

IT'S YOUR ESTATE, WEEK 1

Overview and Estate Law Changes

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WHAT IS AN ESTATE?



WHAT IS ESTATE PLANNING

- Estate Planning is the process of organizing your assets and legal documents to meet your goals before and after your death.
- The Essence of Estate Planning is figuring out and formally identifying, in writing, whom you trust to manage your healthcare and assets (your “stuff”) when you cannot.
 - It is not just about what happens when you die
 - Estate planning is for everyone

WHY PLAN YOUR ESTATE

- Deciding who will inherit your assets
- Deciding how and when your heirs or beneficiaries will receive their inheritance.
- Passing the maximum amount of assets to your heir or beneficiaries
- Appointing a guardian for minor children
- Ensuring that if you become sick or incapacitated and you are no longer able to manage your assets that someone is legally authorized to step in and manage your assets for you
- Ensuring that if you become sick or incapacitated and you are no longer able to make health care decisions for yourself that someone can make health care decisions for you
- Clarifying your wishes concerning your desires if a life ending decision needs to be made

WHO HAS AN ESTATE PLAN?

- Everybody has an estate plan
 - If you have not done your own estate plan, the California Probate Code has one for you
 - Obviously, you may not like “their” plan

BASIC TOOLS OF ESTATE PLANNING

- * Advance Health Care Directives.
- * Wills.
- * Trusts.
- * Beneficiary Designations.
- * Powers of Attorney – for Assets.
- * Deeds/Ownership Documents.

COMMON ESTATE PLANS



Will



Doing Nothing



Joint Ownership



Giving Away Assets



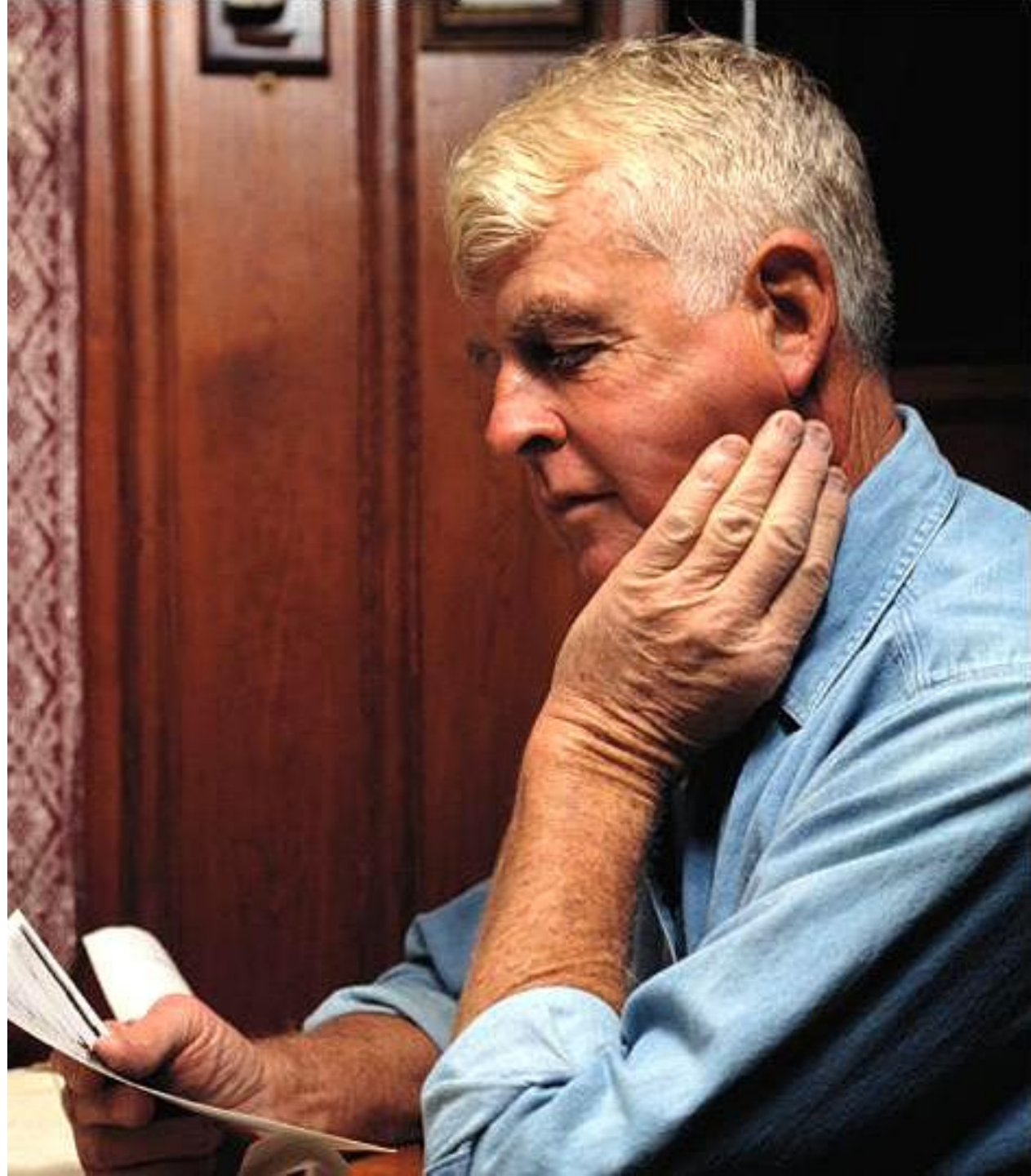
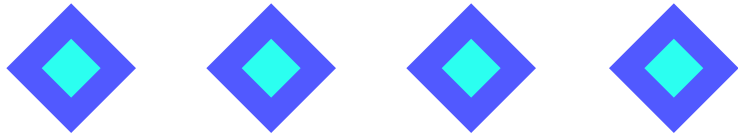
Beneficiary Transfers



