FREQUENTLY ASKED QUESTIONS ABOUT ESTATE PLANNING

1. What is Estate Planning? Estate planning is the broad term used for getting your affairs in order to make it easier for your loved ones should something happen to you. It will encompass different things for different people. It may include preparing a will or trust to handle the disposition of your assets. It may involve appointing certain people to act on your behalf if you cannot, including naming a guardian to raise your children. It may include thinking about related matters such as your funeral and burial wishes and the amount of life or disability insurance you carry.

2. What happens if I die without a will? If you die without a will, called "dying intestate", state law controls what happens to your estate. Under Indiana Law, your estate would be distributed as follows:
    a. If you are married with no descendants: Your surviving spouse will receive 75% of your estate and your parent(s) will receive 25%. If neither of your parents survive, your spouse will receive 100%.
    b. If you are married to the parent of at least one of your children: Your spouse will receive 50% of your estate and your children will split the other 50%.
    c. If you are married, but not to the parent of any of your children: Your spouse will receive 25% of the net value of your real estate and 50% of your other property. The balance will go to your children.
    d. If you are unmarried and have children: Your entire estate will pass to your children.
    e. If you are unmarried and have no children: Your estate will pass to your parents and siblings. If you have none, the estate will pass to your grandparents and their descendants. If you have none, your estate will go to the State of Indiana.

3. What is probate? Probate is the court process through which the local Probate Court oversees how your will (or intestate estate if you have no will) are administered. In Indiana, the representative of any person dying with a total of $50,000 or more of assets in their own name (and not passing by beneficiary designation or otherwise) will need to deal with the probate court to get authority to transfer those assets to others. As each county has its own Probate Court, the procedures differ depending on the county. See the Frequently Asked Questions about Estate Administration for more details on this topic.

4. Can I avoid Probate? Yes, with proper planning. The most common way to avoid probate is to re-title all of your assets into a Revocable Trust which you have established and control. Because the Revocable Trust did not die, it will not be subject to probate at your death. Another way to avoid probate is to structure your assets such that they all pass following your death without the probate process. This is done through titling assets in joint name with others, deed which transfer upon death, using beneficiary designations for insurance and retirement plans, and using transfer on death (TOD) or pay on death (POD) designations for financial accounts.
5. What are the downsides to just using joint names and pay on death designations? There are potential benefits and risks in relying on these types of mechanisms to transfer your assets. First, any joint owner you add to your property may cause a claim against that property through

their creditors or divorcing spouse. Second, people have trouble balancing the estate over time through this method. As account and asset values change, the equal balance among your heirs may shift. Finally, these methods make it difficult to account for unexpected results. If you and your son die in the same accident, any joint property could pass completely to your other children, when you might prefer that your just deceased son's children take his share.

6. What taxes will apply to my estate? Indiana has eliminated its Inheritance Tax, so no state tax will apply on the transfer of assets at death. The IRS allows you to give away a total of $5,430,000 (total during life and at death) before any tax is due. Over that amount, your estate will pay a 40% tax rate. In general, beneficiaries do not have to pay income tax on any amounts received. The big exception is IRAs or other qualified plans which have not yet been subject to income taxes. Your beneficiaries will pay income taxes as they receive those amounts.

7. Can't I give away money during my life? You can give away money during your life. Each person is allowed to give away $5,430,000 before the IRS assesses a tax on transfers over that amount. This amount is a total during both your life and at your death. If you make a gift of $300,000 during your life, your credit will drop by that amount, meaning you can only give away $5,130,000 at death before the estate tax applies. However, there is an amount the IRS allows you to give away each year before you have to start using your credit. This amount is $14,000 to any one person, with no limit on the number of people. Therefore, if you give $20,000 to each of your children, the first $14,000 uses no credit, but the remaining $6,000 will use up a part of your $5,430,000 credit. There is no income tax to the recipient of a gift.

8. What documents may be used in my estate plan? It will vary by situation, but often includes:
    a. Last Will and Testament: This directs who is in charge of your probate estate following your death, directs how your debts are to be paid and how your assets pass, appoints a guardian for your children, and may do other things as needed.
    b. Revocable Trust: This document can be used to direct how your assets pass at your death. By titling your assets into the Revocable Trust, your estate may avoid the probate process.
    c. Durable Power of Attorney: This document directs who is to handle your financial affairs if you are living but unable to do so. This document terminates at death.
    d. Health Care Power of Attorney: This document directs who is in charge of your medical affairs if you are living but unable to communicate your wishes. This document terminates at death.
    e. Living Will: This document directs you be allowed to die a natural death if circumstances are such that the medical procedures would artificially keep you alive and your death is imminent.

9. What is an Irrevocable Trust? All of the documents mentioned above can be changed at any time you are able to do so. At times, it is necessary to establish a trust that is irrevocable, meaning that once it is executed, you cannot change the terms. There are numerous versions of irrevocable trusts which we might suggest depending on your personal circumstances.

10. How do I leave assets to young children? This is one of the most difficult decisions for many parents. You may not want to leave your children so much that it allows them to quit school or their job, or to lose half of it in a divorce. Many parents pay a child their inheritance over a longer period of time or upon certain events to try and alleviate some of this concern.

11. Who raises my children if I cannot? The Probate Court will appoint a new guardian for your minor child. If your child's other parent is living, there is a strong legal presumption that they will be named as that person. If that parent is unfit or unable to raise the children, the Probate Court will very likely name the person(s) you have appointed in your will, unless the court determines they are not fit to do so. If you have not appointed a guardian, it will be up to your family members to come forward to apply for guardianship.

12. Do I have to leave anything to my spouse? Yes. You are required to leave at least those amounts described above in question 2 to your spouse. However, if you signed a Premarital Agreement, your spouse may have waived this obligation.

13. Do I have to leave anything to my children? No, there is no duty to leave assets to a child. You may also treat your children unequally if you desire.

14. How easy is it to contest a Will? There are three primary reasons to contest a will. First, if someone was not mentally competent to execute the will. Second, if a person was unduly influenced to execute a Will in a certain way. Finally, if there was some sort of fraud involved in the Will. There is no contest for a Will being "unfair" or because someone didn't like the result.

15. What happens if I get divorced? Indiana law writes an ex-spouse out of a Will and Revocable Trust, but not out of a Power of Attorney, joint property, beneficiary designation or pay on death account. You should review all of your documents, assets and beneficiary designations following a divorce.

16. Do I need to do estate planning? Most adults do need some form of estate planning, because they want to control some aspects of the items discussed above.

17. Can I use forms from the internet? People have varying degrees of success using internet forms for their estate planning. You have a better chance of success if your asset and family situation is very basic. Once you start getting into more unusual situations or wishes, it is more difficult for an online program to tailor its documents for your needs. There are also very specific rules on how estate planning documents must be signed and witnessed, and people often fail to meet these requirements when doing their own documents, making them invalid.

NOTE: These questions and answers are intended to be general in nature and may not apply to your specific situation. Though we are able to practice in several states, these answers are based on Indiana law.