

Estate Planning Considerations: How do you want to give your final gifts?

During your lifetime, you give gifts for various occasions: birthdays, Christmas, anniversaries, Valentine's Day, etc. For the important people in your life, you spend much time and thought in choosing the right gift and wrapping. The same attention should be given to preparing your estate plan. The gifts you give through your estate plan will not only be the last gifts you give, but may also be the largest gifts you give.

Just like gift wrap, the manner by which you give your final gifts is important. Of course some people are satisfied receiving a gift in a shopping bag. Similarly, it is possible that, even if you do not have a will or make preparations in your estate plan, your loved ones may receive their gifts anyway, provided your intentions coincide with the state's intestate succession laws. However, if you take the time now to prepare your will, your loved ones will know that you chose the gifts for them. In addition, the organization and preparation involved in preparing your will provides the wrapping for a smoother transition.

Frequently Asked Questions about Wills and Estate Planning

Q: What is estate planning? I don't have an estate, so why do I need to plan?

A: Estate planning is the process of: (1) analyzing your assets—what are your assets and how do you own your assets; (2) deciding how you want your assets to be owned and managed during your lifetime; and (3) deciding how you want to pass on your assets upon your death. Many people do not think they have an estate because they have not taken the time to analyze and organize exactly what they have. The estate planning process can be as important for your lifetime goals as it is for planning how you want to distribute your assets upon your death.

Q: Do I have to have a will? What does a will do? What happens if I don't make a will?

A. A will is not a prerequisite to death—everyone dies, whether they make a will or not. A will is a tool which gives you the opportunity to choose how you want your assets to be distributed and who should be involved in the process. If you choose not to make a will, the law dictates how your assets will be distributed. Even if you choose to leave your estate to the same people as the intestate succession laws would dictate, a will simplifies the administration of your estate. Finally, by creating a will, your loved ones *know* that you have chosen them for the gifts—and that they were not just lucky the intestate succession laws favored them.

Q: Can I change my will if I change my mind?

A: Yes. A will is a personal and private document. It does not come into effect until *after* your death and can be changed, in whole or in part, at any time (as long as you are competent and are not forced to change the will.) If you choose to change your will, remember that you must comply with certain formalities in order for the changes to be effective. You should never attempt to make changes on the original will itself. If you write on or cross-out portions of your will, you may invalidate part or all of your will.

Colorado law requires that a decedent's will be filed with the district court within 10 days of death, even if there will be no estate administration.



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Q: All my property is held jointly with my spouse. Do I still need a will?

A: Even when significantly all of your assets are held in joint tenancy with your spouse, it is important for both spouses to have a will. If both spouses die at the same time without a will or your spouse dies and then you die before making a will, the property will be governed by the intestate succession laws. A will allows you to choose who should receive the jointly held property in these situations.

Q: How do I avoid probate? (I want to avoid probate, right? What is probate?)

A: Probate is the process of determining if a valid will exists, choosing the persons who will collect and administer the property, and then distributing a person's property after death. Probate is not as complicated as many people think. There is a formal probate and informal probate. Formal probate (court supervised administration) occurs when there is a dispute among parties who have an interest in the estate. In such a situation, the court is involved to settle the dispute and attorneys are often engaged by the disputing parties. Informal probate is not supervised by the court and attorneys may or may not be involved. In Colorado, over 90% of probated estates are not court supervised.

Q: What happens after I die? What does the personal representative do?

A: After you die, your personal representative (executor) manages your property and carries out your wishes in your will. Your personal representative is named in your will. If you do not have a will, a court will appoint a personal representative to handle your estate. Generally, a personal representative handles your estate without court involvement.

Q: How long does probate take?

A: Probate can take as little as 6 months (for a simple estate), and as long as several years. In Colorado, most estates are administered in 7 to 12 months.

Q: Why should I hire an attorney draft my will? (Why can't I just download one, buy one from the store, or write it myself?)

A: The estate planning process and drafting of a will involves many complex factors. An attorney can explain the process, raise issues you may not have thought of, discuss with you how to address matters outside of the scope of a will that should nevertheless be discussed, and help you clearly explain your wishes. Standardized forms purchased on the internet or off the shelf may not clearly explain your wishes, or may be lacking in legal requirements. You may also choose to write your own will since generally, Colorado recognizes wills that are handwritten and signed by the testator (holographic wills). However, an ambiguous and/or defective will may end up causing the administration of the will to be delayed, and trigger litigation and additional expenses. You may save a dollar writing your will, but your loved ones may spend thousands—and still not know what you wanted.

There are many other aspects to estate planning that are beyond the scope of this summary. If you would like assistance with any estate planning matters, please contact us at 970.612.1208 or info@patterson-tabert.com.