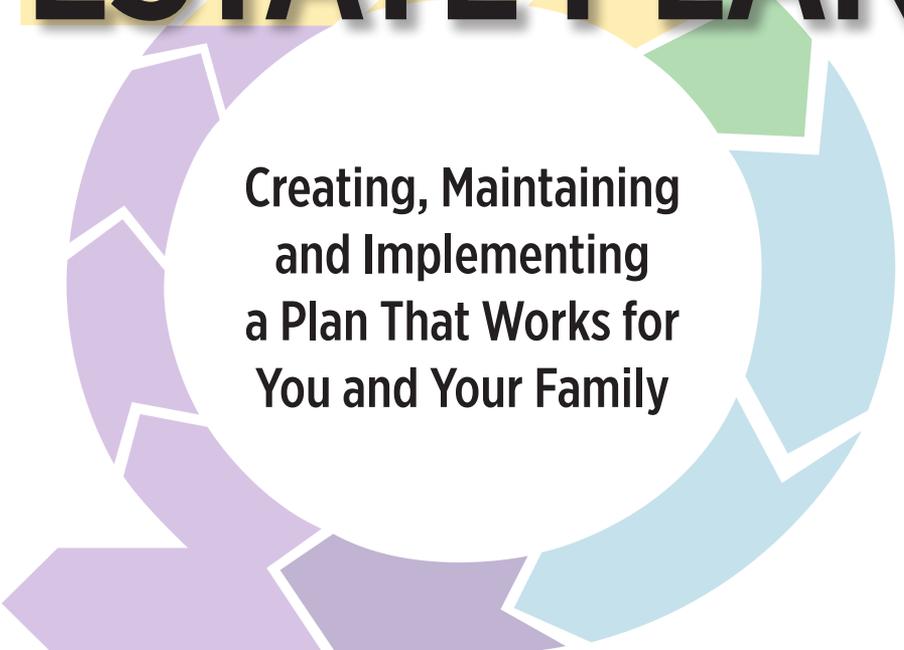


*Lifespan Circle Book Series*

*The*

# **EMPOWERED ESTATE PLAN**



**Creating, Maintaining  
and Implementing  
a Plan That Works for  
You and Your Family**

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Foreword by Jane Smith  
*CEO of Smith Advisory Group*

# Empower

[em-pou-er]

verb (used with object)

1. To give permission, power or the legal right to do something
2. **To give someone more confidence and/or strength to do something, often by enabling them to increase their control over their own life or situation**

# Empowerment

[em-pou-er-ment]

noun

1. The granting of political, social or economic power to an individual or group
2. **The process of supporting another person or persons to discover and claim personal power**
3. The state of being empowered (either generally, or specifically)

## INTRODUCTION

THE ESTATE PLANNING INDUSTRY is at a crossroads.

Your family probably isn't. At least, not today.

But the decisions you make today may make all the difference in how your family navigates the crossroads moments to come—and they're likely to be heavily *and negatively* affected by how “estate planners” advise you.

After years of thinking “we need to get a book out for the public” I finally concluded that the risks facing families are just too high to not get it out *now*. So you now hold it in your hands!

This book is about **empowering** you and your family to create, maintain and implement a successful estate plan, a plan that works. No matter how you're currently positioned my goal to help you begin the process of putting together a plan that works for you and your family—and the time to start is *now*!

You may be a young parent with few assets but a lot of responsibility. Perhaps you're a pre-retiree “finally” building your net worth now that the kids have been educated.

Many readers pick up books like these because they're retirees recognizing that this “estate planning thing” might now actually need to be considered a reality. Still others are caregivers faced with a health care crisis in the family.

You may have very specific concerns like transferring a business or farm, handling complex assets like retirement plans, or leaving a char-

itable legacy consistent with your personal beliefs. In every case, now is the time to get started or to update any planning you've done before.

