Protect You & Your Family From Unnecessary Financial and Emotional Hardships

Keep Control of Assets, Pass Legacy No Matter How Small or Large Your Estate

How to plan your estate so you
❖ Control your money
❖ Control your assets
❖ Protect your family
❖ Become a good steward of your property
❖ Never become a burden to your children

Written and Published as an Educational Service by

GARY C. DEWITT
Asset Protection & Estate Planning Attorney

Providing Legal Services for Families, Businesses, & Executives

What have you done to **Protect** Your Assets and Choices, **Protect** Your Family, and **Never Burden** Your Family?

A Last **Will** and Testament is **not enough** and may **cause unnecessary expenses & headaches** for your family.

**DOING NOTHING IS A CHOICE TOO!**
Complimentary Consultation

1 Hour Estate Planning Strategy Session

Authorized:
Gary DeWitt

Expires:
One Month from Receipt

DeWitt Law Firm
(479)717-6300
gary@dewittlawar.com

*$200 value. Not redeemable for cash. Redemption value not to exceed $0.01
A leading reason people don’t create a plan is because they believe their estate is too small. However, estate planning is for everyone because without planning, State laws will determine how your assets pass, to whom they pass, and when they pass.

Doing nothing can lead to undesired results, and is perhaps the most costly way to pass assets to loved ones – even if those assets are small.

An estate plan isn’t just about tax and probate avoidance; it is about establishing a legacy and a clear process for your care and the care of your loved ones upon your incapacity or death.
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DISCLAIMER

This book is written for educational use only.

No legal advice is intended.

This book was written based on the law of Arkansas.

No attorney-client relationship is created by use of this book.

No attorney-client relationship is created by contacting the author with questions about the book.

Nothing in this guide should be taken, or is offered, as legal advice. You should visit with an attorney before making decisions with long term or legal consequences.

You aren’t allowed to rely on anything in this guide for any reason. Every individual's situation differs and needs an attorney to examine the scenario with you.

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GREETINGS FROM GARY DEWITT

Please take a few minutes, right now, to complete my Estate Planning Deficiencies Check-Up, so you can see if your family and the things you care about are safe from the realities of life.

Why Do You Need to Live, Protect, & Pass?

The number one reason people don’t create a plan is because they believe their estate is too small. However, estate planning is for everyone because without proactive planning, state laws will determine how your assets pass, to whom they pass, and when they pass.

Doing nothing can lead to undesired results, and is perhaps the most costly way to pass assets to loved ones – even if those assets are small.

An estate plan isn’t just about tax and probate avoidance; it is about establishing a legacy and a clear process for your care and the care of your loved ones upon your incapacity or death.

Did you know…?

If you don’t have a valid will or trust, then state laws will determine how your assets pass, to whom they pass, and when they pass. This could lead to unnecessary estate and income taxes, your estate being consumed by creditors, your estate being tied up in probate court (possibly for years...), and other undesired results, and is perhaps the
The most costly and emotionally draining way to pass assets to your loved ones.

A well-structured estate plan provides benefits in five key areas:

<table>
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<th>EMPOWERMENT</th>
<th>INCAPACITY</th>
<th>ASSETS</th>
<th>PROTECTION</th>
<th>TAXES</th>
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<td><strong>Name</strong> guardians for minor children</td>
<td><strong>Choose</strong> who will make emergency health care decisions for you in the event you are unable to do so</td>
<td><strong>Avoid</strong> delays and expense of probate</td>
<td><strong>Protect</strong> your children’s inheritance if your surviving spouse remarries or from a divorcing spouse</td>
<td><strong>Minimize</strong> possible federal and state estate taxes at your death (including taxes on your house, life insurance and IRA’s)</td>
</tr>
<tr>
<td><strong>Appoint</strong> trusted people to manage your affairs</td>
<td><strong>Prevent</strong> possible will contests and disputes</td>
<td><strong>Designate</strong> beneficiar­ies on retirement plans and life insurance policies</td>
<td><strong>Protect</strong> assets passed to your surviving spouse and to your children’s inheritance from creditors and lawsuits</td>
<td><strong>Maintain</strong> consistency with current tax laws</td>
</tr>
<tr>
<td><strong>Keep</strong> your affairs private</td>
<td><strong>Identify</strong> how you wish to determine if you are mentally disabled</td>
<td><strong>Care</strong> for you and your loved ones in the event you are unable to do so</td>
<td></td>
<td></td>
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<tr>
<td><strong>Build</strong> a legacy to pass to your loved ones</td>
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</table>
Estate Planning Deficiencies Check-Up

The following questions will help you determine if your current estate plan is sufficient to accomplish your goals of providing for your care during incapacity, protecting your loved ones, and passing your assets to whom you want, when you want, and in the way you want.

---

<table>
<thead>
<tr>
<th>Do you have a current plan (a Will or Trust) in place?</th>
<th>Yes</th>
<th>No</th>
<th>Don’t Know</th>
</tr>
</thead>
</table>

Even if you marked “Yes” above, Congress, state legislatures, and the courts are constantly changing the rule book. In fact, there have been several major estate and income tax law changes in recent years. Depending on your circumstances, an out-of-date estate plan might be missing valuable planning opportunities and could cost your family dearly in extra taxes and administration costs.

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<table>
<thead>
<tr>
<th>Do you have a current Durable Power of Attorney?</th>
<th>Yes</th>
<th>No</th>
<th>Don’t Know</th>
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</thead>
</table>

<table>
<thead>
<tr>
<th>Do you have a current Healthcare Power of Attorney?</th>
<th>Yes</th>
<th>No</th>
<th>Don’t Know</th>
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</table>

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<tr>
<th>Do you have an Advanced Healthcare Directive (a.k.a. Living Will) or 5 Wishes?</th>
<th>Yes</th>
<th>No</th>
<th>Don’t Know</th>
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<tr>
<th>Has your current plan been reviewed in the last two years?</th>
<th>Yes</th>
<th>No</th>
<th>Don’t Know</th>
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<tr>
<th>Does your current plan contain a customized plan to determine if you are mentally disabled?</th>
<th>Yes</th>
<th>No</th>
<th>Don’t Know</th>
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</table>

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<tr>
<th>Does your current plan give instructions for your care and the care of your loved ones in the event of your disability?</th>
<th>Yes</th>
<th>No</th>
<th>Don’t Know</th>
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<tr>
<th>Are you certain your current plan will minimize possible federal estate taxes at your death, including taxes on your house, life insurance and IRA’s?</th>
<th>Yes</th>
<th>No</th>
<th>Don’t Know</th>
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<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
<th>Don’t Know</th>
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<tbody>
<tr>
<td>Is your current plan fully funded so that not one single item will have to go through probate?</td>
<td>☐</td>
<td>☑</td>
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<tr>
<td>Have you taken steps to avoid possible will contests and disputes during the administration of your estate?</td>
<td>☐</td>
<td>☑</td>
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<tr>
<td>Does your current plan protect your children’s inheritance?</td>
<td>☐</td>
<td>☑</td>
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<tr>
<td>In the event your surviving spouse chooses to remarry?</td>
<td>☐</td>
<td>☑</td>
<td>☑</td>
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<tr>
<td>From creditors?</td>
<td>☐</td>
<td>☑</td>
<td>☑</td>
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<tr>
<td>From lawsuits?</td>
<td>☐</td>
<td>☑</td>
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<tr>
<td>From a divorcing spouse?</td>
<td>☐</td>
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<tr>
<td>Does your current plan protect assets passed to your surviving spouse?</td>
<td>☐</td>
<td>☑</td>
<td>☑</td>
</tr>
<tr>
<td>In the event your surviving spouse chooses to remarry?</td>
<td>☐</td>
<td>☑</td>
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<tr>
<td>From creditors?</td>
<td>☐</td>
<td>☑</td>
<td>☑</td>
</tr>
<tr>
<td>From lawsuits?</td>
<td>☐</td>
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<tr>
<td>Have you recently checked the beneficiary designations of your retirement plans and life insurance policies?</td>
<td>☐</td>
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<tr>
<td>If you have a Trust, are you confident that you have not listed your estate or any minor children as either primary or secondary beneficiaries of your retirement plans and life insurance policies?</td>
<td>☐</td>
<td>☑</td>
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<tr>
<td>Does your current plan name guardians for your minor children?</td>
<td>☐</td>
<td>☑</td>
<td>☑</td>
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<tr>
<td>Are you confident your current plan is income tax efficient?</td>
<td>☐</td>
<td>☑</td>
<td>☑</td>
</tr>
<tr>
<td>Question</td>
<td>Yes</td>
<td>No</td>
<td>Don’t Know</td>
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<td>-------------------------------------------------------------------------</td>
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<tr>
<td>Does your current plan name an executor or successor trustee?</td>
<td></td>
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<tr>
<td>Are you confident your executor, power of attorney, and successor trustee are prepared to act on your behalf when asked to?</td>
<td></td>
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<tr>
<td>Does your current Health Care Power of Attorney permit the person of your choosing (spouse, child, family) to make emergency health care decisions for you in the event you are unable to do so?</td>
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**Complimentary Strategy Session**

Did you mark **No** or **Don’t Know** anywhere on this check-up?

