

# Session 1

## Essentials of Estate Planning

Tuesday, March 19, 2025

Presented By:

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# Please Note:

1. Today's **PowerPoint slides** are available in the “Handouts” section of your GoToWebinar side panel.
2. This session is worth 2 CE credits for those with the CFP and American College designations. It's also eligible for 2 IAR CE credits and 2 CPE credits.
3. A replay will be posted within 36-48 hours.
4. A CE-eligible replay will be posted with 7 days.
  - a. CPE credits are not available for replays.



## **Advisor Requests:**

- **NEW: How a trust removes assets from the taxable estate and the reporting requirements.**
- **NEW: Typical costs for Wills and Trusts – average ranges.**
- **NEW: Understanding DSUE (Deceased Spousal Unused Exclusion) and SLAT (Spousal Lifetime Access Trust) with definitions first.**
- **NEW: Practical worksheets for client meetings.**
- **NEW: Typical probate process and healthcare directive considerations.**
- **NEW: Addressing minors as beneficiaries.**

## | Overview of Key Estate Planning Documents

- **Objective:** Introduce and describe the core documents.
- **Wills:** Importance, basic structure, and limitations.
- **Revocable Trusts:** Flexibility and control benefits.
- **Irrevocable Trusts:** Asset protection and tax benefits.
- **Powers of Attorney:** Financial and healthcare-specific POAs.
- **Advance Healthcare Directives:** Ensuring medical decisions align with personal values.

# Additional Notes

Besides Will and Trust laws, please be aware that many assets will pass by directions provided in beneficiary designations, by reason of "right of survivorship," or other circumstances where the language of a will or trust document may not have the effect that is being expected. Please note that many lawyers specialize in estate planning.

Common credentials include board certification in estate planning, board certification as an Accredited Estate Planner (AEP) by the National Association of Estate Planning Councils, and being included in peer-review organization lists like Martindale.com and Best Lawyers in America.



# What Is A Will?

A Will (also known as a Last Will and Testament) provides for the following in the event of your death:

- Your wishes as to burial, cremation, internment, etc. and payment of funeral expenses.
- Appoints a Personal Representative to handle your estate according to the will.
- Appoints a Guardian for any minor children in the event of a common death with your spouse.
- Directs payment of taxes, debts and expenses and the distribution of remaining property.



# Durable Power Of Attorney

- A Durable Power of Attorney is a specific type of Power of Attorney that does not expire if or when the Principal becomes incapacitated.
- To be Durable, the instrument must include language demonstrating that the Principal intends the power to continue to be exercisable, even if the Principal becomes incapacitated.
- The person granting the power must be competent at the time the Power of Attorney is signed.
  - The level of capacity generally required to create a Power of Attorney is the level of capacity that the Principal would need to have to do the acts authorized in the Power of Attorney.



# Revoking A Power Of Attorney

- The Principal may revoke a Power of Attorney by explicitly stating, “I hereby intend to revoke [insert title on the Power of Attorney here] in either (1) a subsequently executed Power of Attorney or (2) in a separate writing the Principal signs.
- The Principal is not required to directly notify the Agent whose power is revoked but may instead simply notify the newly designated Agent of the previous Agent’s revocation if a new agent is designated.
  - The principal is not required to designate a new agent.
  - It is advisable to notify an agent whose power is revoked because until an agent is notified that their power is terminated, the principal can be bound by the agent as long as the agent acts in good faith.

**NOTE** – The presenter recommends leaving old Powers of Attorney in place as long as the Principal trusts the Agents named thereon – in case newer Powers of Attorney are lost or may have technical defects.



# When A Power Of Attorney Terminates

The Power of Attorney automatically terminates upon the occurrence of any of the following events:

- (a) When the Principal dies;
- (b) When the Principal becomes incapacitated (if it is not a Durable Power of Attorney);
- (c) When the Principal is adjudicated totally or partially incapacitated by the court (for purposes of guardianship proceedings), unless the court determines that certain authority granted by the Power of Attorney is exercisable by the Agent, as discussed in Chapter 2;
- (d) When the Principal explicitly revokes the Power of Attorney;
- (e) When the Power of Attorney document provides that it terminates;
- (f) When the express purpose of a Power of Attorney is accomplished, such as if the Power of Attorney simply gives the right to enter into a real estate transaction and the transaction has been completed; or
- (g) When the marriage between the Principal and Agent ends (either through a divorce or annulment, if a spouse is acting as the Agent), unless the Power of Attorney otherwise provides.



# Health Care Powers Of Attorney

ALLOWS AGENT TO ACT BEHIND THE BACK OF THE PRINCIPAL--CUSTOM DRAFTING RECOMMENDED

## Florida's Health Care Surrogate Statutes

A surrogate can be given the power to make health care decisions when the principal is not incapacitated. If there is ever a conflict between the surrogate and the principal, the principal's decision is controlling. A principal may also amend or revoke the health care surrogate by written amendment.

Physicians must discuss treatment and other important information with patient who is not incapacitated regardless of whether or not there is a surrogate who has made a decision or decisions.

Parents now have an option to name a health care surrogate for minors under F.S. Section 765.2035(6). This will be useful if a parent is unavailable to provide consent for treatment for their child. This could come up in a variety of situations, such as when the parents are traveling without their minor children.



# Health Care Power Of Attorney – Capacity Of Principal

- A principal may designate a Health Care Surrogate and authorize them to make health care decisions even before the principal is deemed incapacitated. However, until deemed incapacitated, a principal is presumed to be capable of making health care decisions for him/herself.
- Until deemed incapacitated, a principal's wishes are controlling and physicians and health care providers must "clearly communicate to a principal with decisionmaking capacity the treatment plan and any change to the treatment plan prior to implementation of the plan or the change to the plan."
- A person's voluntary or involuntary hospitalization for mental illness or intellectual disability is not a basis to infer incapacity.
- "If the principal has designated a health care surrogate/agent and has stipulated that the authority of the surrogate is to take effect immediately, or has appointed an agent under a durable power of attorney as provided in chapter 709 to make health care decisions for the principal, the health care facility shall notify such surrogate or agent in writing when a determination of incapacity has been entered into the principal's medical record." F.S. 765.204(4)



# Pre-Need Guardian Rules

## Vary By State

- (1) A competent adult may name a preneed guardian by making a written declaration that names such guardian to serve in the event of the declarant's incapacity.
- (2) The written declaration must reasonably identify the declarant and preneed guardian and be signed by the declarant in the presence of at least two attesting witnesses present at the same time.
- (3) The declarant may file the declaration with the clerk of the court. When a petition for incapacity is filed, the clerk shall produce the declaration.
- (4) Production of the declaration in a proceeding for incapacity shall constitute a rebuttable presumption that the preneed guardian is entitled to serve as guardian. The court shall not be bound to appoint the preneed guardian if the preneed guardian is found to be unqualified to serve as guardian.



# Pre-Need Guardian, Continued

- (5) The preneed guardian shall assume the duties of guardian immediately upon an adjudication of incapacity.
- (6) If the preneed guardian refuses to serve, a written declaration appointing an alternate preneed guardian constitutes a rebuttable presumption that such preneed guardian is entitled to serve as guardian. The court is not bound to appoint the alternate preneed guardian if the alternate preneed guardian is found to be unqualified to serve as guardian.
- (7) Within 20 days after assumption of duties as guardian, a preneed guardian shall petition for confirmation of appointment. If the court finds the preneed guardian to be qualified to serve a guardian pursuant to ss. 744.309 and 744.312, appointment of the guardian must be confirmed. Each guardian so confirmed shall file an oath in accordance with s. 744.347 and shall file a bond, if required. Letters of guardianship must then be issued in the manner provided in s. 744.345.



# Living Wills

- Living Wills are used to allow a person to declare and direct providing, withholding, or withdrawing life prolonging procedures in the event of a terminal condition, end-state condition, or is in a persistent vegetative state.
- It must be signed in the presence of two witnesses, one of whom is neither a spouse or blood relative of the principal.
- It does not need to be notarized.
- The principal is responsible for notifying their primary physician of the living will, but any person may notify the physician or health care facility of the living will if the principal is physically or mentally incapacitated when admitted.



# Revocable VS Irrevocable



# Estate Planning Definitions

**Trust or Trust Agreement** - an arrangement whereby a Trustee holds or will receive assets for a Beneficiary or Beneficiaries pursuant to the terms of a Trust Agreement personally but between the Settlor/Grantor and the Trustee. The Beneficiaries have legal rights associated therewith. The property held by the Trustee does not belong to him or her personally but is held for the sole benefit of the Beneficiaries.

**Revocable Trust** - a Trust that can be changed by the Settlor, often commonly known as a Living Trust.

**Irrevocable Trust** – a Trust that cannot be changed by the Settlor; a Testamentary Irrevocable Trust may be formed under the Last Will & Testament of the Settlor to hold assets for Beneficiaries pursuant to the terms thereof. It will, therefore, typically require a probate for the assets to come from the name of the individual to the Testamentary Trust. Other Irrevocable Trusts are formed during the lifetime of the Settlor for tax or other purposes, or may be formed pursuant to the terms of a Revocable/Living Trust. For example:

“During my life, this Trust is held only for me and is revocable; on my death, after payment of expenses and liabilities, divided into three separate Irrevocable Trusts for each of my children.”



Feature	Revocable Trust	Irrevocable Trust
<b>Control</b>	The grantor retains full control and can modify or revoke the trust at any time.	Once established, the trust cannot be modified or revoked without the consent of beneficiaries or a court order.
<b>Ownership of Assets</b>	Assets remain under the grantor's ownership for legal and tax purposes.	Assets are transferred out of the grantor's ownership, legally belonging to the trust.
<b>Probate Avoidance</b>	Helps assets pass directly to beneficiaries without probate.	Also avoids probate, ensuring assets are distributed according to the trust terms.
<b>Estate Tax Benefits</b>	No estate tax benefits since assets remain part of the grantor's taxable estate.	Can reduce estate tax liability by removing assets from the taxable estate.
<b>Creditor Protection</b>	No protection from creditors since assets are still legally owned by the grantor.	Provides creditor protection, as assets are no longer owned by the grantor.
<b>Medicaid &amp; Long-Term Care Planning</b>	Assets are still counted for Medicaid eligibility.	Can help with Medicaid planning by removing assets from the grantor's countable assets.



# Revocable Trust Best Uses:

## **1.Avoiding Probate & Simplifying Estate Administration**

1. Example: A client wants to ensure their children receive assets without going through probate, avoiding delays and costs.

