

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

- Funding the Trust
- Living Trusts
- Amendments

Estates

- Basic Estate Plan
- How to protect different assets

Why Have 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)

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“ADMINISTRATOR”

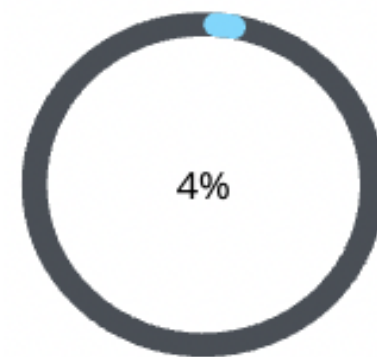
Title used when someone dies without a Will

“EXECUTOR”

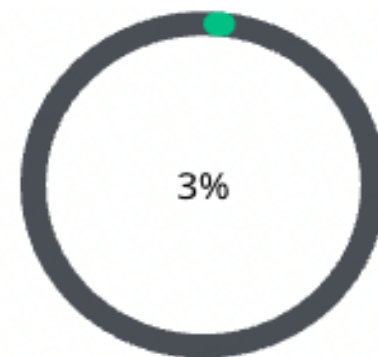
Title used when someone dies with a Will

Probate Fees

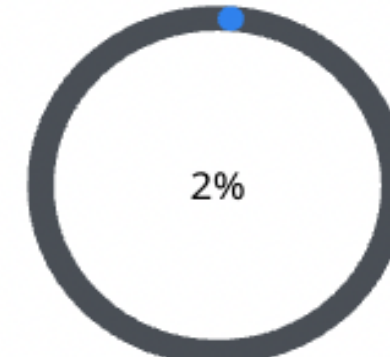
Statutory Fees



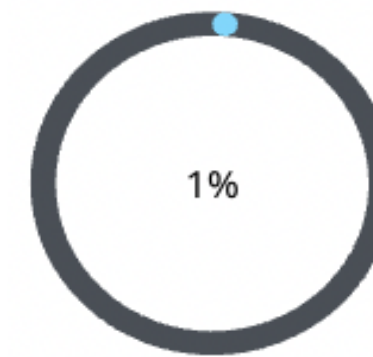
On First \$100,000



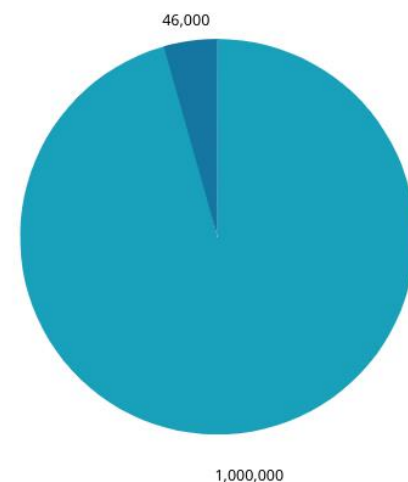
On Next 100,000



Next \$800,000

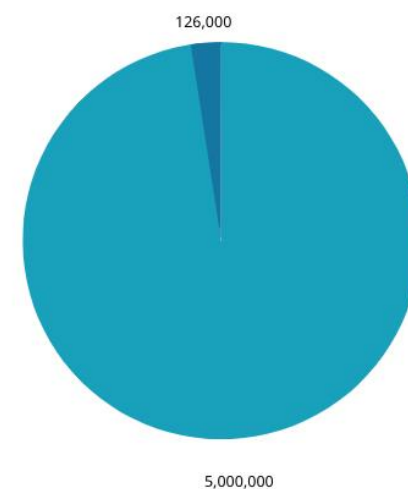


On Next \$9 million



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

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



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

- Probate can take 18 months or more to complete
- Terms of Will, beneficiaries, and probate assets are made PUBLIC
- *Probate/oversight may be warranted for complex estates/conflicts*

