



## Spring 2007 Newsletter

### **Give the Gift of Good Estate Planning**

It can be easy to put off having a will prepared. Many believe that a will is not necessary or that it can be a do-it-yourself project. However, the truth is that having a professionally prepared estate plan is a gift to your family. It can save them significant headaches, conflict and expense.

#### **Reasons to Have a Will**

There are a multitude of reasons to have a will.<sup>1</sup> Having a will allows you to leave your property as you desire. If you do not have a will, property that would have passed under your will passes according to the laws of intestacy.<sup>2</sup> You should not assume that the laws of intestacy will direct the disposition of your property in the same manner than you would choose. For example, if you are married, your spouse may or may not receive all of your property at your death, depending on whether or not you have children and with whom.

It is especially important to have a will if you have minor children. You should name a guardian for your children and also direct that your assets be held in trust at least until your children reach adulthood. Leaving assets in trust for your children allows you to decide upon the terms of the trust. You select the trustee to manage the assets, direct the purposes for use of the trust assets, and determine the age when your children will receive the trust assets. If assets are instead left directly to a minor, a conservatorship will likely be required. A conservatorship necessitates a court appointment, ongoing court supervision and results in the children receiving the assets at age 21.<sup>3</sup>

A proper estate plan can result in substantial estate tax savings. For example, a married couple can currently leave a total of \$4,000,000 to their family or others free of estate tax with appropriate planning. Without such planning, that opportunity may not be fully utilized.

Proper planning can be very important in second marriages. In a second marriage, each spouse may want to provide for the other spouse along with his or her children from a prior marriage. Achieving this objective requires careful planning, often involving the creation of trusts.

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<sup>1</sup> In some cases, it is useful to have a revocable (living) trust as part of your estate plan. If you have such a trust, you still need to have a will. Also, many of the considerations regarding wills discussed in this article also apply to trusts.

<sup>2</sup> If you die "intestate" it means that you did not leave a valid will. In that case, the laws of intestacy apply to direct the disposition of your assets.

<sup>3</sup> A "conservator" is someone appointed by a court to manage the assets of a person who is a minor or who is incapacitated. A "guardian" is someone appointed to care for such a person.

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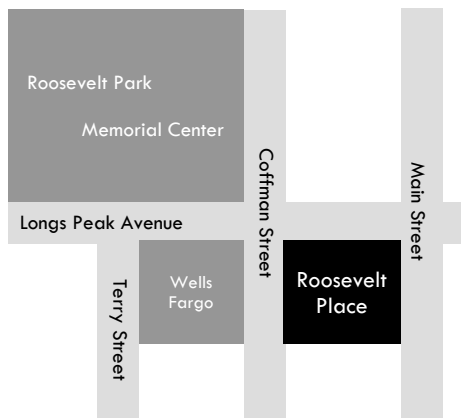
### Myths and Misunderstandings

Some people do not have a will because they rely on their families to “do the right thing” with their property after death. This rationale presents several problems. First, as discussed above, the law is clear as to where your property passes without a will. Your family does not have full discretion to decide on an alternate plan. Your family may be able to redistribute your property according to how they believe you want it to pass. However, such a redistribution may have gift tax consequences, will likely be more costly than having a will prepared, may require court action, and may not be possible to achieve at all, especially when minor children or incapacitated beneficiaries are involved.

For example, if a married couple with minor children die without wills, they may expect their parents or siblings to take care of their assets for their minor children. However, such family members cannot simply take control of such assets or the children. Property passing to the children under the laws of intestacy will need to be managed by a court appointed conservator. Also, a guardian will need to be appointed by the court to care for the children. The people with priority under the statutes to be appointed to these positions may not be the same as your choices.

### It's Easy to Find Us

Stover & Associates LLC is located in Roosevelt Place at the corner of Longs Peak Avenue and Coffman Street across from the Memorial Center in downtown Longmont. There is free on-street parking on both sides of the building. Clients may also park in undesignated spaces in the alley behind the building off of Longs Peak Avenue, in the lot to the south of the building and in undesignated spaces under the building. Signs that say “Authorized Parking Only” indicate spaces for clients and guests.