## **2.Providing for Incapacity Planning**

1. Example: An elderly client wants a successor trustee to manage assets if they become incapacitated, avoiding court-appointed conservatorship.

## **3.Maintaining Control Over Assets**

1. Example: A client wants flexibility to make changes as life circumstances evolve (e.g., remarriage, new beneficiaries).

# Irrevocable Trust Best Uses:

## **Asset Protection from Creditors & Lawsuits**

•Example: A business owner in a high-risk profession transfers assets to an irrevocable trust to shield them from potential legal claims.

## **Medicaid & Long-Term Care Planning**

•Example: A client wants to qualify for Medicaid but has significant assets, so they move funds into an irrevocable Medicaid trust at least five years before applying.

## **Reducing Estate Taxes for High-Net-Worth Clients**

•Example: A wealthy client places life insurance in an **Irrevocable Life Insurance Trust (ILIT)** to keep the death benefit outside of their taxable estate.

## **Providing for a Special Needs Beneficiary**

•Example: A parent sets up a **Special Needs Trust (SNT)** to provide supplemental support for a disabled child while preserving government benefits.

## **Charitable Giving with Tax Benefits**

•Example: A philanthropically inclined client creates a **Charitable Remainder Trust (CRT)** to receive income during their lifetime while donating the remaining assets to charity at death.

# Dangers That Trusts Help Us Avoid?

Don't forget the reasons that trusts are often used:

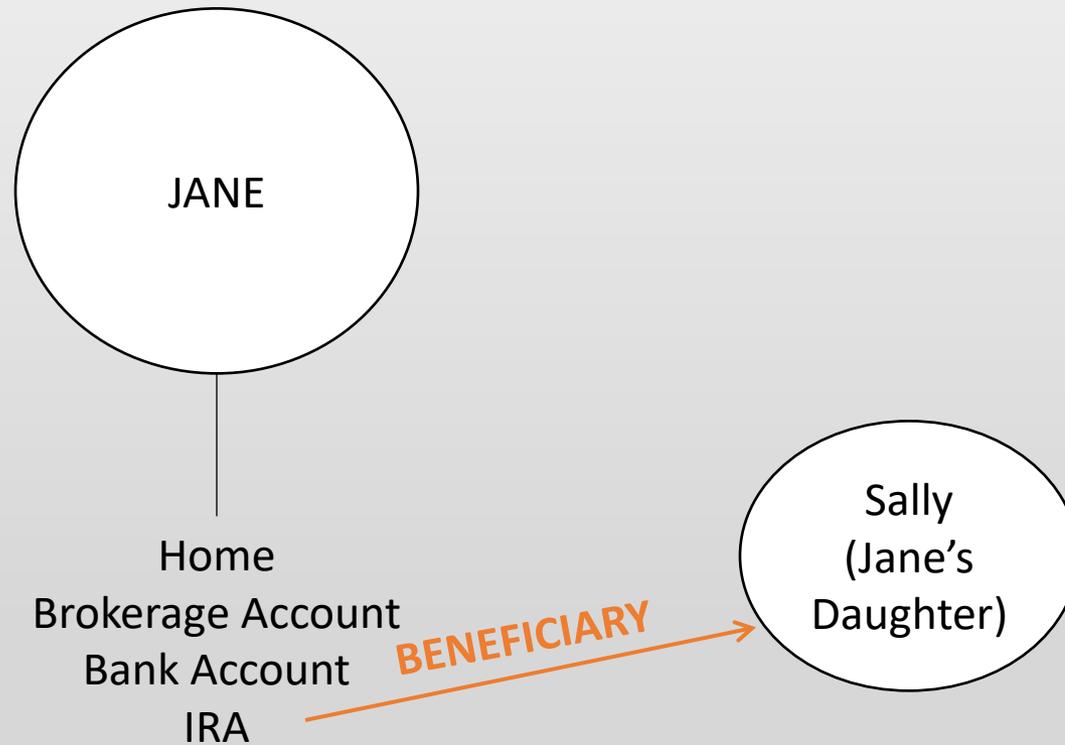
1. Avoid probate and guardianship.
2. Avoid public disclosure of inheritance information.
3. Avoid loss to a beneficiary's creditors, ex-spouse or others.
4. Avoiding taxes.
5. Making sure that there is sound and responsible management and decision-making.



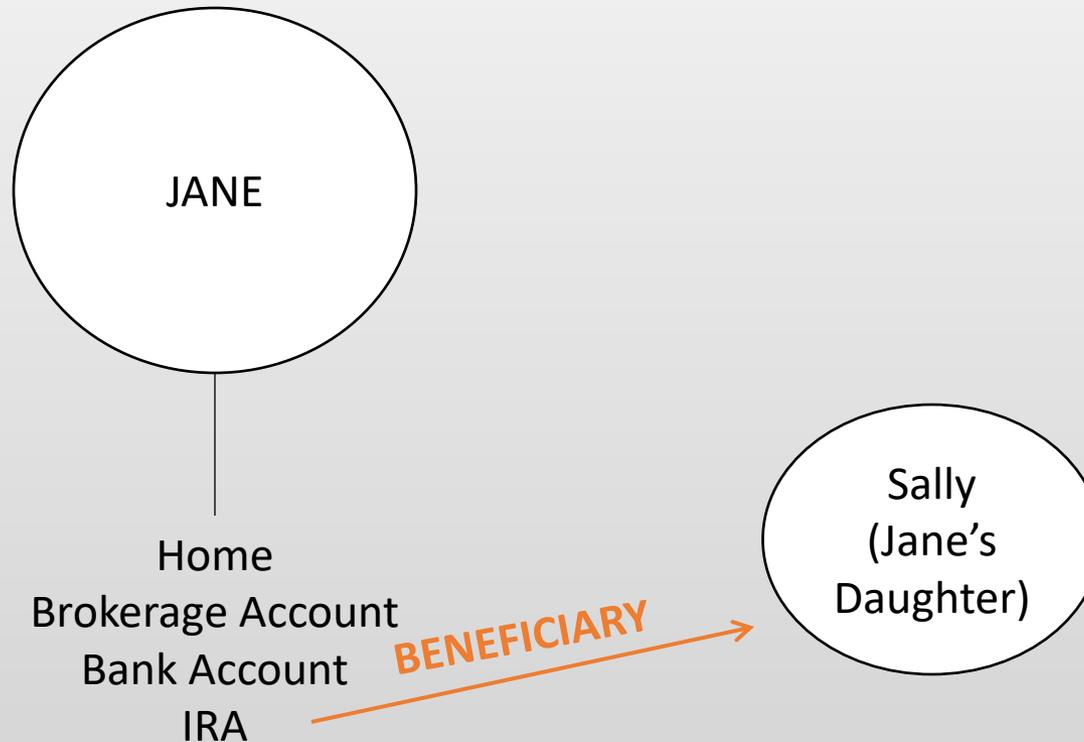
We begin with a single individual named Jane. Jane owns a home, a brokerage account, a bank account, and an IRA.

Jane's daughter is Sally. Jane owns her assets individually, and her IRA beneficiary is Sally.

Life is simple and good, as long as she stays alive and no one sues her!



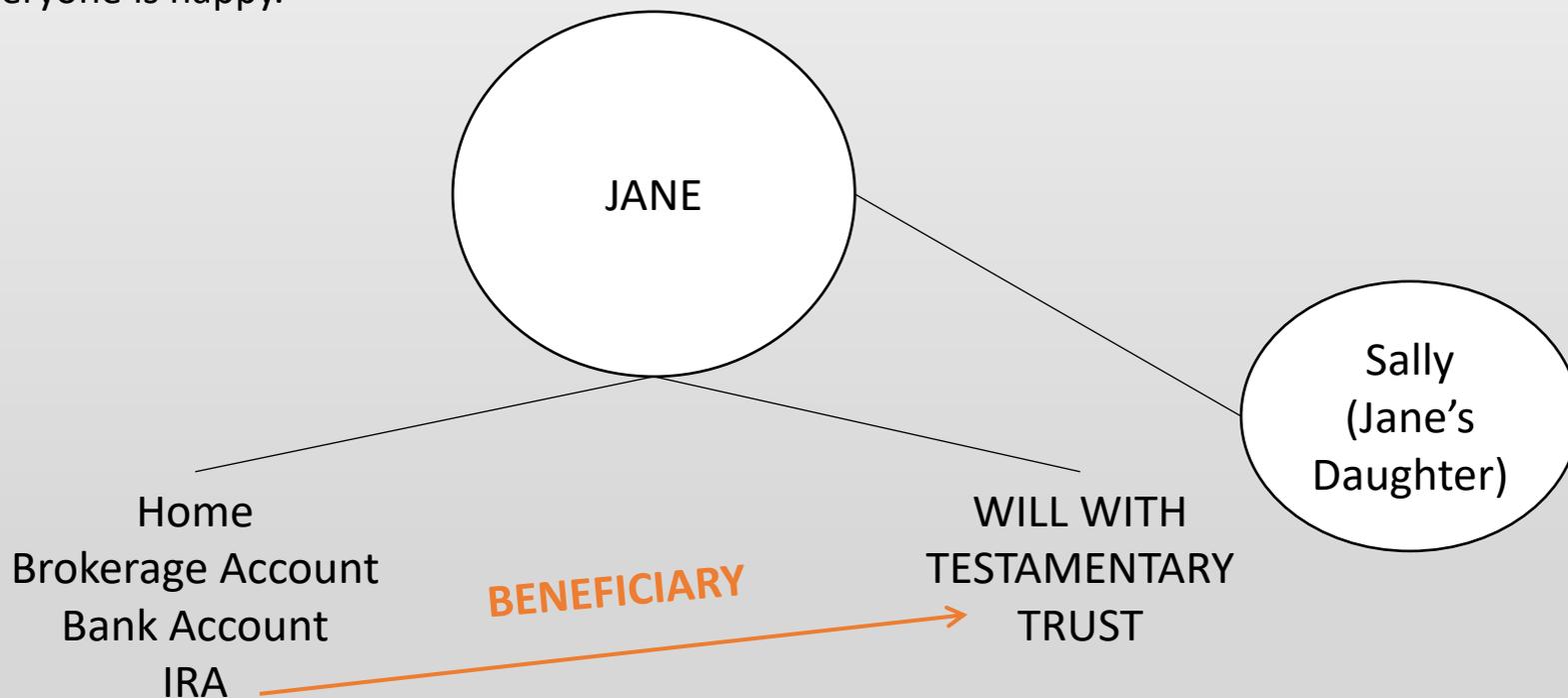
Jane goes to a financial planner and learns that Sally, age 16, should not be the direct beneficiary of Jane's IRA and that Jane needs a Will to provide for assets to be held in a trust for Sally if Jane dies.