**If you did** – **CALL** (479)717-6300 and schedule a Complimentary Strategy Session.
Complimentary Consultation

1 Hour Estate Planning Strategy Session*

Authorized:
Gary DeWitt

Expires:
One Month from Receipt

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gary@dewittlawar.com

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NOTE FROM GARY

I wrote this because I want to help you protect what is important to you.

Yes, it looks like a lot, but you will find that it is spaced out and in a larger font. If I had written it with normal spacing and fonts, it would be much shorter, but difficult to read.

Let me introduce myself – I’m Gary DeWitt and I use the law to help people like you protect their families, their children, their pets, and their businesses from the realities of life.

I am dedicated to providing the highest level of service to families and business owners.

Most people I talk with have many questions. I’m often asked –

Estate planning! Isn’t “estate planning” for rich people?

(Sneak peek answer: You don’t need a fortune to benefit from an estate plan. In fact, most of my clients are just like you…a house, cars, IRAs, life insurance, some investments, a small business, etc…and, most importantly, a family they want to protect. Want to leave money to your church, your alma mater, or other charity? If so, an estate plan is how you get there.)

Or sometimes I hear –

I signed a will or trust a few years ago…why would I need to do it again?
(Remember, the only constant in the world is change...well and that Congress, the legislature, and the courts are constantly rewriting the rulebook. A few years might as well be an eternity when it comes to our tax laws. Plus, our lives, circumstances, needs, and goals are always changing too. Your will and trust must be updated as the law and your circumstances change.)

Remember, **doing nothing is a choice too** – one that can end in financial disaster and a devastating emotional toll on your loved ones (both of which are preventable with proper planning).

Very truly yours,

*Gary Dewitt*

Gary DeWitt
READ WHAT FRIENDS AND CLIENTS SAY ABOUT RESPECTED
Asset Protection and Estate Planning Attorney

Gary DeWitt

Providing Legal Services to Clients in the Areas of
Asset Protection, Estate Planning, Elder Law and Probate

I Would Highly Recommend Contacting The DeWitts...

So helpful in assisting me with my estate planning. They also helped me with my
father's medicaid planning. If you are setting up a trust or need help with a last will
and testament I would highly recommend contacting the DeWitts.

Jay R.
Fayetteville, Arkansas

Very well versed in estate planning. They answered all my questions and made sure my
family's future was taken care of!

Chris Erbe
Farmington, Arkansas

One stop estate planning Gary and his staff will insure that you and your assets are
handled in the best way when the need arises!

Jeff Danley
Fayetteville, Arkansas
IMPORTANT – READ ME

What Have You Done to **Keep Control** Of Your Assets and Choices, **Protect** Your Family, and **Never Burden** Your Family?

A Last **Will** and Testament is **not enough** and may **cause unnecessary expenses & headaches** for your family

You have one of two estate plans:
1. You wrote it yourself
2. The State wrote it for you

**Purpose & Overview**

You don’t want the State’s plan.

You don’t want to burden your family financially and emotionally.

The purpose of this book is to introduce estate planning and educate you how to write your own plan.

You want to protect you and your family!

**Don’t End Up Like Terri Schiavo**

One of the well-known cases that highlights the need for a medical emergency plan is that of Terri Schiavo, a 26-year old Florida woman who collapsed and fell into a coma in February of 1990.
Mrs. Schiavo didn’t have a Living Will or Healthcare Directive, and as a result was kept alive for 15 years while her husband and parents fought in court over taking her off life support.

Finally, in March 2005, a Florida court ordered removal of Mrs. Schiavo’s feeding tube. She died 13 days later - and the autopsy proved that she had been brain dead since she collapsed 15 years earlier.

While the Schiavo case is an extreme one, it emphasizes the fact that without an emergency plan, your family members may be left to guess (or possibly fight) about your medical treatment and end-of-life wishes.

But, it doesn’t have to be that way. A Living Will and Healthcare Directive can make your wishes known and legally enforceable. If you haven’t reviewed your healthcare documents in the last year, now is the time to make sure it reflects your current wishes.

Call us today at (479)717-6300 if you have any questions about decisions and how to best communicate them to your loved ones.

**The State’s Plan**

If you choose not to write your own plan, the state of Arkansas has one written for you, generally:

- Anything not titled jointly goes 1/3 to the surviving spouse and 2/3 immediately to the children
- Your family must go through the **public court** process of probate or administration
- Your **family must wait** for access to money
- Your **financial decisions** will be made by a judge
- Your **medical decisions** will be made by doctors and judges
- Your **family's private information becomes public**
Costly Problems Cause by the State’s Plan

The costly problems you and your family face during life and after you are gone are:

- Who will care for you in case of mental or physical incapacity?
- Who will manage your assets?
- Who will manage your affairs?
- Who will manage your healthcare?
- Will you family fight over decisions?
- Who will watch over your children?
- Who will inherit?
- Who will care for children with special needs?
- Fighting tears families apart
- And many more…
19 Smart Ways to Protect Your Assets

Smart Way #1: Make a promise to yourself -- now.

Make a personal commitment to yourself and your family that you will do everything possible to protect your family and your assets.

Smart Way #2: Identify your personal and financial goals.

If you could have anything you want, personally and financially, what would it be? What are your dreams? How do you and your spouse want to spend your retirement years?

Smart Way #3: Discover which tools you can use to achieve those goals.

You have many legal tools at your disposal that, when used correctly, will create exactly the plan you want for yourself and your family. Ask your estate planning attorney to explain the tools that will achieve your personal and financial goals.

Smart Way #4: Avoid probate and the Court system, as appropriate.

Create a family estate plan that, upon your death, distributes your assets to your heirs without going through the Court-supervised
process called **probate**. Most often a Revocable Living Trust is used for this purpose. If you don't take control of your wealth, the legislature has already written a Will for you.

**Smart Way #5: Reduce income taxes whenever possible.**

Create a family asset protection plan that eliminates unnecessary income and capital gains taxes and minimizes all other taxes. Without proper planning, much of your estate can be lost to various types of taxes.

**Smart Way #6: Protect yourself with insurance.**

Lawsuits can quickly tie up your assets. And if the other party wins the lawsuit, the judgment against you could quickly deplete your funds. If you drive frequently, own rental property, or operate a business, buy an **umbrella liability policy** that protects your assets from lawsuits.

**Smart Way #7: Provide for future health care and financial decisions.**

Your family estate plan should **protect you and your spouse** if the time comes when either of you cannot make decisions. Your estate planning attorney can make sure you have the legal documents in place so a competent, trusted person can make these important decisions according to your wishes.

**Smart Way #8: Plan now to fund nursing home care.**

Sadly, many people think the only way they can pay for their nursing home care is by spending down their estate. But, in fact, you can fund
your long-term care in ways that do not require that you spend down your estate. One common way is with long-term care insurance. Don’t wait until it’s too late to decide how to fund your nursing home care. Do it now, long before you need it.

**Smart Way #9: Pay close attention to Alzheimer’s disease and its associated costs -- even if you have no reason to worry about it.**

Many people who never expect Alzheimer’s disease to strike have had to face its problems with no advance planning. Plan for Alzheimer’s disease now, while you have time. This includes the need to address issues of backup decision-makers, assisted living, and nursing home care. If your children can care for you later in life, that’s fine. If they cannot, your advance planning will pay big dividends.

Plan for the worst -- and hope for the best. Then, in either case, you will have all your bases covered.

**Smart Way #10: Keep all control within your family.**

If you don’t plan properly, you could find that a friend or relative has petitioned the Court to intervene on your behalf. Once a judge gets involved, you have ongoing legal and accounting expenses, plus more problems and hassles than you would ever want to endure. The smart way to plan for your later years is to keep total control within your family.

**Smart Way #11: Create your plan now, while everyone involved is competent to make decisions.**

Seniors often come to our office seeking help only to learn that they are too late to correct a terrible situation. We feel awful when we must tell
them that the much-needed planning should have been done two, five or ten years earlier. **Don’t wait** until you need help to **create your plan.** By then, it’s too late.

**Smart Way #12: Review your plan at least once a year.**

Every time your circumstances change or your goals change, you should change your estate plan. If your **plan is not up to date,** the unintended **consequences** to you and your family could be **disastrous.** Make an appointment at least every year to meet with your estate planning attorney. Then you can go over your plan and discuss any changes in your life circumstances.

**Smart Way #13: Make proper decisions concerning your retirement benefit distributions.**

Make sure your estate plan **maximizes** income-tax-free **deferrals** and **minimizes** income and estate **taxes.**

**Smart Way #14: Work closely with your physician about your Medicare coverage.**

Often skilled nursing services and home health coverage are terminated or denied with little or no input from your treating physician. Before you go without health care that could be covered by Medicare, talk with your physician about your concerns so that he or she can help you get the Medicare coverage you deserve.

**Smart Way #15: Think about future housing options.**
Start from the perspective of **where you would like to live.** Then determine if you could afford this option by comparing your monthly income along with your life savings to the initial cost and the ongoing financial commitment you would have to make. Make sure you consider

(1) your **healthcare needs** that will not be covered by insurance,

(2) **financial security** for your surviving spouse, and

(3) your **desire to pass on a legacy to your children.**

**Smart Way #16: If you are in a second marriage, decide how you will handle the high cost of nursing home care.**

If you are not able to pay **$6,000 per month** to a nursing home and want your children from an earlier marriage to receive your property, a Marital Agreement alone will not do the trick.

