Chapter 10
Estate Planning for Unmarried Couples

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SYNOPSIS

10-1. Colorado and Federal Laws Affecting Unmarried Couples

In this chapter, the term "unmarried couples" refers to same- and opposite-sex couples who enter into, or are deemed to be in, a Colorado civil union; and same- and opposite-sex couples who choose not to marry or enter into a civil union for reasons both personal and financial. Further, "spouses" refers to couples who have legally married, "partners" refers to couples who have entered into or are deemed to be in a civil union, and "life partners" refers to same- and opposite-sex couples who have not married or entered into a civil union.

The State of Same-Sex Marriage in Colorado

Same-sex couples are currently allowed to marry in many countries around the world. On June 26, 2015, the U.S. Supreme Court ruled that state-level same-sex marriage bans are unconstitutional and that states must recognize valid same-sex marriages performed in other jurisdictions. Same-sex couples may marry in any jurisdiction in the United States and their marriage will be recognized regardless of their state of residence. As a result, same-sex marriages are now legal in all 50 states, the District of Columbia, and some Tribal Nations.

Common Law Marriage

Couples that choose not to marry may question whether they could be deemed to be in a common law marriage. Please refer to Chapter 28, "Family Relationships" for a discussion of common law marriage.

Civil Unions

In March 2013, the Colorado legislature passed the Colorado Civil Union Act (Act), which became Colorado law on May 1, 2013. The Colorado Civil Union Act states that the rights of partners in a civil union are the same rights as those extended to spouses who are married under Colorado law.

A civil union may be entered into by two unrelated persons over the age of 18, regardless of gender, who are not married or in a civil union with another person. People who wish to enter a civil union must obtain a license from a local clerk and recorder, which must be certified by a person authorized under the Act, then recorded with the local clerk and recorder to verify the civil union. A priest, minister, rabbi, or other official of a religious institution or denomination or a Tribal nation or tribe is not required to certify a civil union in violation of their right to free exercise of religion. A copy of the civil union certificate received from the state registrar is presumptive evidence of the civil union in all courts.

If a same- or opposite-sex couple has entered into a civil union, domestic partnership, or a "substantially similar legal relationship" that is legally created in another jurisdiction, the couple *shall be deemed to be in a civil union for purposes of Colorado law*. States other than Colorado may not recognize Colorado civil unions unless they have specific legislation or have court decisions that recognize domestic partnerships, or civil unions performed in other states. Even if a Colorado civil union is recognized by another state, the rights, privileges, and responsibilities granted by the other state may be different than those available in Colorado.

Second Parent Adoption

As of 2007, Colorado allows second parent adoptions. In a second parent adoption, it is not necessary for the two parents to be married to each other or in a civil union with each other, as is the case with stepparent adoptions. Therefore, two life partners can now both be the legal parents of a child. The result is that both life partners will have the same rights and obligations associated with being a parent under Colorado law.

To seek a second parent adoption, the child must have only one legal parent, and that parent must consent to the adoption. If the second parent is found by the court to be qualified to adopt, the result will be a new birth certificate for the child naming both parents as legal parents.

Stepparent Adoption

Partners in a civil union can adopt each other's children using a stepparent adoption. This process differs from second parent adoption because it does not require the adopting parent to undergo a home study by a home study agency.

The result of a stepparent adoption is that both partners will have the same rights and obligations associated with being a parent under Colorado law. If the court grants the adoption,

the result will be a new birth certificate for the child naming the two partners as the child's legal parents.

