



THE CURTIS LAW FIRM, PLLC
YOUR ESTATE AND BUSINESS PLANNING PARTNER



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Lawyer, Owner
The Curtis Law Firm, PLLC
Serving Clients in Texas
Office: Houston, TX

Practice Areas:
Estate, Trusts, Wills
Corporate Transactions
Business Exit Planning

Estate Planning: *From Basics... To Brain Surgery!*

Estate Planning: *From Basics... to Brain Surgery*

Agenda

- Estate Planning 101: Components of a Basic Plan
- Adding “***Estate Planning***” to Your Practice
- An Introduction to Advanced Estate Planning

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Estate Lawyer



Clients

Primary purpose is property transfer at death

Generally, must be signed by "testator" and witnesses, and must be notarized.
After death, validity proven in court "probate" hearing (before a judge).
Drafting, signing ceremony, and probate should be done by a lawyer.

Foundational Docs

Fiduciaries:
Executor
Agent
Agent

Wills: "Last Will & Testament," transfers property upon death, names guardians, can create trusts at death

Durable POAs: Incapacity/disability planning, empowers "agent" to act on your behalf with property, accounts, etc. (bill pay, buying/selling, etc.)

Medical POAs: Incapacity/disability planning, empowers "agent" to make healthcare decisions on your behalf

HIPAA Release: Empowers healthcare providers to give healthcare info to people you designate (important for "agents" with medical POA!)

Advance Directive: Sets forth clients' wishes for end-of-life care (feeding tubes, breathing machines, etc.)

- * POA documents, HIPAA releases, and Advance Directives...
May all operate **DURING LIFE**.
- * Wills operate only upon death.



Trusts



trust (n.):

a relationship where a trustee holds legal title of property and manages it for the benefit of a beneficiary, according to the terms of the trust agreement.

Trust (the doc) = Trust Agreement or Declaration of Trust

Settlor = Grantor = Trustor
"Trust Creator"

Beneficiary
(Person(s) named as income
or principal recipients)

If There is Already a Will, Is A Trust Needed?

Trusts Can:

- Appoint specialized people to help with asset management for beneficiaries
- Protect assets from some beneficiaries' creditors or divorcing spouses
- Provide control over how and when assets are distributed (as opposed to being transferred all at once, "outright")
- Provide privacy (*wills are on public record!*), trust assets are automatically administered by trustees without court supervision... exception: "testamentary" trusts come into existence by the probate process, and originate from within the terms of the will
- A trust created during life can avoid probate... which is very expensive in some states (i.e. California has high statutory probate costs. About \$23k on the first \$1m! Which is much higher than the cost of a living trust!)

NOTE: Usually, even if you have a trust, you also need a very simple will (called a "pour over" will) as a backstop to the trust.

Other Basic Trust “Stuff” to Know...

- Trusts are basically a list of “rules” the trustee must follow as a fiduciary
- Most trusts have a “spendthrift” provision (often near the end of the trust), which is the name for the provision that prevents distributing assets to beneficiaries to satisfy a creditor claim... this is where trust “asset protection” comes from
- Trusts usually have a section at the beginning that says who created the trust, a section that names the first (and contingent) trustees, sections that talk about how assets are distributed to different beneficiaries, a section that set forth the “powers” the trustee has (what they are allowed, or NOT allowed, to do with trust property), etc.
- Trusts usually state whether they are created as “revocable” or “irrevocable” (but any sub trusts created at death are presumed to be “irrevocable” since the trust creator is no longer alive to “revoke” the trust)
- Trusts may contain many additional provisions... which are generally what distinguishes one type of trust from another.



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Adding “Estate Planning” to Your Practice

Advisors usually do not:

- Practice law—draft documents, provide legal advice about what transactions / docs to have, etc. (*practicing law w/o a license is a crime*)
- Decide for the client or attorney what to do

Advisors often do:

- **Educate** clients about topics they may want to discuss with their estate planning attorney
- Facilitate flow of information **from** client / **to** attorney
- Review and **summarize** client’s situation (estate docs, etc.)
- Identify **suggestions** to improve, and coordinate additional professionals to work with (quarterback)
- Provide helpful analysis and recommendations to attorney



Adding “Estate Planning” to Your Practice

Practice Additions to Consider:

