, to own the property. When Harry dies, you want the property to pass to your brother, Bill. You can let Harry keep the property until his death by creating a life estate for Harry in your will or trust. On Harry's death, you can have the property go to Bill, the remainderman.

There are other ways that a person can hold title other than those described. If you have any questions about the nature and extent of property ownership, you should talk to a lawyer.

9-3. Types of Estate Planning Techniques

Wills

A will is a statement that describes how your assets will be given away after you die. A will lets you give anything you own, including real estate, cars, business holdings, money, and personal property, to anyone you want after your estate debts are paid. A will also may state whom you want as the guardian of a minor or disabled adult child. In a will, you can appoint a personal representative (executor or administrator) to complete your affairs after your death. Wills provide substantial flexibility for leaving your assets to whomever you choose.

Colorado recognizes holographic wills. A holographic will is a will written in the decedent's own handwriting and signed by the decedent. While holographic wills are recognized in Colorado, they are not preferred because of authenticity issues.

If you wish to make a will, other than a holographic will, you must meet these minimum legal requirements:

- You must be at least 18 years old.
- You must be of sound mind. This means you must understand what property you have to give and to whom you are giving this property after your death.
- You must be making a will because you want to make a will and not because someone is forcing you to do it.
- The will must be in writing (typed) and dated.
- You must sign the will. If another person is signing for you because you cannot, he or she must sign the will at your request and in your presence.
- Two disinterested witnesses must sign the will in your presence, and certify that you signed the will voluntarily and were of sound mind, or your signature must be acknowledged by a notary public.

You may prepare your own will; however, it is not recommended. There are certain restrictions to giving away your property. For example, your will cannot give away property you own in joint tenancy with right of survivorship if the other joint owner survives you. (See section 9-2 of this chapter, "Ownership of Property," for more information on the transfer of real property.) In addition, your will cannot give away property that has a named beneficiary, such as the proceeds of life insurance policies. To change the beneficiary designation on property with a named beneficiary, you must fill out a change of beneficiary form with the company holding the property. Simply giving the property away through your will is not sufficient.

Also, while Colorado law generally gives you broad freedom to give away your estate as you desire, it is important to keep in mind that a surviving spouse has a right to a percentage of the deceased spouse's estate, if the surviving spouse is disinherited by his or her husband or wife. This right is referred to as an elective share. Depending on the number of years a husband and wife were married, the surviving spouse is entitled to a specific percentage of the deceased spouse's estate. If this is something you may be concerned about, it is best to see an attorney to discuss your options. Because some of the restrictions on giving away property can be confusing, it is a good idea to review your will periodically to make sure it reflects your wishes, especially after any financial or other changes in your life.

Trusts

A trust is an arrangement where real or personal property is held by one person, called the trustee, for the care or benefit of another person, the beneficiary. There are basically two types of trusts: those created at your death, referred to as testamentary trusts, and those you create during your lifetime, usually referred to as living trusts, revocable trusts, or *inter vivos* trusts. A testamentary trust is set up in your will, and takes effect only after your death and after your estate has been administered. Testamentary trusts, like living trusts, can be established to save estate taxes and to manage assets for minor or disabled adult children. Because testamentary trusts become effective after death, they are useful in situations where asset management is not needed during life.

A living, or *inter vivos*, trust may be revocable or irrevocable, and it may be funded or unfunded. A funded living trust is an alternative to a will and to probate. In a funded living trust, a person, the settlor, puts property and money into his or her trust during his or her lifetime for his or her benefit and possibly for the benefit of other family members. An unfunded living trust typically receives assets through a simple "pour-over will" following the settlor 's death.

Most people who are able to manage their own financial affairs usually name themselves as trustee of living trusts they establish. The trustee's duties are to invest the trust assets and make the assets and income available to the settlor/beneficiary during his or her life. Such a trust is almost always revocable, meaning that the settlor can revoke or amend the trust as long as he or she is able.

