

LIVING TRUST BASICS

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SPEAKER BIO – DESIREE F. RIVERA, ESQ.

BACKGROUND

- ❖ Associate attorney at Law & Stein, Irvine, CA
- ❖ Lives in Orange County and enjoys spending time with family, attending sporting events, camping and anything outdoors
- ❖ **Education**
 - ❖ J.D. from Chapman University Fowler School of Law Orange, California
 - ❖ B.A., Psychology from Chapman University Orange, California



AREAS OF PRACTICE

- ❖ Estate Planning
- ❖ Trust Administration
- ❖ Business Planning and Transactions

AGENDA

- What is a Trust and how it works
 - Advantages and Disadvantages
 - How a Trust avoids Probate
- Tax Considerations
 - Property Tax
 - Capital Gains Tax
 - Estate Tax



This is not intended to be legal advice, nor is it intended to be a substitute for legal services

A **living trust** is a written document in which you **designate how and to whom you would like your assets to be distributed.**

There are many types of trusts, and all are used for different purposes. The most common is the **revocable living trust.**

There are also **irrevocable trusts.**

Avoiding Probate

- Why would you want to avoid probate?
 - Time, Cost, Energy

WHAT IS A TRUST?

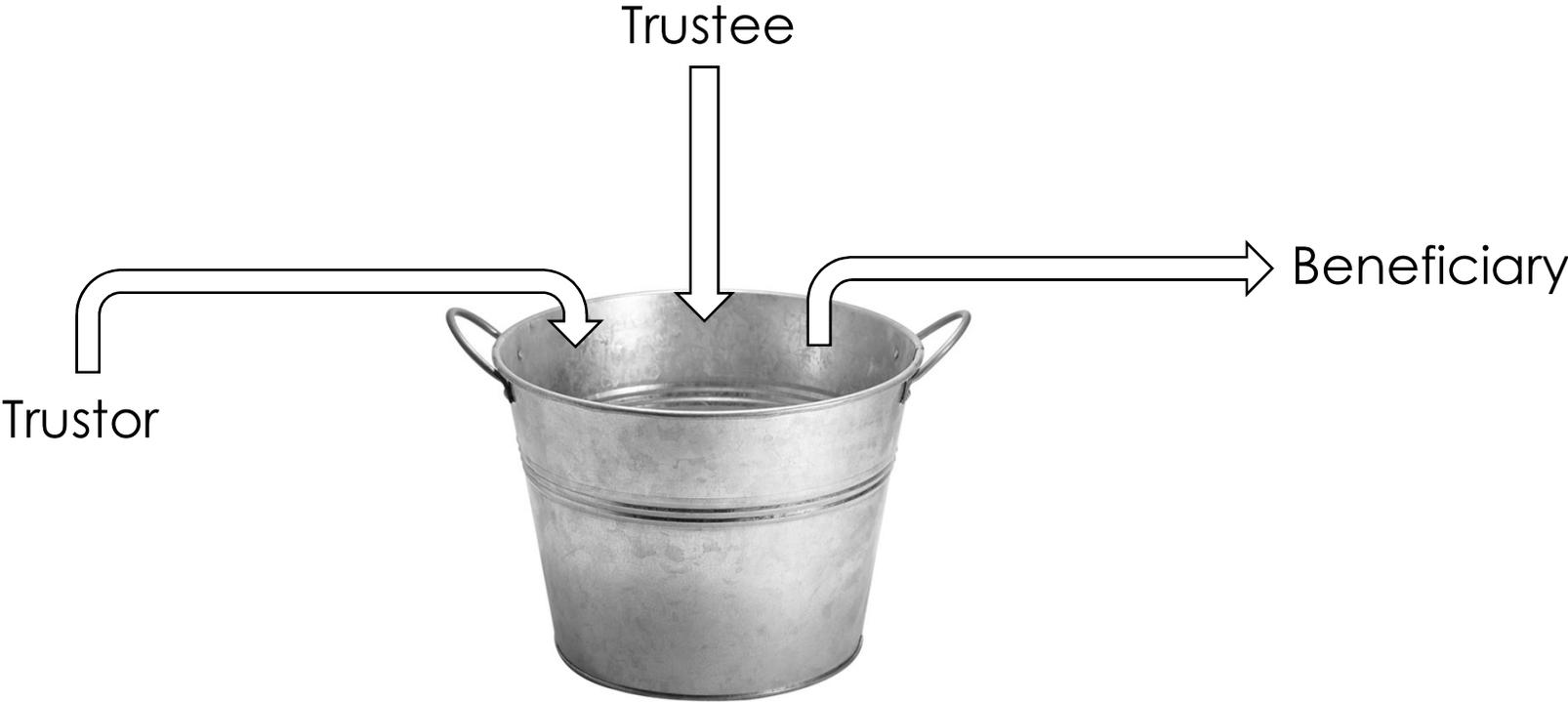
WHAT IS A LIVING TRUST?



