



FERRUZZO

***Living Trusts:  
Death and Taxes***

## “Ask First!”

This form is to be filled out by any person who is offering legal, financial, retirement, insurance, accounting, estate, long-term care or similar planning services.  
Respond to ALL categories completely; sign and date at the bottom of the page.

Ⓞ **MY EDUCATION-** I have achieved the following level of education (check HIGHEST level achieved):

<input type="checkbox"/> Some High School	<input type="checkbox"/> High School Diploma	<input type="checkbox"/> Bachelors Degree
<input type="checkbox"/> GED	<input type="checkbox"/> Some College	<input checked="" type="checkbox"/> Masters or other Advanced Degree

Ⓞ **MY CREDENTIAL(S)-** I have the following specialized credential(s) and training (examples: CFP, ChFC, CLU, CPA, JD, MBA, years of relevant experience):

J.D, LL.M in Taxation, 16 years of experience
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Ⓞ **MY RELEVANT LICENSE(S)-** I have the following license(s) giving me the legal authority to provide the services I am offering to you (examples: bar license (attorney); securities license; insurance license):

License Type	Covers What Activities	Issued By	License No.
Bar	Practice of Law	California	277889
Bar	Practice of Law	Arizona	024543

Ⓞ **LEGAL SERVICES-** (Check ONE):

- I DO NOT practice law, and the services I am offering to you do not involve practicing law.  
 I DO practice law, and have an active license to practice law in California.  
 I DO practice law, but DO NOT have an active license to practice law in California. I am, however, under the supervision of the following attorney who has an active license to practice law in California:

Name of attorney:	Telephone:
Address:	

Ⓞ **OUR BUSINESS RELATIONSHIP-** Check TRUE or FALSE:

- True /  False: In our business relationship, I will at all times serve as a fiduciary and put your interests before my interests and those of my employer.

Ⓞ **MY COMPENSATION-** I will be paid in the following way (commission, fee, salary, etc.), by the named person or company, in connection with the services I am offering to you:

Way(s) I'll Be Paid	Payment Will Be Made By (name each person or company)
Hourly fee (\$425) for consultation	Client
Flat fee for estate plan (with consultation fee incorporated) - prices typically range between \$2,800 - \$3,500	

Ⓞ **FINANCIAL PRODUCTS / AFFILIATED ORGANIZATIONS-** Check TRUE or FALSE:

- True /  False: I offer or sell annuities, insurance, mutual funds or other financial products; or I am, or my employer is, affiliated with a person or organization that offers or sells annuities, insurance, mutual funds or other financial products.

Ⓞ **I certify under penalty of perjury that the responses herein are true to the best of my knowledge.**


Date: 10/10/2020	Business Name: Ferruzzo & Ferruzzo, LLP
Signature: Blaine M. Searle	Address: 3737 Birch Street, Suite 400, Newport Beach, CA 92660
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Blaine M. Searle is a Partner at Ferruzzo & Ferruzzo LLP. Blaine frequently counsels clients on various estate planning strategies from simple trusts to more complex estate planning including the use of qualified personal residence trusts, intentionally defective grantor trusts, and transferring assets through family limited liability companies and limited partnerships.

Because of his background in taxation, Blaine also regularly advises clients on matters involving federal income, gift and estate taxes as well as various state tax issues including California real property taxes.



#### Education:

- Brigham Young University
  - Bachelor of Arts – Political Science
  - Bachelor of Science – Russian
- University of Oregon School of Law – Doctor of Jurisprudence
- Georgetown University Law Center – LL.M. in Taxation

#### Admissions:

- State Bar of California
- State Bar of Arizona
- Member of Orange County Bar Association
  - Trusts and Estates Section
  - Tax Law Section, former Chair

# *Topics*

- *What is a Trust?*
- *Phases of a Trust*
- *Types of Trusts*
- *Property Tax Issues*

# ***What is a Trust?***

# Reasons to Have a Trust

- Assets held in trust avoid probate
  - Faster
  - More private
  - May save on legal fees
- Ability to choose who will ultimately receive assets after death and to dictate the terms by which the beneficiaries may receive the assets
- Potentially avoid estate taxes

# Parties to a Trust: Settlor

- The Settlor creates the trust
  - Chooses immediate and successor trustees
  - Identifies initial and remainder beneficiaries
  - Signs the trust “contract”
- Trust Funding
  - Transfer of title to trust
    - Changing title to bank accounts
    - Recording deed to real property
  - Assignment of personal property to trust
  - Proper steps to ensure that property ends up in trust before or after death



