



2023 ESTATE & SUCCESSION PLANNING FOR THE FAMILY FARM

JOHN E. COLIN, ESQ.



SIMPSON • COLIN LLC
ATTORNEYS AT LAW

205 NORTH CAPITOL, CORYDON, IN 47112 812-738-2246 WWW.CORYDON-LAWYERS.COM © 2023

ATTORNEY STUFF

This presentation is not intended to be legal advice. Although every effort has been made to obtain the best information for this presentation, many of the issues in this area are part of a rapidly changing body of law and administrative regulation.

The presenter makes no warranties about any legal conclusion stated in the presentation and this material is not intended to create an attorney-client relationship and should not be considered legal advice. Application of the principles discussed to specific facts or cases should only be undertaken with the advice of knowledgeable counsel.

Dissemination of this presentation or its materials without the consent of the presenter is prohibited.



JOHN E. COLIN, Esq.

JOHN GREW UP ON A GRAIN AND LIVESTOCK FARM IN SOUTHERN INDIANA. IN 1988, JOHN WAS ELECTED STATE PRESIDENT OF THE INDIANA ASSOCIATION OF FUTURE FARMERS OF AMERICA (“FFA”). IN THAT CAPACITY HE LED THE ORGANIZATION OF APPROXIMATELY 7,200 STATEWIDE MEMBERS. HIS SERVICE REQUIRED THAT HE TAKE A YEAR OFF COLLEGE TO REPRESENT THE ORGANIZATION TO INDIANA’S ELECTED OFFICIALS AND AGRICULTURE INDUSTRY LEADERS.

HE IS A 1993 GRADUATE OF INDIANA UNIVERSITY, WHERE HE GRADUATED WITH A BACHELOR OF ARTS DEGREE IN POLITICAL SCIENCE. WHILE IN COLLEGE, HE SERVED AS STUDENT GOVERNMENT PRESIDENT AND CHAIRMAN OF THE ALL UNIVERSITY STUDENT ASSOCIATION (“AUSA”) REPRESENTING THE NEARLY 90,000 STUDENTS OF INDIANA UNIVERSITY. AFTER COLLEGE, JOHN WORKED AS A FIELD REPRESENTATIVE FOR INDIANA FARM BUREAU, INC. PRIOR TO ATTENDING LAW SCHOOL IN MICHIGAN. JOHN ALSO SERVED AS AN AIDE TO FORMER CONGRESSMAN LEE H. HAMILTON.

JOHN IS A LAW PARTNER IN THE CORYDON FIRM OF SIMPSON COLIN, LLC. THE FIRM HAS BEEN IN EXISTENCE SINCE 1879 AND HAS HAD MANY DISTINGUISHED PARTNERS, INCLUDING FORMER GOVERNOR FRANK L. O’BANNON.

JOHN’S AREA OF PRACTICE INCLUDES CORPORATE LAW, ESTATE PLANNING, AND REAL ESTATE. FROM 2002-2010 HE SERVED AS CHIEF DEPUTY PROSECUTING ATTORNEY IN HARRISON COUNTY. JOHN ALSO SERVED AS COUNTY ATTORNEY FOR BOTH HARRISON (2004-2010) AND CRAWFORD COUNTIES (2000-2016).

JOHN CURRENTLY SERVES AS A MEMBER OF THE INDIANA UNIVERSITY SOUTHEAST CHANCELLOR’S BOARD OF ADVISORS. JOHN ALSO CURRENTLY SERVES AS CHAIRMAN OF THE BOARD OF A COMMUNITY BANK HEADQUARTERED IN SOUTHERN INDIANA AND CHAIRMAN OF THE BOARD OF ITS HOLDING COMPANY WHICH IS A NASDAQ LISTED COMPANY.

JOHN AND HIS WIFE, KELLY, RESIDE IN CORYDON, INDIANA WITH THEIR TWO CHILDREN.



