

# Indiana Estate & Elder Law

PEACE OF MIND STARTS HERE

## **FISHERS**

10412 Allisonville Rd.

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## **ROCKVILLE**

303 N. Lincoln Rd.

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## **WABASH**

56 W. Market St.

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Wabash, IN 46992

# **Estate Planning 101**

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- About Indiana Estate & Elder Law
- About the presenter
- Promises



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# Areas of Practice

- ▶ Estate Planning & Asset Protection
- ▶ Elder Law (Medicaid, Long-Term Care Planning, Adult Guardianships, VA Benefits)
- ▶ Probate
- ▶ Trust Administration
- ▶ Business Succession Planning

# Estate Planning

- ▶ Healthcare Directives
  - ▶ Agent and successors
  - ▶ End stage medical condition instructions
- ▶ Power of Attorney
- ▶ Wills vs. Revocable Trust
- ▶ Prenuptial Agreement
  - ▶ Depart from usual marital laws
  - ▶ Not recognized by the FSSA for Medicaid purposes
- ▶ Trust
  - ▶ Testamentary, Revocable, Irrevocable



# Managing Incapacity

- ▶ Legal definitions of capacity
- ▶ Recognizing incapacity
- ▶ Legal implications of dementia
- ▶ Handling incapacity issues

# Managing Incapacity

IC 29-3-1-7.5: An incapacitated person is an individual who:

- ▶ (1) cannot be located upon reasonable inquiry;
- ▶ (2) is unable:
  - (A) to manage in whole or in part the individual's property;
  - (B) to provide self-care;
  - (c) both;

because of insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity; or

- ▶ (3) has a developmental disability (as defined in IC 12-7-2-61).

## ► Recognizing Incapacity

- What are some of the signs?

## ► Legal Implications of Dementia

Testamentary Capacity: knowing

- (1) the extent and value of his/her property;
- (2) those who are the natural objects of his/her bounty; and
- (3) their just deserts, with respect to their treatment of and conduct toward him/her

- Applies to execution of wills
- Notice difference between this definition and the definition of mentally incapacitated?

## ► Planning Options For Managing Incapacity

- Power of Attorney
- Healthcare Proxies
- Trusts





# Power of Attorney: In Depth

- ▶ Execution
  - ▶ Witnesses? Notarized?
- ▶ Notice?
- ▶ Presumed durable
- ▶ Special rules for gifts
- ▶ Specifying powers
- ▶ Revocation
- ▶ Third party liability
- ▶ Third party immunity
- ▶ Compensation
- ▶ Out-Of-State POAs



# Top Five Power of Attorney Problems

1. Inadequate authority to create, fund, or terminate a trust
2. Springing vs. Durable
3. Improper execution
4. No successor agents
5. Gifting powers inadequate

# Guardianship Process

- ▶ Petition
- ▶ Hearing
- ▶ Medical Testimony
- ▶ Attendance of alleged incapacitated



# Protection Against Exploitation

- ▶ Warning signs
- ▶ Social
- ▶ Financial
- ▶ Legal

## Using A Trust

- ▶ Managing incapacity
- ▶ Trustee & successors





# Irrevocable Trusts

Deals with:

- ▶ Medicaid
- ▶ VA
- ▶ Second marriage problems
- ▶ Scams and undue influence
- ▶ Creditors and lawsuits
- ▶ Avoiding probate and estate recovery



# Why Irrevocable Trusts

Deals with:

