

WILLS AND TRUSTS

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Agenda

Wills



- Benefits on having a will
- Information on what to put in a will

Probates



- Probates and how to avoid them
- Statutory Fees

Trusts



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

Estates



- Basic Estate Plan
- How to protect different assets

Do You Need A Will?

THE BENEFITS OF HAVING ONE

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”

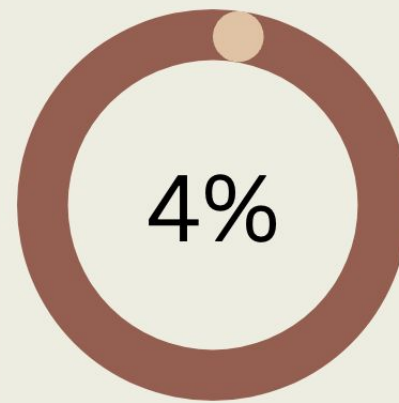
Title used when someone dies without a Will

“EXECUTOR”

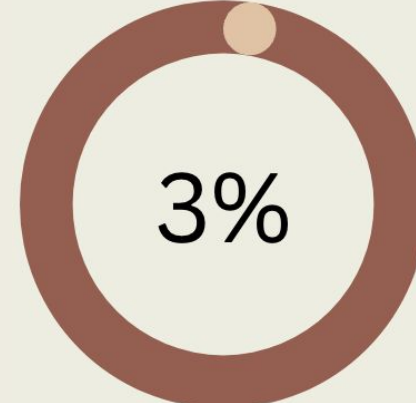
Title used when someone dies with a Will