Presumption of Parentage

Colorado's civil union law states that if a child is conceived by one of the partners during the civil union, the partners to the civil union are both presumed to be the parents of the child. This differs from a opposite sex marriage, where the child is presumed to be the child of a husband if the child is born to his wife during the marriage. The child need not be conceived during the marriage. It is important to remember that in any case, this presumption is rebuttable if proof is provided to a court that both partners or spouses are not in fact the parents of the child and someone else is a parent. On April 1, 2022, the Colorado legislature passed Marlo's Law, which became Colorado law in August 2022. Marlo's Law ensures that all parents who conceive through assisted reproductive technology (ART), regardless of gender identity, sexual orientation, or marital status, are eligible for the same rights and legal protections. Not only does the law provide a streamlined process for parents to have their parentage affirmed by a Colorado court, but it also makes ART provisions and parentage presumptions in Colorado gender-neutral and expands overall access to establishing parentage.

State Employee Domestic Partner Benefits

Colorado offers domestic partner benefits to same-sex partners of state employees who are not married and are not in a civil union. These domestic partner benefits do not apply to opposite-sex partners. The partner must be over the age of 18 and must be the same sex as the state employee. The partners must have shared an exclusive committed relationship for at least one year, and they must have the intent that their relationship will last indefinitely. The two must not be related by blood, and neither of them can be married to or in a civil union with another person. For information about the benefits offered and the procedure for obtaining those benefits, employees should speak with their specific employers.

One item of note is that employees should also speak with their tax professionals prior to enrolling their partners for benefits. If the employer is paying for the benefits, the value of the benefits is taxable income to the employee partner, if the partners are not married under federal law.

Employment Non-Discrimination

Colorado has added sexual orientation, real or perceived, to the list of characteristics for which a person may not be discriminated against at work, as well as gender identity and gender expression. This includes areas of hiring, firing, harassment, and compensation. If someone believes they have been a victim of discrimination based on their sexual orientation, gender status, gender identity, or gender expression they should contact a qualified employment law attorney. The LGBT Center of Colorado has a legal helpline for issues of employment discrimination based on sexual orientation, gender identity or gender bias, and HIV status (call (303) 733-7743 to reach this helpline).

Pension Protection Act and the Secure Act

In the past, if a life partner died and left their 401(k), 403(b), or 457 plan to their life partner (or any non-spouse), the surviving life partner, rather than having the opportunity to withdraw

the proceeds over one's life expectancy, had to withdraw the 401(k) proceeds immediately, or in some cases, over a five-year period. In many instances, this created a major income tax burden on the surviving life partner in the year(s) in which the money had to be withdrawn.

With the passing of the Pension Protection Act and additional IRS action in 2010, custodians of these types of retirement plans must now allow a non-spouse beneficiary, such as a life partner, to make a direct trustee-to-trustee transfer of the retirement plan proceeds to an inherited IRA. If done correctly, the surviving life partner would then be allowed to spread the distributions from that inherited IRA out over their life expectancy, thereby spreading out the income tax burden over that same time period. However, with the passage of the Secure Act in 2020, the life expectancy payout for non-spouse partners would now be reduced to 10 years.

It is important to note that there are several traps that could be triggered if this process is not carried out correctly. Therefore, if a surviving life partner is due to inherit their deceased partner's retirement plan, they should contact a tax advisor prior to taking action to claim the plan proceeds.

Federal Estate Tax

The federal estate tax is a tax on a deceased person's estate if the estate is over the limit set by federal law for the year in which the person died. In 2024, that limit is $13,610,000. The details of estate taxes are beyond the scope of this chapter. However, one area of frustration to those in same-sex relationships who are not married under federal law is that they are not able to benefit from what is known as the unlimited marital deduction.

Federal law allows a spouse to leave an unlimited amount to their spouse at death, without the estate being subject to estate tax. The limits set forth above do not apply if the estate is being left to a spouse. For those life partners who are not married under federal law, when a partner dies, their estate will be subject to the estate tax if it is over the estate tax limit. Additionally, if the estate is given to the surviving life partner, and that life partner is then over the estate tax limit at their death, the estate will be taxed again. The unlimited marital deduction is one factor some same-sex couples take into consideration when deciding whether to marry.

