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A. What Is Probate?

1. Probate Of Will.
2. Assets Controlled By Will Or Intestacy Statute.
3. Role Of Personal Representative.
 - i. Letters Testamentary Or Letters Of Administration (Badge Of Authority).
 - ii. Duties: Collect Assets, Pay Bills & Taxes, And Distribute Assets.
 - iii. Entitled To Reasonable Compensation Based On Time Not Percentage.
4. Informal And Formal Probate.
5. Small Estate Affidavits.
 - i. If Colorado Probate Assets Are Less Than \$50,000 And No Real Estate.
6. Joint Tenancy, P.O.D., T.O.D., Beneficiary Deed, and Beneficiary Designations Outside Probate.
 - i. Beneficiary Deed – Pitfalls/Statutory Requirements.
 - a. Must List Grantees By Name.
 - b. For Four Months After Death Title Is Not Marketable.
 - ii. Joint Tenancy For Convenience Purposes.
7. A Will Says More Than Who Gets Estate.
 - i. Naming A Personal Representative (Residents Better, But Not Necessary).
 - ii. Listing Tangible Personal Property.
 - a. Will Refers to Written Memorandum.
 - b. Family Fights Over Personal Items.

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- iii. Protecting Minor And Incapacitated Beneficiaries.
 - a. Contingent Trust In Will Avoids Need For Court Appointed Conservator.
- iv. Simplifying Administration (Co-Personal Representatives).
 - a. Encourage Sole Personal Representative, Otherwise Cumbersome.
- v. Contingent Circumstances.
 - a. Planning For Predeceased Devisees In Will.

B. Would A Living Trust Be Better For You Than A Will?

1. No Greater Tax Savings – Common Misconception.
 - i. Wills Can Include Estate Tax Planning.
2. Planning For Incapacity And The Use Of Durable Powers Of Attorney As An Alternative.
 - i. Conservatorships.
3. Real property In More Than One State.
 - i. Avoid Multiple Probates In Other States.
4. Funded Vs. Unfunded Trusts.
5. Trust Not Necessary In Colorado With Informal Probate.
6. Trusts Do Not Protect From Creditors.
7. Simple Will And Power Of Attorney Works For Most People.

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C. Do You Need To Be Concerned About Taxes After Death?

1. Exemption – 2010 Unlimited; 2011 \$1,000,000 As Of Now.
 - i. No Colorado Estate Tax Currently.
2. Repeal Of Colorado Inheritance Tax In 1980 (Accounts And Safe Deposit Boxes Not Frozen).
3. Saving Income Taxes By Beneficiary Designations On IRA(s) And Pension Benefits (Rollovers And Minimum Distribution Requirements).
 - i. Want Designated Beneficiaries On IRA For Income Tax Purposes.
 - ii. Advantages of Inherited IRA.
 - iii. Withdrawals Are Taxed As Ordinary Income.
4. Irrevocable Life Insurance Trusts.
 - i. Estate Tax Planning Tool.
5. Asset Basis – 2010 Carryover; 2011 Stepped Up
 - i. Before 2010, Adjusted Basis At Death Saved Capital Gains Taxes.
 - ii. Tax Disadvantage Of Lifetime Gifting of Appreciated Assets.
6. Use Of A Family/Credit Shelter Trust With A Disclaimer.
 - i. Put Assets Into Testamentary Trust So Not Included In Surviving Spouse's Taxable Estate.

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D. Providing For Minor Children And Grandchildren.

1. Using Custodianships For Gifts During Lifetime And At Death.
 - i. Minor Does Not Have Access Until Age 21.
2. Naming Guardians.
3. Contingent Trust For Minor Children (Consider Life Insurance And Pension Benefit Beneficiary Designations).
4. College Funds/529 Plans.

E. Providing For A Surviving Spouse And Children By A Prior Marriage.

1. The Spousal Elective Share (With Vesting Schedule) And Prenuptial Or Postnuptial Agreements Waiving Rights At Death.
2. Trust Arrangements And Life Estates For Residence.
 - i. Surviving Spouse During Lifetime Then To Children Of Prior Marriage.
3. Danger: The Surviving Spouse Can Change Estate Plan.

F. Avoiding Family Disputes After Death.

1. Lists Of Personal Property.

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2. Power To Divide In Personal Representative If Beneficiaries Cannot Agree Regarding Personal Property.

G. Medicaid Planning.

1. 2006 Law Changes, Limiting Gifting.
 - i. 5 Year Gifting Penalty Period Does Not Start Until Donor Goes Into Nursing Home.
 - ii. Gifting Home Thru Life Estate Or Joint Tenancy- After 5 Years Home Not Subject To Medicaid Lien.
2. Income and Resource Limits.
3. Using Exemptions (E.G. Home).
4. Using Gifts.
5. Spousal Assets.
6. Life Estates, Revocable Trusts And Joint Tenancy.
7. Alternative To Medicaid Planning Is Long Term Care Insurance.

H. Use Of Gifts.

1. \$13,000 Annual Exemption.

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2. Dangers Of Losing “Stepped-Up” Basis and Special Tax Treatment Of Residence (\$250,000 Gain Exclusion).
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- I. **Powers Of Attorney, Living Wills, Medical Proxies And D.N.R.**
 - J. **Asset Management.**
 1. We Are Not Investment Advisors.
 2. Fiduciary Duty Regarding Asset Management.
 3. Portfolio Theory.
 4. Asset Allocation/Asset Classes – Fixed Income Vs. Equities.
 5. Diversify Risk.
 6. Advantages Of Index Funds.