Probate Fees

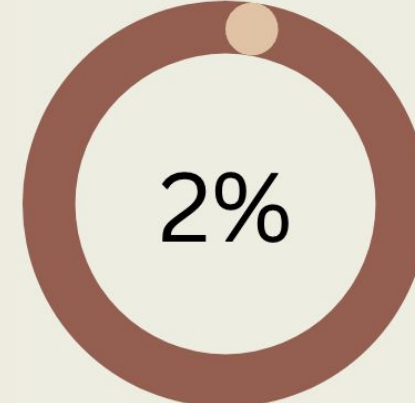
Statutory Fees



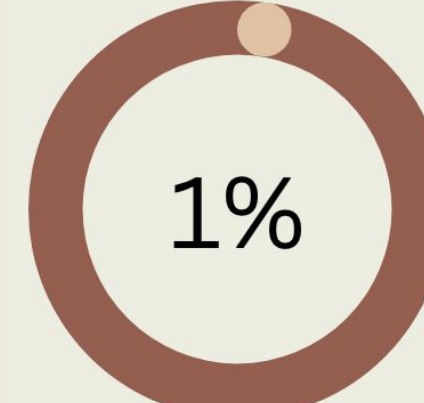
On First \$100,000



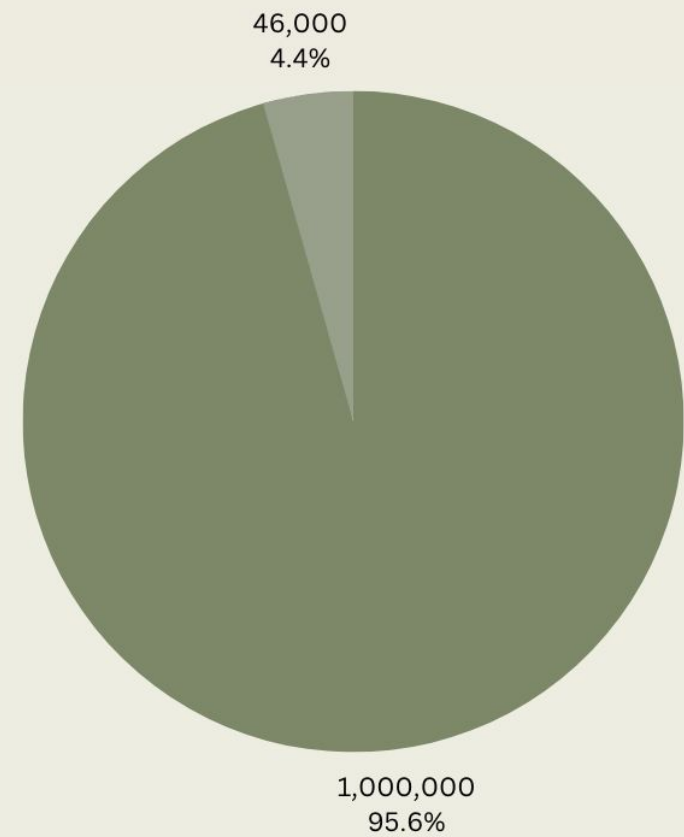
On Next 100,000



Next \$800,000

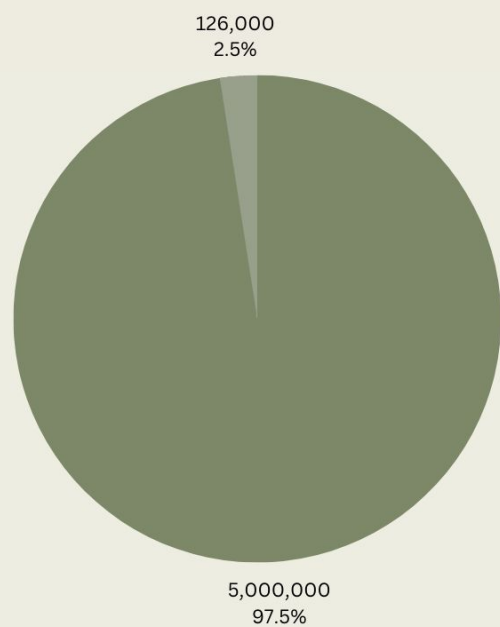


On Next \$9 million



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

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



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

Ways To Minimize the Need for Probate

▶ **Pay-on-death / transfer-on-death designations**

▶ **Beneficiary designations**

▶ **Titling (e.g., joint tenancy)**

Drawbacks:

- Adding a child to title to real property is a gift if over \$16,000 in any given year (requires gift tax return) and exposes the property to sale by child, child's creditors, and child's divorce
- Child loses full step-up in cost basis he/she would have otherwise received if he/she inherited it at death instead.

▶ **Revocable living Trust**

What Is A Trust?

CONTRACT

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



**GRANTOR, SETTLOR,
TRUSTOR, TRUSTMAKER**

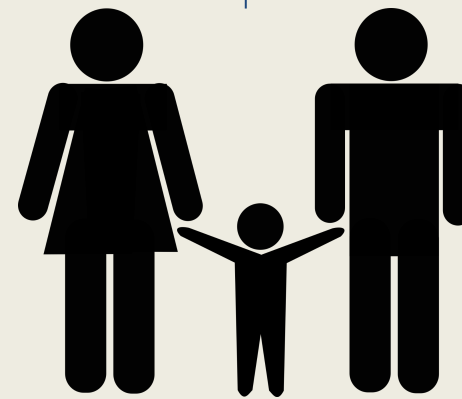
The person who grants assets to a trust

Contract



TRUSTEE

Manages the assets



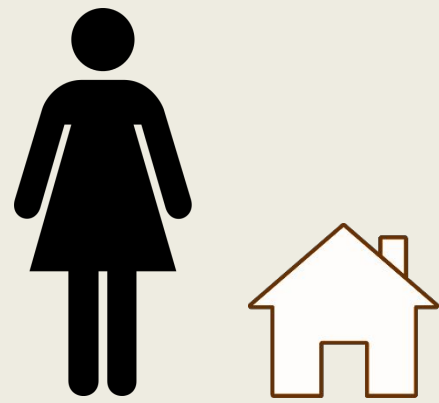
BENEFICIARY

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**

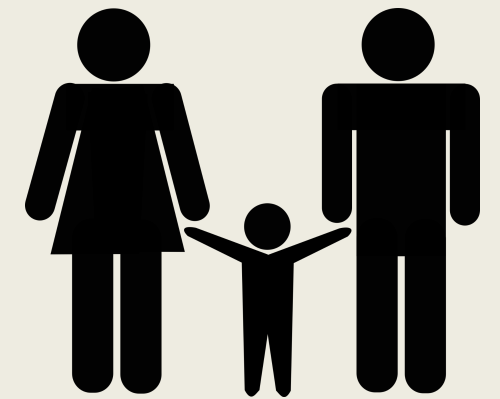
Manages his/her assets as Trustee and is the beneficiary for his/her entire lifetime until he/she becomes incapacitated or dies and the Successor Trustee steps in



SUCCESSOR TRUSTEE

Manages the assets

Contract



BENEFICIARY

Gets benefit in accordance with terms of trust

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

Contract between:

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

Trustee (manages assets in trust)

DEATH

Avoids Probate

POUR-OVER WILL

*Guardian

*Executor / Personal
Representative

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

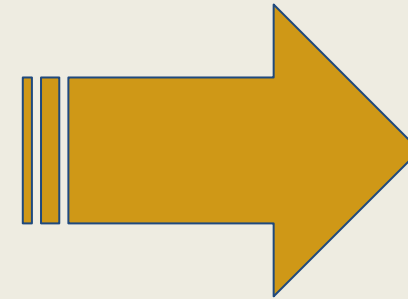
- Cost to set up
- No oversight
- Trust Administration at death
 - BUT typically 50-90% less than probate
- Common fallacies:
 - Provides asset protection
 - Separate tax ID number

“Funding” the Trust

Critical Step

Assets

- Must be re-titled from your name as an individual to your name as Trustee of your trust



Successor Trustee

- Can step in to manage them at your incapacity and distribute the assets in accordance with the terms of your trust at death.

*Acquiring new assets or disposing of assets after you create your trust does not ordinarily affect the terms of your trust. You must remember to take title to new assets in the name of your trust.

EXCEPTIONS: Retirement Plans and Life Insurance (except life insurance in an ILIT) remain titled in your own name during your lifetime and are not retitled as Trustee of your trust. Other exceptions may also apply.