- **Educate:**

- Explain different types of major documents needed

- **Gather Client Info for Attorney:**

- Balance sheet
- Financial plan
- Planning gaps / needs

- **Collect Basic Client Preferences:**

- Fiduciaries for estate documents
- Initial thoughts on distribution

- **Summarize Documents:**

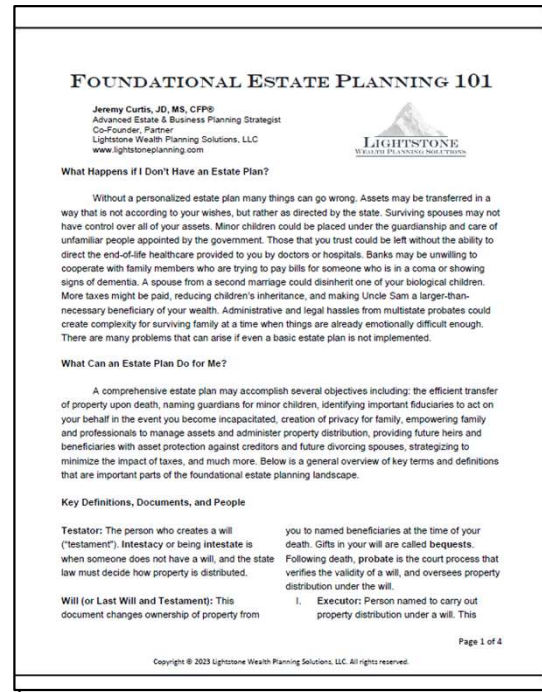
- Which docs they have
- When they were executed
- Who the fiduciaries are
- Who the beneficiaries are
- ***Distribution Summary?***
(Next Level!)

- **Model Taxation:**

- Project taxes, and (more importantly) tax savings, from different strategies



Create a White Paper on Foundational Estate Planning!



Adding “Estate Planning” to Your Practice

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ESTATE DISTRIBUTION & FIDUCIARY PREFERENCES



Spouse #1: _____
 Spouse #2: _____

Use this worksheet to prepare to discuss your estate planning wishes with your attorney.

Spouse #1 Fiduciary Preferences: Select at Least 3 for Each Document

	Will: Executor	Guardians for Minor Children	Property POA: Agent	Medical POA: Agent	HIPAA Medical Info Release
#1					
#2					
#3					
#4					

Spouse #2 Fiduciary Preferences: Select at Least 3 for Each Document

	Will: Executor	Guardians for Minor Children	Property POA: Agent	Medical POA: Agent	HIPAA Medical Info Release
#1					
#2					
#3					
#4					

Spouse #1 Distribution Preferences

1) To whom would you like your property to go to at your death?

(Examples: All to my spouse. All to my children, divided equally. Half to John Smith, one quarter to Jane Jones and Sally Jones. To my children from a prior marriage. To my daughter Elizabeth. To my friend Martha.)

2) If your spouse passes first, to whom would you like your property to go?

3) Do you have any special property that you want certain people to receive, or would you prefer the simplicity having the executor divide property among beneficiaries? A letter with your wishes to your executor can help with this, but would not be legally binding for them to follow exactly.

4) Would you like inheritances to be protected from your beneficiaries' future creditors, predators, and any future divorcing spouses? If so, how long would you like that protection to last? *(Examples: Yes, their entire life. Yes, until they reach age 35, etc.)*

5) Do you own any property out of state? If so, please describe. *(Example: Yes, commercial rental property in the state of Washington.)*

6) Do you own a business? If so, please provide name, industry, number and names of owners, % ownership of each partner, and whether you have a buy-sell agreement or formal succession plan in place *(Example: Yes, Acme Inc, gadget manufacturing, 3 partners, Jane Jones owns 50%, me and James Smith, each own 25%, no formal succession planning.)*

7) Have you made any major gifts before? Any prior planning? If so, please provide details. *(Example: \$20,000 to my son Jeff. \$25,000 every year to charity. \$500,000 to my daughter Jane in 2009. \$1.5 million of company stock to an irrevocable trust for my children in 2007.)*

Adding “Estate Planning” to Your Practice

Practice Additions to Consider:

- **Educate:**
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- **Collect Basic Client Preferences:**
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(Next Level!)
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Sample Client Estate Doc Summary

Your Estate Documents

Property Distribution:

- 2 - Pour Over Wills
- 1 - Living Trust
- 0 - Quit Claim Deed (for home)
- 0 - Personal Property Assignment

Disability / Incapacity Planning:

- 0 - Powers of Attorney for Property (Durable POA)
- 3 - Powers of Attorney for Healthcare
- 0 - HIPAA Release Forms, but 3 – Releases *in the Medical POAs*
- 0 - Advance Directives / Living Wills



Key Document Details

James Lightstone

Pour-over Will: 11/12/2023

Executors:

1. Lisa Lightstone
2. Val and Mary June
3. Stephen Lightstone

Medical POA: 11/12/2023

Agents:

1. Lisa Lightstone
2. Sara Anders
3. **None**

Joint Living Trust: 12/9/2012, Amended 11/12/2023

Trustees:

1. James & Lisa L.
2. Val and Mary June*
3. Stephen Lightstone

HIPAA Release: Embedded in POA for Healthcare

Living Will: Have one?