Jane can set up a Will that provides for a trust to be established for Sally on death, called a Testamentary Trust. “On my death my personal representative will establish a trust to be funded with my remaining assets and the proceeds of life insurance (which I will make payable by beneficiary designation to such Testamentary Trust...)”

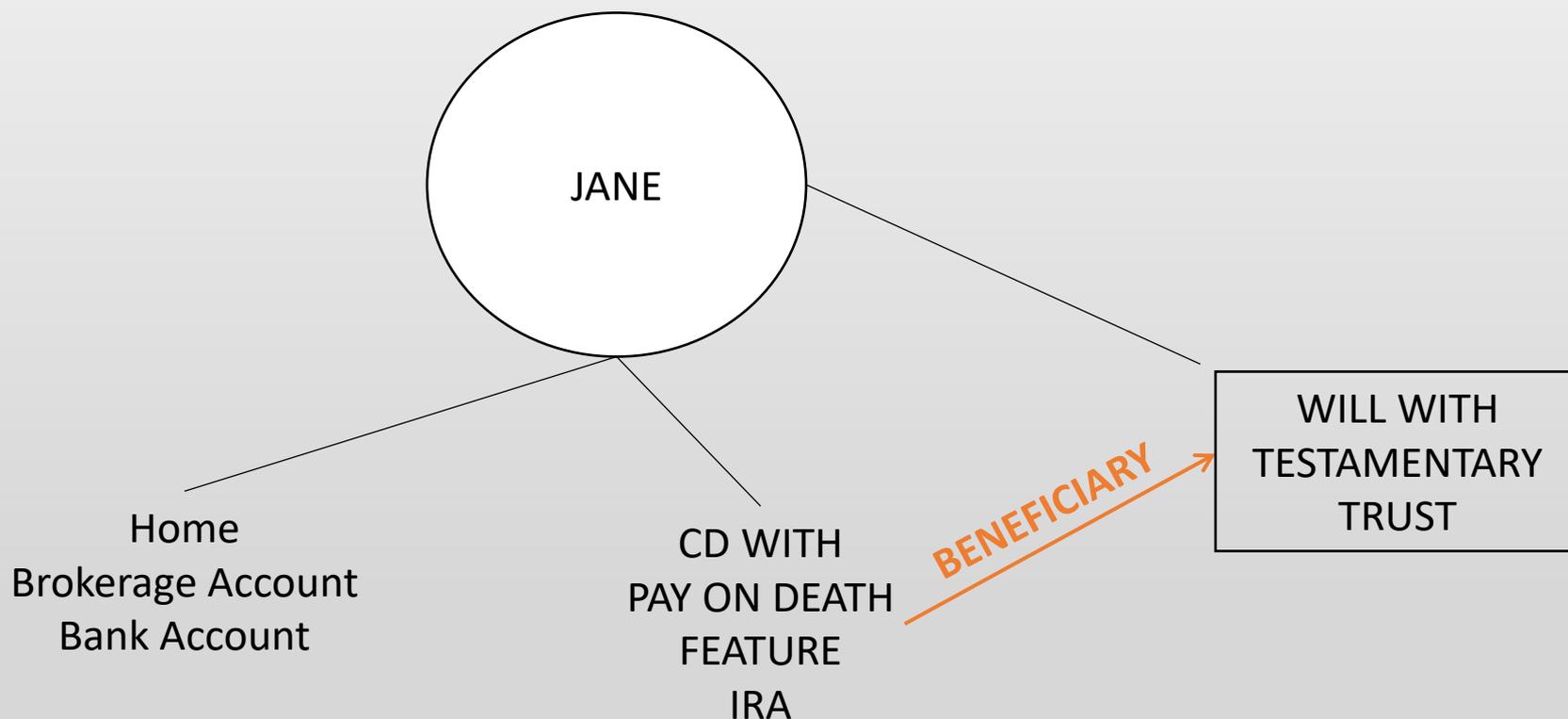
Jane changes her IRA beneficiary designations as payable to the Testamentary Trust that will open up for Sally under her Will.

Everyone is happy.

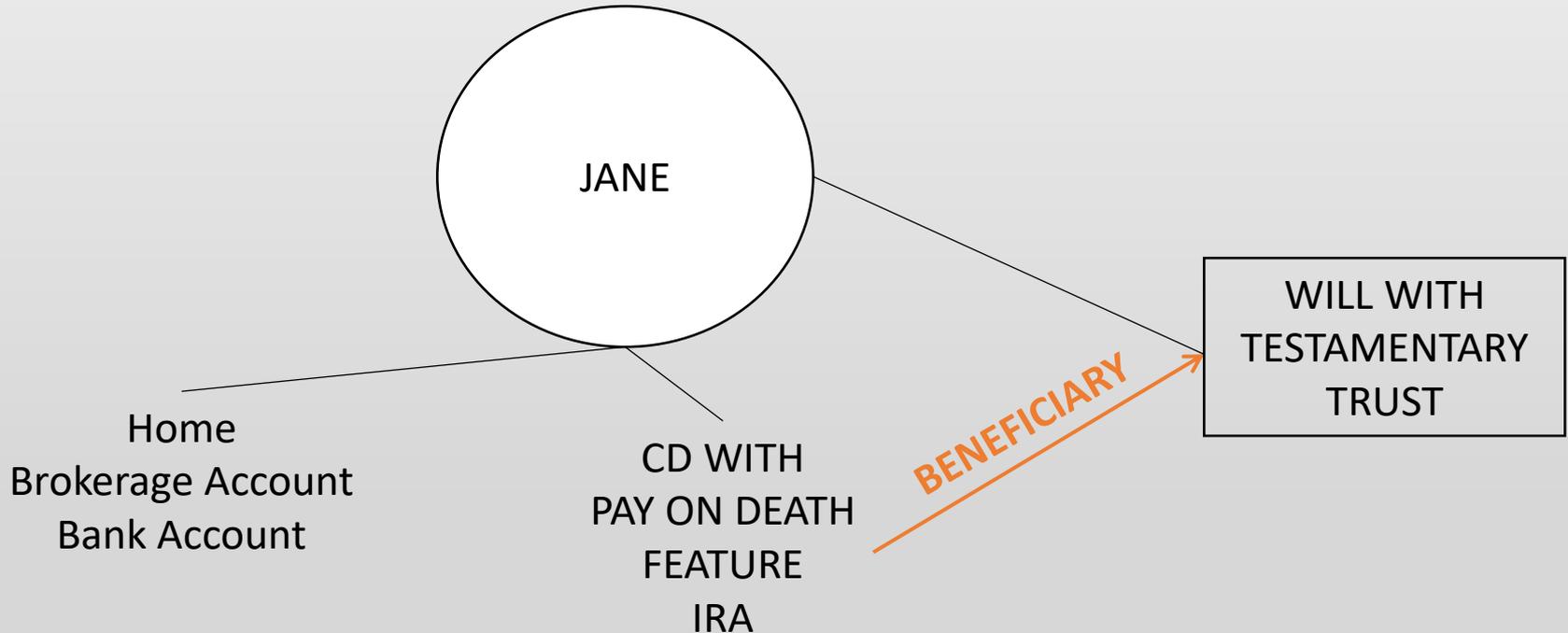


Jane's well meaning banker sets up a CD with a pay-on-death feature, payable to Sally. Jane corrects him and makes the beneficiary the Testamentary Trust.

Jane understood that her CD could go directly to Sally on death but that Sally might lose the CD to potential creditors if she is not 18 years of age. Jane would rather the CD go to a trust for Sally on Jane's death.



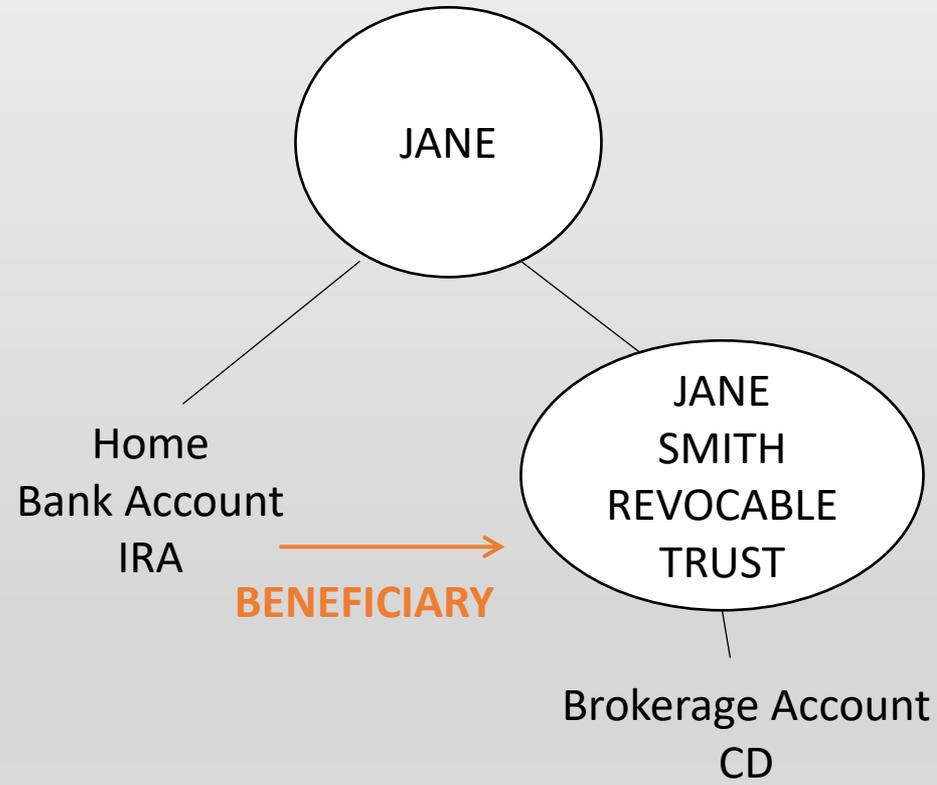
Jane reviews her above assets with her financial planner and finds out that she is a good candidate for having a revocable living trust and “pour over Will” in order to avoid probate on her home, her brokerage account, and her bank account if she dies.



