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# FUNDAMENTALS OF ESTATE PLANNING

*DISCLOSURE: These slides and the presentation are for information purposes 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.*

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LAW  
STEIN   
ANDERSON



## SPEAKER BIO – BRYAN JOHNSON, ESQ.

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### Background

- Senior Attorney at Law Stein Anderson, LLP in Irvine, CA
- President of the Orange County Bar Association's Trusts & Estates Section
- Estate Planning Attorney for over 15 years
- Lives in Orange County and enjoys spending his free time with family and coaching kids' sports



## SPEAKER BIO – BRYAN JOHNSON, ESQ.

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### Practice Areas

- Estate Planning
- Trust Administration
- Probate Administration
- Tax Planning
- Inheritance Disputes

### Education

- M.B.T., USC's Marshall School of Business
- J.D., Chapman University School of Law
- B.S., Cal Poly San Luis Obispo

# AGENDA

- Four Basic Documents In an Estate Plan
  - Power of Attorney,
  - Health Care Directive,
  - Wills, and
  - Trusts
- How Does a Trust Work?
- How Do Assets Get Transferred After Death?

# THE *BILLS* AND THE *PILLS*: DIFFERENCES BETWEEN AN ADVANCE HEALTH CARE DIRECTIVE AND A POWER OF ATTORNEY

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## Advance Health Care Directive

- Allows you to nominate an agent to make health care decisions for you if you are unable to do so for yourself.

## Power of Attorney

- Allows you to nominate an attorney-in-fact to make financial decisions for you if you are unable to do so for yourself.
- Springing vs Immediate

## Both the AHCD and POA are Critical for Avoiding Conservatorships

- Conservatorships require seemingly never-ending Court proceedings
- Court approves a conservator of the conservatee's person and/or estate
- EXPENSIVE!!!

# SIMILARITIES BETWEEN WILLS & TRUSTS

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- 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 WILLS & TRUSTS

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## WILLS

- With a will, if you have more than \$208,850 combined in real estate & cash assets, your estate must go through **probate**.
- Exception: Primary residences worth \$750,000 or less can be transferred without a probate.

## TRUSTS

- With a trust, you can leave assets of ANY AMOUNT to your beneficiaries **without** need for **probate**.
- Dictate timing and terms of distribution.