Revocable Living Trust

PLAN #1: WILL

- Expresses Your Wishes at Death
- Only Controls Assets Titled In Your Name
 - Example
- Enforced By Probate Court

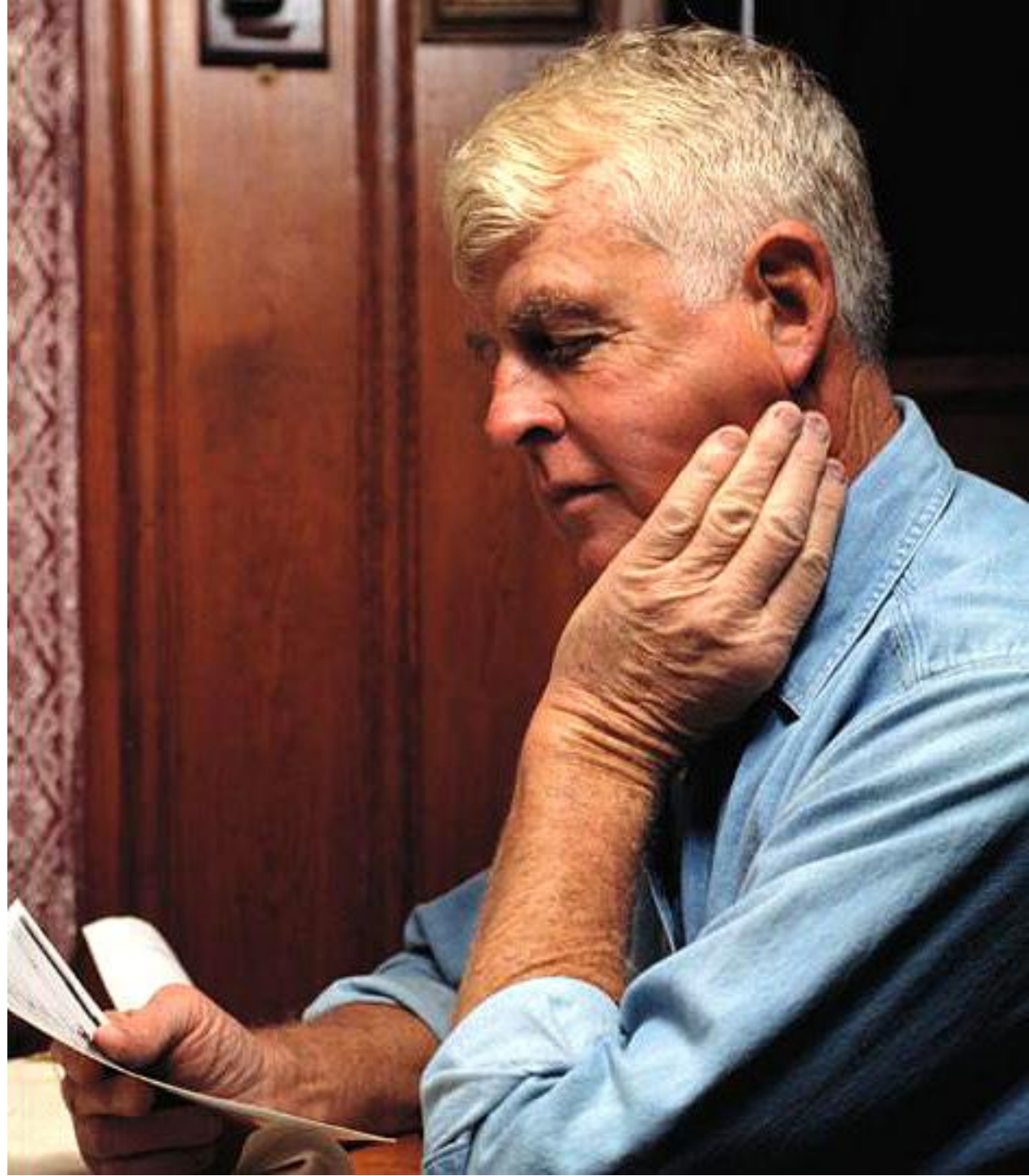
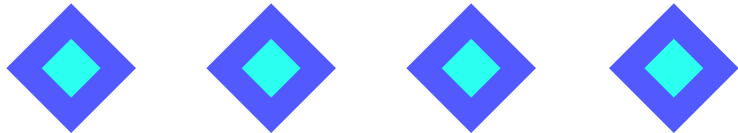