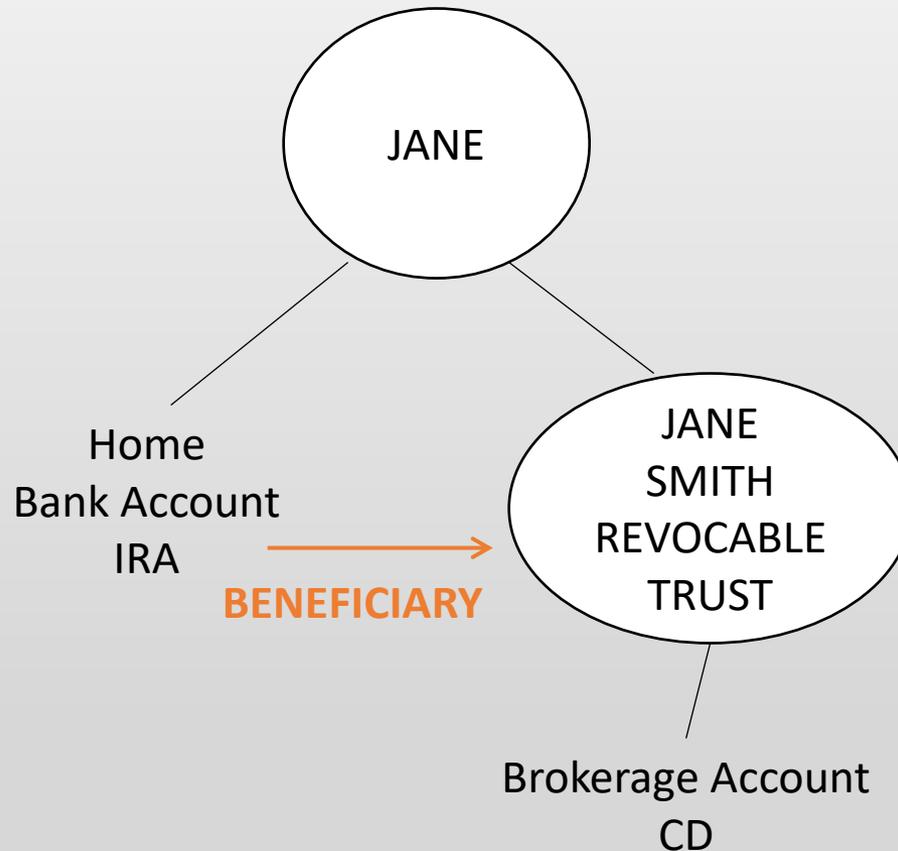
Jane establishes the Jane Smith Revocable Trust and may title her brokerage account and her home under the Trust. She should talk to a qualified lawyer before putting her home in the Trust though because there are technical issues in Florida with respect to this.

On Jane's death the Trust continues for Sally with another trusted individual and/or trust company to be Co-Trustees until Sally reaches the age of maturity, which is expected to be 80 years old.

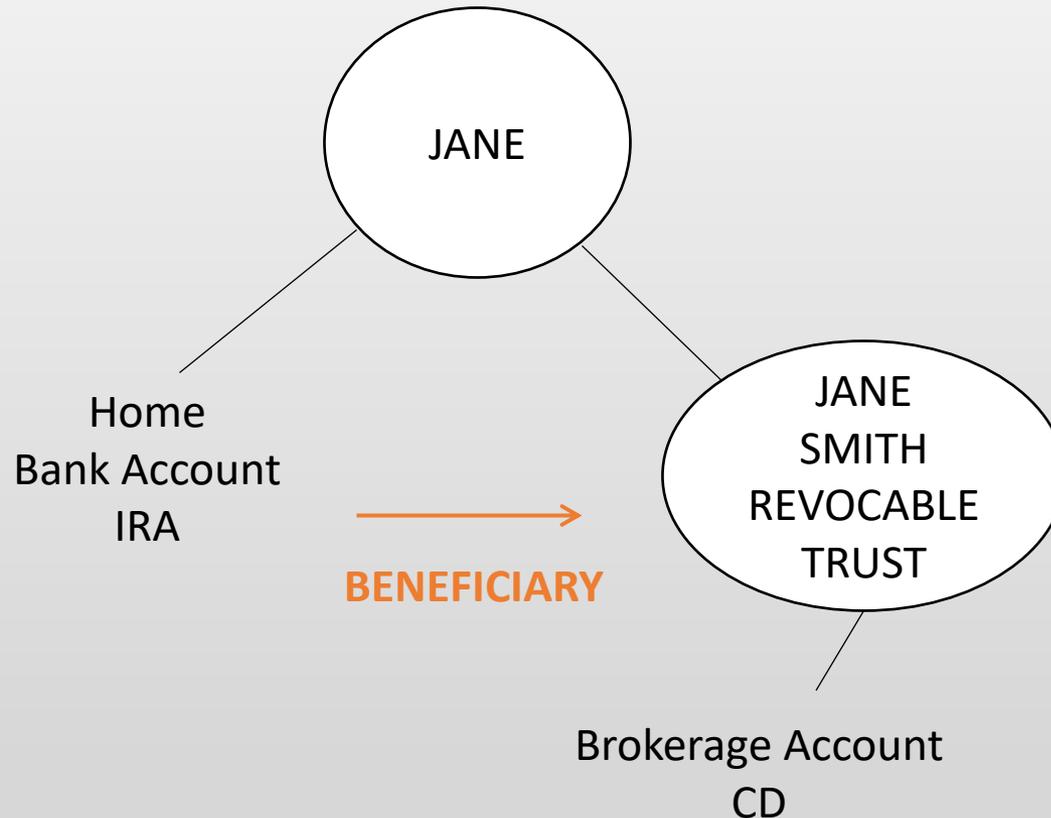
Having the CD owned by the revocable trust avoids probate and guardianship issues.



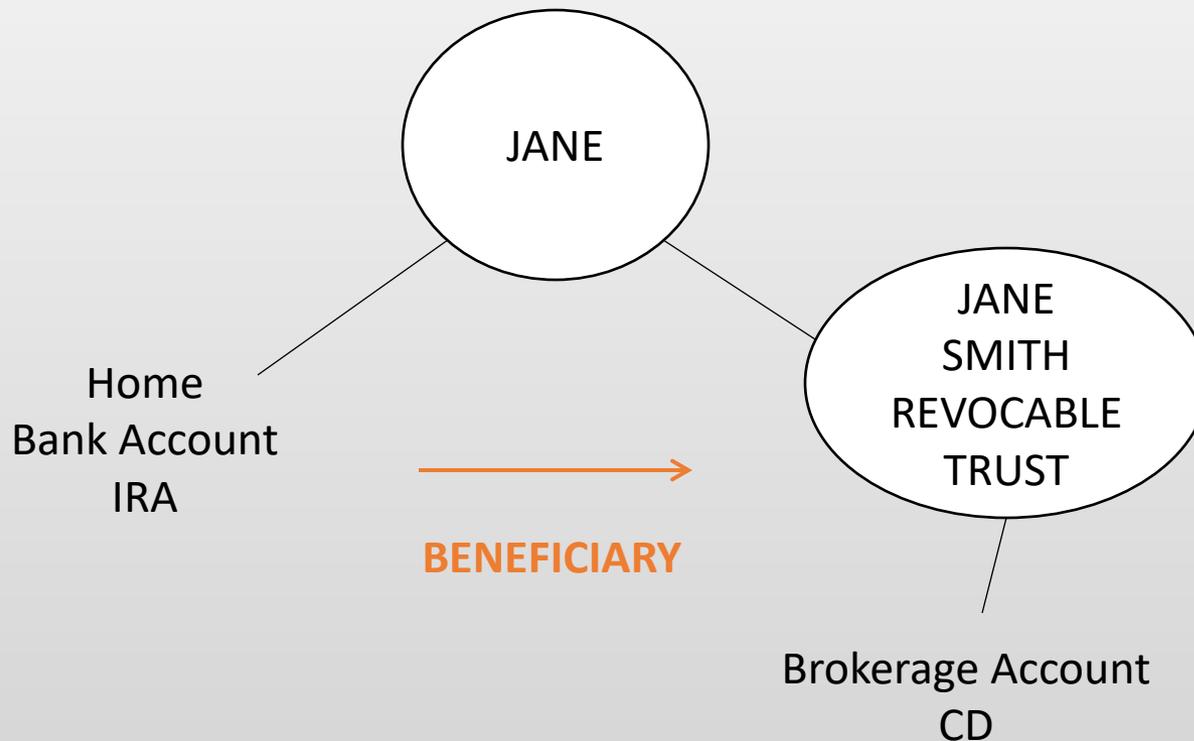
The Trust is revocable and Jane is the Trustee, so it does not need a separate tax identification number. Jane puts her brokerage account under the Trust, and may put her house into the Trust and makes her IRA payable to the trust.



The trust continues for Sally after Jane's death, with another trusted adult or trust company to be the trustee at least until Sally is 18, and preferably until she grows up (perhaps at age 80).

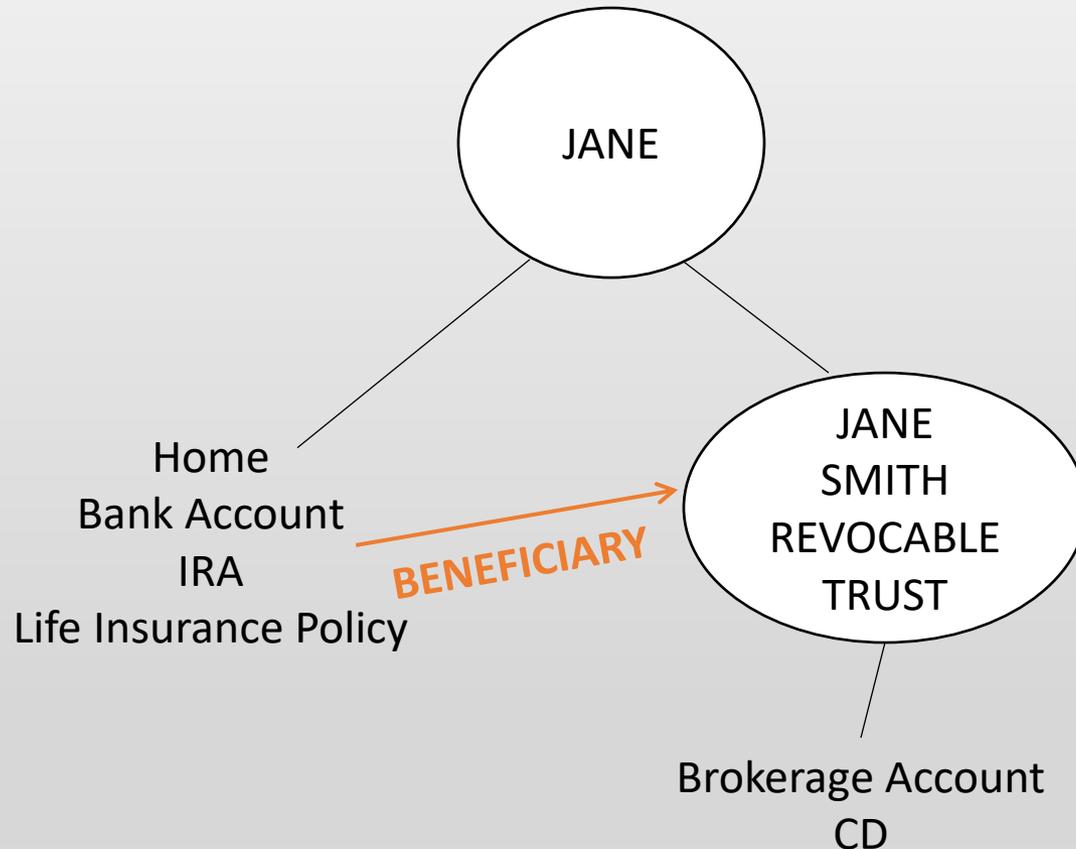


Jane should not put ownership of a life insurance policy or an annuity contract in the name of the trust, or they may no longer be creditor protected under the Florida Statutes.