SIMPSON • COLIN LLC

ATTORNEYS AT LAW

205 NORTH CAPITOL, CORYDON, IN 47112 812-738-2246 WWW.CORYDON-LAWYERS.COM © 2023

GOALS of TODAY'S PRESENTATION

1. TODAY'S GOAL IS TO ASSIST YOU TO PREPARE YOUR PLANS....WHATEVER THEY MAY BE.
2. IDENTIFY TERMS AND CONCEPTS OF ESTATE PLANNING TO MAKE THOSE CONCEPTS EASIER AND TO PREPARE YOU FOR THE NEXT STEPS.
3. ASSIST YOU TO IDENTIFY THE NEXT STEPS IN YOUR ESTATE PLAN.
4. TO LET YOU KNOW THAT YOU ARE NOT ALONE. WE ARE IN THE MIDDLE OF THE LARGEST WEALTH TRANSFER IN THE HISTORY OF THE WORLD.





THIS CHART SHOWS A BREAKDOWN OF THE 140 TRILLION DOLLARS IN TOTAL WEALTH HELD IN UNITED STATES BY GENERATION.

- SILENT GENERATION BORN BEFORE 1946
- BABY BOOMERS BORN 1946-1964
- GENERATION X BORN 1965-1980
- MILLENNIALS BORN AFTER 1980

NEW YORK TIMES, MAY 14, 2023 THE GREATEST WEALTH TRANSFER IN HISTORY IS HERE, WITH FAMILIAR WINNERS.



SIMPSON • COLIN LLC

ATTORNEYS AT LAW

205 NORTH CAPITOL, CORYDON, IN 47112 812-738-2246 WWW.CORYDON-LAWYERS.COM © 2023

REASONS PEOPLE FAIL TO PLAN

1. TOO DIFFICULT TO MAKE THE HARD DECISIONS.
2. THEY DON'T KNOW WHERE TO BEGIN.
3. COST/TIME.



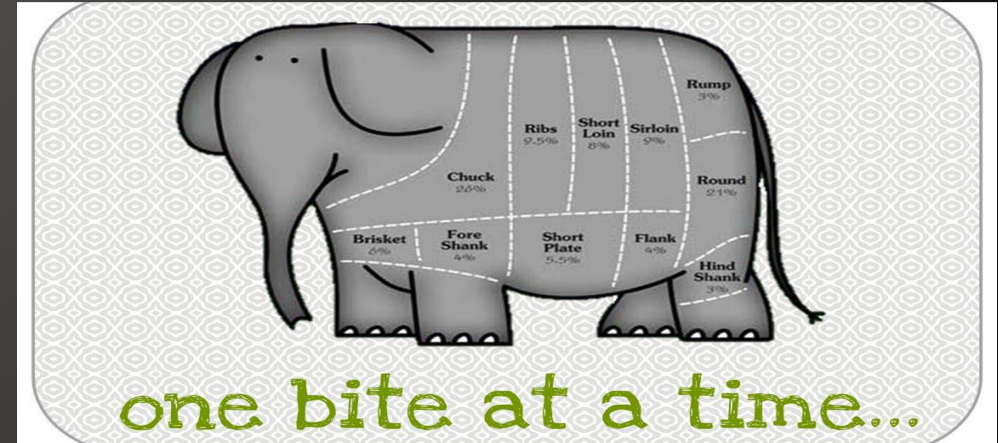
SIMPSON • COLIN LLC

LAWYERS AT LAW

205 NORTH CAPITOL, CORYDON, IN 47112 812-738-2246 WWW.CORYDON-LAWYERS.COM © 2023

REASONS YOU NEED TO PLAN

1. YOU NEED TO TAKE CARE OF YOUR SPOUSE AND CHILDREN.
2. COULD SPELL THE END OF THE FAMILY FARM.
3. PRESERVE RELATIONS OF YOUR HEIRS.
4. TOO COSTLY NOT TO PLAN.
5. NEARING THE END OF THE “ERA OF EASY PLANNING”-- A DISCUSSION OF THE 2017 TAX ACT.