Types of Wills

- Holographic Will
 - Material provisions are handwritten and the instrument is signed.
 - No witnesses or date required.
- Statutory Will
 - Tracks the language of the form provided by the legislature in the Statute (“fill in the blanks” with material provisions).
 - Witnesses required.
- Formal Will (often Attorney Prepared)
 - Can be entirely typed
 - Must be signed and requires two witnesses.
 - Common: “Pour-Over” Will, with associated living trust.

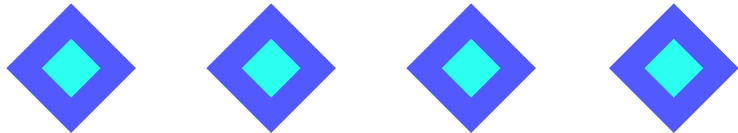
WILLS & INCAPACITY

- Will Is No Help
- Court Process (Conservatorship)
 - Expensive
 - Time Consuming
 - Public
 - Doesn't Replace Probate
- Durable Power of Attorney
- Advanced Health Care Directive



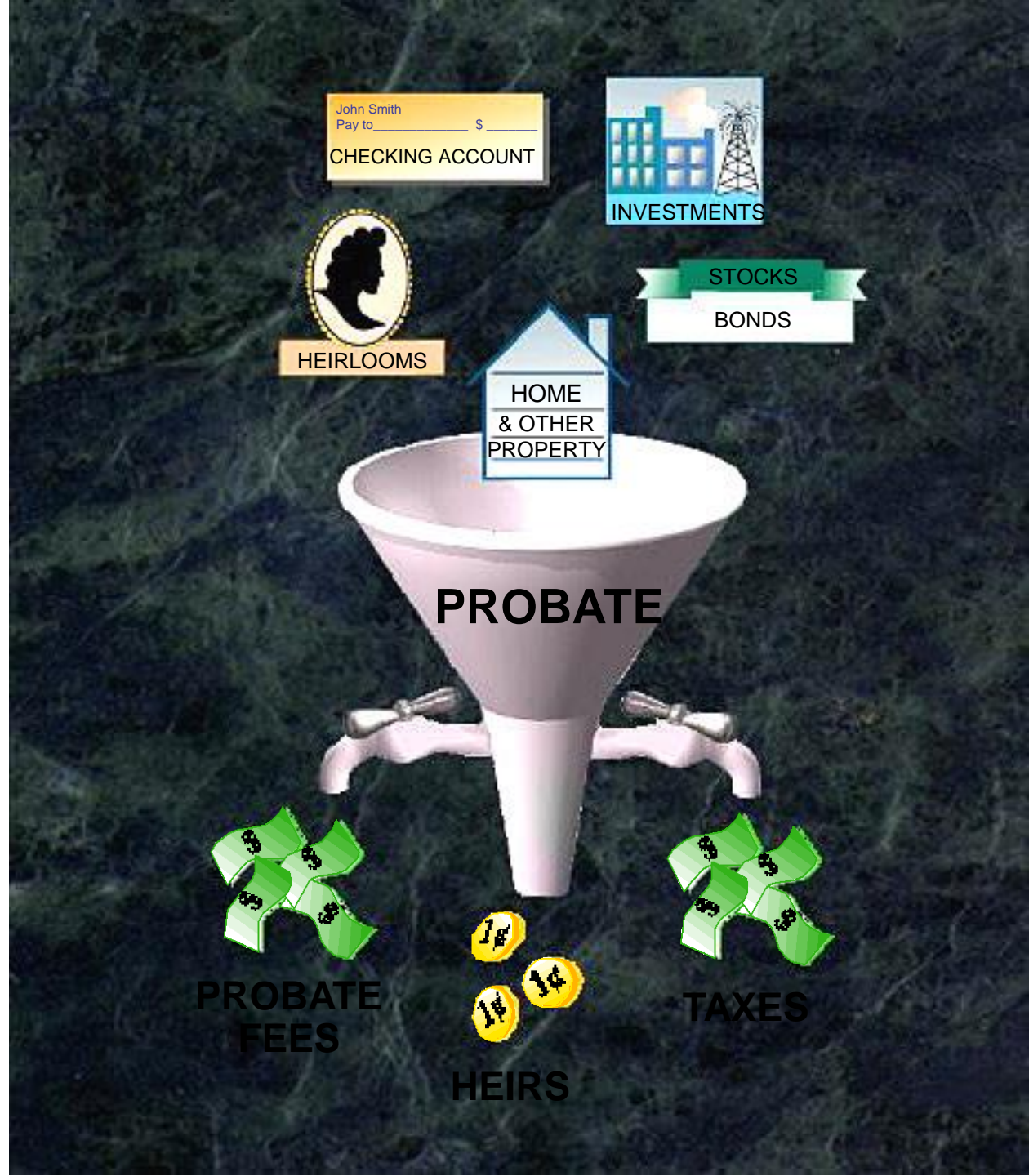
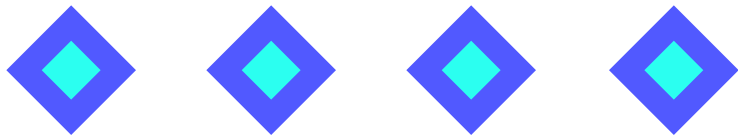
WHAT IS PROBATE?