# WHAT IS A PROBATE

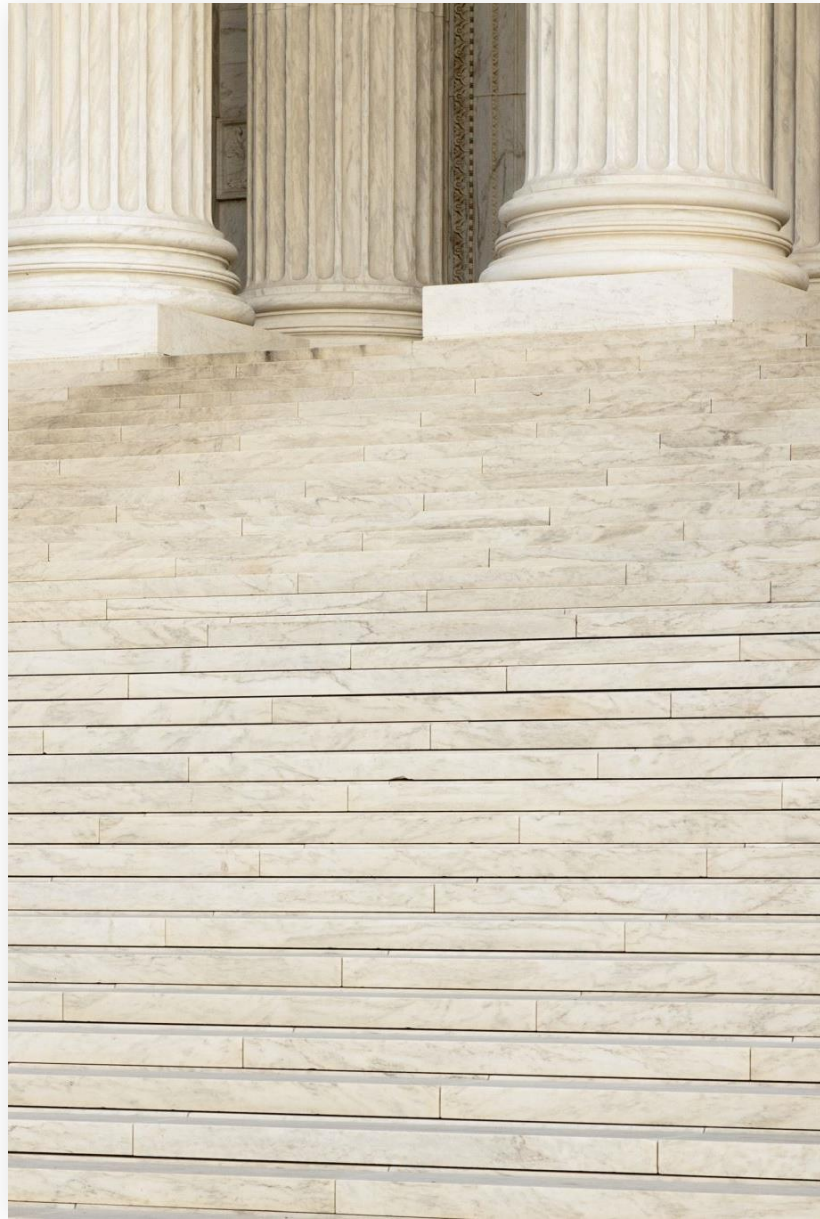
Probate is a court-supervised process whereby a person's assets are transferred to their loved ones after death.



## BUT BEFORE PROBATE CAN HAPPEN...

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



## REASONS TO AVOID PROBATE

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- **TIME:** It takes too long.
- **COST:** It's Expensive.
- **HEADACHE:** It's a stressful and *unnecessary* process.
- **PUBLIC:** This takes place in a public court.

# REASONS TO AVOID PROBATE: TIME

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

Some of the steps:

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





## REASONS TO AVOID PROBATE: **HEADACHE**

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- Stressful.
- Unnecessary.
- Invites Conflict, family fighting, and disharmony.

