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Estate planning software

FUNDAMENTALS OF AN ESTATE PLAN 102

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Saturday, December 14, 2024
11:00 AM to 12:00 PM EST
(60 minutes)

1245 Court St.
Clearwater, FL 33755
727-442-1200

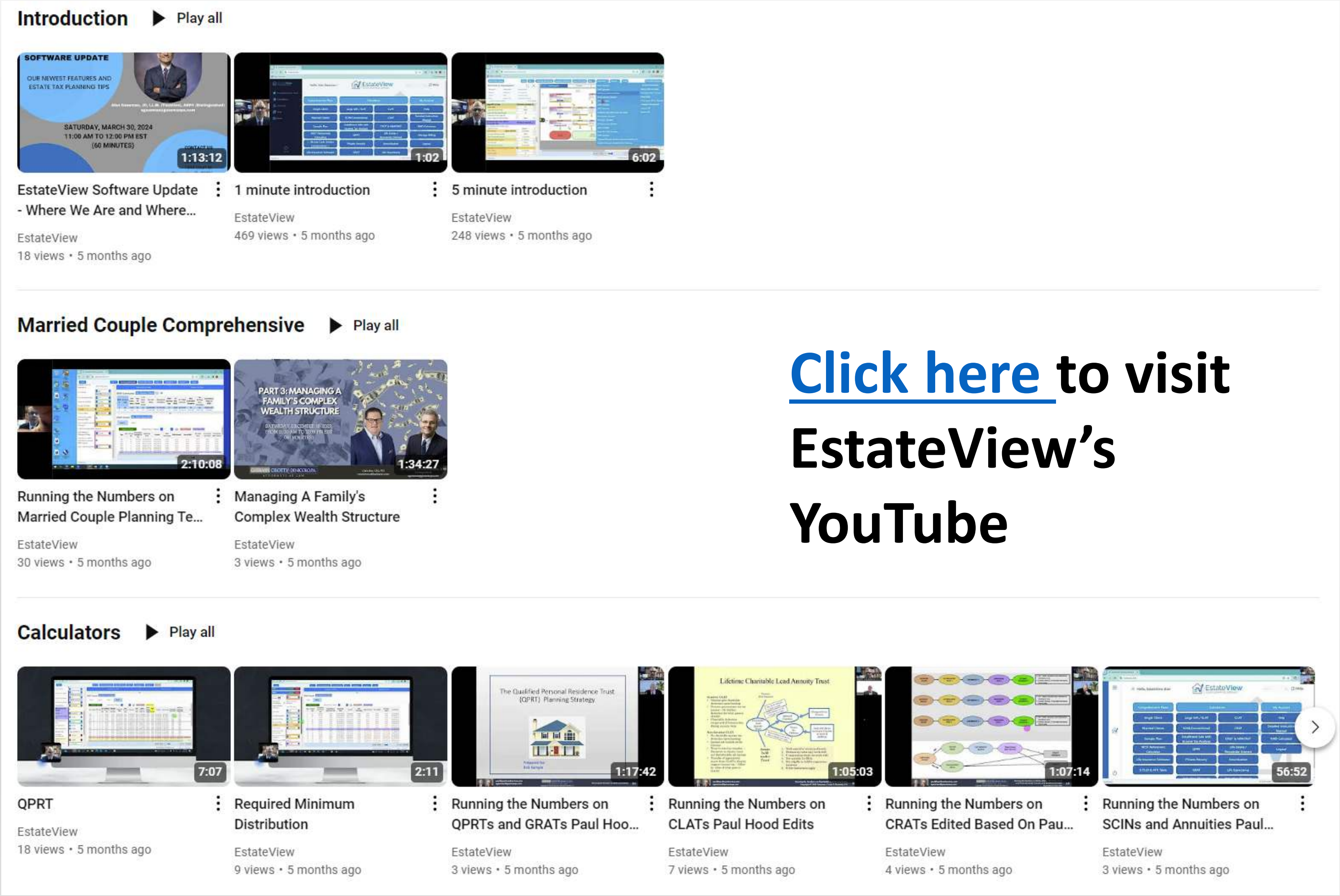
Please Note:

1. This presentation does not qualify for continuing education because it isn't good enough.

2. Today's PowerPoint slides are available in the "Handouts" section of your GoToWebinar side panel.

3. Within 3-5 hours after the webinar, all registrants will receive a follow-up email with today's recording and PowerPoint materials.

WATCH PART 1 HERE



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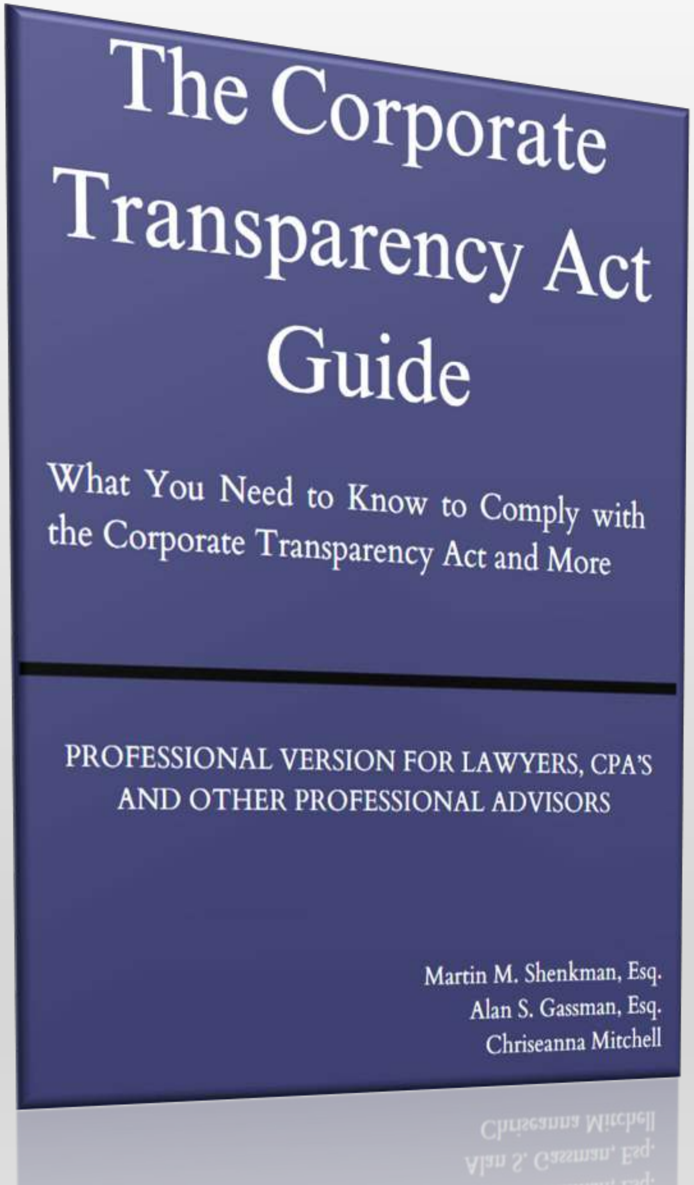

The Corporate Transparency Act (CTA) is a new federal law that will require tens of millions of people to file new reports with the federal government. These reports are very different from income tax returns most people are familiar with. These reports require disclosing personal information to be included in a new federal database. The invasiveness of this information will upset many people who are required to report. Additionally, if you fail to report, the penalties can be horrendous, with $500 a day charges and up to two years in jail! The decisions as to who must report are complex, given that the guidance from the government is over 300 pages long. In order to avoid the harsh penalties, this book will explain these new rules, what you may have to do, and how you can deal with your reporting requirements.

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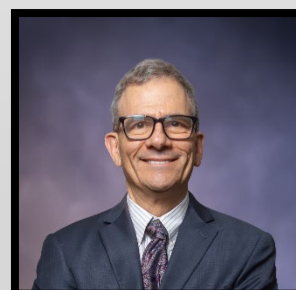

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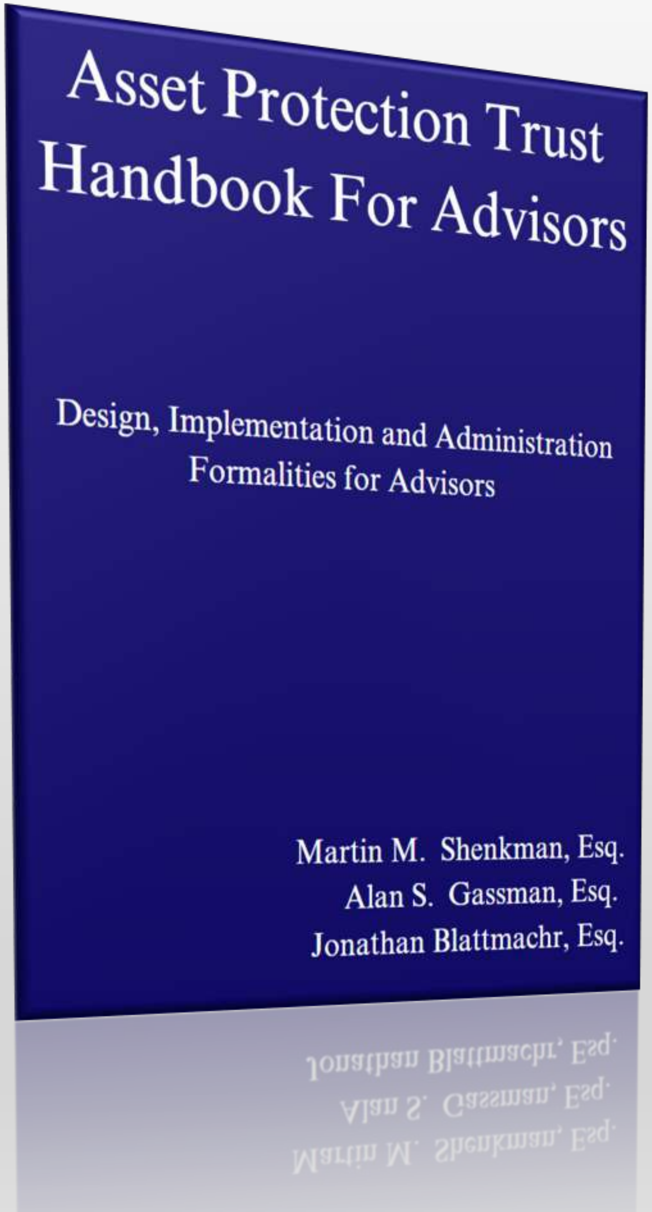

The "Asset Protection Trust Handbook for Advisors" by Martin M. Shenkman, Alan S. Gassman, and Jonathan Blattmachr is a detailed guide for estate planners, lawyers, accountants, and financial advisors, focusing on the design, implementation, and administration of Asset Protection Trusts (APTs). The handbook begins with a preface that emphasizes the necessity of cautious and well-informed asset protection planning, acknowledging the ever-evolving legal landscape and the unique circumstances of each client. The authors underscore that while asset protection strategies can be highly beneficial, they must be carefully tailored to each client's specific needs to avoid potential legal pitfalls.

The handbook is divided into several parts, starting with an introduction and overview of APTs. This section defines APTs as irrevocable trusts formed in specific jurisdictions designed to protect assets from creditors. It traces the history and evolution of APTs, particularly highlighting the pivotal role of the Cook Islands in popularizing such trusts in the 1980s. The section outlines the fundamental principles that advisors should consider when evaluating asset protection strategies, including the choice between domestic and foreign APTs and the integration of tax planning with asset protection.

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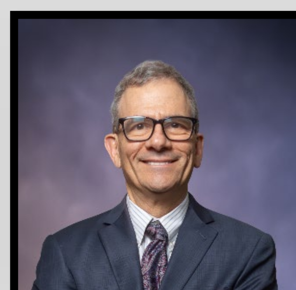

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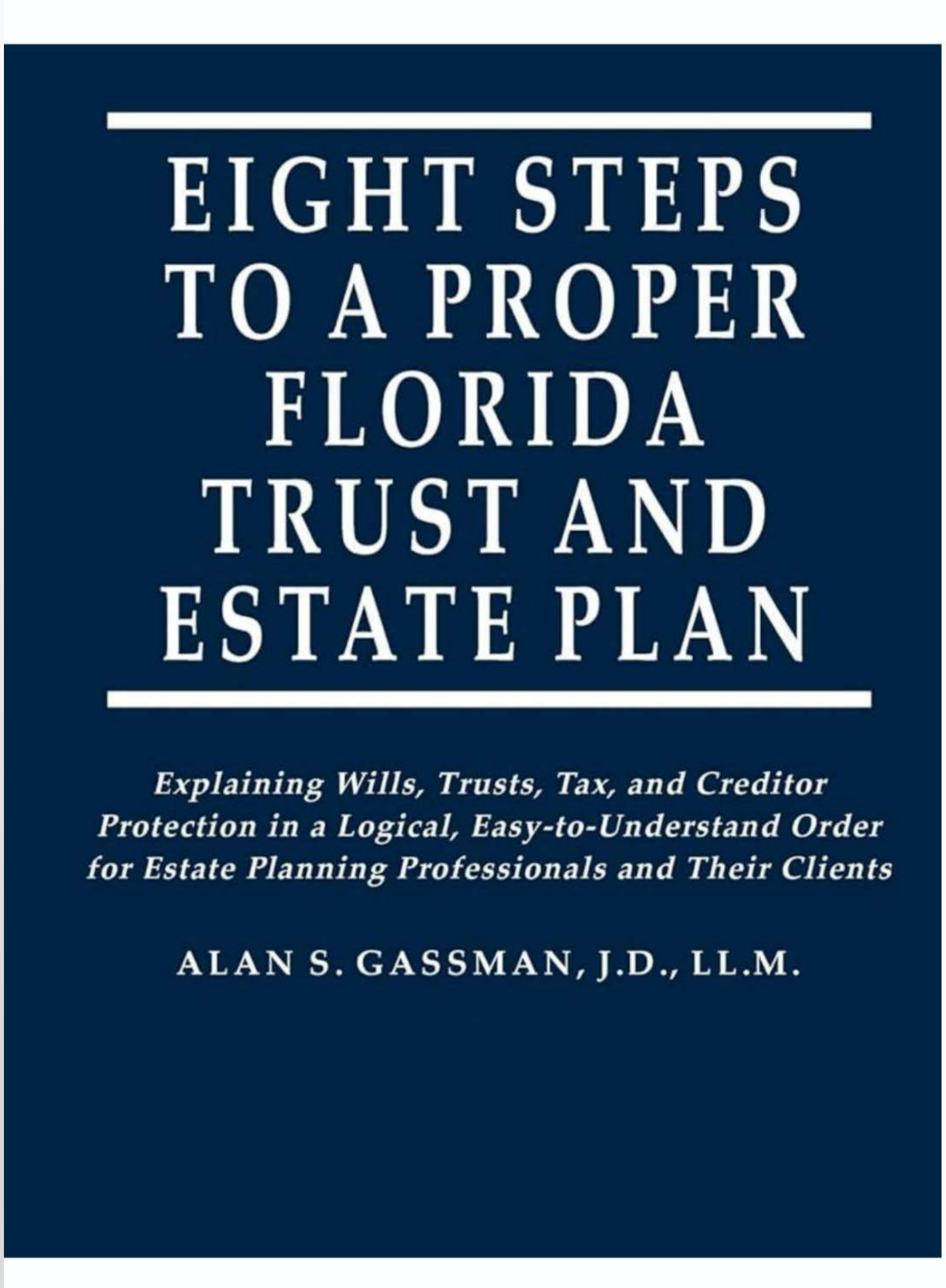
Jonathan Blattmachr, Esq.



TODAY ONLY:

Our latest published version of the Eight Steps To A Proper Florida Trust and Estate Plan is being given as one of the electronic handouts today for all viewers.

Join Alan Gassman as he explains wills, trusts, tax and creditor protection in a logical, easy-to-understand order for estate planning professionals and their clients.