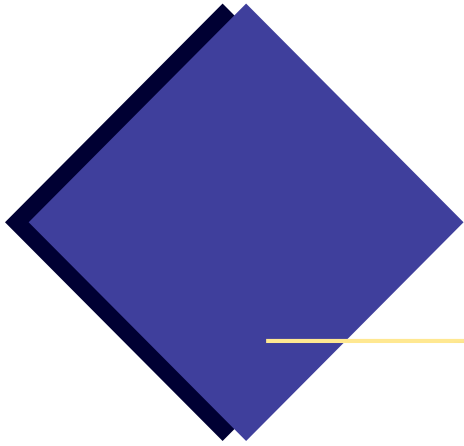
- Legal Process
 - Will Validated
 - Representative is appointed
 - Debts Paid
 - Assets Distributed
- Only Legal Way to Change Title



PROBATE ILLUSTRATION

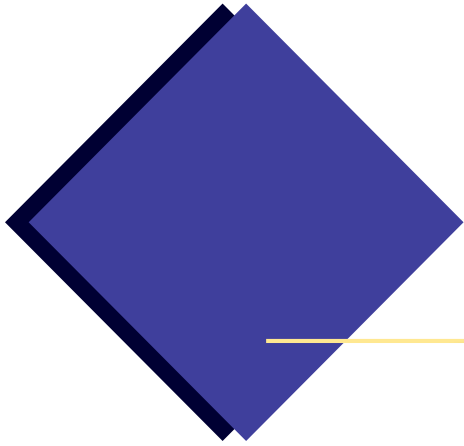
- Assets Titled in Just Your Name Go Through Probate





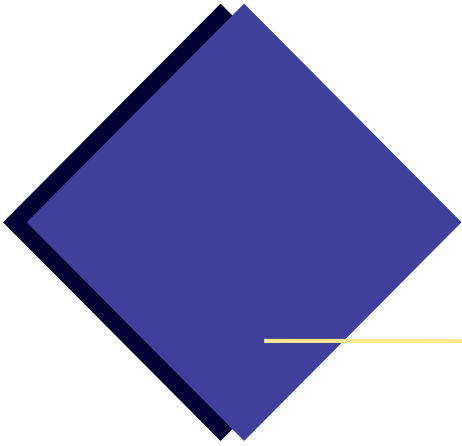
Advantages of Probate

- Court Supervision
- Creditor period dramatically shortened
- Attorney & fiduciary (executor) fees are generally only paid at the end of the administration and then only with the approval of the Judge.
- Protects the fiduciary from ongoing liability.
- Power of the black robe to control beneficiaries (court of equity)



Top Three Reasons to Avoid Probate

- Cost
- Time
- Publicity



Costs

- Statutory Executor Compensation
- Statutory Attorney Compensation
- Court Filing Fees and Costs
- Appraisal Fees
- Bond Premiums

Statutory Fees

- (1) Four percent on the first one hundred thousand dollars (\$ 100,000).
- (2) Three percent on the next one hundred thousand dollars (\$ 100,000).
- (3) Two percent on the next eight hundred thousand dollars (\$ 800,000).
- (4) One percent on the next nine million dollars (\$ 9,000,000).
- (5) One-half of one percent on the next fifteen million dollars (\$ 15,000,000).
- (6) For all amounts above twenty-five million dollars (\$25,000,000), a reasonable amount to be determined by the court.

