

Legal jargon 101
Wills and probate in Colorado
By Bill Beyers

Most of us know what a will is, and many of us probably have one. But are you familiar with all the ins and outs of wills and probate, legal issues essential to elder care?

A will is a document that operates after a persons death to distribute that persons assets and nominates a person or people to act as trustees to the estate. It allows you to control how your estate will be distributed upon your death. The person making a will, also known as the testator, specifies what portions of the estate go to whom. Will-makers can set up a trust fund to protect these distributions if they are to be made to a minor or to inexperienced, incompetent or irresponsible beneficiaries.

Through a will, you can also nominate someone to administer your estate (the personal representative) or serve as trustee or guardian of minor children. Finally, a will gives you the opportunity to grant your personal representative greater powers or discretion to administer your estate than that provided by state law.

Probate in Colorado

Probate, in its broadest sense, is the process by which a persons will is determined to be valid, the persons final debts are paid and his or her assets distributed. When a person dies leaving a valid will, the person dies testate. In this case, the distribution of the persons estate is governed by the terms of the will, subject to certain statutory rights of the surviving spouse.

If a person dies without a will, the person dies intestate. In such a case, the persons estate is distributed according to the laws of the state, which directs how and to whom your estate is distributed.

In Colorado, probate can be handled either formally (with active court supervision and intervention) or informally (without active court intervention). Most estates in Colorado are handled informally with the court uninvolved unless an interested party asks.

An equally important, yet often overlooked, aspect of the estate planning

process is the preparation of advanced directives. While a will allows a person to direct how his estate will be distributed after death, advanced directives allow him to designate who will make medical or financial decisions for him if he becomes incapacitated and incapable of making such decisions.

Advanced directives also provide the opportunity to educate and inform his agent as to his thoughts on quality of life issues. Advance directives consist of the following documents:

Living will

A living will is a document (or declaration) directing that life-sustaining procedures be withheld or withdrawn in the event of terminal illness. In Colorado, a person's physician and one other physician must certify in writing that she is terminally ill. Once this certification is made, her health care providers must wait at least 48 hours (longer if you so direct in your living will), before removing or discontinuing life sustaining procedures.

Medical Power of Attorney

A medical power of attorney allows a person (the principal) to nominate another person (the agent) to make medical decisions in the event the principal is unable to make such decisions. This document also allows the agent to state the principal's wishes regarding medical treatment in the event of incapacity, and it might even address things such as organ donation.

A medical power of attorney is much broader in scope and more versatile than a living will since it extends to situations where the principal might not necessarily be terminally ill. For instance, a medical power of attorney allows an elderly person suffering from dementia to nominate an adult child to make medical decisions in the event the person's dementia progressively worsens. A medical power of attorney is not limited to traditional medical decisions but can cover such things as nursing home placement and Hospice care.

Financial Power of Attorney

Similar to the medical power of attorney, this document allows a principal to nominate an agent to make financial decisions for the principal. It is critical to decide whether the power of attorney should become effective immediately upon signing or should spring into existence at some point in the future (usually the principal's incapacity). Particular care must be taken in naming an agent because of the possibility of abuse.

It is wise to name co-agents or to require the agent to account regularly to others (such as other family members) to lessen the temptation for financial abuse. Unless a provision is made in the power of attorney, the agent is not under a legal duty to account to others as to how the principals money is spent.

Bill Beyers is a Loveland-based attorney whose practice focuses on legal issues affecting elderly clients.