Jane buys a life insurance policy and she is the owner. The beneficiary is the revocable trust, which becomes irrevocable on her death.

If she did not have the revocable trust, then the beneficiary of the life policy would have been the Testamentary Trust under her prior Will.

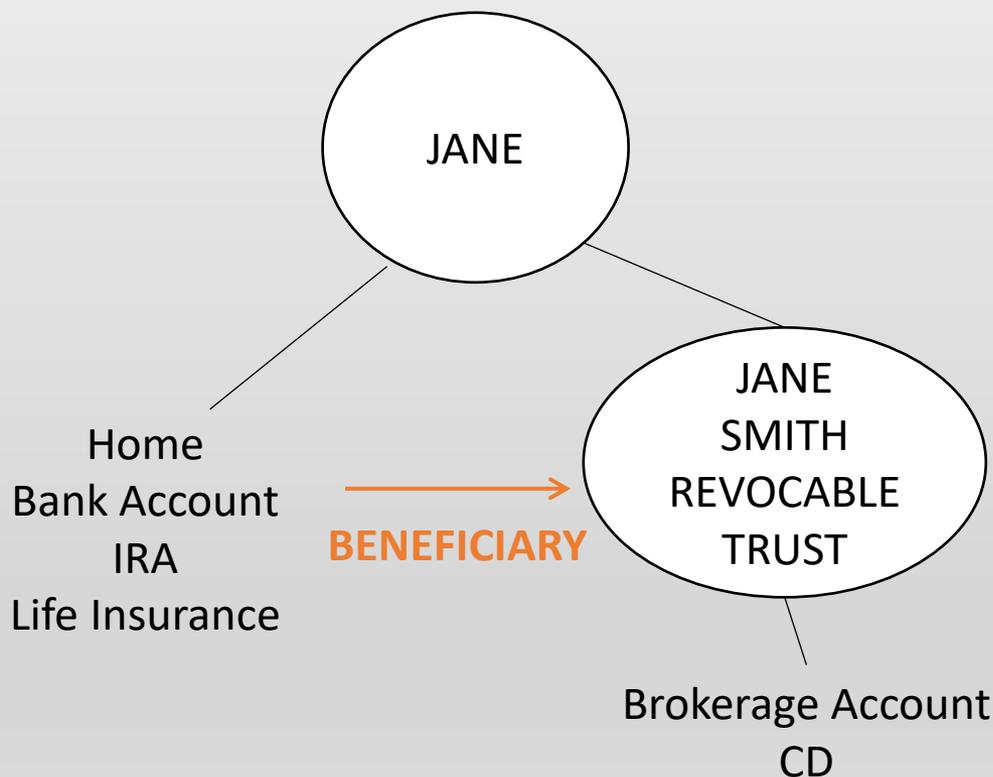


A different alternative is that Jane buys an annuity contract, and the beneficiary is the revocable trust.

Jane's IRA is relatively small, so it is fine for the beneficiary to also be the revocable trust. For large IRAs, the trust should be carefully drafted so that it can "stretch out" withdrawals over the life expectancy of the beneficiary under the IRA stretch rules. If the proper language is not used then the IRA would have to be paid out within 5 years of Jane's death. These rules apply to 401k plans and pension plans.

**IRA stretch rules state that you must take money out ratably and not sit on the money and wait to withdraw it.** The rules allow you to take the money out over the life expectancy of the oldest trust beneficiary, if the trust is specially drafted. Therefore, if you have more than one beneficiary it may be beneficial to have the trust split into separate trusts for each beneficiary, and have the IRA split also and paid into the separate trusts so that it is based on the life expectancy of each beneficiary.

Drafting the language for a "Stretch IRA Trust" requires intimate knowledge and precision – **MOST trusts** do not have the needed language for this.



## Please see the following articles on Mr. Gassman's Forbes Blog:

### **How to Avoid A Healthcare Surrogate Tragedy**

<https://www.forbes.com/sites/alangassman/2018/10/04/avoiding-tragic-health-care-surrogate/>

### **Why Inherited IRA Wealth Is Now Less 'SECURE' And What To Do About**

<https://www.forbes.com/sites/alangassman/2020/01/20/why-inherited-ira-wealth-is-now-less-secure-and-what-to-do-about-it/>

### **Not All Inheritance Trusts Are Created Equally**

<https://www.forbes.com/sites/alangassman/2019/07/31/not-all-inheritance-trusts-are-created-equally/>

### **The Most Valuable Gift You Can Give: A Good Estate Plan**

<https://www.forbes.com/sites/alangassman/2018/12/17/the-most-valuable-gift-you-can-give>

### **Your Biggest Financial Nightmare Is Parked In Your Driveway**

<https://www.forbes.com/sites/alangassman/2018/12/05/your-biggest-financial-nightmare-is-parked-in-your-driveway/>

**What To Do When You Might Get** <https://www.forbes.com/sites/alangassman/2018/08/31/life-insurance-considerations-do-you-choose-your-policy-or-has-your-policy-chosen-you/>

### **New IRA Guidance on Pre-Kindergarten 529 Plans And Other Issues**

<https://www.forbes.com/sites/alangassman/2018/08/08/new-ira-guidance-on-pre-kindergarten-529-plans-and-other-issues/>



## Federal Estate and Gift Tax Basics

- **Objective:** Explain the fundamentals of estate and gift taxes.
- **Estate Tax Exemption:** Current limits and portability rules.
- **Gift Tax:** Definition, lifetime exemption, and annual exclusion gifts.
- **Examples:** Case studies on maximizing exemptions.

# Estate Tax Exemption: Limits and Portability Rules

The Federal Estate Tax applies to estates above a certain exemption limit.

- 2025 Exemption: \$13.99 million per individual (\$27.98 million for couples with portability).
- Portability allows a surviving spouse to use the deceased spouse's unused exemption.
- Exemptions are subject to legislative changes.

# How Portability Works

- Each individual has their own federal estate tax exemption (\$13.99 million in 2025).
- If a spouse dies and does not use their full exemption, the unused portion can be transferred to the surviving spouse.
- This means a married couple can shield up to **\$27.98 million** from federal estate taxes (as of 2025) with proper planning.

# Portability Requirements

- **Filing Form 706:**

- The estate of the deceased spouse **must file IRS Form 706** nine months after the decedent's date of death, however, the estate's representative may request an extension of time to file the return for up to six months. An automatic six-month extension of time to file the return is available to all estates, including those filing solely to elect portability, by filing Form 4768 on or before the due date of the estate tax return, even if no estate tax is owed.

**Only for U.S. Citizens:** Portability is only available to U.S. citizen spouses; it does not apply to non-citizen spouses unless a **Qualified Domestic Trust (QDOT)** is used.

# Why Portability Matters

- **Maximizes Estate Tax Savings:** The surviving spouse effectively doubles their exemption amount, shielding more assets from estate taxes.
- **Simplifies Estate Planning:** Portability allows couples to reduce the need for complex trust structures, though **bypass trusts** may still be beneficial for asset protection and growth outside the taxable estate.
- **Preserves Wealth for Heirs**

# Limitations & Considerations

- **Does Not Apply to GST Tax:** Portability only applies to the estate tax exemption, not the **generation-skipping transfer (GST) tax** exemption.
- **Exemption Could Be Reduced in 2026:** The current high exemption amount is scheduled to **sunset after 2025**, potentially reducing it to **around \$7 million per individual** unless Congress extends current laws.
- **Growth of Inherited Assets May Be Taxed:** If a surviving spouse inherits assets and they appreciate significantly, they could be taxable in their estate. **Bypass trusts** can be used to keep growth outside the taxable estate.

# Example of Portability

- John passes away in 2025 with a \$5 million estate, leaving it to Mary.
- His unused exemption is **\$13.99M - \$5M = \$8.99M**.
- If Mary elects portability, she inherits John's unused exemption, adding it to her own \$13.99M exemption.
- When Mary later passes away, she can shield **up to \$22.98M (\$13.99M + \$8.99M)** from estate taxes.

# Gift Tax: Lifetime Exemption & Annual Exclusion

- - Lifetime Gift Tax Exemption: \$13.61 million per individual (2024).
- - Annual Exclusion: \$18,000 per recipient per year (2024).
- - Gifts above the annual exclusion reduce the lifetime exemption.
- - Gifts to spouses (U.S. citizens) are unlimited and tax-free.

# Gift Tax Basics: Definition, Lifetime Exemption, and Annual Exclusion

Understanding Key Concepts and Tax-Free Gift Strategies

# What is the Gift Tax?

- - A federal tax imposed when transferring money or assets without receiving something of equal value.
- - Prevents individuals from avoiding estate taxes by gifting assets before death.
- - Most gifts are **\*\*not taxed\*\*** due to exemptions and exclusions.

# Lifetime Gift Tax Exemption (Unified Credit)

- **\*\*2025 Exemption:\*\*** \$13.99 million per individual.
- - Unified with the estate tax, meaning gifts made reduce the exemption available at death.
- **\*\*Married couples:\*\*** Can transfer up to \$27.98 million tax-free using portability.
- Applies to cumulative lifetime gifts exceeding annual exclusions.

# Annual Gift Tax Exclusion

- 2025 Limit: \$19,000 per recipient per year.
- Tax-free gifts can be made to multiple individuals without affecting the lifetime exemption.
- Married couples: Can give up to \$38,000 per recipient.
- Gifts exceeding this amount require filing IRS **\*\*Form 709\*\***, but no immediate tax is owed.