**Medicaid ignores these contracts** and considers **all of the couple’s assets**, whether owned **jointly** or **individually**, in determining Medicaid eligibility.

A better choice is to include in your Marital Agreement a provision that requires each spouse to obtain and maintain long-term care insurance. Also, you can include additional provisions that clearly state that the healthy spouse is able to take all necessary steps to protect his or her separate property from a Medicaid “spend-down.”

**Smart Way #17: Keep the lines of communication open within your family.**

If one of your children will be managing your finances, you should take specific steps to help him or her **avoid conflict within your family.**
Insist that your child disclose to other family members what has been done on your behalf. You can do this by adding this instruction to your Trust or General Durable Power of Attorney.

By doing this you accomplish two things: One, you keep everyone in the loop so feelings of distrust are eliminated. And two, you reduce the risks of financial abuse because other family members will know how your finances are being managed.

**Smart Way #18: Don’t let incapacity put your family at risk for criminal or social worker investigations.**

Many professionals are responsible for protecting frail and elderly people from predators. If your legal documents don't provide clear legal authority and guidance on how to manage your assets, the police or adult protective services could step in and question your children’s actions and motives.

If authorities investigate your children’s actions, at worst, they could file criminal charges. At best, an investigation by adult protective services could return a “finding” of no current financial abuse. You can eliminate these risks to your children -- and avoid becoming a burden to your children -- with a competent estate plan.

**Smart Way #19: Hire a competent, experienced estate planning attorney to create an estate plan.**

The areas of estate planning and elder law are far too complex to hire just any attorney. Often, strategies used in estate planning to minimize taxes directly conflict with strategies used in elder law planning to protect assets and achieve Medicaid eligibility for nursing home care.
In situations where both goals are important, you and your family need a lawyer who has in-depth knowledge and experience with both sets of rules and strategies. Most attorneys are not qualified to provide these services. Make sure the estate planning attorney you hire has the knowledge, skill, judgment, and experience to create a competent plan for you and your family.

5 Misconceptions About Estate Planning

I have a Will so my family will avoid probate when I die

Actually, a Will only works if your property goes through probate after you die. Probate is the legal process through which the court makes sure that after your death your debts are paid, that your will is legally valid, and then your assets are distributed according to the instructions in your will. So rather than avoiding probate a Will is really a set of instructions to the probate court and only works if there is a probate.

I don’t have a Will, so my family will not have to go through probate

If you own assets in your name and you don’t have a Will, Arkansas has one for you—and it is enforced through the probate court. The bigger problem, however, is that the State’s Will probably won’t be what you would have wanted. For example, in many states if you are married and have children, each will receive a share of your estate. This often results in your spouse not having enough to live on and, if the children are minors, the court will set up expensive guardianships.
for their inheritances. Also, the laws in Arkansas allow for the inheritance of property **only by bloodline or marriage**, so an unmarried partner or close friend would not receive anything.

**If I become incapacitated, the executor of my will shall be able to handle my financial affairs**

Unfortunately, **any instructions in your Will are ignored if you become incapacitated**. That’s because a **Will can only go into effect after you die**; it is of no use before then.

Unless you make other arrangements, the court shall likely appoint an individual to take control of your assets and your care if you become unable to conduct business due to incapacity.

After appointment of this individual or individuals, commonly referred to as a conservator or guardian, the court will continue to supervise the actions of the conservator or guardian.

**Joint ownership is a good way to avoid probate**

It is true that joint ownership with right of survivorship (the most commonly used form of joint ownership) allows the jointly owned asset to transfer automatically to the other joint owner when one owner dies, without probate. However, if both owners **die at the same time** or if the surviving owner does not add a new joint owner before he/she dies, the **asset will have to go through probate** before it can go to the heirs. So, in most cases, **joint ownership merely postpones probate**.

**I don’t need to do any estate planning because I own much less than the federal estate tax exemption**
Don’t confuse *estate planning* with *estate tax planning*. Estate planning is about making sure your assets will go to the people you want to have them with the least amount of delay and costs. Good estate planning also includes a plan for incapacity. This is something *everyone needs to do, regardless of the size of your estate*. And while most people are now exempt from *federal* estate taxes (the exemption is above $5 million), you may need to plan for *state* death or inheritance taxes, which typically have a much lower exemption.

### Wills & Trusts

#### 20 Costly Misconceptions About Wills and Trusts

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**Misconception #1: A Will avoids probate.**

**No, A Will DOES NOT AVOID PROBATE.**
A Will is the primary tool of the probate system. Your Will is like a letter to the Court telling the Court how you want your property distributed. Then you must make sure that you prove to the Court that all your property is collected and appraised, and all your bills and taxes are paid, before your property can be distributed to your heirs.

**Misconception #2: A Testamentary Trust avoids probate.**

No, a Testamentary Trust DOES NOT AVOID PROBATE.

A Testamentary Trust is a Trust contained within a Will that holds property for a specific purpose. For example, one purpose would be to hold property until minor children turn 18, when they can legally own property -- or until children reach the age when you believe they are mature enough to responsibly handle the property. A Testamentary Trust is not a Revocable Living Trust. It is part of a Will and takes effect only when the Will is probated.

**Misconception #3: Probate costs and the costs of administration of the estate are small.**

Not necessarily.

Such costs can be very substantial. The real problem is, no one can tell you how much the costs will be until the probate has been completed, which often can take several years.

The biggest portion of the costs are the fees charged by attorneys and personal representatives for their services for the estate, in addition to filing fees, costs of publication, fees for copies of death certificates, filing and recording fees, bond premiums, appraisal and accounting fees, and more.
Often the fees of personal representatives are based on an hourly rate, and while they can tell you what their hourly rate is, they cannot tell you the number of hours their services will take, so they cannot tell you what their total fees will be.

Like surgery, probate can be simple and easy, but **frequently probate can have drastic and damaging results.** Accordingly, like surgery, because of its uncertainty in terms of both the potential for problems and high costs and fees, probate is something best to avoid if you can.

**Misconception #4: Property can be distributed according to the terms of your Will in only a few weeks.**

**NO.**

In Arkansas, the administration usually takes 6 to 18 months (and up to 21 years)! During this time, the deceased person's property must be inventoried and appraised. Heirs must be notified. Estate and inheritance taxes, if any, must be paid. Contested claims, if any, must be settled.

Creditors must be notified and paid. If all of this is not done before the estate is distributed to the beneficiaries of the estate, the personal representative will be personally responsible for those claims. As a result, most personal representatives won't distribute property until they are sure all claims have been settled.

**Misconception #5: Your Will and your assets remain private.**

**No, Your Will and your assets become PUBLIC RECORD.**
Because **probate is a public legal proceeding**, your estate may become a matter of public record. This means that anyone -- including nosy neighbors and salespeople -- can go to Court to find out the balance in your savings account, the value of your stocks, even the appraised value of your diamonds.

**Misconception #6: A Will helps you avoid taxes.**

No, a Will DOES NOT help you avoid taxes.

A simple Will does nothing to lower your taxes. A Will simply tells the court how you want your property distributed, and who you want to act as guardian for your minor children in case you and your spouse die in a common accident.

A skilled lawyer can use a Will to plan complicated estates that require tax planning, but the cost of the complex plan will be comparable to the cost of a Revocable Living Trust plan. Plus, the Will-based plan will still have to go through probate.

**Misconception #7: Your permanent family home and your vacation home can be handled through the same probate and qualification.**

Yes, but only if they are in the same state.

If you own property in different states, a second probate, called an ancillary administration, will need to be opened, which means your estate may need to hire another attorney. This will increase the overall estate administration expense. If you own real estate in other states, probates will need to be opened in those states as well.
Misconception #8: A Will prevents quarrels over assets.

Wrong, a Will DOES NOT PREVENT QUARRELS.

Wills are among the most contested legal documents in the United States. Today, it is common for unhappy relatives to challenge a Will. This results in higher attorneys’ fees and even more delays.

Wills actually encourage challenges over assets because a petition must be filed in Court to probate them, which is like filing a lawsuit. As a result, since a lawsuit has already been filed to probate the Will, a contesting party can simply file their claim in Court without instigating their own lawsuit.

Misconception #9: Estranged family members do not need to be notified of a probate if the Will excludes them from an inheritance.

No.

In Arkansas, the Court may require that all heirs be notified of the probate even if they are excluded from the Will. Certain aspects of the probate process can be avoided and financial responsibility can be mitigated through the use of various trusts and other types of financial planning.

Misconception #10: A Will from one state is not legal in another state.

Wrong, Wills are legal in all 50 states, but do not travel well.
If the Will is legal in the state where it was prepared, it is legal in all 50 states. However, **Wills do not travel well from state to state** and should be reviewed by an attorney and very likely changed whenever you move to a new state. This is because the Will’s language may not mean the same in other states as it did in the state where it was signed.

In addition, many states require witnesses to the Will signing. **If proper procedures are not followed, you may need to produce those witnesses in order to probate the Will.**

**Misconception #11: A Will helps you when you become physically or mentally incapacitated.**

No, a Will DOES NOT HELP when you become incapacitated.

A Will is totally ineffective until death, and, therefore, does nothing to help you through incapacity and disability. Your family or friends may have to go to Court to start emotionally and financially costly guardianship or conservatorship proceedings.