Real Property, Timeshares, and Co-ops



Real Property

Sole owners or tenant-in-common owners can transfer their interests to the trust with a deed/preliminary change of ownership report recorded in the county where the property is located



Timeshare Interests

Deed or points-based ownership



Out-of-state Real Property

Transferring out-of-state property to the trust should be handled by an attorney in that state, which will avoid an ancillary probate in that state (Some states have unique rules)



Stock Cooperatives (“Co-op”)

Attorney Opinion Letter needed to re-issue Co-op certificate

Bank and Brokerage Accounts

(non-retirement / non-business)

- ▶ Should be **retitled** in your name as Trustee of Trust
- ▶ Pay-on-death (**POD**) or transfer-on-death (**TOD**) beneficiary designation only if you want to keep account in sole name during lifetime
- ▶ Can **name Co-Trustee** as to one or more accounts through trust instrument
- ▶ Can **give someone power of attorney** over trust account (maintain control)
- ▶ **Household checking account** - In trust or not?
- ▶ **Checks** – Do not need trust name on checks

Business Interests

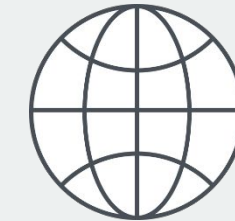
Interest in sole proprietorship, corporation, professional corporation, limited liability company, and/or general or limited partnership:



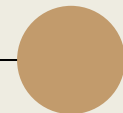
**Sign an
assignment to
trust**



**Change title on books
and records**



**Do not change title on
business bank
accounts – keep them in
the name of the business**



Other Assets

▶ **Safe Deposit Boxes**

- Re-title in name of trust and/or add a joint owner.

▶ **Promissory Notes**

- Sign assignment to trust.

▶ **Paper Savings Bonds**

- Re-title in name of trust (treasurydirect.gov).

▶ **Cars and Vessels**

- Pass free of probate using DMV Affidavit for Transfer without Probate California Titled Vehicles and Vessels (not documented by the U.S. Coast Guard).

▶ **Vessels Documented by the U.S. Coast Guard**

- Re-title in name of trust with U.S. Coast Guard Transfer of Ownership Form CG-1258.

▶ **Mobile Homes** (See California Department of Housing and Community Development www.hcd.ca.gov/manufactured-mobile-home/registration-titling).

▶ **Tangible Personal Property**

- Sign general assignment to trust.
- May dispose of personal effect by Personal Property Memorandum.

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

Information Needed to Create a Trust



Names

- Use name most often used to title accounts



Names of Trust

- 3 components to trust name:
 - Name of Trustee
 - Name of Trust
 - Date of Trust



Asset information

- For tax planning and trust funding



Successor Trustees

- in order of:
 - Handle financial affairs
 - Marshall assets, pay taxes, distribute assets
 - Friends, family members, CPA, private fiduciary, corporate Trustee
 - Serve individually, jointly, by majority



Definition of Incapacity

- One physician, two physician and spouse or family member



Beneficiaries

- At the first death, if any for married couples, and at the second death
- Back-up beneficiaries



