



Estate Planning

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Ask First:

- ▶ Juris Doctorate degree from Pepperdine School of Law (1978)
- ▶ Licensed by California State Bar in 1979
- ▶ Masters in Tax Law ((M.S., TAX) from Golden Gate University (1992)
- ▶ Certified Specialist in Estate Planning, Trust and Probate Law (1997)
- ▶ Instructor at UCI / Extension (1994 – 2020) Estate Planning
- ▶ Author and contributor to Estate Planning Texts
- ▶ Frequent Speaker on Estate Planning Topics
- ▶ AV Rated 25 years / Super Lawyer 15 years (2007 – 2011) (2014-2023)

What comes with a basic estate plan?

- ▶ Trust
- ▶ Will
- ▶ Advance Health Care Directive
- ▶ Durable Power of Attorney
- ▶ Personal Property Memorandum
- ▶ Titling Documents (e.g., Wills, Assignments)

Personal Property Memorandum

- ▶ This document works *with* your will or trust to leave certain items of tangible personal property to specific individuals
- ▶ Benefits:
 - ▶ Flexibility – you do not need to have this document signed and notarized
 - ▶ Revocable – you can write a new memorandum of personal property any time
 - ▶ Personal – you can take your time to select items with special meaning without rush
- ▶ Legally binding under state law BUT: there are limitations to what you can give away using the memorandum

Durable Power of Attorney (DPOA)

- ▶ This document works *with* your trust to manage your finances in the event you are unwilling or unable to manage them on your own
- ▶ Example:
 - ▶ You experience a medical emergency and are comatose
 - ▶ You are diagnosed with Alzheimer's or dementia and cannot make decisions
 - ▶ You go on sabbatical for a year and want to leave someone else in charge!
- ▶ Typically your trustee and your agent under your durable power of attorney are the same person to avoid conflict between competing fiduciaries
- ▶ Can be immediate or occur at a later date specific in the document

Advance Health Care Directive (AHCD)

- ▶ This document expresses your wishes regarding health care decision in the event you are unable to express them on your own
- ▶ Typical provisions in an Advance Health Care Directive
 - ▶ Appointment of agent to make decisions (can include naming conservator if needed)
 - ▶ Express wishes concerning health care and end-of-life decisions (withdrawal of treatment)
 - ▶ Express wishes concerning organ donation (and for what type of use)
 - ▶ Designate primary care physician
 - ▶ HIPAA Authorization – name individuals who may access medical records
- ▶ Can be the same person as your trustee and DPOA

Will vs. Trust

WILL

- Dictates where your property will go
- Requires administration
- Costs time and money
- Typically does not require bond*
- Avoids estate taxes 99% of the time

TRUST

- Dictates where your property will go
- Requires administration
- Costs time and money
- Typically does not require bond
- Avoids estate taxes 99% of the time

Will vs. Trust

WILL

- Public; does not skip probate (>\$184,500)
- Governs property in your name
- Beneficiaries receive property at 18 y/o
- Requires court approval of distributions
- Follows a court timeline (and backlog)

TRUST

- Private; skips probate*
- Governs property in the trust name
- Beneficiaries receive property as stated
- Flexible timing on distributions
- Timeline can be faster or slower

What if I do nothing?

“Any part of the **estate** of a decedent not effectively disposed of by **will** passes to the **decedent's heirs** as prescribed in this part.”

▶ California Probate Code § 6400

- ▶ Estate = property in your name
- ▶ Will = last will and testament (not a trust)
- ▶ Decedent's heirs = California rules of intestate succession; Table of Consanguinity

My spouse gets everything, right?

“As to **community property**, the **intestate share** of the surviving spouse is the one-half of the community property that belongs to the decedent...”

► California Probate Code § 6401 (a)

- Community property = property acquired during marriage
- Intestate share = distribution when not otherwise directed by will, trust, beneficiary designation, or disposition by operation of law

My spouse gets everything, right?

“As to **separate property**, the **intestate share** of the surviving spouse is as follows:

- ▶ The *entire intestate estate* if the decedent did not leave any surviving issue, parent, brother, sister, or issue of a deceased brother or sister.
- ▶ *One-half of the intestate estate* in the following cases:
 - ▶ Where the decedent leaves only one child or the issue of one deceased child.
 - ▶ Where the decedent leaves no issue, but leaves a parent or parents or their issue or the issue of either of them.
- ▶ *One-third of the intestate estate* in the following cases:
 - ▶ Where the decedent leaves more than one child.
 - ▶ Where the decedent leaves one child and the issue of one or more deceased children.
 - ▶ Where the decedent leaves issue of two or more deceased children.

▶ California Probate Code § 6401(c)

My spouse gets everything, right?

