

Special points of interest:

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- Death Tax
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A Beneficiary Deed Can Simplify Some Estate Plans

We often hear “just keep things simple” when structuring a client’s estate plan. Of course, many times, a complicated estate plan can do a much better job of accomplishing the client’s other goals, which may include minimizing taxes, achieving fairness in a second marriage or other situation, or protecting assets for certain beneficiaries. But for some estates, a beneficiary deed may truly provide some simplicity.

Although the concept of a beneficiary deed is not new to Colorado, a new law enacted last year clarifies the law surrounding the use of beneficiary deeds and gives us a greater comfort level in utilizing them. For instance, we now know exactly what format is acceptable for a beneficiary deed under the law, and the basic rules and requirements that govern it.

A beneficiary deed basically says that you, the grantor, retain title to the property during your lifetime, and then goes on to set forth who gets title to the property upon your death. No interest in the real estate is actually conveyed by the beneficiary deed until your death, and you can revoke or amend the beneficiary deed as many times as you like during your lifetime as long as you have capacity to do so. To be effective, an executed beneficiary deed must be recorded in the county where the real estate being conveyed is located. Upon your death, title to the real estate will typically pass outside of your probate estate, subject the rights of creditors and other interested parties to bring the property into the probate estate to satisfy claims. It is important to note that because property conveyed by a beneficiary deed is subject to creditor claims, it is not an effective tool for avoiding Medicaid liens or for general asset protection.

If your estate primarily consists of real estate, and perhaps other assets that can pass outside of probate such as life insurance and retirement accounts, a beneficiary deed may allow you to structure an estate plan that can avoid probate without the need to create a revocable living trust. Even if you do have a more sophisticated estate plan involving the use of a trust, a beneficiary deed may simplify the funding of your trusts. Most mortgage lenders now require you to get their written consent before transferring title to the real estate to your trust. Then, if you later decide to refinance the mortgage, you have to convey the property back to yourself, individually, to complete the refinance, and then convey title to the trust once again afterwards. The beneficiary deed alleviates this problem, because it allows you to fund the trust by naming the trust as beneficiary at your death (which avoids probate in most circumstances), without transferring title out of your name. This means that you typically do not need your lender’s consent and do not need to transfer title when you refinance the mortgage.

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The State of the “Death Tax”

Although death and taxes are certain, the state of the “death tax” has been an uncertainty for some time now. Here’s where things stand. Under current law, the amount that can be effectively excluded from a taxpayer’s estate is \$1,500,000 (“Applicable Exclusion Amount”). With proper planning, a married couple can maximize their respective Applicable Exclusion Amounts, allowing them to effectively pass up to \$3,000,000 to their loved ones free of estate tax. The estate tax rates are steep – currently ranging from 45% to 47%. Absent further action by Congress, the Applicable Exclusion Amount is scheduled to change as follows in the coming years:

“The estate tax rates are steep — currently ranging from 45% to 47%.”

2006-2008	\$2,000,000
2009	\$3,500,000
2010	(no federal estate tax)
2011	\$1,000,000

You may wonder why the estate tax would go away in 2010 and then re-emerge in 2011 with an Applicable Exclusion Amount equal to that which existed in 2001. The simple answer is that budgetary restraints prevented the permanent repeal of the estate tax when the applicable tax laws were enacted in 2001. In April of this year, the U.S. House of Representatives passed a bill that would permanently repeal the estate tax. This is not the first time in recent years the House has passed such a bill, but Senate approval may be more likely now due to the more conservative make-up of the Senate. A vote on the estate tax issue may come as soon as September. News reports indicate that proponents of the bill in the Senate still do not have the sixty votes needed for full repeal of the estate tax and that compromises involving an increase in the Applicable Exclusion Amount and a reduction in the estate tax rate have been proposed.

Getting Insurance Companies to Pay

Insurance protects you from unexpected losses. Two aspects of insurance are critical: first, purchasing the right type of insurance and second, obtaining payment for losses.

In recent years, insurance companies have become less profitable and the insurance industry, generally speaking, has experienced limited growth. Therefore, insurance companies have an incentive to cut costs whenever possible. One of the ways insurance companies reduce costs is to limit the coverage provided in their policies. These limitations on coverage have served to increase the complexity of insurance policies and the number of exceptions to coverage. In most cases, your insurance broker will be able to answer your questions with regard to the scope of policy coverage. An insurance broker is required, under Colorado law, to secure the type of insurance you request. In some complex cases, however, you may need an attorney to review the proposed policy to make sure it covers the particular loss you intend to insure.