Remote Contingent Beneficiaries

- Heirs at law
- Other

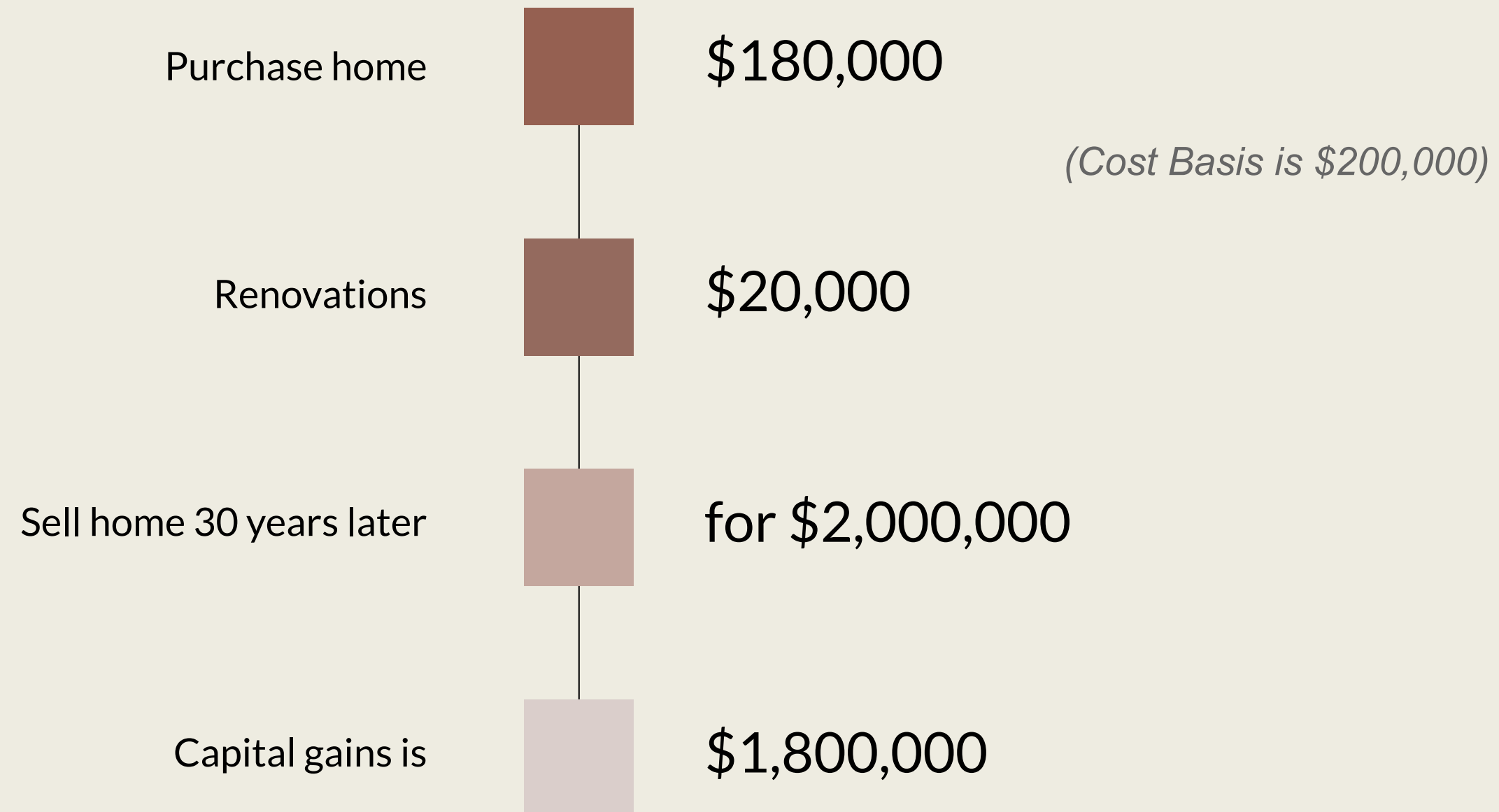
Gift and Estate Tax

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 roughly \$6,000,000 -in 2026)
 - 40% top tax rate
 - No California estate tax

Capital Gains Tax



Subject to Capital Gains Tax:

- *\$250,000 / \$500,000 exemption for primary residence (2 out of 5 years)*
- *Other Adjustments may apply*

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

Marital Sub-Trusts:



A TRUST

Survivor's Trust

- Revocable



B TRUST

Bypass Trust, Credit
Shelter Trust, and
Exemption Trust

- Maximum it can hold is the deceased spouse's Applicable Exclusion Amount (\$12,060,000 in 2022, indexed for inflation)



C TRUST

QTIP Trust or Marital Trust

- Limited control over decedent's property after death

Married Couples - First Death



SURVIVING SPOUSE

Share ($\frac{1}{2}$ of CP and all his/her SP to revocable A trust to avoid probate at second death; or other formula))



