

LIFETIME DISABILITY PLANNING AND ADVANCE DIRECTIVES

- » **Durable Power of Attorney (Financial Matters)** - Everybody should have one. The issue of “privacy”, although well intended, has and continues to cause unintended hurdles. If a person is incapacitated for any reason, family members may not automatically have a right to make choices for that person. To the contrary, they, may find they are shut out of the process entirely! are not permitted to help. The “durability” language must be set forth in the agreement. This instrument provides continuity in business and financial affairs, should the person be unable to make informed decisions about business and financial matters. It can be used for both personal and real property and can be as broad or as limited as a client desires. Caution must be used in selecting an agent.

- » **Supplemental Provisions to Durable Power of Attorney** - It is important a person consider giving the agent the power to make gifts. This may assist the agent in qualifying the principal for *Medicaid*. It also permits the agent, in larger estates, to reduce estate taxes by utilizing the **\$13,000** per year (2011) per donee annual exclusion.

- » **“Living Will”** - A living will is a *medical* declaration expressing a person’s wish to reject medical or surgical treatment in very limited situations. We recommend a living will only in very specific situations. Colorado has traditionally recognized the right of a competent person to accept or reject medical or surgical treatment affecting his person. Advances in medical science have made it possible to prolong dying through the use of artificial, extraordinary, extreme or radical medical or surgical procedures. During this process the body may respond to these procedures, but the mind may be lagging and the patient may be unconscious or otherwise incapable of accepting or rejecting these decisions. Many persons feel that a living will covers the “typical nursing home situation”. The problem is, the living will covers only *terminal situations*, and does not cover the situation where one is not terminal.

- » **Medical Durable Power of Attorney** - The authority of an agent to act on behalf of the person consenting to or refusing medical treatment, including artificial nourishment and hydration, may be set forth in a medical durable power of attorney. The medical durable power of attorney provides more discretion in specific instances than a living will.