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These slides and the presentation are for information purpose only. This is not intended to be legal advice, nor shall it be construed as legal advice. If you have any specific questions, please reach out to your estate planning attorney.

# UNDERSTANDING WILLS & TRUSTS

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Associate, Law & Stein, LLP

**LAW & STEIN**  
LLP

## SPEAKER BIO – JOSH BROMLEY, ESQ.

### BACKGROUND

- ❖ Associate at Law & Stein, LLP, Irvine, CA
- ❖ Nearly 10 years experience in Trusts & Estates
- ❖ Has experience working as trust officer for corporate trustee
- ❖ Lives in Orange County and enjoys spending time with family (wife, four young sons, and golden doodle dog)



### AREAS OF PRACTICE

- ❖ Estate Planning
- ❖ Trust Administration
- ❖ Probate Administration
- ❖ Tax Planning

### EDUCATION

J.D., 2013, Arizona State University, Sandra Day O'Connor College of Law, Tempe, AZ

B.S., *Cum Laude*, 2010 Business Management, Brigham Young University

## AGENDA

- Defining a Will & a Trust
- How Does a Trust Work
- How Assets get Transferred After Death

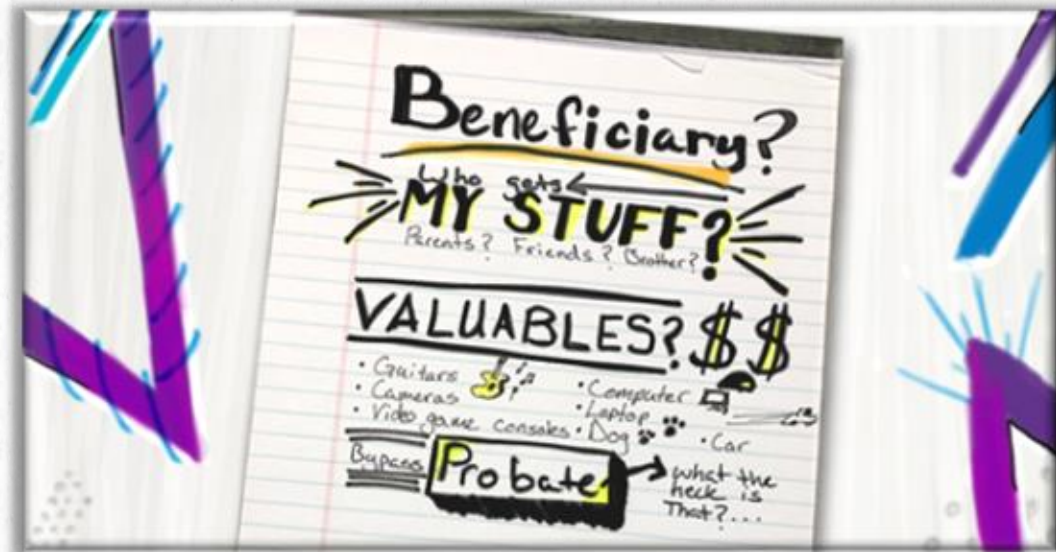


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## SIMILARITIES BETWEEN A WILL & A TRUST

- Both a will and a trust allow you to oversee the transfer of your assets to your loved ones after your death.
- Both a will and trust allow you to designate where your assets will go after you pass away



# DIFFERENCES BETWEEN A WILL & A TRUST

## WILL

With a will, if you have more than \$61,500 in real estate, or more than \$184,500 combined in real estate & cash assets, your estate must go through probate.



## TRUST

With a trust, you can leave assets of ANY AMOUNT to your beneficiaries without need for probate.







Probate is a court supervised process whereby a person's assets are transferred to their loved ones after death.

**But before that can happen...**

- Probate referee must be appointed
- Assets must be inventoried & appraised
- Creditors must be notified and paid
- Court & administrative costs must be paid
- Mandatory attorney's fees must be paid
- Finally, distribution of assets to loved ones

## WHAT IS PROBATE?

If you don't have an estate plan,

it becomes the government's plan.