**Misconception #12: You must name your attorney as your personal representative.**

No, you DO NOT have to name your attorney as personal representative.

You may name anyone you choose.

**Misconception #13: The cost of your estate plan is only the cost of drawing up the documents.**

No, the cost of your plan depends on many things.
The cost of your estate plan is both the cost of drafting the documents and the cost of distributing property to your heirs. Simple Wills are less expensive to set up, but potentially expensive when they go through probate and there is qualification on the estate and estate administration. Revocable Living Trusts may initially cost more than a simple Will, but the overall cost of settling your estate is often substantially less.

**Misconception #14: Revocable Living Trusts are only for large estates.**

No, Revocable living trusts are good for all size of estates.

Revocable Living Trusts are for anyone who wants to avoid costly conservatorship and probate proceedings. In appropriate cases, **people with small estates benefit** from a Revocable Living Trust. People with larger estates can benefit even more.

**Misconception #15: A Revocable Living Trust is a public document.**

No.

Your Revocable Living Trust can remain private because it does not have to be recorded or published in any way. The only people who will know about your Trust are the people you choose to tell. However, some professionals may need to review your Trust to confirm that your trustee is authorized to take a particular action. This review is for the protection of all beneficiaries of the Trust.

**Misconception #16: A Revocable Living Trust cannot be changed.**
Wrong.

You can change and even revoke your Revocable Living Trust any time you wish. The decision is entirely up to you.

**Misconception #17: A Revocable Living Trust must have a separate tax return.**

Not necessarily.

As long as you are a trustee or co-trustee of your Revocable Living Trust, it does not need a tax return of its own. Your personal tax return, which uses your social security number, is sufficient for the IRS.

**Misconception #18: When you set up a Revocable Living Trust, you lose control of your assets.**

No, you DO NOT lose control of your assets.

When you set up your Revocable Living Trust, you simply name yourself and/or your spouse as Trust managers, called “trustees.” In this way, you never give up control.

**Misconception #19: The best way to transfer assets to your Revocable Living Trust is through a pour-over Will.**

No, you need to fund your Trust immediately.

A pour-over Will can be used to clean up the transfer of any miscellaneous assets to your Revocable Living Trust, but in order for
that to take place, the Will must be probated for the assets to be transferred to the Revocable Living Trust.

A better course of action is to transfer the assets to your Trust while you are still healthy and able. Not only do you get the peace of mind that comes from knowing the transfer was made properly, you will also get an accurate inventory of your estate.

**Misconception #20: There are no costs associated with administering a Trust at the death of the original settlor of the Trust.**

**Not true.**

While people commonly think that only the probate system costs money and takes time, they fail to understand that administering a Trust, distributing Trust assets to beneficiaries named in the Trust, and terminating the Trust can result in substantial fees and costs. Trustees charge fees for their service, and many trustees hire attorneys and accountants. These costs are paid by the Trust before beneficiaries receive their inheritances.
8 Potential Problems With Revocable Living Trusts

Problem #1: Choosing the wrong trustee.

Many people believe that you must name your bank as your trustee, but this is not the case.

Gary “will spend the time with you to make sure he understands your situation.”

Gary is an attorney who is a down to earth person and has a great understanding of what a person needs are. Gary is very concerned with giving his clients a quality solution for a good value and will spend the time with you to make sure he understands your situation. He is knowledgeable on elder law, estate planning, and special needs circumstances and I would feel comfortable in recommending him to anyone who has those types of concerns.

Don W. Ogden
Financial Advisor
Edward Jones
I recommend you act as your own trustee (if you are married, your spouse can serve as a co-trustee) so you continue to manage and invest your assets, just as you do now.

If you do not choose to serve as trustee, you may hire a professional fiduciary who is not affiliated with a bank or trust company.

**Problem #2: Leaving your Trust empty.**

A Revocable Living Trust is like a safe deposit box. It’s a good place to put your valuables, but it **won’t do any good if you leave it empty**. It’s not uncommon for people to have a lawyer draw up their Trust and then, years later, still have to go through probate.

Why? Because neither they nor their attorney ever put their assets into the Trust. Your property must be put into the Trust. But don’t worry. The process of retitling assets is easier than you think.

**Problem #3: Initial cost.**

A Revocable Living Trust is more expensive to set up than a simple Will. But, **in the long run**, the **cost** will probably be **much less** because the Revocable Living Trust allows you to avoid probate, Court supervised estate administration, guardianships and conservatorships.

**Problem #4: The potential for poor management.**

You could find that the person you selected to manage your affairs is not a good manager. **Your choices** for successor trustee(s) should be family members or friends **you can trust**. Corporate trustees, such as banks, are also an option. But, even if you don’t put your assets into a trust, you could still have a problem with management of your assets.
Problem #5: Refinancing real estate may be inconvenient.

Some mortgage companies and banks require that you take real estate out of your Trust before they will place a new mortgage on your property. Once the financing is complete, then you simply transfer the property back into your Trust.

Problem #6: Keeping a list of assets in your Trust.

Some people don’t like to keep track of assets they put into their Trust. Others don’t mind this small amount of extra work. When you want to add something to your Trust, you simply title it in the name of the trustees and add it to your list. Your benefits of having a Revocable Living Trust far outweigh these minor inconveniences.

Problem #7: Opening a new bank account.

Some banks will require you to close your current bank account and open a new bank account if you transfer the account into a Trust. This is a matter of the bank being uninformed. If you have substantial direct deposits or automatic debits, it will be necessary to see that the new account is functioning properly before closing the old account.

Problem #8: Imprinting on your checks.

Some banks will require that you put the name of your Trust and trustees on the checks. You can respond to this in one of three ways.

(1) The name of your Trust and trustees can very closely match your own name and be abbreviated in many respects.
(2) You can order checks from a printing company with anything on them that you choose. Or
(3) you can print your own checks with very simple and inexpensive computer software packages.

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**Estate Planning Pitfalls**

**11 Problems That Could Cost Your Family a Fortune -- and Their Solutions**

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Problem #1: Probate.

**Probate** is the **Court-supervised** process of passing title and ownership of a deceased person’s property to his or her heirs. The process consists of assembling assets, giving notice to creditors, paying bills and taxes, and passing title to property when the judge signs the order.
Probate can cost your loved ones a **sizeable portion of your estate**. The biggest portion of the costs are the fees charged by attorneys and personal representatives for their services for the estate, in addition to filing fees, costs of publication, fees for copies of death certificates, filing and recording fees, bond premiums, appraisal and accounting fees, and so on.

Often the fees of attorneys and personal representatives are based on a hourly rate, and while they can tell you what their hourly rate is, they cannot tell you the number of hours their services will take, so they cannot tell you what their total fees will be.

Like surgery, probate can be simple and easy, but frequently **probate** can have very **drastic** and **damaging results**. Accordingly, like surgery, because of its uncertainty in terms of both the potential for problems and high costs and fees, probate is something best to prepare for if you can.

You can **avoid** a substantially larger **probate** process by having an estate planning lawyer set up and fund a **Revocable Living Trust**. Since the Trust actually owns your assets, no significant probate of the estate will be required, saving your family many thousands of dollars.

**Problem #2: Lawsuits and Creditors.**

Protect the property you leave to your spouse and children from the claims of their creditors, ex-spouses, and the IRS. This can best be done with proper creditor protection provisions in a Revocable Living Trust.

**Problem #3: Income Taxes.**

You can lower your family’s overall income taxes by setting up a Family Limited Partnership to own income-producing property. A parent can do this by setting up a Family Limited Partnership and
making gifts of limited partnership interests to the other limited partners, normally their children or grandchildren who pay income tax at lower tax rates. A Family Limited Partnership is an excellent tool to shift income to partners who pay taxes at lower rates. It is also an effective way to make gifts and still keep total control of the property owned by the partnership.

Problem #4: Lawsuits.

Protect your assets from lawsuits by doing any or all of the following, as appropriate:
(1) purchasing an umbrella liability insurance policy,
(2) setting up a Family Limited Partnership,
(3) setting up a program for lifetime gifting,
(4) setting up a Limited Liability Company, and
(5) incorporating.

Further, you can protect your children from lawsuits by putting their inheritances into a Discretionary Trust. This is especially important if your children are likely to become professionals subject to potential malpractice actions or, on the other hand, are spendthrifts!

Problem #5: Inexperienced Beneficiaries.

Protect your assets from being wasted by young or inexperienced family members. Most beneficiaries spend their entire inheritances in less than two years, regardless of the size of the estate or the heir’s socio-economic background. Your lawyer can set up your Family Trust with protective provisions that provide guidance and safeguard your life savings.

Problem #6: Guardianships.
Protect your assets from the high costs of incapacity by (1) setting up a Living Trust so you avoid the need for a guardianship, (2) drawing up an Living Will, and (3) drawing up a Health Care Power of Attorney.

**Problem #7: Nursing Home Care.**

Protect joint assets from the high costs of nursing home care. Buy insurance that covers nursing home care and provides a death benefit that returns the money spent on nursing home care to your heirs.

**Problem #8: Unwanted Medical Care.**

Protect your assets from unwanted and costly medical care by having an Advance Healthcare Directive and Health Care Powers of Attorney that spell out your instructions, including which medical care, treatment and procedures you want -- and which you don’t want.

