

ESTATE PLANNING GUIDE

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The Time to Act is Now

Life changing events happen every day. On one page of the Sunday paper, births, deaths, marriages, and divorces are reported. Stories of sports heroes, graduations, and county fairs recount many joys in life. But police blotter and accounts of automobile accidents, often resulting in injury or death, remind us that life is fragile.

If life were predictable, estate planning would not be urgent. However, perusal of a single day's news confirms that change is occurring all of the time. Failing to plan for these events can have unwanted, and sometimes devastating, consequences for your spouse, children, parents, and other loved ones. Proper planning can insure that your family is provided for. You can also reduce or eliminate estate taxes and the necessity of costly court proceedings.

This Estate Planning Guide is intended to provide you with an overview of the estate planning process and identify issues that may affect your family. Each person and family has unique needs, concerns, and goals that must be considered in developing and implementing an estate plan that works for them. I always offer a free initial consultation to discuss your family's needs and the options that are available to you.

Most people feel a sense of relief and accomplishment once they have planned their estate. If you are reading this guide, you have taken the first step!

What is Estate Planning?

Estate planning is something you do for both yourself and your loved ones. It includes planning for the possibility of medical emergencies and death. All of the following goals can be accomplished through proper planning:

- Determine who will receive your assets when you die.
- Decide who will take care of your minor children if you and your spouse die.
- Designate someone to manage your children's financial assets until they reach a mature age.
- Choose an executor or trustee to carry out your wishes.
- Appoint someone to make medical decisions on your behalf if you become incapacitated.
- Determine who will manage your financial affairs in the event of short or long-term incapacity.
- Avoid costly court proceedings and eliminate the need for probate.
- Reduce or eliminate death taxes.

What will happen if I do nothing?

If you die without a will or trust, your assets will be distributed according to state law. The actual distribution will depend upon several contingencies, including whether you survive your spouse, have surviving parents or children, and how your assets are titled. Distribution can also change if you have children from a prior relationship. Your estate will be subject to costly probate proceedings, which could last several months or even years. And, a court will decide who will act as executor of your estate. Because of the dead man's statute, no one will be allowed to testify regarding your wishes. Thus, the court will not know your intentions.

If you have minor children, their inheritance will be held by a guardian until the age of 18. If you have failed to name this person in a will or trust, a court will determine who will care for your children and who will manage their money. When they turn 18, they will control their entire inheritance without restriction.

Estate planning also involves preparing for medical emergencies. If you become incapacitated as a result of an illness or accident, a court may have to appoint a guardian over your person and to manage your financial affairs. This may not be the person you would choose, if you were competent to do so. Expensive guardianship fees, including court costs and legal fees, can be assessed to you.

How can I avoid these problems?

You can decide who will receive your assets when you die through a will or trust. You can also designate an executor or trustee to administer your estate. This person may be a trusted family member or a professional at a local bank.

You can designate the person you want to take care of your children if something happens to both parents. And, you can decide if that same person should manage the children's financial assets. You can provide that the inheritance of children be distributed over time to make sure money is available for education and health care costs.

You can plan for the possibility of becoming incapacitated, due to accident or illness, by designating someone to make medical decisions for you. You can also appoint someone to manage your financial affairs while you are incapacitated. This will also eliminate costly court proceedings and attorneys fees.

Probate is the process of distributing and re-titling your assets when you die. This requires lengthy court proceedings, attorney fees, and public hearings. If you value privacy and desire for your heirs to avoid costly probate proceedings, you may consider utilizing a living trust.

Special Challenges and Solutions for 3 Families

Married Couple with Young Children

Parents with young children should consider the following:

Who should raise your children if both parents were to die?

Who should manage their financial assets?

Is age 18 too young for the children to take control?

Will money be available for their education and health care?

What will happen if I do nothing?

Assume a couple with young children dies and the parents did not have a will or trust. A court would decide who would become guardian over the children and their inheritance. The children would not be able to choose who would take care of them. And, because the parents did not designate a guardian, their wishes will not be known by the judge.

There is also a possibility that more than one person will seek guardianship over the children, resulting in a contested hearing. Expensive legal fees and court costs can be charged to the estate. And, family members may be placed at odds over who should become guardian, damaging relationships.

Each child will assume control over their assets at age 18. For some children, 18 may not be a mature age to make wise financial decisions. An inexperienced child may not be equipped to budget for education, health care, and living expenses. There is a risk their inheritance will not last long.

How can I protect my children?

A couple with young children can protect their children's interests by addressing these issues in advance. Parents can designate a person or persons to become guardian over their children in a will or trust. Parents can also decide whether the same person should manage the children's assets, or whether a different person, or a financial institution with a trust department, would be more appropriate.

Parents can also choose when children assume control of their financial assets. Assets can be distributed over time to make sure money is available for college tuition, that first car, or health insurance.

Each family has unique concerns. However, it always makes sense for parents to make these critical decisions and not a judge.

Married Couple with Children from a Prior Relationship

If you are married and have children from a prior relationship, you should consider:

Your children could inherit either 100% of your estate or absolutely nothing, depending on how your assets are titled and whether you survive your spouse.

Your spouse will inherit only 25% of the equity value of any real estate.

Your spouse will inherit only 50% of your net estate (excluding real estate) if you are survived by at least one child.

What will happen if I do nothing?

Assume that all assets owned by you and your spouse are jointly-titled. Assume further that you die before your spouse. When you die, all jointly-titled assets become your spouse's by operation of law. Your children would inherit nothing. When your spouse later dies, her estate will be distributed to her children. Your children will receive nothing.