- ▶ Community Property
 - ▶ Income or property obtained during marriage
- ▶ Separate Property
 - ▶ Income or property obtained prior to marriage
 - ▶ Property purchased using separate property funds
 - ▶ Inheritance/bequests
 - ▶ Gifts

My spouse gets everything, right?

- ▶ How your spouse can get everything:
 - ▶ No children, grandchildren, great-grandchildren
 - ▶ No parents
 - ▶ No siblings
 - ▶ No nieces or nephews
- ▶ California Probate Code § 6401(c)



What if I do nothing?

Takeaway:

Unless you are comfortable leaving the disposition of your estate up to California Probate Code, you should consider the most basic estate planning tool: **the will.**

Okay, then what if I only make a will?

- ▶ You get to choose who acts as your executor, waive bond, and direct where your assets go at your death.
- ▶ You do not get to skip probate unless your assets are less than \$184,500, combined.
- ▶ The contents and disposition of your estate becomes public record.

Okay, then what if I only make a will?

- ▶ Probate costs include filing fees, publication fees, and probate referee fees
- ▶ Attorney's fees are based upon a statutory calculation:
 - ▶ 4% of the first \$100,000 (or \$4,000)
 - ▶ 3% of the next \$100,00 (or \$3,000)
 - ▶ 2% of the next \$800,000 (or \$16,000)
 - ▶ 1% of the next \$900,000 (or \$9,000)
 - ▶ 0.5% of the next \$15,000,000 (or \$75,000)
 - ▶ NOTE: these are based upon the gross estate, not the net estate

So then it's cheaper to make a trust?

- ▶ It depends.
- ▶ Basic trust administration can run between \$7,500 - \$15,000
- ▶ Complex trust administration can exceed \$50,000
- ▶ My experience:
 - ▶ most families feel more secure and in control when they administer a trust rather than go through probate
 - ▶ however, they also often feel like they can skip important steps

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: Trustees

- ▶ 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

FIDUCIARY = TRUST
(LOOK IT UP...)

Parties to a Trust: Beneficiaries

- ▶ 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



What is in a Trust?

- ▶ Articles Governing Establishment and Administration by Settlor
 - ▶ Statement of intent to establish trust and hold property in trust
 - ▶ Provisions confirming powers retained by settlor
 - ▶ Provisions describing trustee succession
- ▶ Articles Governing Administration by Successor Trustee During Incapacity
- ▶ Articles Governing Administration by Successor Trustee After Death
- ▶ Articles Governing Administration of Subtrusts for Beneficiaries

What is “trust administration” anyway?