To watch this Presentation on YouTube you can go to:
https://www.youtube.com/watch?v=XQ59Tk_OOGQ

BASIC ESTATE AND LLC PLANNING: FUN WITH DICK AND JANE

Saturday, July 9, 2022

From 11:00 AM to 12:00 PM EDT

(60 minutes)

Presented by:
Alan Gassman, JD, LL.M. (Taxation),
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1245 Court Street
Clearwater, FL 33756

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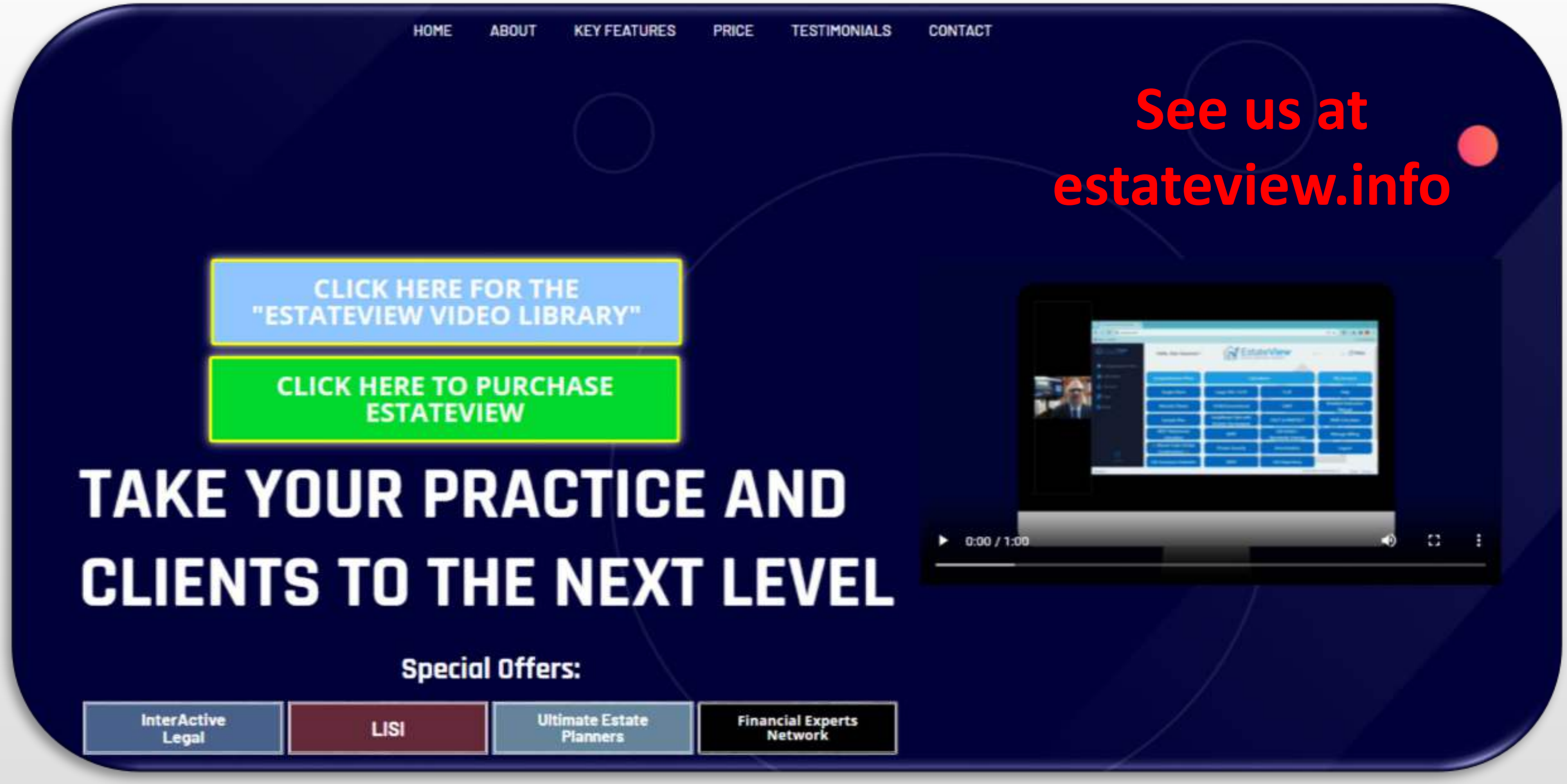
EstateView	Standard	Pro	MOST POPULAR Pro Plus
Subscription Cost (Volume Discounts Available)	**$199/year**	**$399/year**	**$499/year**
Comprehensive Plans: Married and Single Client Modules	Excludes letter, sharing and installment sales	Excludes letter and sharing features	Full Access (*included with Pro Plus & Pro Elite only)
Amortization Calculator	YES	YES	YES
Life Expectancy Calculator	YES	YES	YES
Holding Company Valuation Calculator	YES	YES	YES
Valuation Discount Calculator	YES	YES	YES
Create side-by-side Plan Comparisons for Each Calculator	YES	YES	YES
Access to stand-alone SCIN/Conventional Calculator	Limited Features (excludes spreadsheet)	YES	YES
Large Gift / SLAT Calculator	Limited Features (excludes spreadsheet)	YES	YES
SCIN / Conventional Note Calculator	Limited Features (excludes spreadsheet)	YES	YES
Installment Sale with Income Tax Analysis Calculator	Limited Features (excludes spreadsheet)	YES	YES
QPRT Calculator	Limited Features (excludes spreadsheet)	YES	YES
Private Annuity Calculator	Limited Features (excludes spreadsheet)	YES	YES
GRAT Calculator	Limited Features (excludes spreadsheet)	YES	YES

EstateView	Standard	Pro	MOST POPULAR Pro Plus
CLAT Calculator	Limited Features (excludes spreadsheet)	YES	YES
CRAT Calculator	Limited Features (excludes spreadsheet)	YES	YES
CRUT Calculator	Limited Features (excludes spreadsheet)	YES	YES
Life Estate/Remainder Interest Calculator	Limited Features (excludes spreadsheet)	YES	YES
Rolling GRAT Calculator	NO	NO	YES*
Access to our Exploding Asset Planning Feature	NO	NO	YES*
Comprehensive Plans: Access to Installment Sale to Grantor Trust / SCIN	NO	YES	YES
Comprehensive Plans: Married and Single Client Letters	NO	NO	YES*
Send e-copies of plans to clients & colleagues (with a free 14-day trial)	NO	YES	YES
Generate Personalized Client PowerPoints	NO	YES	YES
Income Tax Impacts of QPRTs	NO	NO	YES*
Rolling GRAT Calculator	NO	NO	YES*
Flip NIMCRUT Calculator	NO	NO	YES*
4 Hours of Tax Lawyer Time	NO	NO	NO
30 Hours of Customized Video Editing Time	NO	NO	NO
Special Access to Video Editors for $35 an Hour	NO	NO	NO



10 Reasons that EstateView will blow your socks off

1. Dynamic illustrations of tax savings.
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4. Generate and illustrate comprehensive estate tax planning letters.
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Our Pricing Plans

Standard

$199 / Year

Standard pricing plan offers almost every feature available from competitors plus side-by-side comparisons and additional features.

Get Started

- Standard support
- Standard options
- Standard results
- Side-by-side comparisons

Pro

$399 / Year

Pro pricing plan offers everything possible except comprehensive letters, sharing software with others, Rolling GRATs and FLIP-NIMCRUTS (includes all PowerPoints).

Get Started

- Everything in Standard Plan plus..
- Access to enhanced options
- Detailed projections
- Exportable Spreadsheets & PowerPoints

Pro-Plus Recommended

$499 / Year

Pro-Plus pricing plan provides comprehensive letters, sharing software, Rolling GRATs and FLIP-NIMCRUTS, as well as income tax analysis for QPRTs.

Get Started

- Everything in Pro Plan plus..
- Priority support
- Access to advanced options
- Access to more advanced features


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Volume User Discount

Units	Discount	Standard	Pro	Pro Plus
2-5	15%	$170.10	$339.95	$424.95
6-10	20%	$159.96	$319.96	$399.96
11-15	25%	$149.96	$299.96	$374.96
16-20	30%	$139.96	$279.96	$349.96
21-30	35%	$129.96	$259.96	$324.96
31-35	40%	$119.97	$239.97	$299.97
36-40	45%	$109.97	$219.97	$274.97
41-42	50%	$99.50	$199.97	$249.97
46-50	55%	$89.97	$179.97	$224.97
51-55	60%	$79.98	$159.98	$199.98
56-100	65%	$69.98	$139.98	$174.98
101-200	70%	$59.98	$199.98	$149.98
201-300	75%	$49.98	$99.98	$124.98


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Comprehensive Plans

- Single Client
- Married Clients
- Sample Plan
- NEST Retirement Calculator
- RMD Calculator
- Monte Carlo
- Life Insurance Estimator
- §7520 & AFR Table

Calculators

- Large Gift/SLAT
- CLAT
- SCIN/Conventional
- CRAT
- Installment Sale with Income Tax Analysis
- CRUT & NIMCRUT
- QPRT
- Life Estate / Remainder Interest
- Private Annuity
- Amortization
- GRAT
- Life Expectancy
- Rolling GRATs
- Holding Company Valuation
- Letter Writer (Under Construction)
- Valuation Discount (Active Business)

My Account

- Help
- Detailed Instruction Manual

Smart Estate Planning Considerations

A.) Important Personal Items

What should be done with important personal items, collectibles, and anything else that might be fought over upon your death?

Item/Collection	Sell	Leave to Specific Heir (If So, Who?)	Go Into a Lottery for Heirs	Donate	Other and Instructions

Smart Estate Planning Considerations

B.) Liquidity Plan

Question to Consider	YES	NO	Action to Take	Who to Delegate To
a.) Do you know how much cash would be needed to settle your estates and trusts and pay estate taxes?				
b.) Will banks or other lenders call loans in in the event of your death?				
c.) Are you confident that there is enough life insurance or other assets cordoned off for the exclusive use of your beneficiaries in a way that creditors cannot reach them?				
d.) Do you know how much cash your beneficiaries need each month for the first 24 months after your death?				
e.) Will there be adequate cash and cash flow?				
f.) Have you factored in income taxes and other expenses that may occur upon death?				

Smart Estate Planning Considerations

C.) Minimum and Maximum Needs and Objectives

Question to Consider	YES	NO	Action to Take	Who to Delegate To
a.) Is there going to be enough to go around?				
b.) Will you need to plan for educational needs of young or other family members?				
c.) Do any of your family members have special needs?				
d.) Do you need to plan for special circumstances such as rehab, etc?				
e.) Do you want to prevent ostentatious use of wealth?				
i.) Maseratis				
ii.) Multiple mansions				
iii.) Jet airplane				
iv.) Huge boats/Yachts				
v.) $1,000 bottles of wine				
f.) What is the maximum annual expense amount that a family should spend in today's dollars?				

Smart Estate Planning Considerations

D.) Limits on Availability of Funds and Expenses

Question to Consider	YES	NO	Action to Take	Who to Delegate To
a.) Are you interested in the 4% Rule?				
b.) Are you interested in the $20,000 a month rule?				
c.) Are you interested in the “must work and contribute to society” requirement?				
d.) Would you like to institute a rule of thumb to make sure the money lasts?				
e.) Would you like to institute a rule of thumb to not ruin the life journey?				
f.) Would you like to make some money available to provide business/entrepreneurial opportunities?				
g.) Would you like to appoint a dynamic advisor to assist in decision making, behaviors, and goal fostering of your beneficiaries?				



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Smart Estate Planning Considerations

E.) Family Philosophies & Limitations on Investment Categories

Question to Consider	YES	NO	Action to Take	Who to Delegate To
a.) Do you have any overriding family philosophies that should be considered in deciding your estate or asset protection plan?				
If yes, please describe:				
b.) Do you have any investment limitations?				
If yes, please describe:				
c.) Are you confident in stocks of mutual funds?				
d.) Are you confident in bonds?				
e.) Are you confident in annuities?				
f.) Are you confident in life insurance?				
g.) Are you confident in real estate?				
h.) **Never** invest in the following:				
i.) **Always** invest in the following:				
j.) Recommended ratios and indicators:				

Smart Estate Planning Considerations

F.) Considering Unique Investments

Are the following options a plan that could be considered for your unique investments upon your death?

Action Plan	YES	NO	Action to Take	Who to Delegate To
a.) Authorize your trustee(s) to keep the investments				
b.) Request that your trustee(s) sell your investments				
c.) Appoint a committee to direct your trustee(s) on how to proceed				
d.) Do nothing – hope for the best!				

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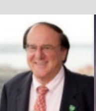
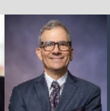
Smart Estate Planning Considerations

G.) Identity of Primary and Secondary Beneficiaries

Question to Consider	YES	NO	Action to Take	Who to Delegate To
a.) Would you like to appoint your spouse as a beneficiary?				
b.) Would you like to appoint your child(ren) as a beneficiary?				
c.) Is there someone else that you would like to appoint as a beneficiary?				
d.) Sharing an inheritance can be very divisive. Would you like to leave your estate to more than one person?				
e.) Would you like to set aside something for your parents?				
f.) Would you like to set aside something for your siblings?				
g.) Would you like to set aside something for your in-laws?				
h.) Do you have any concerns about irresponsible beneficiaries?				
i.) Who will have a Power of Appointment/Disappointment?				
j.) Should children be able to appoint assets directly to irresponsible grandchildren?				
k.) When clients demand outright disposition provisions, consider adding "unless the Trustee determines that the beneficiary would be better served by extending the duration of the trust to age 122."				

Smart Estate Planning Considerations

H.) Trusteeship Coordination

Question to Consider	YES	NO	Action to Take	Who to Delegate To
a.) Educate the client that the safest Trustee is a trust company				
b.) If client refuses trust company, require chosen individual trustee to choose a trust company "when the time comes."				
c.) If client says no to (a) and (b) above, suggest that any beneficiary should be able to require addition of a trust				
d.) Review estate plan with trust company during drafting and design stage				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Smart Estate Planning Considerations

I.) Avoiding Litigation

Item to Consider	YES	NO	Action to Take	Who to Delegate To
a.) Trusteeship for portion that may be under partial or complete control of beneficiary				
b.) Trusteeship for portion that may be absolutely protected for beneficiary				
c.) Avoiding state law limitations on what can be done				
d.) Beneficiary initiated court changes				
e.) Avoiding loss to litigation				
f.) Avoiding loss to divorce				
g.) Avoiding loss to creditors of beneficiary				
h.) King Solomon and trust protector considerations				


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Smart Estate Planning Considerations

J.) Considerations for Business Owners

Are the following options a plan that could be considered for your business when you are no longer able to work?

Action Plan	YES	NO	Action to Take	Who to Delegate To
a.) Sell the business to key family members				
b.) Equally divide the business among family members				
c.) Allow the business to be sold to key employees				
d.) Allow the business to be sold to any interested party				
e.) Donate the business to a foundation				
f.) Obtain business advisors that the trustee can rely upon				

Smart Estate Planning Considerations

K.) Buy-Sell Agreement Needs and Implementation

Question to Consider	YES	NO	Action to Take	Who to Delegate To
a.) Do you want a Buy-Sell Agreement?				
b.) Should your Buy-Sell Agreement be funded with life insurance?				
c.) Should there be a formula for the price of your Buy-Sell Agreement?				
d.) Should there be financing for your Buy-Sell Agreement or must the parties involved pay cash?				
e.) Shouldn’t the life insurance be paid to an escrow agent/trust company to assure proper administration?				
f.) Use trusteed buy/sell “LLC/Partnership” cross purchase arrangement to insulate insurance proceeds from creditors				
g.) Other Considerations: *(please describe below)*				

Avoiding Estate and Trust Litigation Before It Happens
Ethical and Practical Considerations

Instructions:

- It is your role as an estate planner or advisor to identify and discuss red flag situations for litigation with clients, their other advisors, and possibly family members and friends as well.
- In this presentation, you will think about situations you have seen and situations now in the making that you can do something about.
- Take notes of specific actions you can take and specific clients you will call to implement the strategies we will discuss today.
- Also enumerate form and procedural changes that can be facilitated to protect your clients, their beneficiaries, and your legal or advisory practice.
- Let's know that we went beyond the normal call of duty to help our clients, their families, and other beneficiaries avoid the abyss of uncertainty, fear, and loathing. That is our world of trust and estate litigation.

Trust and Estate Litigation Risk Profile

			Score (1-10)	Multiplier	Final Score
A		Infirm Testator or Testatrix			
	1	Age as a Factor		2	
	2	Dementia Diagnosis		5	
	3	Beneficiaries Without Contact ("Hijacked")		6	
B		Spouse with Separate Children		3	
C		Imbalanced Children		2	
D		Particularly Aggressive Individuals Involved		2	
E		Disorganized with Assets		1	
F		Unequal Lifetime Gifting		1	
G		Descendants with Alcohol, Drug, or Gambling Addiction Issues		2	
H		Significant Estate Tax and Other Liability Exposure		2	
I		Naming a Non-Professional/Possibly a Non-Compliant Trustee		2	
J		Unclear Estate Planning Documents		3	
K		One or More Descendants are Reliant Economically and Over Age 28 (or older, if continuing education)		2	
L		History of Dishonesty in Family		3	
M		History of Litigation in Family		3	
N		Family Members or Advisors are Litigious		3	
				TOTAL SCORE	

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Trust and Estate Litigation Risk Profile

<u>TOTAL SCORE ANALYSIS</u>

If your score falls between 39 and 155 →	**LOW RISK**
If your score falls between 156 and 272 →	**MEDIUM RISK**
If your score falls between 273 and 390 →	**HIGH RISK**

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Trust and Estate Litigation Reduction of Risk

		Yes/No	Risk Reduction %	Total Risk Reduction
A	Was a psychologist, psychiatrist, or neurologist present contemporaneously with signing?			
B	Was a videotaped conversation created at time of signing?			
C	Were all important members involved at signing, and did they approve any changes?			
D	Was there a safety latch committee, and did they approve any changes?			
E	Was the document "tweaked" later 2-3 times so the burden of an opponent would be to prove that each and every change was invalid?			
F	Is there a strong Trust Protector with the ability to "make things right?"			
G	Have potential contestants signed a binding arbitration agreement?			
H	Have the assets already been divided and distributed or held in separate trusts before death of decedent?			
I	Has the trust of the complaining beneficiary been separately funded so as to bear the cost of defending any action and administrative difficulties?			
J	Is the "offensive beneficiary" not included in the estate plan but could be added in by a benevolent Trust Protector?			
K	Is the trust formed in a jurisdiction that has favorable laws to support Trustees?			
L	Do key beneficiaries have the power to require that a trust company serve as additional Co-Trustees, if there is an individual beneficiary?			
M	Addicted beneficiary documented to be stabilized at the time that a binding Inheritance Agreement is executed.			
N	Agreement among all beneficiaries to not allow variance from agreed inheritance			
O	Agreement that beneficiaries will reimburse for expenses paid by decedent who was unwilling to pay for their own care			
P	Good ongoing relationship with mental counselor – psychologist, psychiatrist, or neurologist			

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GASSMAN, CROTTY & DENICOLO, P.A.
ESTATE PLAN QUICK START FORM

1. WHO?

Potential client name:

Occupation:

Date of Birth: Social Security Number:

Cell Phone: Email Address:

Home Address:

Are you a Florida resident? ☐ Yes ☐ No

Who referred you to our firm?

