

Overview and Estate Law Changes

By: Steve Giammichele, Esq.
Giammichele Law, APC

17592 Irvine Blvd
Tustin, CA 92780



April 18, 2024

<https://www.giammichelelaw.com/>

Agenda

AHCD Overview

- Overview
- Benefits
- Components

DPOA Overview

- Overview
- Benefits and Types
- Components

Wills Overview

- Overview
- Probate
- Benefits and Components

Trusts Overview

- The difference kinds of trusts
- Living Trusts
- Marital trusts

Estate Law Changes

- Estate & Gift Tax Exemption Chart
- Step up in basis
- Trusts & Estates tax rate

Basic Estate Plan

THE BENEFITS OF HAVING ONE

INCAPACITY

Avoids Conservatorship

FINANCIAL POWER OF
ATTORNEY

Agent / Attorney in fact

ADVANCED HEALTH CARE
DIRECTIVE

Health Care Agent

HIPAA AUTHORIZATION

REVOCABLE LIVING TRUST

Grantor/Settlor/Trustor/Trustmaker
(grants assets to trust)

Trustee (manages assets in trust)

DEATH

Avoids Probate

POUR-OVER WILL

*Guardian

*Executor / Personal
Representative

Advanced Health Care Directive (AHCD)

What is it?

A special plan you make for your medical care when you can't make decisions for yourself. It's a legal paper that tells doctors and your family what kind of medical treatments you want or don't want if you get very sick or can't talk about it.

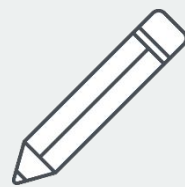
Why is it important?

Helps ensure that your wishes about things like life support, surgeries, or other treatments are known and followed, even if you can't say them yourself.

Objective

It's a way to have control over your own health care, even when you're not able to express your choices.

Components of an AHCD



Health Care
Proxy



Living Will



Specific Instructions

Naming a trusted person to
make medical decisions on
your behalf

Documenting your
preferences for medical
treatments in specific
situations

Providing guidance on
end-of-life care, organ
donation, and more

Advanced Health Care Directive (AHCD)

BENEFITS

- Empowering your loved ones with clear instructions
- Ensuring medical wishes are respected
- Reduce family conflicts during healthcare situations

CONSIDERATIONS

- Choosing the right healthcare proxy
- Periodic review and updates of the AHCD
- Legal implications and state-specific regulations

Durable Power of Attorney (DPOA)

What is it?

Legal paper that says this person can make decisions for you, like handling your money, paying bills, or making legal choices, if you become sick or can't make those decisions.

Why is it important?

Giving someone you trust a special job to help you with important things when you can't do them yourself.

Objective

Continues to work even if you're not well or can't make decisions, and it's a way to make sure your affairs are taken care of by someone you choose and trust.

Types of DPOA and Responsibilities

**GENERAL
DPOA**



Powers granted for broad financial decisions

**LIMITED
/ SPECIAL
DPOA**

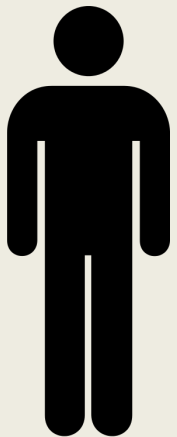


Powers restricted to specific tasks

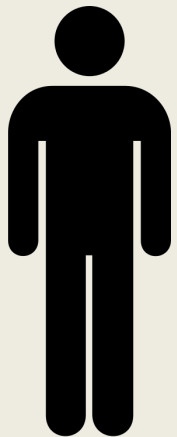
**HEALTH
CARE DPOA**



Authority over medical decisions



Agent's role:
The person granted authority (agent) and their fiduciary duties.



Principal's Rights:
The person granting authority (principal) and their rights and limitations.

Durable Power of Attorney (DPOA)

BENEFITS

- Ensuring continuity of financial and medical decisions in case of incapacity.
- Avoiding costly and time-consuming guardianship proceedings.
- Customizable to meet individual needs and preferences.