In situations where the settlor is also the trustee and he or she becomes disabled, alternate trustees are usually named in the trust to assume trustee responsibilities, the most important of which is providing for the financial needs of the disabled settlor/beneficiary. A settlor will usually name a spouse, adult child, relative, friend, or bank as alternate trustees. When the settlor/beneficiary dies, the trust often terminates, and the successor trustee will distribute the trust property to the beneficiaries, similar to the distributions in a will. In many situations, however, living trusts will continue for the benefit of the settlor's spouse and children and terminate at a later date.

Benefits of Using a Trust

A living trust has several advantages if it is set up properly and fully funded, meaning all the settlor 's assets are placed in trust. These are listed below.

First, a fully funded trust can reduce or eliminate the need for probate upon the death of the settlor. While this is a significant reason in many states, Colorado's probate process is relatively simple and inexpensive.

Second, a Colorado resident who owns real property in another state can put that real estate into a living trust and thereby reduce or eliminate the need for probate in the other state. This is an especially important reason when the probate system in the other state is expensive and cumbersome.

Third, a living trust may avoid the need for a conservatorship for the settlor if he or she becomes legally disabled and the settlor has funded his or her trust. However, a living trust cannot avoid a guardianship proceeding, because the trustee of a living trust cannot make medical or care decisions for the settlor unless the trustee is the named agent for the settlor under a separate medical power of attorney. (See Chapter 14, "Medical Advance Directives," and Chapter 15, "Guardianship of Adults," for more information on guardianships and health care powers of attorney.)

Fourth, the terms of a living trust are generally private, unlike a will where the document is delivered to the court as part of the probate proceeding. For instance, many individuals may not want the "world" to know the terms of their distributions to their heirs, as would be the case with the use of a will deposited with a court.

Fifth, trusts are a good tool for tax planning. Some trusts are designed specifically to minimize federal estate tax. The terms of the trust dictate the distribution of the trust assets to utilize the currently effective estate tax exemption, or use the marital deduction to avoid any tax at the first spouse's death. There are also trusts that are designed to be funded with specific assets, like a residence or life insurance, that can create favorable tax consequences for the settlor and the beneficiaries.

Finally, trusts can be used to accomplish asset protection for individuals and their beneficiaries. Third-party asset protection trusts can be created for beneficiaries. This type of trust protects an inheritance from a beneficiary's creditors, a beneficiary's divorce, or a spendthrift beneficiary. First-party asset protection trusts can provide some creditor protection for individuals, but these trusts must be set up with a great deal of care, as there can be unfavorable consequences if they are set up incorrectly.

If the trust is not drafted correctly, significant harmful tax liabilities may occur. Generally, you should not try to create your own trust or purchase a preprinted living trust. Preparing and managing the living trust can be more expensive in Colorado than a will and probate. Initially, living trusts and wills with testamentary trusts are usually more expensive to prepare and manage than wills without trusts; however, the expense up front may save your estate future expenses.

Pet trusts have become increasingly popular as part of an estate plan. Often, people are concerned about the well-being and care of their pets after they die. One of the most famous pet trusts of recent history was Leona Helmsley's trust for her dog, Trouble. In her will, she established a $12 million trust to benefit Trouble.

A pet trust can be established in either a will or a trust, and can benefit one pet or many pets. The idea behind a pet trust is to appoint a person or organization to care for your pet and establish a trust fund to finance the care of your pet. The trust will continue after your death until the pets pass away and the remaining funds, if any, will be distributed to a contingent beneficiary named in the trust. If you would like to establish a trust for a pet, you will need to work with an attorney to coordinate the pet trust with your estate plan.

Changing Your Will or Living Trust

A will or living trust that meets all of the requirements described earlier is valid until you revoke it. You may revoke either a will or a living trust at any time. A will or living trust that is valid in another state is also valid in Colorado, so simply moving to another state does not revoke a will or trust.