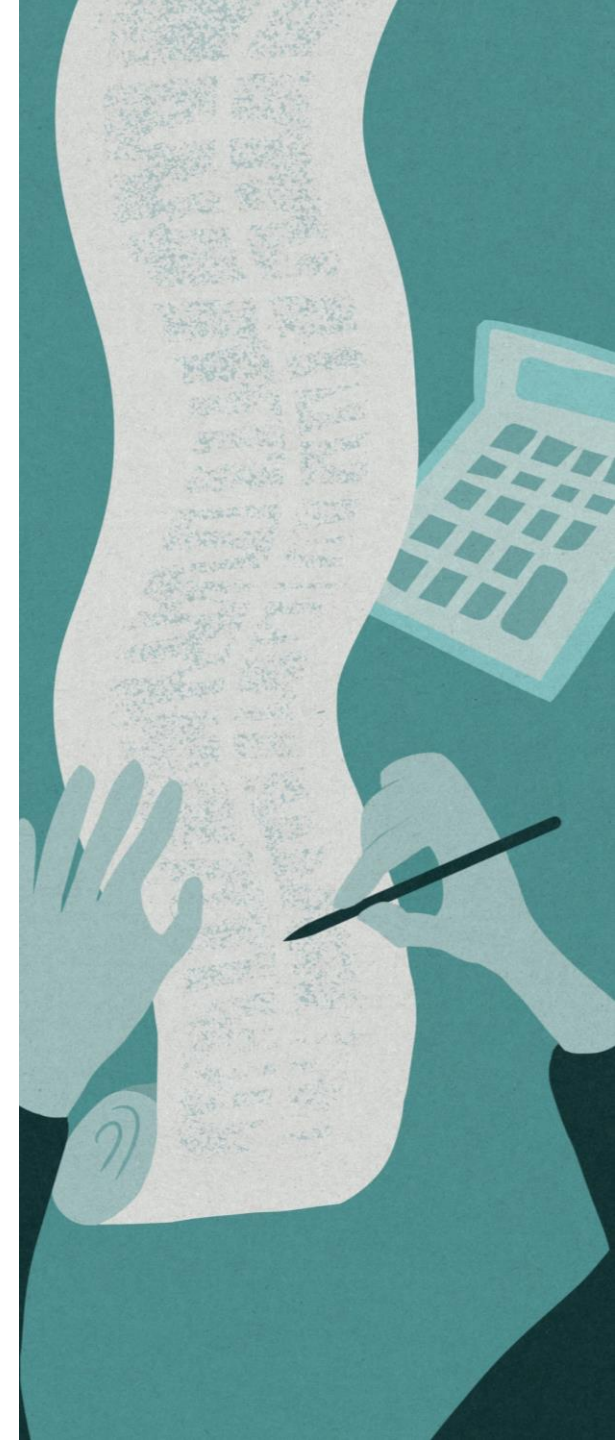
# REASONS TO AVOID PROBATE: **PUBLIC**

- Pleadings are public.
- The inventory and appraisal will list ALL YOUR STUFF:
  - Investments,
  - Accounts,
  - Business interests,
  - Real property,
  - Some tangible personal property.

Do you want strangers knowing about this?

# 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 and Administrator Fees are Set by Statute: \$23,000 each on the first \$1,000,000 in **gross** assets.
- Example: House worth \$1,000,000 results in \$46,000 in attorney's fees and administrator fees, plus costs.
- Gross value of the estate is what matters, so the fees would be the same if the house had a \$400,000 mortgage.



# STATUTORY PROBATE FEES SPLIT BETWEEN THE ADMINISTRATOR AND THE ATTORNEY

Probate Assets	Probate Fees	Probate Assets	Probate Fees
\$10,000	\$800	\$675,000	\$33,000
20,000	1,600	700,000	34,000
40,000	3,200	725,000	35,000
60,000	4,800	750,000	36,000
80,000	6,400	775,000	37,000
100,000	8,000	800,000	38,000
120,000	9,200	825,000	39,000
140,000	10,400	850,000	40,000
160,000	11,600	875,000	41,000
180,000	12,800	900,000	42,000
200,000	14,000	925,000	43,000
225,000	15,000	950,000	44,000
250,000	16,000	975,000	45,000
275,000	17,000	1,000,000	46,000
300,000	18,000	1,100,000	48,000
325,000	19,000	1,200,000	50,000
350,000	20,000	1,300,000	52,000
375,000	21,000	1,400,000	54,000
400,000	22,000	1,500,000	56,000
425,000	23,000	1,600,000	58,000
450,000	24,000	1,700,000	60,000
475,000	25,000	1,800,000	62,000
500,000	26,000	1,900,000	64,000
525,000	27,000	2,000,000	66,000
550,000	28,000	2,500,000	76,000
575,000	29,000	3,000,000	86,000
600,000	30,000	3,500,000	96,000
625,000	31,000	4,000,000	106,000
650,000	32,000	5,000,000	126,000

# HOW TO AVOID PROBATE... WHAT DOES **NOT** WORK?

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- WILLS: Does not avoid probate. Estate must still go through probate.
- OWNERSHIP:
  - Joint Tenancy/Community Property w/Spouse. Works as long as you don't die together. Works if you update ownership after the first death. Not recommended.
  - Joint Tenancy w/Children: Not recommended. Risk of creditors, spousal claims, judgments, etc.



# HOW TO AVOID PROBATE... WHAT DOES WORK?

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# WHAT IS A TRUST

A living trust is a written document in which you designate how and to whom you would like your assets to be distributed.

There are many types of trust and all used for different purposes. The most common is the revocable living trust.