Spouse/Significant Other Name:

Occupation:

Date of Birth: Social Security Number:

Cell Phone: Email Address:

Is your Spouse/Significant Other a Florida resident? ☐ Yes ☐ No

Married: ☐ Yes ☐ No

Year of marriage:

Do you have a Prenuptial Agreement or other marital contract in effect? ☐ Yes ☐ No

First marriage: ☐ Yes ☐ No

If not first marriage, list prior spouse(s) name(s):

Children from previous marriage or relationship? ☐ Yes ☐ No

Alan S. Gassman, Esquire
Email to: agassman@gassmanpa.com
Fax to: (727) 443-5829

Name(s) of children from **previous marriage or relationship** (please note if child is adopted by writing an "A" after their name):

	Special needs?	Date of Birth:
	☐ Yes	
	☐ Yes	
	☐ Yes	
	☐ Yes	
	☐ Yes	
	☐ Yes	

Child's Name(s) (please note if child is adopted by writing an "A" after their name)	Special needs?	Date of Birth:
	☐ Yes	
	☐ Yes	
	☐ Yes	
	☐ Yes	
	☐ Yes	
	☐ Yes	

Other people to consider in estate plan: ☐ Yes ☐ No

Name:	Relationship to you:

Charities or other groups to consider in estate plan: ☐ Yes ☐ No

2. WHAT?

Attach balance sheet(s) for self and all entities.

Do you have any IRA accounts? ☐ Yes ☐ No
Please provide printouts, if available.

Acct. Owner (Name)	*Current Beneficiary*	*Contingent Beneficiary*	*Carrier/Acct. #*	*Approx. Acct. Value*

Do you have any pension(s) or retirement accounts? ☐ Yes ☐ No
Please provide printouts, if available.

Acct. Owner (Name)	*Current Beneficiary*	*Contingent Beneficiary*	*Carrier/Acct. #*	*Approx. Acct. Value*

Do you have any life insurance? ☐ Yes ☐ No
Please provide printouts, if available.

Acct. Owner (Name)	*Current Beneficiary*	*Contingent Beneficiary*	*Carrier/Acct. #*	*Approx. Death Benefit*	*Approx. Cash Value*

Do you own any real estate? ☐ Yes ☐ No

Owner's Name	Property Address	Value of Property	List Mortgage(s) and Amount(s)

List your other significant financial assets	How titled?	Approximate value

Important personal items to address in estate plan:

Item:	Sell	Gift	Donate	Comment
	☐	☐	☐	
	☐	☐	☐	
	☐	☐	☐	
	☐	☐	☐	
	☐	☐	☐	

3. HOW?

Please complete the charts below with respect to your preferred Power of Attorney Agents Personal Representatives, and Trustees and other important questions to consider.

Who are the documents for?	1st Choice - Who is your first choice to serve in this capacity? Please fill in name below.	2nd Choice - Who is your first choice to serve in this capacity? Please fill in name below.	Can the 1st and 2nd Choice individuals named serve alone or must they serve together (jointly)?
HEALTH CARE POWER OF ATTORNEY			
FOR YOU			☐ Alone ☐ Joint
FOR YOUR SPOUSE/ SIG. OTHER			☐ Alone ☐ Joint
DURABLE POWER OF ATTORNEY			
FOR YOU			☐ Alone ☐ Joint
FOR YOUR SPOUSE/ SIG. OTHER			☐ Alone ☐ Joint
PERSONAL REPRESENTATIVE			
FOR YOU			☐ Alone ☐ Joint
FOR YOUR SPOUSE/ SIG. OTHER			☐ Alone ☐ Joint
ALTERNATE TRUSTEES IN THE EVENT OF YOUR INCAPACITY			
FOR YOU			☐ Alone ☐ Joint
FOR YOUR SPOUSE/ SIG. OTHER			☐ Alone ☐ Joint
ALTERNATE TRUSTEES IN THE EVENT OF YOUR DEATH			
FOR YOU			☐ Alone ☐ Joint
FOR YOUR SPOUSE/ SIG. OTHER			☐ Alone ☐ Joint

4. **HOMEOWNERS / DRIVER'S / UMBRELLA INSURANCE?** It is helpful to send us copies of insurance information, if available.

5. **ADVISORS?**

CPA/Accountant's name:

Cell Phone: Email Address:

Insurance Agent's name:

Cell Phone: Email Address:

Investment Advisor's name:

Cell Phone: Email Address:

Pension Plan Advisor's name:

Cell Phone: Email Address:

May we speak to your advisors directly? ☐ Yes ☐ No

THE FOLLOWING QUESTIONS ARE OPTIONAL:

QUESTIONS TO CONSIDER:	YES	NO
a.) Do you know how much cash would be needed to settle your estates and trusts and pay estate taxes?		
b.) Will banks or other lenders call loans in the event of your death?		
c.) Are you confident that there is enough life insurance or other assets cordoned off for the exclusive use of your beneficiaries in a way that creditors cannot reach them?		
d.) Do you know how much cash your beneficiaries need each month for the first 24 months after your death?		
e.) Will there be adequate cash and cash flow?		
f.) Have you factored in income taxes and other expenses that may occur upon death?		

g.) If updates are recommended to your IRA beneficiary designations, would you like our assistance with this?		
h.) If updates are recommended to your pension plan beneficiary designations, would you like our assistance with this?		
i.) If updates are recommended to your life insurance ownership and/or beneficiary designations, would you like our assistance with this?		
j.) Would you like for us to contact your insurance agent(s) and run projections that we can review with you?		
k.) Do you we have your permission to communicate directly with your CPA and other advisors? This would include copying your CPA on correspondence we send to you.		
l.) Would you like our office to handle maintenance of your corporate entities? This would include preparing annual minutes, filing annual reports with the Secretary of State and serving as (or appointing an out-of-state) Registered Agent.		
m.) Do you know if you have a power of attorney over your parents?		
n.) Have you done any annual gifting in the past?		


Introduction to Estate Planning: The objectives

By: **Jerome M. Hesch**

The purpose of an estate planning technique is to shift value from the senior generation to the junior generation without exposing the wealth transfer to the gift or estate taxes, and for the very wealthy, without exposure to the generation skipping transfer tax. Because of the way all estate planning techniques are designed, the longer one survives after an estate planning technique has been put in place and implemented, the greater are the gift and estate tax savings. In fact, only two of the many available estate planning techniques provide a significant transfer tax-free shifting of wealth if the individual survives for a relatively short period of time after the implementation of an estate plan. Therefore, it is never too soon to consider estate planning. The same technique will yield far greater benefits if put in place by someone age 60 as opposed to the same technique used by someone age 75 or 80.

There are two primary reasons the estate tax savings created by a planning technique are greater the younger one starts.

The first is that many of the transfer tax-free factors are repetitive and occur continuously. For example, the simplest technique is for one to make $15,000 annual exclusion gifts each year. Gifts in an amount equal to the annual exclusion are not treated as taxable gifts and thus incur no gift tax. Therefore, individuals are entitled to make annual exclusion gifts to the same persons each calendar year. Thus, if one can make separate $15,000 annual exclusion gifts to three separate donees, the tax-free annual gift is $45,000. If one makes these gifts over the next 20 years, the total tax-free gifts will be $900,000. And, that can be doubled with the split-gift election.

The second is that the tax savings resulting from each transfer to a trust for the next generation compounds as the wealth transferred to the trust for the next generation builds up. This is like the way the income accumulating income tax deferred in an IRA compounds as time goes by.

The available estate planning techniques range from the very simple, (i) such as annual exclusion gifts to trusts for junior family members (ii) to more complex, but well-known techniques such as a GRAT and (iii) finally to the sophisticated and infrequently used techniques such as zeroed out charitable lead trusts funded with financial assets that produce income taxed as the lowest possible income tax rates.

Every sophisticated estate planning professional is familiar with the menu of estate planning techniques, ranging from the simple through the sophisticated and finally to the overly complex. But familiarity with the menu of available estate planning techniques is but one small part of the process. The preparation of a complete estate planning proposal not only requires familiarity with the range of available estate planning techniques, but the analytical ability to evaluate everyone's unique situation in order to decide upon the most appropriate estate planning technique or combination of estate planning techniques to use for that particular individual. Furthermore, a complete estate planning analysis requires that the estate planner not only consider how to maximize the estate planning benefits, but also evaluate the potential for income tax savings and consider the individual's personal and financial objectives. When evaluating one's estate tax saving and income tax saving objectives, the estate planning professional must make sure that in maximizing the estate tax and income tax savings, the estate planning professional does not lose sight of the individual's personal and financial objectives and must make sure that all these objectives are coordinated. The professional advisor must be sensitive to the possibility that the focus on saving estate taxes may adversely affect the individual's financial security. Therefore, if it is not possible to completely satisfy all an individual's tax, financial and personal objectives, a compromise may be necessary. Finally, given the litigious nature of our society, the professional advisor must incorporate as part of the planning proposal that the individual's assets are protected, not only from the individual's potential future creditors, but that the future creditors of the beneficiaries of any trusts for junior family members cannot attach the assets in that trust. Thus, the objectives include asset protection from creditors.

Not unexpectedly, an integral part of the estate planning process is the ability of the planning professional to communicate what can end up as a complicated estate planning proposal in a concise and understandable manner. Since there is a tendency by estate planning professionals to use technical terms such as a GRAT, a CLAT or an IDIT, professional advisors may inadvertently describe the proposed planning technique in a manner that can easily be confusing to someone who is not conversant with the technical language. As part of the communication process, the individual client who needs to decide whether or not to proceed with the recommended planning technique needs to first understand, not the technique itself, but the concepts that the technique uses to achieve the transfer of wealth free of the gift and estate taxes. Thus, the first objective is to simply communicate the wealth shifting concept that is being proposed. In this regard, there are only a few fundamental wealth shifting concepts and all estate planning techniques combine one or more to these concepts. These concepts are:

A. Exemptions: Transfers that that would otherwise be taxable gifts or that would result in taxable estates but are exempted from the gift and the estate taxes. There are two types of exemptions. Annual exclusion gifts that are not treated as taxable gifts. And, that a certain amount of taxable gifts are exempted from the gift tax and the estate tax.

B. Gifts of assets expected to increase in value.

C. Valuation discounts that make value disappear.

D. The ability to borrow at a low interest rate and invest the borrowed funds at a higher rate of return (*i.e.* financial leverage).

E. The senior generation's payment of the income taxes on the younger generation's taxable income under the grantor trust rules.

a. ***Exemptions: Transfers that that would otherwise be taxable gifts or result in taxable estates but are exempted from the gift and the estate taxes.***

Each year an individual is allowed to make gifts up to a certain amount that are not treated as taxable gifts for purposes of the gift tax. These gifts are commonly referred to as *annual exclusion* gifts. At present every individual donor is permitted to make annual exclusion gifts of $15,000 every calendar year and can make separate annual exclusion gifts to separate individual donees. For this purpose, a husband and a wife can each make their own annual exclusion gifts. For example, an individual with three children can give each of their three children $15,000 every year, for a total of $45,000 each year. And, a married couple with three children can gift up to $90,000 this year and another $90,000 in each subsequent year. None of these annual exclusion gifts will be treated as a taxable gift. And, the annual exclusion is not limited to the donor's descendants. The annual exclusion applies to any gifts even if the donee is not a family member or is a trust for one's descendants. Suppose a married couple has three adult children who are all married and each child has three of their own children. The potential donees are the three children, the three son-in-laws or daughter-in-laws and the nine grandchildren. There are 15 separate donees and two separate donors. Each donee can receive $30,000 in annual exclusion gifts every year. Thus, there is a total of $450,000 in tax free annual exclusion gifts every year. Over a 20-year period, that would amount to $9,000,000 of aggregate annual exclusion gifts.

Even more can be gifted without a gift tax. Although all gifts in excess of the annual exclusion amount are treated as taxable gifts, an individual is not taxed on their first $11,700,000 of cumulative taxable gifts they make during their lifetime. This means that after a married couple has made their annual exclusion gifts, the first $23,400,000 of their taxable gifts make during their lifetime is not subject to the gift tax.

At death the amount exempted from the estate tax for each individual is the first $11,700,000 of a decedent's taxable estate. Thus, a married couple can leave up to $23,400,000 without any estate tax. However, the $23,400,000 exemption is reduced for any taxable gifts a couple made during their lifetime which was exempted from the gift tax by the couple's gift exclusion. If a married couple used their gift tax exemption to exempt $12,000,000 of their taxable gifts from the gift tax while they were alive, then the amount of the combined taxable estates of that married couple that is exempted for the estate tax is reduced by the $12,000,000.

There is another valuable exemption from taxable gifts. Any individual who directly pays the tuition at any educational institution, even a private high school, for any donee, or the medical expenses of that donee, does not have to treat that gift as a taxable gift. Assume that the grandparents have a grandchild just starting college where the tuition is $50,000 and the costs of room, board, entertainment and travel are another $30,000, a total of $80,000. The tuition paid directly by the grandparents is not a gift and the remaining $30,000 is not a gift because the grandparents have two $15,000 annual exclusions.

b. *Gifts of property expected to appreciate in value*

The gift and estate taxes are transfer taxes on the value of assets transferred. Once an asset is transferred, any subsequent appreciation in value and the income generated by the donated assets cannot be subject to the transfer taxes. Thus, one should consider making a gift of assets that are expected to appreciate in value and assets that are producing a substantial amount of income. Once the ownership of an asset has been transferred, the donor is no longer the owner of the asset, and any subsequent appreciation in value belongs to the new owner. Since any income generated by the gifted asset now belongs to the new owner, that income is not subject to any gift taxes.

c. Discounts that make value disappear

Many assets are worth less than what the owner of the asset could sell it for because of two factors. The first is lack of control. If an individual is a minority owner of an asset, the minority owner cannot decide to sell the asset without the owners who have voting control agreeing to a sale. Therefore, the value of the minority interest is not generally equal to the minority owner's portion of the value of the entire asset. If an individual owns a 25% minority interest is a building valued at $1,000,000, the minority owner's 25% interest is worth something less than $250,000. Thus, the 25% minority interest must be discounted for this lack of control. This lack of control can occur even if the individual owns more than a 50% interest in an asset. This is accomplished by creating voting and non-voting interests. In the typical family limited partnership, the limited partner has a 99% interest and the general partner has only a 1% interest. Since the limited partnership interest has no voting rights, all of the control is in the general partner even though the general partner has a right to only 1% of the partnership's assets and 1% of its profits.

The second factor leading to a discount is called lack of marketability. If an asset is not a publicly-traded security, it may take some time to actually sell the asset. Thus, the amount one can expect to sell an asset for may not be received until an actual buyer is found and committed to purchase the asset. And, the ability to sell the asset may be uncertain. The possibility that it may take a long time to sell the asset and the possibility that the asset may not be sold for a price equal to its hoped for value must be taken into account. This lack of marketability leads to a further valuation discount.

When both lack of control and lack of marketability are taken into account, it is not unusual for the valuation discount to range from 20% to as high as 45%. The only assets that are not discounted for lack of control and lack of marketability are marketable securities, such as stocks that are traded on a listed stock exchange. Because one can sell stocks in a public company at or near the price listed on the stock exchange and because the sale can occur immediately after putting in a sell order with their stock broker, marketable securities have no such discount from their price on a listed stock exchange. However, if an individual transfers marketable securities into a family limited partnership in exchange for a limited partnership interest, the individual no longer has any control because a limited partnership interest has no voting rights. And, there is a lack of marketability because a limited partnership interest in a family limited partnership is not readily marketable. Thus, one can create valuation discounts for assets that would not have such discounts if held directly by contributing the marketable assets to a family limited partnership in exchange for a limited partnership interest. By creating a valuation discount for an asset, the amount of the discount can essentially be transferred without any gift or estate taxes by using any of the available estate planning techniques. For example, if a married couple who own marketable securities valued at $2,666,667 transfers their marketable securities to a family limited partnership in exchange for a non-voting limited partnership interest, it is reasonable to take a 25% discount and value the limited partnership interest at $2,000,000. They can then make a gift of the entire limited partnership interest, reporting a $2,000,000 taxable gift without any gift tax, while essentially transferring $666,667 of value without any gift tax.

d. The ability to borrow at a low interest rate and invest the borrowed funds at a higher rate of return (i.e. financial leverage).

If a person can borrow funds at a low interest rate and invest the borrowed funds at a rate of return greater than the cost of the borrowing, that person can keep the excess of what was earned over the cost of the invested funds. This concept is commonly referred to as financial leverage and is not only a well-accepted estate planning technique, but is also approved by the Internal Revenue Code. For example, a father lends his son $1,000,000 with annual interest payable at a rate of 0.50%, and the entire $1,000,000 is payable at maturity which is at the end of three years. The son's annual interest cost is $5,000. The son uses the loan proceeds to purchase a safe corporate bond paying 3½% annual interest with a maturity of 3 years. The son collects $35,000 of interest each year and uses only $5,000 to pay the interest owed to his father. The use of this financing technique has allowed the son to earn and keep $30,000 generated by the father's funds without the payment of any gift taxes.