GIFT AND ESTATE TAX

- * THE TAX CUTS AND JOBS ACT OF 2017.
- * FOR 2023, THE AMOUNT THAT YOU CAN TRANSFER DURING YOUR LIFE OR AT YOUR DEATH WITHOUT INCURRING TAX IS \$12.92 MILLION (\$25.84 MILLION PER MARRIED COUPLE).
- * FOR 2023, THE ANNUAL GIFT TAX EXCLUSION IS \$17,000 (\$34,000 FOR MARRIED COUPLE) PER PERSON. GIFTING ABOVE ANNUAL EXCLUSION REQUIRES FILING OF INFORMATIONAL RETURN.
- * FEDERAL ESTATE TAX RATES GRADUATED SCALE WITH TOP ESTATE TAX RATE 40% ON TAXABLE AMOUNT ABOVE \$1 MILLION.



GIFT AND ESTATE TAX

- * MOST PROVISIONS OF THE TAX CUTS AND JOBS ACT OF 2017 ARE SET TO EXPIRE ON DECEMBER 31, 2025 INCLUDING FEDERAL ESTATE TAX EXEMPTION AMOUNTS UNLESS CONGRESS ACTS TO EXTEND OR CHANGE RATES.
- * UPON EXPIRATION, THE RATES REVERT TO THE RATES THAT EXISTED PRIOR TO THE ACT (2017) COST ADJUSTED FOR INFLATION (EST. \$6.8 MILLION).
- * WILL LIKELY GIVE RISE TO INCREASED CREDIT SHELTER TRUSTS/GIFTING PRIOR TO 2026.



INDIANA INHERITANCE TAX

THERE IS NO INDIANA STATE INHERITANCE TAX
FOR PERSONS DYING AFTER DECEMBER 31, 2012.



SIMPSON • COLIN LLC

ATTORNEYS AT LAW

205 NORTH CAPITOL, CORYDON, IN 47112 812-738-2246 WWW.CORYDON-LAWYERS.COM © 2023

GIFT AND ESTATE TAX



SIMPSON • COLIN LLC

ATTORNEYS AT LAW

205 NORTH CAPITOL, CORYDON, IN 47112 812-738-2246 WWW.CORYDON-LAWYERS.COM © 2023

ESSENTIAL ITEMS OF UNDERSTANDING –Estate Planning 101

* LAST WILL & TESTAMENT

* PROBATE/SMALL ESTATE ADMINISTRATION

* TRUSTS

* JOINT OWNERSHIP/BENEFICIARY DESIGNATIONS

*BUSINESS ENTITIES
-LLC'S

*POWER OF ATTORNEYS

*ADVANCED DIRECTIVES

*BASIS



SIMPSON • COLIN LLC

ATTORNEYS AT LAW

205 NORTH CAPITOL, CORYDON, IN 47112 812-738-2246 WWW.CORYDON-LAWYERS.COM © 2023

ESSENTIAL ITEMS OF UNDERSTANDING –Estate Planning 101

* LAST WILL & TESTAMENT

REQUIREMENTS: MUST BE: 1) IN WRITING, 2) SIGNED BY TESTATOR/TESTATRIX, AND 3) WITNESSED BY TWO PERSONS NOT BENEFICIARIES IN THE WILL.

COMMON PROVISIONS:

- EXPENSE PAYMENTS
- PROVISION FOR CREATION OF GUARDIANSHIP IF CHILDREN ARE MINORS
- IDENTIFICATION OF SPECIFIC BEQUESTS
- DETERMINATION OF HEIRS/BACKUPS FOR DISPOSITION OF RESIDUE
- DETERMINATION OF PERSONAL REPRESENTATIVES/EXECUTOR AND BACKUP
- DIRECTION FOR SUPERVISED/UNSUPERVISED ESTATE



ESSENTIAL ITEMS OF UNDERSTANDING –Estate Planning 101

* PROBATE

FROM THE LATIN “PROVAR”. IT MEANS TO PROVE. THUS, PROBATE IS THE PROCESS OF PROVING THE LAST WILL AND TESTAMENT. COMMON DESCRIPTION OF THE PROCESS OF ADMITTING AND COMPLETING PROBATE ADMINISTRATION.