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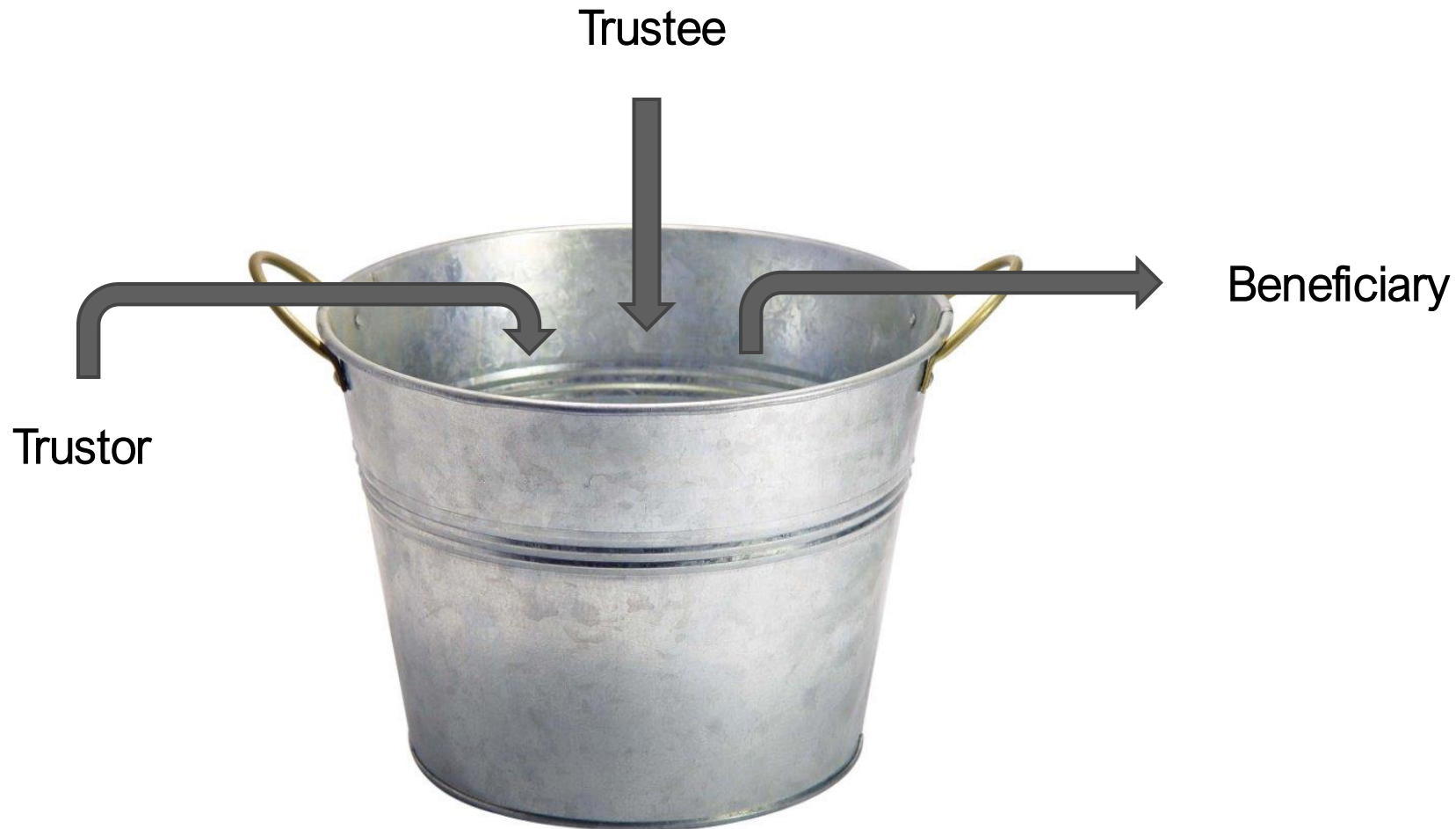
## WHAT IS A LIVING TRUST?