**Problem #9: Unwanted Emergency Care.**

Protect yourself from unwanted emergency care. If you have a terminal illness, you can draw up and sign a Pre-hospital Medical Directive that will tell emergency personnel not to resuscitate you in the event of a medical emergency. This directive is often referred to as a “Do Not Resuscitate Order”.

**Problem #10: Ineffective Estate Plans.**

Protect your assets from an ineffective estate plan. Don’t depend on pre-printed “cookie cutter” form kits or document preparation services for your estate plan. Contrary to what you may have heard or read, one size does not fit all!
You may think you have precisely what you need. But you will never know -- because your family members will have to clean up the mess. You see, after you die, your family members will try to use your documents to settle your estate. And if the documents weren't drafted correctly, they will cause additional expense and long delays because a probate will have to be done to convey title to your assets.

**Problem #11: Unqualified Lawyers.**

Many attorneys are getting into estate planning because it’s less stressful than other areas of law.

Not surprisingly, most of these newcomers focus on the needs of senior citizens and almost never deal with issues affecting young families.

If you have young children, make sure you choose an independent attorney who focuses their law practice on asset protection and estate planning for young families. This will help insure that the lawyer you choose has the knowledge, skill, experience and judgment necessary to fully protect your family and your assets, and to give you advice and counsel that is in your best interests.
8 Dangers of Owning Property in Joint Tenancy

“Joint Tenancy With Right of Survivorship” means that each person has equal access to the property. When one owner dies, that person’s share immediately passes to the other owner(s) in equal shares, without going through probate. We’ve all been told that Joint Tenancy is a simple and inexpensive way to avoid probate, and this is sometimes true. But the tax and legal problems of Joint Tenancy ownership can be mind-boggling. The dangers of Joint Tenancy include the following:

Danger #1: Only Delays Probate.

When either joint tenant dies, the survivor -- usually a spouse or a child -- immediately becomes the owner of the entire property. But when the survivor dies, the property still must go through probate. Joint Tenancy doesn’t avoid probate; it simply delays it.

Danger #2: Two Probates When Joint Tenants Die Together.

If both of the joint tenants die at the same time, such as in a car accident, there will be two probate administrations, one for the share of each joint tenant in the Joint Tenancy property as well as any other property they each may own.

Danger #3: Unintentional Disinheriting.

When blended families are involved, with children from previous marriages, here’s what could happen: the husband dies and the wife becomes the owner of the property. When the wife dies, the property goes to her children, leaving nothing for the husband's children.
Danger #4: Gift Taxes.

When you place a non-spouse on your property as a joint tenant, you make a gift of property every time that joint tenant takes property out of the account. For example, when a mother retitles her $80,000 account in Joint Tenancy with her son, she makes a gift to her son every time he makes withdrawals. This may not be the most efficient use of her $14,000 annual exclusion. The main point is that the gift is unintentional and not carefully planned.

Danger #5: Right to Sell or Encumber.

Joint Tenancy makes it more difficult to sell or mortgage property because it requires the agreement of both parties, which may not be easy to get.

Danger #6: Financial Problems.

If either owner of Joint Tenancy property fails to pay income taxes, the IRS can place a tax lien on the property. If either owner files for bankruptcy, the trustee can sell the property even though the other joint tenant is not otherwise involved in the bankruptcy.

Danger #7: Court Judgments.

If either joint tenant has a judgment entered against them, such as from a car accident or business dealings, the holder of the judgment can execute the judgment against the Joint Tenancy property.

Danger #8: Incapacity.
If either joint owner becomes physically or mentally incapacitated and can no longer sign his name, the Court must give its approval before any jointly owned property can be sold or refinanced -- even if the co-owner is the spouse.
14 Costly Misconceptions About Planning for Your Senior Years

Misconception #1: Most seniors move into nursing homes as a result of minor physical ailments that make it hard for them to get around.

Wrong! A large percentage of admissions to nursing homes is because of serious health, behavior, and safety issues caused by Alzheimer's disease and dementia.

Misconception #2: Nursing home costs in Arkansas average $1,500 to $2,500 per month per person.

Hardly. Current nursing home charges for one resident typically run $5,200 per month, or $62,400 per year, which does not include prescription drugs -- and those costs continue to rise.

Misconception #3: Children can care for a parent with Alzheimer’s disease at home, without the need for nursing home care.

Not true!
Many patients with Alzheimer’s disease end up in nursing homes because children are simply unable to provide the level of care their parent needs. In most cases, the children want to care for their parents.

But, as a practical matter, they simply can't. Moving a parent into a nursing home is an intensely personal issue and should not be labeled as a right or wrong decision. In many cases, it's the only realistic option. The rare exception is when the family has enough money to pay for skilled nursing care at home.

**Misconception #4: Standard legal forms are all you need for a good estate plan.**

Not true. A competent estate plan begins with clearly defined goals, supported by well-drafted legal documents, and the repositioning of assets, as needed, to protect your estate from taxes, probate costs, and catastrophic nursing home costs.

**Misconception #5: Your child will never move you into a nursing home.**

Wrong. Most children consider all options before moving a parent into a nursing home. But, sadly, children usually find they have no other alternative. As a result, parents who never expected to live in a nursing home soon discover that a nursing home is the only place with the staff and equipment to provide the care they need.

**Misconception #6: As payment for nursing home care, the government will take your family home.**

Not true. If you plan ahead. Many people fear that the government will take their home in exchange for nursing home care, but you can
avoid this with proper planning. You’ll be glad to know there are some ways you can protect your home so it won’t be taken.

**Misconception #7: You will never end up in a nursing home.**

**That’s hard to predict.** Your odds are roughly 50/50. Of Americans reaching age 65 in any year, nearly half will spend some time in a nursing home. And a surprising number will require care for longer than one year. That means every year, tens of thousands of seniors will face **costs of $62,400 or more**, which does not include the cost of prescription drugs.

**Misconception #8: If your spouse enters a nursing home, all of your joint savings will have to be spent on his or her care.**

**No.** With proper planning you can keep half of your combined “countable” assets up to approximately $129,000. In some circumstances, you may be able to protect nearly all of your life savings. In fact, it is often possible to protect much more than the $129,000 maximum. “Countable” assets are those assets such as cash, checking accounts, savings, CDs, stocks, and bonds that the government considers available to be spent on the cost of nursing home care.

**Misconception #9: Legally, you can give away only $14,000 to each of your children each year.**

**Not true.** You can give away any amount, but you have to report to the IRS gifts in excess of $14,000 per recipient per year ($28,000 if both husband and wife make a gift). However, there is no requirement that
you pay any gift tax unless you have exhausted your lifetime exclusion amount, which is currently set at $5,450,000 (2016) for an individual.

**Misconception #10: You can wait to do long-term planning until your spouse or you get sick.**

Yes, to some degree. However, you and your spouse will be much better off if you have taken important planning steps in advance, before a crisis occurs. What stops most people from being able to effectively plan when they are in the middle of a crisis is that the ill person is unable to make decisions and sign the necessary legal documents.

**Misconception #11: All General Durable Powers of Attorney are created equal.**

Completely false! A General Durable Power of Attorney is a highly customized legal document -- and NOT a form! Most Durable Powers of Attorney don’t contain even the most basic gifting authority. Without a gifting power, your agent is usually limited to spending your money on your bills and selling your assets to generate cash to pay your bills.

Some Durable Powers of Attorney contain a gifting provision, but often it is limited to $10,000 to $14,000 per year. This figure is too small for effective asset protection planning, and relates to a completely different type of federal estate and gift tax issue. Other Durable Powers of Attorney allow transfers only to certain people and do not take into account that you may want your agent, spouse, or children to receive your property.

**Misconception #12: Since you are married, your spouse will be able to manage your property and...**
make financial decisions without a general durable power of attorney.

Not true. If you become incapacitated and your spouse needs to sell or mortgage the family home -- or gain access to financial accounts that are in your name only -- your spouse will need a general durable power of attorney. Without one, your spouse will have to go to Court and get the judge’s permission to act on your behalf by way of a conservatorship proceeding.

Misconception #13: You can hide your assets while you become eligible for Medicaid.

False! Intentional misrepresentation in a Medicaid application is a crime and can be costly. The IRS shares any information concerning your income or assets with the local Medicaid eligibility office. You -- or whoever applied for Medicaid -- may have to repay Medicaid to avoid prosecution.

Misconception #14: Medicaid rules that applied to your neighbor when he went into a nursing home will also apply to you.

Maybe not. Medicaid rules change. Don't assume the law that applied to your neighbor will also apply to you. In addition, there may have been facts about your neighbor's situation that you just don’t know.
5 Dangerous Holes in Your Estate Plan That Could Hurt Your Family and Cost You a Fortune

Dangerous Hole #1: Disability Planning.

You have two children who live within 30 minutes of you. Your other child lives out of state. You suffer a severe stroke and require monitoring 24 hours a day.

One local child wants to move in with you and provide all of your care. The other local child thinks an assisted living facility would be safer and provide better care. And your out-of-state child wants you to use your income and savings to hire around-the-clock home health care aides so you can stay at home.

Who decides on where you should live and how to use your money? Make sure YOU decide by properly planning for disability or incapacity.

Dangerous Hole #2: Assisted Living Care Planning.