10-2. Reasons People Do Not Complete Estate Plans

The reasons people do not do estate planning are usually the same for all communities. Not understanding the process, procrastination, feeling overwhelmed, believing that one doesn't have enough assets to require planning, or the feeling that "it isn't going to happen to me," are just a few of the reasons that people do not complete their estate plan.

I Only Have Personal Property Items

Many times, people feel as though they do not have an "estate" so they do not need to do an "estate plan." However, this is a trap for unmarried life partners. Even if your estate is made up only of the tangible personal items you and your life partner have accumulated over the years, you need to create a plan for what will happen to those items upon your death. With a legally recognized marriage or civil union, when one spouse or partner dies, all of the tangible items are presumed to be owned jointly, and therefore they automatically transfer to the surviving spouse or partner. In a relationship that does not qualify as a marriage or civil union, this is not the case. When a life partner dies, their tangible personal items do not transfer automatically

to the surviving life partner. They transfer under the intestacy laws, often to the deceased life partner's children, parents, or siblings. This can be very distressing to the surviving life partner and is probably not what the deceased life partner wanted. A will or a Designated Beneficiary Agreement can avoid this scenario.

I Own Everything Jointly with My Life Partner

When two life partners own an asset in joint tenancy, if one of them dies, the entire asset transfers to the surviving life partner. This transfer by operation of law at one life partner's death may seem like the easiest answer to many life partners' concerns. However, there are several issues and potential problems that can arise when using joint tenancy.

These issues surface primarily where one life partner owns an asset and wishes to change the sole ownership to joint ownership with their life partner. As an example, let's look at the concerns where one life partner owns a home and wants to put their life partner on the title as a joint owner. The following considerations must be addressed.

Neither partners nor life partners are allowed to make unlimited, tax-free gifts to each other the way that spouses are allowed under federal law. If Life Partner A owns the home and adds Life Partner B to the property title, Life Partner A has made a gift of one-half of the equity in that property to Life Partner B. If that gift is over the annual gift exclusion amount (currently $18,000), Life Partner A is required to file a gift tax return with the IRS. If partners or life partners are considering any type of transfer between them, they should consult with their tax professional before doing so.

Most mortgages in this country have a "due on transfer" clause. If the owner transfers any interest in the property to someone not on the mortgage without the mortgage company's permission, the lender can demand full payment of the mortgage debt immediately. There is a federal law called *Garn St. Germaine* that exempts such transfers between spouses, but this does not apply to partners or life partners. Partners and life partners need to check with their mortgage company before transferring the ownership of property from one of them to both of them.

Adding a partner or a life partner to the title of property as a gift may also cause unfavorable capital gains tax issues.

If a property transfers to the surviving life partner automatically at the death of the first life partner, the first life partner's children or other family and friends will not receive any of the property when the surviving life partner dies, unless the surviving life partner makes a will or trust or otherwise provides that the property will be split between both life partners' families at the second life partner's death. This can be an unintended consequence of owning property as joint tenants.

In summary, transfers and gifts should not be made before consulting with a tax and/or legal professional familiar with these issues.

10-3. What Happens When There Is No Estate Plan

Before deciding *not* to do any estate planning, it is important to understand what can happen if there is no estate plan. The following are some examples of what happens when a person does not have estate planning documents in place.

If There is No Durable Power of Attorney for Property in Place

If someone in Colorado is unable to make their own financial decisions (i.e. manage their finances), and there is no durable power of attorney for property (also called a durable financial power of attorney) that names a person to act on their behalf, a court must appoint a conservator. Who the court will appoint is governed by Colorado law. In general, the priority list for appointment of a conservator is as follows:

1) A spouse or partner in a civil union;
2) A person designated in a Designated Beneficiary Agreement (discussed in section 19-5);
3) Parents;
4) Adult children; or
5) An adult the person has lived with for the past six months.

