

Colorado Legal Services



Legal help for low-income Coloradans seeking assistance with civil legal needs

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Basic Estate Planning

The process of Basic Estate Planning can generally be described as

- Awareness,
- Action, and
- Follow up.

With good planning and in the event of death or incapacity, goals have been established, decision makers are in place, and documents have been signed.

What do you need to do?

Most Estate Planners recommend 4 or 5 basic documents for everyone:

1. **Medical Power of Attorney:** This document appoints someone to make personal care, medical care and treatment decisions if a person is unable to make those decisions for themselves;
2. **Advance Medical Directive ("Living Will"):** Allows an individual to record their own end of life choices should they be unable to make decisions about their own medical care and if they have been diagnosed as being in a persistent vegetative state or with a terminal illness
3. **General Durable Power of Attorney:** Also referred to as a *Financial Power of Attorney*, this allows you to appoint another to manage your financial affairs should you be unable to do so;
4. **Last Will and Testament or a Trust:** Controls who will receive your financial assets and "things" at death;
5. **Disposition of Last Remains:** Allows you to express your preference about what happens to your body after death and who you designate to handle those arrangements.

CLS highly recommends and suggests that it is the best practice to have personal contact with an estate planner or attorney when preparing the documents recommended above. However, due to social distancing, geographic remoteness, or other valid reasons, personal contact with an attorney or estate planner may not be possible or practical. In that case Colorado Statutes provide some appropriate, generic forms that may be used.

Please keep copies of any documents you choose to complete and bring them along when you

make an appointment to see an attorney after the stay-at-home order has been lifted.

All the documents discussed in more detail below are part of an estate plan. CLS strongly recommends consulting with an attorney to draft an estate plan. This will ensure that those closest to you will have clear and detailed instructions. This will make it easier for your family to manage your estate correctly. Some families take steps to avoid probate. However, the probate process in Colorado can be relatively straightforward and is designed to implement a deceased person's last wishes. If you try to go around the probate system without consulting with an attorney, you may create unforeseen problems.

Here are some things to be sure to avoid:

1. Avoid simply transferring title of your home or car to the person you wish to inherit this property. This creates the opportunity for financial abuse. You may also make yourself ineligible for some public benefits for up to five years by making large gifts.
2. Be careful about forms that you find online. Some forms are not drafted well. Some forms may be based on another state's laws. Probate law can be very different in other states which may make other state forms work poorly in Colorado courts.
3. Carefully consider if a power of attorney is appropriate for you. Be careful who you give this power to. If you use this tool, you can limit the powers to what you need and remember you can revoke it if needed as detailed below.
4. Always be careful of scams. Generally, paid caregivers should not be asking to be listed in an estate plan. Do not make gifts to people you have not met in person.

1. Power of Attorney

First is the Statutory Form Power of Attorney found in Colorado Revised Statutes 15-14-741. Note that the document must be signed by a Notary. The Optional Grant of Specific Authority portion of the form requires special care and knowledge for proper use and application. The legislature recognized that powers conferred by this section are the most likely to be abused and therefore required that the principal (the person making the document) specifically authorize the specific powers. The first page contains instruction to the person signing, the last two pages are for the agent (the person appointed as Financial Power of Attorney).

You must be competent to sign a Power of Attorney. If someone needs help managing their finances and they are not competent, a guardianship or conservatorship may be more appropriate. Because this decision is based on the specific facts surrounding each person who needs help, please consult with an attorney to get advice about how to go forward.

Please be very careful before you give someone power of attorney. Whoever you give power of attorney will have a fiduciary duty to act in your best interest. However, there is little to no oversight of these agents. If you find that your agent has abused his or her authority, you can revoke, or cancel, a power of attorney at any time. You can revoke a power of attorney for no cause at any time as long as you are competent to do so. If someone has abused their authority under a power of attorney, you should consult with an attorney. You can also notify the police or adult protective services.