CONSIDERATIONS

- Selecting a trustworthy agent.
- Establishing clear guidelines and limitations.
- Legal requirements and state-specific regulations.

Wills

What is it: A legal document that you create to tell people what you want to happen with your things, like your money, your house, or your special belongings, after you pass away

NO WILL:

- Administrator appointed by Court
- Probate
- Intestate Heirs

WILL:

- Executor appointed by Court
- Probate
- Beneficiaries you choose

What Is A Probate?

COURT SUPERVISED

Process of distributing a decedent's assets after death

ADMINISTRATOR/EXECUTOR AND ATTORNEY

Entitled to statutory compensation based on gross value of the estate (not net of mortgages or indebtedness)

“ADMINISTRATOR”

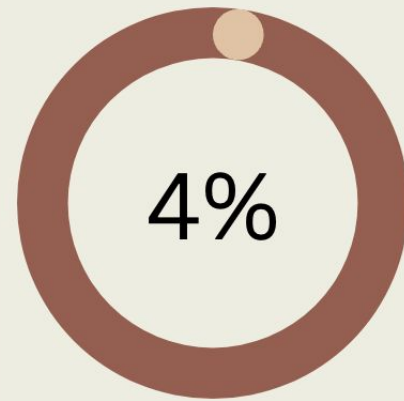
Title used when someone dies without a Will

“EXECUTOR”

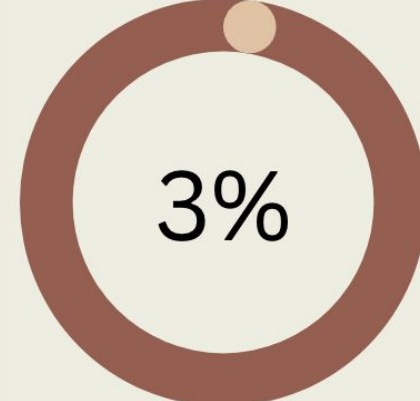
Title used when someone dies with a Will

