

# Estate Planning

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## Ask First:

- ▶ Juris Doctorate degree from Pepperdine University School of Law 1978
- ▶ Licensed by California State Bar in 1979
- ▶ Certified Specialist in Estate Planning, Trust & Probate Law
- ▶ Senior Partner

# Two Concepts: Always....

How is property transferred upon

- ▶ Incapacity
- ▶ Death

How is property transferred if:

- ▶ Gifted
- ▶ Devised or Bequeathed

# What comes with a basic estate plan?

- ▶ Trust
- ▶ Will
- ▶ Advance Health Care Directive
- ▶ Durable Power of Attorney
- ▶ Personal Property Memorandum

# Will vs. Trust

## WILL

- Dictates where your property will go
- Requires administration
- Costs time and money
- Typically does not require bond\*
- Avoids estate taxes 99% of the time

## TRUST

- Dictates where your property will go
- Requires administration
- Costs time and money
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# Will vs. Trust

## WILL

- Public; does not skip probate (>\$166K)
- Governs property in your name
- Beneficiaries receive property at 18 y/o
- Requires court approval of distributions
- Follows a court timeline (and backlog)

## TRUST

- Private; skips probate\*
- Governs property in the trust name
- Beneficiaries receive property as stated
- Flexible timing on distributions
- Timeline can be faster or slower

# My spouse gets everything, right?

“As to **community property**, the **intestate share** of the surviving spouse is the one-half of the community property that belongs to the decedent...”

▶ California Probate Code § 6401 (a)

- ▶ Community property = property acquired during marriage
- ▶ Intestate share = distribution when not otherwise directed by will, trust, beneficiary designation, or disposition by operation of law

# My spouse gets everything, right?

“As to **separate property**, the **intestate share** of the surviving spouse is as follows:

- ▶ The *entire intestate estate* if the decedent did not leave any surviving issue, parent, brother, sister, or issue of a deceased brother or sister.
- ▶ *One-half of the intestate estate* in the following cases:
  - ▶ Where the decedent leaves only one child or the issue of one deceased child.
  - ▶ Where the decedent leaves no issue, but leaves a parent or parents or their issue or the issue of either of them.
- ▶ *One-third of the intestate estate* in the following cases:
  - ▶ Where the decedent leaves more than one child.
  - ▶ Where the decedent leaves one child and the issue of one or more deceased children.
  - ▶ Where the decedent leaves issue of two or more deceased children.

▶ California Probate Code § 6401(c)

# My spouse gets everything, right?

- ▶ Community Property
  - ▶ Income or property obtained during marriage
- ▶ Separate Property
  - ▶ Income or property obtained prior to marriage
  - ▶ Property purchased using separate property funds
  - ▶ Inheritance/bequests
  - ▶ Gifts

# My spouse gets everything, right?

- ▶ How your spouse can get everything:
  - ▶ No children, grandchildren, great-grandchildren
  - ▶ No parents
  - ▶ No siblings
  - ▶ No nieces or nephews
- ▶ California Probate Code § 6401(c)

# What if I do nothing?

## Takeaway:

Unless you are comfortable leaving the disposition of your estate up to California Probate Code, you should consider the most basic estate planning tool: **the will.**

## Okay, then what if I only make a will?

- ▶ You get to choose who acts as your executor, waive bond, and direct where your assets go at your death.
- ▶ You do not get to skip probate unless your assets are less than \$150,000.00, combined.
- ▶ The contents and disposition of your estate becomes public record.

## Okay, then what if I only make a will?

- ▶ Probate costs include filing fees, publication fees, and probate referee fees
- ▶ Attorney's fees are based upon a statutory calculation:
  - ▶ 4% of the first \$100,000.00 (or \$4,000.00)
  - ▶ 3% of the next \$100,000.00 (or \$3,000.00)
  - ▶ 2% of the next \$800,000.00 (or \$16,000.00)
  - ▶ 1% of the next \$1 million (or \$10,000.00)
  - ▶ NOTE: these are based upon the gross estate, not the net estate

## So then it's cheaper to make a trust?

- ▶ It depends.
- ▶ Basic trust administration can run between \$5,000.00 - \$10,000.00
- ▶ Complex trust administration can exceed \$50,000.00
  
- ▶ My experience:
  - ▶ most families feel more secure and in control when they administer a trust rather than go through probate
  - ▶ however, they also often feel like they can skip important steps