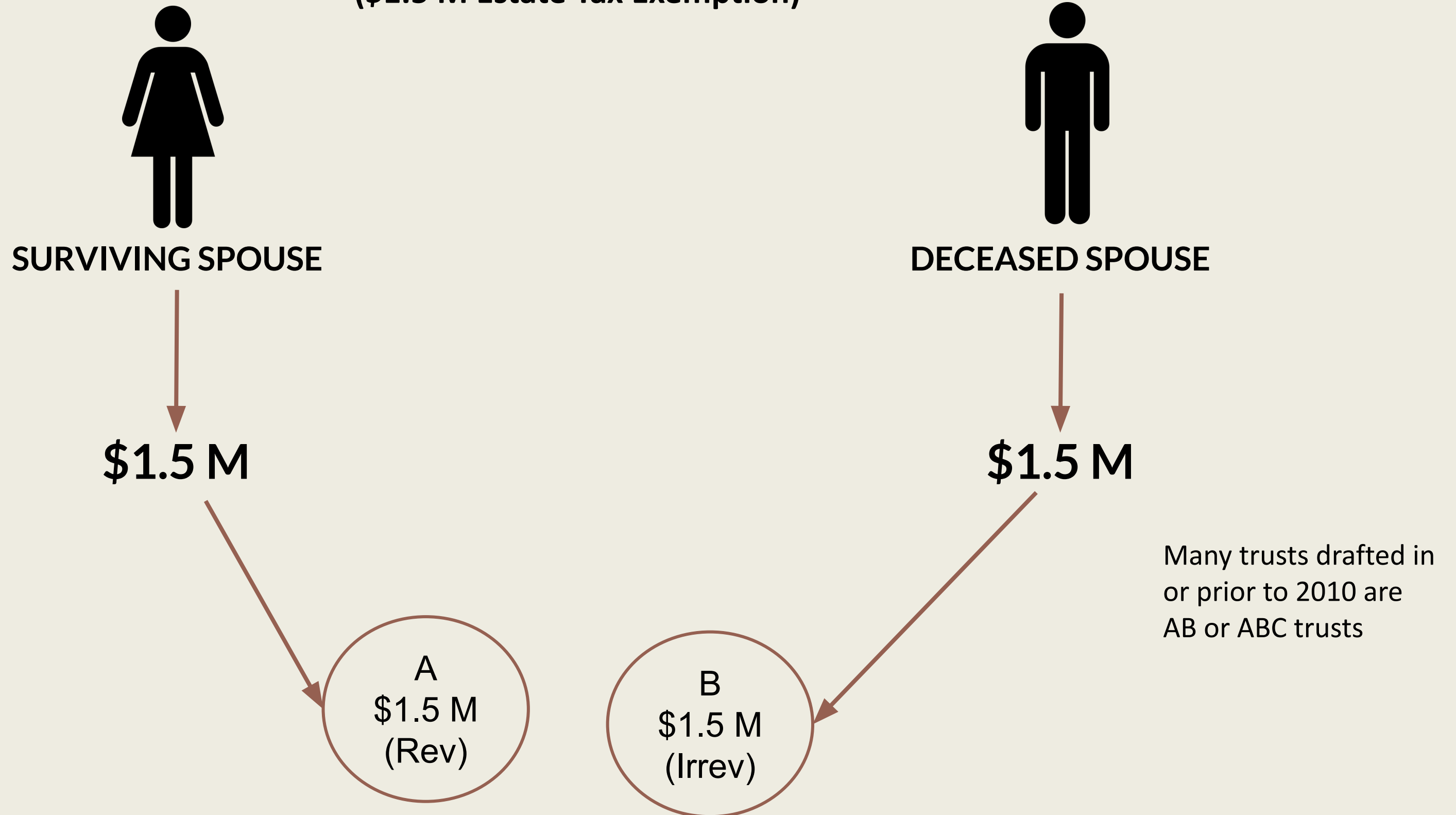
DECEASED SPOUSE

Share ($\frac{1}{2}$ of CP and all his/her SP; or other formula) to:

- Revocable A Trust
- One or more irrevocable (B and C) sub-trusts; and/or
- Descendants or other beneficiaries

Married Couples - First Death

Trusts Drafted In or Prior to 2010:
Ex. \$3M Community Property Estate in 2005
(\$1.5 M Estate Tax Exemption)