Avoiding Probate

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

- ▶ **Beneficiary designations**

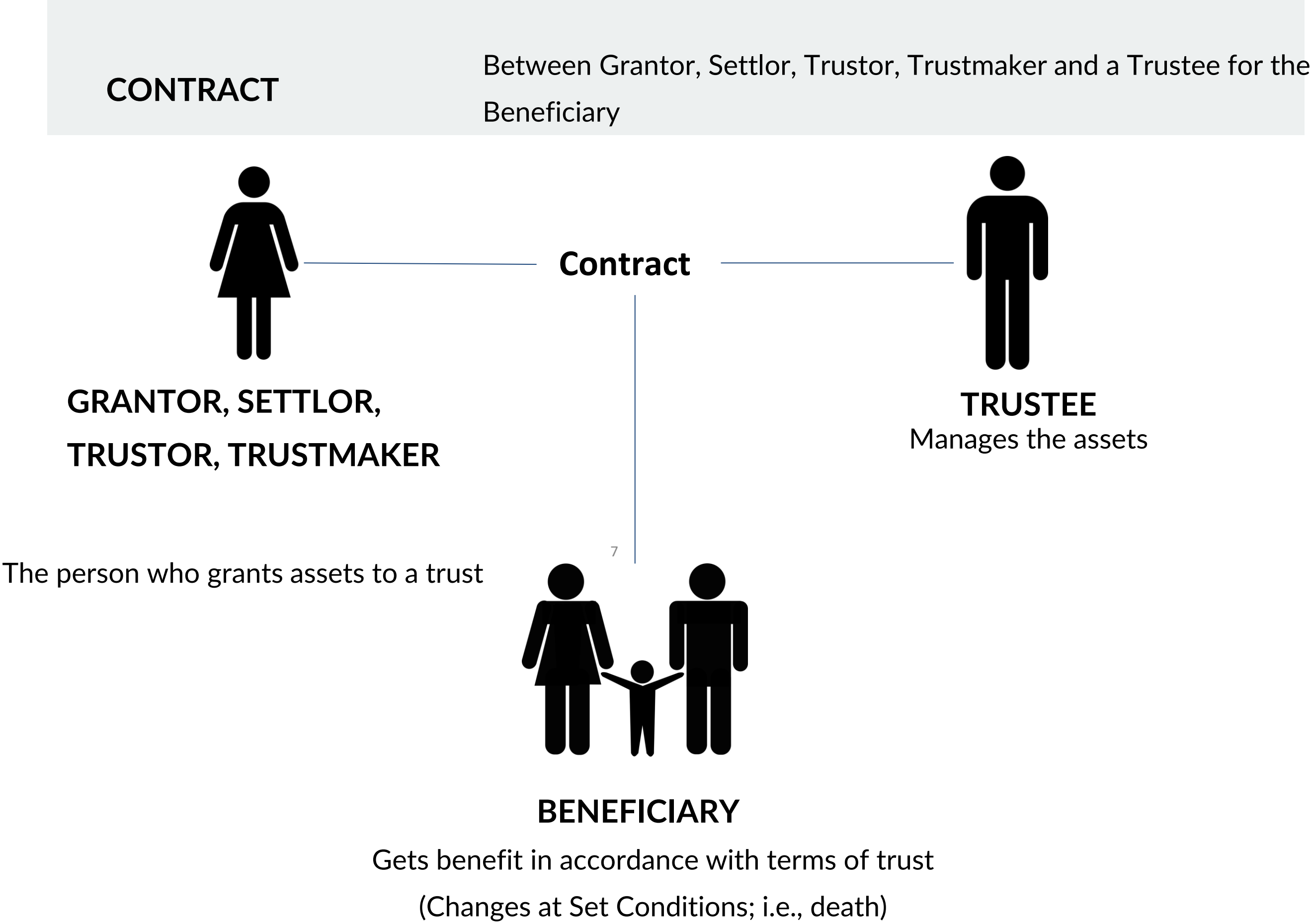
- ▶ **Titling (e.g., joint tenancy)**

 - Drawbacks:**

 - Adding a child to title to real property is a gift if over \$17,000 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.

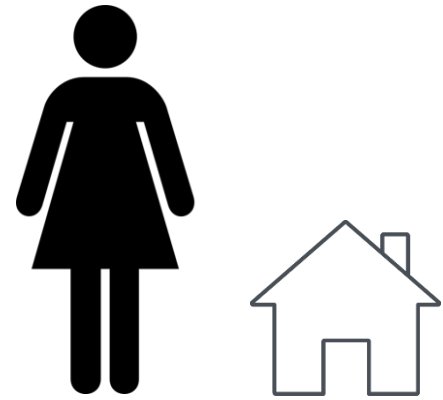
- ▶ **Revocable living Trust**

What Is A Trust?