* SMALL ESTATE/SUMMARY ADMINISTRATION PROCESS

PROVIDES A SIMPLIFIED PROCESS TO AVOID THE PROBATE PROCESS FOR ESTATES HAVING ASSETS WORTH LESS THAN \$100,000.00, THROUGH THE USE OF AN AFFIDAVIT THAT COMPLIES WITH THE STATUTE.



ESSENTIAL ITEMS OF UNDERSTANDING –Estate Planning 101

* TRUSTS

IN GENERAL, A TRUST IS A FIDUCIARY RELATIONSHIP IN WHICH ONE PERSON HOLDS TITLE TO PROPERTY, SUBJECT TO AN AGREEMENT TO KEEP OR USE THE PROPERTY FOR THE BENEFIT OR USE OF ANOTHER.

TRUSTOR/SETTLOR/GRANTOR –CREATOR OF THE TRUST

TRUSTEE-PERSON GIVEN POWER OVER PROPERTY PLACED IN TRUST
PROVISIONS:

- REVOCABLE OR IRREVOCABLE
- CAN HOLD VARIOUS TYPES OF PROPERTY
- AVOIDS PROBATE
- INCREASED PRIVACY (WILL BECOME MORE IMPORTANT AFTER 1-1-24 IMPLEMENTATION OF THE CORPORATE TRANSPARENCY ACT REPORTING REQUIREMENTS.)



ESSENTIAL ITEMS OF UNDERSTANDING –Estate Planning 101

* JOINT OWNERSHIP/BENEFICIARY DESIGNATIONS

JOINTLY HELD PROPERTY OR PROPERTY WITH BENEFICIARY DESIGNATIONS PASSES OUTSIDE OF PROBATE.

EXAMPLES:

TOD'S

POD'S

STOCK/LIFE INSURANCE BENEFICIARY DESIGNATIONS

JOINT TENANCY

TENANCY BY THE ENTIRETY



ESSENTIAL ITEMS OF UNDERSTANDING –Estate Planning 101

*BUSINESS ENTITIES

-LIMITED LIABILITY COMPANIES (“LLC”)

- * CREATED BY INDIANA BUSINESS FLEXIBILITY ACT-1993
- * MEMBERS TYPICALLY PROTECTED FROM PERSONAL LIABILITY
- * TAXATION FLEXIBILITY
- * FLEXIBLE MANAGEMENT STYLE (MEMBER/MANAGER)
- * ALLOWS ALLOCATION OF INCOME UNRELATED TO OWNERSHIP PERCENTAGE
- * FEWER REQUIREMENTS/FORMALITIES THAN CORPORATIONS.
- * ALLOWS MEMBERS TO PLACE RESTRICTIONS ON TRANSFERS
- * RULES OF THE LLC ARE GOVERNED BY OPERATING AGREEMENT.



ESSENTIAL ITEMS OF UNDERSTANDING –Estate Planning 101

POWER OF ATTORNEYS

-“ATTORNEY IN FACT” IS THE PERSON DESIGNATED TO ACT UNDER A POWER OF ATTORNEY (“POA”). FIDUCIARY OBLIGATION.

-POA CAN BE AS BROAD OR NARROW AS YOU WISH.

-EFFECTIVE DURING LIFE, TERMINATES UPON DEATH.

-POA WILL IDENTIFY THE POWERS YOU SPECIFY TO BE USED ON YOUR BEHALF.

-POA WILL IDENTIFY POA AND ANY BACKUPS.