# Example: Gift Tax Planning in Action

## Scenario 1:

- A grandfather gifts \$19,000 to each of his 4 grandchildren in 2025.

Total gifts: \$76,000

- Since each gift is under the annual exclusion, no gift tax return is required.

- Scenario 2:

- A parent gifts \$50,000 to their child in 2024.
- \$19,000 qualifies for the annual exclusion.
- The remaining \$31,000 reduces the lifetime exemption.

- Gift tax return (Form 709) must be filed, but no tax is owed.

# Tax-Free Gifts That Don't Count Toward the Exemption

- Gifts to a U.S. citizen spouse:
  - Unlimited tax-free amount.
- Payments for medical expenses
  - Must be paid directly to the provider.
- Tuition payments:
  - Must be paid directly to the school.
- Charitable gifts:
  - May qualify for a tax deduction.

# State Estate & Inheritance Taxes: Key Insights

Understanding Which States Impose These Taxes & What  
You Need to Know

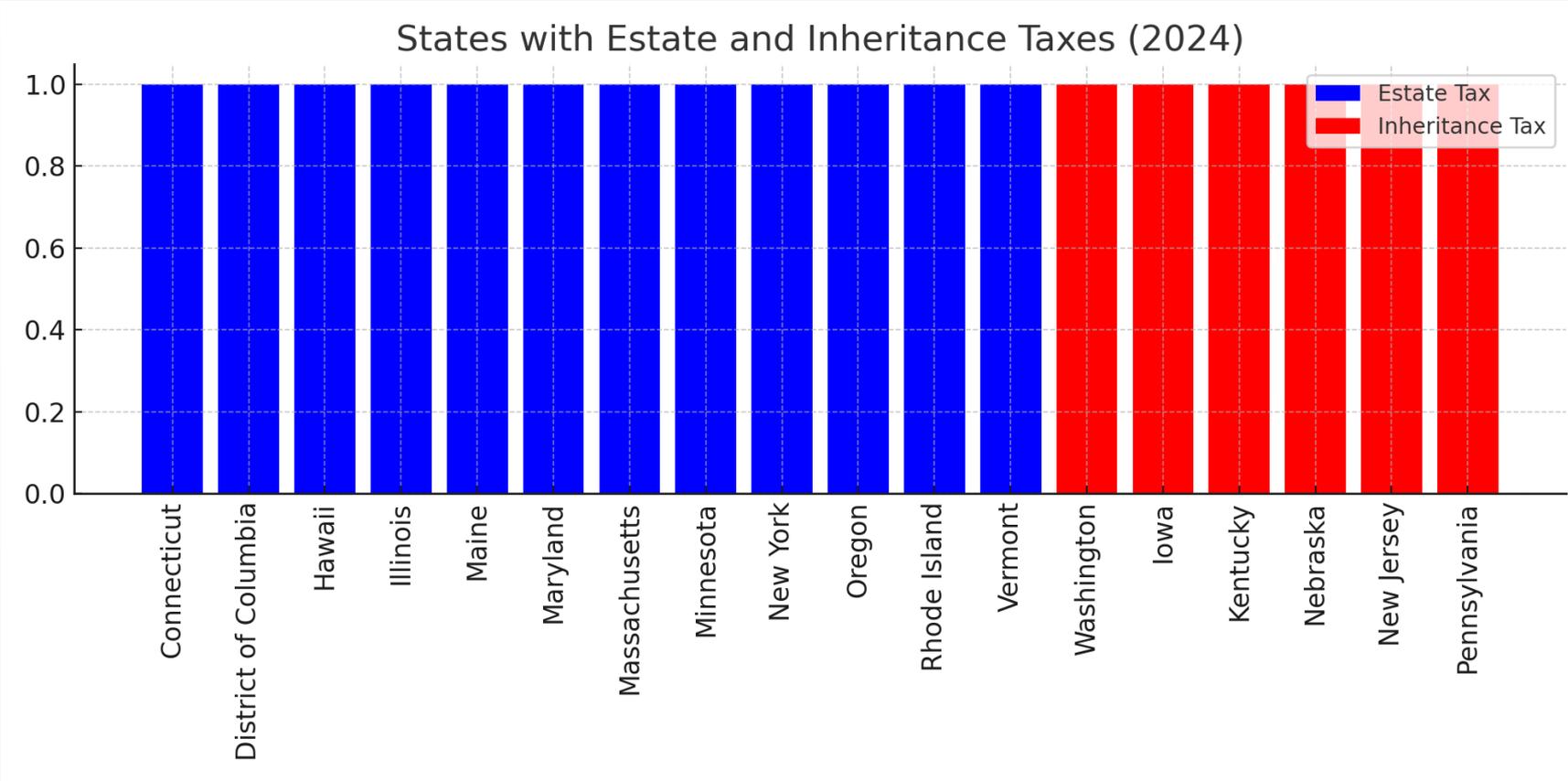
# Estate Tax vs. Inheritance Tax: Key Differences

- Estate Tax: Tax on the estate before assets are distributed to heirs.
- 
- Inheritance Tax: Tax paid by the recipient of an inheritance.
- Some states impose both, while others have only one or neither.
- Federal estate tax applies to estates over \$13.99M (2025), but state thresholds are lower.

# Which States Impose Estate & Inheritance Taxes?

- Estate Taxes: Connecticut, D.C., Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, New York, Oregon, Rhode Island, Vermont, Washington.
- 
- Inheritance Taxes: Iowa, Kentucky, Maryland, Nebraska, New Jersey, Pennsylvania.
- Maryland is the only state with both estate & inheritance taxes.

# States with Estate & Inheritance Taxes (2024)



# Key Considerations for Estate & Inheritance Taxes

- **Thresholds Vary:** State estate tax exemptions are much lower than the federal exemption.
- **Family Members May Be Exempt:** Some states exempt spouses, children, or other close relatives from inheritance tax.
- **Gifting Strategies:** Tax-free gifts can reduce taxable estate value over time.
- **Relocation Planning:** Moving to a tax-friendly state can help avoid these taxes.

# **Role of Life Insurance in Estate Planning**

**Objective:** Highlight the strategic uses of life insurance in estate planning.

- **Providing Liquidity:** Covering estate taxes and debts.
- **Equalizing Inheritances:** Balancing distributions among heirs.
- **Funding Buy-Sell Agreements:** Succession planning for business owners.  
(Hold for Session 5)
- Real-world examples of strategic life insurance use.

# A Crucial Consideration

Deciding who will own the policy,  
and what person or trust will be the beneficiary,  
is an important question to answer.

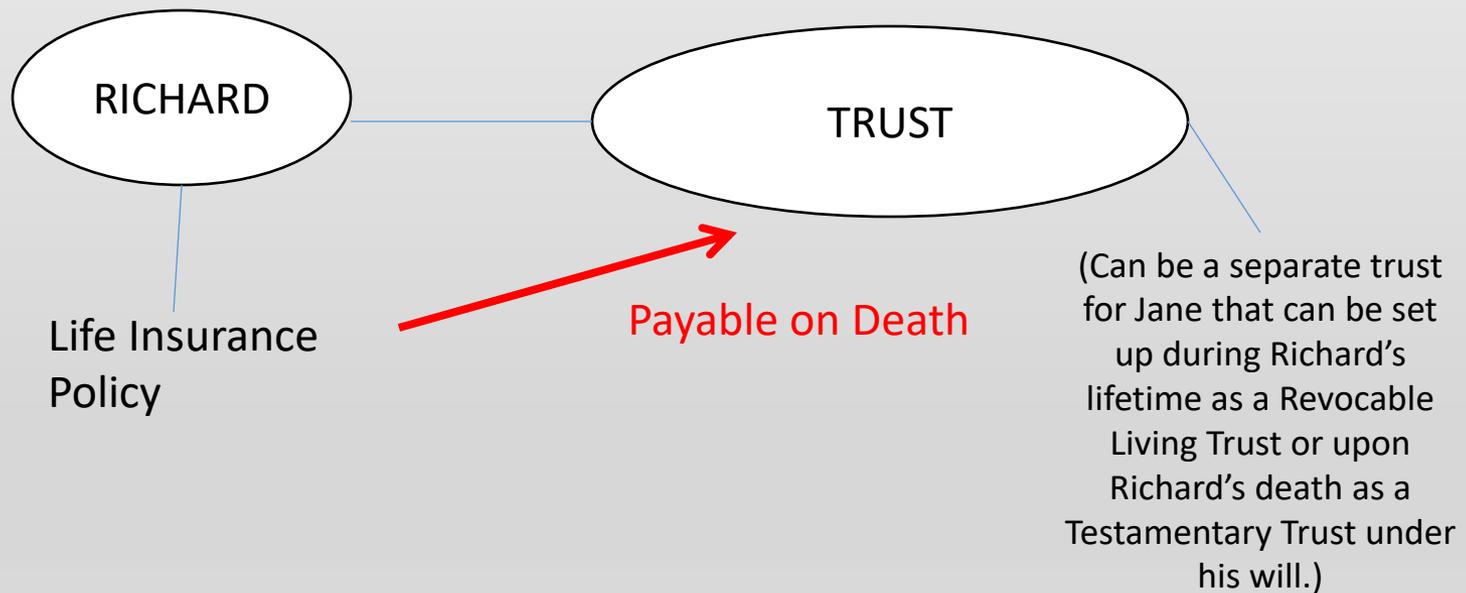


Jane buys a \$5,000,000 life insurance policy on Richard. If Jane owns the life insurance policy, then when Richard dies, Jane will have a large estate for estate-tax purposes, and the monies will be subject to her creditor claims.