Probate Fees

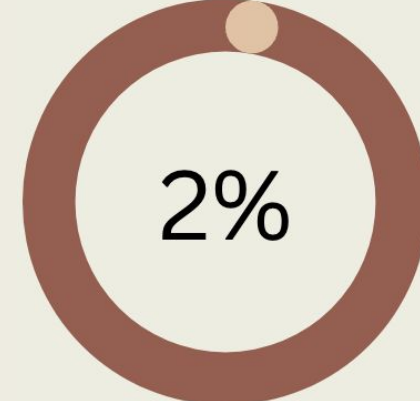
Statutory Fees



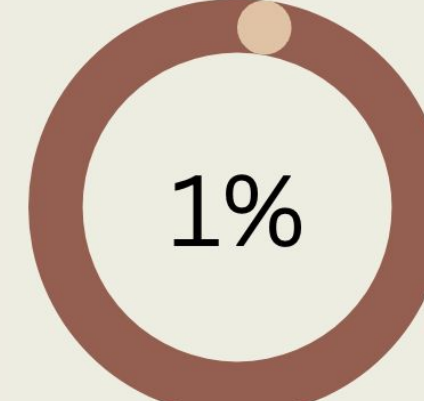
On First \$100,000



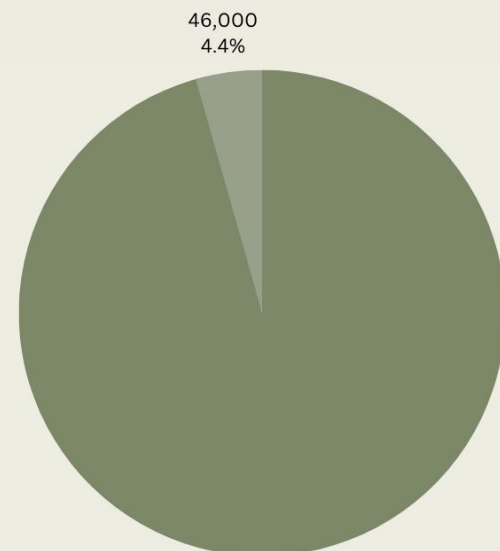
On Next 100,000



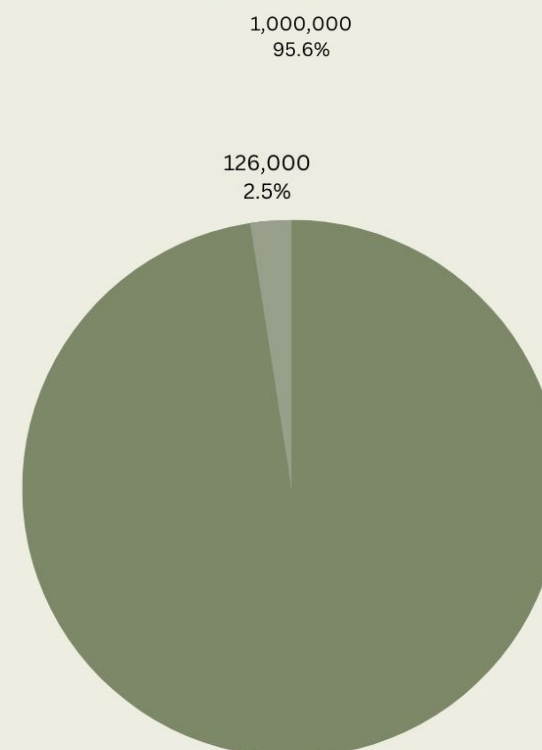
Next \$800,000



On Next \$9 million



\$1,000,000 gross estate
= \$23,000 x 2 =
\$46,000 statutory fees

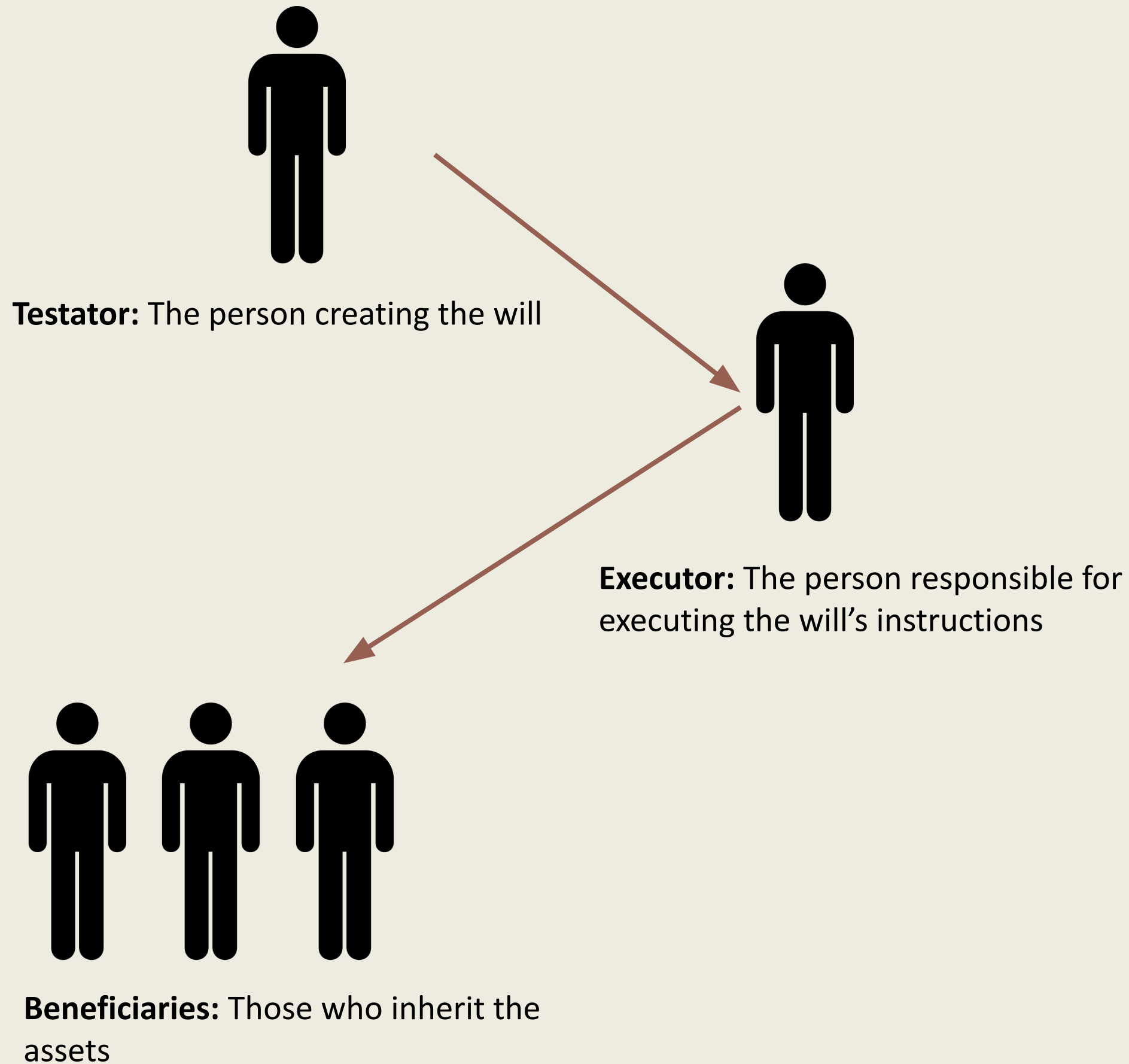


\$5,000,000 gross estate
= \$63,000 x 2 =
\$126,000 statutory fees

- + Court Costs, Filing Fees, and Probate Referee Fees
- + Bond
- + Potential for extraordinary fees

- Probate can take 1-2 years
- Terms of Will, beneficiaries, and probate assets are made PUBLIC
- *Probate/oversight may be warranted for complex estates/conflicts*

Wills



Types of Wills:



SIMPLE WILLS



JOINT WILLS