While it is possible for a life partner to be appointed conservator if they qualify under (5), above, the other people with higher priority may object. Even though the life partner has the legal ability to apply to the court to be appointed conservator, there is a mandated review process and court hearing that must be completed before a conservator is appointed. Once appointed, the conservator must make annual reports to the court. The delay and expense associated with the conservatorship process can be avoided with the execution of a durable financial power of attorney appointing the life partner to make financial decisions. Durable financial powers of attorney are discussed in more detail in Section 19-4.

If There is No Durable Medical Power of Attorney or Living Will in Place

Every adult has the legal right to consent to or refuse medical treatment and may declare their wishes in writing if they cannot communicate them. Colorado law recognizes three documents as advance medical directives. These are the living will, durable medical power of attorney, and the CPR directive [also known as a Do Not Resuscitate (DNR) directive]. There is also a document referred to as a MOST form – Medical Orders for Scope of Treatment - which is basically a checkbox style medical directive that is occasionally used in nursing homes with the chronically or severely ill. If someone in Colorado suffers a medical emergency or is unable to make medical decisions on their own behalf and does not have a durable medical power of attorney or advanced directives in place, their loved ones may be forced to go to court to pursue guardianship to have the authority to make medical decisions on their behalf. As with a conservatorship, who the court will appoint is governed by Colorado law. In general, the priority list for appointment of a guardian is as follows:

1) A currently acting guardian;
2) A person nominated as guardian by the respondent;
3) An agent under a medical durable power of attorney;
4) An agent under a general durable power of attorney;
5) The spouse of the respondent or a person nominated by a will or other signed writing of a deceased spouse;
6) An adult child of the respondent;

7) A parent of the respondent or an individual nominated by a will or other signed writing of a deceased parent; and

8) An adult with whom the respondent has resided for more than six months immediately before the filing of the petition.

If good cause is shown, the court can appoint as guardian someone who has lower priority or no priority at all. With the legalization of same-sex marriage in Colorado, if one spouse becomes disabled or incapacitated, the other spouse will be recognized as the preferred medical decision-maker, just as with married same-sex couples. However, while it is possible for a life partner to be appointed guardian if they qualify under (8), above, the other people with higher priority may object. Even though the life partner has the legal ability to apply to the court to be appointed guardian, there is a mandated review process and court hearing that must be completed before a guardian is appointed. Once appointed, the guardian must make annual reports to the court. The delay and expense associated with the guardianship process can be avoided with the execution of a durable medical power of attorney appointing the life partner to make financial decisions.

If There is No Will or Trust in Place

When someone dies without a will or a trust and has assets in their name (those that are not jointly owned and those without a beneficiary designation or payable on death designation), Colorado law will determine what happens with these assets, according to what are called the intestacy statutes. A court process called probate is required to distribute these assets. Colorado's intestacy statutes list to whom the assets are to be distributed under probate, in the following order:

1) A spouse or partner in a civil union;

2) A person granted the right to inherit under a Designated Beneficiary Agreement (see Section 10-5);

3) Issue (children or descendants of deceased children);

4) Parents;

5) Siblings or descendants of deceased siblings; or

6) Grandparents or descendants of deceased grandparents.

Not included in the list are a life partner, a favorite charity, or a best friend. If a person does not want the intestacy statutes to say what will happen to their assets, a will or trust is needed.

10-4. Essential Estate Planning Documents

Estate planning is a term that is often misunderstood. In this chapter, it means not only planning for health and financial issues that may arise during life, but also planning for the distribution of assets at death. Estate planning is important for everyone, but it is especially important for those in the lesbian, gay, bisexual, transgender, queer, intersex, asexual, and two-spirit (LGBTQIA2S+) community and those opposite-sex and same-sex couples who choose not to marry or enter a civil union. Where the law does not recognize one's committed relationship, the need to proactively plan is paramount.