- Parties to a living trust:
 - The person who creates the Trust is the **Trustor**
 - The person who carries out your wishes is the **Trustee**
 - The ultimate recipient(s) of your assets is the **Beneficiary** (or Beneficiaries)

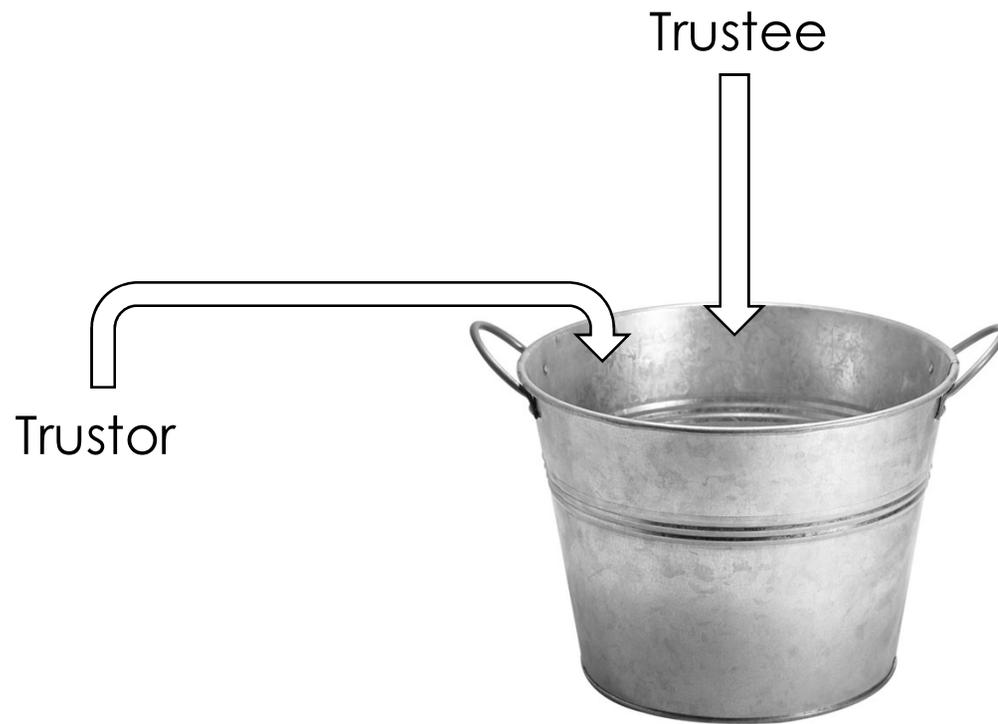
REVOCABLE LIVING TRUST

Three Parties in Revocable Living Trust



REVOCABLE LIVING TRUST

Contract Between Trustor & Trustee



Terms of Contract

- Amend
- Revoke
- Add Property
- Access to all income & principal

Do whatever you want

REVOCABLE LIVING TRUST

Transferring Assets Into the Trust

Simply Change
Ownership of Asset

- Real estate
- Bank accounts
- Investments

~~Bob & Mary Smith~~



Bob & Mary Smith,
Trustees of the
Smith Family Trust



REVOCABLE LIVING TRUST

Avoiding Probate

After the Smith's pass away...



Beneficiary

...all assets titled in the name of their trust avoid probate and will be distributed to beneficiaries named in the trust

TAX CONSIDERATIONS

- Property Tax (Propositions 19)
 - Real Property passing to children may keep the same tax rate so long as the child declares property as primary residence
- Capital Gains Tax
 - Gain = difference between sale price and basis
 - 100% Step-Up in Basis for assets in trust
 - Only Partial Step-Up for assets held jointly
- Estate Tax
 - \$11.7 million estate tax exemption per person
 - Most of the estate is taxed at 40% rate for amounts over \$11.7M

ASSET DISTRIBUTION – OPTION 1

Distribute Assets Directly to Children – Problems with This Approach

- Divorce
- Bankruptcy
- Creditors
- Government Benefits



ASSET DISTRIBUTION – OPTION 2

Distribute Assets Directly to Children AND Protect Their Inheritance

Protection Strategies:

- Spousal claim in event of divorce
- Creditors in event of lawsuit
- Bankruptcy in event of insolvency
- Special needs trust to protect government benefits



TRUST ADMINISTRATION

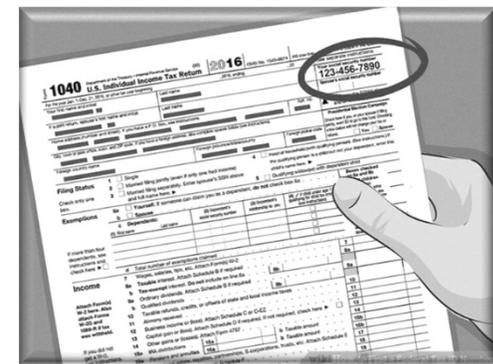
When a loved one passes & you are Successor Trustee, the following are the administrative steps to perform prior to being able to distribute the deceased's assets to the beneficiaries...