Property POA: None

Agents:

1. **None**

*Note: If one is incapacitated, the other is sole trustee. This only applies to assets that are in trust.

Lisa Lightstone

Pour-over Will: 11/12/2023

Executors:

1. James Lightstone
2. Val and Mary June
3. Stephen Lightstone

Medical POA: 11/12/2023

Agents:

1. James Lightstone
2. Sara Anders
3. **None**

Joint Living Trust: Same as for James.

HIPAA Release: Embedded in POA for Healthcare

Living Will: Have one?

Property POA: None

Agents:

1. **None**

*Note: If one is incapacitated, the other is sole trustee. Only applies to assets that are in trust.

Observations:

*Wills name guardians for Son: Val and Mary June, then your adult Daughter.

*There is also a Medical POA for your adult daughter (1/2/2023) that names Lisa, then James as her agents.

No Property POA.

*The trust text is not clear that Val and Mary June can serve individually. For example, if Mary passes, Val

may not be able to serve alone as trustee (is that what you wanted?).

*Is there a personal property transfer document?

*Was home deeded to trust? (Quitclaim deed, etc.?)

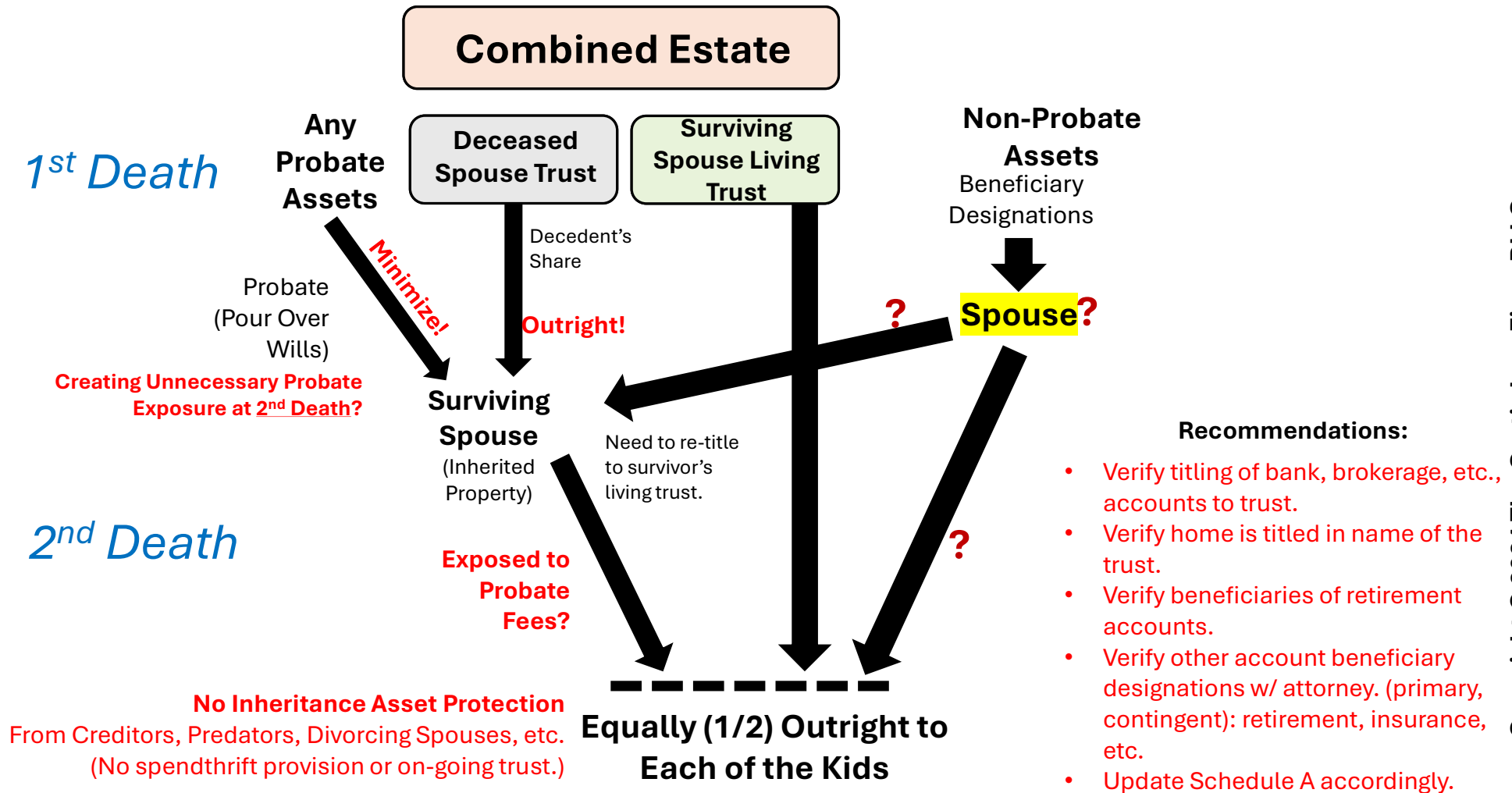
*How are cars owned? (May be best to hold in your own names).

