

Estate Planning for Young Professionals



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Questions?

- Please feel free to ask questions along the way.
- This is meant to be a discussion (not a lecture).

Capacity

- In the legal sense, **capacity** means a person's ability to enter into binding legal documents.
- To make a valid Will or Revocable Trust in Indiana, a person generally must be:
 - at least age 18 (or a member of the armed forces); and
 - of sound mind.

Common Documents

- Last Will and Testament
- Revocable Trust
- Declaration of Standby Guardian
- Durable Power of Attorney
- Health Care Power of Attorney
- Living Will Declaration
- Funeral Planning Declaration
- Declaration of Anatomical Gift
- Pre-Marital Agreement

What is a Last Will and Testament?

- A Last Will and Testament provides how your probate property will be distributed upon your death.
- In Indiana, a Will generally must be:
 - in writing;
 - signed by the **testator**; and
 - signed by at least **two disinterested witnesses**.

Should you have a Will?

- If you die without a Will, the laws of **intestate succession** will decide who receives your **probate assets** (more on this later).
- A Will also allows you the opportunity to name a **Personal Representative** (i.e., an Executor) to settle your final affairs.
- Absent a valid Will, the selection of the Personal Representative is left up to the local court.

Intestate Succession

- If you die without a valid Will your probate assets will be distributed as follows if you are **married**:
 - and have children: $\frac{1}{2}$ to your spouse* and $\frac{1}{2}$ to your children (see exception below);
 - and have no children but living parents: $\frac{3}{4}$ to your spouse and $\frac{1}{4}$ to your parents;
 - and have no living children or parents: all to your spouse.

*EXCEPTION – If you are in a subsequent, *childless* marriage and have children from a prior marriage, your spouse will receive $\frac{1}{4}$ of your real estate and $\frac{1}{2}$ of your personal property.

Intestate Succession

- If you die without a valid Will your probate assets will be distributed as follows if you are **not** married:
 - to your **children** in equal shares; or
 - if none, to your **parents and siblings** (with each parent receiving at least $\frac{1}{4}$); or
 - if none, to your **siblings' descendants**; or
 - if none, to your **grandparents**; or
 - if none, to **aunts and uncles** (or their descendants); or
 - if none, to the State of **Indiana**.

What is a Revocable Trust?

- A Revocable Trust is created during your lifetime.
- The Revocable Trust's property is controlled by the terms of a written **Trust Agreement** and applicable law.
- The Trust Agreement should direct how the Revocable Trust's assets will be administered or distributed upon death.
- Key players:
 - Settlor/Grantor/Trustor;
 - Trustee; and
 - Beneficiary (or Beneficiaries).



Should you have a Revocable Trust?

- Following are a few key reasons a Revocable Trust might be right for you:
 - Privacy
 - Real Estate in More than One State
 - Assistance with Asset Management
 - Avoidance of Probate

Revocable Trust

- Some things to keep in mind:
 - A Revocable Trust is most effective if assets are actually transferred to the Revocable Trust during your lifetime.
 - Even if you have a Revocable Trust, you still need a Will to deal with any **probate assets** that remain at the time of your death.
 - The use of a Revocable Trust does not reduce estate taxes (at least not any more than can be done through the use of a Will).

What is Probate?

- In general, **probate** is the court process of administering a deceased person's assets.
- The proceedings are public.

Why Avoid Probate?

- Probate can be costly.
- Probate is a public process.
- Probate can be slow.

Declaration of Standby Guardian

- In Indiana, the parent of a minor (or the guardian of a protected person) may designate standby guardian(s) in a written declaration.
- The declaration becomes effective upon the death or incapacity of the parent(s) or guardian(s).
- The declaration will terminate 90 days after it becomes effective.

What Happens Without a Declaration of Standby Guardian?

- If it becomes necessary to appoint a guardian of a minor child or incapacitated person, the court will consider:
 - Any request made by the incapacitated person in a Durable Power of Attorney;
 - Any request contained in a Will or other written instrument;
 - A designation of a standby guardian;
 - Any request made by a minor who is at least age 14;
 - Any request made by the spouse of the alleged incapacitated person;
 - The relationship of the proposed guardian to the individual;
 - Any person acting for the incapacitated person under a Durable Power of Attorney; and
 - The best interests of the incapacitated person or minor.

Durable Power of Attorney

- A Durable Power of Attorney (“DPOA”) authorizes another person to handle your financial affairs on your behalf.
- The person designated is referred to as your **attorney-in-fact**.
- A DPOA can be effective:
 - immediately; or
 - upon your incapacity; or
 - for a specified period of time.
- A DPOA can include broad powers or can be limited in nature.

What Happens Without a Durable Power of Attorney?

- In the absence of a valid DPOA, if you become incapacitated, it may be necessary to have a guardian appointed by a court to handle your financial affairs.
- This process is often costly and time consuming.

Health Care Power of Attorney

- A Health Care Power of Attorney (“HCPOA”) authorizes another person to make health care decisions for you if you are unable to make health care decisions for yourself.
- Without a Health Care Power of Attorney, there may be conflicting directions by your spouse, adult children, parents, and adult siblings and a court-appointed guardianship may be necessary.

Living Will Declaration

- A Living Will provides that you do not wish to receive life prolonging procedures in the event that you:
 - have an incurable injury, disease or illness;
 - your death will occur within a short period of time; and
 - the use of life prolonging procedures would only serve to prolong the dying process.
- The Living Will also allows you to indicate whether you wish to receive artificially-supplied hydration and nutrition in such an event.

Funeral Planning Declaration

- A Funeral Planning Declaration authorizes another person to make arrangements for your funeral and the disposition of your body.
- In addition, the Funeral Planning Declaration allows you to indicate whether you wish to be buried, cremated or entombed and to specify any particular funeral arrangements that you desire.

Declaration of Anatomical Gift

- A Declaration of Anatomical Gift allows you to state your desire with respect to the donation of your body (or specific organs, tissue or body parts) at the time of your death for the purposes of:
 - transplantation;
 - therapy;
 - medical research; or
 - education.

Pre-Marital Agreement

- A Pre-Marital Agreement sets forth the rights you and your future spouse will have in your respective property, debts and income during your marriage and in the event the marriage terminates due to a divorce or upon the death of either of you.
- In the absence of such an Agreement, upon divorce, the proceedings can be costly and the division of property may not be according to your wishes.

Next Steps

- Review how your assets are titled.
- Review your current beneficiary designations.
- Create a Declaration of Standby Guardian, Durable Power of Attorney, Health Care Power of Attorney and Living Will Declaration. If it is important to you, also consider creating a Funeral Planning Declaration and/or Declaration of Anatomical Gift.
- Create a Will. If you already have one, review it to make sure it continues to match your wishes.
- Consider whether a Revocable Trust would make sense for you.

Finding An Attorney

- I suggest hiring someone who routinely drafts estate planning documents.
- The cost for a basic plan can range from a few hundred dollars to a couple thousand dollars or more.
- If you need assistance with the cost of estate planning documents, you may qualify for low to no cost documents through the Indianapolis Bar Association's Low Asset Will Program. IBA phone (317) 269-2000.

Questions?



Thank you!