# Parties to a Trust: Trustee

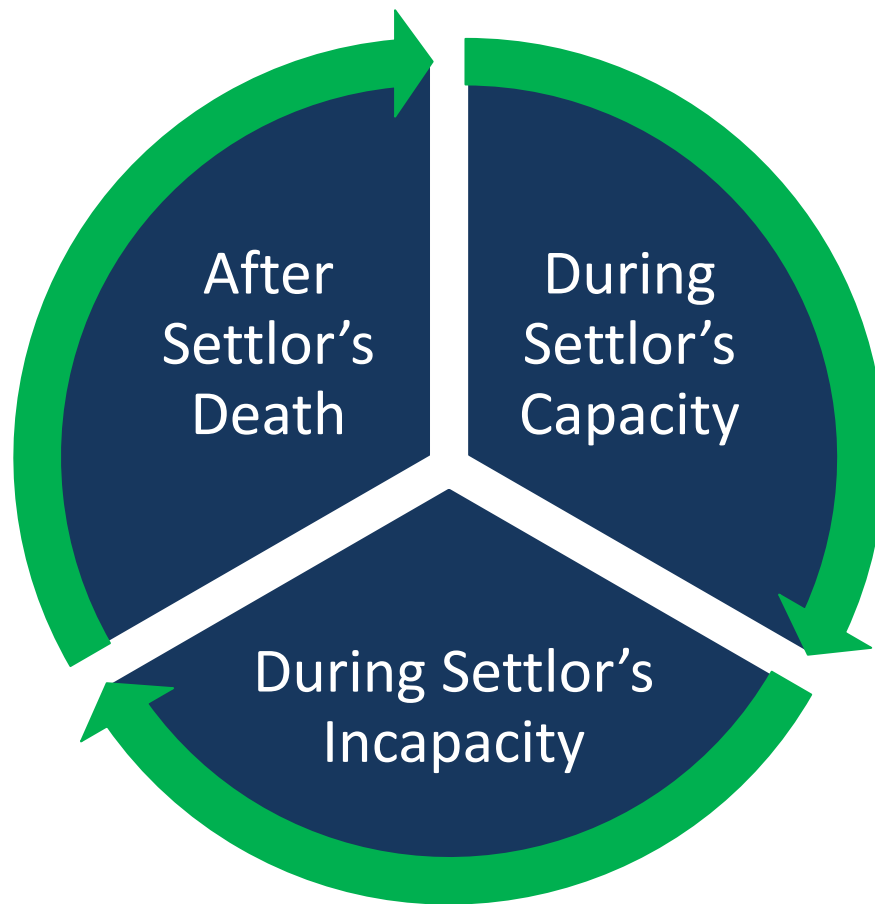
- The Trustee manages the property in the trust
  - Has authority to manage everything transferred into the trust
  - Limited by the powers identified in the trust
  - Fiduciary duty to the trust beneficiaries
- Who can be a Trustee?
  - Individual (friends and family)
  - Private professional fiduciary
  - Trust company

# Parties to a Trust: Beneficiary

- The Beneficiaries receive the trust property
- Settlor is the primary beneficiary during life
- Property is held for remainder Beneficiaries after death of Settlor
  - Outright distribution
  - Distribution in trust

# ***Phases of a Trust***

# Phases of a Trust



# What is Trust Administration?

- During Settlor's Life
  - Settlor as Trustee
    - When the Settlor is living and managing his or her affairs, the Settlor is the Trustee
    - The Settlor can typically do anything with the trust assets that he or she could do without the trust
    - Nothing changes with day-to-day trust administration
  - Successor as Trustee
    - When the Settlor is living but unable to manage his or her affairs, the Settlor may resign as Trustee or be declared incapacitated (usually pursuant to the trust)
    - The Settlor's named successor Trustee for incapacity will step into the role and administer the trust
    - The trust will include provisions to instruct the successor Trustee, and certain limitations will apply

# What is Trust Administration?

- Following Settlor's Death
  - The Trustee will:
    - Follow trust terms
    - Marshall trust assets and confirm ownership of assets within the trust
    - Provide notices required by law
    - File necessary paperwork
    - Pay taxes (income, estate, etc.)