Primary Estate Distribution Summary

Primarily for Spouse, Then Outright to Kids

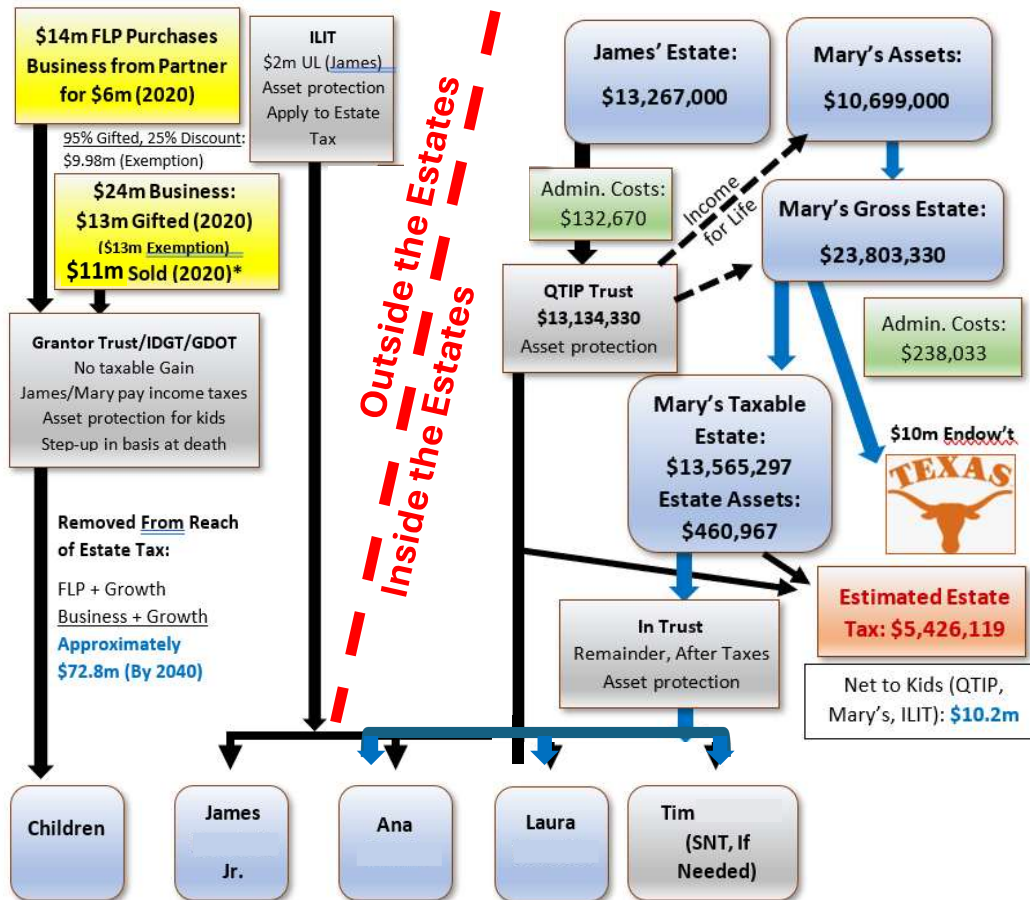


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“Jones” Estate: Extensive Planning (2040)

Wealth Transfer Flowchart (~\$98.8m)



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Uncle Sam: **\$5.4m**

Family: **\$83m** and James gets an inheritance!