Example

Based on the California Probate Code, a person with a 2.0 million dollar estate would have the following fees:

Executor Compensation : \$33,000

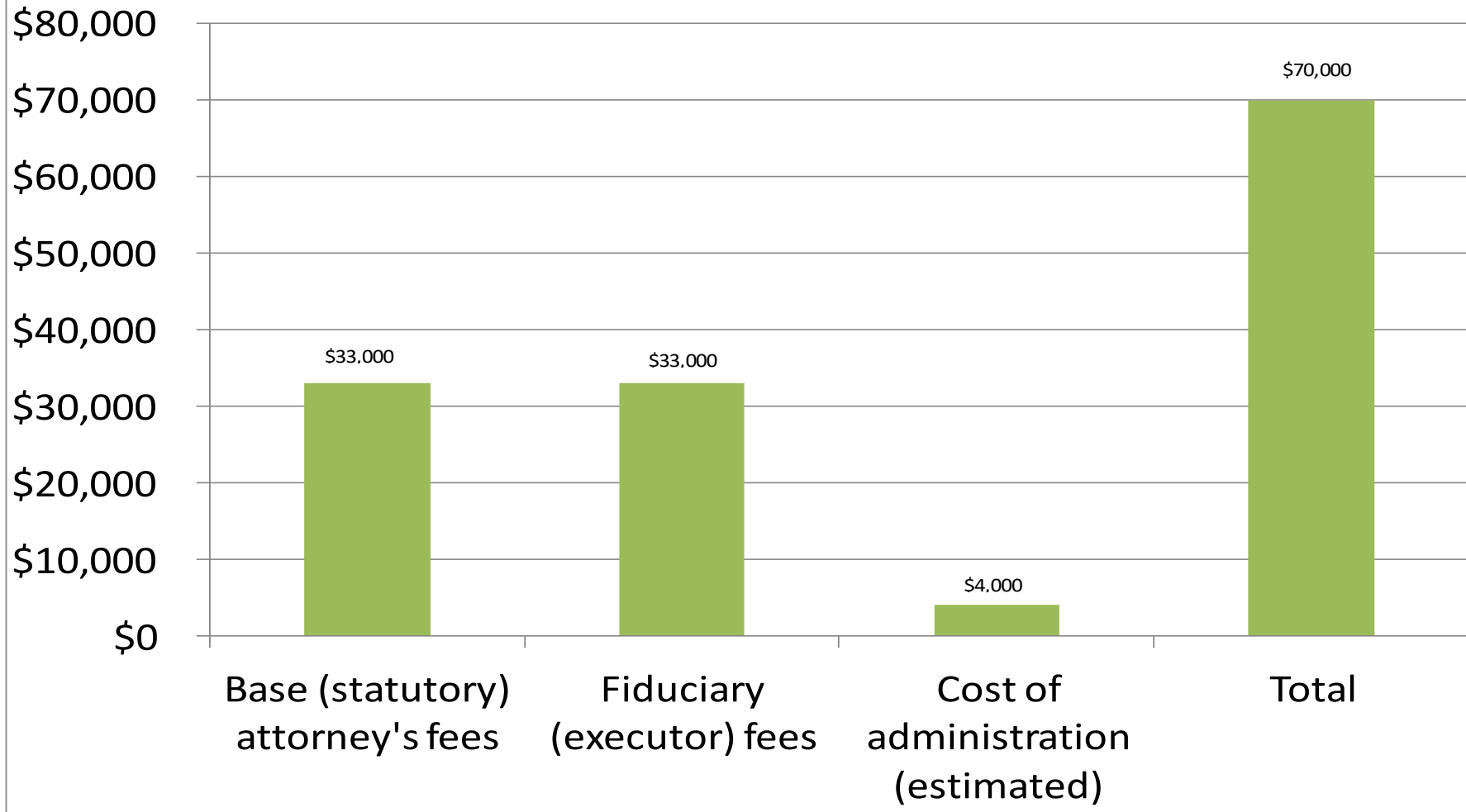
Attorney Compensation : \$33,000

\$66,000

Note that this is based on the gross estate and that the above number does not include, court fees, costs, bond premiums, appraisal fees, taxes or extraordinary fees.

