

# Estate Planning Overview

Kyle B. Mandeville, Attorney  
Lafayette, Indiana

BB & C

[Hereforlife.com](http://Hereforlife.com)

## Estate Planning Overview

### **WHO IS THIS KYLE, FELLOW?**

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1. Serving farmers throughout Indiana
2. An honor to teach Purdue farm estate planning course
3. A farm owner
4. Proud to be Farm Bureau member

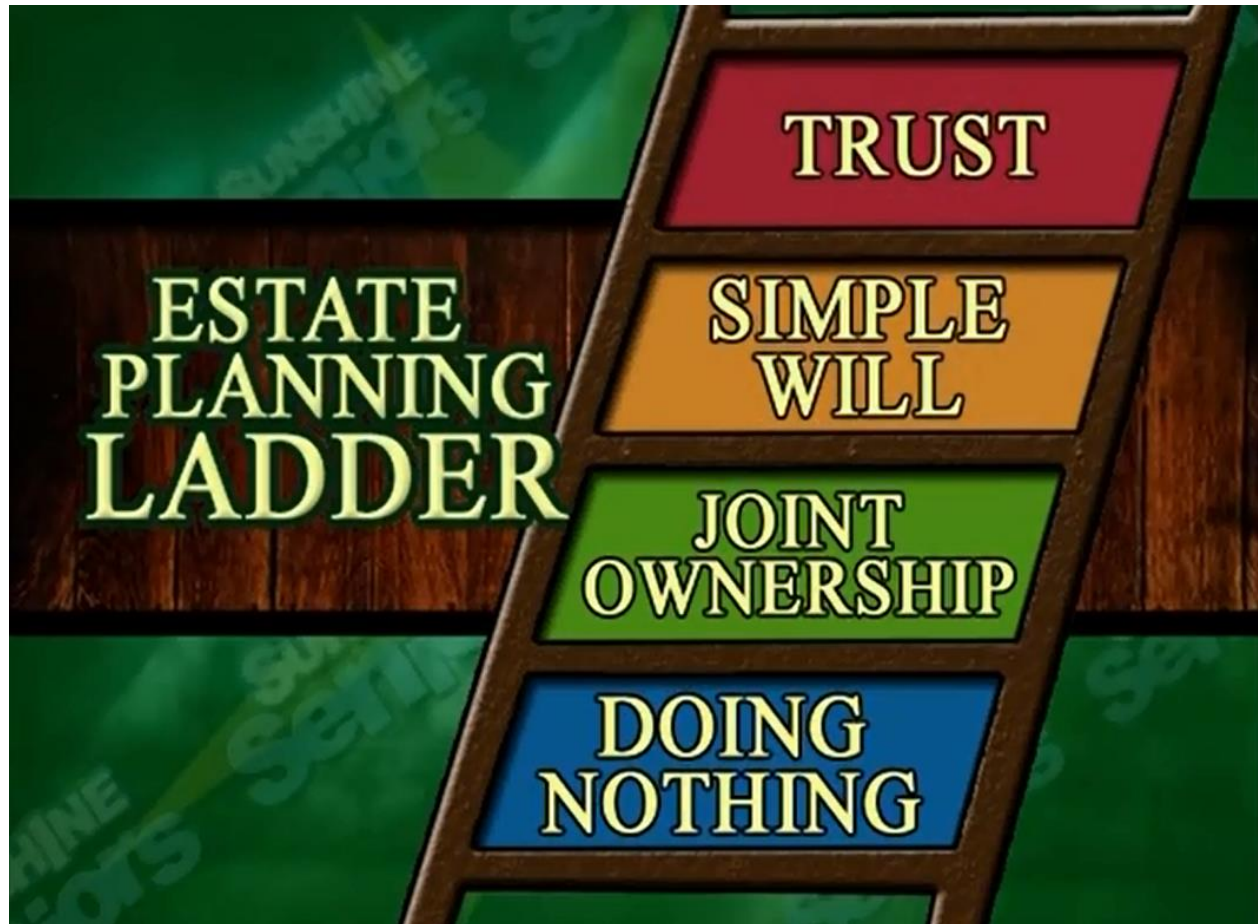
## Estate Planning Overview

### **TODAY'S GOALS**

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1. Simple estate plan
2. Wills
3. Trusts
4. Power of Attorney
5. Advance Directives
6. Farm Family Miscellany

# Everyone has an estate plan



- Copyright Sean Scott – Youtube
- <https://www.youtube.com/watch?v=J9mRHSgrGAM>

## Estate Planning Overview

# DOING NOTHING?

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- Indiana's Statutes of Intestacy
  - Someone died without a Will