In any and all of these situations, how you obtain and follow estate planning advice can make a world of difference. Done correctly, an estate plan that works can address these and a host of other concerns better and more fully than what most people accept as “their plan”. With proper planning, you can be:

- Empowered to ensure your children are reared the way you intend, with proper guidance and resources
- Empowered to maintain control of your finances as long as that makes sense—*in your opinion!* And to transfer the distinctions and approaches you've discovered, including those who helped you most, on to your loved ones
- Empowered to design and implement a plan to ensure you are cared for in your later years the way you prefer, and *without* unnecessary stress and regret on the part of your caregivers
- Empowered as a surviving spouse to better handle the grieving period and your move to your “new normal,” whatever that turns out to be for you—possibly even including remarriage!
- Empowered to protect your loved ones from life risks such as lawsuit creditors, failed marriages and catastrophic illness
- Empowered as an inheritor to better use your inheritance to meet your own goals with comfort and confidence
- Empowered to leave a legacy more than just financial that reflects your own values and beliefs

The plan that's right for you we call simply your **Empowered Estate Plan**.® In short, it is my goal to show you how to *empower* yourself and your family through your decision to participate in a *lifelong process* of estate planning. That is markedly different than “doing your estate plan.” Signing documents is an event. Planning is an ongoing process. And this simple distinction has escaped both the legal and financial fields for far too long.

## The Three Step Strategy™

The process of creating, maintaining and implementing an **Empowered Estate Plan**® that works follows a carefully constructed Three Step Strategy.™ First, you will need to **DEVELOP** your plan with counseling-oriented planning partners. Once the initial design of your plan is complete, you'll need to **COMMIT** yourself *and your family* to a formal maintenance and education program. Finally, you'll want to make sure you **SECURE** appropriate assistance to ensure that your wisdom is transferred along with the rest of your wealth.

We will discuss each of the three steps in this book. They are interdependent, and no plan will result in you and your family being fully empowered without intentional attention to each step. (In fact, all three steps are so rich that a full book can be, and will be, devoted to each one!).

As we begin our journey together, I would like to set the stage by sharing some “editorial comments” and also a warning. The observations I'll share reflect my own personal experience in developing the Three Step Strategy™ in my private law firm (Randall, Gentry & Pike, located in Indianapolis, Indiana but serving clients nationally), as well as the rich experience obtained in working with my colleagues in the National Network of Estate Planning Attorneys. I hope to address some of the major things that may get in your way as you consider pursuing planning for yourself and your family.

## Obstacles to Planning—The Crossroads

The very first observation in this introduction was that the estate planning industry is at a crossroads. And that you are at risk of being negatively affected by how “estate planners” advise you. It's always been difficult for people to address this subject of estate planning—it's morbid, intimidating, etc., etc., etc. So difficult, in fact, that fully two-thirds of Americans simply haven't done it!

Today more than ever before, however, the estate planning industry is providing dangerous information and approaches masquerading as “advice.” This “advice” threatens to lull you into doing bad planning, or worse yet, no planning at all!

Let’s discuss four of the major obstacles to ensure you and your family do not fall for this mis-education. They are:

- The TAX TRAP  
*No Need*
- The TRANSFER TRAP  
*TOD and Planning With “The Box”*
- The NURSING HOME SCARE  
*“Bait and Switch”*
- The MYTH OF ON-LINE “PLANNING”  
*An even Bigger “Bait and Switch!”*

Each is created “advice” given by the estate planning industry (which includes financial, accounting and legal professionals). They reflect the training and assumptions of the professionals themselves. We’ve found are incomplete at best and outright dangerous at worst.

## The Four Obstacles Examined

Let’s take each obstacle one at a time.

First, there’s the **TAX TRAP**.

This obstacle comes from a professional’s mindset that estate planning equals tax planning. In fact, nothing could be further from the truth. As we just reviewed, there are a whole host of planning goals that have nothing to do with taxes. (If necessary, go back and review the list of “empowered” concepts. Literally NONE deal with tax planning.)

The education of the estate planning industry was dramatically impacted by the use of living trust planning. In the Nineties free seminars “spread the word” across the country at breathtaking speed. Because estate planning was then viewed as complicated and “only for the rich”

there had been up until then an almost complete void when it came to education for the public.

