# The COLORADO GUIDE to the LIVING TRUST

Including a Discussion

about

Probate

and

Death Taxes

and

How to Avoid Both

THE HUGHES LAW FIRM

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# THE REMARKABLE LIVING TRUST

## THE TIME-TESTED SECRET TO AVOIDING A DEATH PROBATE, A DISABILITY PROBATE, DEATH TAXES, AND CONFUSION OVER THE USE OF PODs, TODs, AND JOINT OWNERSHIP OF ASSETS

The Revocable Living Trust, which I like to call the "Remarkable" Living Trust, is a power tool. We use it, among other reasons, to build probate-free estates for our clients.

Many of our clients come to us wanting to avoid probate. They have read this and that about trusts, and are fairly certain that the Revocable Living Trust is the way to go. We agree.

To help you determine whether or not the Revocable Living Trust is right for you, I will try to paint you a picture of what it looks like and how it works. Then, you can decide if it's right for you.

Think of a Revocable ("Remarkable") Living Trust (which I will refer to throughout here as an "RLT") as a bucket with a spigot attached to its side. We build this bucket and its spigot out of words. The law allows its creation as a substitute for a probate estate.

### THE GOVERNMENT-ISSUED PROBATE BUCKET

As a little background, a probate estate is what everyone has. We all get one when we're born. It's government issue. That's where all of our stuff is, including our money, our real estate, our investments, our personal property, etc. Think of a probate estate as a bucket also, but with no spigot on the side and a top that gets locked down when the probate estate owner dies or becomes mentally disabled.

To appreciate an RLT, you must first understand what happens to the probate-estate bucket when you die or become disabled.

By law, if you die, the law locks the top down on the probate estate bucket, forcing family members to go to court to get the key to unlock it. This usually involves hiring probate lawyers. The probate judge "wholesales" the keys to probate lawyers. Probate lawyers then "retail" those keys to you or your family members.

## WILLS DON'T AVOID PROBATE

Even if there is a will, the family is still forced to purchase a key from the court. Stated another way, wills do not avoid probate. They never have, never will, and were never intended to. Although that reality comes as a shock to many people, especially those who have old wills in the file drawer they thought were just what the doctor ordered, those wills don't do anything to avoid a death probate.

The problem with probate is that it is expensive, time consuming, and generally a big pain in the back side. While death probate in Colorado is not the end of the world, fees still range between $3,000 and $30,000 in about 90% of cases. Expensive probates are usually a sign of other problems, not just the administrative costs of probate, such as will contests and other fights of infinite variety caused by a decedent's poor or no planning. And when decedents own property in their own names in other states, there are additional probate proceedings necessary to clear title in those other states. So, if you die owning property in more than one state, plan on multiplying the cost of probate by the number of states in which you own property. This just adds to the cost and makes probate that much more aggravating.

## LIVING PROBATE

And if a death probate wasn't bad enough, there is a second kind of probate that's even worse: a *living* probate. This is the probate court procedure involved in managing the financial assets of a mentally disabled individual when no or inadequate planning has been done to avoid this process. More specifically, a living probate for financial matters is called a conservatorship. This is a court procedure involving a judge who appoints a conservator to manage the estate of a disabled person when no planning to avoid this court procedure was in place.

The living probate, or conservatorship, is generally two to five times more expensive than a death probate. It's not unusual to see court costs, attorney fees, and accounting expenses top $10,000 to $50,000, even in relatively routine cases.

I bring this up because most people seem to dwell on the desire to avoid only a death probate and totally overlook the far-more expensive and complicated living probate, or conservatorship. It seems to be human nature that, although we know we are going to die, we just can't imagine ourselves mentally incapable of managing our own financial affairs. Yet, government statistics reveal that well over half of us will be mentally incapable of managing our own affairs for a significant period of time before we die.

## BUILD IT AND FILL IT

Well, that brings us back to the RLT. Once folks realize that probate is truly a double whammy, they get even more interested in learning about and, perhaps, building an RLT. Building an RLT is a two-step process: we have to first build it, then fill it. Once again, visualize the RLT as a bucket with a spigot. Although there is a top on the bucket, it doesn't get locked down in the event of your death or mental disability. Therefore, when you, as the Trustmaker, die or become disabled, it is not necessary to go to the courthouse with probate lawyers to buy keys to unlock the top. The law simply does not lock down the top on an RLT. Likewise, the spigot on the side of the bucket can be opened and closed by the manager of the trust, called a trustee, without any need to get permission from the court or probate lawyers to do anything. *CAVEAT*: to work properly, you must retitle your real estate, using deeds, to show that your trust is now the owner. You must also retitle other assets – such as bank accounts, CDs, money market accounts, brokerage accounts, business interests, etc. – showing your trust as the owner. This "funding" process for non-real estate assets is done with change-of-ownership forms and "assignments." Funded trusts avoid probate; unfunded trusts do not. Don't neglect this "filling" (funding) process. More on this in a moment.