# Indiana Intestate Distribution

If you have:	Heirs and probate asset distribution:
Children with no spouse	Children inherit all assets
Spouse with no descendants or parents	Spouse inherits all assets
Spouse and children from current marriage	Spouse inherits $\frac{1}{2}$ Children receive $\frac{1}{2}$
Spouse and child from prior marriage	Spouse inherits $\frac{1}{2}$ of personal property Spouse inherits $\frac{1}{4}$ of real estate Children inherit <b>all</b> other assets
Spouse and parents	Spouse inherits $\frac{3}{4}$ Parents inherit $\frac{1}{4}$
Parents (with no spouse or children)	Parents inherit all assets
Siblings (with no spouse, children or parents)	Siblings
None of the above family members or descendants	State of Indiana

**Who gets Mama's estate  
if Papa's in the pen?**

# Joint Ownership



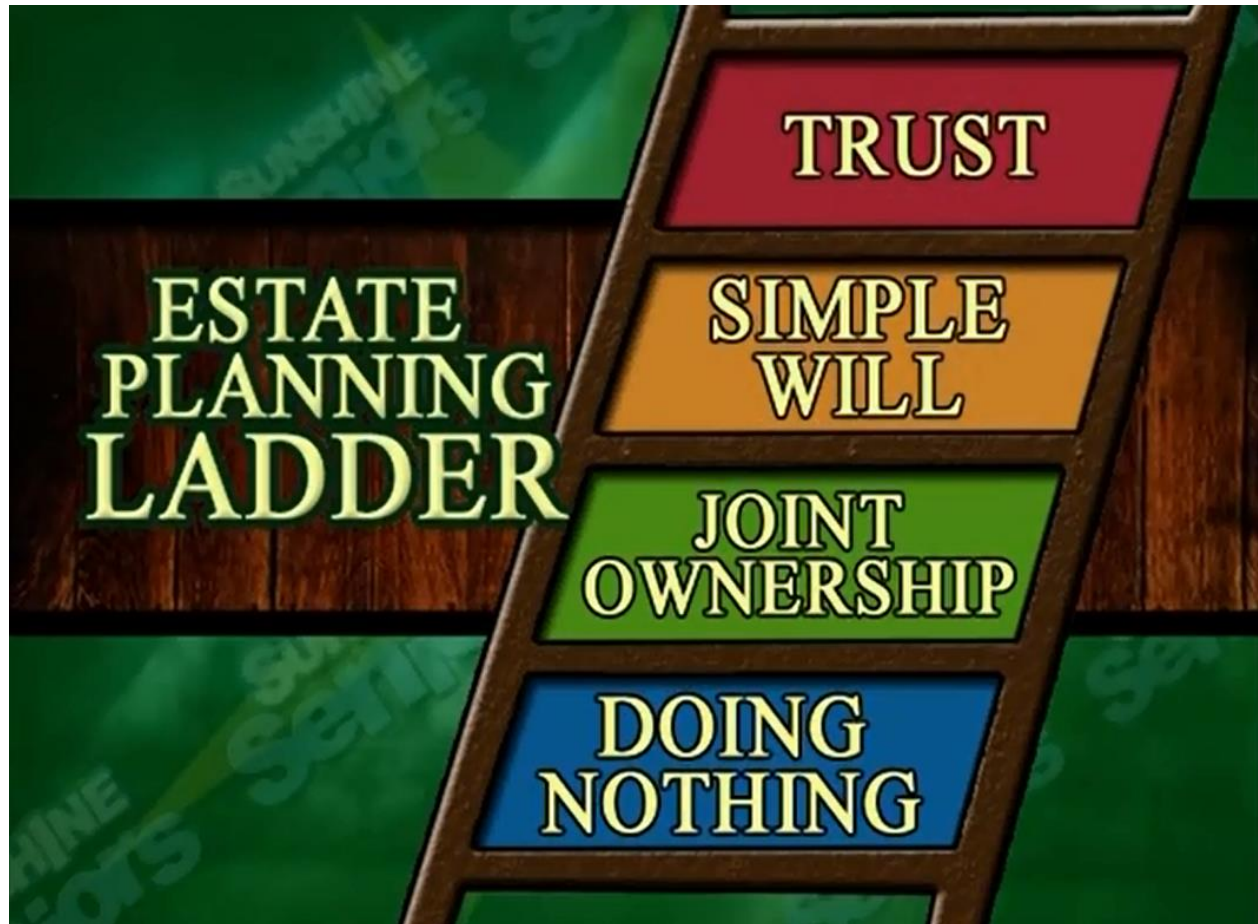
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# Joint Ownership of Assets & More...