As a result, although the public living trust seminars were highly criticized by the organized legal profession (the “Bar”), financial advisors and the public were highly energized. Estate planning of all types—both will and trust-based—increased dramatically because information was made available as had never been done before. Unfortunately, the structure of these seminars formed the basis for the education of the public, and for many professionals as well. In fact, generations of “estate planners” have bought into this mis-education, and worse yet, continue to teach it to their clients to this day.

The message was (and is) that there are two main goals to an estate plan. Those are *avoiding probate and reducing or avoiding estate taxes*. The TAX TRAP obviously involves the second goal. It is more dangerous now than ever before because of recent tax law changes. Under current law, virtually NO client families (well less than 1%!) face a Federal Estate Tax problem. As a result, it is assumed by many clients as well as advisors that there is simply no need to plan.

For decades, the most common objection to pursuing planning, especially trust planning, has been that it’s only for “the rich.” This concept would be amusing if it were not so serious. In my private practice, I quickly learned that a client’s definition of “rich” is *“more than I have!”*

The conclusion reached is that “I don’t need” estate planning. *Don’t fall for this false narrative*. Explore with me how you and your family can be empowered to meet goals far more important, interesting and fulfilling than mere tax avoidance. Stay with me, read on, and DO pursue real quality estate planning!

## THE TRANSFER TRAP

A related obstacle harkens back to those original assumptions about planning. This one involves avoiding probate. On this front, there have

always been many ways to avoid probate. The original living trust seminars did a good job of explaining why the most traditional approaches (especially owning property jointly with others) could actually create more problems than they solved.

Today, however, the financial industry has successfully pushed alternate means of transferring property without probate through titling of financial accounts. Not too long ago, only a few accounts could be designated as “Payable on Death” or POD. In those limited instances accounts could be transferred without probate.

Today, in many states all types of accounts can be designated as “Transfer on Death” or TOD. These accounts allow a person to name a beneficiary and to transfer the account without the need for a probate court order. In fact, some states have gone so far as to allow TOD deeds so that even real estate may be transferred without probate!

This enticing development appeals to people for a couple of reasons that match why many people never pursue estate planning. One is cost, and the other is the desire to avoid dealing with lawyers.

Note that it’s not just the public that likes this type of approach—it is heavily promoted by financial “advisors.” These folks (rightfully in many cases) believe that lawyers only complicate the process—that they are essentially “deal-killers.” Recommending this type of “planning” allows me as an advisor to retain control, to avoid fighting with the “deal-killer” and to get “credit” with my client both for saving them money and avoiding complication. A win-win—if the strategy would only work!

The problem with this TRAP is that estate planning is not only about getting property to your loved ones without court orders or the involvement of lawyers. To reach many personal planning goals we need to leave instructions—and that’s best done with trust planning.

In addition to TOD planning, there is the problem of what we refer to as “The Box.” This term refers to planning with beneficiary designations. You simply fill out a form by checking “The Box.” Most clients

own much of their wealth in assets controlled by beneficiary designations. These include retirement funds in IRAs and 401 (k) accounts, life insurance, and annuity contracts.

The problem with TOD accounts and/or just checking “the box” is that there is no way to leave any instructions as you pass these assets to your loved ones. In this book you’ll learn that you can leave detailed instructions *for your own care* should you become disabled. You can also provide protections for your loved ones from their creditors and predators. There’s no way to do this by using TOD accounts or by just checking “The Box.”

In short, you CAN avoid the probate court and obtain the advice and counsel of an attorney who can help EMPOWER you and your family to reach goals most folks are unaware they even have. The feared attorney “deal-killer” can actually turn out to be a trusted advisor who contributes greatly to your planning!

In our supporting process we BEGIN with an orientation meeting designed to combat the incorrect and incomplete education normally provided to client families. Review for yourself some of the common EMPOWERED goals listed above—you’ll see avoiding probate is not the goal, it’s a nicety. And one you don’t need to give up as you achieve all the other things. With a properly supported trust-based plan, an *Empowered Estate Plan*,<sup>®</sup> you will be able to meet all your planning goals, all while you also avoid probate!

## THE NURSING HOME SCARE

In recent years, medical advances have allowed us to live longer, (although not necessarily better!).