## A TRUST IS A WILL SUBSTITUTE

The trust ends up looking much like a will when we are done building it. It tells the world who gets its contents. The recipients of trust assets are called beneficiaries. And as you have already gathered, the folks that build trusts are called trustmakers. If you build a trust, you would be a trustmaker, too. More than likely, you would also be the manager of your trust while you are competent and alive. Therefore, you would also be given the title of "trustee." Because you get to use all of the assets in the trust whenever you want, you are deemed the 100% beneficiary as well. If you are married, your spouse would be a co-trustmaker, a co-trustee, and a co-beneficiary.

When building the trust, special effort is made to tell the world who the ultimate beneficiaries will be after the trustmakers die. It's also critical to name those persons who would manage the trust after a trustmaker's death, called successor trustees. These successor trustees can be children, professionals, other relatives, or anyone else you would feel comfortable appointing to take care of the settlement of your estate at the time of your death.

But remember, death isn't the only problem here. We have to deal with disability, too. Since there's a 50% chance you're not going to make it through life without suffering a disability, you have to name some person or entity to step up and manage your financial affairs if you have a stroke, struggle with Alzheimer's, fall and bang your head, or otherwise lose the ability to make your own financial decisions in a prudent fashion. This successor trustee who goes to work for you in the event of your disability can also be a child, professional, or anybody else you trust. It's a good idea to name backups, as well, just in case your first or second choice fails to serve for whatever reason.

## PEOPLE JUST DON'T PLAN AHEAD

Your state legislators know that 50% of all Colorado adults will fail to set up any kind of estate plan, even a homemade will. That's why there are probate laws on the books. They're there to clean up messes people leave behind because they failed to make the effort or take the time to plan. Call it human nature, neglect, fear, or whatever. It's simply a fact of life. People just don't take care of business.

Those who do plan can avoid the probate process altogether. Probate is a completely voluntary process. You don't need it (except in rare cases where you want to cut off troublesome creditors at the pass). And, you can generally avoid it using a variety of different planning techniques. While PODs, TODs, beneficiary designations on insurance policies, and joint tenancy are ways to avoid a death probate, they do little, if anything, to avoid the more onerous *living* probate (conservatorship). Those simpler arrangements are seductive, but they simply fail to address all of the issues connected with both dying and becoming disabled. The RLT is, by far, the best way to handle your planning so you don't have to struggle with the frequent inconsistencies and confusion surrounding the use of PODs, TODs, joint tenancy, and wills. More on all of this in a moment.

**YOUR RLT: A PROBATE-FREE ZONE**

Once we build our RLT by designating our beneficiaries and our successor trustees, we are well on our way to taking the next step: filling the RLT.

Many folks, after building their RLTs, will neglect to *fill* them. To work properly, the RLT must be filled, or as lawyers say it, funded, with your major assets. That way we can get them out of your probate estate bucket, which will eventually get stuck in death probate and living probate, and pop them into the probate-free zone which is your RLT.

**EVERY FAMILY IS UNIQUE**

When I talk about trusts during the many workshops I conduct each year in and around Denver, I use the Love family as my case study. John and Mary Love attended one of my workshops four years ago and became my clients. We called their trust the "Love Family Trust." John and Mary were the trustmakers, and the initial trust managers, or co-trustees.

They were also named 100% beneficiaries of their trust while they were both alive. But to make their trust a probate-free zone for their various properties, we had to actually transfer those properties over into the name of their trust.

Although at first blush this may seem a bit daunting, with a little help from our staff, it's actually a pretty simple process. For example, John and Mary transferred their home in Lakewood and their condominium in Maui to the name of their new trust: The Love Family Trust. They did this by having us prepare special warranty deeds transferring title ownership out of their joint names over to the name of their new trust. This put these two properties into the probate-free zone where they could be properly distributed at death, and properly managed in the event of disability. In other words, we positioned their estate to avoid both a death probate and a living probate.