- Title property in joint-ownership - JTWROS / TIC / H&W
  - BEWARE of a partition law suit – the FARM will be SOLD!
- Transfer property via contract
  - Annuities
  - Totten Trusts/POD accounts
  - Qualified retirement plans/IRAs/SEPs
    - Beneficiary designations
- Transfer property by deed after death
  - Transfer on Death provisions
  - Number of heirs?

# Last Will & Testament



- Copyright Sean Scott – Youtube
- <https://www.youtube.com/watch?v=J9mRHSgrGAM>

**“I Need a Will, Kyle;  
Indiana is not to get my  
money!”**

# Wills: What and Who?

- Will defined: legal instrument in which a person specifies terms of property dispersion upon their death
- Will administered by: personal representative (PR)
  - Fiduciary duty to fulfil the wishes of the deceased

# Advantages of a Will

- Choice of Personal Representative (PR)
- Waiver of PR's requirement to post bond
- Distribution of property to chosen beneficiaries / option for disinheritance
- Transfer of property to charity
- Direct source of property to pay death taxes / Implement provisions to minimize taxes
- Designation of guardian for minor children

# What's involved in administering a will ?

- Will administered by the PR
- PR responsibilities include:
  - Gathering of estate assets
  - Probating the will
  - Filing tax returns
  - Paying taxes and other debts of the estate
    - Duty to pay debts?
  - Providing interim support for beneficiaries
  - Settling decedent's business interests
  - Collecting benefits and income due to the estate
  - Filing an accounting with probate court
  - Distributing property to intended beneficiaries
  - Closing the estate

# Property Transfer @ Death

## Via Will

- Legal document giving testator (will-maker) oppty to control distribution of their property at death (and avoid intestate laws)
- May be amended/revoked at any time if testator competent. Provisions of will not invoked until death
- Assets not automatically transferring under state contract laws (ex: insurance policy beneficiary), state property titling ex: TBE), state trust law become part of the probate process
- Will is the voice of decedent directing how probate assets should be administered/distribution in probate process

## Via Intestacy

- State of decedent's domicile determines how property distributed
  - Personal property distributed as per will/laws of intestacy
  - Real property distributed based on situs
  - Probate process in other state than state of domicile is ancillary probate
- Individual with largest share in decedent's estate could be entitled to be administrator. Probate court must approve.

# Will

- Personal Representative locates and files the Will with Probate Court
- PR receives letters testamentary from the Court

# Intestacy

- Administrator petitions court for his/her own appointment
- Administrator receives letters of administration
- Posts the required bond



# Trusts



- Copyright Sean Scott – Youtube
- <https://www.youtube.com/watch?v=J9mRHSgrGAM>

# What is a trust?

- A fiduciary arrangement whereby the legal title of property is held and the property is managed by someone for the benefit of another
- A structure that vests legal title (legal interest) to assets in one party, the trustee, who manages those assets for the benefit of the beneficiaries (who hold equitable title) of the trust

# What is not a reason for a trust?

- Avoid all possible taxes
- Tax minimization is possible

# What is a Trust?

- [https://www.youtube.com/watch?v=UG5n\\_3UsrxA&list=UUKryftKNI\\_VNv5nbWeCAF6A](https://www.youtube.com/watch?v=UG5n_3UsrxA&list=UUKryftKNI_VNv5nbWeCAF6A)

# Why a Trust?

- Why create a trust versus distributing property via a will?
  - Provision of income to beneficiary
  - Provision of financial oversight/structure to trust corpus distribution
- Management
  - Oppty to handle and consolidate accumulations of wealth
- Creditor protection
  - Trust clause restricts beneficiaries from pledging trust income or principal interests to pay bene's debts

# Trust Benefits to Grantor

- Split interests in property
  - Ability to create separate interests (income and remainder beneficiaries). Allows grantor to influence asset distribution even after death through specification of timing and conditions of asset distribution
- Tax minimization
  - The transfer of future asset appreciation to heirs
  - Minimization of transfer taxes on subsequent generations
  - Reduction in size of grantor's gross estate
  - Reduction in income taxes for donor of income produced on the transferred asset(s)

# Trust Benefits to Grantor, 2

- Probate avoidance
  - Opportunity to create revocable trust that becomes irrevocable upon grantor's death and assets pass directly to heirs, bypassing probate process
  - Revocable trust doesn't avoid FGE taxes - grantor retains ownership until death
    - Rev. trust will avoid/minimize probate expenses

# Testamentary Trusts

- Created within the will as part of the will and becomes effective and irrevocable at death
- Because created by will, provision part of the probate estate
  - No savings from estate or income taxes during testator's lifetime
- If income and remainder beneficiaries named, may provide income for first generation w/o passing through their own estates at death
- Enhanced flexibility if trustee allowed to sprinkle income and principal among beneficiaries in different income and estate tax brackets whose needs may differ



# Pour-Over Will

- Property is transferred (“poured over”) from an estate into a preexisting trust
- Legally, “pouring over” must be done into an existing instrument

# The key...fund the Trust!

- A trust is useless without property inside it
- Must transfer all assets into a trust to avoid probate
- Farm Family Example
  - Revocable Living Trust (RLT) created by SE Indiana parents
  - Transferred all farms, house, bank accounts
  - Forgot about stock in mom's name
  - Mom dies 18 months after RLT creation
  - \$120,000 of publicly traded stock
  - An estate must be opened to transfer these shares to the RLT
  - 9 months later and some probate expenses...RLT now owns stock

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# What is a power of attorney?