# ***Types of Trusts***

# Living Trust for a Single Person



INCAPACITY  
TRUST  
ADMINISTRATION  
PERIOD

AFTER DEATH  
TRUST  
ADMINISTRATION  
PERIOD

DISTRIBUTION TO  
BENEFICIARIES



# Types of Trusts for Married Couples

- No Split Trust – “I Love You” Trust
- A/B Trust
  - Survivor’s Trust (A)
  - Bypass Trust (Decedent’s Trust) (B)
- A/B/C Trust
  - Survivor’s Trust (A)
  - Bypass Trust (Decedent’s Trust) (B)
  - Marital Trust (QTIP Trust) (C)
- A/C Trust
  - Survivor’s Trust (A)
  - Marital Trust (QTIP Trust) (C)

# What Type of Trust is Right for You?

- Considerations:
  - Estate and income taxes
  - Community vs. separate property assets
  - Blended families
  - Concerns about asset protection
- Talk to a lawyer who can help you select the proper trust

# Estate Taxes

## Applicable Exclusion Amount

2001	\$675,000
2002/03	\$1,000,000
2004/05	\$1,500,000
2006/08	\$2,000,000
2009	\$3,500,000
2010	No FET
2011	\$5,000,000 plus COLA
2018	\$11,180,000 plus COLA
2019	\$11,400,000 plus COLA
2020	\$11,580,000 plus COLA
2026	\$5,000,000 plus COLA
After November 2020 election - ?	