John and Mary Love have a couple of robust CDs, some mutual funds, and a brokerage account with their financial advisor. With simple "change of ownership" forms, which all brokers, banks, credit unions, and mutual fund companies have on their forms shelves, we simply changed the names on all of their accounts to show that the Love Family Trust is the new registered owner. Even though this may be a frightening concept, keep in mind that John and Mary are in full, 100% control of their trust because they are the co-trustmakers, the co-trustees, and the co-beneficiaries. This gives them 100% control over their trust, so they lose no control when they transfer assets out of their probate bucket into their trust bucket. They simply move assets from a probate-zone to a *probate-free* zone.

John and Mary also own a couple of annuities, some life insurance, and IRAs. Those assets don't go through probate since they already have beneficiary designations on them, which, by law, skirt the probate process. Therefore, we don't have to put those assets into the trust. We do, however, change the beneficiaries on those assets so that when both John and Mary are deceased, the proceeds from those assets will pour into the trust and then be distributed out to the beneficiaries in the manner prescribed by John and Mary's plan of disposition.

We normally don't put personal property into RLTs. Personal property includes cars, RVs, furniture, jewelry, heirlooms, antiques, china, silver, clothing, etc., etc., etc. Colorado has a convenient little law we call the "$64,000 Rule" (for 2014) that exempts personal property from having to go through probate as long as the total value of that personal property (versus "real" property, like a house) does not exceed $64,000. In practice, we rarely see personal property being subject to the probate process. Exceptions, of course, exist when we are dealing with an estate with collectibles, expensive vehicles, or certain intellectual property rights that may be valued far in excess of $64,000. In those cases, we simply assign those assets, using another one page form called a "General Assignment," over into the name of the client's RLT. For vehicles, we send our clients down to the DMV to change title on high-priced rides into the name of their RLT.

John and Mary Love both lost their first spouses to illness several years ago. They then met up at a class reunion years later and fell in love. They got married, blended their grown-up families, and have lived happily ever after since.

John's daughter, Alice, is a delightful, responsible, and frugal 40 year old. She is shackled, however, with a "challenging" husband by the name of Rusty, multiple sclerosis, and a pre-teen autistic son, Danny.

Mary's son, Bart, is a tragic alcoholic. Although he is a petroleum engineer with an IQ of 143, he has no ability to take care of himself, his family, or his finances. He is simply addicted to alcohol and has no particular desire to change course at this particular point in time.

Given these family circumstances, we worked with John and Mary to design trusts that would continue after both John and Mary died and benefit both of the children and the four grandchildren. We designed one trust specifically for Bart to deal with his particular situation. We designed another trust for Alice to deal with her special issues.

I strongly urge you to order my DVD entitled "Wills and Trusts 101" to learn more about how we designed what we call Bulletproofed Trusts

™ for the children and grandchildren in anticipation of what the future holds. You will see me discussing many of the things you are learning in this article, plus much more, including a revealing insight into the use of our Bulletproof Trusts™.

**SHAKY POWERS OF ATTORNEY OFTEN FAIL**

Let's go back to disability for a moment. If John and/or Mary became disabled before death, without having done any trust planning, it is probable that the courts would need to step in to create a conservatorship for one or both of them. Once again, the conservatorship is the living probate I talked about earlier. It is the court process of managing a person's financial affairs during that person's period of disability.

Many folks ask, "Why won't that financial power of attorney I had prepared several years ago work to avoid a living probate? I mean, I named my brother to be my agent under my financial power of attorney to pay my bills, manage my assets, and take care of any other financial matters if I became disabled. I did that power of attorney so my brother could handle everything free of court control. Won't that work? Do I still need an RLT?"

Well, there is a nasty, dirty little secret most folks don't know about when it comes to financial powers of attorney (sometimes referred to as durable powers of attorney): financial powers of attorney, particularly stale ones (older than 3 or 4 years old), get rejected by banks, credit unions, and stockbrokers on a routine basis. They shouldn't be rejected; there are laws on the books that make it hard on financial institutions if they reject valid powers of attorney, but it still happens. Why? Well, to be blunt, some sons who have power of attorney over their mothers steal from their mothers! Some daughters who have powers of attorney over their fathers steal from their fathers!

Power-of-attorney fraud and thievery runs rampant in this country. When this occurs and other family members catch on to what's happening, there is invariably a law suit with the hope of recovering what the thieving child stole. Usually, however, these suits are fruitless.