One spouse requires assisted living care and the other spouse continues to live in the family home. Neither spouse wants to think about nursing home placement. After several years of paying privately for assisted living care, they have spent almost all of their life savings. Now, how will the healthy spouse avoid total financial ruin? Proper advance planning can prevent this terrible problem.

Dangerous Hole #3: Nursing Home Care Planning.

Both spouses purchase long-term care insurance policies that cover nursing home costs for two years. One spouse enters the nursing home, which triggers the start of the policy. What steps should now
be taken to protect assets for the healthy spouse while the long-term care insurance pays the nursing home costs? To be able to take the necessary steps, you must do proper planning in advance.

**Dangerous Hole #4: Second-to-need-care Planning.**

One spouse gets sick. The other spouse cares for the sick spouse in their family home. Then the caring spouse gets sick. Now, who cares for both the first and second spouse? Without proper advance planning, how can you hope to solve this problem?

**Dangerous Hole #5: Who-takes-care-of-the-finances Planning.**

The spouse who handles the money and writes the checks dies. The surviving spouse is now left with handling the money, something he or she has never done. Now, who pays the bills? With proper advance planning, you can solve this problem.

**20 Red Flags**

**That Signal When Your Will or Living Trust is Out of Date**

I offer clients the opportunity to sit down with me and review their estate plans at least once each year. However, this doesn't mean you should wait until your next review if your circumstances change.

This Estate Planning Checklist identifies things that could make a big impact on your estate. If any of these events occurs, please call me. For your protection, we may need to amend or revise one or more of your estate planning documents.
Changes Involving You or Your Spouse

1. You get married
2. You and your spouse divorce
3. Your spouse dies or becomes incapacitated
4. Your health changes

Changes Involving Your Children, Grandchildren or Other Beneficiaries

5. You have a child
6. You adopt a child
7. Your child marries
8. Your child divorces
9. Your child becomes ill
10. One of your beneficiaries experiences an economic change, good or bad
11. One of your beneficiaries proves to be financially irresponsible
12. One of your beneficiaries has a change in attitude toward you

Changes in Your Economic Condition

13. The value of your assets increases or decreases
14. Your insurability for life insurance changes
15. Your employment changes
16. Your business interests change, such as becoming involved in a new partnership or corporation
17. You retire from your business or profession
18. You acquire property in a different state
19. You move to a different state

Changes to a Person Named in Your Estate Plan
20. Something happens to a person named in your estate plan, such as the death or incapacity of your personal representative, executor, trustee, guardian or conservator.

**You’re Invited to Call or E-mail.**

If you have experienced a **change in circumstances**, including any of the above, **call me at (479)717-6300** -- or send an e-mail to gary@dewittlawar.com. For your protection, we may need to amend or revise one or more of your estate planning documents. Thanks. -- *Gary*
Your Estate Plan Needs Maintenance

When you buy a new car, everything works perfectly. (At least, you hope it does.) But then in 3,000 miles, it’s time for an oil change. Also, you must keep your eye on the level of coolant in the radiator, your transmission fluid, and your power steering fluid. You must make sure your alternator works to keep the battery charged.

What happens if you don’t maintain your car? Your engine will burn up. Your transmission could fail. Your car could overheat. Your battery will go dead. All of which mean you’re stuck on the side of the road trying to hitchhike to the nearest town.

Your estate plan is like your car. When you set it up, everything is current and accurate. But you need to keep your eye on your assets, insurance, Powers of Attorney, gifting program, distribution plan, successor trustees, beneficiaries, and so much more. That’s why it’s important that you meet with your estate planning attorney every year.

You wouldn’t think of going on a long trip without making sure that your car was in tip-top shape.

Yet every day, people embark on the long trip we call life. And the problem with our “life trip” is that we’re never sure when that trip might end. It’s a good idea to review your estate plan with your lawyer every year or two to see if changes in your family’s circumstances need to be reflected in your estate plan.

For example: You should review your estate plan with your estate planning attorney any time:

1. you get married,
2. you and your spouse divorce,
(3) your spouse dies or becomes **incapacitated**,  
(4) your **health** changes,  
(5) you have or adopt a **child**,  
(6) your **children marry or divorce**,  
(7) a **potential problem** arises with a **beneficiary**,  
(8) the **value** of your assets **changes**,  
(9) your **employment** changes,  
(10) your **business interests** change,  
(11) you **retire**,  
(12) you acquire **property in another state**,  
(13) you **move** to a different state, or  
(14) something happens to a person named in your estate plan that could affect your relationship or the duties they are to perform on your behalf.

But wait. **Is your estate plan really like your car?** It’s more accurate to say it’s **like a fire engine – ready to handle any emergency at a moment’s notice**. When your spouse has a heart attack, you want the paramedics – right now! **You don’t want to call 9-1-1 and have the dispatcher explain to you that the fire truck has a dead battery. Or a flat tire.**

It would be **ridiculous** to buy a new fire engine, back it into the fire station where it waits for the next emergency, and then not have a mechanic check under the hood for a year. Do you know how many things can go wrong with a fire truck’s engine if it goes without service for a year?

Yet that’s **exactly what people do with their estate plans**. They invest hard-earned money to set up their plans. Then they put their plans in a drawer or safe deposit box where they gather dust for 2 years, 5 years, even 10 years -- often without updating the plan even once!
And then, **when you have an emergency, do you know what happens?** They **dig out their paper-work only to learn that their plan no longer works.** You see, it was custom designed to fit their specific needs 5 years ago. But now their needs, and often the law, have changed -- and no one updated the plan. What a tragedy!

Your estate **plan must be fully operational, ready to handle any emergency at a moment's notice.** If your spouse has a heart attack and cannot make medical decisions, you don’t want the nurse at the hospital to explain that the legislature changed the law and now your Powers of Attorney are no longer valid.

Or, if your spouse dies, you don’t want the judge to tell you that your estate must go through probate because your Revocable Living Trust has not been properly maintained and updated.

**You need your estate plan to be ready for any emergency -- 24 hours a day** -- because you never know when you might need it.

**An out-of-date estate plan isn’t worth the paper it’s written on.** But a **current** estate plan that works precisely the way it should -- protecting your family and safeguarding your assets -- is the greatest gift of love you can give to your family, your spouse, and yourself. Your custom designed estate plan, created specifically for you -- combined with yearly maintenance meetings to keep your estate plan in tip-top shape -- are the best investment you’ll ever make. I guarantee it.
5 Steps to a Competent Asset Protection and Estate Plan

Step #1: Learn how to deal with your incapacity.

Court Supervision. Our system of laws allows two methods for people to care for you. One method, Court supervision, has already been chosen for you. If you make no decisions, the Court will step in and appoint a conservator to handle your financial matters and a guardian for your personal affairs.

Your guardian and conservator carry out the judge’s orders. It is not likely they will handle things the way you would have handled them. When the Court steps in, you and your family lose control.

Setting up a guardianship and conservatorship is like other matters involving the Court. Lawyers represent all parties, including you. Accountants manage your finances. Doctors confirm that you need some-one to care for you.

The law requires periodic reports to make sure everyone is looking out for your interests. What’s more, all these people must be paid for their services. You bear the expense.

Private Supervision. Revocable Living Trusts do not require Court supervision. In your Trust, you decide whom you want to care for you in the event of your mental or physical incapacity. This usually includes family members or friends.

When you design your plan, you control the outcome because the plan is set up exactly the way you want it. By setting up a plan that allows for private supervision -- with no Court interference -- you
save a great deal of money and make sure that your wishes are carried out.

**Step #2: Choose the method for dealing with your incapacity that is right for you.**

**Court Supervision.**

**Advantages:** If you want the Court to dictate the care you receive, dictate how to use your assets, and make decisions for you, then you should use a guardianship and conservatorship.

**Disadvantages:**

You lose control because the judge makes decisions about your care. Long delays are common. You pay a high price because guardianships are expensive to set up and maintain. You lose your privacy because your personal and financial affairs are open to public view. The emotional strain of reporting everything to the Court takes a toll on you and your family.

**Private Supervision** through a Revocable Living Trust.

**Advantages:** You and the people you select make all the decisions. You maintain control. You can make decisions quickly. You save money because a Revocable Living Trust is less expensive than a guardianship. You don’t have to involve a variety of lawyers, doctors and accountants. You maintain your privacy because your documents are not open to the public. You reduce stress on your family.

**Disadvantages:** Generally, none.

**Step #3: Learn how you can distribute property**
during your lifetime and after your death.

**Court Supervision.** The laws of all states are written so if you do nothing to plan your estate, the Court will distribute your property according to the laws of the state where you live. If you write a Will, and the Court is satisfied that the Will is valid, under the supervision of the Court your property will be distributed according to the terms of your Will. This process is called probate.

**Private Supervision.** You can distribute your property privately, without Court involvement. Your choices consist of the following:

**Joint Tenancy With Right of Survivorship:** You should own property in Joint Tenancy only in very rare circumstances. Review “8 Dangers of Owning Property in Joint Tenancy” in this book.

**Gifts:** Gifting is a good way to get property out of your estate so it avoids probate and reduces estate taxes. In 2016, the IRS limits the value of assets you can give without paying a gift tax to $14,000 per person per year. The downside of gifting is that you lose control of the asset. If you give property to your children, they might sell it against your wishes. And if you outlive your child, your gift may not be returned to you.