- Outside Estates: \$72.8m
- Inside Estates: \$10.2m

Charity: **\$10m**

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Estate Tax in a Nutshell



Estate Tax Intro

Upon death, spouse 1 transferred \$5m to kids when exemptions was \$10m... Form 706 Filed to "elect portability" of the remaining \$5m. ...Everything else left to their surviving spouse.

At death of second spouse...



Estate Value
at Death

\$25.39m Taxable!
(@ 40% Estate Tax) → \$10.16m TAX!

\$5m Exemption (DSUE - from Portability)

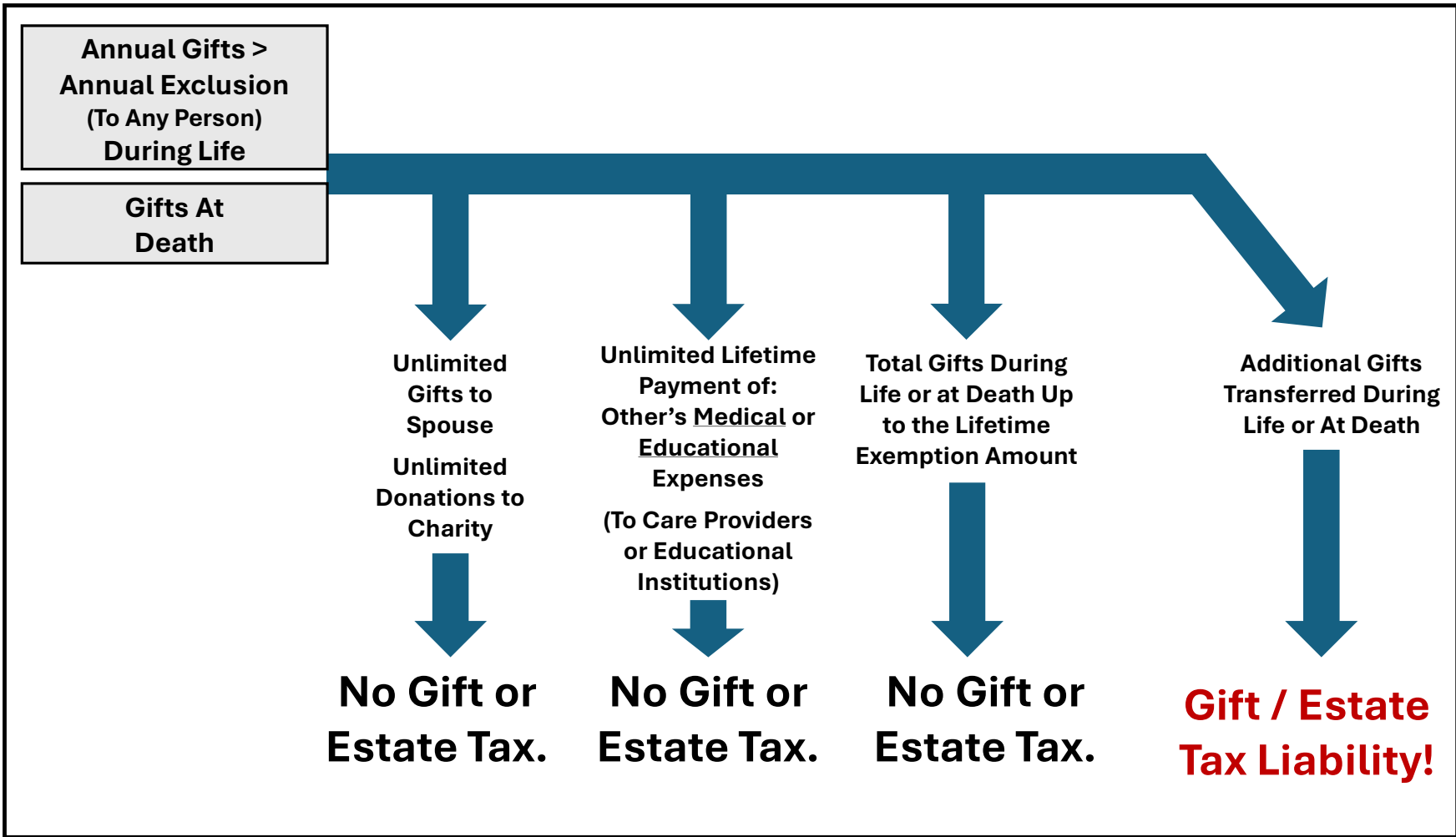
\$13.61m Estate & Gift Exemption (2024)