It is well known that the cost of medical care is out of control. The government supports elders through Medicare. Many people are *shocked* to discover that Medicare DOES NOT provide ongoing support for what is known as “custodial care.” That is, helping people manage

their daily living, as opposed to care provided to help people recover from illness, which it IS designed to cover.

Whether the health care need a person faces involves stay-at-home care support or assisted living in a variety of outside-the-home formats, the formidable costs are now becoming known. They are a massive threat to wealth. And the most at risk are those with SMALLER balance sheets, the very ones who think they don't need and can't afford planning!

Advertising for public seminars conducted by lawyers today feeds on the fear of "losing it all to the nursing home." Once a person attends, however, they discover the planning vehicles suggested requires losing control of his or her assets TODAY. So instead, the seminar leader suggests (perhaps at a later consultation or during the question/answer session), why not get a regular living trust that leaves you in control today and do the nursing home avoidance planning later? For many presenters, this may well have been their goal from the beginning. A classic BAIT and SWITCH!

In turn, financial "advisors" regularly recommend that elders place their assets in an annuity contract "specially designed" to not count in the asset requirements for Medicaid qualification. The problem with these annuities is that those assets are also not available to the elder's family following death.

While at least these programs do provide some valuable education, particularly in helping people understand the difference between Medicare, which does not help with custodial expenses, and Medicaid, which can, the "solution" presented is incomplete and inaccurate. The trick, they teach, is to get assistance—unload your assets, impoverish yourself, and let the government pay your bills. In both instances, the "planning" suggested by legal and financial "advisors" involves waiting to the last minute (or even beyond!) to address a problem that *routinely* strikes families.

Aging is a normal part of life. Navigating the health care system

and addressing whatever comes at you is something both you *and your family* might very well face. Why not deal with the concern in advance? Doing so allows you both more options and more control over how you approach your final years. An ***Empowered Estate Plan***<sup>®</sup> allows you to do just that—together as a family!

DO plan in advance. But DON'T fall for the scare tactics. Instead, pursue planning for ALL your life needs. Make sure you and your family are prepared as far in advance as possible. This is what the supporting process we recommend is all about. You'll be ready no matter what comes along.

And, if it turns out moving assets out of your control is appropriate, you'll be the one to direct the timing and appropriateness of that step yourself! Either way, your family will certainly face the situation with more comfort and confidence. You'll also likely be pleasantly surprised that you're likely to incur lower legal fees, too!

### THE MYTH OF ON-LINE PLANNING

This obstacle to quality planning is fueled primarily by cost concerns. Today it seems that everything is available on the internet. Legal documents are no exception. In fact, ads touting Legal Zoom are virtually unescapable.

In our orientation sessions, we have stressed for almost three decades clients that clients should be aware of the attorneys' "classified trade secret." After a dramatic pause, we simply ask, "did you know... that lawyers have computers?" It always draws a laugh.

Attorneys don't use a quill pen to custom-design your plan—and it would be unaffordable if they did! The question, then, is not whether we use technology, it's how and for what purpose?

Legal Zoom and its predictable on-line competitors now springing up (like Rocket Lawyer) prey on those who don't get themselves educated. In fact, after much pressure on this issue, they offer a consultation

with an attorney for those who wish to seek further advice. This “consultation” often turns out, unfortunately, to be little more than an “upsell” opportunity for the law firm that receives the Legal Zoom referrals.

I’m not suggesting at all that you should avoid technology. I AM suggesting that you think about its proper place. An estate “plan” is not simply a set of word processed documents—and that’s often what you get—too often even when working with traditional attorneys! The documents themselves are worthless without knowing what you can accomplish and how you and your family can pursue the goals you choose.

Using customization checklists to support creation of your personalized instructions, meeting with advisors over the internet with videoconferencing technology, sharing documents with protections afforded by client portals, working with a law firm that helps you transfer the exploding number of digital assets you own and that stocks its website with quality education and resources for the you and your family are all goals best pursued with a focus on the latest technology.