Married Couples - Portable Exemption

2022

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



SURVIVING SPOUSE



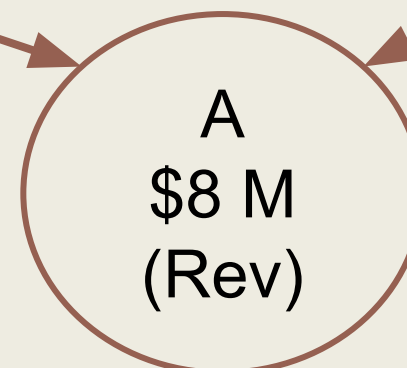
DECEASED SPOUSE

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

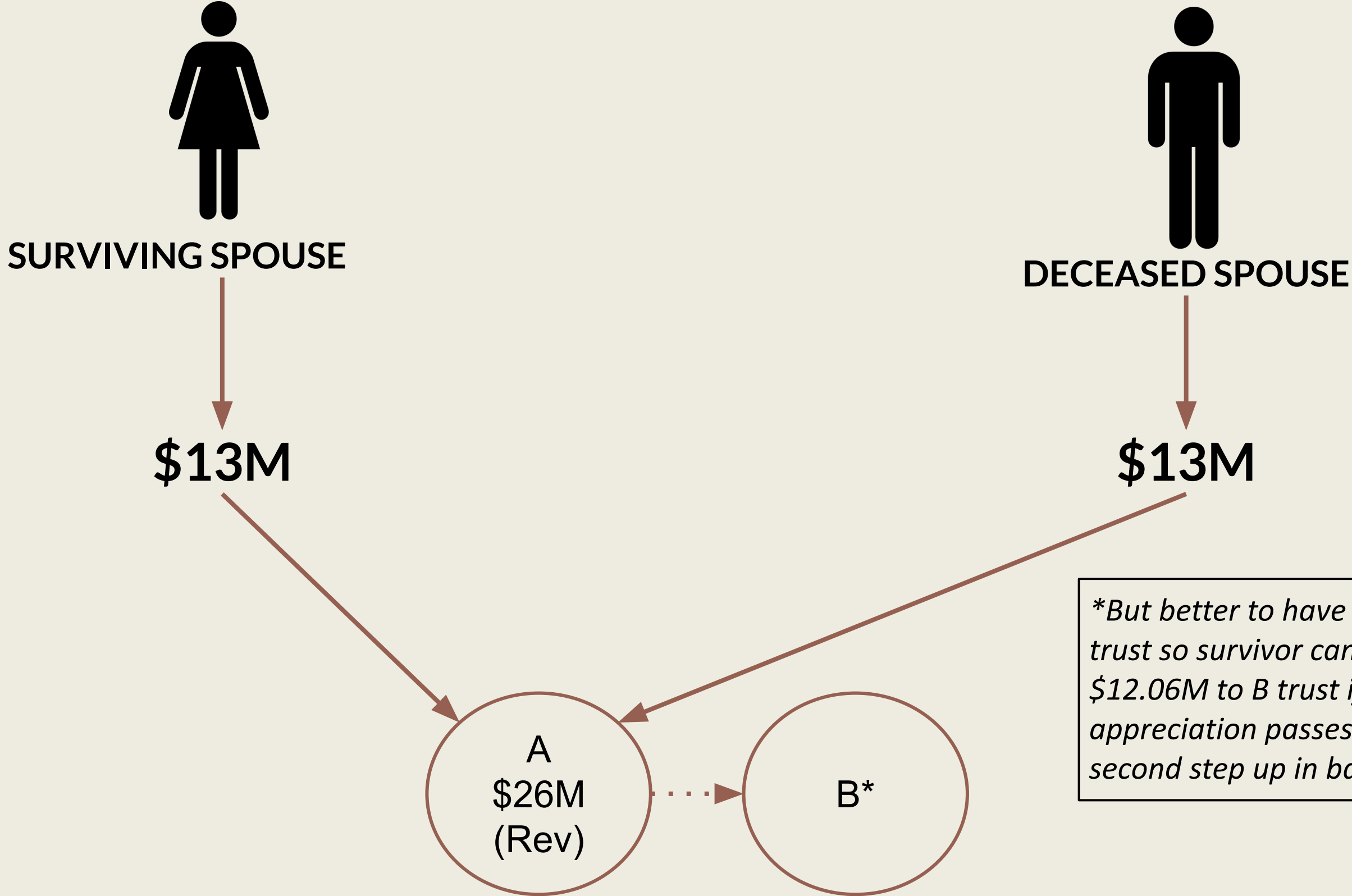


**B Trust not needed to pass two exemptions because of portability.*

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

Survivor/Disclaimer Trust (Optional B Trust) - 2022

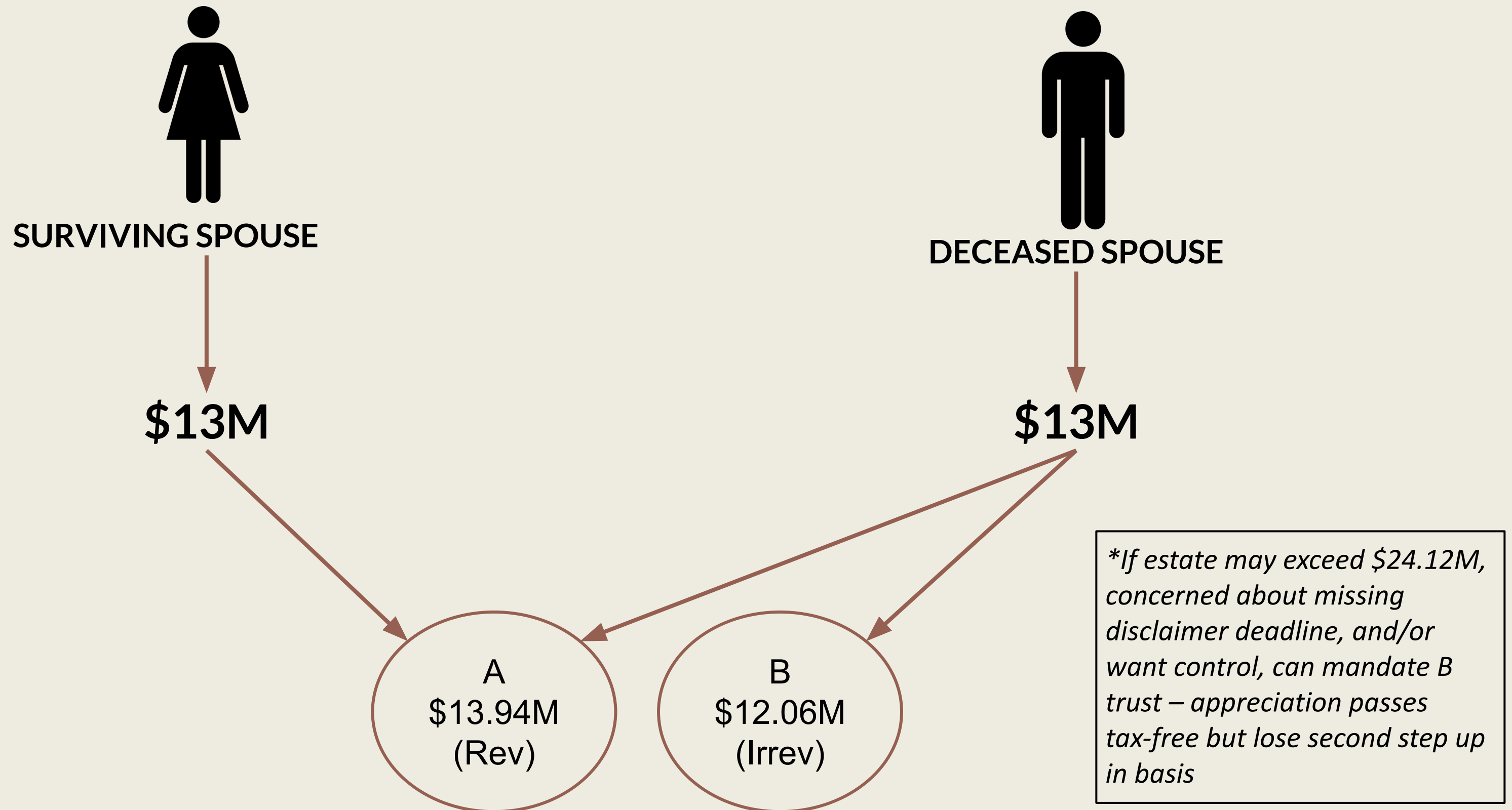
Ex. \$26M Community Property
(\$12.06M Federal Estate Tax Exemption)



**But better to have optional disclaimer trust so survivor can disclaim up to \$12.06M to B trust if desired – future appreciation passes tax-free but lose second step up in basis.*