# No-Split Trust



Joint Trust

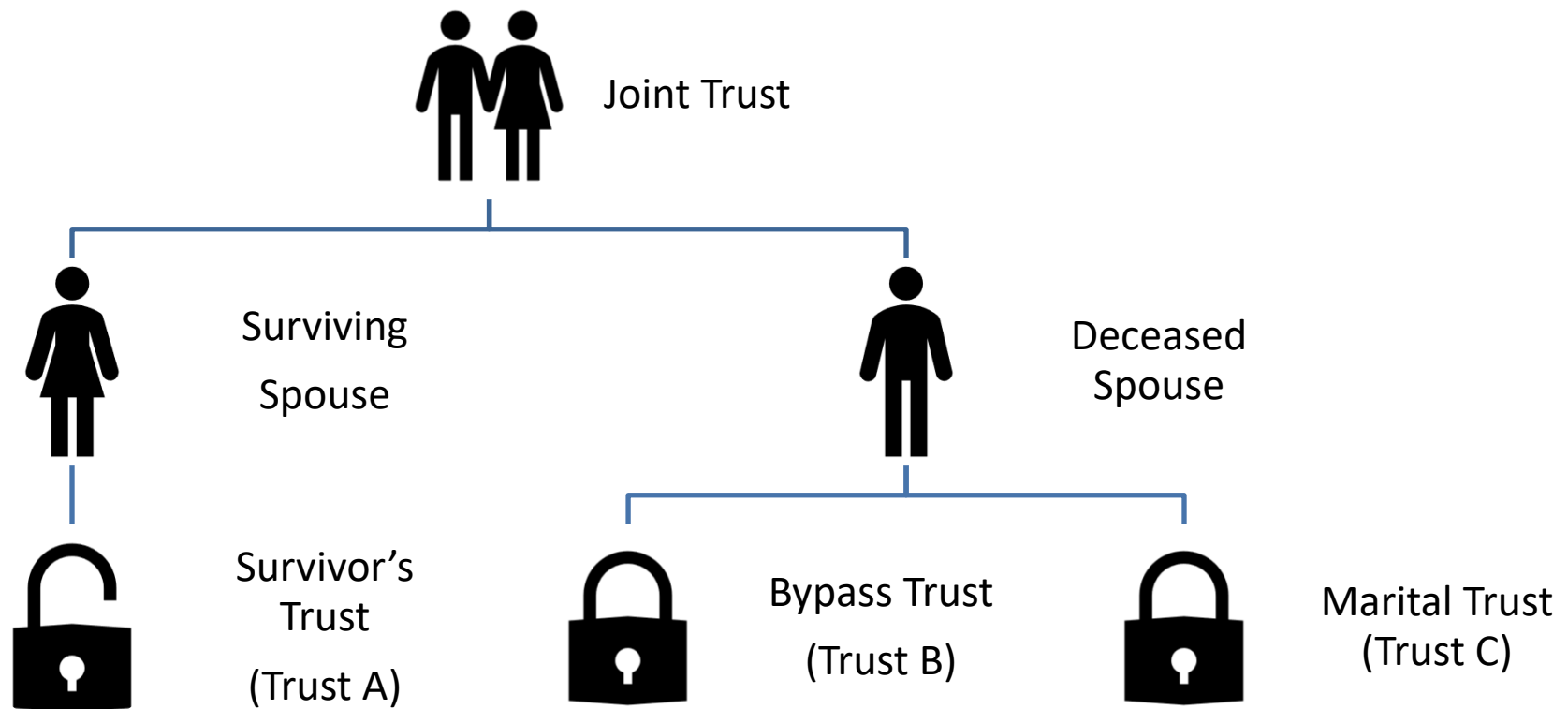


Surviving  
Spouse

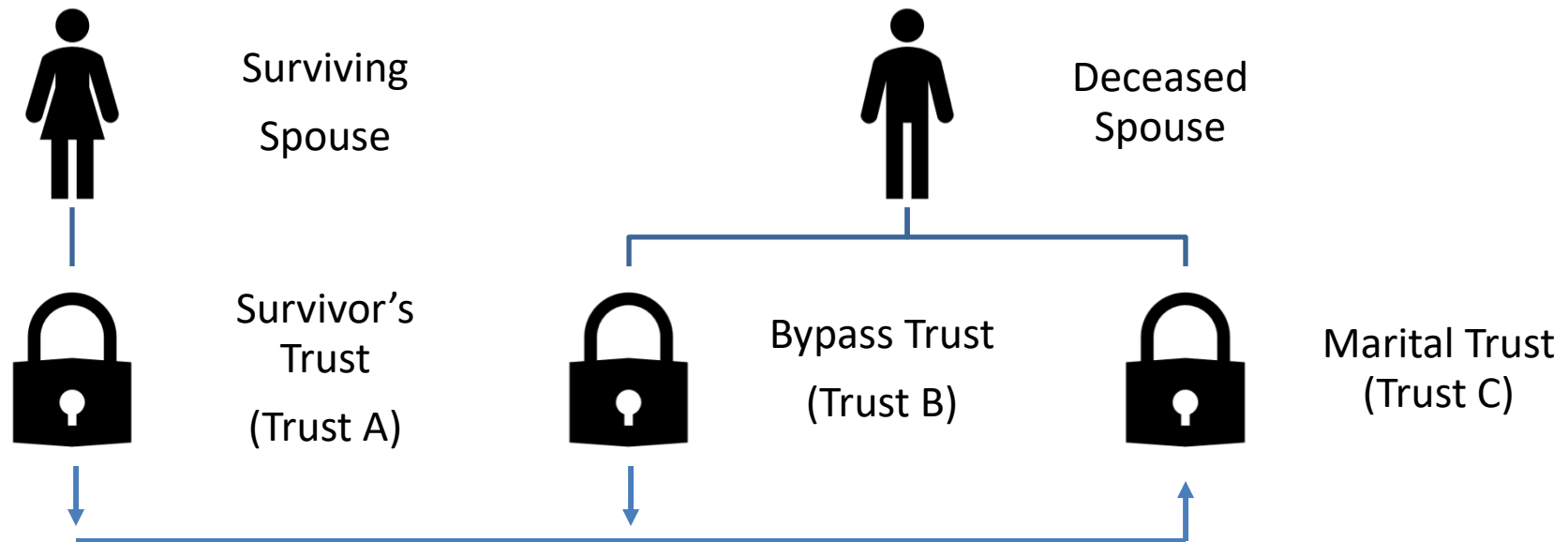


Children /  
Beneficiaries

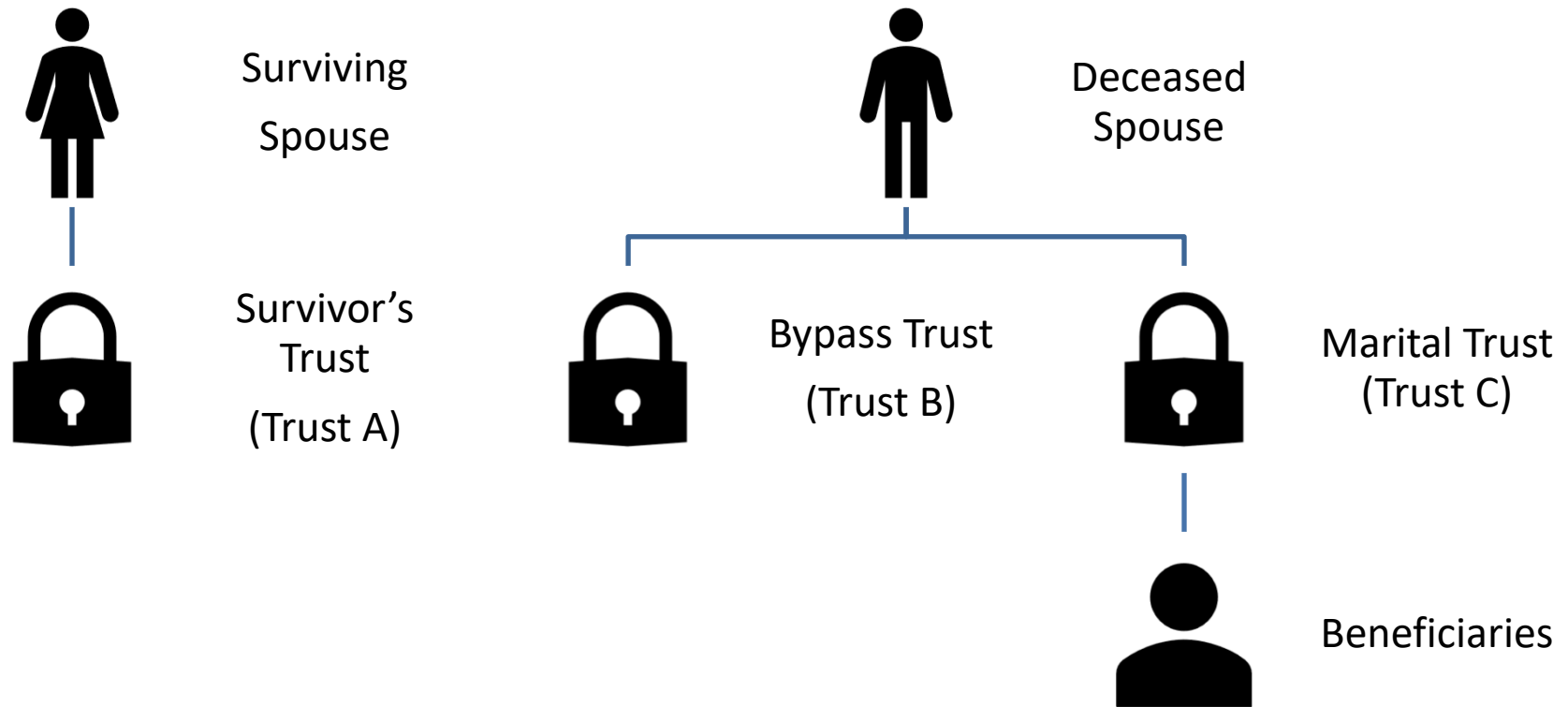
# Living Trust for a Married Couple



# Living Trust for a Married Couple



# Living Trust for a Married Couple



# Blended Families

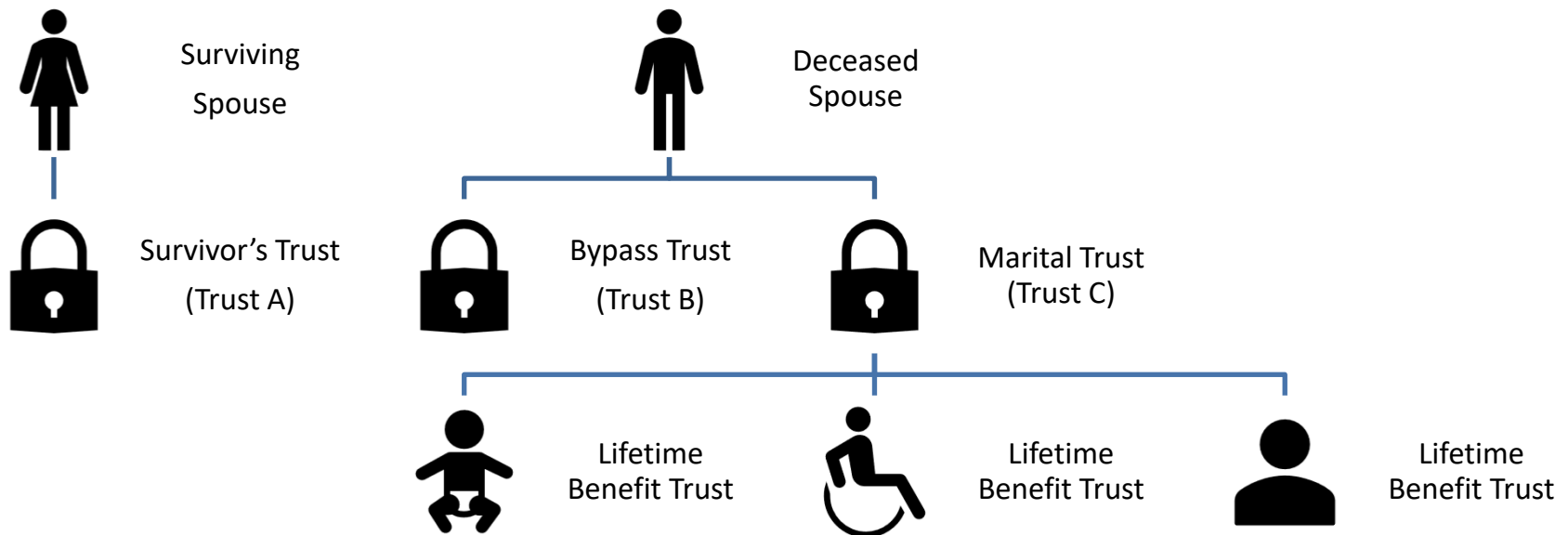
- Spouses may want to ensure that his or her children are provided for after the death of the parent
- Spouses may want to ensure a certain quality of life for the surviving spouse
- Spouses may want to put in safeguards to ensure a smooth trust administration following the death of one or both spouses



