

# Estate Planning

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# Speaker Bio – Cheryl L. Barrett, Esq.

## BACKGROUND

- ❖ Partner at Ferruzzo & Ferruzzo, Newport Beach, CA
- ❖ **Education**
  - ❖ J.D. from Pepperdine University School of Law Malibu, California
  - ❖ B.A., Communications from California State University Fullerton

## AREAS OF PRACTICE

- ❖ Estate Planning
- ❖ Trust Administration
- ❖ Conservatorships
- ❖ Probate

# What comes with a basic estate plan?

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

# Personal Property Memorandum

- This document works *with* your will or trust to leave certain items of tangible personal property to specific individuals
- Benefits:
  - Flexibility – you do not need to have this document signed and notarized
  - Revocable – you can write a new memorandum of personal property any time
  - Personal – you can take your time to select items with special meaning without rush
- Legally binding under state law BUT: there are limitations to what you can give away using the memorandum

# Durable Power of Attorney (DPOA)

- This document works *with* your trust to manage your finances in the event you are unwilling or unable to manage them on your own
- Example:
  - You experience a medical emergency and are comatose
  - You are diagnosed with Alzheimer's or dementia and cannot make decisions
  - You go on sabbatical for a year and want to leave someone else in charge!
- Typically your trustee and your agent under your durable power of attorney are the same person to avoid conflict between competing fiduciaries
- Can be immediate or occur at a later date specific in the document

# Advance Health Care Directive (AHCD)

- This document expresses your wishes regarding health care decision in the event you are unable to express them on your own
- Typical provisions in an Advance Health Care Directive
  - Appointment of agent to make decisions (can include naming conservator if needed)
  - Express wishes concerning health care and end-of-life decisions (withdrawal of treatment)
  - Express wishes concerning organ donation (and for what type of use)
  - Designate primary care physician
  - HIPAA Authorization – name individuals who may access medical records
- Can be the same person as your trustee and DPOA

# 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
- Typically does not require bond
- Avoids estate taxes 99% of the time

# Will vs. Trust

## WILL

- Public; does not skip probate (>\$184,500)
- 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

# What if I do nothing?

“Any part of the **estate** of a decedent not effectively disposed of by **will** passes to the **decedent’s heirs** as prescribed in this part.”

- California Probate Code § 6400

- Estate = property in your name
- Will = last will and testament (not a trust)
- Decedent’s heirs = California rules of intestate succession; Table of Consanguinity

# 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 unless received through inheritance or gift
- 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 \$184,500.00, 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

## Example:

- \$5,000,000.00 Estate
  - Attorney's Fee - \$63,000.00
  - Executor's Fee - \$63,000.00
    - Total: **126,000.00**

# 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

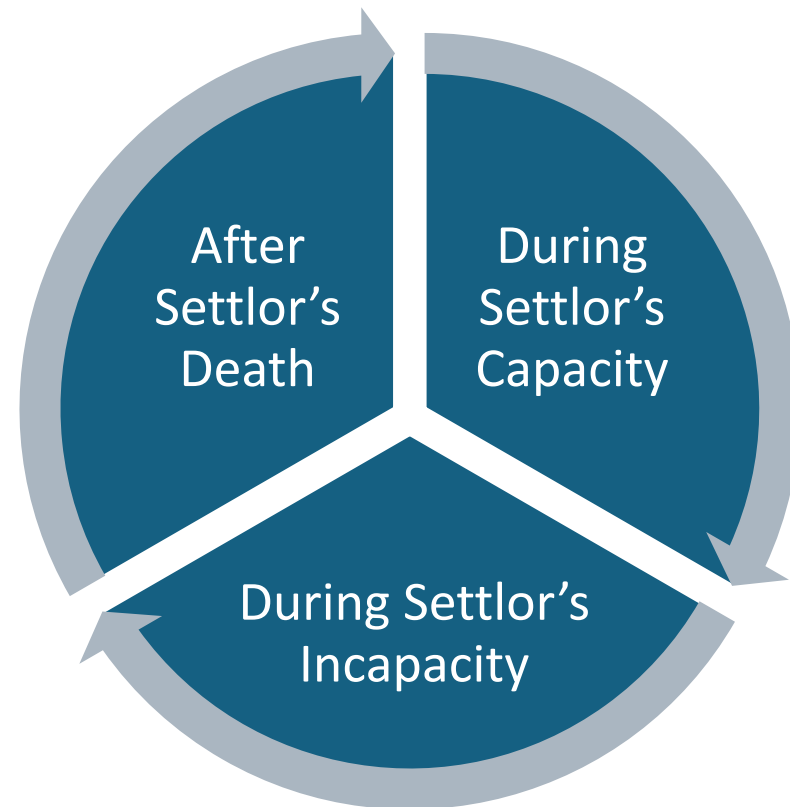
FIDUCIARY = TRUST  
(LOOK IT UP...)

# 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 Settlers
  - Statement of intent to establish trust and hold property in trust
  - Provisions confirming powers retained by settlors
  - 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