If you change your mind about a particular distribution of your property, or if circumstances force you to otherwise change your will or living trust, you can create a codicil to your will (a document amending your will) or a trust amendment to change your living trust. The codicil or trust amendment must be signed and witnessed with the same formalities as your original will or living trust. While a codicil or trust amendment provides you with a convenient method for making minor changes to your will or living trust, significant modifications may require redrafting the original document. You should never write on your will or living trust after it is executed. Such writing may not be legally effective and may invalidate the entire document. Always consult an attorney about how to change your will or living trust.

Power of Attorney

A power of attorney gives another person the legal authority to manage some or all of your financial affairs. A power of attorney is created when a person, called the principal, gives someone else, called the attorney in fact or agent, written permission to act on the principal's behalf. The attorney in fact does not have to be a lawyer and may be a spouse, relative, or friend.

A power of attorney can give the attorney in fact authority to manage most of the business that may otherwise require the principal's presence or signature. For example, if you are physically unable to go to the bank, you could give someone the power to deposit and withdraw money from your account. The principal also could create a limited power of attorney. This grants permission to the agent to perform only certain acts. In other situations, the principal could create a general power of attorney. This grants permission to the agent to handle all financial affairs.

A power of attorney does not take away the principal's rights to make his or her own decisions about financial matters. The principal can end the power of attorney at any time by simply telling the agent in writing. The principal should send copies of the termination notice to anyone with whom the agent may need to conduct business, such as the bank. A power of attorney ends automatically when the principal dies.

The principal must be mentally competent to grant a power of attorney. The power of attorney must be in writing and signed. It also should be notarized, but it does not need to be witnessed. If a power of attorney is used to transfer real property, it must be recorded in the Clerk and Recorder 's Office in the county where the property is located.

In Colorado, the principal may state in the document that the power of attorney is durable. This means that it continues to be valid even if the principal becomes incapacitated. If no such statement is contained in the document, then the power of attorney stops being valid when the principal becomes incapacitated. If the principal has stated in the document when the power is to end, then the power will be effective only until the ending date. However, the principal may revoke the power of attorney at any time as long as he or she is not incapacitated. You should only give a power of attorney to someone you trust completely. (See Chapter 14, "Medical Advance Directives," for more information on the medical durable power of attorney.)

Transferring Ownership Interests of Real Property During Your Lifetime

Deeds

If you want to transfer your interest in real property, you must do so in writing. The document used to transfer your interest is called a deed. There are four types of deeds in Colorado:

1) General warranty deeds;
2) Special warranty deeds;
3) Bargain and sale deeds; and
4) Quit claim deeds.

A general warranty deed tells the person to whom the property is being sold or transferred that you are warranting the title and making other warranties about the property. A warranty means a representation as to the title of the property. This means you will guarantee the title except for any conditions specifically listed in the deed.

A special warranty deed is similar to a general warranty deed, but does not give all the warranties that a general warranty deed gives.

A bargain and sale deed transfers whatever title or interest you may have at the time of the transfer or later acquire. However, it does not give any warranty that your title is good.

A quit claim deed, on the other hand, only transfers whatever title you may have at the time of the transfer.

You must give the deed to the person receiving the property. A deed will not be effective if you fill it out, sign it, and keep it in the desk drawer or other place for safekeeping. If you want to give your real property to someone, you must complete the deed properly. You must sign the deed in front of a notary public. You must give the deed to the person you want to receive the property or you may record the deed in the Clerk and Recorder's Office in the county where the property is located. Once you give your property to someone else, it becomes theirs, and you cannot take it back.

There are a few practical matters you should know about completing a deed:

- The property legally must be described by lot and block numbers, if it is located in a subdivision.
- It must be described by metes and bounds or a sectional description if not in a subdivision. A tax lot number or street address is not enough.
- The deed must state what was given or paid, called consideration, for the property. If the property is a gift, the deed can say that the consideration is love and affection.
- Never sign a deed someone else has prepared for you, unless you know and understand the results.
- Once a deed has been received or delivered, it must be recorded with the county clerk and recorder where the property is located.