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- Parties to a living trust:
  - The person who creates the Trust is the **Trustor**
  - The person who carries out your wishes is the **Trustee**
  - The ultimate recipient(s) of your assets is the **Beneficiary** (or Beneficiaries)

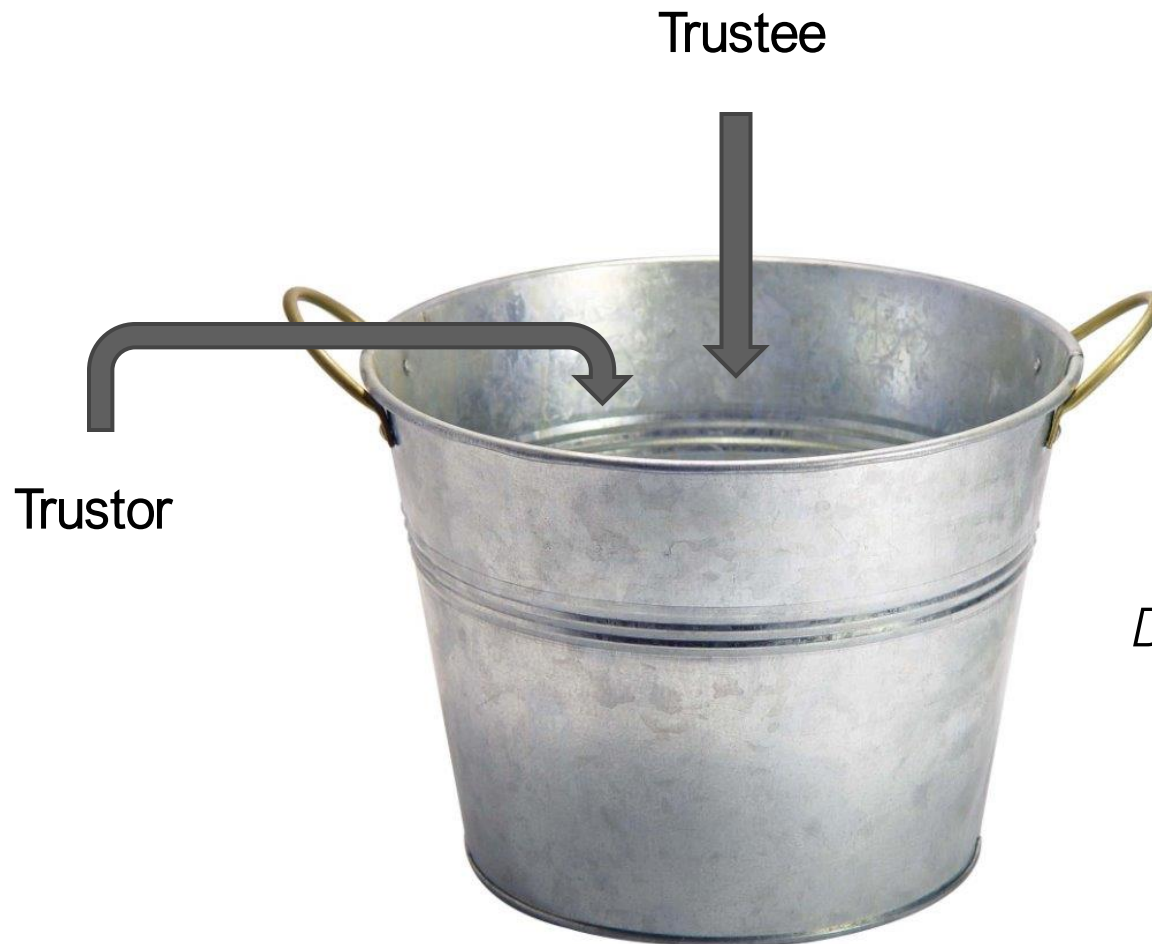
# REVOCAABLE LIVING TRUST

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

# REVOCAABLE LIVING TRUST

Avoiding Probate

After the Smith's pass away...