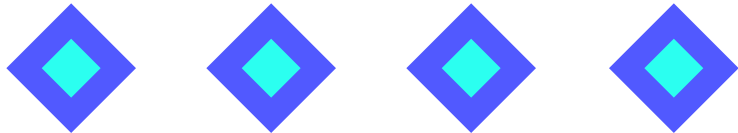
Probate Fees and Expenses

Example : \$2 Million Gross Estate



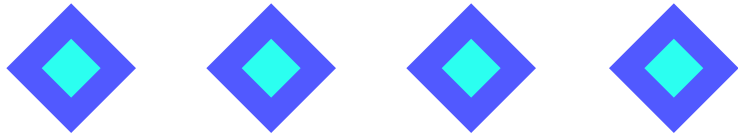
PROBATE TAKES TIME

- 9 Months - 2
Years



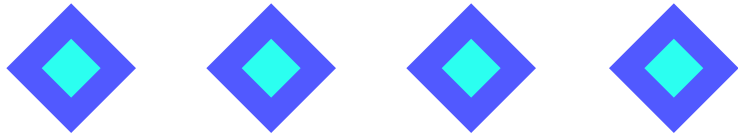
PROBATE IS PUBLIC

- No privacy
- Published in newspaper
- Available via the web (at least portions)
- Copies of all filed documents are available at court



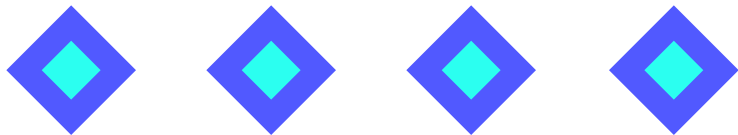
PLAN #2: DOING NOTHING

- At Death
 - Probate
 - Assets Distributed by State Law
- At Incapacity
 - Court Controls Assets
 - Health Care



PLAN #3: JOINT OWNERSHIP

- Surviving joint owner has full ownership



TOM & ANN Joint Owners



TOM DIES



ANN INHERITS
TOM'S SHARE



ANN DIES

NO PROBATE



PROBATE

ANN'S HEIRS
INHERIT

DAN & ANN Joint Owners



ANN MARRIES
DAN



ANN DIES



DAN INHERITS
ANN'S SHARE

DISINHERITED

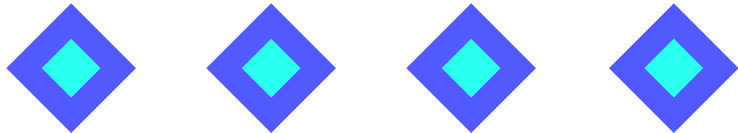
TOM'S & ANN'S
CHILDREN

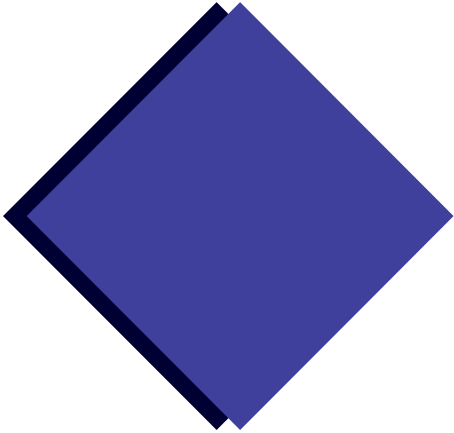
JOINT OWNERSHIP SUMMARY

1. Only Postpones Probate
2. Unintentional Disinheriting
3. Incapacity = Court Interference
4. Difficult To Remove Co-Owner
5. Lawsuits/Debts of Co-Owner

PLAN #4: GIVING AWAY ASSETS

- You lose control of assets
- No help at incapacity
- Gift/Estate Tax issues
- **Income Tax issues**





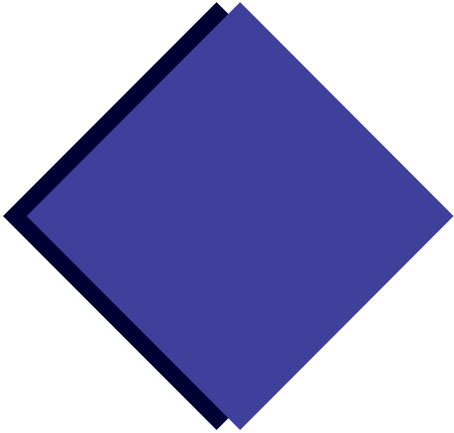
BASIS



Basis is commonly the purchase price of an asset
Basis is used to determine tax liabilities