# Asset Protection

- Protecting against potential threats
- Creditors
  - Lawsuits
  - IRS tax liens
- Predators
  - Undue influence
  - New spouse

# Living Trust for a Married Couple



# Protect Beneficiaries / Lifetime Benefits

- Property Held in Separate Irrevocable Trust for Each Child
  - Child may get income
  - Child may get principal
  - Child may serve as the trustee of his or her trust during life
- Spendthrift Trust Protection
  - Divorce Proof
  - Creditor Protection
  - Bankruptcy Protection

# ***Property Tax Issues***

# Proposition 13

- California Proposition 13, approved by voters on June 6, 1978, provides that a property's tax base will only increase (or decrease) in value by a maximum of 2% per year irrespective of the property's fair market value. Article XIII A, Section 1, California Constitution.

# Proposition 58

- California Proposition 58, approved by voters on November 4, 1986, provides that, under certain circumstances, a transfer of property between a parent and a child will not cause a property tax reassessment. California Revenue and Taxation Code (“CRTC”) § 63.1.

# Proposition 58 Illustrations

- Transfer of unlimited property tax base if transfer of a principal residence.
  - Charles may transfer his home to his daughter, Jill, without causing a property tax reassessment even though the home has a property tax base of \$2M and a fair market value of \$5M.
- Each transferor may transfer up to \$1M of non-principal residence property tax base.
  - Becky owns a commercial property that has a property tax base of \$1M and a fair market value of \$9M. Becky may transfer the entire commercial property to her children without a property tax reassessment.

# Proposition 58 Illustrations

- What happens if Becky's remaining Proposition 58 Exemption is not sufficient to cover the entire transfer?
  - If Becky's remaining Proposition 58 exemption is \$1M but the property's tax base is \$1.5M, the property would retain the first \$1M of property tax base and one-third of the property would be reassessed at its then current fair market value.
    - If the value of the property is \$9M, the new property tax base would be \$4M (2/3 of \$1.5M existing property tax base + 1/3 of \$9M fair market value).



# Proposition 193

- California Proposition 193, approved by voters on March 26, 1996, provides that under certain circumstances, a transfer of property by a grandparent to a grandchild will not cause a property tax reassessment.  
CRTC § 63.1.
- Applies rules similar to Proposition 58.

# Proposition 60

- Homeowners who at least 55 years old or who are severely disabled are able to transfer the property tax base from their current principal residence to a new residence if certain conditions are met. CRTC § 69.0.5 (Proposition 60 (1986)).

# 55+ Transfer of Principal Residence

- Requirements:
  - One of the spouses must be at least 55 years old (or disabled) and an owner of record.
  - The replacement residence must be within the same county or within one of the participating counties (Proposition 90 (1988)).
  - The original residence must qualify for the Homeowners' Exemption or the Disabled Veterans' Exemption.

# 55+ Transfer of Principal Residence

- Requirements:
  - The replacement residence must be of equal or lesser value to the value of the original residence.
  - The replacement residence must be purchased or constructed within two years of (before or after) the sale of the original residence.
  - The original residence must be subject to reassessment after the sale at full FMV.
  - One-time benefit.

# 55+ Transfer of Principal Residence

- Participating Counties:
  - Alameda
  - Los Angeles
  - Orange
  - Riverside
  - San Bernardino
  - San Diego
  - San Mateo
  - Santa Clara
  - Tuolumne
  - Ventura

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THE **RECORDER**



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