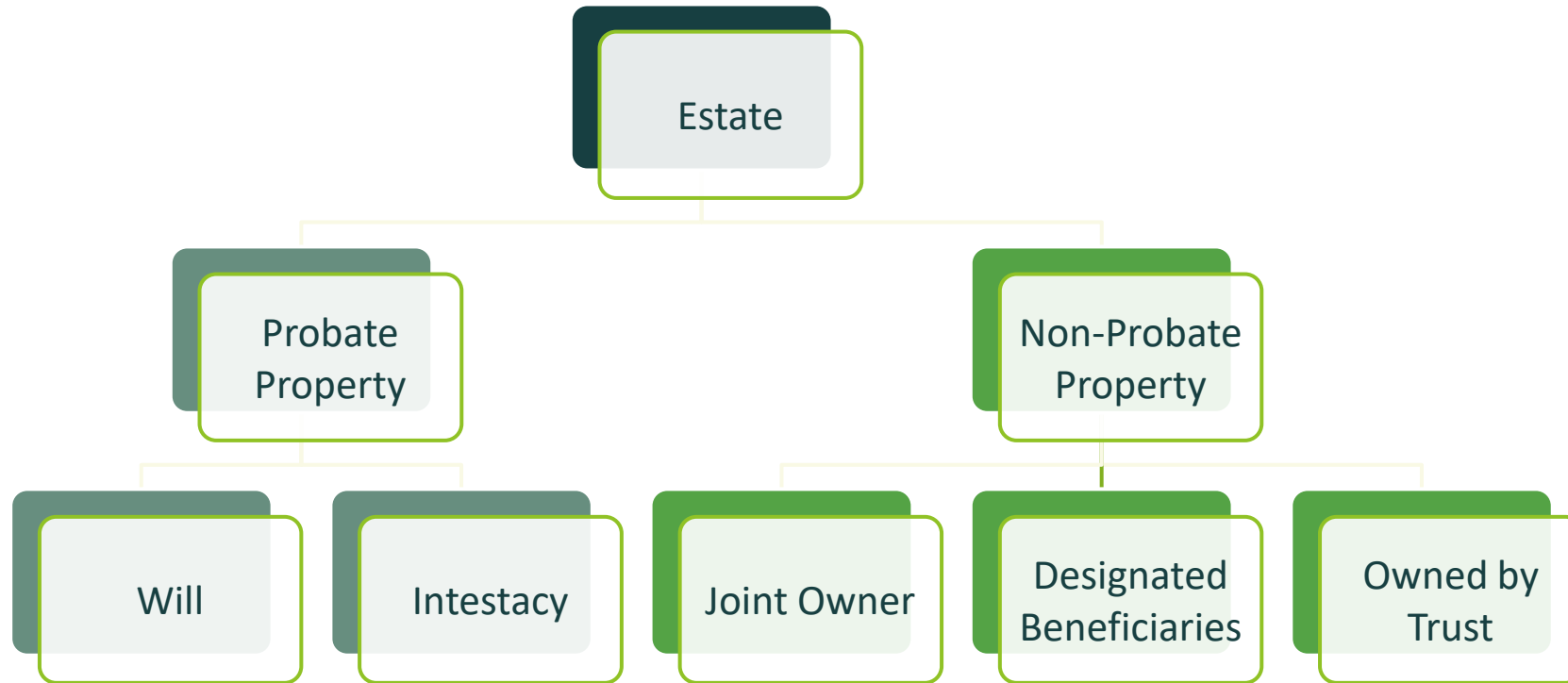
- ▶ Preferable to gifting
  - ▶ Control
  - ▶ Protection
  - ▶ Tax advantages
- ▶ Income
- ▶ Ability to make distributions
- ▶ Ability to terminate



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# Probate & Trust Administration





# Handling Estate Assets & Estate Administration

## ► Important Issues:

- Need to open probate estate?
- What was date of death?
  - *Triggers potential due dates*
- Who are decedent's survivors and are they entitled to assets of decedent?
- Married at time of death?
  - *Potential elective share issue*



# Handling Estate Assets & Estate Administration

## ► Kids?

- Minors

- Disabilities

- Pre-deceased children

## ► What are the date of death values for the assets?

- Important for valuation and tax purposes

QUESTIONS



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# Estate & Gift Tax Update

## Key Tax Provisions:

- ▶ Gift Tax (during life)
  - ▶ \$17,000 per person/per year exclusion
  - ▶ \$12.92 million lifetime exemption (per person)
- ▶ Estate Tax (after death)
  - ▶ \$12.92 million exclusion per person in a lifetime (indexed for inflation)
  - ▶ Law will be sunset in 2026

# Medicaid

- ▶ Est. 1965 along with Medicare
- ▶ Federal program administered by states

## Eligibility Criteria

- ▶ Citizen, Indiana resident
- ▶ 65+, blind or with a disability
- ▶ Medically eligible
- ▶ Assets <\$2,000



# After Qualifications

Program pays for nursing facility care

- ▶ Waiver program – home care

Recipient's income paid to nursing facility, except for:

- ▶ \$60 (\$52)/mo., personal needs allowance
- ▶ Health insurance premium
- ▶ Income to spouse, if applicable
- ▶ Other deductions may apply



# All Resources – Applicant & Spouse

- ▶ Exempt (non-countable)
- ▶ Non-Exempt (countable)

## Common Exempt Resources

- ▶ Residence
- ▶ Household goods/personal effects
- ▶ Motor vehicle
- ▶ Some life insurance
- ▶ Irrevocable burial reserve
- ▶ Community spouse qualified retirement plan/IRA
- ▶ Property (non-business and business property essential to self support)



# Asset Transfers

- ▶ Except
- ▶ For value
- ▶ Gifts

## Common Exempt Transfers

- ▶ To child with a disability, under 21, or blind
- ▶ House to caregiver child
- ▶ House to sibling of applicant with equity interest in residence



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# Transfers For Value

If legitimate and not exorbitant,  
no period of ineligibility

- ▶ Nursing care, living expenses prior to admission, legal fees
- ▶ Purchases of exempt resources

## Gifts In General

“Transfer of asset, by applicant or spouse, for less than fair market value

- ▶ Period of ineligibility may be imposed if made within look-back period



# Gifts (Period Of Ineligibility)

Amount gifted ÷ penalty divisor  
(\$6,873) = months of ineligibility

## Look-Back Period

Depends on date when application  
for benefits is file:

60 months

- (1) transfers to trust, or
- (2) transfers to individual



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