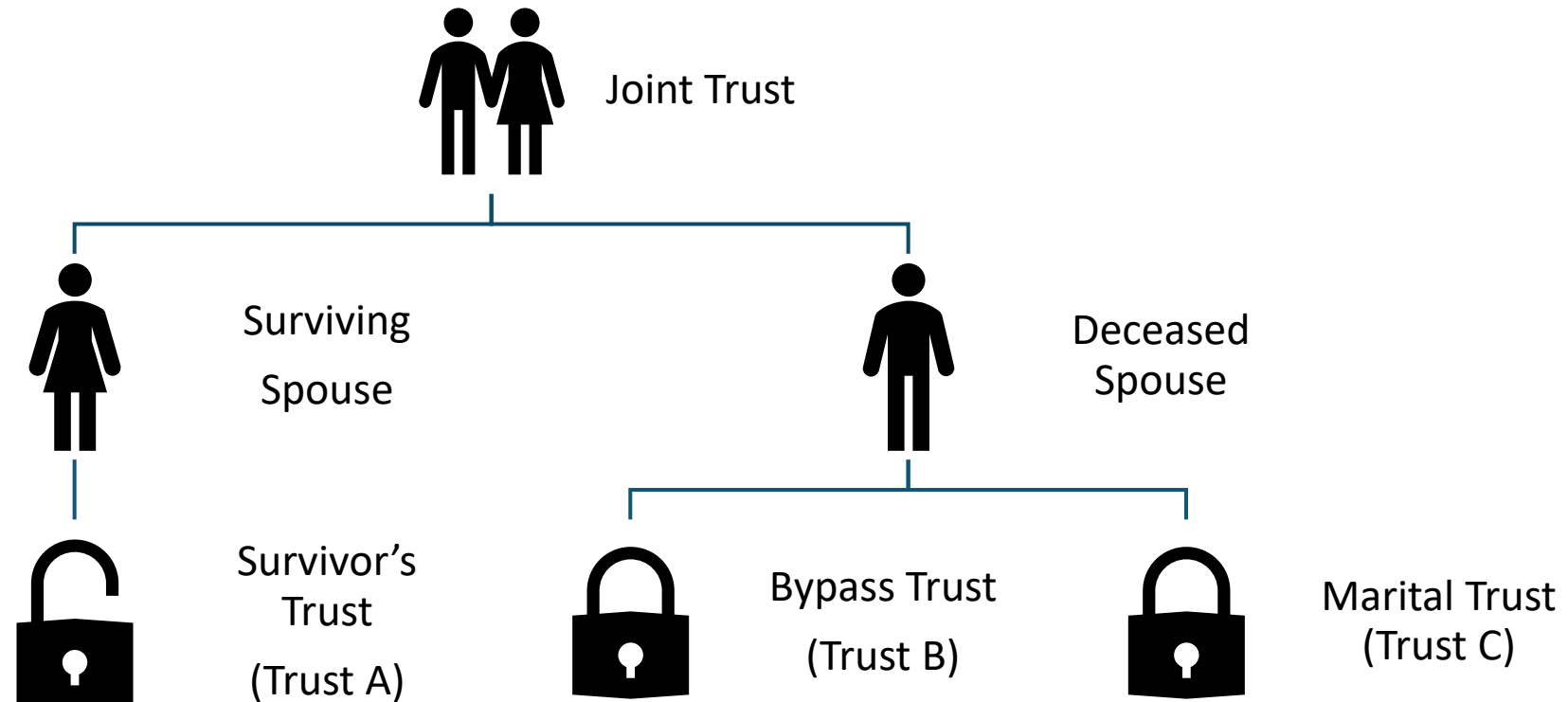
# What is “trust administration” anyway?

- 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

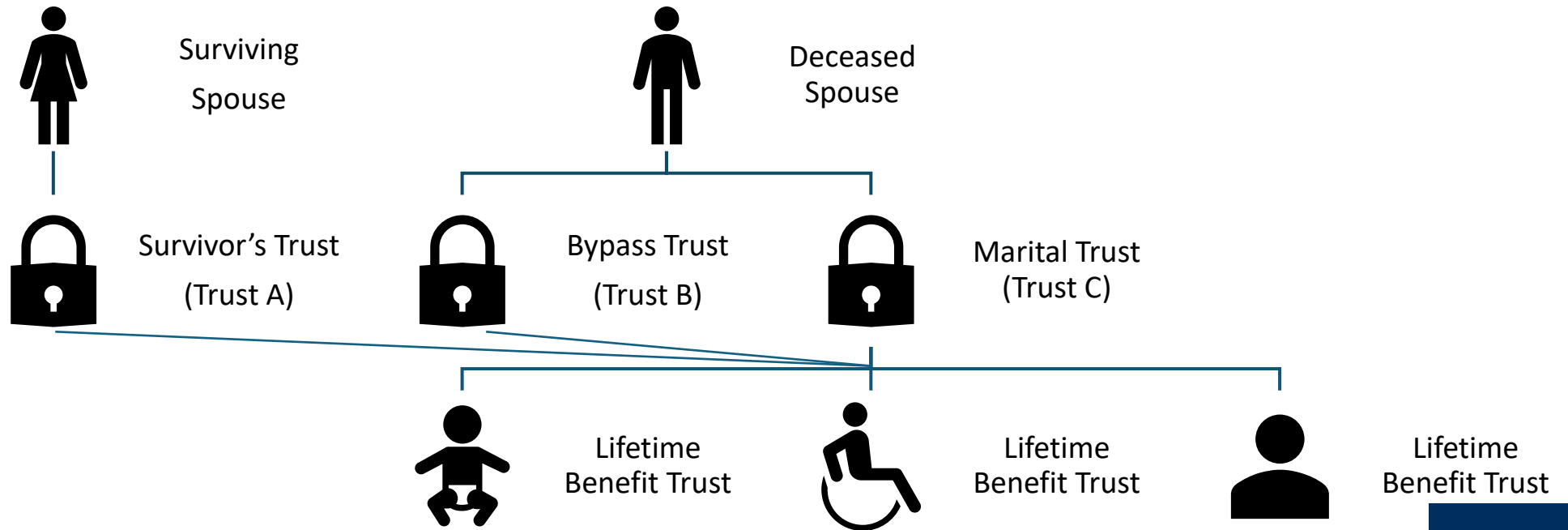
# Living Trust for a Single Person



# Living Trust for a Married Couple



# Living Trust for a Married Couple



# Thank You

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