Obtaining the right policy is only the first step. Once a loss is sustained, the next step is to file a claim with the insurance company. If you have ever had to make a claim for a loss you believe is covered by an insurance policy, you undoubtedly have interacted with the insurance company’s claims adjuster. Claims adjusters handle all types of claims, ranging from personal injuries to business losses. In automobile accident cases for example, insurance adjusters may seek a quick settlement of the claim, but it can be unwise to accept such offers without consulting an attorney. In the business context, insurance

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Charitable Planning Corner

It's a good problem to have, but it may not feel that way. If you've been holding onto highly appreciated stock (perhaps purchased many years ago), you may be loathe to sell it because of the capital gains the sale would generate. The solution may be to gift the stock, in-kind, to charity. If you regularly, or occasionally, give cash to your church or favorite charity anyway, you could substitute one or more those cash gifts with gifts of the stock. You'll get a charitable deduction to offset any capital gains tax that would otherwise be owed, and the charity, as a tax-exempt entity, will be able to sell the stock tax-free. You could even stretch the gifts out over many years, and retain an income stream from the sale of the stock, by using a charitable remainder trust to accomplish the gift. Another option – just keep hanging on to the stock. Absent changes in current law, when you die your beneficiaries will get a step-up in basis on the stock.



Notes to Self — Beneficiary Designations

Beneficiary designations on life insurance policies, retirement accounts, certain types of annuities and “pay-on-death” or “P.O.D.” accounts are an easily-overlooked aspect of completing your estate plan. For instance, various changes in circumstances, such as a marriage, divorce, birth of a child or death of a named beneficiary, could render inappropriate the designation you made on a particular account or life insurance policy years ago. Also, obtaining new assets since the creation of your estate plan can raise significant tax issues. For instance, if you've created an estate plan designed to minimize potential estate taxes, make sure that the beneficiary designations on your life insurance policies and other assets are consistent with your overall estate plan (e.g., it might be advantageous for a life insurance policy to name your estate or a living trust as beneficiary rather than your spouse). With IRA's and certain other retirement accounts, it can be important to carefully consider the beneficiary designations so as to allow for the creation of “rollover accounts” for your loved ones and minimize income taxes and penalties upon your death.

Who's Who at Mallgren & Ferrell, P.C.

Robert A. McDermott, Esq., LL.M., CPA



Robert McDermott grew up on the east side of Washington State. In 1995, he completed his undergraduate accounting degree. In the ensuing four years, he completed his law degree and became a Certified Public Accountant and licensed attorney in Washington. After working for the international accounting firm of Deloitte & Touche, L.L.P. and the U. S. headquarters of Corporate Express, Inc., Robert joined our firm as an Associate Attorney in 2003. He completed a Master of Laws in Tax degree from the University of Denver this year. Robert is licensed to practice law in Colorado and Washington State.

Rob has experience in tax planning and audit defense for income tax, pension and retirement related issues. He is also proficient in trust litigation, real estate transactions and tax-free exchanges. He also has assisted clients in transactions involving mergers and acquisitions of closely held businesses.

Outside of work, Robert enjoys spending time with his two children, Savannah, 6, and Josh, 4. He also enjoys off-road motorcycling and remodeling his Broomfield home.

Mallgren & Ferrell, P.C.

200 Spruce Street, Suite 201
Denver, Colorado 80230

Phone: 303-341-0700
Fax: 303-341-0701
Email: office@mallgrenferrell.com

Our goal is to provide cost-effective legal assistance to help our clients achieve their personal and financial goals.



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Kansas, Missouri, Ohio and Arizona have enacted similar laws governing the use of beneficiary deeds. So, Colorado residents owning real estate in any of those states may want to consider executing beneficiary deeds for that out-of-state property to avoid ancillary probate in that state at death. Local counsel in those states should be able to assist with preparing the appropriate deed, but it is important first to sit down with an attorney and look at your overall estate plan.

Although beneficiary deeds can help simplify some estate plans, they cannot take the place of a will, which is needed, at the very least, to dispose of tangible personal property and small bank accounts, name a personal representative, and name guardians for any minor children.

Getting the Insurance Company to Pay, Continued from Page 2

companies often work diligently to identify ways to avoid policy coverage. In either case, the best way to get and keep the insurance company adjustor's cooperation is to develop a working relationship with the insurance adjustor, and to provide necessary documentation in a timely fashion.

After placing a value on the loss, the adjustor will offer a settlement. If the settlement amount is unfair or the insurance company wrongfully refuses coverage, Colorado law protects the insured by providing recourse through a bad faith claim directed against the insurance company. Sometimes, pressure has to be brought to bear on the insurance company to make it follow the black letter terms of the insurance policy. Appropriate and timely interaction with an insurance adjustor can maximize the settlement obtained from an insurance company without resorting to costly litigation.