The money either can't be found, or can be traced to a bank account of some casino in Las Vegas! When the family fails to recover any money, they resort to going after the "deep pockets." That means they sue the bank, the credit union, or the stock broker who "should have known not to allow Johnny to withdraw those kinds of dollars from the account." Then the banks, credit unions, and stockbrokers are forced to hire high-priced lawyers to defend themselves. They frequently prevail, but not without spending a small fortune in legal fees. Therefore, when folks come in to banks, credit unions and financial service organizations waving around powers of attorney and asking to do business with them, the financial institutions often hesitate, if just not flat out say "No." As a result, the family is forced into a "living probate" where the court has to open up a conservatorship estate and manage the affairs of the disabled person through an expensive court process.

And to make matters worse, Colorado just had a recent law change that makes most all powers of attorney executed before January 1, 2010, virtually obsolete. The new law now specifies that certain powers, called "hot powers," need to be specifically listed in new financial powers of attorney so there is no confusion as to what powers an agent has or does not have. In addition, there are other provisions in the new law that give judges enhanced powers when it comes to policing the conduct of agents who are suspected of wrongdoing.

In short, if you have any hope of your power of attorney being accepted out there in the real world, you should get the latest and greatest financial power of attorney that complies with Colorado's new law.

And, to avoid any problems with these troublesome powers of attorney in the first place, put your major assets into your RLT and let your trustee manage those assets without the need to rely on a power of attorney.

Trusts aren't rejected. Why? When assets are transferred to an RLT, <u>title</u> is transferred to the RLT. Therefore, when the successor trustee needs to do business with assets that are in the trust, the successor trustee is totally in the driver's seat since the assets he or she is managing are titled in the name of the trust. On the other hand, when folks are attempting to manage the financial affairs of a disabled family member using a power of attorney, the assets are still in the name of the disabled person.  That way, banks, credit unions, and financial institutions can get away with rejecting an agent's power.  Titling, in other words, is everything.  Use the RLT as a tool to avoid both a death probate and a living probate and you will save yourself and your entire family a tremendous amount of time, money, and frustration.

Getting comfortable with the concept of an RLT is the first step toward building your own.  If this helps, I have achieved my purpose.  If you want to learn more and make a fully-informed decision about whether or not an RLT is right for you, give us a call and we'll show you how easy it is to get your planning started.

# "THE DESCENDANTS' BULLETPROOF TRUST™

**The secret to protecting your children's, grandchildren's, and other loved ones' inheritance from their divorces, lawsuits, healthcare costs, joint tenancy, and responsibility issues."**

Studies reveal the amazing speed inherited assets, lottery winnings and personal injury awards slip through the hands of even the most responsible beneficiaries. Inherited assets left outright to your heirs are exposed to a multitude of hazards, including divorce, creditors, lawsuits and opportunistic friends, relatives and suitors. The problems multiply with irresponsible children struggling with alcohol, drugs, gambling, or legal problems. Leaving your estate outright to your children is risky and, frankly, unnecessary. Instead, leave your estate to your children in a trust – a **Descendants' Bulletproof Trust™**.

## JOINT TENANCY PROTECTION

Beneficiaries, when pressured or simply without thinking, all too often put newly- inherited assets into joint tenancy with their spouses without considering how a later death or divorce can impact what the grandchildren get – or don't get – later on. To avoid this risk of loss, leave your children's inheritance in a **Descendants' Bulletproof Trust™** and keep the family legacy in your bloodline. Because assets held in a **Descendants' Bulletproof Trust™** cannot be titled in joint tenancy with your child's spouse or any other person, the transfer of family assets to your grandchildren or other heirs is assured at the death of a child.

## DIVORCE PROTECTION

Assets held in a **Descendants' Bulletproof Trust™** are owned by the trust, not the child; therefore, trust assets cannot be titled in joint tenancy or given to your child's spouse. This prevents separate property from becoming marital property, subject to equitable division by a divorce-court judge.

## BLOODLINE PROTECTION

Assets held in a **Descendants' Bulletproof Trust™** cannot (without special provisions) be willed by your child to his or her spouse. This prevents the diversion of family assets to persons outside the family bloodline, a major concern for parents who fear that a child's inheritance may later trickle down to the bank account of a less-than-perfect son-in-law or daughter-in-law (and his or her new spouse) instead of to the grandchildren! Assets remaining in your child's trust at your child's death will pass automatically to your child's children, or if none, to your other living children.

**LAWSUIT PROTECTION**

Assets held in a **Descendants' Bulletproof Trust™** cannot be seized or attached by successful plaintiffs in litigation, including accident cases, sexual harassment suits, etc. Since assets held in a **Descendants' Bulletproof Trust™** are not legally owned by the trust beneficiary, they are not "available" to satisfy a court judgment.