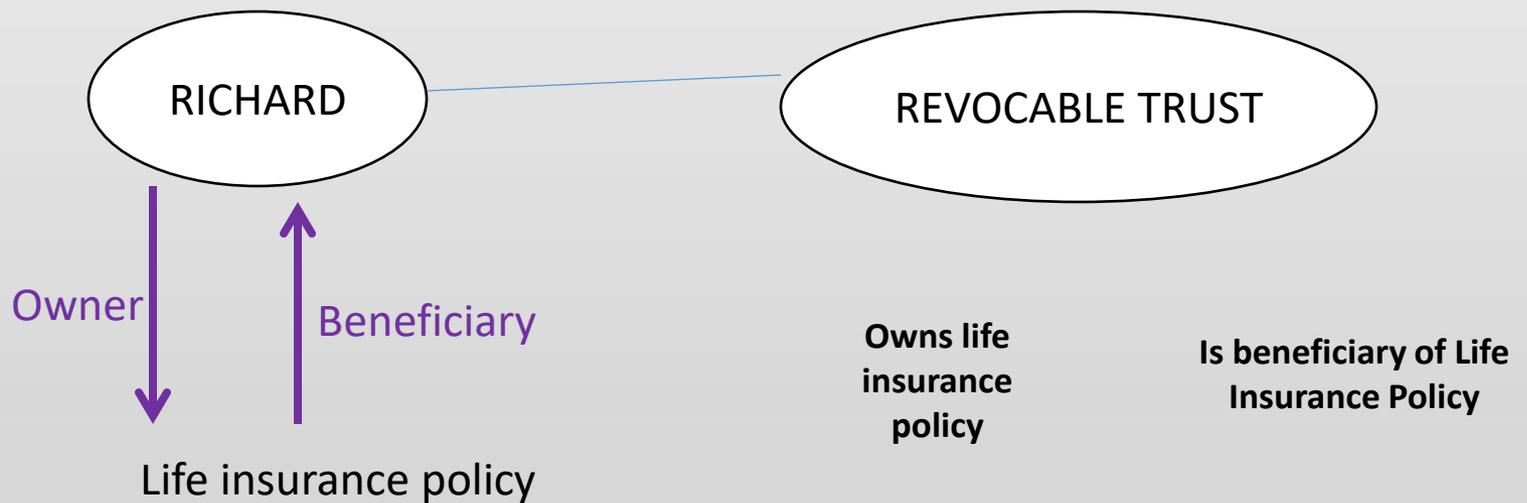


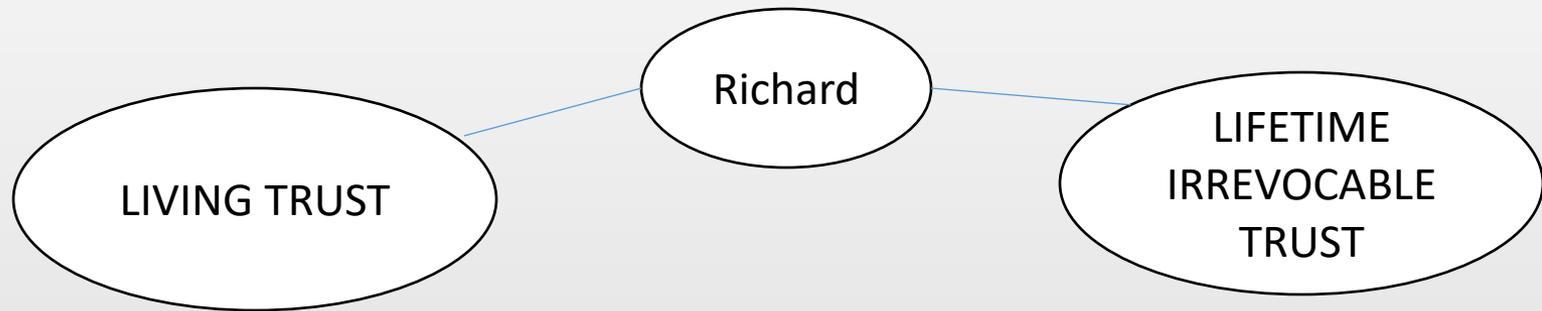
Jane can protect the \$5,000,000 policy by doing one of the following:

- (a) Have Richard own the policy and make it payable to a special trust for Jane that can be established on Richard's death. Jane can be the trustee and receive amounts as needed for health, education, and maintenance. Jane can also have the right to direct the trust assets.



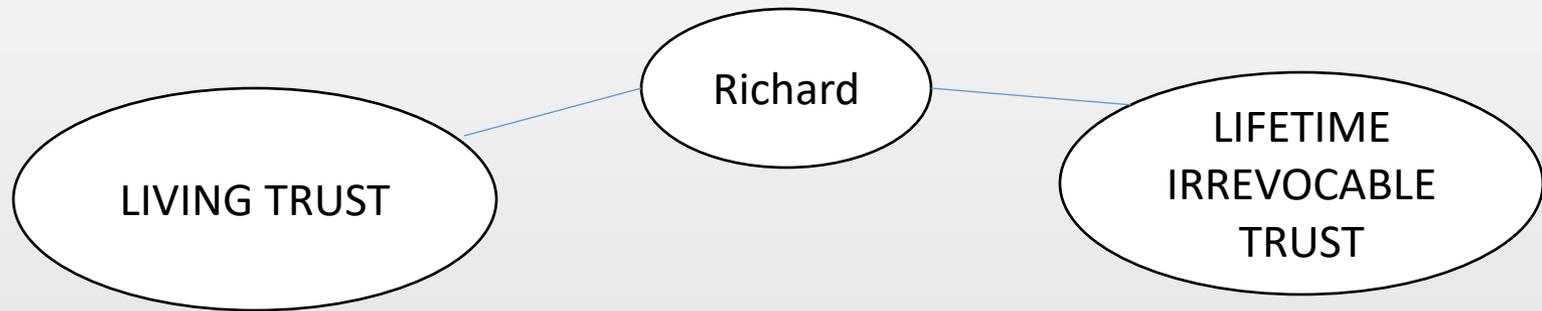
(b) Richard can set up a revocable trust that accomplishes the same goals as the trust in the previous slide, and if Richard owns the policy the trust can be the beneficiary of the policy.





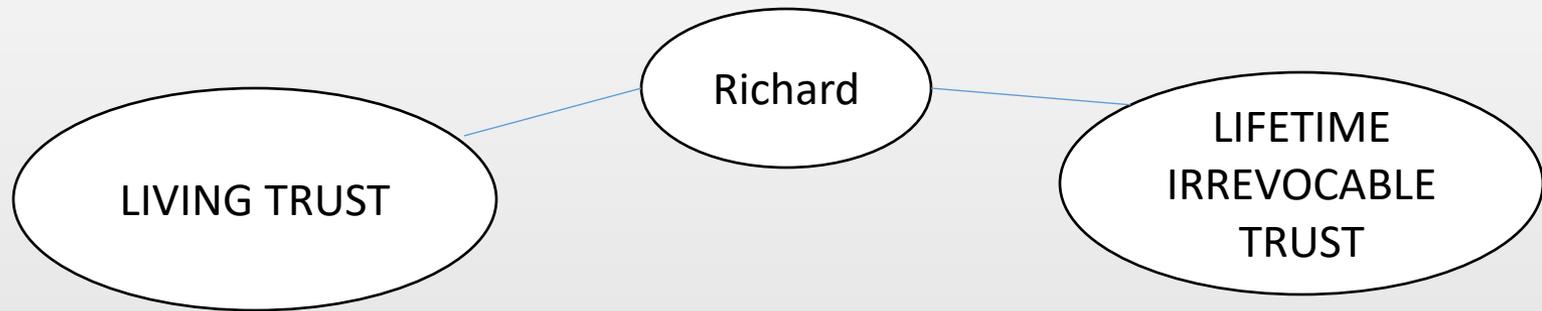
(c) Richard can also set up an irrevocable life insurance trust to reach the same result without any estate tax issues, if properly established and funded.





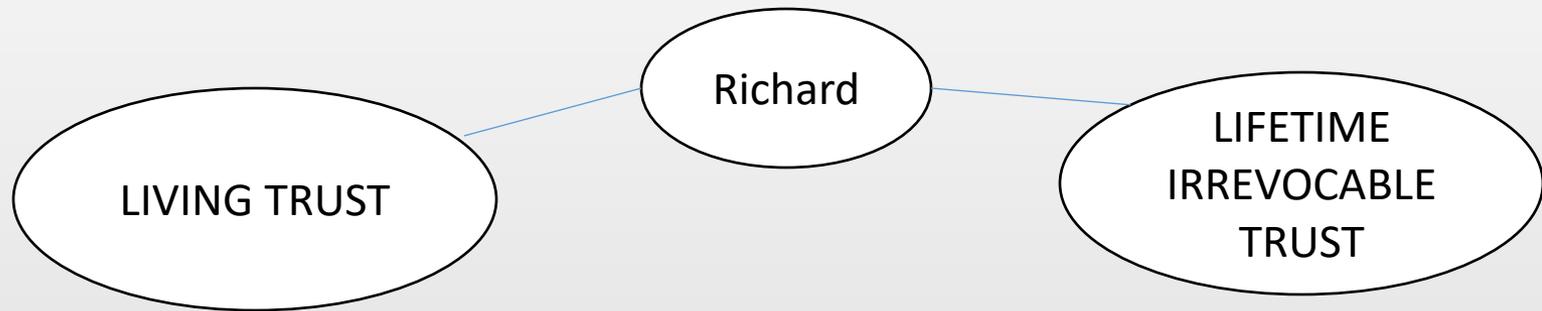
Richard and Jane go to a good estate and estate-tax-planning lawyer who wants to help them protect their assets from estate tax, creditor claims, and other types of issues.





The lawyer explains that Richard has a \$13.99 MM gifting allowance that can be used all or in-part during his lifetime.





Richard sets up a lifetime irrevocable trust for Jane and Janette. Richard funds the trust with the life insurance policy and a \$5,000,000 gift of discounted limited partnership interests.

Richard also establishes a living trust so that if Richard has assets on his death, they can be held for Jane's benefit in an appropriate manner.



# INTRODUCTION

Term life insurance is the simplest form of life insurance.

Life insurance is a contract between a life insurance company and the person or people who own a life insurance policy.

The contract basically says that if premium payments are made on time, the carrier will pay a death benefit when a person dies, or sometimes before this, if the person has a near fatal illness and needs cash before he or she dies.

In order to buy life insurance, a person has to fill out an application and take a physical examination, which normally includes blood testing, urine testing, and an EKG that is administered at the applicant's home or office by a nurse.

The questionnaire will include the last five years of medical information, and the carrier will spend 5 to 8 weeks reviewing the medical records that it obtains from doctors' offices and other medical facilities, running a credit report and looking at the other medical records.

Normally, an application is a “**formal application**,” and the information in the application goes to a Bureau that all life insurance companies have access to for up to 8 years after the application is filed.

An “**informal application**” is an application made to only one carrier that is not shared with the Bureau unless or until the carrier agrees to issue a policy.



# INTRODUCTION

Once the carrier has the information and has decided that it is willing to issue a policy, it will make an offer that will include the death benefit and the premium costs.

Different carriers will give different offers, and there is much to think about beyond just what the death benefit and premium amounts will be.

These other factors include:

1. The strength, size and history of the carrier.
2. For term insurance, whether there is a right to convert to a permanent policy before premium amounts go up, and when that “conversion option” can be exercised.
3. Who will be your sales agent or policy representative? – Do you prefer to deal directly with a carrier or with an individual who sells you the policy?