Now assume that you and your spouse have some assets that are jointly-titled and other assets that are titled individually. With respect to assets titled individually, the surviving spouse will receive only 25% of the equity value of any real estate and only 50% of the residual estate. The children of the deceased spouse will receive the rest. And, if the children are minors, a guardian will have to be appointed to manage their inheritance. A court will decide who will be appointed.

How can I protect both my spouse and children?

Many couples with children from a prior relationship want to take action to insure both the surviving spouse and their children are provided for. They also want to make sure children from each spouse are treated fairly. That will not happen without proper estate planning.

One solution includes executing reciprocal wills or trusts that provide the following: When the first spouse dies, all assets are distributed to the surviving spouse. Then, when the surviving spouse dies, the assets are distributed equally to the children of both spouses. Special gifts or family heirlooms could be left to the children who will appreciate them the most. Each spouse could appoint someone to manage their children's assets until they reach a mature age.

The Unmarried Couple

Unmarried couples living together are more common than ever. These families include couples with children and domestic partners. Unmarried couples should consider:

Your significant other will not inherit anything from you.

Your partner has no legal right to consult with your doctor if you are incapacitated.

Who owns your household property in the event of a break-up?

An unmarried couple has no rights under the laws governing marriage, divorce, or inheritance. This can have devastating consequences in the event of a medical emergency or death. Additionally, in the event of a break-up, property rights are not well-defined and legal remedies are unclear.

How can my partner and I define our rights?

Unmarried couples can define their rights during life by entering into a cohabitation agreement. The cohabitation agreement can identify what assets will remain the separate property of each partner and which assets will be considered joint property. The agreement can also set forth how assets will be divided in the event of a break-up.

Domestic partners can execute a health care power of attorney appointing their partner to make health care decisions on their behalf in the event of incapacity. They can also enable their partner to manage their financial affairs during incapacity by executing a general durable power of attorney.

Unmarried couples can leave assets to their partner through a will or living trust. Many domestic partners choose to utilize a living trust to keep their affairs private from prying family members.

Other Critical Planning Opportunities

Living Will. A living will is a document whereby you can communicate your wishes in the event a doctor determines that you have an incurable injury, disease, or illness; your death will occur within a short time; and the use of life prolonging procedures would only artificially prolong the dying process. No one wants to contemplate a state of terminal illness, where you are unable to communicate your wishes. But it is a tremendous burden on family members to have to make such decisions. You can make these decisions in advance through a living will and lessen the burden on your loved ones.

Out-of-State Vacation Home. What is worse than probate proceedings? Probate proceedings in two states at the same time. If you own an out-of-state vacation home, your estate could be subject to probate proceedings in two states. This will require expensive court proceedings, attorney fees, and travel for court hearings by your heirs. This costly problem can be avoided by contributing your vacation home to a living trust. By utilizing a living trust, you can avoid probate proceedings in either state and distribute the property according to your overall estate plan.

Death Taxes. The first \$2,000,000 of your estate is now exempt from federal estate tax. However, a taxable estate of \$4,000,000 would be subject to federal estate tax of approximately \$920,000. If you are married, proper planning could result in owing absolutely no estate tax, resulting in an additional distribution to your heirs of \$920,000. This can be accomplished through the use of a credit trust. However, this planning must be done while both spouses are living.

How can I get started?

Getting started is easy. Visit www.bbgibson.com and click on Plan My Estate Now. In just a few minutes you can assemble the information needed to get started and request a free initial consultation.

What will happen at my free consultation?

We will discuss your estate planning goals and identify ways to accomplish them. You will also be quoted a flat fee so you know exactly what your plan will cost.

I have additional questions before I get started. What should I do?

- Call Brett Gibson at 765-742-8440 and ask for a free estate planning consultation.
- E-mail Brett Gibson at bg@bbgibson.com with your questions.

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About Your Attorney

Brett B. Gibson has represented individuals, families, and businesses in the courtroom and boardroom, and with their personal legal needs, throughout the State of Indiana. His office is located at 133 N. 4th Street, Suite 73, Lafayette, Indiana. His experience and practice includes:

Estate and Life Planning

- Wills and Trusts. Representation of individuals and families in planning the transfer of assets at their death, while minimizing taxes and administrative burdens.
- Health Care Planning. Assisting clients in preparing for possible incapacitation through the preparation of health care powers of attorney, general durable powers of attorney, and living wills.
- Life Planning. Advising clients on issues of wealth preservation for children, prenuptial and cohabitation agreements, utilizing and funding living trusts, and protecting the interests of children from prior relationships.
- Domestic Partners. Representation of domestic partners in legally defining their relationship, including property rights, cohabitation agreements, living trusts, and powers of attorney.
- Adoptions. Assists families and step-parents in the adoption of children.
- Business Succession Planning. Representation of clients in business and succession planning and the use of buy-sell agreements, estate planning, and financial planning. Representation of clients in drafting agreements to retain control of closely-held companies in the event of shareholder death, divorce, or disability.

Probate Administration and Litigation

- Probate and Transfer of Assets. Assists clients in the efficient transfer of assets in probate proceedings.
- Litigation. Successfully represented clients in probate litigation, including the challenge of prenuptial agreements, will and trust contests, tortious interference with inheritance, and obtaining spousal elective shares.

For a complete review of Brett B. Gibson's professional experience and practice areas, including significant jury trial experience, go to www.bbgybison.com.

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