

# WHAT SHOULD BE IN YOUR BAG OF TRICKS

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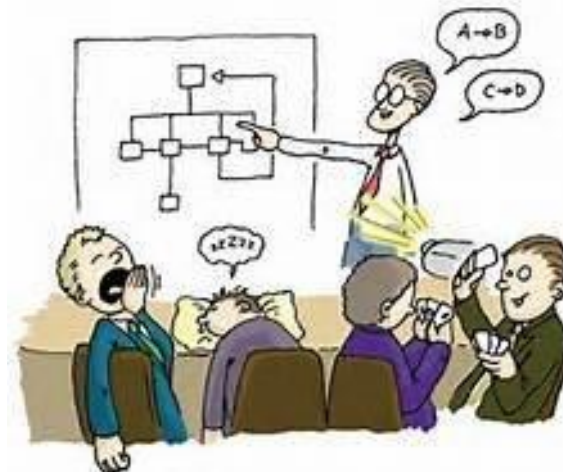
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Denver Estate Planning Council

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- ❑ Avoid Probate of Real & Personal Property
- ❑ Plan for Incapacity
- ❑ Making a Gift Without Making a Gift; Present Interest Gift
- ❑ Keep a Trust/Custodianship from Ending When it is Ending
- ❑ Avoid Earning Unearned Income
- ❑ Amending the Non-Amendable
- ❑ Making a Gift of a Specific Value When Values are Unknown
- ❑ Type of Deed for Estate Planning
- ❑ Backdating
- ❑ Avoidance of Colorado Income Tax



# How to Avoid Probate of Real Estate

## □ Deed in the Desk Drawer



# How to Avoid Probate of Real Estate

## □ Declaration of Trust

### ▣ Elements Necessary to Create Trust:

1. Settlor's capacity to create trust
2. Intent to create trust
3. Declaration of trust
4. Identifiable trust res
5. Trustee
6. Identifiable beneficiaries

### ▣ Authority of Trustee does NOT lapse at death of principal

# How to Avoid Probate of Personal Property



- Collection of Personal Property by Affidavit (C.R.S. § 5-12-1201)
  - ▣ If value of property does not exceed \$60,000
- Summary Administration (C.R.S. § 15-12-1203)
- POD or TOD Beneficiary Designations
- Declaration of Trust

# How to Plan for Incapacity

- Durable Power of Attorney
- Medical Power of Attorney
- Incapacity Provisions in Revocable Trust
- Joint Accounts- Risk Involved
- Declaration of Trust



# How to Make a Gift Without Making a Gift





# How to Make Sure a Present Gift is Made



- \$14,000 annual exclusion

- Present Interest requirement

- Crummey Powers





# How to Keep a Trust/Custodianship from Ending

- Uniform Prudent Investor Act
- Balance need for liquidity and need for preservation of capital
- Investment in a limited partnership or LLC



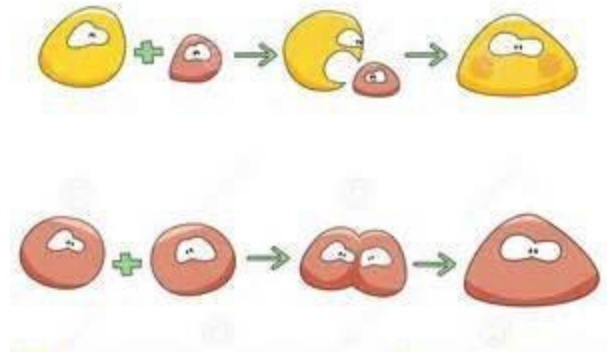
# How to Avoid Earning Unearned Income

- Assignment of LLC membership interest to “S” Corporation
- Reasonable compensation is then paid from the corporation



# How to Amend the Non-Amendable

- Trust Modification
  - ▣ Merger
- Decanting



# Decanting

- Trustee must have the power to invade the principal
- Trustee with discretion to do so can use the power to create an estate in trust that is less than the estate set forth in the initially governing instrument
- Reasons to Decant
  - ▣ Creditor protection
  - ▣ Change trust situs
  - ▣ Reduce state income taxation
  - ▣ Extend the period for vesting