Beneficiary

...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

Option to Hold Assets In Trust For Children AND Protect Their Inheritance:

- Delay distributions to certain ages or hold in trust for their benefit.

Protection from what?:

- Spousal claim in event of divorce
- Creditors in event of lawsuit
- Bankruptcy in event of insolvency
- Special needs trust to protect government benefits

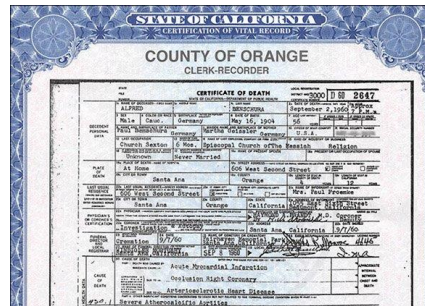


# TRUST ADMINISTRATION

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:

1. Death Certificate
2. Trust Document
3. 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? (\$15,000,000)
- Establish new cost basis for real property and investments
- Determine how assets are divided equally among beneficiaries



# TRUST ADMINISTRATION

## Property Taxes & Proposition 13

### What is Prop 13?

Allows property taxes to be based on the purchase price of your home rather than the current fair market value

### Why is it important?

If you bought your home for \$100,000 in 1980 and it's worth \$600,000 today, your property taxes are probably between \$1,000-\$2,000 versus \$6,000-\$7,000



# TAX CONSIDERATIONS

- Property Tax (Propositions 19)
  - Real Property passing to children may keep some or all of the same tax rate so long as the child declares property as primary residence
- Capital Gains Tax
  - Gain = difference between sale price and basis
  - 100% Step-Up in Basis for assets in trust
  - Only Partial Step-Up for assets held jointly
- Estate Tax
  - \$15 million estate tax exemption per person

# TRUST ADMINISTRATION

Property Taxes & Proposition 13 – Avoid Reassessment Tax

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).

To avoid this we must:

File a **Preliminary Change of Ownership Report** notifying the County Assessor there should be no reassessment because this is a transfer between **spouses** or a transfer between **parents and children**

*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.

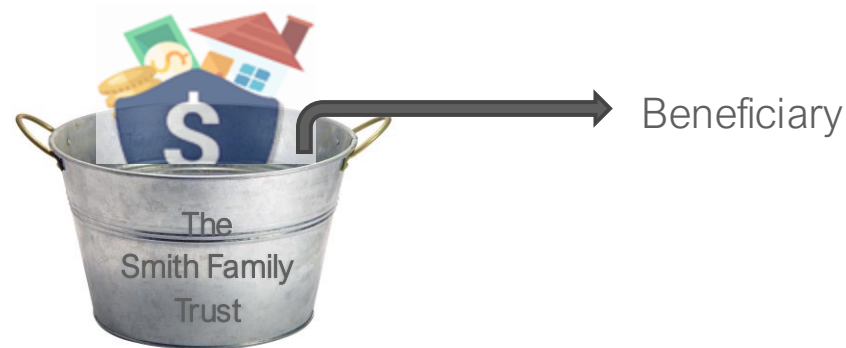
That Tax ID # is also required to file the decedent's tax returns for the period of time ranging from the date of death to the end of year (IRS Form 1041).

# 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 **\$208,850** in combined value and
  2. In any case, real property outside of trust must not exceed **\$69,625** in value (**\$750,000** if primary residence).
  3. What will the value be on your date of death?