Wills or Trusts

A thorough overview of wills and trusts is provided in Chapter 9, "Estate Planning: Wills, Trusts, and Your Property." For those in the LGBTQIA2S+ community and those who are in non-married partnerships or are not in a civil union, having a will or a trust is important because the laws that apply when someone dies without a will or trust (intestacy laws) do not provide for one's life partner or for charitable gifts.

Durable Power of Attorney for Property

A durable power of attorney for property (also called a financial power of attorney) allows a person (the principal) to appoint someone else (the agent) to make financial decisions for the principal and manage their assets, including the purchase and sale of real estate. When referring to a power of attorney, the word "durable" means that the document remains valid during any period that the principal is incapacitated. There are non-durable powers of attorney. However, when the power of attorney is not durable, if the principal becomes incapacitated, the document is no longer effective, and the agent has no power to make decisions. Therefore, in most cases, a durable power of attorney is appropriate.

A good power of attorney should not only appoint a primary agent, but should appoint a successor agent, and, if possible, a back-up to the successor agent. Then, if the primary agent is unable or unwilling to act, the next agent can take over, and if the next agent is unable to act, the second successor agent can take over.

The document should set out when the power of attorney will become effective. There are three primary ways a power of attorney will become effective:

1) The power of attorney may be effective only upon the incapacity of the principal. Therefore, if the principal is not incapacitated, the agent has no power. In this case, the power of attorney document must define how incapacity is to be determined. In most cases, this can be done by a court determination, or upon obtaining the written opinion of a doctor or doctors that the principal lacks the capacity to handle their own financial affairs. If the power of attorney is valid upon incapacity, the agent will also need a HIPAA release in order to obtain a doctor's statement that the principal is incapacitated (HIPAA releases are explained below).
2) The power of attorney may be effective at the time the principal signs it. In this instance, the agent can act on behalf of the principal as soon as the power of attorney is signed by the principal.
3) The power of attorney may also be a hybrid power of attorney. This type of power of attorney provides that if the agent is the spouse or partner, the powers are granted immediately, but as to the successor or second-successor agent, the powers are not granted unless the principal becomes incapacitated.

In 2010, Colorado passed a law that potentially limits the powers of an agent who is not a spouse, partner in a civil union, descendant, or ancestor of the principal. Therefore, it is important that a power of attorney appointing an agent who is not a spouse, partner in a civil union, descendent, or ancestor of the principal be reviewed and possibly updated to comply with Colorado law.

Finally, many powers of attorney for property nominate the appointed agent as the court-appointed conservator in the event the principal would need a court-appointed conservator.

Medical Power of Attorney

A medical or healthcare power of attorney allows a person (the principal) to appoint someone else (the agent) to make medical decisions for the principal in the event the principal is unable to make such decisions for themself.

As with a financial power of attorney, a medical power of attorney should name successor and second successor agents if possible.

Some medical powers of attorney cover the issue of whether the agent may authorize organ donations for the principal upon death. Additionally, many nominate the appointed agent as the court-appointed guardian, in the event the principal would need a court-appointed guardian.

When the agent appointed is not a blood relative, the power of attorney should specifically state that the agent will be able to visit the principal in any healthcare facility.

Most states do not recognize civil unions as legal relationships. Therefore, even if the agent is a partner in a civil union, the right to visit should be specifically set out in case the principal requires medical treatment while traveling outside of Colorado. President Barack Obama signed a presidential memorandum banning discrimination against hospital visitors based on sexual orientation. However, it is still the best practice to specifically include such visitation rights in the medical power of attorney.

Living Wills

A living will is also referred to as an advance directive. A living will is designed to allow the principal to state their directions with regard to whether they would like to have life-sustaining procedures implemented or continued in the event the principal is diagnosed with a terminal condition or a persistent vegetative state.