The use of financial leverage is sanctioned in the Internal Revenue Code which provide for minimum interest rates that must be used where there are intra-family loans and intra-family sales. If one provides that the stated interest rate on a note is the minimum interest rate required by the IRS, the IRS is required to accept the stated interest rate used for the intra-family loan.

Since many of the commonly used estate planning techniques, such as a GRAT, use interest rates and depend for their success on financial leverage, the use of below market interest rates increases their ability to successfully transfer value without any gift taxes.

e. *The senior generation's payment of the income taxes on the younger generation's taxable income.*

Planners often use transfers to grantor trusts, such as an outright gift, a grantor retained annuity trust ("GRAT"), the charitable lead annuity trust ("CLAT") and an installment sale to a grantor trust as estate freeze techniques. Although the primary objective of these estate planning techniques is to shift future appreciation in value to the trust without any gift taxes, a separate wealth shifting benefit arises by the grantor's payment of the grantor trust's Federal and state income tax liabilities. When there is a transfer to an irrevocable trust and the trust is treated as a grantor trust for Federal income tax purposes, the Internal Revenue Code creates a fiction in that the settlor/grantor of the trust is deemed to own the trust's assets, and, as the deemed owner of the trust's assets, the grantor must report the trust's income on the grantor's individual income tax return even though the grantor does not receive a distribution of that income, such as when the income is accumulated or distributed to a trust beneficiary. Accordingly, the grantor must pay the income taxes on the trust's income at the grantor's individual income tax rates. The IRS ruled that the grantor's payment of the income taxes on the grantor trust's income is not a gift for gift tax purposes. Suppose a grantor trust received a taxable gift of $2,000,000, with no gift taxes because the first $2,000,000 of taxable gifts is not subject to gift taxes and the contributed asset generates $100,000 of ordinary income. If the combined state and Federal income tax on this income is $40,000, the grantor is required to pay the income taxes on the trust's income. In effect, the grantor has effectively made a gift-tax free transfer of another $40,000. And this indirect tax-free gift continues each year that the grantor is living and paying the income taxes on the grantor trust's income.

Application of the wealth shifting concepts

The above-described concepts are the foundation for all the estate planning techniques used by estate planners to shift wealth without the payment of gift and estate taxes. The use of all or some of these wealth-shifting concepts, and the eventual estate planning technique or combination of techniques used, is different for everyone and is determined by the nature of the individual's assets, the individual's personal needs, such as what the individual will require for living expenses, the individual's financial objectives, the individual's health and actual life expectancy and whether the individual has any charitable desires.

If an individual is inclined to leave a portion of his wealth to charity, a properly designed estate planning technique that is also income tax efficient can end up passing on to the charity what the individual and the individual's estate would otherwise have to pay in income, gift and estate taxes. In other words, what is actually is passing to a charity comes out of funds that would have been used to pay taxes had no estate plan been adopted.

Another objective of the estate planning process is to undertake a financial analysis of each proposal, using the personal and financial information supplied by the individual. An illustration of the financial impact of each proposal over a number of years must be undertaken in order to decide upon the appropriateness of a technique. Such a financial analysis also illustrates how to maximize the tax savings and coordinate the client's income tax planning and estate planning objectives with the client's financial and personal objectives. Furthermore, this financial analysis can be used to explain how each of the fundamental concepts contributes to the success of the planning technique, illustrating how each of the concepts contributes to the tax savings.

Practical application: Installment sale to a grantor trust

The example which follows is a technique called an installment sale to a grantor trust. As applied in the situation for the hypothetical client used in the example, the technique is designed to incorporate all but one of the concepts described above. What is primary is that the example illustrates that the technique is designed to leave sufficient assets with the senior generation to adequately provide for their living expenses and always have sufficient assets in reserve so that they will have the financial security of knowing that they will not have to ever be dependent upon their children. By deciding upon how much of their income-producing assets to commit to the estate plan and how much they should retain, the analysis is designed to leave the surviving spouse with income-producing assets approximately equal to the remaining amount that is exempted from estate taxation if the surviving spouse lives well into the 90s. Because their investment assets far exceed the $7,000,000 that is exempted from estate taxation, one of the objectives of the technique is to remove from their taxable estate as much of the value as possible while still providing them with the financial security of having more than a sufficient income to provide for their living expenses. The final amount committed to the planning technique was arrived at by trying different allocations of their assets. In order to compute the results for each of the different allocations, the author used software designed for this purpose. The example also illustrates how the grantor trust, whose assets are not included in the estate of the senior family members, can purchase life insurance to provide the funds needed by the estate to pay for estate taxes and other administrative costs if the estate does not have the liquidity to make those payments.

The investment assets owned by this couple are corporate bonds, designed to generate a safe and predictable income stream that will provide them with the funds needed for their retirement. Since these investment assets are not designed to appreciate in value, an estate plan designed to shift future appreciation in value is not necessary for this particular couple.

Interest-only installment sale to grantor trust: The Seniors have a total of $32,000,000 invested in high grade corporate bonds paying 5.35% annually. Because their Federal and state income taxes and their living expenses do not exceed the income produced by their investment portfolio, without an estate plan, their taxable estate increases every year.

Client Name	Mr. & Mrs. Senior		
Year of Transfer	2009		
Value of asset to FLP	20,000,000		
Applicable discount	25.00%		
Value of limited partnership interest	15,000,000		
Note Principal	15,000,000		
Basis in assets	20,000,000		
Terms of Note:			
Note Interest Rate	3.50%		
Interest Only Balloon At The End Of Note Term	20	Life expectancy	
Seller's Age	68	17.6 years	
Spouse's Age	62	22.5 years	
Joint Life Expectancy		25.5 years	
Extend BEYOND life expectancy?		Yes	
Number of years beyond life expectancy		5 years	
Term of Projection (rounded up)		31 years	
Estimated Annual Living Expenses		$300,000	
Estimated Annual Living Expenses Inflation Rate		1%	

California	State Of Residence	
Assumptions:		GST rate
Estate Tax Rate	45.00%	69.75%
value of seniors other assets		9,333,334
Gift In Trust before discount		2,666,666
Discounted Value of Gift/Taxable gift		2,000,000
Pretax Investment Earnings Rate		5.35%
Percent of Earnings Taxed as Capital Gains		0.00%
Percent of Earnings Taxed as Ordinary Income		100.00%
Unused Unified Credit		5,000,000
	LIFE INSURANCE ASSUMPTIONS	
	Type of Policy Purchased	Ordinary Life
	Amount of annual premium for life	100,000
	Death Benefit	4,000,000

Senior with no tax planning

Year	Ordinary Income (5.35%)	Less: Income taxes on Ordinary Income	Net cash after income taxes	Less: Living expenses	Less: Life insurance premiums	Ending Principal $32,000,000
1	1,712,000	758,416	953,584	300,000	100,000	32,553,584
2	1,741,617	771,536	970,081	303,000	100,000	33,120,665
3	1,771,956	866,486	905,469	306,030	100,000	33,620,104
4	1,798,676	879,552	919,123	309,090	100,000	34,130,137
5	1,825,962	892,896	933,067	312,181	100,000	34,651,022
6	1,853,830	906,523	947,307	315,303	100,000	35,183,026
7	1,882,292	920,441	961,851	318,456	100,000	35,726,421
8	1,911,364	934,657	976,707	321,641	100,000	36,281,487
9	1,941,060	949,178	991,881	324,857	100,000	36,848,512
10	1,971,395	964,012	1,007,383	328,106	100,000	37,427,789
11	2,002,387	979,167	1,023,220	331,387	100,000	38,019,622
12	2,034,050	994,650	1,039,399	334,701	100,000	38,624,321
13	2,066,401	1,010,470	1,055,931	338,048	100,000	39,242,205
14	2,099,458	1,026,635	1,072,823	341,428	100,000	39,873,600
15	2,133,238	1,043,153	1,090,084	344,842	100,000	40,518,842
16	2,167,758	1,060,034	1,107,724	348,291	100,000	41,178,276
17	2,203,038	1,077,285	1,125,752	351,774	100,000	41,852,254
18	2,239,096	1,094,918	1,144,178	355,291	100,000	42,541,141
19	2,275,951	1,112,940	1,163,011	358,844	100,000	43,245,308
20	2,313,624	1,131,362	1,182,262	362,433	100,000	43,965,137
21	2,352,135	1,150,194	1,201,941	366,057	100,000	44,701,021
22	2,391,505	1,169,446	1,222,059	369,718	100,000	45,453,362
23	2,431,755	1,189,128	1,242,627	373,415	100,000	46,222,574
24	2,472,908	1,209,252	1,263,656	377,149	100,000	47,009,081
25	2,514,986	1,229,828	1,285,158	380,920	100,000	47,813,318
26	2,558,013	1,250,868	1,307,144	384,730	100,000	48,635,733
27	2,602,012	1,272,384	1,329,628	388,577	100,000	49,476,784
28	2,647,008	1,294,387	1,352,621	392,463	100,000	50,336,943
29	2,693,026	1,316,890	1,376,137	396,387	100,000	51,216,692
30	2,740,093	1,339,905	1,400,188	400,351	100,000	52,116,528
31	2,788,234	1,363,447	1,424,788	404,355	100,000	53,036,961

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EstateView
Estate planning software

Because the annual build-up in their assets was in their estate, their entire $53,036,961 (and the $4,000,000 of life insurance they purchased) is exposed to the estate tax and the GST tax.

The following chart illustrates how all of the factors used in this technique to shift wealth without exposure to the estate and gift taxes can be communicated in an understandable manner.

	Senior with No Tax Plan	Senior with Tax Plan	Trust with Tax Plan
Beginning Principal	32,000,000	None	22,666,666
Other Assets		9,333,334	-
Note Principal		15,000,000	(15,000,000)
Interest Paid by the Trust on Note		10,500,000	(10,500,000)
Income Earned	68,136,824	14,271,756	53,865,068
Income Taxed paid by Senior	(33,160,040)	(33,160,040)	-
Living Expenses	(10,839,822)	(10,839,822)	
Life Insurance Premiums	(3,100,000)		(3,100,000)
Life Insurance Death Benefits	4,000,000		4,000,000
Total Assets at Death	57,036,961	**5,105,227**	51,931,734
Transfer Taxes After Unified Credit	(23,416,633)	(47,352)	
Net After Transfer Taxes	33,620,329	5,057,875	51,931,734
Combined Assets After Death		56,989,609	
Tax Benefit of Plan		**$23,369,280**	

Example Mr. and Mrs. Senior contribute $22,666,666 worth of assets to their family limited partnership in exchange for a limited partnership interest and apply a conservative 25% valuation discount in valuing their limited partnership interest. They make a $2,000,000 taxable gift of a limited partnership to the grantor trust. They then sell a $15,000,000 limited partnership interest to the grantor trust, taking back the trust's $15,000,000 interest only installment note with a 20 year term and paying 3.50% annual interest. They have retained $9,333,334 of income-producing assets. By the time Mrs. Senior reaches age 95 only $105,227 is exposed to the estate tax. Consider the following financial projection for the Seniors with the tax plan in place. The retained $9,333,334 of income-producing assets is slowly depleted during the 20-year note term as the interest received on the grantor trust's promissory note is not sufficient to fund the payment of the grantor trust's income taxes, their income taxes and their living expenses. By the time the note matures, the assets retained by the Seniors have been depleted to $2,000,000. If grantor trust status continues, then during this 11-year period after the note is paid, their assets are further depleted. During the 31 years, the Seniors paid a total of $33,160,040 of income taxes of which $26,227,007 was the income taxes on the grantor trust's taxable income. *And, the income taxes paid by the Seniors on the grantor trust's income for the 11 years after the note matured in year 20 were $10,366,201.* One must be sensitive to the further depletion of the grantor's assets after the note principal is paid and decide whether or not to continue grantor trust status after the note principal is fully satisfied.

The next table illustrates the impact on the Seniors if they implement the recommended estate plan.

Seniors with the estate plan

Year	Principal Payment Received	Interest paid by Trust	Income on retained assets	Less: tax on Income	Less: Tax on Trust's Income	Seniors' Annual Net Cash	Less: Living Expenses	Ending Principal $9,333,334
1	-	525,000	499,333	221,205	537,211	265,917	300,000	9,299,251
2	-	525,000	497,510	220,397	551,139	250,974	303,000	9,247,225
3	-	525,000	494,727	241,921	624,565	153,240	306,030	9,094,435
4	-	525,000	486,552	237,924	641,628	132,000	309,090	8,917,345
5	-	525,000	477,078	233,291	659,604	109,182	312,181	8,714,346
6	-	525,000	466,218	227,980	678,542	84,695	315,303	8,483,738
7	-	525,000	453,880	221,947	698,493	58,439	318,456	8,223,721
8	-	525,000	439,969	215,145	719,512	30,312	321,641	7,932,393
9	-	525,000	424,383	207,523	741,655	205	324,857	7,607,741
10	-	525,000	407,014	199,030	764,982	(31,998)	328,106	7,247,637
11	-	525,000	387,749	189,609	789,558	(66,419)	331,387	6,849,832
12	-	525,000	366,466	179,202	815,448	(103,184)	334,701	6,411,947
13	-	525,000	343,039	167,746	842,724	(142,431)	338,048	5,931,468
14	-	525,000	317,334	155,176	871,459	(184,301)	341,428	5,405,739

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Year	Principal Payment Received	Interest paid by Trust	Income on retained assets	Less: tax on Income	Less: Tax on Trust's Income	Seniors' Annual Net Cash	Less: Living Expenses	Ending Principal $9,333,334
15	-	525,000	289,207	141,422	901,731	(228,946)	344,842	4,831,951
16	-	525,000	258,509	126,411	933,623	(276,524)	348,291	4,207,136
17	-	525,000	225,082	110,065	967,220	(327,204)	351,774	3,528,158
18	-	525,000	188,756	92,302	1,002,616	(381,161)	355,291	2,791,706
19	-	525,000	149,356	73,035	1,039,905	(438,584)	358,844	1,994,278
20	15,000,000	525,000	106,694	52,173	1,079,189	14,500,332	362,433	16,132,177
21	-	-	863,071	422,042	728,152	(287,122)	366,057	15,478,997
22	-	-	828,126	404,954	764,492	(341,319)	369,718	14,767,960
23	-	-	790,086	386,352	802,776	(399,042)	373,415	13,995,503
24	-	-	748,759	366,143	843,109	(460,492)	377,149	13,157,862
25	-	-	703,946	344,229	885,599	(525,882)	380,920	12,251,059
26	-	-	655,432	320,506	930,362	(595,436)	384,730	11,270,893
27	-	-	602,993	294,863	977,520	(669,391)	388,577	10,212,925
28	-	-	546,391	267,185	1,027,201	(747,995)	392,463	9,072,467
29	-	-	485,377	237,349	1,079,541	(831,513)	396,387	7,844,567
30	-	-	419,684	205,226	1,134,680	(920,221)	400,351	6,523,995
31	-	-	349,034	170,677	1,192,769	(1,014,413)	404,355	5,105,227

The $5,105,227 remaining in the taxable estate has been reduced so that the impact of the estate tax is almost non-existent due to the $5,000,000 of exemption remaining under their combined unified credits. The estate plan is almost perfect as only $105,227 remains exposed to estate taxes. The next table illustrates the funds that have accumulated in the grantor trust that are not exposed to estate tax. In explaining the tax savings, all one needs to look at is the assets in the trust at the end of any single year as that is the amount that is not exposed to the estate tax.

Grantor Trust with tax plan

Year	Note Payment	Ordinary Income (5.35%)	Less: Annual Interest	Annual net Increase In Funds	Less: life Insurance Premiums	Ending Principal
						$22,666,666
1	-	1,212,667	525,000	687,667	100,000	23,254,333
2	-	1,244,107	525,000	719,107	100,000	23,873,439
3	-	1,277,229	525,000	752,229	100,000	24,525,668
4	-	1,312,123	525,000	787,123	100,000	25,212,792
5	-	1,348,884	525,000	823,884	100,000	25,936,676
6	-	1,387,612	525,000	862,612	100,000	26,699,288
7	-	1,428,412	525,000	903,412	100,000	27,502,700
8	-	1,471,394	525,000	946,394	100,000	28,349,095
9	-	1,516,677	525,000	991,677	100,000	29,240,771
10	-	1,564,381	525,000	1,039,381	100,000	30,180,152
11	-	1,614,638	525,000	1,089,638	100,000	31,169,791
12	-	1,667,584	525,000	1,142,584	100,000	32,212,374
13	-	1,723,362	525,000	1,198,362	100,000	33,310,736
14	-	1,782,124	525,000	1,257,124	100,000	34,467,861
15	-	1,844,031	525,000	1,319,031	100,000	35,686,891
16	-	1,909,249	525,000	1,384,249	100,000	36,971,140
17	-	1,977,956	525,000	1,452,956	100,000	38,324,096
18	-	2,050,339	525,000	1,525,339	100,000	39,749,435
19	-	2,126,595	525,000	1,601,595	100,000	41,251,030
20	15,000,000	2,206,930	525,000	(13,318,070)	100,000	27,832,960
21	-	1,489,063	-	1,489,063	100,000	29,222,023
22	-	1,563,378	-	1,563,378	100,000	30,685,402
23	-	1,641,669	-	1,641,669	100,000	32,227,071
24	-	1,724,148	-	1,724,148	100,000	33,851,219
25	-	1,811,040	-	1,811,040	100,000	35,562,259
26	-	1,902,581	-	1,902,581	100,000	37,364,840
27	-	1,999,019	-	1,999,019	100,000	39,263,859
28	-	2,100,616	-	2,100,616	100,000	41,264,475
29	-	2,207,649	-	2,207,649	100,000	43,372,125
30	-	2,320,409	-	2,320,409	100,000	45,592,534
31	-	2,439,201	-	2,439,201	100,000	47,931,734

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Since the trust is able to generate sufficient excess funds each year, it can easily pay the $100,000 annual life insurance premium out of its own funds without the grantor having to resort to any annual exclusion gifts (Crummey powers) or even any taxable gifts. In addition to the $47,931,734 accumulated in the grantor trust, the grantor trust also collects the $4,000,000 death benefit from the life insurance policy. The death benefit can provide the funds needed to pay any estate taxes if the surviving spouse does not survive to age 95. If the surviving spouse dies at age 89 (year 26), the taxable estate has been depleted to $11,270,893, and at a 45% estate tax rate on the taxable estate in excess of $5,000,000, the life insurance death benefit can provide the funds needed to pay the estate taxes on this $6,270,893 taxable amount. If the surviving spouse dies sooner, say in year 23, the taxable estate will be $13,995,503 and the estate tax will be $4,047,976. The $4,000,000 death benefit can eliminate any liquidity problems.