Total:

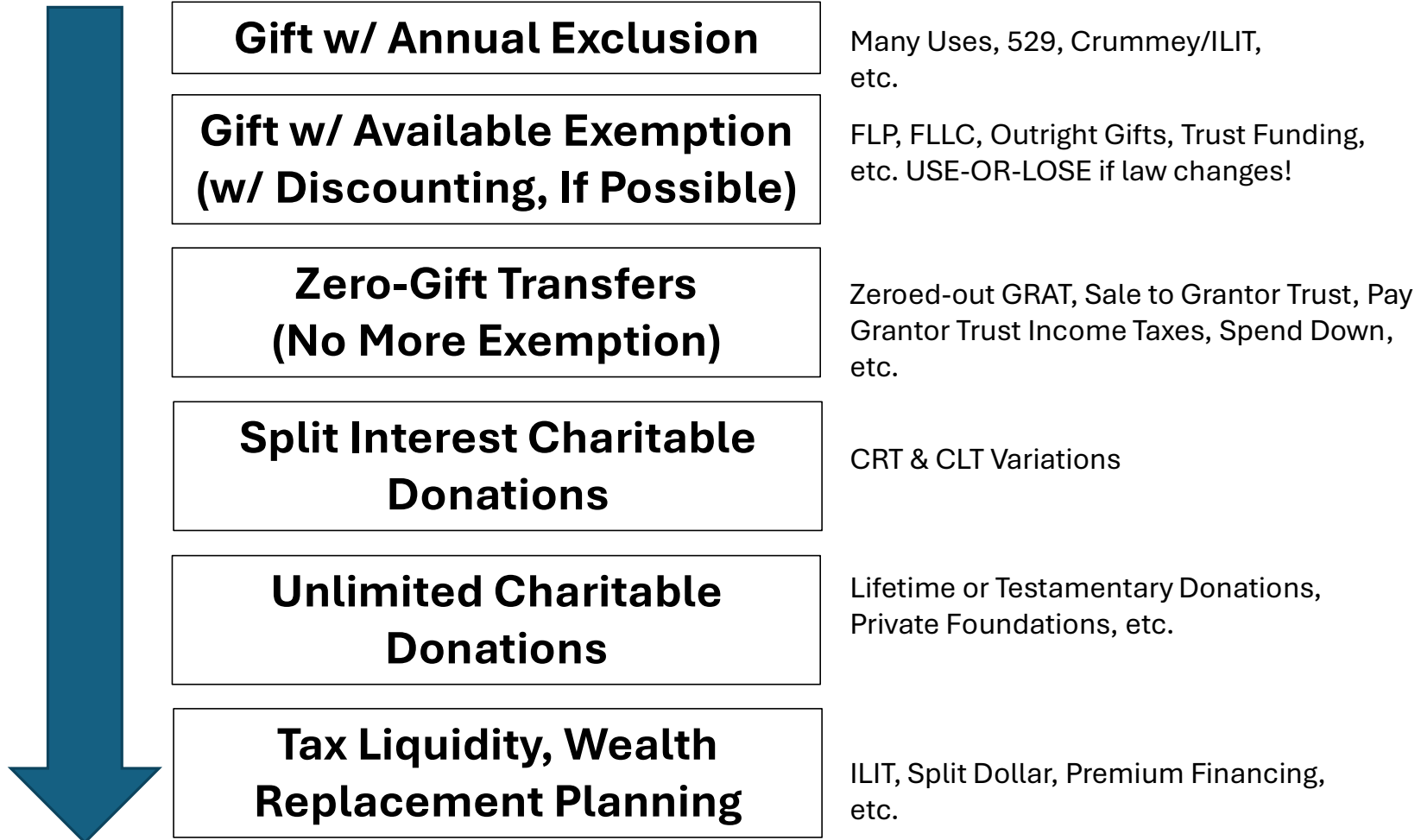
\$18.61m "Exempt" from Estate Tax

Note: In effect, this is how the estate tax exemption works... but in reality it is more complicated. Tax is determined, and then a credit is applied. This credit covers all the lower tiers of estate tax (graduated rates like the income tax), and a portion of the transferred dollars that are in the 40% bracket up to a certain level. The total dollars for which the tax is "credited" are, therefore, "exempt" from the tax.