HOLOGRAPHIC WILLS



LIVING WILLS

Wills

BENEFITS

- Control over asset distribution.
- Appointment of guardians for minor children.
- Minimizing potential family disputes.

CONSIDERATIONS

- Updating the will regularly
- Legal counsel for complex estates
- Potential challenges to the will

What Is A Trust?

CONTRACT

Between Grantor, Settlor, Trustor, Trustmaker and a Trustee for the Beneficiary



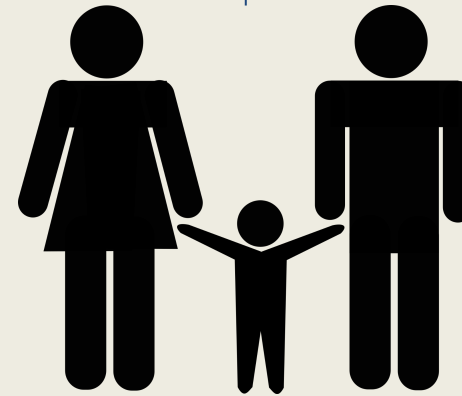
**GRANTOR, SETTLOR,
TRUSTOR, TRUSTMAKER**

The person who grants assets to a trust

Contract



TRUSTEE
Manages the assets

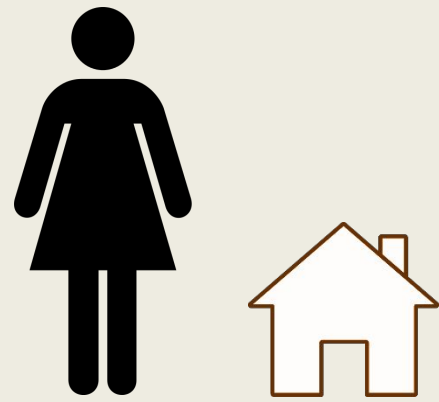


BENEFICIARY

Gets benefit in accordance with terms of trust
(Changes at Set Conditions; i.e., death)

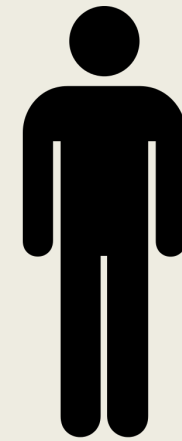
What Is A Living Trust?