Colorado's living will statute provides that two physicians must certify, in writing, that the principal is terminally ill or in a persistent vegetative state. If that determination is made, then the living will directs the physicians to carry out the principal's wishes regarding life-sustaining procedures. Some living wills direct that a certain number of days must pass where the principal is unable to effectively receive or evaluate information or communicate decisions before any decision is made to withdraw life-sustaining procedures, and some living wills direct that life-sustaining procedures should never be withdrawn. A living will also allows the principal to state their wishes with regard to whether artificial nutrition and hydration are to continue, if they are the only procedures being provided.

The living will is legally binding on healthcare providers, and can diminish the possibility of a battle concerning such issues between the principal's partner (regardless of whether they are in a civil union) and the principal's family of origin.

Declaration of Last Remains

A declaration of last remains allows the principal to make a legally binding written statement regarding what is to happen to their last remains. Burial or cremation are the two most

common directions. The declaration also allows the principal to appoint an agent and successor agents to have the burial or cremation carried out. Under Colorado law, such written statement, signed by the principal, is legally binding on the funeral home. As with so many other statutes, the law regarding last remains declarations provides a list of agents that have the power to make such decisions if someone dies without having made a written statement regarding their wishes. The priority list to be able to make these decisions does not include a life partner. It is as follows:

1) Personal representative;
2) Spouse/partner in a civil union;
3) The person granted such power in a Designated Beneficiary Agreement;
4) A majority of adult children;
5) A majority of parents and guardians;
6) A majority of siblings; or
7) Anyone that will take on the responsibility.

To ensure that a life partner is able to make these decisions, a written statement signed by the principal should be used. The statement need not be in a separate document; it may be a part of another document, such as a will.

HIPAA Release

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), a federal law, provides that doctors and other healthcare providers may not share a patient's medical information or medical records with anyone other than the patient. This can be very problematic if the patient has family or friends that need such information. While spouses and partners in civil unions are not exempt from HIPAA privacy laws, it is sometimes the case in practical settings that healthcare professionals will share medical information about a patient with their spouse or partner in a civil union. This willingness to share information does not always extend to unmarried life partners. Therefore, any thorough estate plan needs to include a HIPAA release, allowing the release of medical records and information to the life partner, and other friends or family members, if desired.

10-5. Colorado's Designated Beneficiary Agreement

Another Colorado Estate Planning Tool

Another estate planning tool for Colorado citizens who are not married or in a civil union is a document called a Designated Beneficiary Agreement (DBA). The adoption of DBAs in Colorado became effective on July 1, 2009. A DBA permits adults who are neither married nor in a civil union to give each other certain rights and appoint each other for certain roles. This section will explain the requirements for making a valid and enforceable DBA, discuss what rights the DBA can confer, and discuss what must be done to revoke or override the rights conferred in a DBA. It will also explain the benefits of a DBA, as well as point out its significant limitations.

Although a DBA has been generally viewed as an estate planning tool for non-traditional couples (same- and opposite-sex couples who choose not to marry or enter into a civil union), its application is much broader and can include unmarried friends and relatives, such as an unmarried parent and their unmarried adult child.

Who Can Enter into a DBA and What Makes a DBA Valid and Enforceable?

First, there can only be two parties to a DBA, and both parties must satisfy *all* of the following criteria: both must be at least 18 years of age, both must be competent to enter into a contract, and both must enter into the DBA without force, fraud, or duress. Additionally, neither party may be married or in a civil union, and neither party may be a party to another DBA with a different person.

If both parties meet all of the criteria listed in the previous paragraph, then additional criteria must be satisfied. The DBA form must be in "substantial compliance" with the standard form set forth in the Colorado statutes. It must also be properly completed, signed, acknowledged by a notary, and recorded with the county clerk and recorder in a county where one of the parties to the DBA resides.

What does "substantial compliance" mean? A DBA is in substantial compliance if it includes the disclaimer, the instructions and headings about how to grant or withhold a right or protection, the statements about the effective date of the DBA and how to record the agreement, and the notarized signatures of the two parties. If the DBA does not contain all of these requirements it may be invalid.