Successor trustee needs three items to access assets in trust:

Death Certificate

Trust Document

Tax ID Number



TRUST ADMINISTRATION

Written Legal Notification Must be Sent to Beneficiaries & Heirs
within 60 Days of Date of Death

Contents of Notice:

- Decedent's name & date of death
- Existence of trust document
- Right to obtain copy of trust, including amendments
- Any contest to trust must be brought within 120 days
- Strict requirements regarding font size, language, etc.



TRUST ADMINISTRATION

Valuation of Assets

Determine Fair Market Value of Assets

- Is estate tax owed? (\$11.7 million)
- Establish new cost basis for real property and investments
- Determine how assets are divided equally among beneficiaries



TRUST ADMINISTRATION

Changing Title to Real Property

- Within 150 days of death, an **Affidavit of Death** must be completed and recorded with the County Recorder's Office
- Transfer title to the name of the successor trustees thereby allowing them to legally make all decisions regarding real property (i.e. sale, lease, etc.)



TRUST ADMINISTRATION

Property Taxes & Proposition 13

What is Prop 13?

Allows property taxes to be based on the purchase price of your home rather than the current fair market value

Why is it important?

If you bought your home for \$100,000 in 1980 and it's worth \$600,000 today, your property taxes are probably between \$1,000-\$2,000 versus \$6,000-\$7,000



TRUST ADMINISTRATION

Property Taxes & Proposition 13 – Avoid Reassessment Tax

When an **Affidavit of Death** is filed, the County Assessor is notified of **Change in Ownership**, which results in **Reassessment of Property Taxes** (increased tax rate).

To avoid this we must:

File a **Preliminary Change of Ownership Report** notifying the County Assessor there should be no reassessment because this is a transfer between **spouses** or a transfer between **parents and children**

NOTE: PROP 19 and Limits on Transfers Occurring February 16, 2021 or after

Transfers to other individuals may trigger reassessment!

TRUST ADMINISTRATION

Tax ID # and Tax Filings

When an individual passes away, their social security number **expires** and can no longer be used to report their assets.

Therefore, a **Tax Identification Number** must be applied for and obtained through the IRS.

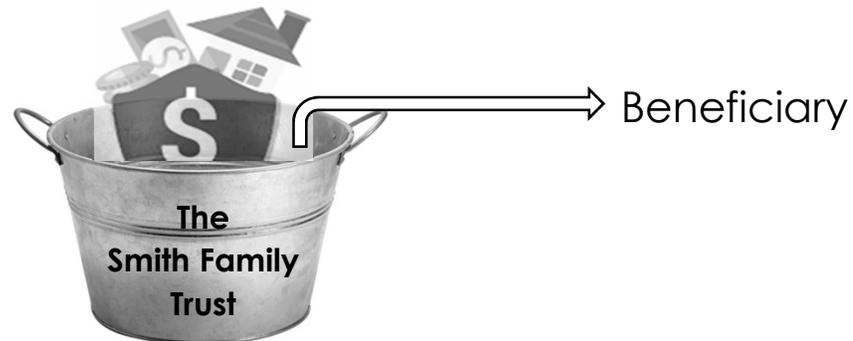
That Tax ID # is also required to file the decedent's tax returns for the period of time ranging from the date of death to the end of year (IRS Form 1041).

TRUST ADMINISTRATION

Changing Title to Other Assets

Once the **Tax Identification Number** is obtained, title to bank accounts and investments can be transferred into successor trustee's name:

- Tax ID#
- Copy of Trust Document
- Death Certificate



Once assets are in name of successor trustee, trustee may distribute assets to beneficiaries according to terms of trust.

PROBATE ASSETS OUTSIDE OF TRUST

Assets that are **properly funded** into a trust **avoid probate entirely**

However, occasionally a decedent will pass away owing assets in their individual name rather than in the name of the trust, which **may require probate**.

- Probate can still be avoided by an Affidavit Procedure as long as assets outside the trust:
 1. Do not exceed **\$166,250** in combined value and
 2. In any case, real property outside of trust must not exceed **\$55,425** in value

TRUSTEE'S FIDUCIARY DUTIES

Fiduciary Duty: *A legal duty to act solely in another party's interests (not YOUR interests)*

- Reasonably inform all beneficiaries of trust and administration status including:
 - Assets, liabilities, acts of trustee, and terms of trust, all within reasonable timeframe
- Prudent Investor Rule
- Duty to provide accounting of trust to beneficiaries
- Duty to avoid conflicts of interest
- Duty to deal with beneficiaries impartially



SUMMARY

A goal without a plan is just a wish.

~ Anonymous

~ THANK YOU ~

Desiree F. Rivera, Esq.

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