**Revocable Living Trust:** A Revocable Living Trust is a separate legal entity that holds title to property. After you set up a Trust, you put property into your Trust, called “funding the Trust.” At the time of the funding, you change the title on real estate deeds to the name of the trustee and trust, such as the “John Jones, Trustee of the Jones Revocable Living Trust u/a/d July 1, 2009.” When you transfer personal property and real estate into your Trust, you no longer own these assets in your own name. This means these assets don’t have to go through probate.
Step #4: Choose the method for distributing your property that is right for you.

Court Supervision. Will or no estate plan: Either is easy to maintain during your lifetime, and your distribution plan is supervised by the Court through probate. In the worst case situation, probate can cost thousands of dollars and take months or even years to complete. You lose all privacy because your file is a matter of public record.

Small estates can transfer title without the need for qualification, but this method is not available to most estates.

Private Supervision. Revocable Living Trusts allow you to control your property without Court involvement. Revocable Living Trusts completely avoid probate if properly funded before death. They avoid the dangers of Joint Tenancy. They keep your affairs private. Upon your death, subject to payment of debts and taxes, your estate is able to transfer to your heirs within a few days. Plus, your Revocable Living Trust eliminates the need for a guardianship or conservatorship.

Step #5: Act now, while you are competent to make your own decisions.

None of us likes to think that we may become incapacitated or die. Yet it happens every day. We all have friends who have been injured in car accidents. We all know people who have had heart attacks, even when they were in “excellent health.”

If you want to see how dramatically people’s lives change every day, just watch the news. You’ll see car accidents, plane crashes, shootings, heart attacks, drownings…the list seems endless. And yet every one of those people thought their day would end just as safely as it began.
**Will you be next?** The greatest gift you can give your spouse and your children is an asset protection, elder law, and estate plan -- a plan that you have designed to carry out your wishes when something happens to you. This is how you can insure that you won’t become a burden to your children.

I sincerely hope you live a long, happy life in excellent health. I also hope you have your asset protection, elder law, and estate plan ready to protect your family from probate and the other problems we all face every day.
11 MISTAKES THAT TEAR FAMILIES APART
and Cause Children to Suffer

Mistake #1: Relying on Arkansas’ estate plan.

If you do not set up an estate plan, upon your death your property will be distributed according to the laws of your last state of residence. Often, the law will require the probate judge to give your property to someone other than the person(s) you would have chosen.

Mistake #2: Relying on a Will.

If your estate plan consists only of a Will, your heirs may face many costly problems, such as probate and/or guardianship proceedings. True, a Will is the most common estate planning tool, but it may not be the best tool to use.

Mistake #3: Relying on Joint Tenancy.

Almost everybody owns their bank accounts in Joint Tenancy. Yet Joint Tenancy often causes families horrible legal nightmares. You have many options that are better and safer than owning property in Joint Tenancy, and they come with much less risk.

Mistake #4: Relying on Community Property laws.

Relying on the Community Property laws is a position many clients take. However, as in Joint Tenancy, your property will still have to go through probate on the death of the spouse. Also, as in Joint Tenancy,
Community Property ownership requires a conservatorship if a spouse is incapacitated and the home needs a mortgage, home equity line, or to be sold. Relying on the Community Property laws is not a good estate plan.

**Mistake #5: Relying on Guardianships.**

These Court-supervised proceedings for addressing your physical or mental incapacity are costly, time-consuming and horribly burdensome. When you set up a Living Trust and transfer your assets into it, you avoid the need for a guardianship. You also need to put into place up to date Powers of Attorney, Health Care Powers of Attorney and Directives to Physicians.

**Mistake #6: Relying on the small estate affidavit procedure as your way of avoiding probate.**

Most people assume they have fewer assets than they actually have. The small estate exemption that avoids probate is permitted only for estates consisting of less than $100,000 of personal property excluding debt and no debts are allowed.

**Mistake #7: Relying on a gifting program as your way of avoiding probate.**

The law allows you to give away your property at a rate of $14,000 (2016) per person per year. A married couple can give $28,000 (2016) per year to anyone they choose without gift tax consequences. While this is an effective way to reduce the size of your estate, it has two downsides:

First, you lose control of the assets you have given away.
Second, **minor beneficiaries get total control over everything that has been given to them when they turn 21**, if the gift is to a uniform transfer to minors act account (UTMA Account).

To avoid that problem certain Trusts would need to be established to receive gifts to minors.

**Mistake #8: Relying on the Courts to take care of your child’s finances.**

If you **die intestate (with no Will) or with only a Will**, and your property passes to your minor child, the Court will put your child’s money into a Court-supervised guardianship or Trust involving annual accountings to the Court.

Naturally, this requires **CPAs** to prepare accountings, **lawyers** to file those accountings with the Court, plus **filing fees**. In addition, since the (State) probate code imposes the most **conservative investment standards**, this might significantly lower the return on your child’s investment. It also means that the **Court determines** the person who will serve as **guardian of the property**, who may not be the person you would have chosen.

**Mistake #9: Relying on a form kit for your Will or Living Trust.**

**One size does not fit all because no two people or families are alike.** Do you know even one family whose concerns are the same as yours? From your family’s needs and dynamics -- to personalities and values -- can you imagine any form kit ever being suitable for any family? If you use a form kit, you’re asking for problems.
The only estate plan you can rely on is one that is custom prepared by a qualified estate planning lawyer.

**Mistake #10: Relying on an attorney who uses boiler-plate Living Trust documents to provide for your spouse and children.**

When you create your Living Trust, you and your lawyer have the opportunity to write specific instructions about how you want to provide for your surviving spouse and children. If you overlook this opportunity, your family will receive whatever care the one-size-fits-all form documents provide. That care is almost never as good as the care you would want your family to receive.

**Mistake #11: Relying on the wrong attorney.**

Most attorneys know very little about estate planning. What’s more, even estate planning attorneys often don’t put much time or energy into a Minor’s Trust. Responsible parents realize a Minor’s Trust is the most important part of their family estate plan. That’s why I urge you to choose an estate planning attorney who has the primary focus, mission and purpose to help you achieve your family’s estate planning goals: putting your children first.
Right Now, After Reading This Guide, You Know More About Estate Planning Than Most Lawyers

This is because law has become specialized, much like medicine. When you need a doctor, you can find specialists in foot care, eye care, and everything in between. Law is much the same. You can find lawyers who practice corporate law, family law, criminal law and every other kind of law. And because they work in other areas of law, most of these lawyers don’t know the first thing about estate planning.

If you hear a lawyer say: “Probate isn’t bad. Just come to me and I’ll write a new Will for you.” This lawyer has not educated you about your options and probably earns a good part of his living from conducting probates. No doubt, he will write your Will and then keep it in his or her safe for you. But will you have the right documents that meet your needs?

If you hear a lawyer say: “It’s easy to avoid probate. Just put all of your property into Joint Tenancy.” This lawyer doesn’t know the many financial dangers of owning property in Joint Tenancy with Right of Survivorship. Fortunately, after reading this guide, you do.

If you hear a lawyer say: “I’ll introduce you to the lawyers in our estate planning department. They will create an estate plan for you for only $30,000.” You can bet that this lawyer works at a large law firm that charges fees higher than you can imagine -- higher than anyone should pay.
**If you hear a lawyer say:** “Just go to a bookstore and buy a Living Trust form kit. You can create your own trust for $29.95 and it’s perfectly legal.” Any lawyer who recommends that you prepare your own estate plan should not be practicing law.
How to Choose a Qualified Lawyer

**Tip #1: Choose an attorney who specializes in estate planning.**

Other attorneys simply don't have the knowledge, skill, judgment or experience to plan your estate properly.

**Tip #2: Choose an attorney you trust.**

Nothing is more important in a lawyer/client relationship than having a lawyer you trust.

**Tip #3: Choose an attorney who creates your estate plan himself.**

If the attorney has an assistant create your estate plan, then why hire the attorney? Note, it’s not uncommon for lawyers in solo practice to ask a funding coordinator to transfer property into your trust. Even so, funding is a fairly routine function and you are well protected as long as the lawyer supervises the process.

**Tip #4: Choose an attorney who provides excellent service.**

Anything less is not acceptable.
Tip #5: Choose an attorney who welcomes your questions

Who structures meetings by allowing enough time to answer your questions. High-volume practices have short appointments so they can move clients quickly through the process. I don't know about you, but this is not the level of service I expect when I hire a lawyer.

Tip #6: Choose an attorney who will return your phone calls quickly.

You should never hire a lawyer who won’t respond promptly to your needs.

Tip #7: Choose an attorney who has roots in the community.

This attorney cares about his reputation and is more likely to be available in the future when you need help.

Tip #8: Choose an attorney who is a respected source of information

One who has dedicated his practice to helping people understand their estate planning alternatives.

Tip #9: Choose an attorney who charges fair fees.

At best, you get what you pay for. Most people do not shop for the cheapest doctor. Instead, they focus on the doctor’s qualifications and experience. You should apply the same principle when selecting an estate planning attorney. If the fee is too low, the lawyer may be
leaving something out. Make sure the fee you pay and the services you receive are of equal value.

**Tip #10: Choose an attorney who offers free initial consultations.**

Shouldn’t you be able to talk with the lawyer for free before you decide whether to hire him?