Caution: Large valuation discounts are insignificant over the long term

Although the size of the discount in the long run is the least significant wealth depletion factor, the absolute amount of the future tax savings from a large discount over a more conservative discount can be substantial. However, when one takes into account the present value of the tax savings attributable to a lower valuation discount, and also takes into consideration that the present audit exposure of the gift tax return is reduced, one may conclude that foregoing the additional potential tax savings from a larger discount is worthwhile and can be considered a cost for minimizing audit exposure. Remember that the estate tax savings will not occur until far in the future upon the death of the surviving spouse while the exposure to a gift tax audit occurs today. The following table illustrates the absolute tax savings and the present value of the absolute tax savings starting with a conservative valuation discount of 25% and comparing the additional tax savings from 30%, 35% and 40% valuation discounts. The comparison starts with a couple ages 68 and 63, living in New York City, a 20-year interest-only promissory note with annual interest at 4.11% (the January 2010 long-term AFR), with $42,000,000 of corporate bonds yielding 5½%, a 30-year projection and continuing grantor trust treatment after the note is paid at maturity. The couple retains $19,333,334 worth of corporate bonds and transfers $22,666,666 worth of corporate bonds to a family limited partnership in exchange for a limited partnership interest. The couple gifts a limited partnership interest with a $2,666,666 capital account to the grantor trust as seed money and sells a limited partnership interest with a $20,000,000 capital account to the grantor trust, both the gift and the sale use the discounted value of the limited partnership interests. The following table compares the tax results for an installment sale to a grantor trust using different valuation discount assumptions.

Rev. Rul. 2010-1, 2010-2 I.R.B. (Dec. 22, 2009).


Discount %	Estate tax paid upon death of surviving spouse	Taxable estate upon death of surviving spouse	Tax savings over the 25% valuation discount	Present value of estate tax savings
25%	$8,660,625	$24,245,834	-------	-------
30%	$6,714,314	$20,054,033	$1,946,311	$ 571,389
35%	$4,768,004	$15,862,231	$3,892,621	$1,142,779
40%	$2,821,693	$11,670,429	$6,838,932	$2,007,744

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[1] The annual 4.11% long-term AFR for January 2010 was used as the discount rate, and the present value was for a period 30 years in the future.

BARRY A. NELSON, JENNIFER E. OKCULAR & CASSANDRA S. NELSON: 2024/2025 CLIENT LETTER ON LEGISLATIVE, CASE LAW, AND RELATED UPDATES, AND HOW THEY MAY IMPACT YOUR ESTATE PLAN

Steve Leimberg's Estate Planning Email Newsletter - Archive Message #3162

Date: 02-Dec-24

From: Steve Leimberg's Estate Planning Newsletter

Subject: Barry A. Nelson, Jennifer E. Okcular & Cassandra S. Nelson: 2024/2025 Client Letter on Legislative, Case Law, and Related Updates, and How They May Impact Your Estate Plan

"In our firm's 2024/2025 client update letter, we discuss a number of legislative, case law, and related estate planning and asset protection developments that we believe are most relevant to our clients."

Barry A. Nelson, Jennifer E. Okcular and Cassandra S. Nelson share with **LISI** members their year-end client newsletter that they recently sent to their clients.

Barry A. Nelson, a Florida Bar Board Certified Tax and Wills, Trusts and Estates Attorney and author of *Estate Planning and Asset Protection in Florida: A Plan to Survive Unexpected Financial Threats* is a shareholder in the law firm of Nelson & Nelson, P.A. in North Miami Beach, Florida. He practices in the areas of tax, estate planning, asset protection planning, probate, partnerships and business law. He provides counsel to high net worth individuals and families focusing on income, estate and gift tax planning, and assists business owners to most effectively pass their ownership interests from one generation to the next. As the father of a child with autism, Barry combines his legal skills with compassion and understanding in the preparation of Special Needs Trusts for children with disabilities. In September 2024, Barry received the Activated Professional Impact Award presented by the Miami Foundation. Barry received the Distinguished Planner Award 2021 presented by the Estate Planning Council of Greater Miami. He is a Fellow of the American College of Trust and Estate Counsel and served as Chairman of its Asset Protection Committee from 2009 to 2012. Mr. Nelson has been named in *Chambers USA High Net Worth Guide* as a Tier 1 leading estate planning attorney in Florida since the inaugural edition in 2016. He has been listed in *Best Lawyers in America®* since 1995 in the practice areas of Trusts and


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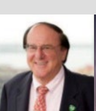
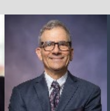
Estates and Tax Law; and has been a Martindale-Hubbell AV Preeminent® Rated Lawyer for over 25 years. Mr. Nelson was named by *Best Lawyers in America®* as the 2015 Trusts and Estates "Lawyer of the Year" in Miami.

As the founding chairman of the Asset Preservation Committee of the Real Property, Probate and Trust Law Section of the Florida Bar from 2004-2007, Barry introduced and coordinated a project to write a treatise authored by committee members entitled *Asset Protection in Florida* (Florida Bar CLE 2008, 7th Edition 2022). Barry wrote Chapter 5 of Asset Protection in Florida, entitled "Homestead: Creditor Issues" which is now co-authored by Barry Nelson and Cassandra Nelson. Barry Nelson is a co-founder and serves as board co-chairman of The Victory Center for Autism and Behavioral Challenges (a not-for-profit corporation). In May 2024 Binghamton University Alumni Association recognized Barry's exemplary contributions through his work at The Victory Center by awarding him the Edward Weisband Distinguished Alumni Award for Public Service or Contribution to Public Affairs along with his wife, Judi Nelson.

Jennifer E. Okcular, is a shareholder in the law firm of **Nelson & Nelson, P.A.** in North Miami Beach, Florida, practices primarily in the areas of tax, estate planning, asset protection planning and probate administration. Jennifer is Board Certified by the Florida Bar in Wills, Trusts and Estates and currently serves as a member of the Board Certification Committee of the Real Property, Probate and Trust Law Section of the Florida Bar and as an Associate Trusts and Estates Article Editor of the ABA Probate and Property Magazine. Jennifer received her B.A. from the University of Florida; graduated first in her class from Stetson University College of Law in 2004; and received her LLM in Taxation at the University of Florida Graduate Tax Program. In May 2017 she graduated from Class II of the Florida Fellows Institute of the American College of Trust and Estate Counsel (ACTEC). Jennifer Okcular has been listed in The Best Lawyers in America® since 2019 in the practice area of Tax Law and since 2022 in Trusts and Estates. Jennifer received her first honor as an "Up and Coming" attorney in Private Wealth Law Florida by Chambers USA High Net Worth Guide in 2024. She has also been named as a top rated estate planning and probate attorney by Florida Super Lawyers Magazine since 2017.

Cassandra S. Nelson is a shareholder at **Nelson & Nelson, P.A.**, a trusts and estates law firm in North Miami Beach, Florida. Cassandra specializes in estate planning, asset protection, tax law, special needs trusts,

guardianships, and probate administration. She holds a B.A. from the University of Miami and a J.D. from Emory University School of Law. She is currently pursuing an Executive LLM in Taxation at New York University. Cassandra has been acknowledged as a future leader in the legal profession earning recognitions by *Best Lawyers: Ones to Watch® in America* in the practice area of Trusts and Estates (since 2022); as an "Associates to Watch" by *Chambers USA High Net Worth Guide* 2024 in Private Wealth Law Florida; and as a Class IV graduate of the Florida Fellows Institute of the American College of Trust and Estate Counsel (ACTEC). Cassandra is an active contributor to legal scholarship having co-authored numerous articles and chapters in respected publications including *Trust & Estates*, *ActionLine* (Florida Bar), and Leimberg Information Services. She co-authored Chapter 5: *Homestead: Creditor Issues, Asset Protection in Florida* (The Florida Bar, 7th Edition, 2022), and has been a co-contributor on several chapters published in Barry A. Nelson's treatise, Estate Planning and Asset Protection in Florida: A Plan to Survive Unexpected Financial Threats. Cassandra's dedication to the legal profession is paralleled by her passion for special needs advocacy. Her personal experience as the sister of an adult brother with severe autism drives her involvement with The Victory Center for Autism and Behavioral Challenges (a not-for-profit corporation), and her commitment to helping families with children who have disabilities by providing counsel on creating special needs trusts and establishing guardianships.

Here is their commentary:

COMMENT:

In this client update letter, we discuss a number of legislative, case law, and related estate planning and asset protection developments that we believe are most relevant to our clients.

I. Increases in Estate, Gift, and GST Exemptions and Exclusions for 2025

The IRS released the 2025 inflation-adjusted exemptions and exclusions for estate, gift, and GST tax in Rev. Proc. 2024-40 as follows:

- The estate and gift exemption amount (currently $13.61 million) will increase to $13.99 million for 2025 ($27.98 million per couple). The GST exemption will likewise increase by the same amount.

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- The annual gift tax exclusion will increase from the current $18,000 up to $19,000 in 2025.
- The gift tax exclusion amount that can be given annually to a non-citizen spouse is increasing from $185,000 up to $190,000 next year.

II. December 3, 2024 Injunction Enjoining Enforcement of the Corporate Transparency Act:

In our October 2024 newsletter, which can be found at: estatetaxlawyers.com/boi-filing-2024, we advised our clients of important upcoming Corporate Transparency Act ("CTA") deadlines and information about filing the Beneficial Ownership Information ("BOI") report, including the potential of significant penalties if the filing requirements are not satisfied. The October 2024 newsletter was also sent via email to our clients.

However, on December 3, 2024, a Federal District Court in Texas issued a **nationwide** preliminary injunction enjoining enforcement of the CTA pending further proceedings. **This means that the reporting requirements under the CTA are, for the time being, put on hold, although it is important to note that this is not a final ruling.** The case is Texas Top Cop Shop, Inc. et al. v. Garland (U.S. Attorney General), Case No. 4:24-cv-00478, for the Eastern District of Texas.

On December 5, 2024, the United States Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") filed a notice of appeal with the 5th Circuit Court of Appeals.

Perfect Form, a vendor we recommend to our clients to assist in completing BOI reports, is completing further filings at this time only as desired by their clients. If onboarding with them directly through their website, you will find the latest update on the current legal status of the CTA and will see that you have the choice to either continue with your filing or wait. To be clear, it is up to each company whether to proceed with their filing now or wait for the legal process to conclude. In either case, they recommend that companies continue to collect the applicable entity and beneficial owner/company applicant information so that filings can be completed quickly if and when needed.

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BARRY A. NELSON, JENNIFER E. OKCULAR & CASSANDRA S. NELSON: 2024/2025 CLIENT LETTER ON LEGISLATIVE, CASE LAW, AND RELATED UPDATES, AND HOW THEY MAY IMPACT YOUR ESTATE PLAN

Steve Leimberg's Estate Planning Email Newsletter - Archive Message #3162

Date: 02-Dec-24

If the injunction is lifted and the reporting requirements under the CTA are reinstated, it is important for our clients to be aware of another update. Due to Hurricane Milton, FinCEN will provide a 6-month extension (until as late as June 1, 2025) for companies with their principal place of business located in designated counties impacted by Hurricane Milton. The extension applies to businesses required to submit BOI reports, including updates and corrections, under the CTA. To qualify for such extension, reporting companies must meet the following two requirements:

1. First, the deadline for the reporting company to file an initial or updated BOI report must fall on or between October 4, 2024, and January 2, 2025.
2. Second, the reporting company must have its principal place of business in an area designated both by the Federal Emergency Management Agency (FEMA) as qualifying for individual or public assistance, and by the Internal Revenue Service (IRS) as eligible for tax filing relief as a result of Hurricane Milton. The following counties have each been identified by FEMA and the Internal Revenue Service as qualifying for disaster relief, making companies with their principal place of business located in these areas eligible for the extension: Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Columbia, DeSoto, Dixie, Duval, Flagler, Gilchrist, Glades, Hamilton, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lafayette, Lake, Lee, Levy, Madison, Manatee, Marion, Martin, Miami-Dade, Monroe, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putman, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, Suwannee, Taylor, Union and Volusia.

If clients have filed their BOI reports, no further action is required currently. If clients have started, but have not yet filed their BOI reports, they may (but are not obligated to) complete such at this time. Clients may also pause their BOI reporting compliance efforts until further guidance is provided from the courts or FinCEN.

Considering the November 2024 elections, it is possible that Congress may delay or eliminate the CTA filing deadlines.

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III. IRS Final Regulations Issued July 19, 2024 Impact Retirement Plan Assets

On July 19, 2024, the IRS issued final regulations under the SECURE Act relating to retirement plan assets. The final regulations are effective September 17, 2024, and generally apply to retirement plan distributions made on or after January 1, 2025. Our office has updated our master documents to comply with the final regulations, which will provide maximum flexibility to the beneficiaries of our client's retirement plan assets, to the extent such retirement plan assets will be held in trust for the client's beneficiaries. Clients with existing estate planning documents should amend or modify such documents to comply with the new SECURE Act provisions if retirement plan assets will (or may) be held in trust for beneficiaries.

The final regulations can be found at: *govinfo.gov/content/pkg/FR-2024-07-19/pdf/2024-14542.pdf*.

To the extent clients have significant retirement plan assets, we recommend that they review their existing estate planning documents with respect to the retirement plan provisions to determine whether such documents need to be updated.

A few of the important provisions in the final regulations are outlined in Section VII of this letter, below.

IV. Reduction in Current $13.99 Million Estate Tax Exemption on January 1, 2026

In March 2024, we sent a letter to our clients reminding them that, unless Congress extends the expiring estate and gift tax exemptions, the current estate and gift tax exemption (in 2025, $13.99 per person or $27.98 for a married couple reduced by prior taxable gifts) is scheduled to decrease on January 1, 2026, to approximately $7 million per person or $14 million for a married couple. Ultimately, whether there will be tax legislation to maintain the current estate and gift tax exemptions (or possibly increase gift and estate tax exemptions above current levels or even repeal estate taxes) will be determined by the new Republican majority in the House and Senate and President-elect Trump. As reflected in the March 2024 client update letter (which can be found at: estatetaxlawyers.com/cta-client-update-2024-03), there are a significant

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planning opportunities for a client to consider to use the current gift tax exemption amount before January 1, 2026 and avoid paying gift tax of 40% on the transfer. While it is more likely the current estate and gift exemptions will be reinstated in light of the recent Republican sweep in this month's elections it is still possible that the exemptions will be reduced, at least temporarily as of January 1, 2026. It is possible to create trusts or fund existing trusts prior to the January 1, 2026 sunset that will ultimately benefit our clients' chosen beneficiaries in a manner that is tax efficient and may provide additional protection from future creditors, including a child's divorcing spouse, and allow some flexibility should access to the funds be needed by client or client's spouse at a future date. We expect our office may be unable to satisfy demand for our services, especially for clients who wait until the end of 2025 to begin this planning assuming the exemptions are not extended in early 2025. We suggest that clients start the planning process early even if the trusts we create remain unfunded until the current law is extended, or it becomes clear that the larger exemptions will terminate. We believe that this planning is most effective for clients with estates exceeding $20 million, but clients with smaller estates may want to consider such planning as well subject to caveats we can explain.

V. Durable Power of Attorney Risks:

Our office was recently informed of a situation in which a "trusted" family member gained access to copies of a client's estate planning documents while the client was ill and used a copy of the client's Durable Power of Attorney that was not intended to be given to the family member until the incapacity of the client or at the discretion of the client. With a copy of the client's Durable Power of Attorney (which designated such family member as Attorney in Fact), the family member directed a financial institution to make transfers of funds to the family member Attorney in Fact and directed another financial institution to issue an additional credit card in the name of the Attorney in Fact. The Durable Power of Attorney included optional language provided in Florida Statutes Section 709.2208 that provides expanded access to the Attorney in Fact at financial institutions. The client only intended the designated Attorney in Fact to have access to the Durable Power of Attorney if the client became incapacitated or the client exercised his discretion to provide the Durable Power of Attorney to such Attorney in Fact. Neither financial institution contacted the client to confirm the use of the Durable Power of Attorney was authorized prior to effectuating the requests, and each financial institution acted upon a copy of the Durable Power of Attorney and not the original.