Example: Purchase a stock for \$100,000 in 2002

The **basis in this stock is \$100,000**

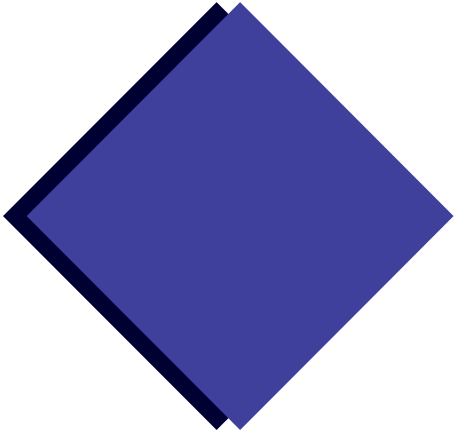


BASIS



You Decide to Sell

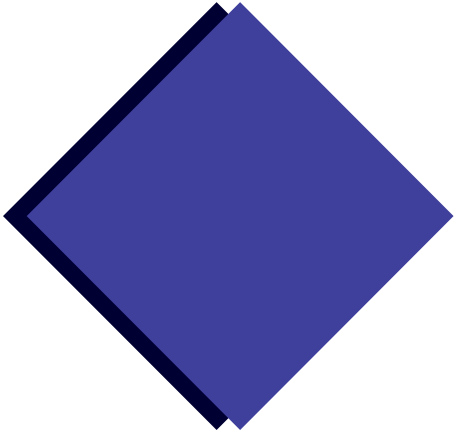
Selling Price	\$ 200,000
Basis	- 100,000
Gain	\$ 100,000
Capital Gains Tax	\$ 25,000 [Federal 0%/15%/20%; State up to 13.3%]



GIVE IT AWAY AND RECIPIENT SELLS (Carryover Basis)

**Recipient Takes
Your Basis**

Selling Price	\$ 200,000
Basis	- 100,000
Gain	\$ 100,000
Capital Gains Tax	\$ 25,000

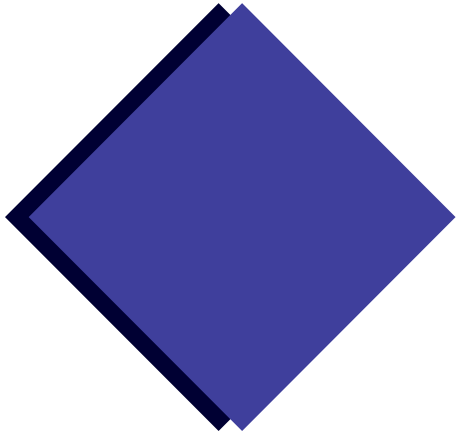


STEPPED-UP BASIS



What happens to **basis** when someone inherits your property

The **basis** in inherited property for the new owner is "stepped-up" to the market value of the property at the time of death.

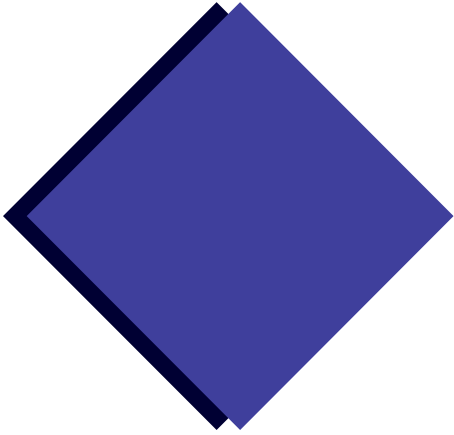


STEPPED-UP BASIS



Example: If the value of the stock was \$200,000 on the date of death, then the new basis for sale purposes is \$200,000

Old basis is irrelevant and capital gains are erased

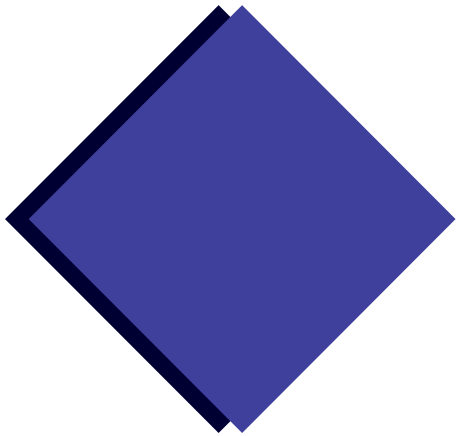


STEPPED-UP BASIS



Transfers At Death (New, Stepped-Up Basis)

Selling Price	\$ 200,000
Basis	- 200,000
Gain	\$ 0
Capital Gains Tax	\$ 0



STEPPED-UP BASIS



Lifetime Gifts (Your Basis)

Transfers At Death (New, Stepped-Up Basis)

Selling Price	\$ 200,000	\$ 200,000
Basis	- 100,000	- 200,000
Gain	\$ 100,000	\$ 0
Capital Gains Tax	\$ 25,000	\$ 0

PLAN #5: BENEFICIARY TRANSFERS

- Examples:
 - Beneficiary Designation Form (BD)
 - 401(k), IRA
 - POD/TOD
- Usually no probate
- Complications Leading to Court Potentially:
 - Beneficiary Dies First or at Same Time
 - “My Estate”
 - Your Incapacity
 - Beneficiary is a Minor