Also, ask specific questions about your estate and your objectives, such as: “How do I protect my children from abusive relatives if something happens to me?” “Can I keep my kids from controlling their entire inheritance at age 18?” “Can I protect my children’s money from creditors?” “How can I leave money for my child’s education?”
12 Tough Questions to Ask a Lawyer

Before You Write a Check

1. What’s your opinion of the **probate** process?
2. Under what conditions do you recommend a **Living Trust**?
3. How do I **protect my children** from abusive relatives if something happens to me?
4. Can I keep my **kids from controlling their entire inheritance** at 18?
5. How can I **protect my children’s money** from creditors?
6. How can I **leave money for my child’s education**?
7. **How long** will it take to set up my Trust?
8. **How many times do I meet** with **you** during the process of preparing my Trust?
9. **What do you charge** to set up my Living Trust and what does that fee include?
10. What do I need to bring with me to our **first conference**?
11. If I have more questions after you set up my Trust, **may I call you**?
12. **Can you send me information about Wills, Living Trusts and probate**?
Gary DeWitt is a respected estate planning, asset protection and wealth management attorney based in Springdale, Arkansas. He has extensive experience working with families and businesses.

**Practice Areas:** Gary represents clients in all matters relating to Estate Planning, Asset Protection, Elder Law, and Probate matters.

**Education, Honors & Awards:** In 1992, Gary graduated from Oklahoma State University (Stillwater), where he earned a Bachelor of Arts Degree in Computer Science and a Bachelor of Arts Degree in Business Administration. In 2014, he graduated from the University of Arkansas School of Law, where he earned his Juris Doctor Degree. Gary was the managing editor of The Journal of Food Law and Policy.

**Court Admissions & Bar Memberships:** Gary is admitted to practice law in all State Courts in Arkansas (2014). In addition, he is admitted to practice before the United States District Court for the Western District of Arkansas. He is a member of the American Bar Association, Arkansas Bar Association, National Academy of Elder Law Attorneys, and Wealth Counsel.
Legal & Professional Affiliations: Gary is a member of WealthCounsel, an organization of over 2,500 lawyers who share their experience and wisdom -- and who are committed to serving estate planning clients with dignity and excellence.

Family & Hobbies: Gary lives in Springdale, Arkansas, with his wife, Winnie and his two children, Aaron and Madeline. After he helps you protect your family’s assets, he enjoys martial arts, weight lifting, and reading.

Early Life

I had a pretty normal life for a boy growing up in Northeastern Oklahoma. I spent my days going to school and my mornings, afternoons and nights working on my family’s farm. At an early age, I learned the importance of hard work. My family raised me with strong values: Perseverance, Honesty, Integrity & Service. I was also taught that my life should be conducted in the order of God, Family, Country.

I was blessed to be able to attend Oklahoma State University, majoring in Business Administration and Computer Science. After graduation, I spent the next 20 years working as a computer professional & consultant. Most of that time was spent working in the agriculture industry at a very large poultry company & providing consultation services to numerous Fortune 100 companies. Although I was successful, I felt something was missing in my life.

Reborn

In February of 2010, my father passed away of a sudden heart attack. Because of this, Mom and I had to take the family farm through probate - for the third time since 1975. This time it was 8 months of probate - fairly short, by probate standards.
Later that year, I experienced some heart problems. While lying in the hospital and reflecting on my future, I decided to take my life and career in a new direction. Because of the experience (and the stress) of going through the Probate Court, I decided I wanted to help families navigate their own probate issues; And through proper planning, guide others in avoiding this stress, altogether.

Although, not many people go to Law School with the goal of becoming an Estate Planner, that’s exactly what I did! I attended the University of Arkansas Law School, graduated, passed the bar and was reborn as an attorney.

I opened the DeWitt Law Firm and I limit my practice to the areas of Estate Planning, Elder Law & Probate. Growing up on a farm, it was understood that during the good times, you should prepare for the not-so-good times (accidents are not uncommon on a farm).

Most people don’t think about Estate Planning, sometimes until after it is too late.

With proper Estate Planning, nobody should have to go through probate. Nobody should have to add extra strain to an already emotional time. Families deserve to be protected from the dangers they don’t know about. If you are already going through Probate Court, my goal is to help guide your family though the process, stress-free.

The best part of being an Estate Planner, what motivates me every day are the families I get to work with. Meeting them, hearing their stories & counseling them on creating a practical & effective plan for the future, is a gratifying experience. I truly enjoy taking my clients through the planning process, explaining and simplifying the “legalese” along the way — so they understand all their options and make the best decisions for their loved ones.
My education, coupled with my valuable life experiences, gives me a unique perspective and allows me to bring Estate Planning and Elder Law solutions to your family, in a way that goes beyond the traditional lawyer/client relationship. I don’t provide canned, one-size-fits-all plans.

I work to create a customized solution, tailored to each client’s values, needs & goals. I also take the time to make sure each plan is implemented correctly and I monitor the plan so it is kept up-to-date.

**Gary’s Mission Statement**

I practice estate planning, probate, and elder law so I can use my education, experience, talents and abilities to best serve others within the Northwest Arkansas area.

With that in mind, my mission is to:

- **Develop long-term relationships** with my clients and their team of financial professionals by earning their confidence and trust

- Fully **understand my clients’ circumstances**, needs, goals and anxieties

- **Stay abreast of new developments** in the law and how those developments affect clients

- Use the most **appropriate, efficient and cost-effective strategies** to accomplish my client’s objectives

- Provide clients the **peace of mind** that they have hired the best attorney to represent them
CONCLUSION

Everybody should have an estate plan with these benefits:

- Address health care decisions
- Plan to control matters during incapacity
- Wealth transfer strategy
- Plan for estate taxes
- Protect children – minor and adult
- Transfer “Values” (ethics, incentive trusts, recorded messages)
- Preserve tax deferral benefits of retirement plans
- Organize and consolidate (where is everything)
- In second marriages, protect your spouse, and your kids
- Plan for tangible personal property
- Access to medical records – plan for HIPAA
- Have an ongoing update plan
YOU’RE INVITED TO CALL OR E-MAIL.

“If you have questions about asset protection, estate planning, business planning, charitable giving or wealth management, please don’t hesitate to call. I’ll be happy to help you in every way.” – Gary

(479)717-6300

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Read What Friends and Clients Say About Respected Asset Protection and Estate Planning Attorney

Gary DeWitt
Providing Legal Services to Clients in the Areas of Asset Protection, Estate Planning, Elder Law and Probate

The client I referred to Gary “came back and was thrilled with the way Gary respectfully and competently handled her affairs.”

Recently, I had a client I was helping with a real estate transaction that needed help with their estate planning. I felt 100% confident referring them to Gary DeWitt. My client came back and was thrilled with the way Gary respectfully and competently handled her affairs. Gary is a man of integrity that I have known since our days in Law School, and I would highly recommend him to anyone.

Bryan C. Gibson
Attorney at Law
Rogers, Arkansas

Gary will “take an issue and work to find the best possible solution....”

I have known Gary for many years and the one thing that stands out about him is his ability to take an issue and work to find the best possible solution to the problem. He is not afraid to dig in and work many hours to learn something new to help with the task or just to better his own knowledge.

Pam Bowerman
Senior Analyst
Tyson Foods, Inc.
“Gary is an attorney who is down to earth, honest and cares about his clients.”

Gary is an attorney who is down to earth, honest and cares about his clients. When he was working on my trust, he was very thorough and explained all details in easy to understand terms. Gary is very personable, which you rarely find in an attorney, making for a pleasant experience. I would highly recommend Gary DeWitt!

Keith Branch
Branch Photography
Fayetteville, Arkansas

Gary “is a very intelligent, capable, and professional attorney.”

Gary DeWitt was an absolute pleasure to work with. He walked me through the entire guardianship process and addressed all of my concerns. He is a very intelligent, capable, and professional attorney. I would like to thank the Dewitt Law Firm for their expertise and professionalism in handling our family’s guardianship case. Gary and Winnie were outstanding and really put my mind at ease during the entire process. I highly recommend him and his staff.

Jennifer Keeling
Springdale, Arkansas

“Gary asks the right questions to... best protect you and those you love.”

Gary DeWitt is an absolute professional. No one wants a cookie cutter approach to their legal or financial affairs. Gary asks the right questions to get your affairs in order the way to best protect you and those you love. The DeWitt Law Firm cares about their clients and the path the clients want to take. I appreciate that.

Bambi Crozier
NWA CAR Clinic
Gary’s “law business is a family business and he is honest and exemplifies integrity.”

Gary practices law for the right reasons, to help people and make life simpler for average folks. Gary DeWitt is patient and listens. He isn’t going to give a knee-jerk answer, but actually research and provide the best option for the client. His law business is a family business and he is honest and exemplifies integrity. Gary isn’t a stereotypical attorney that is all about the billable hour. Instead he going to do quality work at a fair price. Practicing law to him and to Winnie is his ministry back to the community while earning a living.

Melinda Silva
Director of Marketing
Butterfield Trail Village
Retirement Community
Complimentary Consultation

1 Hour Estate Planning Strategy Session

Authorized:
Gary DeWitt

Expires:
One Month from Receipt

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*$200 value. Not redeemable for cash. Redemption value not to exceed $0.01