- ▶ During Settlor's Life

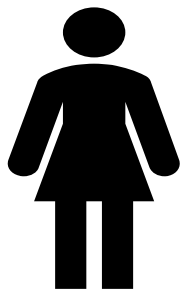
- ▶ Settlor as Trustee

- ▶ 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

Living Trust for a Single Person

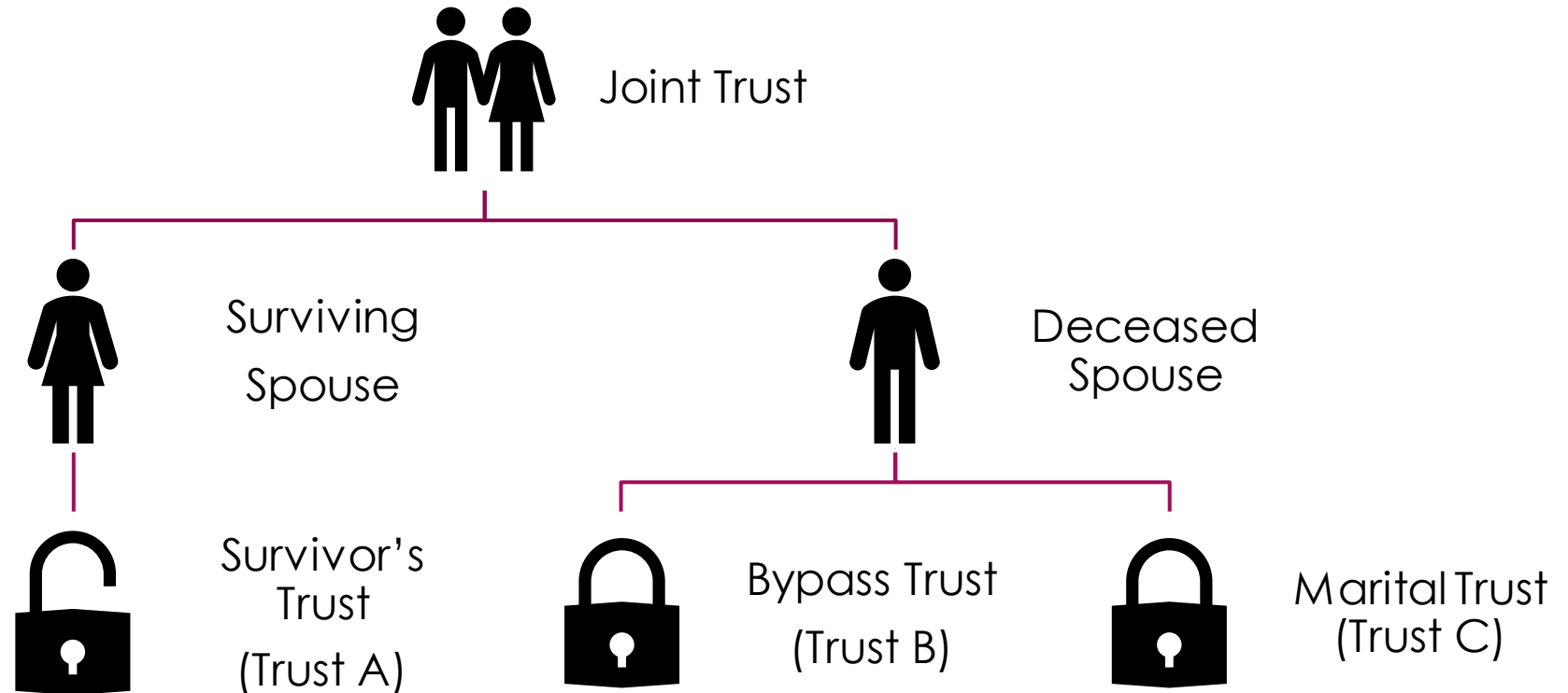


INCAPACITY TRUST
ADMINISTRATION PERIOD

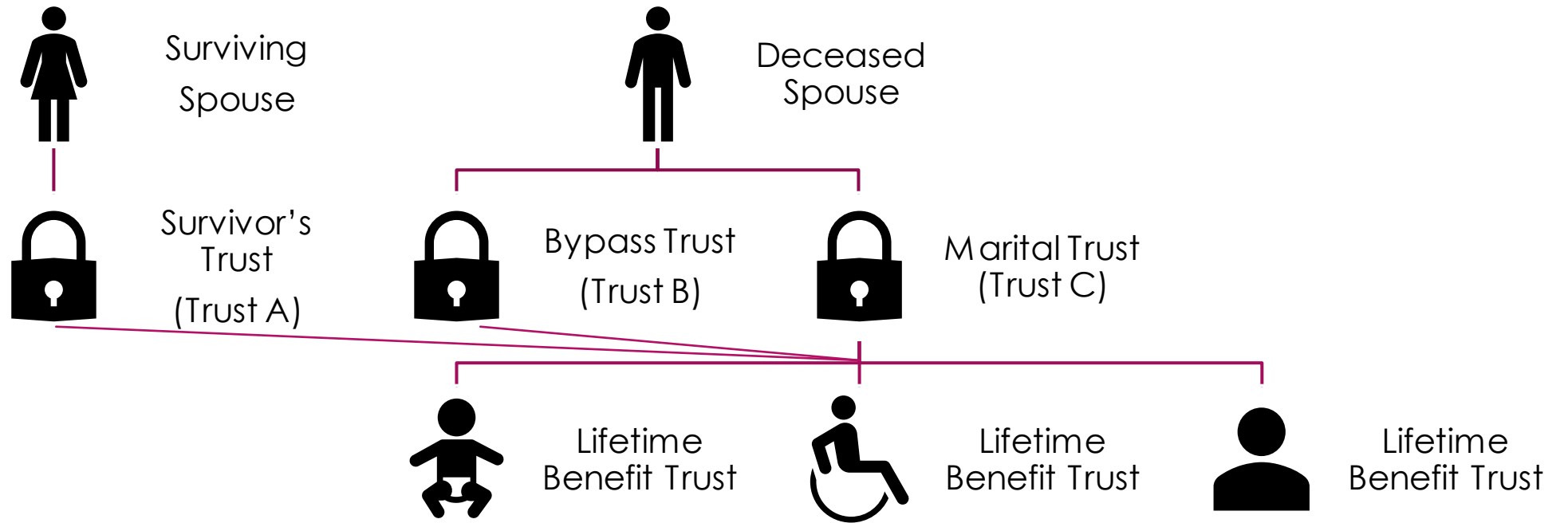
AFTER DEATH TRUST
ADMINISTRATION PERIOD

DISTRIBUTION TO
BENEFICIARIES

Living Trust for a Married Couple



Living Trust for a Married Couple





Thank You.

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