What Is A Living Trust?

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



**GRANTOR, SETTLOR,
TRUSTOR, TRUSTMAKER**

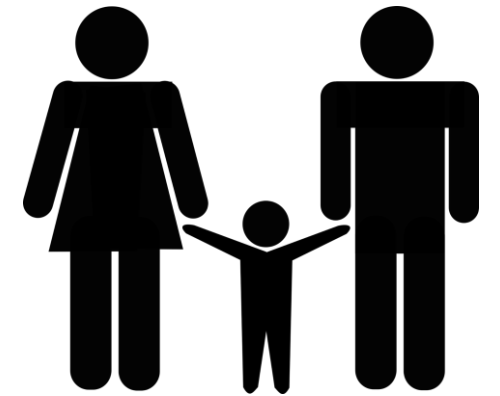
Manages his/her assets as Trustee and is the beneficiary for his/her entire lifetime until he/she becomes incapacitate or dies and the successor Trustee steps in



SUCCESSOR TRUSTEE

Manages the assets

Contract



BENEFICIARY

Gets benefit in accordance with terms of trust

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)

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 – 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

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

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

Selecting a Trustee

- **Trust:** Choose someone you trust to carry out your wishes and manage your affairs.
- **Responsibility:** Select a responsible individual with excellent organizational and communication skills.
- **Knowledge:** Choose someone with knowledge of your financial and legal affairs, as well as experience in managing personal finances.
- **Relationship:** Consider the relationship you have and the beneficiaries have with the person you would like to choose as your trustee.
- **Age:** Choose someone who is likely to outlive you and is capable of managing your affairs for an extended period.

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

Drug and Alcohol Provisions

Life Estate

Other Trusts

- ▶ **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

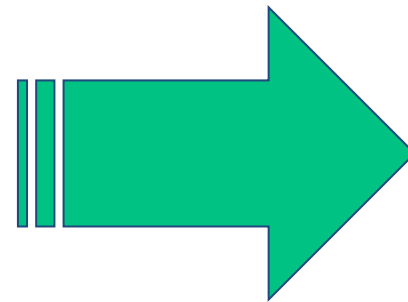
- ▶ **Pet trusts**

“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

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](https://www.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).
- ▶ **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

Updating your Trust

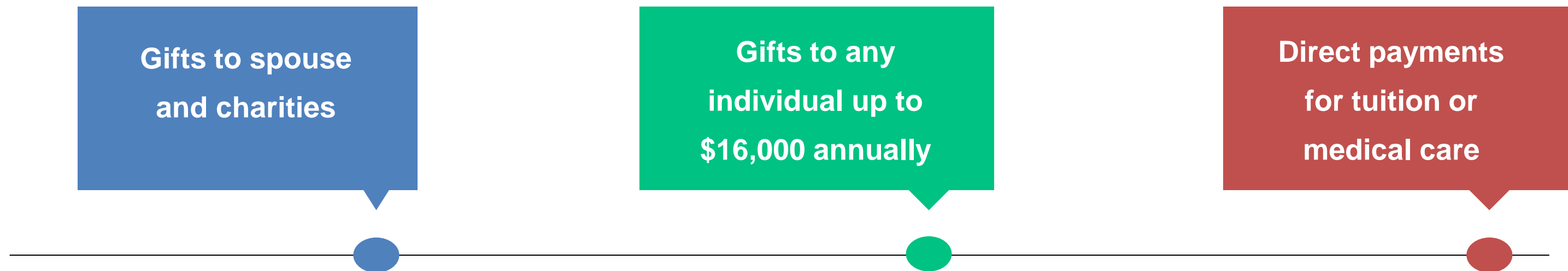
- ▶ **Review your Trust and other estate planning documents every 5 years.**
- ▶ **Review anytime there is a major life change**
 - Death
 - Divorce
 - Marriage
 - Birth

Amendments

- ▶ ● An Amendment to your trust is a SEPARATE Signed document.

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:** \$12.92 million during lifetime and/or at death in 2023 and 25.84 million per married couple.
- (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

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

Do it on your own?

- ▶ **A Trust should be tailored to meet your specific planning goals.**
- ▶ **Legal advice.**
- ▶ **Saving a few hundred dollars could cost you and your loved ones several thousand dollars.**
- ▶ **Executed correctly/ properly funded?**

THANK YOU



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