Florida Statutes Section 709.2106(5) provides that "except as otherwise provided in the power of attorney, a photocopy or electronically transmitted copy of an original power of attorney has the same effect as the original. Notwithstanding this subsection, an original power of attorney that is relied upon to affect the title to real property may be required for recording in the official records."

Many of our clients have executed Durable Power of Attorneys where the originals are held by our firm in escrow subject to "escrow letters" that provide that our office will maintain the original Durable Power of Attorney and not release them unless the client instructs us to release it or certain criteria (e.g. incapacity of the client) are met such as through a letter from the client's primary physician concluding that the client has become incapable of handling their financial affairs. However, clients should be aware that in many situations a copy of a Durable Power of Attorney can be used at a financial institution rather than the original. In light of the foregoing, we believe that it is safer for clients not to have any copies or scans of their Durable Power of Attorney documents that can be accessed by others who are named. Considering these recent events, we recommend that our clients (i) remove copies of their Durable Power of Attorneys from their estate planning binders (except for the first page) and shred such copies and (ii) ensure that any copies held on a computer or other device are inaccessible to others who may be named as power of attorney holders without the client's explicit knowledge and consent. Should clients wish to maintain a copy of their Durable Power of Attorney in their binder or scans, we suggest that clients safeguard such documents (such as placing such documents in a safe) so that they cannot be taken by the client's Attorney-in-Fact without the client's knowledge or consent.

Clients may want to contact their financial advisor(s) to determine whether anyone designated in their Durable Power of Attorney (past and present) has been added to their financial accounts without their knowledge or consent. Clients should also review their credit card statements to verify that there are no additional credit cards or charges that they are unaware of. The most effective way for clients to be certain: (i) unauthorized charges are not being made on their credit card(s), (ii) a new credit card is not obtained without the client's knowledge or consent, or (iii) unauthorized


withdrawals are not being made from their financial accounts is to monitor monthly statements rather than to rely on others to review such statements. These situations typically occur as our clients age and their children or advisors have the ability to access the client's personal documents, such as their Durable Power of Attorney.

Note: A Durable Power of Attorney does not control assets titled in the name of the client's Revocable Trust. The Trustees of the Revocable Trust control the Revocable Trust assets. The Revocable Trust lists the current trustee(s) (generally the Settlor during the Settlor's lifetime provided the Settlor is not incapacitated) and designates successor Trustees or the process for of appointing successor trustees to become acting Trustees (e.g., upon the death or incapacity of a prior Trustee).

We also suggest that clients complete a Trusted Contact Person form that designates one or more people as Trusted Contact Persons, with their financial institution so that their advisor may contact those designated in the event they suspect the client is being subjected to financial exploitation. The Trusted Contact Persons cannot withdraw funds, but will only be advised if the financial institution has concerns the client is being subjected to possible financial exploitation so that if the client's family member, caretaker, friend, lover, etc. is acting improperly with respect to the client, others will be also contacted who may step in to resolve the situation.

VI. Other Important Considerations for Clients:

Planning Opportunities that Could be Taken Away by Statute: There are numerous effective estate and gift tax planning/savings techniques that have been threatened by proposed legislation. Specifically, clients who were considering sales or gifts of discounted stock, partnership, or LLC interests or fractional interests in real property to a grantor trust, such as Spousal Limited Access Trusts ("SLATs"), Grantor Retained Annuity Trusts ("GRATs"), or generation skipping transfer tax trust for children and more remote descendants, or who were considering substituting assets into a grantor trust for other assets of equivalent value (if authorized in such grantor trust), should either monitor the actions of our legislature or proceed with such now before the benefits of these techniques are eliminated or curtailed. The concerns of future legislation to limit or eliminate these techniques or close existing tax loopholes appear far more unlikely as a result of the November 2024 elections. Nevertheless, some of these techniques, including creation of inter vivos Qualified Terminable

Interest Property ("QTIP") Trusts for a spouse, and SLATs provide excellent asset protection benefits as well as estate planning benefits, and clients may want to take advantage of these options even if the estate and gift tax benefits are not the most significant priority.

Donor Advised Funds: Clients who have or may create charitable donor advised funds ("DAFs") in the future should review Barry and Cassandra's DAF article (estatetaxlawyers.com/2023-11-lisi330-donor-advised-funds). The article explains why donors of DAFs must consider how their DAFs will be administered after their death or incapacity as Barry and Cassandra encountered many DAF agreements for their clients by charitable or financial sponsors that may not satisfy the client's charitable objectives once the client passes away or becomes incapacitated. A comprehensive DAF agreement should: (i) list successors to the donors who may suggest charitable distributions (e.g., the donor's children, by majority, can make such requests) and (ii) specify the donor's default charitable beneficiaries. Otherwise, the DAF charitable sponsor may have the authority to direct DAF assets to charities in the DAF charitable sponsor's discretion as compared to charities desired by the DAF donor.

Owners of Golf Cart, Electric Bikes, Electric Scooters, Micromobility Devices, and Watercraft Vessels Should Beware of Huge Potential Liability: Clients who own golf carts should review Barry and Cassandra's article (estatetaxlawyers.com/florida-golf-cart-owners-beware-of-liability) and be aware that lending their golf cart to others could, based upon a September 19, 2023 Miami-Dade County Circuit Court ruling, result in damages in excess of $50 million, even if they are not the driver who negligently caused significant injuries. This exposure could also result from electric bikes, electric scooters, micromobility devices, and watercraft vessels. A comprehensive periodic liability insurance review is critical, and clients should consider increasing their liability umbrella policy to cover unexpected financial exposure and confirm their "toys" are adequately insured.

Consider Revocable Trust Funding: Clients who do not own assets as tenants by the entirety with their spouse (including single clients) should consider funding their respective Revocable Trusts (other than with retirement assets, annuities, and life insurance) to avoid probate on such assets upon death. Revocable Trusts do not provide clients with asset protection and are includible in the settlor's/grantor's taxable estate, but

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assets owned by a Revocable Trust avoid probate on death. Probate can cause court delays, delay in access to liquidity, and additional legal expenses. We provide a trust funding memorandum when our clients execute their Revocable Trusts, but on occasion, we are advised that their Revocable Trusts were not funded, or were only partially funded, upon the settlor's/grantor's date of death. For single clients or clients who are married, but do not own assets jointly with their spouse, Revocable Trust funding is an important consideration. Not every asset is appropriate for transfer to Revocable Trusts and some business or real estate interests require approvals before title of assets are conveyed.

Other than our married clients who may consider a Community Property Trust, as described in the next section below, we believe our married clients who own their Florida homestead jointly with their spouse, as tenants by the entirety, or in the name of both spouses should generally retain such title until the death of the first spouse. Clients who prefer to hold title to their homestead in only their name (such as those in second marriages with prenuptial agreements where their spouse waived homestead) should consider conveying their Florida homestead to their Revocable Trust to avoid probate court orders for transfer of such Florida residence upon death. Clients must carefully review these issues with their real estate attorney before taking any action to retitle their homestead and advise their insurance company of the transfer to maintain insurance coverage. Before any deed transferring ownership from the client to the client's Revocable Trust is recorded, the client should confirm with their real estate attorney, and possibly also the Property Appraiser's office, that such transfer will not result in loss of their homestead exemption or Save Our Homes Cap. Furthermore, it is important that clients confirm with their advisors that proposed transfers to the client's Revocable Trust will not accelerate existing mortgage debt on homesteads.

Married Clients Should Consider Community Property Trust for Homestead: Chapter 736, Part XV, the "Community Property Trust Act," (effective July 1, 2021), allows the creation of a trust, referred to as a "Community Property Trust", which may result in the property held in such trust receiving a full step up in income tax basis upon the death of the first spouse rather than a 50% step up in income tax basis. The benefit of receiving such full step up in income tax basis to fair market value at the date of the first spouse's death is that the surviving spouse can then sell such homestead without incurring capital gains tax on the entire appreciation that occurred prior to the deceased spouse's death (as compared to only one-half (1/2) of such appreciation that occurred prior to the deceased spouse's death under the tax law where a property is owned jointly between spouses). As a result of asset protection concerns, we only suggest Community Property Trusts hold Florida homestead and no other assets, such as stocks or bonds.

It should be noted that some tax commentators have expressed concern as to whether a state statute that effectively allows property owners to "elect" community property status will be respected by the Internal Revenue Service ("IRS"). If the IRS takes the position that the full ("double") step up in income tax basis upon the death of the first spouse is not permitted, the taxpayers should not be in any worse of a position, other than the transaction costs to create the Community Property Trust and potential audit costs, if the community property election and associated double step up in income tax basis upon the death of the first spouse is challenged, including possible interest as to the late payment of income tax when the property is sold and possible late payment penalties.

Those with mortgage debt on their homestead need to review their mortgage and note documents with their real estate attorney and confirm: (i) there will be no acceleration on the mortgage, especially a low interest mortgage, and (ii) there will not be unanticipated state transfer taxes when the homestead is deeded to the Community Property Trust.

Tangible Personal Property: Clients who intend to gift specific items of their tangible personal property (e.g., jewelry, handbags, clothing, furniture, automobiles) upon death should take photographs of such items, include a detailed description, and prepare a statement disposing of such tangible personal property to avoid family disputes upon death. Clients who are elderly and may be subject to elder exploitation should consider making gifts of such items while they are living and capacitated or putting such items in a safe deposit box as we have experienced many situations of theft of jewelry owned by elderly clients by those who have access to the elderly person's personal belongings.

Planning for Beneficiaries Who May Live in High Income Tax Jurisdictions: Clients with beneficiaries who are living in or may move to high income tax jurisdictions should consider advance planning to reduce such income tax implications.

VII. Final SECURE Regulations

The final SECURE regulations clarify changes made by the SECURE Act and SECURE 2.0. One of the more important items in the final regulations is the clarification of whether a beneficiary (who is not a surviving spouse or a disabled beneficiary, often referred to as an "eligible designated beneficiary") of an individual taking Required Minimum Distributions ("RMDs") annually take RMDs yearly, or whether such beneficiary may defer distributions for up to ten years (provided all distributions are paid by the end of the tenth year after a participant's death).

This SECURE Act provision was subject to debate as commentators suggested that requiring annual distributions was not in accordance with congressional intent. However, the final rule clarifies that in this situation, the beneficiary must take RMDs for the first nine years and cannot defer all RMDs until the end of the tenth year.

Other provisions in the final regulations include, but are not limited to, the following:

1. Participants in multiple plans. The final regulations provide that if individuals and employees participate in more than one plan requiring RMDs, the plans in which they participate may not be aggregated for purposes of testing whether the RMD requirements are met.

2. Distributions beginning during a participant's lifetime. In a change from the proposed regulations, the final regulations provide that an employee's Required Beginning Date ("RBD") is determined by when the employee reaches the "applicable age." The final regulations define "applicable age" as:

   i. age 70 1/2, for employees born before July 1, 1949;

   ii. age 73, for employees born after January 1, 1951, but before January 1, 1959; and

   iii. age 75, for employees born after January 1, 1959.

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3. Determining the eligible designated beneficiary. The final regulations adopt with modifications the SECURE Act's definition of "eligible designated beneficiary." The final regulations:

   i. clarify that the definition of "child" in Code Section 152(f)(1)—which includes stepchildren, adopted children, and eligible foster children—applies;

   ii. provide that if an employee has more than one designated beneficiary and one of them is not an eligible designated beneficiary, the employee is treated as not having an eligible designated beneficiary (in which case the required distributions are accumulated); and

   iii. retain the rules on determining who the beneficiary is for purposes of calculating RMDs and identify events that can cause a beneficiary to be disregarded.

4. Age of majority. The final regulations adopt the proposed rule that an employee's child reaches the age of majority on their 21st birthday for purposes of determining an eligible designated beneficiary.

5. Disabled or chronically ill beneficiaries. The final regulations adopt the proposed rules regarding disabled or chronically ill beneficiaries and also adopt the requirements that documentation regarding a beneficiary's disability or chronic illness be provided to the plan administrator. In a new provision, the final regulations state that this documentation is not required to be provided to IRA trustees, custodians, or issuers.

Complicated provisions should be reviewed with our clients' retirement plan advisors, CPAs, or financial advisors. We have included the general description of the SECURE Act final regulations so our clients can consider updating their estate planning documents and initiate conversations with their retirement plan administrators. We suggest that our clients consult with their retirement plan administrators, CPAs, or financial advisors to be sure that they are complying with the final SECURE Act regulations.

* * * *

Warren Buffet's philosophy on giving has often been referenced in our practice – "parents should leave their children so they can do *anything* but not enough that they can do *nothing*." On November 25, 2024, Warren Buffet released a letter, where he noted the following suggestion for *all parents*, whether they are of modest or staggering wealth: "When your children are *mature*, have them read your will *before* you sign it. Be sure each child understands both the logic for your decisions and the responsibilities they will encounter upon your death." Warren Buffet's letter can be found at: https://www.berkshirehathaway.com/news/nov2524.pdf. While we understand that not every client will agree with Warren Buffet's philosophy, we wanted to share it with our clients for their consideration.

We encourage our clients to schedule an "estate planning checkup" every three to five years or sooner, if personal or financial circumstances materially change. While we address matters we believe are of interest to many, there are an infinite number of year-end planning options that are not discussed in this letter.

Barry A. Nelson
Jennifer E. Okcular
Cassandra S. Nelson


Steve Leimberg's Estate Planning Email Newsletter - Archive Message #3162

Date: 02-Dec-24

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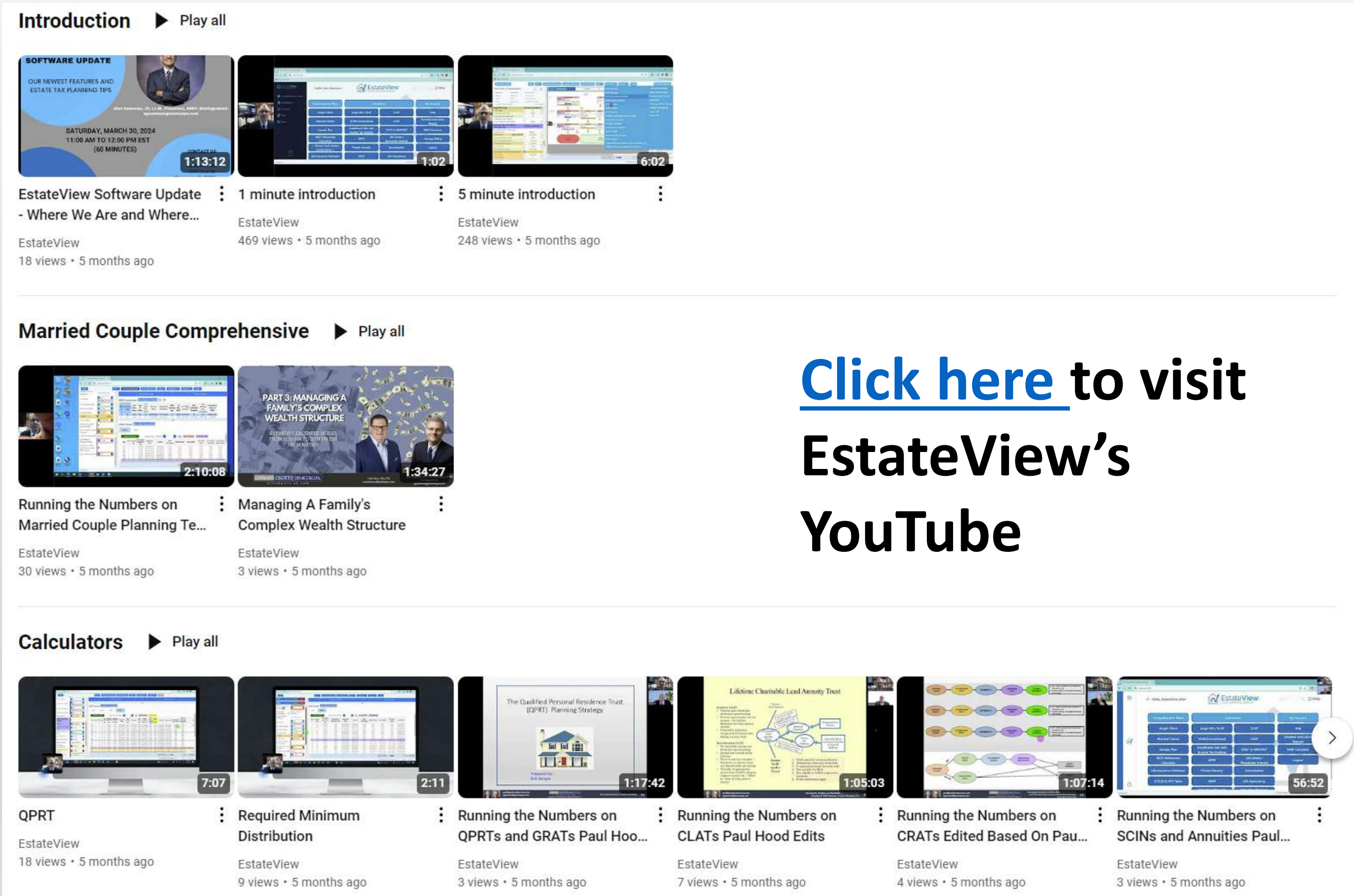