**If a policy application is not completely truthful, then there may be no death benefit – but if the insured lives longer than two years after the policy is issued, the policy may be “incontestable.”**



# What Alan Tells His Clients About Buying Term Insurance

- You can ask an independent agent who writes for many carriers to have the client take the physical so that they can get quotes from several carriers.
- ★ You can ask that all results and quotes be confidential and not given to the bureau that all carriers belong to and share information with. Once a carrier turns the client down or "rates" the client all other carriers know.
- This is called an "informal application" and then the carriers can each give informal quotes for term coverage. If the client likes the quote then he or she can buy it.



# What Alan Tells His Clients About Buying Term Insurance, Continued

- You might spread this among 2 or 3 carriers in case one goes under.
- Better to buy six \$500,000 policies with separate carriers than one \$3,000,000 policy with one carrier for financial security. You cannot reduce the amount of coverage in a life insurance policy once purchased, but you can terminate smaller policies to adjust coverage downward when appropriate.
- Sample term rates for "preferred," "standard" and "standard smoker" individuals at ages 35, 40, 45, 50 and 55 are as follows:



# Buying Term Insurance

<b><u>AGE 30</u></b>						
	<b><u>PREFERRED</u></b>		<b><u>STANDARD</u></b>		<b><u>STANDARD SMOKER</u></b>	
	<b><u>MALE</u></b>	<b><u>FEMALE</u></b>	<b><u>MALE</u></b>	<b><u>FEMALE</u></b>	<b><u>MALE</u></b>	<b><u>FEMALE</u></b>
10 Year Term	\$378	\$328	\$658	\$518	\$1,548	\$1,218
15 Year Term	\$458	\$398	\$768	\$688	\$1,918	\$1,438
20 Year Term	\$608	\$478	\$968	\$738	\$2,278	\$1,638
30 Year Term	\$938	\$768	\$1,518	\$1,218	\$3,908	\$3,018

<b><u>AGE 40</u></b>						
	<b><u>PREFERRED</u></b>		<b><u>STANDARD</u></b>		<b><u>STANDARD SMOKER</u></b>	
	<b><u>MALE</u></b>	<b><u>FEMALE</u></b>	<b><u>MALE</u></b>	<b><u>FEMALE</u></b>	<b><u>MALE</u></b>	<b><u>FEMALE</u></b>
10 Year Term	\$505	\$435	\$925	\$785	\$2,405	\$2,005
15 Year Term	\$655	\$575	\$1,215	\$1,035	\$3,125	\$2,485
20 Year Term	\$865	\$745	\$1,505	\$1,255	\$4,345	\$3,185
30 Year Term	\$1,495	\$1,135	\$2,465	\$1,985	\$7,175	\$5,275



# Buying Term Insurance

<b>AGE 50</b>						
	<b><u>PREFERRED</u></b>		<b><u>STANDARD</u></b>		<b><u>STANDARD SMOKER</u></b>	
	<b><u>MALE</u></b>	<b><u>FEMALE</u></b>	<b><u>MALE</u></b>	<b><u>FEMALE</u></b>	<b><u>MALE</u></b>	<b><u>FEMALE</u></b>
10 Year Term	\$1,235	\$1,025	\$2,145	\$1,625	\$6,435	\$4,295
15 Year Term	\$1,785	\$1,235	\$2,805	\$2,065	\$7,825	\$5,725
20 Year Term	\$2,225	\$1,625	\$3,425	\$2,715	\$10,425	\$6,865
30 Year Term	\$4,025	\$2,645	\$6,245	\$4,785	\$13,719	\$10,109

<b>AGE 60</b>						
	<b><u>PREFERRED</u></b>		<b><u>STANDARD</u></b>		<b><u>STANDARD SMOKER</u></b>	
	<b><u>MALE</u></b>	<b><u>FEMALE</u></b>	<b><u>MALE</u></b>	<b><u>FEMALE</u></b>	<b><u>MALE</u></b>	<b><u>FEMALE</u></b>
10 Year Term	\$3,098	\$2,198	\$4,808	\$3,278	\$13,028	\$8,308
15 Year Term	\$4,488	\$3,048	\$7,088	\$5,218	\$17,658	\$12,978
20 Year Term	\$5,798	\$4,078	\$9,488	\$6,668	\$22,048	\$15,058
30 Year Term	Not Available	Not Available	Not Available	Not Available	Not Available	Not Available



# Consider the Following for Term Life Policies

1. Request deadlines for conversion on term policy coverage.
2. Understand convertibility features and quality of carriers convertibility options.
3. Will it be possible to reduce the policy or should policies be purchased in smaller increments?
4. Use multiple carriers to enhance financial security?
5. Schedule for replacing term coverage or converting to permanent coverage well before conversion deadline, which is usually one year before the last year of the fixed term competitive rate coverage.
  - A. Consider keeping previous coverage in place two years or less for contestability purposes.
  - B. What riders would be considered for term insurance policies?
  - C. Term insurance with premium refund – is this ever worthwhile?
  - D. Is there second-to-die term or any equivalent? – Consider a minimum pay variable or universal no-load coverage with minimum annual payments to have second-to-die coverage available and at least temporarily in place.



# Permanent Cash Value Products

Four primary varieties of permanent life insurance products have the expectation of an increasing cash value that will, to some degree, provide a return on investment to pay or help pay mortality and maintenance costs that might eventually facilitate having the cash value replace the death benefit at an advanced age can take a number of forms.



	Term Life	Whole Life	Universal Life	Variable Universal Life	Guaranteed Universal Life	Equity Index Life Distinguishing Feature
Distinguishing Feature	Provides protection for a specific period	Lifetime protection for as long as premiums are paid	Guaranteed minimum interest rate on investments accumulated in the accounts – interest rates are based on bonds only and can be higher than the minimum guaranteed	Combines premium and death benefit flexibility of universal life with investment choice of variable life	Death benefit is guaranteed if specified premiums are made timely for a given period of years	No loss of cash value in negative stock market years – rate of return will be a portion of index performance
Premium	Fixed, but will increase at each renewal	Fixed	Flexible since they are set by the policyholder	Flexible, like universal life	Fixed	Flexible, like universal life
Cash Value	None	Guaranteed	Account value minus the surrender charges	Not guaranteed; depends on performance of stocks	Can generate significant cash value (albeit at a higher premium)	See above
Death Benefit	Face amount of policy if death occurs within the term	Face amount of policy if in force when death occurs	<u>Option A:</u> maintain level death benefit <u>Option B:</u> face amount increases as cash value grows <u>Option C:</u> death benefit increases to facilitate a return of all premiums on death	Same options as universal life	Guaranteed if premiums paid timely; accelerated death benefit rider for chronic and terminal illness	Same options as universal life
Can Borrow Against Cash Value	N/A	Yes	Yes	50%; Subject to Regulation U	May lose “no-lapse” guarantee	Depends upon policy
Cash Value at Risk if Carrier Fails	N/A	Yes	Yes	No	Yes	Yes
Can be Sold without Series 6 License	Yes	Maybe	Yes	No	Yes	Yes
Life Settlement	Yes	Maybe	Yes	Maybe	Yes	Yes
Regulated By	State	State	State	FINRA and State	State	State



Life Insurance Product	First Year Commission (\$)	Next Six Years Commissions	Total Seven Year Commissions
20-year term policy Premium: \$2,500/year Mutual Fund Investment: \$27,500/year	\$2,500 (the first year premium)	\$5,775 (3% of the Mutual Fund Investment) (\$27,000 x 6 = \$162,000)	\$8,275
Fee-for-Service no-load life insurance Premium: \$30,000	0	Between 1% and 2% of cash value (advisor fee)	Between 1% and 2% of cash value (May be \$6,000)
No commission concessions Premium: \$30,000	\$18,000; plus 3% of annual premiums a year plus next 6 years	\$900 for the next 6 years; plus 2-4% of premium (\$600 to \$1,200 per year)	\$23,400
Discount commission Premium: \$30,000 Advisor agrees to discount commissions by 90%	\$1,800	\$2,100 a year for 7 years	\$7,170



## When looking at an existing permanent policy, we typically ask about the following:

1. What is the exact premium history, and the rate of return thus far?
2. Should the death benefit be decreased, or contributions made to meet but not exceed the minimum corridor guidelines?
3. The same as #2 above, but to meet the modified endowment contract guidelines, if the client will never need to borrow or otherwise withdraw from the policy during his or her lifetime.
4. Withdraw as much as possible tax free and convert remaining value to a lower cost annuity.
5. Should the policy be sold?
6. Are there riders that can be eliminated to enhance expected rate of return?

If the insured or insureds are in very good health, as compared to the mainstream insureds who have purchased policies of the same type from the same carrier many years back, then a replacement policy may be worth considering.

If the death benefit is no longer needed, then withdrawing the maximum amount that can be taken out (up to the tax basis) tax free and converting the remaining policy values into a variable or fixed annuity to defer taxation may be the best planning strategy.



# Riders on the Storm

1. Disability Premium Waiver – a provision that will not require the insured to pay the usual recurring fee to maintain the health insurance policy if the person responsible for paying the premiums is seriously injured. Insurance companies vary in their definition of a disability.
2. Contractual guarantee that if cash value crashes, policy loans need never be repaid.
3. Option to increase death benefit without taking physical.
4. Automatic incrementally increasing death benefit at preset pricing.
5. Term-like coverage on spouse, commonly provided by American Dental Association and similar group policies
6. For second-to-die only:
  - Divisible into two separate policies in the event of divorce (“split option”).
  - Pays a death benefit to the heirs after both spouses are dead
  - Second-to-die can help pay estate taxes and/or provide financial legacy to children



# Tax Talk for Permanent Life Policies

- Premiums are not deductible in the vast majority of circumstances.
- Cash value income used to pay for death benefit is in essence tax-free.
- Can withdraw up to tax basis and then borrow from policy tax-free, but borrowing causes interest differential rate to be paid to the carrier, except with respect to private placement policies
- If death benefit is reduced or started at the modified endowment contract (“MEC”) level, then any pledging of or borrowing from the policy or withdrawal of basis will carry out income first, and subject the owner to the 10% excise tax, unless the owner is an individual over age 59 1/2
- If policy destructs, income may result - if policy is cashed in, ordinary income (not capital gains) will be based upon the cash surrender value received, minus basis, and basis will be based upon premiums paid minus income within the policy that was used to purchase additional death benefit. If a loan is owed to the policy, then the amounts owed are considered to be additional amounts received for income calculation.
- 1035 Exchanges.