What Rights Can Be Conveyed with a DBA?

There are 16 distinct rights and protections set forth in a DBA. Six of the rights listed on the DBA are rights that people already have under Colorado law, with or without a DBA. These are the right to: (1) jointly acquire, own, and transfer title to property; (2) be designated as a beneficiary in a will, trust, or for non-probate transfers; (3) be designated as a beneficiary and recognized as a dependent in a life insurance policy; (4) be designated as a beneficiary and recognized as a dependent in a health insurance policy (if the health insurance policy is an employer-sponsored group plan, confirm whether the employer allows such coverage); (5) be designated as a beneficiary in a retirement or pension plan; and (6) act as a proxy decision-maker or surrogate regarding medical decisions.

Eight of the rights are statutory rights that are usually given in a will, trust, or medical power of attorney, and can now be given in a DBA. These are the right to: (1) inherit real or personal property from the other designated beneficiary when there is no valid will or trust; (2) petition and have priority for appointment as personal representative, guardian, or conservator for the other designated beneficiary; (3) visit the other designated beneficiary in a hospital, nursing home, hospice, or similar care facility; (4) initiate a formal complaint regarding alleged violations of the other designated beneficiary's rights as a nursing home patient; (5) receive notice of withholding or withdrawal of life-sustaining procedures from the other designated beneficiary; (6) challenge the validity of a living will of the other designated beneficiary; (7) act as agent for the other designated beneficiary to make, revoke, or object to anatomical gifts; and (8) direct the disposition of last remains of the other designated beneficiary.

The remaining two rights are new statutory rights, which were historically only available to a spouse or dependent children. These are the right to: (1) have standing to receive benefits pursuant to the Workers' Compensation Act of Colorado in event of the death of the other designated beneficiary while on the job; and (2) have standing to sue for the wrongful death of the other designated beneficiary.

Know the Rights You Are Granting and Carefully Complete the DBA Form

You need to know that a DBA is presumed to grant all of the rights listed in the statutory form *unless* the parties to the DBA explicitly withhold a right or protection. If there are some rights that you *do not* want to give the other party, you *must* withhold the rights by initialing the line in the form next to the right to be withheld. As with any document that grants legal rights, it is essential for you to complete the form carefully and fully.

When is a DBA Effective?

Currently, a DBA is effective as of the date and time received for recording by the county clerk and recorder of the county where one of the designated beneficiaries resides. A DBA can be delivered or mailed, along with a filing fee in cash or check. The clerk and recorder must issue two certified copies of the DBA showing the date and time the office received the DBA for recording. The filing fee will vary with each county, so you should call the clerk in advance to find out the amount of the check to include. It is also a good idea to include a pre-addressed and stamped envelope for the return of the document to you.

Can a Valid DBA be Revoked or Terminated?

There are several ways to revoke or terminate a valid DBA. One way is when one of the designated beneficiaries unilaterally records a Revocation of Designated Beneficiary Agreement form (revocation) with the county clerk and recorder of the county where the DBA was originally filed. Revocation is effective as of the date and time the revocation is received for recording by the county clerk and recorder. The clerk is to issue a certified copy of the revocation to the designated beneficiary recording the revocation and must mail a certified copy of the revocation to the other designated beneficiary at that party's last-known address.

Another way to revoke a valid DBA, or a portion of a valid DBA, is for a designated beneficiary to sign a legal document that conflicts with all or a portion of the DBA, such as a will or a beneficiary designation form for a life insurance policy. A DBA is revoked upon the marriage or civil union of either of the designated beneficiaries. A valid DBA is also terminated upon the death of a designated beneficiary; however, a right or power conferred upon the living designated beneficiary survives the death of the deceased designated beneficiary. Thereafter, the surviving designated beneficiary may enter into a new DBA with a different person, as long as the other requirements of the law stated above in "Who Can Enter into a DBA and What Makes a DBA Valid and Enforceable?" are met.