# Parties to a Trust: Settlor

- ▶ The settlor creates the trust
  - ▶ Chooses immediate and successor trustees
  - ▶ Identifies initial and remainder beneficiaries
  - ▶ Signs the trust “contract”
- ▶ Trust Funding
  - ▶ Transfer of title to trust
    - ▶ Changing title to bank accounts
    - ▶ Recording deed to real property
  - ▶ Assignment of personal property to trust
  - ▶ Proper steps to ensure that property ends up in trust before or after death



# Parties to a Trust: Trustees

- ▶ The trustee manages the property in the trust
  - ▶ Has authority to manage everything transferred into the trust
  - ▶ Limited by the powers identified in the trust
  - ▶ Fiduciary duty to the trust beneficiaries
- ▶ Who can be a trustee?
  - ▶ Individual (friends and family)
  - ▶ Private professional fiduciary
  - ▶ Trust company

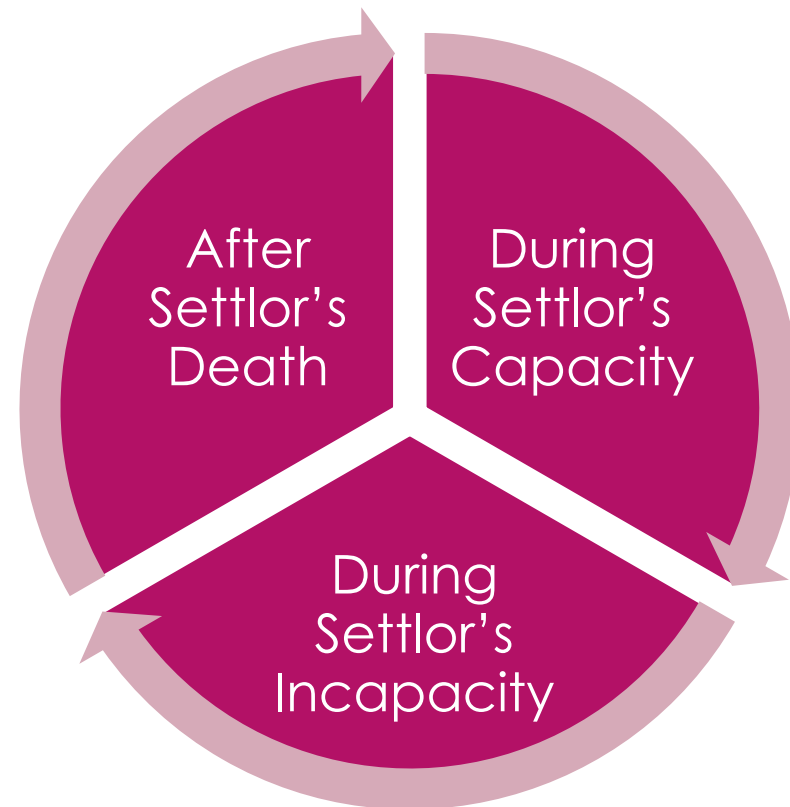
**FIDUCIARY = TRUST**  
(LOOK IT UP...)

# Parties to a Trust: Beneficiaries

- ▶ The beneficiaries receive the trust property
- ▶ Settlor is the primary beneficiary during life
- ▶ Property is held for remainder beneficiaries after death of settlor
  - ▶ Outright distribution
  - ▶ Distribution in trust



# Phases of a Trust



# What is in a Trust?

- ▶ Articles Governing Establishment and Administration by Settlor
  - ▶ Statement of intent to establish trust and hold property in trust
  - ▶ Provisions confirming powers retained by settlor
  - ▶ Provisions describing trustee succession
- ▶ Articles Governing Administration by Successor Trustee During Incapacity
- ▶ Articles Governing Administration by Successor Trustee After Death
- ▶ Articles Governing Administration of Subtrusts for Beneficiaries

# What is “trust administration” anyway?

## ▶ During Settlor's Life

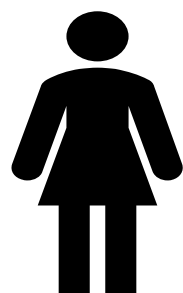
### ▶ Settlor as Trustee

- ▶ When the Settlor is living and managing his or her affairs, the Settlor is the Trustee
- ▶ The Settlor can typically do anything with the trust assets that he or she could do without the trust
- ▶ Nothing changes with day-to-day trust administration