Plan #5 (Cont'd)– Beneficiary Transfers

REVOCABLE T.O.D. DEED

- For deaths after 1/1/2016. [legislation expires 1/1/2032 unless extended further]
- Nonprobate Transfer of Certain Types of Real Estate. [(i) RP improved with 1-4 residential units; (ii) a condo unit; or (iii) agricultural of <= 40 acres improved with single-family residence]
- Need 2 witnesses to signing or transferor's acknowledgment of signing and Must have Notarized; record on/ or before 60 days of signing.
- Does not sever a Joint Tenancy or a CP w/ROS.
 - Not effective as to CP share of non-consenting spouse.
- Operative on Death only.
 - No provision for incapacity.
- Named Beneficiaries become EQUAL co-owners (on death).
 - No “non-pro-rata” distribution (potential property tax implications).
- Deceased Named Beneficiary's share is divided equally among other specifically named beneficiaries. If no other specifically named, then “Estate” is beneficiary. (Probate).
 - No Anti-Lapse protection.



PLAN #6: REVOCABLE LIVING TRUST

- Living Trust Is Usually The Solution
 - Advantages and Disadvantages (and varying types of Trusts) to be discussed in Week 3 of It's Your Estate: "Wills and Trusts".



LIVING TRUST SUMMARY

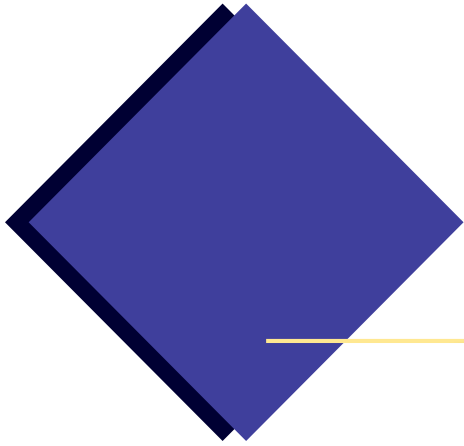
- Avoids Probate at Death
- Prevents Court Control of Assets at Incapacity
- Provides Maximum Privacy
- Allows Control of Distribution of Assets to Beneficiaries , Protection from Creditors and Irresponsible Spending

Updates – 2024 (1)

- Estate/Gift Tax Exemption Amount - **\$13.61 M** per person
 - (**\$27.22 M** per married couple, but need to preserve the first-to-die's exemption via Formula Trust or Portability Election). Rate of Tax: **40%**.
- Annual Gift Tax Exclusion (**\$18,000** per donee).
- Gift Tax Exclusion for transfer to non-citizen spouse: **\$185,000**.
- Highest (37%) tax rate on Trust income > **\$15,200**.
 - \$609,350 for single filer; \$731,200 for Married filing jointly.
- Prop. 19's Limited Intergenerational Transfer Exclusion Amount is **\$1,022,600** until 2/16/2025 [**\$1,000,000**+Inflation adjustment].
 - Transferor's (e.g., Parent's) principal residence (family home/family farm).
 - Transferee's (e.g., Child's) principal residence, within 1 year of Transferor's death.
 - Child to File Homeowner's Exemption within 1 year of death, plus Claim form within (generally) 3 years.

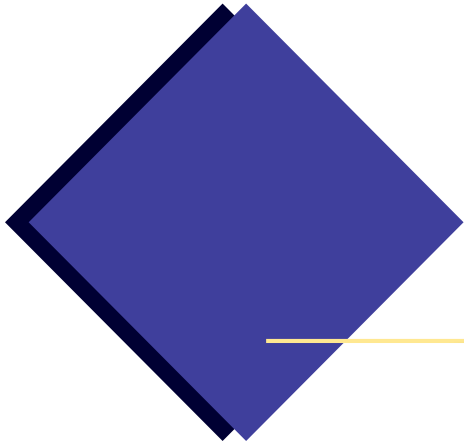
Updates 2024 (2)

- Directed Trusts.
 - “Director” directs the Trustee.
 - Examples: Director of Investments; Director of Distributions; Director to Manage a particular asset.
 - » Trustee only liable if “willful misconduct”.
- SECURE ACT/SECURE 2.0
 - No more stretch-out over life of beneficiary unless Eligible Designated Beneficiary (EDB); consider gifting IRA/401(k) to Charity. [Week 4: Retirement Asset Planning].
 - Consider Rollover of unused old (15+ years) 529 to Roth IRA for beneficiary. (subject to limitations for contribution to Roth IRA – up to \$7,000 of beneficiary’s earned income in 2024 (\$8,000 if >50); total cap of \$35,000; cannot include earnings from past 5 years; watch for State Tax).



FINAL THOUGHTS

- Many choices in Estate Planning
 - Write Down Your Goals/Objectives
 - Inventory Your Assets and Debts (**How titled?**)
 - Make Choices (fiduciaries/who you want to inherit and how)
 - Use Professional Help.



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