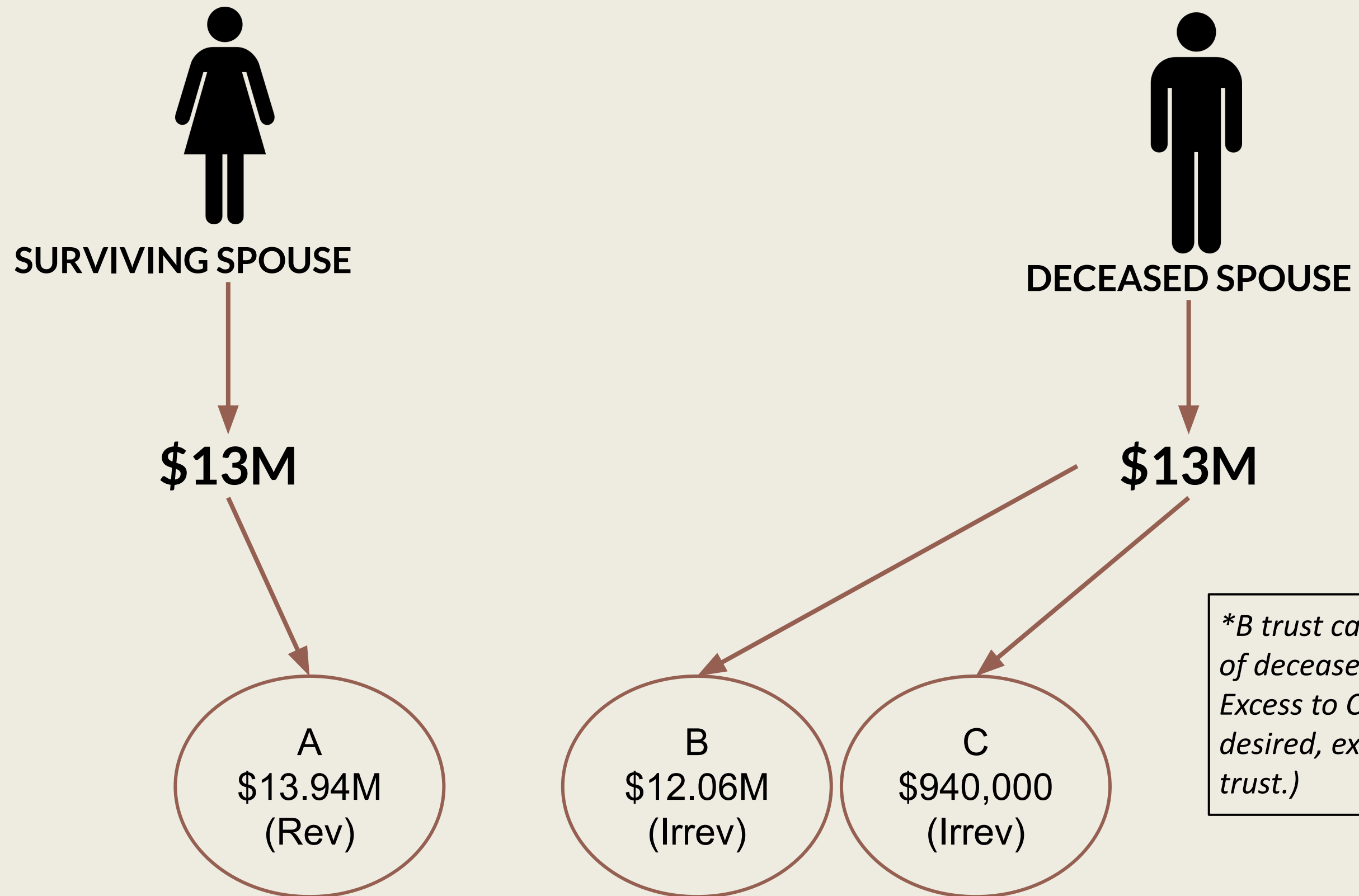
AB Trust (Mandatory B Trusts) - 2022

Ex. \$26M Community Property Estate
(\$12.06M Estate Tax Exemption – Portability)