ESSENTIAL ITEMS OF UNDERSTANDING-Estate Planning 101

ADVANCED DIRECTIVES

EFFECTIVE JULY 1, 2021, A PERSON WITH DECISIONAL CAPACITY COULD SIGN A NEW ADVANCED DIRECTIVE. BEGINNING JANUARY 1, 2023, AN ADVANCE DIRECTIVE IS THE REQUIRED DOCUMENT TO:

- APPOINT A HEALTH CARE REPRESENTATIVE; AND,
- EXPRESS HEALTHCARE DECISIONS FOR THE WITHDRAWAL OF HEALTHCARE. (MAY INCORPORATE OLD LIVING WILL LANGUAGE)

IF DECLARANT STILL HAS CAPACITY TO CONSENT TO HEALTH CARE, DECLARANT WILL CONTROL. OPTIONAL PROVISIONS FOR DELEGATION, CONTROL OVER AUTOPSY, ETC.



ESSENTIAL ITEMS OF UNDERSTANDING –Estate Planning 101

BASIS

-THE VALUE ASSIGNED TO A TAXPAYER'S INVESTMENT IN PROPERTY AND USED PRIMARILY TO COMPUTE GAIN OR LOSS FROM A TRANSFER IN PROPERTY.

STEP-UP BASIS

-A PERSON WHO INHERITS PROPERTY THAT WAS INCLUDED IN THE DECEDENT'S ESTATE OBTAINS A NEW BASIS FOR THE PROPERTY EQUAL TO FAIR MARKET VALUE.

CARRY OVER BASIS

-PROPERTY THAT IS TRANSFERRED AS A LIFETIME GIFT FROM THE PROPERTY OWNER TO AN INDIVIDUAL OR AN IRREVOCABLE TRUST FOR THE BENEFIT OF ANOTHER MAINTAINS THE BASIS OF THE DONOR.



ESSENTIAL ITEMS OF UNDERSTANDING –Estate Planning 101

CARRY OVER BASIS EXAMPLE:

FATHER ACQUIRES FARM FOR \$100,000 IN 2003. IN 2022, IN AN EFFORT TO “AVOID PROBATE” FATHER CONVEYS THE FARM, WHICH IS NOW WORTH \$250,000 TO SON. IF SON WERE TO SELL THE FARM THIS YEAR FOR \$275,000, HE WOULD PAY CAPITAL GAIN TAX ON \$175,000, THE DIFFERENCE BETWEEN \$100,000 AND \$275,000, SINCE THE FATHER’S BASIS “CARRIED” FORWARD.

STEP-UP BASIS EXAMPLE:

MOTHER PURCHASED A FARM IN 2006 FOR \$300,000. SHE PASSED AWAY IN 2023. IN HER LAST WILL AND TESTAMENT, SHE LEFT THE FARM TO HER DAUGHTER. THE FARM APPRAISED FOR \$750,000. DAUGHTER SELLS THE FARM FOR THAT AMOUNT. DAUGHTER IS ENTITLED TO THE “STEP-UP” TO FAIR MARKET VALUE. THUS, HER BASIS IS \$750,000, WHICH RESULTS IN -\$0- CAPITAL GAIN.



WHERE DO YOU GO FROM HERE

IDENTIFY PROFESSIONAL ADVISORS:

ATTORNEY

ACCOUNTANTS

FINANCIAL ADVISORS



SIMPSON • COLIN LLC

LAWYERS AT LAW

205 NORTH CAPITOL, CORYDON, IN 47112 812-738-2246 WWW.CORYDON-LAWYERS.COM © 2023



JOHN E. COLIN
SIMPSON COLIN, LLC
205 NORTH CAPITOL AVE
CORYDON, IN 47112
812-738-2246
WWW.CORYDON-LAWYERS.COM



SIMPSON • COLIN LLC

LAWYERS AT LAW

205 NORTH CAPITOL, CORYDON, IN 47112 812-738-2246 WWW.CORYDON-LAWYERS.COM © 2023