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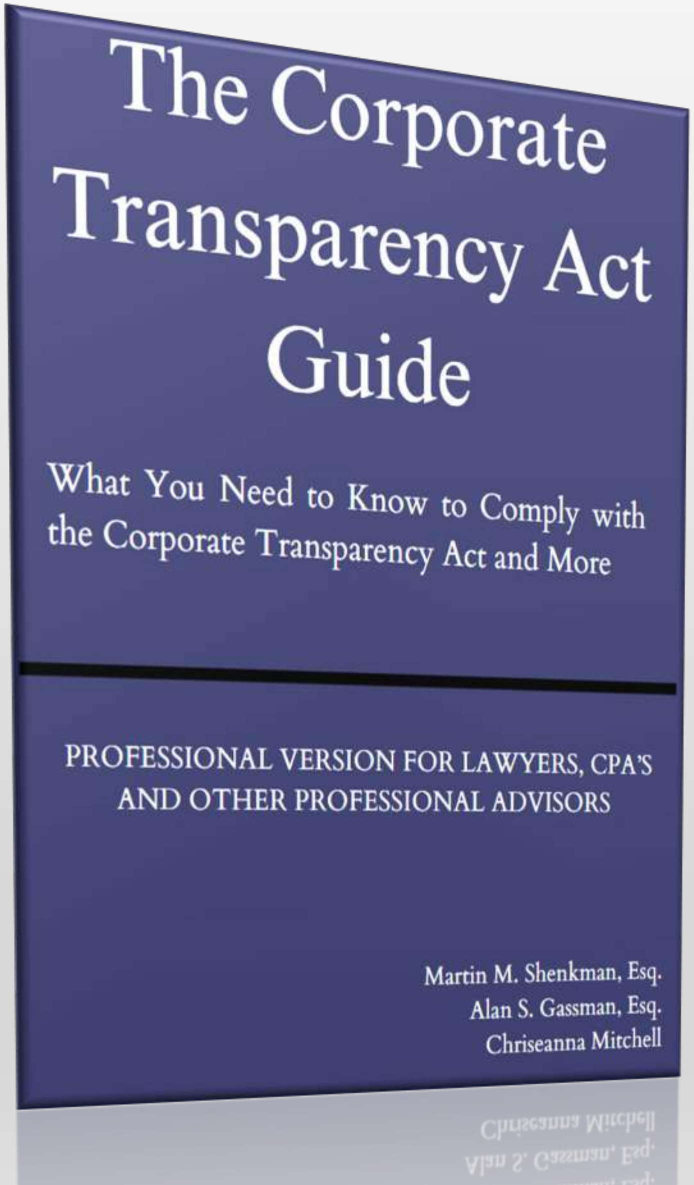

The Corporate Transparency Act (CTA) is a new federal law that will require tens of millions of people to file new reports with the federal government. These reports are very different from income tax returns most people are familiar with. These reports require disclosing personal information to be included in a new federal database. The invasiveness of this information will upset many people who are required to report. Additionally, if you fail to report, the penalties can be horrendous, with $500 a day charges and up to two years in jail! The decisions as to who must report are complex, given that the guidance from the government is over 300 pages long. In order to avoid the harsh penalties, this book will explain these new rules, what you may have to do, and how you can deal with your reporting requirements.

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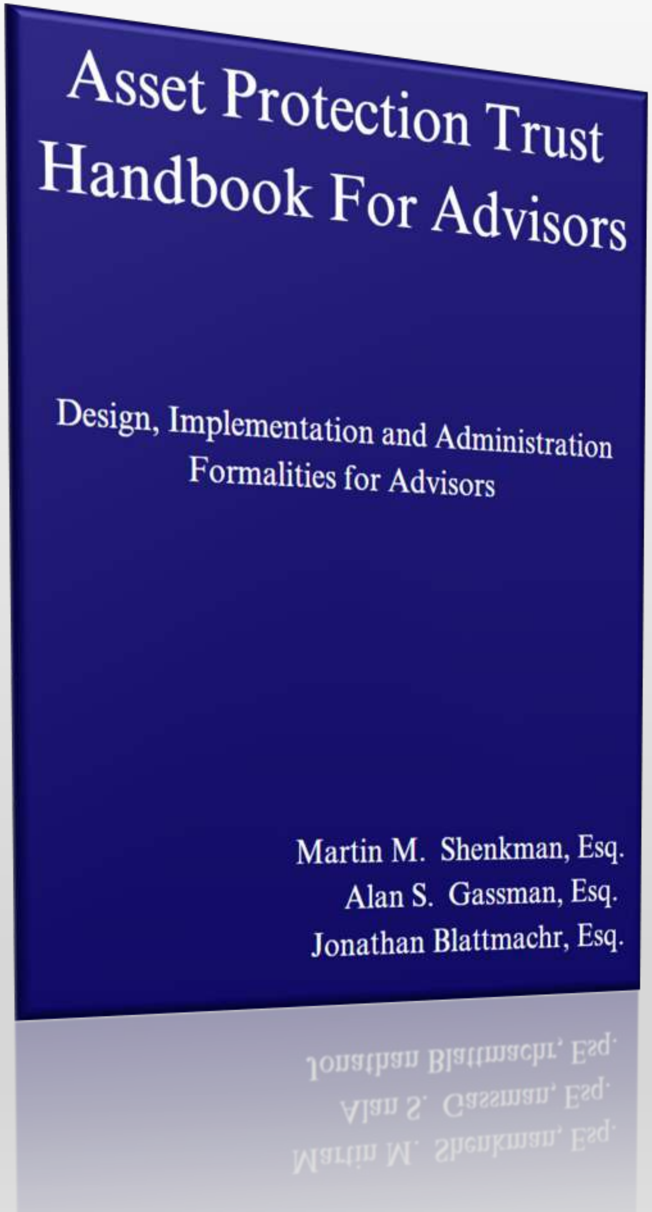

The "Asset Protection Trust Handbook for Advisors" by Martin M. Shenkman, Alan S. Gassman, and Jonathan Blattmachr is a detailed guide for estate planners, lawyers, accountants, and financial advisors, focusing on the design, implementation, and administration of Asset Protection Trusts (APTs). The handbook begins with a preface that emphasizes the necessity of cautious and well-informed asset protection planning, acknowledging the ever-evolving legal landscape and the unique circumstances of each client. The authors underscore that while asset protection strategies can be highly beneficial, they must be carefully tailored to each client's specific needs to avoid potential legal pitfalls.

The handbook is divided into several parts, starting with an introduction and overview of APTs. This section defines APTs as irrevocable trusts formed in specific jurisdictions designed to protect assets from creditors. It traces the history and evolution of APTs, particularly highlighting the pivotal role of the Cook Islands in popularizing such trusts in the 1980s. The section outlines the fundamental principles that advisors should consider when evaluating asset protection strategies, including the choice between domestic and foreign APTs and the integration of tax planning with asset protection.

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Alan S. Gassman, Esq.

Jonathan Blattmachr, Esq.

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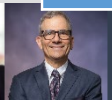

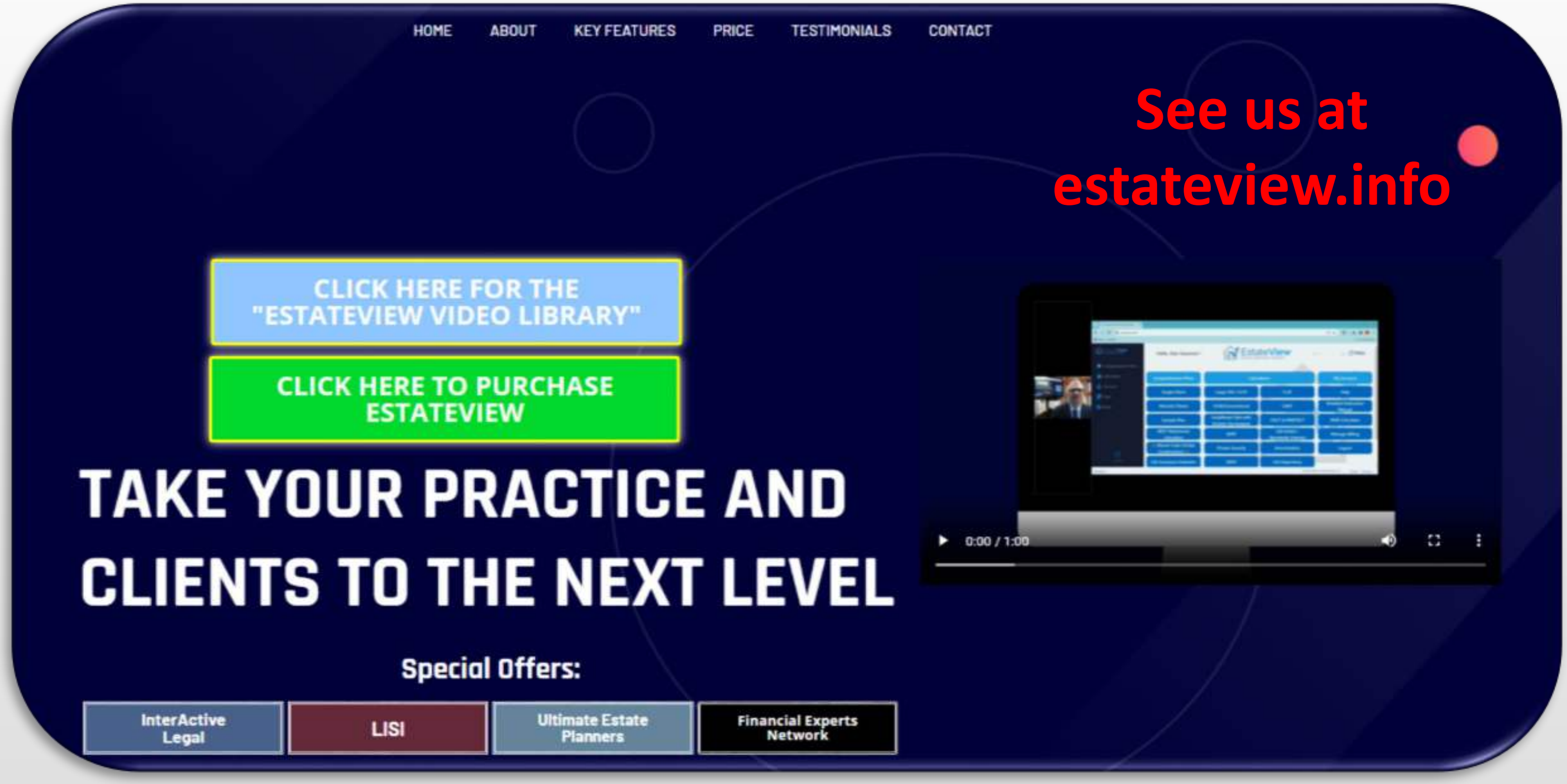

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Alan Gassman, JD, LL.M. (Taxation)
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The Project Manager

Business and professional life is a series of projects, tasks, and associated activities and reminders. Typically, the professional who the client sees as the Primary Handler is the "Project Manager," although this is not always the highest and best use for that professional's time and abilities.

Even clients/customers will understand that many aspects of a given project are better managed and shepherded by someone other than the key professional.

Tasks that include making checklists, sending reminders, making necessary phone calls, and otherwise will often be forgotten or left for later (too late), so why not appoint a Project Manager to efficiently and effectively manage a given task, and also provide an important backstop to make sure that appropriate steps and actions are taken at appropriate times to best handle any given objective?

Our reptile brain impulses of the need to control, the need for recognition, and basic insecurities will often prevent us from effectively and efficiently delegating the management of a task to someone other than us who can do a better and more thorough job of it, not to mention being a less expensive labor source than we are.

Some professionals appoint a separate independent Project Manager for every client matter, while others will only use a Project Manager occasionally.

Many people and organizations do this informally, but formalizing the arrangement and giving credit, and responsibility, where it is due and will recognized, will often be helpful.

Once you appoint someone other than yourself as the Project Manager for things that you are working on, you may find responsibilities and functions, like billing, follow up, client/customer satisfaction questionnaires, and value/revenue added services to be additional parts of an enhanced productivity and profitability equation.

Estate Planning Definitions

1. **Probate** - the court supervised process to make sure that a deceased person's Will is valid, creditors are paid, tax requirements are satisfied, and that distributions comply with applicable law; involves red tape and "cleaning up" a person's estate; probate is completely separate and apart from estate tax and inheritance taxes.

2. **Percentage Fee** - in many states, the Executor/Executrix may be paid on a percentage basis and may pay the law firm that provides administrative services on a percentage basis; law firms and trust companies have been severely criticized when a lawyer who drafts documents puts a trust company in as Personal Representative or Successor Trustee, and then, when the person dies, the trust company receives a percentage of the estate and pays the law firm a percentage of the estate. This can be avoided by giving a family member the right to choose a trust company or other fiduciary when the time comes, after advance negotiation of fee issues.

3. **Executor/Executrix/Personal Representative** - the person, people, or company appointed under the Will to take title to estate assets, and to take all actions needed to administer the estate, with court supervision.

4. **Guardian** - a person or people appointed to be the surrogate for a minor whose parents are deceased or unable to act as such.

Estate Planning Definitions

5. **<u>Trust or Trust Agreement</u>** - an arrangement whereby a Trustee holds or will receive assets for a Beneficiary or Beneficiaries pursuant to the terms of a Trust Agreement entered into 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.

6. **<u>Revocable Trust</u>** - a Trust that can be changed by the Settlor, often commonly known as a Living Trust.

7. **<u>Irrevocable Trust</u>** – 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."

Alan Gassman, JD, LL.M. (Taxation)
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Estate Planning Definitions

8. **Spendthrift Clause** - a provision under an Irrevocable Trust that prevents creditors from reaching into the Trust, although in some states, alimony, child support, and legal fees incurred by a Beneficiary to sue a Trust may still have to be paid from the Trust; this is one reason that the "asset protection trust states" like Nevada and Alaska are often preferred.

9. **Living Will** - this is not a Living Trust or a Will; it is a document that enables medical facilities and physicians to withdraw life support, and, in some states (Oregon, Washington, Vermont and Montana), to cause life to end under certain circumstances. (States presently considering Physician Assisted Suicide are Hawaii, Kansas, Massachusetts, New Hampshire and New Jersey.)

10. **Health Care Power of Attorney** – names a Health Care Surrogate to make health decisions if the Principal is unable to do so.

11. **Durable Power of Attorney** – enables an appointed Agent to make financial decisions and to transfer individually owned assets, but loses its power if the Principal is declared incompetent and thus placed under Guardianship (while the Trustee of a Living Trust does not lose such power in the event of a Guardianship).

Estate Planning Definitions

12. **Guardianship** - a court supervised process whereby an individual who has lost his or her mental capacity will have a Guardian appointed, and individual assets overseen by the court (a standby Revocable Trust may be funded by the Guardian with court approval to avoid the need for continued court oversight).

13. **Exempt Assets** – assets that creditors cannot reach.

14. **Non-Exempt Assets** – assets that creditors can reach.

15. **Fraudulent Transfer** – a transfer made to avoid creditors that may be set aside and can result in a judgment imposed against a person who would receive such assets.

16. **Murphy's Law** – anything that can go wrong, will go wrong, at the worst time, and in the worst manner.

17. **Noah's Ark** – it wasn't raining when Noah built the ark.

18. **The F. Lee Bailey Rule –** Any person who does his own legal work has a fool for a client.

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Asset Protection Definitions

Joint and Several Liability - The concept that individuals who participate in a negligent or improper act will be totally liable for all damages imposed to the extent that the other "co-defendants" do not pay their fair share. There are limitations on joint and several liability pursuant to Florida Statute Section 768.81.

Vicarious Liability- The concept that an employer is generally responsible for liabilities incurred by an employee acting within the scope of the employee's duties. The Greek term for this phenomenon is "respondeat superior."

Under this concept, parents may be responsible for the driving activities of their nannies or errand runners, and doctors may be responsible for unforeseen actions by employees who might aggressively try to help people using prescription scripts, giving medical advice, and/or driving automobiles.

Asset Protection Definitions

Secured Interest - The concept whereby a creditor can record a mortgage or lien on assets whereby that creditor would be entitled to repossess the assets and sell them at auction to satisfy a debt owed to the creditor. Real estate is liened by the recording of a proper mortgage, and non-real estate assets may be liened by recording UCC-1 Financing Statements based upon appropriately drafted security and/or pledge agreements. If a friendly debtor has a secured interest in a particular asset, then another debtor would have to pay the friendly secured debtor before they would be able to seize the asset secured. This is why doctors will often give the bank with a mortgage on business real estate a lien against medical practice assets, so that a malpractice claimant would have to pay the bank off or take other steps before seizing medical practice assets.

Marshaling of Assets - Whereby a party having a lien against assets may be forced to sacrifice their position if there are plenty of other assets that it has access to, to satisfy the obligation of the debtor. Over-secured creditor issues may also arise.

Asset Protection Trust - A trust arrangement whereby creditors of the grantor may not have access – which is contrary to Florida and basic common law that if the grantor could receive any benefit whatsoever, then creditors may receive all assets.

Asset Protection Definitions

Bad Faith – In most states an insurance carrier has an obligation to settle any claim within the limits of coverage of the physician, if reasonably possible. The failure of an insurance carrier to settle within policy limits can result in the carrier being responsible for an "excess verdict." When this occurs, the plaintiff's lawyer will often settle with the defendant by receiving an assignment of the defendant's right to pursue the insurance carrier for the excess amount.