- Legal document authorizing an individual to act on one's financial and/or medical behalf
- Requirements: age of majority (18 yoa), legal competence
- All powers are revocable by principal and cease upon principal's death
- Gen'l power of atty: such broad powers authorized that it can have adverse effect of ending up in agent's estate if they predecease the principal
  - Special/limited power of attorney may narrow authority of agent
    - Specific real estate closing - realtor

# Power of Attorney

- Consequences of NOT having power of atty:
  - Court will need to appoint guardian to assist with these issues.
  - Included in public record and can be administratively expensive.
  - Healthy spouse has limited ability to sell jointly owned assets – sale w/o consent of an incapacitated spouse can create hardship
- Disadvantages of power of atty:
  - Opportunity for agent to abuse powers granted to them
  - Gen'l power of atty – if agent dies before the principle, principal's assets may be included in the agent's gross estate
  - Agent with ltd/specific power cannot make gifts to themselves, other family members, nor can they make gifts to charity

# Power of Attorney - Principal

- Sally
  - 85 yoa Ohio resident
  - Gives unlimited Power of Attorney to son and daughter in law
    - Includes right to transfer assets
  - Son transfers \$250,000 of real estate to him and siblings
    - Siblings promise to take care of mom
  - Son applies for Medicaid for mother
    - Commits fraud by not disclosing real estate transfer
  - Son dies
- Sally moved to a 2<sup>nd</sup> class nursing home - penniless
- Granddaughter has to purchase toiletries, food, etc.

# Power of Attorney - Agent

- Agent cares for brother with POA
  - Many decades of personal care & financial decisions
- Incapacitated brother dies
  - Family sues the agent; their own family
  - Claim breach of fiduciary duty
    - Improper accounting – inappropriate expenses
    - Imprudent investing
- Be careful of agent liability
  - Personal liability – self funded defense (Tens of thousands \$)

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# Advance Directives

- Legal documents applicable when you are unable to make health care decisions on your own behalf
  - Health Care Power of Attorney and Designation of Representative
    - AKA Health care proxy, durable power of attorney for health care
  - Living Will declaration

# Advance Directives

- Advantages:
  - Avoid administrative delay in absence of documents
  - Ability to link health planning with wealth planning in advance
  - Opportunity to specify health care wishes in advance

# Advance Directives

- Health Care Representative general notes
  - Appoints individual to act on behalf of another who is unable to make those decisions for themselves
  - Puts health care decisions in hands of a 3<sup>rd</sup> party
  - May provide direction in terminal and non-terminal illness situations
    - Disclosure of medical records, blood transfusions, cardiac resuscitation, organ transplants, selection of medical support staff
    - Typically does not provide the right to end life-sustaining measures

# Advance Directives

- Attorney-in-fact Healthcare Representative powers:
  - To employ or contract with healthcare personnel affecting principal's care
  - To admit/release from healthcare facility
  - *To access medical records*
  - To make anatomical gifts on principal's behalf
  - To request an autopsy
  - To prepare for disposition of principal's body
- To consent, withdrawal, withhold medical care including providing nutrition and hydration through intravenous, gastronomy or nasogastric tubes
- Agreement to discuss decisions with principal and/or principal's family whenever possible

# Advance Directives

- Living will: opportunity to specify one's wishes regarding life sustaining measures in advance
- Indiana Living Will Declaration:
  - Applicable conditions: incurable injury/disease/illness, imminent death, use of life prolonging measures only artificially prolongs dying process

# Homework

“Are you kidding me? I was told this would be an easy class!”

2014 Purdue student quote

- Due August 21<sup>st</sup> – the start of Purdue classes
- Email a scanned copy or picture of completed chart to Kyle Mandeville ([kbm@hereforlife.com](mailto:kbm@hereforlife.com)).
- Top score wins a prize!

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# Family – Make the decision, before death

Set the terms for purchase, inheritance, etc.

Take control...with communication and avoid drama





# Partnerships?

Farmer child  
with off-farm  
siblings, only

Farm ground  
ownership,  
only

Avoid a  
“parent -  
forced”  
partnership



Start the conversation, today



# Questions?

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