In short, technology is the key to progress in estate planning, as in most areas of life. The organized “Bar” seems intent on denying the use of technology rather than explaining how it’s best embraced—just as they resisted family-controlled living trust-based plans when those were “the new thing.” And, like before, they’re howling at the wind. Technology will continue to change everything. None of us, not even all of us, can stop the coming changes. So, the sooner we put technology to proper use the better!

What I’m suggesting is that you use your own good common sense as you apply technology to estate planning. Keep in mind an unfortunate truth. Striving for the lowest cost “plan” sometimes results in MORE expensive mistakes that have to be addressed by the lawyers you sought to avoid! Often mass-produced approaches can result in you not even realizing what goals you have that can be addressed through quality planning!

I strongly recommend that you consider both the direct and indirect costs of boilerplate planning as you pursue your estate planning. Just be sure you’re working with *your own* professional advisors, and that they use technology to support a *personalized* environment for you and your family to build together a plan that works.

Notice I said “advisors”—with an “s.” Nothing matches a team of advisors you build around you to help you and your family discover, pursue and reach your goals. You’ll likely find that you’ll get more value when working with a team of professionals, and that your overall planning project often will surprisingly cost less in the long run.

Don’t fall for the Myth of on-line planning. It’s often not less expensive, and in many ways isn’t even “planning” at all.

## The Truth About Estate Planning

In this book I’ll be sharing the insights and experiences from the “orientation session” we provide for our clients. They’re drawn from sessions I’ve personally presented to over 20,000 people, and that our National Network of Estate Planning Attorney members have presented to countless more. Our goal is to answer NOT the questions you have right at this moment, but rather to answer the questions you’d have *if you knew what we know!*

The point of having professional advice is to acquire an experienced guide to assist you and your family with your journey. This book is designed to get you started on your path aided by the insights, lessons and approaches developed through our years of experience working with thousands of client families served by our hundreds of members over the past three decades. I’m excited to share “the Truth” with you—and we’ll begin with more on the concept of Truth itself in Chapter One!

## The “Lifespan Planning Circle”

You’re undoubtedly familiar with the Disney movie “The Lion King.” It

featured the classic song “The Circle of Life.” The song’s message resonates with so many because the concept is so strong. We long believed estate planning should involve a lifetime relationship with our clients. Only recently, however, did we “discover” that when family is fully involved in the plan’s implementation a true “Lifespan Circle” is needed to address the needs of all.

From young adults to aged elders, people with estates both large estates and small alike, highly motivated planners to those less motivated (or even resistant!), we *all* will leave a legacy to, for and with our families. At every stage of life there are financial and estate planning obstacles and opportunities. My goal is to help you and yours navigate the obstacles and capture the opportunities!

Recently, we have been able to construct a visual to help communicate the planning support needed at each stage of life for ourselves and our family members. We’ve created programs at each stage to specifically address each stage. It’s our “Lifespan Planning Circle. This book-and the rest of the series to come-will flesh out each of the major needs and how we support successful planning (as defined by each of our individual clients themselves) every step of the way.

## Before We Start, Here’s the Conclusion

We will cover a lot of ground in this book. The amount of new information can certainly feel overwhelming. That said, if you’ll just fully involve your family, we can boil the project down to just five (not five hundred!) things you, and they, need to address.

### THE FIVE ESSENTIALS

In order to create and maintain a plan that works for you and your family, there are five essentials that the family must understand and pursue over the lifetime of the project. We’re assuming you’ve *empowered* your family members by ensuring they are participating in ongoing educa-

tion and training as helpers and/or beneficiaries, as well as willingly participating in open discussion with you about your planning. That is job one. It’s not easy to get participation, but it makes all the difference in the success of your planning effort.

With everyone involved, the planning complexity shrinks dramatically. Not five hundred, but five:

Here they are:

- Regularly Update Your Planning Documents
- Regularly Update Your Asset Titling
- Personalize Your Plan with Individual Instructions
- Know When to Seek Additional Counselling
- Understand the Use of a Trust Protector

We’ll cover them all, and get you prepared for successful implementation of a Plan That Works for you and your loved ones.

So that’s where we’re headed. I’m excited to embark on this journey with you! Let’s start with the story of Cliff Young. He didn’t know the Truth . . .