**DEBT PROTECTION**

Assets held in a **Descendants' Bulletproof Trust™** cannot be claimed by your child's creditors. Your child cannot lose what your child does not own. Even if your child was forced to file for personal bankruptcy, assets held in the **Descendants' Bulletproof Trust™** would be sheltered from loss. As an added benefit, your child could not pledge trust assets as collateral for a loan – preventing the inadvertent loss by careless borrowing.

**DEATH TAX PROTECTION**

With certain exceptions, assets held in a **Descendants' Bulletproof Trust™** will totally escape death taxes when your child dies and passes the remaining trust assets to your grandchildren. This is an especially important benefit if you have children who are independently wealthy in their own right.

**BAD HABITS PROTECTION**

Assets held in a **Descendants' Bulletproof Trust™** are insulated from the spendthrift tendencies of children who are financially irresponsible, over generous, or prone to taking unreasonable business or investment risks. Children addicted to drugs, alcohol, gambling and other life-style challenges will find difficulty accessing the assets of the **Descendants' Bulletproof Trust™** to sustain their self-destructive behaviors.

**MEDICAID AND MEDICAL EXPENSE PROTECTION**

Assets held in a **Descendants' Bulletproof Trust™** may enjoy protection from Medicaid. This is important if a child, grandchild, or other beneficiary is disabled, handicapped, or suffering from a chronic disease that requires care in a nursing home or other long-term care facility. With new legislation making it more difficult to qualify for Medicaid benefits, asset-protection planning for disabled beneficiaries is more important now than ever.

**INCOME TAX SAVINGS**

The **Descendants' Bulletproof Trust™** can purchase assets for a child, such as a residence or business. Because the IRS does not impute income to the child for the use (i.e., rent) of trust-owned property, your heirs will enjoy significant income tax savings for life.

**RETIREMENT**

Imagine that your children have not "socked" enough away to provide for their secure retirement. A **Descendants' Bulletproof Trust™** can serve as a safety net that will be there for them when traditional retirement plans and/or social security benefits just aren't enough.

**PROTECTION FOR GRANDCHILDREN AND BEYOND**

Assets held in a **Descendants' Bulletproof Trust™** benefit your grandchildren by preserving assets in the family bloodline against a child's divorce, bad habits, legal problems, death taxes, premature death, and debt problems. After a child's death, these same protections can be continued for the benefit of your grandchildren and their children by the continuous operation of the **Descendants' Bulletproof Trust™** for generations to come.

**WHO CAN SERVE AS A TRUSTEE OF A DESCENDANTS' BULLETPROOF TRUST™?**

Your child can serve as the trustee of his or her own **Descendants' Bulletproof Trust™**; however, certain asset-protection benefits may be weakened. You may be wise to name an independent trustee, perhaps a bank or trust company, to act as trustee – especially for any financially irresponsible or unsophisticated children. Responsible children can decide who serves as their own independent trustee. It could even be a best friend. Clearly, an independent trustee is a key element to maximum asset protection, and should be used to make distribution decisions in most every instance. Investment decisions can be entrusted to responsible children who act as co-trustees, relieving an independent trustee of investment responsibilities. Your child could be given the power to remove and replace an unsatisfactory trustee with another individual or trust company at any time. In short, many options exist and should be discussed with your attorney.

## DISTRIBUTIONS PERMITTED AS YOU DEEM APPROPRIATE

The **Descendants' Bulletproof Trust™** can be designed to provide either liberal or conservative benefits for your child or children (your call), while keeping outside creditors and predators at bay. The trustee will pay funds to your children for their health, education, and general welfare, including additional sums for purchasing a new home, starting a business, getting married, hanging a shingle – even retirement! Only irresponsible children need worry about trustee-imposed restrictions. Honest, self-reliant, hard-working children will be very happy with their **Descendants' Bulletproof Trusts™**. Don't be surprised if your children, once they understand the wisdom of your planning, design their estate plans for their children around a **Descendants' Bulletproof Trust™**.

## CONCLUSION

The **Descendants' Bulletproof Trust™** is the most powerful asset-protection tool in American law. It compassionately provides for your children and younger generations in a manner that reflects your family values and personal concerns. For decades, wealthy families have successfully bulletproofed family inheritances. Faced with the reality of 50%+ divorce rates, record-setting bankruptcy filings, 24 million new lawsuits a year, and a reckless credit-card culture, it is no mystery why prudent parents and grandparents – regardless of net worth – are turning to the **Descendants' Bulletproof Trust™** to protect family wealth for generations.

***"The best estate plan is to own nothing but have access to everything."***

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