ABC Trust (Mandatory B and C Trust) - 2022

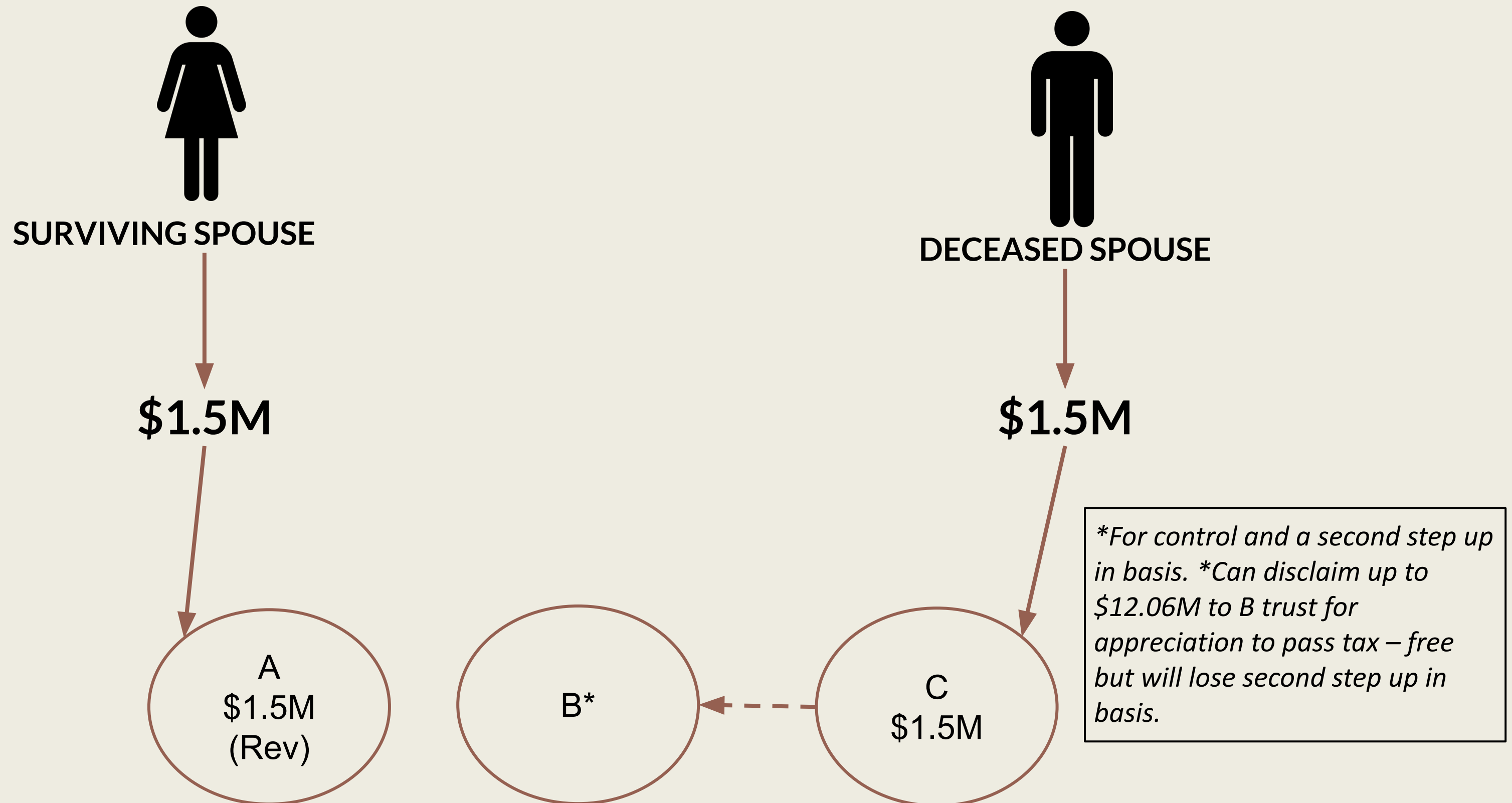
\$26M Community Property



**B trust can hold up to \$12.06M of deceased spouse's assets. Excess to C trust. (If control not desired, excess could go to A trust.)*

AC Trust - 2022

Ex. \$3M Community Property



Sub-trust Considerations for Spouses – Simplicity or Control

- ▶ **Sub-trust Administration** – Allocate assets between sub-trusts, obtain tax ID number for irrevocable trust, and prepare Form 1041 annually for irrevocable trust

- ▶ Determine whether to give surviving spouse a limited testamentary power of appointment
 - (e.g., among joint descendants⁴⁰, or among descendants and charities).

- ▶ Note, allocation determined after the first death
 - (e.g., primary residence typically allocated to the A trust to preserve \$250,000 / \$500,000 capital gains exclusion.

Considerations for Distributions to Children and Other Beneficiaries

▶ **Outright**

At ages/stages:

- Distributions for health, education, maintenance, and support
- Example:
 - At age 25, one-third outright
 - At age 30, one-half of remaining balance outright
 - At age 35, remainder outright

▶ **Lifetime Trusts**

- Distribution Trustee
- Beneficiary-controlled trusts (descendant can resign, remove, and replace Trustees of his/her own trust)
- Tax ID number
- Form 1041

▶ **Parent-Child/Parent-Grandchild Property Tax Exclusion**

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
 -
- ▶ **Pet trusts**

Additional Trusts for Larger Estates



Charitable Remainder Trusts
(CRT, CRAT, CRUT)



Grantor Retained Trusts
(GRAT, GRUT)



Qualified Personal Residence Trust
(QPRT)



Charitable Lead Trust
(CLAT, CLUT)



Irrevocable Trusts for
Children/Grandchildren
(Crummey Trusts)



Intentionally Defective
Grantor Trusts
(IDGT)

Limited Partnerships and Limited Liability Companies

- ▶ Transferring income-producing capital assets (i.e., rental property) into an LP or LLC
 - the value of the assets can be discounted up to 30% or more based on factors such as the lack of marketability of or minority interest in the share.
- ▶ Gifting fractionalized LP and LLC interests in assets
 - Maximize use of an individual's federal transfer tax applicable exclusion amount during life.
 - Entities can provide a measure of asset protection.

More About Asset Protection



Insurance



Entities (LLC, LP)



Irrevocable Trusts



Domestic Asset Protection Trusts
(for residents of states like NV, AL, etc.)



Offshore Asset Protection Trusts

THANK YOU



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