What Is the Effect of a DBA on Any Existing Estate Planning Documents I Have?

A DBA does not override documents you may already have or subsequently enter into, such as a will, trust, medical power of attorney, or a beneficiary designation under a life insurance policy or retirement asset. Said another way, a valid legal document entered into before or after

a DBA is recorded that conflicts with all or a portion of the DBA causes the DBA, in whole or in part, to be replaced or set aside.

If I Have a DBA, Do I Need Other Estate Planning Documents?

It is essential to understand that a DBA does not replace the need to prepare other estate planning documents. The DBA is a Colorado document, and it is unclear whether it will be honored outside the State of Colorado. Therefore, if you travel outside the state, you still need documents such as a medical power of attorney. Be aware that a DBA is limited in scope, as it only allows a party to name one decision-maker, whereas a medical power of attorney names successor agents. Additionally, the DBA does not appoint an agent to handle the financial affairs of the other designated beneficiary, so having a current financial power of attorney is essential if you want someone to be able to make financial decisions for you. Finally, while the DBA does provide intestacy rights between the two parties, it cannot provide for the simultaneous death of both parties.

If I Have Other Estate Planning Documents, Why Would I Want a DBA?

One reason is that a DBA is the only way for two persons who are not married or in a civil union to seek workers' compensation benefits if either of them dies at work. Another reason is that a DBA may give both parties the right to sue for the wrongful death of the other designated beneficiary. If you are in a same- or opposite-sex relationship, you might want a DBA to provide evidence that you are not in a common law marriage.

Does Having a DBA Mean that I Don't Have to Do Anything Else with My Assets?

A DBA does not automatically designate the other party as a beneficiary of contractual benefits, such as life insurance or retirement assets, or create co-ownership of real estate. If you want the other party to a DBA to be the designated beneficiary of your life insurance or retirement assets, you *must* complete and sign a separate beneficiary designation form for those assets. If you want the other party to a DBA to be a current co-owner of any property you own, you need to add that person to the title of the property. You should seek help from an attorney to make sure it is done correctly or you may cause problems with the title, which a court may have to correct. Be aware that adding someone to the title of your property may have unintended tax consequences.

What Happens at the Death of a Party to a Valid, Unrevoked DBA?

If the deceased party to the DBA has given the right of intestate succession to the other party, then that surviving party is technically an heir of the deceased party, and has the right to challenge a will or trust document of the deceased party. If the personal representative has actual notice or actual knowledge that there is a valid, unrevoked DBA in existence, the surviving party must be identified as an heir on the documents submitted to the court to open the deceased party's probate, and must be notified if a probate is opened. The personal representative will also need to search the county clerk and recorder's records in any county where the personal representative has actual knowledge that the deceased party was domiciled for the three years prior to the deceased party's death, to determine whether there is a valid, unrevoked DBA in existence.

So Should I Prepare and Sign a DBA?

A DBA is an additional estate planning tool for Colorado citizens who are not married or in a civil union, and may be a document you should prepare. But it does not provide all of the protections and benefits most people need, both during lifetime and after death, and should not be relied on as the only document you need to have. It is really a document to reinforce the other life and estate planning documents (powers of attorney, wills, and trusts) you should have in place to ensure your wishes are known and can be legally enforced.

10-6. More Information

For an example of a Designated Beneficiary Agreement, visit:

> https://www.denvergov.org/content/dam/denvergov/Portals/777/documents/MarriageCivilUnions/Designated%20Beneficiary%20Agreement.pdf

For an example of a Revocation of Designated Beneficiary Agreement, visit:

> https://www.denvergov.org/content/dam/denvergov/Portals/777/documents/MarriageCivilUnions/Revocation%20-%20Designated%20Beneficiary%20%20%20Agreement.pdf

For more information and resources for unmarried couples see Appendix A: Resources, Chapter 10.