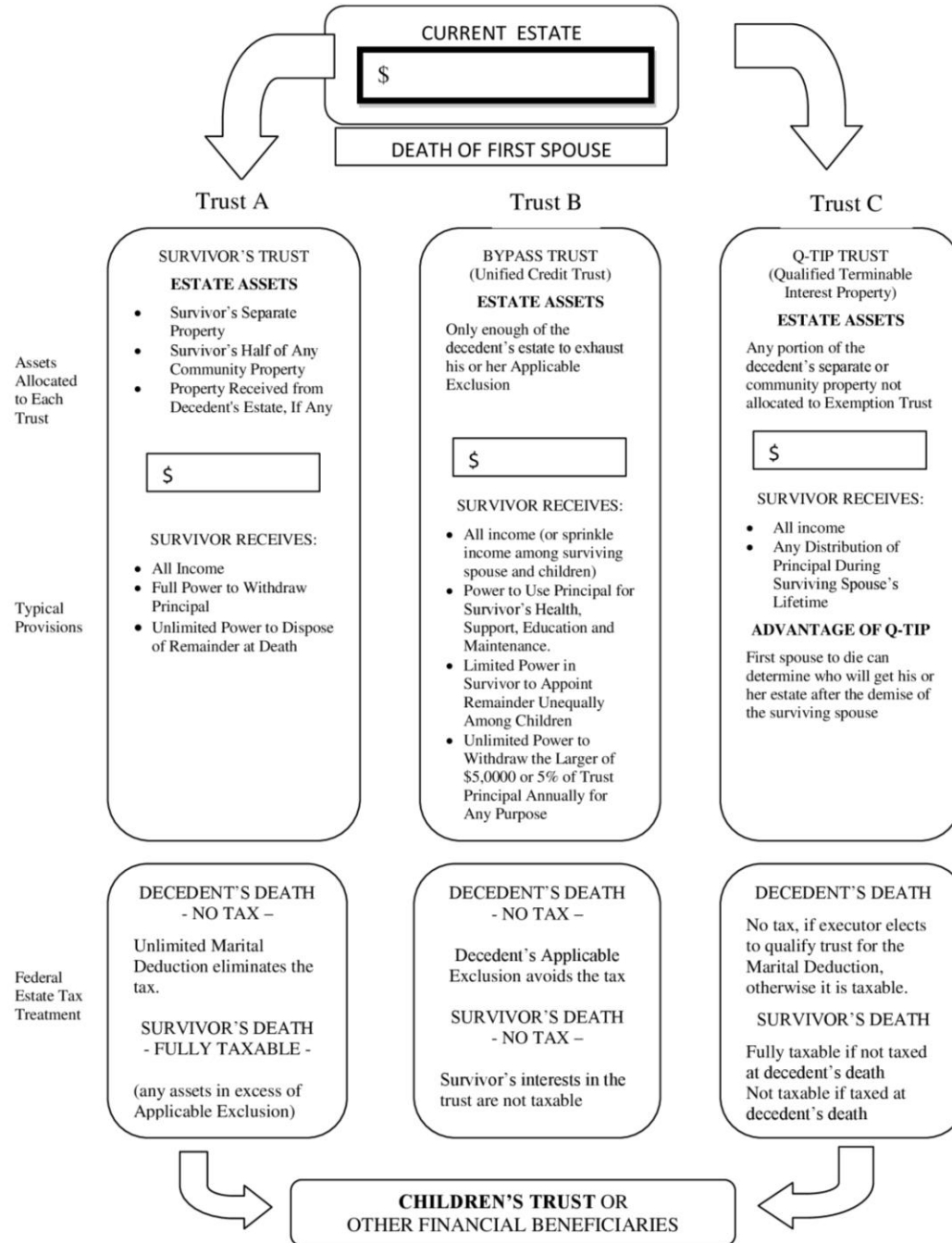
# TRUSTEE'S FIDUCIARY DUTIES

*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



# THE A-B-C TRUST



# THE A-B-C TRUST

## Pros:

- Lack of control
- Tax Issues: B trust protected from future estate taxes.
- Good for 2<sup>nd</sup> marriages (or 3<sup>rd</sup> or 4<sup>th</sup>), especially with stepchildren
- Some creditor protection

## Cons:

- Lack of control
- Tax Issues: No step-up in B trust on second death.
- Administration (tax returns, division between the trusts)

# SUMMARY

*A goal without a plan is just a wish.*

~ Anonymous

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~ THANK YOU ~

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*Estate Planning, Trust Administration, Tax Planning  
Inheritance Disputes & Business Litigation  
Guidance you can trust.*

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