From the statute:

STATE OF COLORADO STATUTORY FORM

POWER OF ATTORNEY

(effective January 1, 2010)

IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act, part 7 of article 14 of title 15, Colorado Revised Statutes.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the special instructions.

This form provides for designation of one agent. If you wish to name more than one agent you may name a co-agent in the special instructions. Co-agents are not required to act together unless you include that requirement in the special instructions.

If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the special instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

IMPORTANT INFORMATION FOR AGENT

Agent's duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that

continue until you resign or the power of attorney is terminated or revoked. You must:

1. Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest;
2. Act in good faith;
3. Do nothing beyond the authority granted in this power of attorney; and
4. Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

(Principal's name) by (Your signature) as agent

Unless the special instructions in this power of attorney state otherwise, you must also:

1. Act loyally for the principal's benefit;
2. Avoid conflicts that would impair your ability to act in the principal's best interest;
3. Act with care, competence, and diligence;
4. Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;
5. Cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and
6. Attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

Termination of agent's authority

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

1. Death of the principal;
2. The principal's revocation of the power of attorney or your authority;
3. The occurrence of a termination event stated in the power of attorney;
4. The purpose of the power of attorney is fully accomplished; or
5. If you are married to the principal, a legal action is filed with a court to end your marriage, or for your legal separation, unless the special instructions in this power of attorney state that such an action will not terminate your authority.

Liability of agent

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act, part 7 of article 14 of title 15, Colorado Revised Statutes. If you violate the Uniform Power of Attorney Act, part 7 of article 14 of title 15, Colorado Revised Statutes, or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

2. Will

Colorado Statutes (15-11-101 et. seq.) set forth who gets a person's estate if he or she dies without a Will. Generally, the spouse receives a significant portion. However, that portion can change a lot if there are children, children of previous marriages, or parents. If there is no spouse, children are first in line, followed by grandchildren; if no children, parents then brothers and sisters--all set forth in the statute. All this works pretty well if there is one marriage and only children of that marriage. Several marriages, children of all the marriages, adopted children, children born outside marriage can create thorny distribution questions.

Interestingly, Colorado is one of a small number of states that recognizes Holographic Wills--that is, Wills merely having been written by a deceased person the "signature and material portions of the document are in the testator's handwriting". You cannot type and then sign a holographic will. The whole document must be written out by you. In a pinch, writing down what a person wants might work. CLS cannot recommend this method of making a Will because of the many issues that it may raise: did the person have "capacity" at the time of the writing, was there undue influence, is the writing actually the person's handwriting, the Probate Court will probably require a formal proceeding to "prove the Will", the writing probably will not be accepted in a state that does not recognize Holographic Wills --to name a few.

Although the Holographic Will need only be signed by the person making that document, Colorado Statutes require, generally, that a Will be in writing, signed by the person making the document and signed in the presence of two witnesses or a notary. Signing in the presence of a Notary and two witnesses makes the Will self-proving.

3. Medical Power of Attorney

Colorado does not have a Statutory Form Medical Power of Attorney; however, most hospitals have a short form combination Medical Power of Attorney/Advance Medical Directive that is offered to patients. Decision making on admission to a hospital may not be the best time to make these decisions; but, the documents, if signed by a person having "decisional capacity" before two witnesses, do have the effect of appointing a decision maker. The declaration may be notarized, but the absence of notarization has no effect on the validity of the declaration. You may find more information about Medical Power of Attorney on your local hospital's website.

Cardiopulmonary Resuscitation (CPR) directives, Do Not Resuscitate (DNR) orders, Scope of Treatment directives are produced by medical personnel and can be of significant help in determining the type and extent of care a person desires.

4. Disposition of Last Remains

Colorado Statutes deal with Treatment of Human Bodies After death at 15-19-101 (et.seq.) and a form is provided.

[Click here](#) for a copy of the form.

CLS once again recommends that persons with estate planning questions contact us directly to properly produce, review and execute the documents described here.

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<http://www.coloradolegalservices.org/node/65/basic-estate-planning>

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