### ▶ Successor as Trustee

- ▶ When the Settlor is living but unable to manage his or her affairs, the Settlor may resign as Trustee or be declared incapacitated (usually pursuant to the trust)
- ▶ The Settlor's named successor trustee for incapacity will step into the role and administer the trust
- ▶ The trust will include provisions to instruct the successor trustee, and certain limitations will apply

# Living Trust for a Single Person

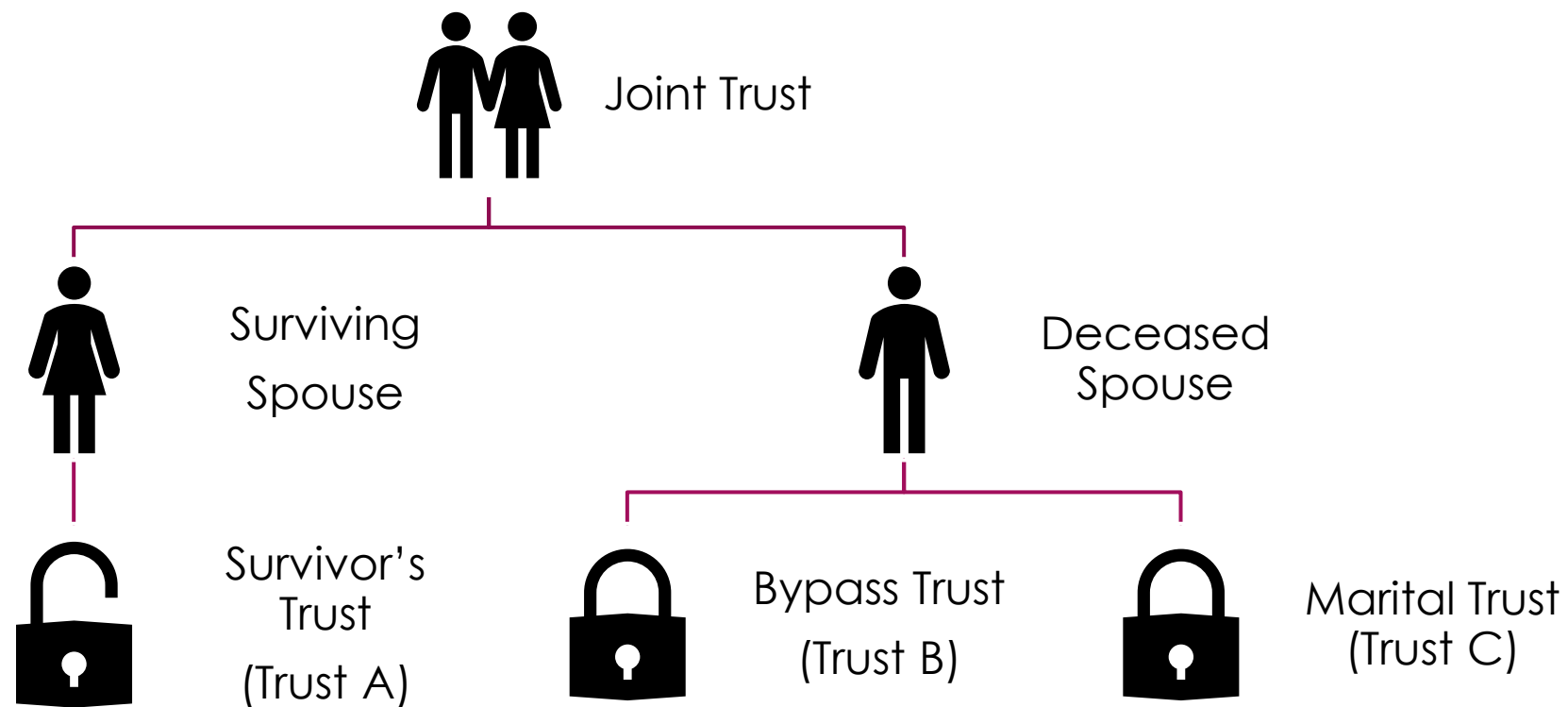


INCAPACITY TRUST  
ADMINISTRATION PERIOD

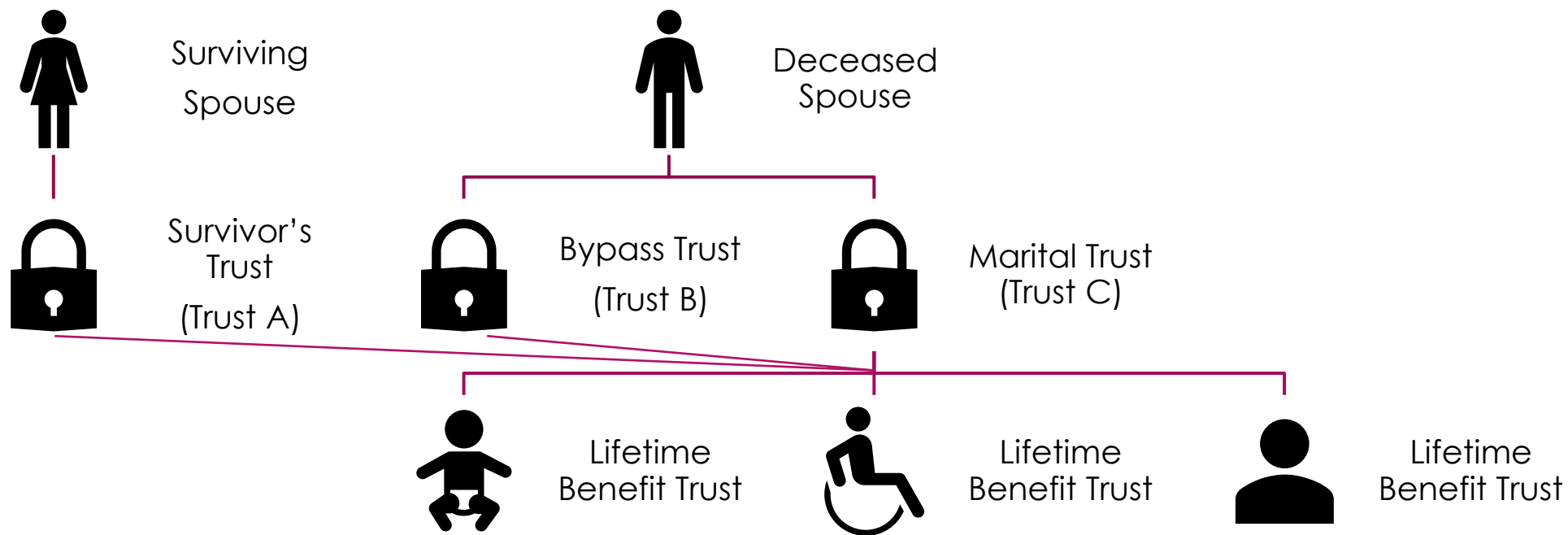
AFTER DEATH TRUST  
ADMINISTRATION PERIOD

DISTRIBUTION TO  
BENEFICIARIES

# Living Trust for a Married Couple



# Living Trust for a Married Couple



# Protect Beneficiaries / Lifetime Benefits

## **After Settlor Dies:**

- **Property is transferred by Trust / not by Will**
- **Pour Over Will exception**

## **Property Held in Separate Irrevocable Trust for Each Child**

- **Child may get income**
- **Child may get principal**

## **Spendthrift Trust Protection**

- **Divorce Proof**
- **Creditor Protection**
- **Bankruptcy Protection**