All deeds, mortgages, contracts, and other writings concerning ownership interests in real property should be recorded. This protects you and the person receiving the property. If you do not record a deed when you are purchasing property, the seller could sell the property again to someone else and you would lose the property. An unrecorded deed also could create problems with transferring the property in the future, because upon selling the property one requirement is that you are the rightful owner. If you have not recorded the deed, then you are not the owner of record.

Funeral Issues

Your specific wishes for your own funeral arrangements are best done in writing. To avoid any problems, you should communicate your wishes to your family or loved ones in advance. If you leave the original of this writing in your safety deposit box, then you also should have a copy outside of the box and known to your family or loved ones. This is because the safety deposit box is very often not opened until after the funeral has been held.

Colorado law provides that you may execute a Declaration Instrument (Declaration) that gives your specific instructions for disposition of your last remains and your funeral arrangements. The Declaration needs to be in writing, dated, and signed by you. It can be inserted in your last will and testament, or it can simply be any separate writing making your Declaration as to your wishes. The Declaration also can be made within a prepaid funeral, burial, or cremation contract with the mortuary or crematorium. In the Declaration, you may specifically direct the arrangements for disposition of your remains and any ceremonial arrangements to be performed after your death. Or, you can direct that the person you name in the Declaration has the authority to make all those arrangements.

If you wish to provide for cremation, be sure your wishes are communicated to all of your family, and that your wishes are properly documented in your will or declaration. If not, and if any family member objects, the funeral home usually will not allow cremation.

As a pre-planning option, you may wish to make arrangements directly with a funeral home. However, it is very important to let a loved one know you have purchased a funeral and burial plan from a specific funeral home. This allows the loved one to carry out your wishes.

Generally, you may purchase a revocable (can be changed) or irrevocable (cannot be changed) funeral and burial plan. An advantage to an irrevocable funeral and burial plan is that it is an exempt asset if you are attempting to qualify for Medicaid.

If you decide to exercise a pre-planning option, be sure to read all of the documents carefully to confirm you are getting exactly what you paid for. It is very important to check for competitive rates. It also is very important to be sure there will not be any additional charges to your estate. The main reason for obtaining a prepaid funeral and burial plan is to pay all of the costs in advance.

If you are receiving state public assistance, such as financial aid payments, or medical assistance, such as Medicaid, you may be eligible to receive a limited contribution of state funds to assist with the expenses of the funeral, burial, or cremation.

To apply for assistance with funeral, burial, or cremation expenses, and to determine whether you are eligible for such assistance after your death, your family should contact the county Department of Social Services that was handling your case during your lifetime.

9-4. Additional Information

General Advice

You should keep an up-to-date, itemized list of all your property and debts. This includes insurance policies, securities, bank accounts, real estate, jewelry and artwork, business interests, pension plans, IRAs, and other retirement benefits. You should keep this list with your other important documents, like your will, trust documents, and powers of attorney. You should record where you maintain a safe deposit box and where you keep your important documents. You also should list your current financial advisors, your attorney, and your accountant on a piece of paper and keep it with your list of property. Give a copy of this list to your personal representative, successor, trustee, relative, or friend you trust, and to your attorney or financial advisors. Giving people who will be involved with your estate administration a list of where your documents are kept will help them gather the appropriate information to uphold your wishes.

A letter regarding your funeral wishes and any prepaid arrangements should be given to whoever you think will be involved with your funeral, as this will ensure that your family will know your wishes.

Guardianship and Conservatorship Proceedings

Under certain circumstances, a guardian or conservator may need to be appointed for an individual (see Chapter 15, "Guardianship of Adults," and Chapter 16, "Conservatorship of Adults," and for additional information).

For more information and assistance see Appendix A: Resources, Chapter 9.