# Making a Gift of a Specific Value

- Price Adjustment Clauses
- Defined Value Clauses
- Absence of Intent to Make a Gift of Amounts in Excess of Defined Value
- Use of Defined Value in Other Transfer Tax Areas



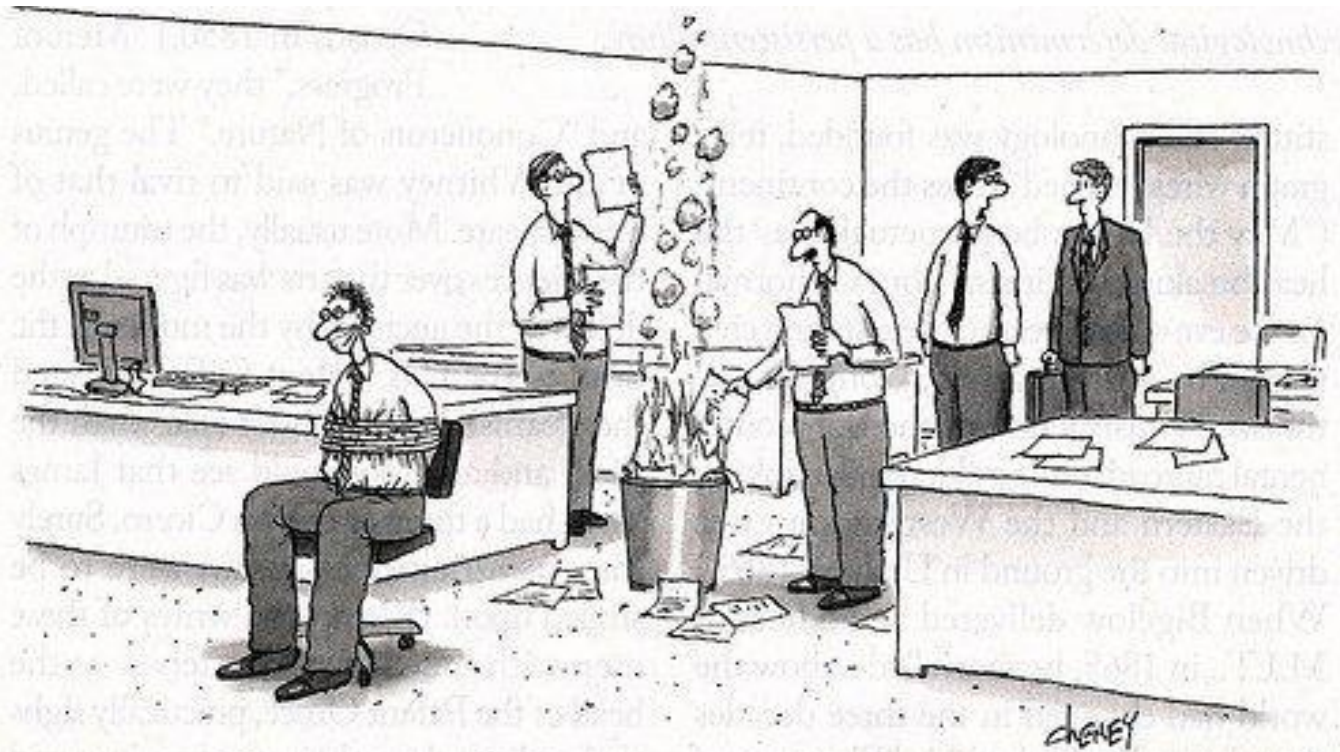
The graphic is a dark blue rectangle with a white border. Inside, the mathematical expression  $\int x^{\sum A(k)} dx$  is written in white. The integral symbol is on the left, followed by the variable  $x$  raised to the power of the summation  $\sum A(k)$ , and then  $dx$  on the right.

# Deeds for Estate Planning Transfers

- Warranty vs. Quitclaim
- Special Warranty Deed
- Allocation of Risk



# Backdating



*"First rule—what happens in accounting stays in accounting."*



# How to Avoid Colorado Income Tax

WING  
DING



# How to Avoid Colorado Income Tax





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