# Trusts: Were Used To Reduce Estate Taxes

Old Law	AEA
1999	\$650,000
2000/2001	\$675,000
2002/2003	\$700,000
2004	\$850,000
2005	\$950,000
2006 after	\$1,000,000

Current Law	AEA
2001	\$675,000
2002/03	\$1,000,000
2004/05	\$1,500,000
2006/08	\$2,000,000
2009	\$3,500,000
2010	No FET
2011	\$5,000,000 plus COLA
2018	\$10,000,000 plus COLA
2026	\$15,000,000 plus COLA

# Provide for Special Needs

## **If Descendant has a Special Need – Irrevocable Trust**

- **Mental or Physical Incapacity**
- **Government Assistance is available**
- **Inheritance would mean no Government Assistance**
- **Limited rights to use, but preserves the trust from Government's levy**

# Coordinate the IRA Beneficiary Designation with Trust

## **Don't Automatically Name Trust as IRA Beneficiary**

- **Sometimes best to name Spouse**
- **Sometimes best to name Children**
- **Sometimes best to name Trust**
  - **If name Trust certain specific language is necessary to allow for “stretch payments to beneficiaries.”**

Please...



## Don't Delay....

- Many People wait until it's too late...
- Don't let that be you...
- If you don't plan, someone will later...