Family Gets: $\$44m - \$10.16m = \$33.84m$ (Plus the \$5m Previously Transferred)
to the IRS!!



General Tiers of HNW Estate Tax Planning



Advanced Strategies...

Rapid Fire Review

Estate Planning 101... And Then Some
Introductory Estate Planning Playbook
for Awesome XYPN Members



Estate Planning	Basic Trusts	Practical	Asset & Income Protection
Will(s)	Revocable Living Trust (A/B)	Plan Preferences Doc	Qualified Plans, Life Insurance, Annuities, IRAs
Guardianship Declaration	Marital / QTIP / C-Trust	Key Parties Summary	Children's inheritance Trusts
Durable Powers of Attorney	Decedent's Trust (B Trust)	Primary Distribution Flowchart	DAPT
Medical Powers of Attorney	Survivor's Trust (A Trust)	Estate Tax	SLAT or Non-Reciprocal SLATs
HIPAA Authorizations	Charitable Planning	Annual Exclusion Gifting, Crummey Stacking	Insurance: Debt Elimination
Advance Directive	CRT	Sale to Grantor Trust (IDGT)	Insurance: Income Replacement
Life Insurance	CLT	GRAT	ILIT

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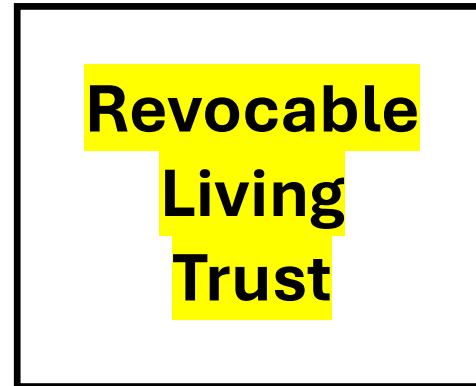
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Grantors

= Client(s)
= Trustee(s)



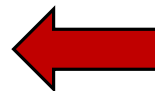
Beneficiaries

= Client(s)...

THEN children (after both deaths. If in Lifetime Trusts = Asset Protected Inheritance!



IRS



Note:

- At death, often divides into: survivor's trust ("A"), deceased's trust ("B"), and possibly marital trust ("C").

Best Purpose:

- Trustee-directed estate distribution, privacy, probate avoidance
- Avoid disinheritance: 2nd marriage with kids from a prior (marital trust, often called QTIP trust, can provide income for surviving spouse while leaving principal for prior children)

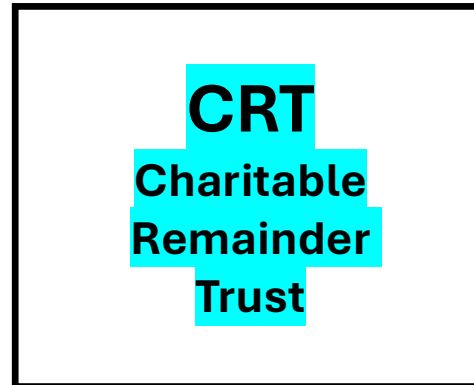


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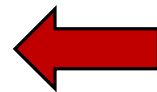
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Grantors

= Client(s)
= Trustee(s)
(Usually)



Beneficiaries



= Client(s), Children, etc.
For life or a period up to 20 years,
THEN... remainder to **charity!**

IRS



Note:

- Charitable Deduction = Value of Trust Contribution – PV of Payment Stream Retained. (Using an IRS-prescribed discount rate).

Best Purpose:

- Client already has charitable intent, would like a deduction, AND needs an income stream.
- Estate tax savings.
- Simpler to just make a donation to charity, and invest the rest for your income needs.
- Makes more sense in higher interest rate environments.

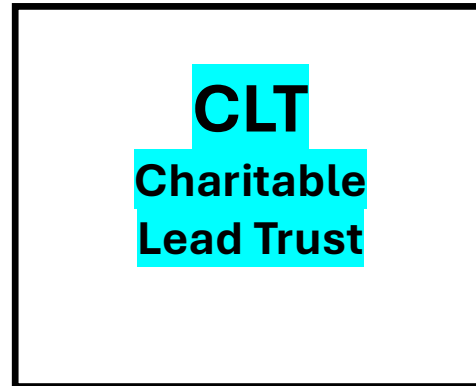


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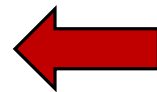
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Grantors

= Client(s)
= Trustee(s)
(Usually)



Beneficiaries



= **Charity FIRST**, for a period or lifetime, THEN... remainder to Family or Client(s).