All three at inception – the Grantor, the Trustee, and Beneficiary



**GRANTOR, SETTLOR,
TRUSTOR, TRUSTMAKER**

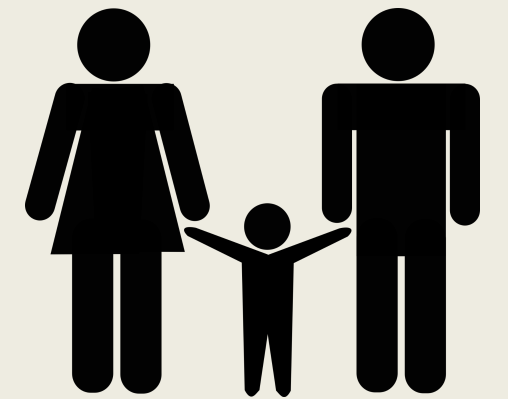
Manages his/her assets as Trustee and is the beneficiary for his/her entire lifetime until he/she becomes incapacitated or dies and the Successor Trustee steps in



SUCCESSOR TRUSTEE

Manages the assets

Contract



BENEFICIARY

Gets benefit in accordance with terms of trust

Types of Trusts

THE BENEFITS OF HAVING ONE

Revocable

- Can be Revoked or Amended
- Centerpiece of basic estate plan
- Intestate Heirs

Irrevocable

- Cannot be Revoked, but may be amendable (Gifting / Reducing Assets)
- Can Become Irrevocable and Not Subject to Change at Grantor's death
 - May be modified or terminated during Grantor's lifetime (capacity)
 - Compressed tax rates (Highest rate at \$13,451 of income)
 - Form 1041
 - Trust Protector

Revocable

BENEFITS

- Minimizes risk of conservatorship at incapacity and probate at death
 - Assets distributed *without court involvement*
 - If Grantor is incapacitated, named successor Trustee takes over management of assets *without court involvement*
 - After death – Usually no probate
- Trust provisions are not made public

DRAWBACKS

- Cost to set up
- No oversight
- Trust Administration at death
 - BUT typically 50-90% less than probate
- Common fallacies:
 - Provides asset protection
 - Separate tax ID number

If Assets Are Not In Trust

POWER OF
ATTORNEY

Agent can transfer assets to trust before Grantor's death

SMALL
ESTATE
AFFIDAVIT

Avoids probate for assets up to \$184,500 (as of 4/1/2022) in aggregate

HEGGSTAD
/UKKESTAD
PETITION

Court petition process to avoid full probate at death

POUR OVER
WILL

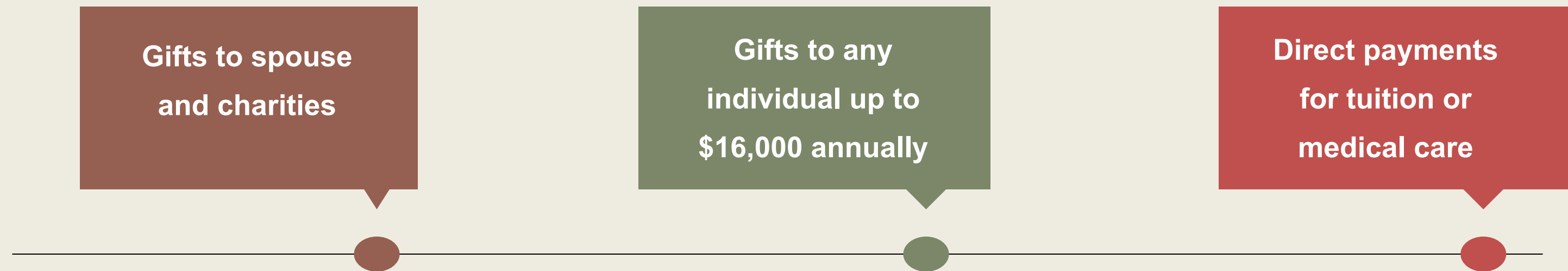
Final safety net to pour assets into the trust so they can be distributed according to the trust's terms – *after* probate