Another problem with relying on your family to carry out your wishes without a will is that it leaves your family with the task of deciphering your wishes. Clearly setting forth your plan for your property in your will eliminates the guesswork.

It may be tempting to save money by drafting your own estate planning documents. Doing so may save money in the short term, but if the documents are not prepared correctly it may cost vastly more to fix the problem than if they are prepared right from the beginning. Often, the problem is just not fixable and the documents will fail to carry out your intentions. In many cases, court action is required to patch up the estate plan. Even an uncontested court action can be expensive, but an even greater concern is that ambiguous documents can result in costly and time-consuming will contests.

### Reasons to have a Professionally Prepared Will

There is a very specific body of law regarding wills. Specific requirements must be met in order for a document to be a valid will. These requirements vary state-by-state.

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## ★ ★ ★ **ROLL CALL** ★ ★ ★

**Tom Stover** was named as Longmont's only Colorado Super Lawyer for 2007 by Law & Politics and the Publishers of 5280 Magazine. The list of Colorado Super Lawyers is published in the April issue of 5280 Magazine and the Colorado Super Lawyers® special publication. He recently returned from the annual meeting of the American College of Trust and Estate Counsel (ACTEC) in Scottsdale, Arizona. Tom published an article entitled, "Estate Planning for the Me Generation" in the March 2007 Boulder County Bar Association Newsletter. You can read this and other articles by Tom on the Stover & Associates LLC website at [www.stoverlawcolorado.com](http://www.stoverlawcolorado.com). He also presented a continuing legal education program entitled "Hot Topics in Estate Planning" to the Boulder County Estate Planning Council in August 2006.

**David Brantz** is a regular participant in the meetings of the Boulder County Bar Association's Trust and Estates Section. David has also completed a Colorado Bar Association continuing legal education (CLE) course on "Estate Administration Basic Skills" and a six-week CLE course on "Colorado Real Estate Practice".

Our receptionist, **Denise Reckers**, will be getting married in Hawaii this May. She will be out of the office for two weeks. If you call in while she is out and the automated system answers, you can dial the extension of the person you are calling at any time or dial 8 for the company directory.

**Tom** ext. 101 ♦ **Jennifer** ext. 102 ♦ **Robbin** ext. 103 ♦ **Josie** ext. 104 ♦ **David** ext. 105

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Also, certain laws apply to interpret wills. These laws need to be taken into account in preparing your will, otherwise they may result in your property being distributed differently than you intend. For example, these laws direct what happens if you leave a share of your property to someone who predeceases you, or if you leave a specific asset (such as land, a car, or jewelry) that you do not own at your death. There are also laws governing payment of taxes, characterization of income and principal, definition of terms and nearly every other aspect of a will. There are good reasons for the existence of these laws, but they are traps for the unwary.

It is equally important that the titling of your assets and your beneficiary designations coordinate with your estate plan. These choices determine whether your will governs the disposition of your assets or whether your assets pass outside the directions in your will.

### Conclusion

A will only becomes effective at your death. At that point, you will not be available to verify its validity or answer any questions about your intentions. Therefore, it is essential that your will clearly carries out your wishes in accordance with all applicable laws.

If you fail to implement an estate plan, or if you implement a poor plan, you will not pay the price. It is your family who will be faced with the repercussions after you are gone. Therefore, it is a true gift to your family to implement a good estate plan.

# STOVER



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## SPRING 2007 NEWSLETTER



### New Arrival!

Jennifer Spitz has returned from maternity leave. She and her husband welcomed baby Christopher Robert in early December. He arrived weighing 7 pounds and 15 ounces and was 20¼ inches long.

Jennifer will continue to focus her practice in the areas of estate planning, probate and trust administration, including related estate and gift tax planning and return preparation, and charitable planning.

You can reach Jennifer at 303-682-0433 or [jspitz@stoverlawcolorado.com](mailto:jspitz@stoverlawcolorado.com).