IRS



Note:

- Charitable Deduction = PV of Payment Stream to Charity. (Using an IRS-prescribed discount rate).

Best Purpose:

- Client already has charitable intent, would like a deduction, AND does not need income, but would like to direct assets elsewhere.
- Estate tax savings.
- Simpler to make a donation to charity.
- Makes more sense in LOWER interest rate environments.
- Remainder “gift-value” can be “zeroed-out.”

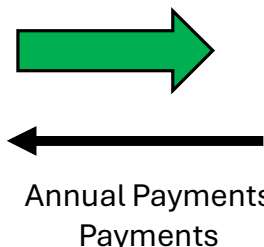


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Grantors

= Client(s)
= Trustee(s)
(Usually)



Beneficiaries

= Client(s) receive(s) income for a term of years, THEN remainder goes to children (or other named beneficiaries).



IRS



A GRAT is a “Grantor Trust” (taxes on trust income are paid by the grantors / clients, enhancing net growth of the trust assets)!

Note:

- Gift value - PV of annuity stream = essentially zero.

Best Purpose:

- “Estate freezing” to remove some asset growth from client’s estate (if assets exceed IRS-prescribed discount rate, and client outlives annuity period). Gift-tax-free transfer!
- Enough of an income stream is retained that its present value approximately equals the value of assets transferred. The gift is “zeroed-out” such that the IRS “sees” no material gift with low exemption used.
- This preserves more exemption to save estate taxes, while still removing some future asset growth.
- Usually best for liquid, high-growth, volatile assets.
- Better suited for lower-interest rate environments.

Grantors

= Client(s)
= Trustee(s)
(Usually)

Seed gift (at least 10%
of value to be sold)



Sell Assets



Installment Note
& Note Payments



Beneficiaries

= Children / benes receive income
and principal, but pay NO taxes on
it (assets have tax-free growth)!!

**Until mom and dad (“grantors”) pass away.*

Note:

- Use applicable federal interest rate as the minimum rate (to avoid accidental gift).

Best Purpose:

- “Estate freezing” to remove some asset growth from client’s future estate. Gift-tax-free transfer!
- Sell an asset (using no tax exemption, so it is preserved for gifts) in exchange for a note which entitles client to payments over time.
- Note has fixed interest rates.
- This preserves more exemption to save estate taxes, while still removing some future asset growth.
- Usually best for liquid, or high-income, high-growth assets.
- Better suited for lower-interest rate environments.

TAX ON INCOME
Generated by
Trust (but NOTE is
tax-free income
to grantors)



IRS



***Usually Independent Trustee(s)!**

Grantors

= Client(s)

Funds (\$)



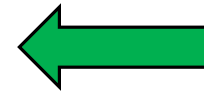
Gift-tax-free contributions
can be made with \$18k/year
annual exclusion (by each
spouse, x # of children, etc.)



Premiums (\$)



**Insurance
Company**



Proceeds (\$) **at Death**



Beneficiaries

= Children, etc.

No Tax!

Life insurance proceeds
are income-tax free!

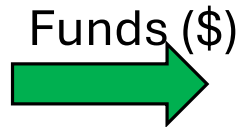


Note:

- ILIT funds CAN be used to buy assets from clients' estate at death, thereby "funding" estate taxes by providing the liquidity to pay the taxes without a forced sale. Alternatively, they may also provide "wealth replacement" to children of the value paid in estate taxes.
- Good for asset protection, estate creation, wealth replacement, "cash-gift-leveraging," and creating liquidity to avoid forced sales of illiquid family assets.

***Usually Independent Trustee(s)!**

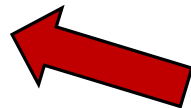
Grantor
= Spouse #1



Up-to-Exemption-Limit
Gifts to Trust for Spouse



Beneficiaries
= Spouse #2
(& then Children, etc.)



Taxes Due
On Spouse #2's
Trust Income

Note:

- PRO 1: Future growth outside estate, spouse gets all the income, access to principal for health, education, maintenance, and support.
- PRO 2: Asset protection of these assets from BOTH spouse's creditors!!
- CON 1: if spouse #2 divorces #1, #1 loses ALL of these assets! Only for secure marriages!!
- *** If spouse #2 wants to also create a SLAT for spouse #1, it needs to be "non-reciprocal" (materially different terms, benes, distribution, timing of creation, etc.).

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What Did We Cover?

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