Other Trusts (Standalone or within Revocable Living Trust)

- ▶ **Supplemental (Special) Needs Trust for beneficiary with:**
 - Mental or physical incapacity
 - Governmental assistance is available
 - Inheritance would mean no governmental assistance
 - Limited rights to use preserves trust assets from governmental levy
 - A standalone trust allows others to contribute

Gift and Estate Tax

Generally, you are subject to gift tax whenever you give assets to individuals except three types of gifts:



- **Federal Gift/Estate Tax Exclusion:** \$12,060,000 during lifetime and/or at death in 2022 (to revert to \$5,000,000, adjusted for inflation -expected to be approximately \$6,000,000 -in 2026)
 - 40% top tax rate
 - No California estate tax

Federal Estate Tax

Federal Estate Tax is 40%
on assets over
\$12,060,00 per taxpayer

2026 will reduce the
exemption to around
\$6 million

Generation-skipping
transfer tax is separate
40% tax that applies in
some situations

Married Couples - Portable Exemption

2022

Ex. \$8M Community Property Estate
(\$12.06M Estate Tax Exemption - Portability)



SURVIVING SPOUSE



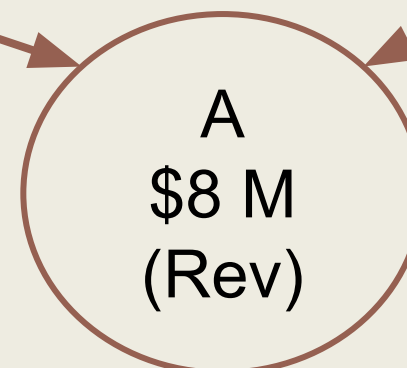
DECEASED SPOUSE

Can elect to claim the deceased spouse's unused exemption

- In order to make this election, a timely Form 706 estate tax return must be filed

\$4M

\$4 M



**B Trust not needed to pass two exemptions because of portability.*

**Filing a timely 706 estate return "ports" the deceased spouse's unused exemption to the surviving spouse*

Basis Adjustment - Step Up or Step Down

JOINT TENANTS

Partial Adjustment at first joint tenant's death

COMMUNITY PROPERTY

Full adjustment at first spouse's death

SOLELY OWNED

- Gift during life - Donor's basis
- Inherit at Death - Full step up or step down

FROM IRREVOCABLE TRUST

No adjustment

2024 Ordinary Income Trust Tax Rates

Estates and Trusts are subject to a top rate of 37% after earning \$15,200+ where as an individual would have to earn over \$300k to be at the same rate.

- ▶ In 2024, the federal government taxes trust income at four levels. These tax levels also apply to all income generated by estates. Below is a breakdown of these rates and brackets:
 - \$0 – \$3,100: 10%
 - \$2,901 – \$11,550: 24%
 - \$10,551 – \$15,200: 35%
 - \$15,200+: 37%

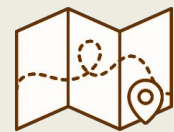
THANK YOU



Steven Giammichele, Esq.



(949) 339-1845



Giammichele Law, APC
17592 Irvine Blvd Tustin, CA 92780

DISCLAIMER: Nothing in this presentation should be interpreted as legal advice. This presentation is intended to help a person to understand the general area of law to help ask the right questions with an attorney of their choice. Your time to act may be very limited and this could substantially reduce your rights and options. **YOU CANNOT** rely on anything contained herein. This information is not intended to substitute for professional legal advice and does not create an attorney-client relationship. You should accept legal advice only from a licensed legal professional with whom you have an attorney-client relationship. You should contact a lawyer in your area immediately, to assist you in any of these matters.

Circular 230 Disclosure: Pursuant to recently-enacted U.S. Treasury Department Regulations, we are now required to advise you that, unless otherwise expressly indicated, any federal tax advice contained in this communication, including attachments and enclosures, is not intended or written to be used, and may not be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.