# REASONS TO AVOID PROBATE

TIME



COST



HEADACHE





## REASONS TO AVOID PROBATE - TIME

In California, the average probate process takes about 18 to 24 months to complete

- Personal representative appointed
- Valuation of assets
- Notification to creditors to file timely claim
- Validating the Will
- Locating the beneficiaries
- Budget cuts have caused greater backlog of cases





# REASONS TO AVOID PROBATE - COST



The rule of thumb is that probate costs 5% to 10% of the fair market value of the probate estate

- Mandatory attorney's fees set by statute
  - i.e. \$1M home results in \$23,000 attorney's fees

## REASONS TO AVOID PROBATE - HEADACHE



The probate process  
tends to create a  
forum for  
family fighting,  
conflicts  
and  
disharmony



# HOW TO AVOID PROBATE

## WHAT DOES NOT WORK...

### Will

- Required to go through probate and therefore does not avoid it

### Joint Tenancy/Community Property w/Spouse

- Delays probate, but does not avoid it

### Joint Tenancy w/Children

- Risk of creditors, spousal claims, judgements, etc.

# HOW TO AVOID PROBATE WHAT DOES WORK...

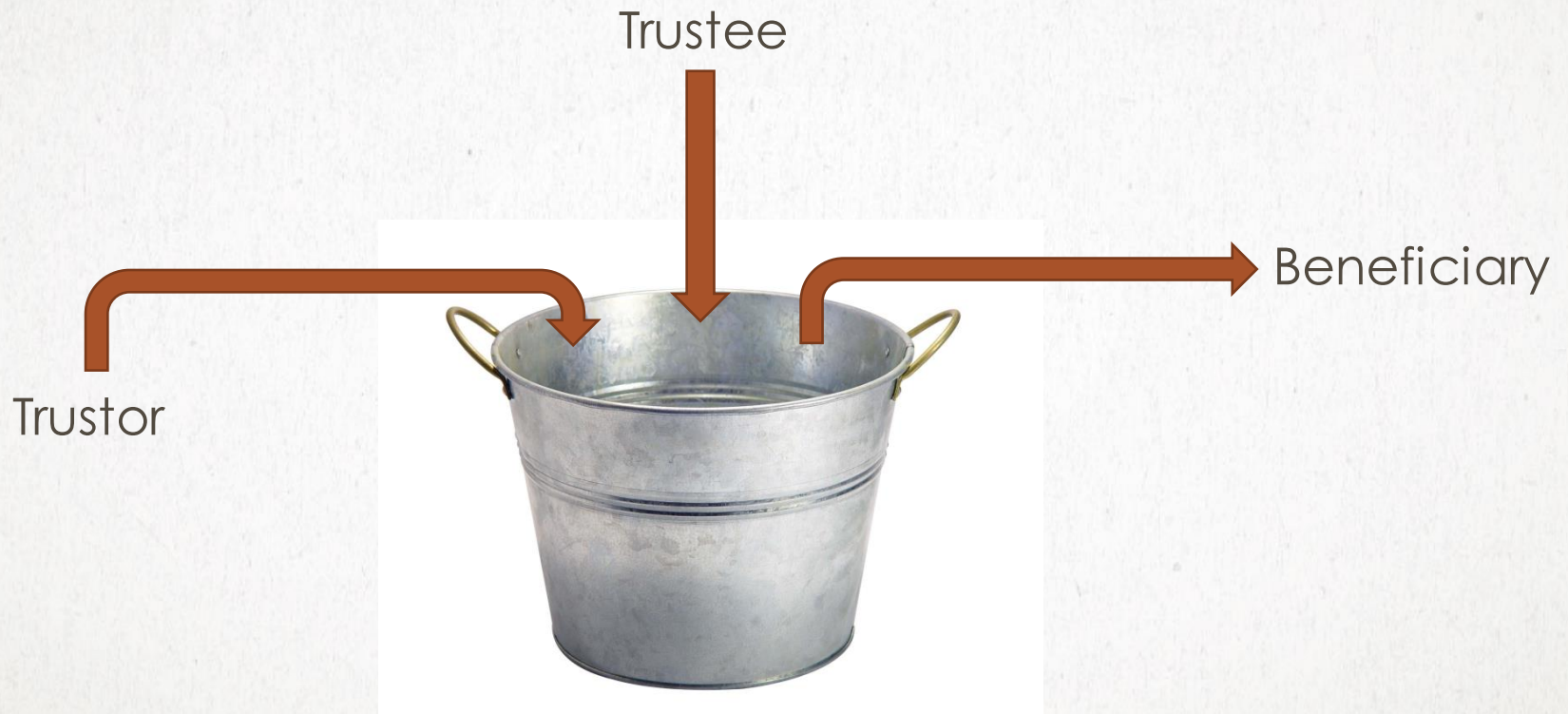
Revocable Living Trust





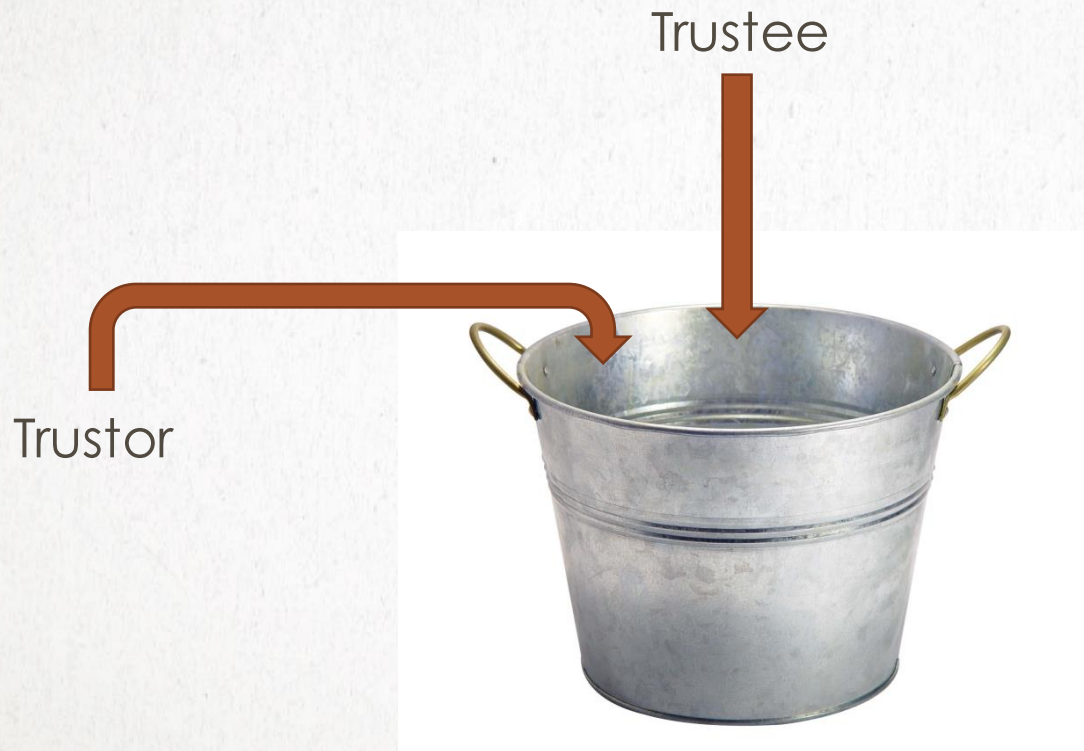
# REVOCABLE LIVING TRUST

## 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...



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

# 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



# TRUST ADMINISTRATION


When a loved one passes & you are Successor Trustee, 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?  
(\$12,920,000)
- 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 & 19

### Prop 13 old law

Allows transfer of primary residence between parent and child without reassessing the tax basis of the home

### Prop 19 new law

Change of ownership triggers a reassessment unless there is a parent to child transfer of primary residence, and the child declares the property as their primary residence (\$1MM limit)





# TRUST ADMINISTRATION

## Real Property

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).

*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 **\$184,500** in combined value and
  2. In any case, real property outside of trust must not exceed **\$61,500** 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

Will vs Trust



What is Probate?

How a  
Revocable Living  
Trust Avoids  
Probate

How to Protect  
Your Loved  
One's  
Inheritance



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~ THANK YOU ~

**Joshua D. Bromley, Esq.**

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