If the carrier believes it has a 90% chance of winning at trial and a 10% chance of losing with a verdict well over policy limits, then it may make good economic sense for the carrier to take the chance, but not from the point of view of the physician. If the carrier takes the chance then if it has acted in bad faith it will be responsible for any excess verdict. Private legal counsel is commonly hired to encourage the carrier to settle within policy limits, and a physician should almost never encourage a carrier not to settle or be without private representation when the carrier or its lawyer recommends private representation! Fortunately, most verdicts exceeding coverage limits result in the physician assigning their bad faith claim to the plaintiff in exchange for a total release, particularly where the physician is otherwise judgment proof.

Automobile Liability – The owner of a motor vehicle in Florida is liable for operation of the vehicle by another driver, except that if the other driver has insurance then the owner's exposure may be limited to $300,000 per incident. If the driver has $500,000 of liability insurance, then the owner may not have liability exposure, unless the owner was negligent in allowing the driver to use the vehicle.

Sovereign Liability - The concept whereby an individual working for a governmental agency and the agency itself has limited liability, presently being $250,000 per incident. This applies to a physician working full time for public hospitals, medical schools, and the Veteran's Administration.

Asset Protection Definitions

<u>Successor Liability</u> - When a corporation has a liability and a "successor corporation" has identical or similar ownership, identity, customers, employees and/or general identity, a judge may find the new company responsible for the liabilities of the old company, even if there was a legitimate bankruptcy of the old company before the new company was formed and operational.

<u>Reverse Veil Piercing</u> - When a court unwinds transfers made to entities where the transferor is a debtor that had control over the entity, and used the entity to disguise personal assets to keep them beyond the reach of personal creditors.

<u>Concealment</u> - Under the doctrine of concealment an asset "given away" but actually held for the original transferor will be considered as continually owned by the original transferor, notwithstanding title. Concealing assets puts the debtor at risk for losing a bankruptcy discharge.

<u>How to Stop Worrying and Start Living</u>- A book written by the late Dale Carnegie, which includes phenomenal advice on how to counsel for and live with concerns about what may happen in the future, what can be done about these potential future problems, and how to handle oneself and others in a logical, sequential, and effective manner.

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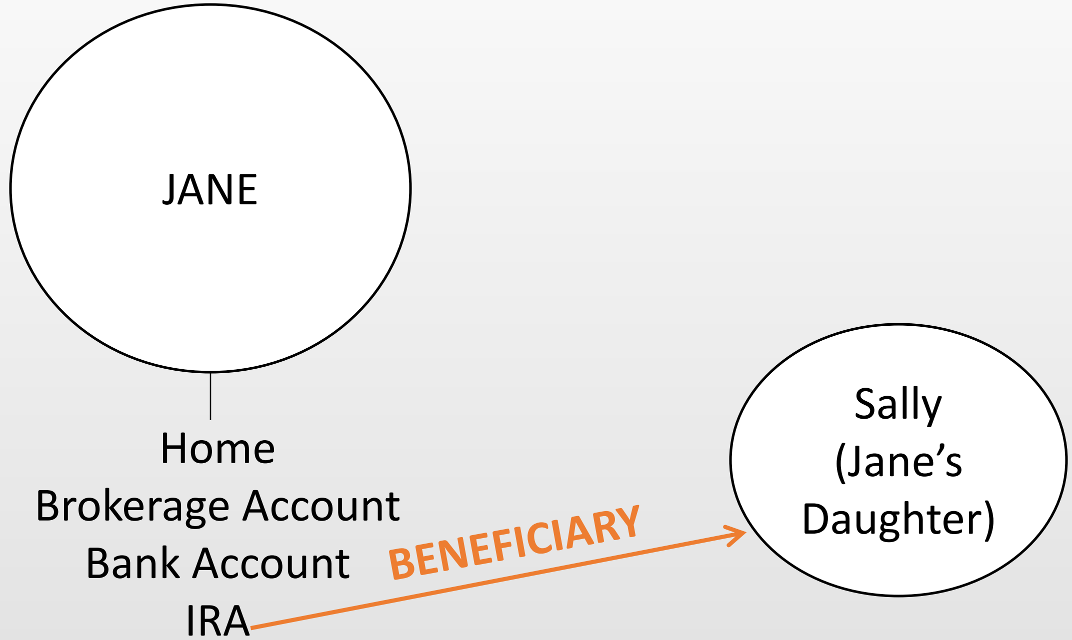
PRIMARY ESTATE TAX PLANNING TECHNIQUES TO BE FAMILIAR WITH

1. Divert business opportunities and income to the next generation
2. Use annual gifting and "Crummey Trusts"
3. Use Irrevocable Life Insurance Trusts
4. Use split dollar arrangements in conjunction with life insurance
5. Use Defective Grantor Trusts for income and estate tax efficiency
6. Use discount vehicles and entities
7. Use installment sales to Defective Grantor Trusts to "lock in discounts" and freeze growth
8. Use self-canceling installment notes when life expectancy may be short
9. Use private annuities when life expectancy may be very short
10. Use Credit Shelter Trusts
11. Use portability only after careful consideration
12. Use Qualified Personal Residence Trusts
13. Use Charitable Lead Trusts
14. Use administrative notes to allow beneficiaries to buy assets that would pass to a private or public foundation.
15. Use private and public foundations
16. And more.

INTRODUCTION

This presentation is designed for professionals who are not tax lawyers, and want to know basic and structural information about multiple entity planning, registration of assets, and what to suggest to clients.

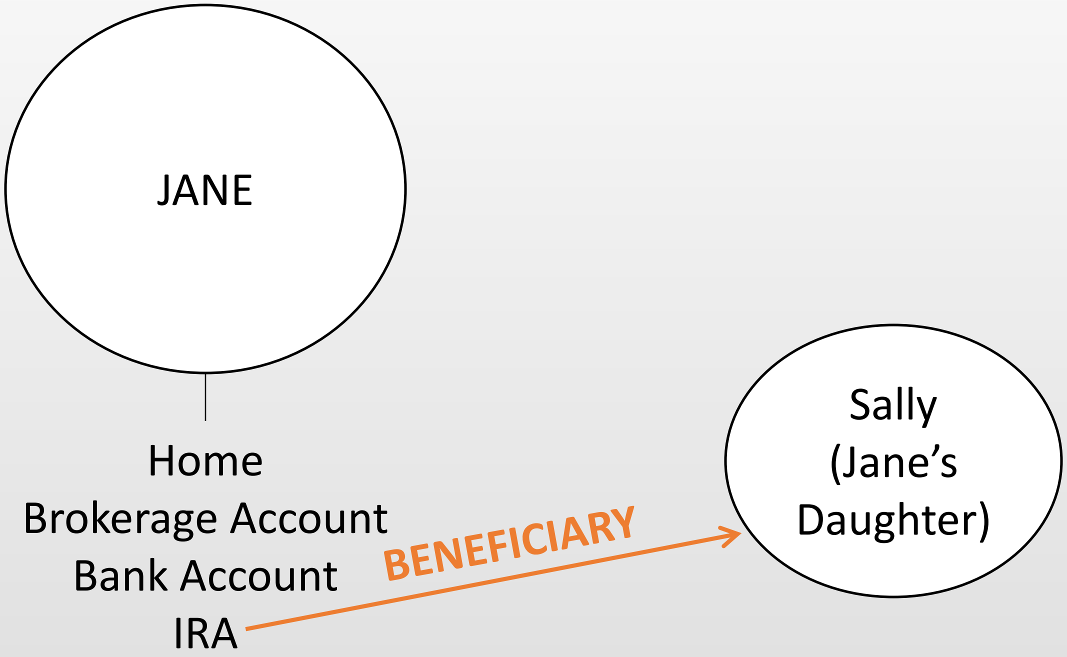
One suggestion will hopefully be that clients should have appropriate legal and tax advice.



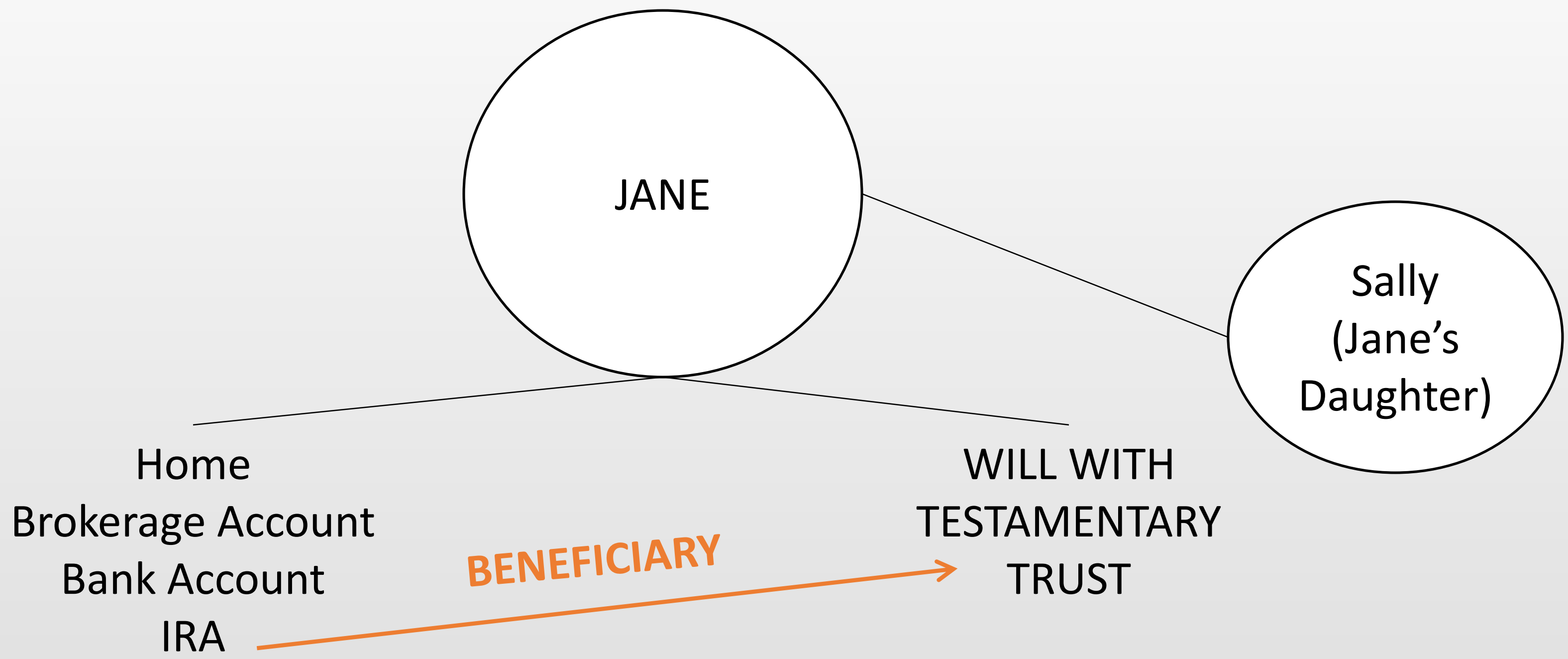
We begin with a single individual named Jane.
Jane owns a home, a brokerage account, a bank account, and an IRA.

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 <u>Testamentary Trust.</u> "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

Home
Brokerage Account
Bank Account

CD WITH
PAY ON DEATH
FEATURE
IRA

BENEFICIARY

WILL WITH
TESTAMENTARY
TRUST

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.

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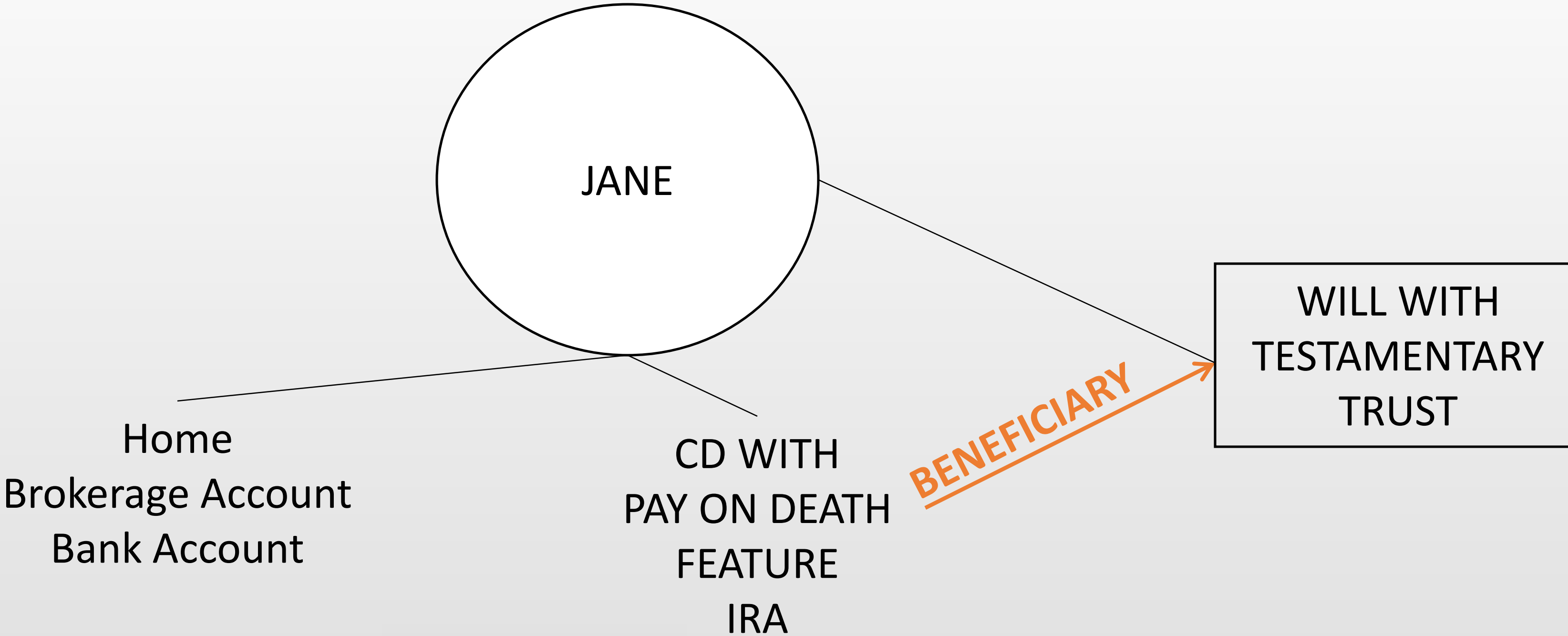
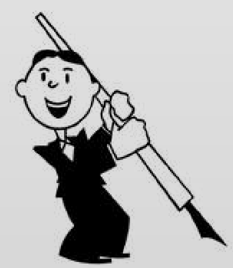
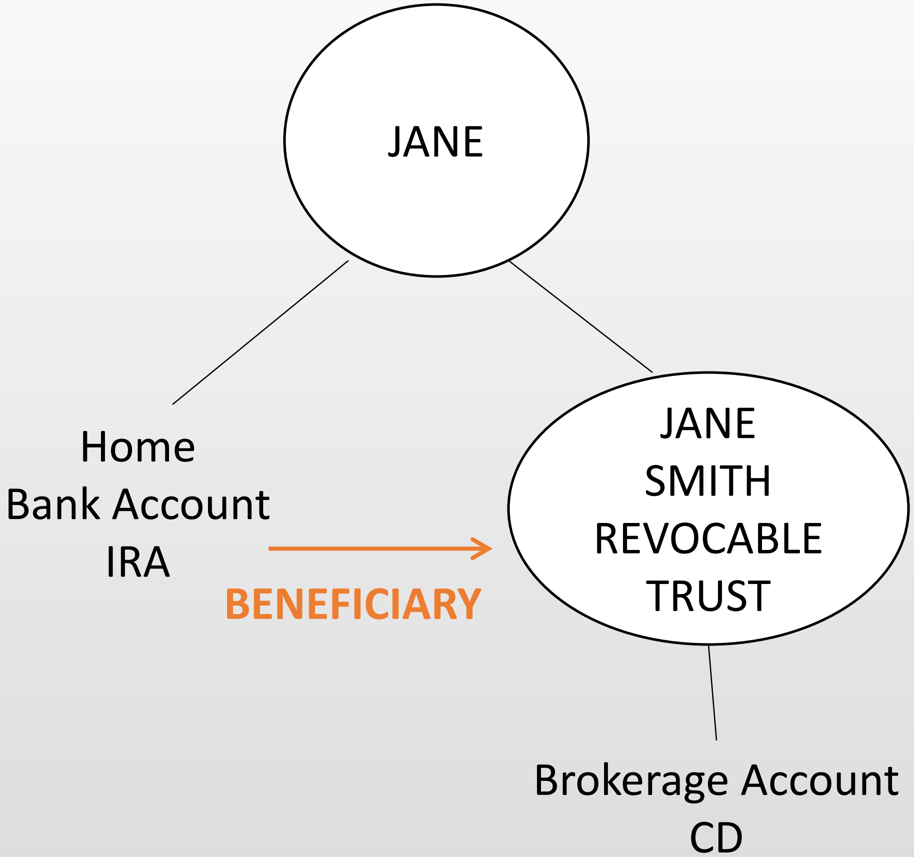




Jane reviews her above assets with her financial planner and finds out that she is a good candidate for having a revocable living trust and "pour over Will" in order to avoid probate on her home, her brokerage account, and her bank account if she dies.



Jane establishes the Jane Smith Revocable Trust and <u>may title</u> 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.

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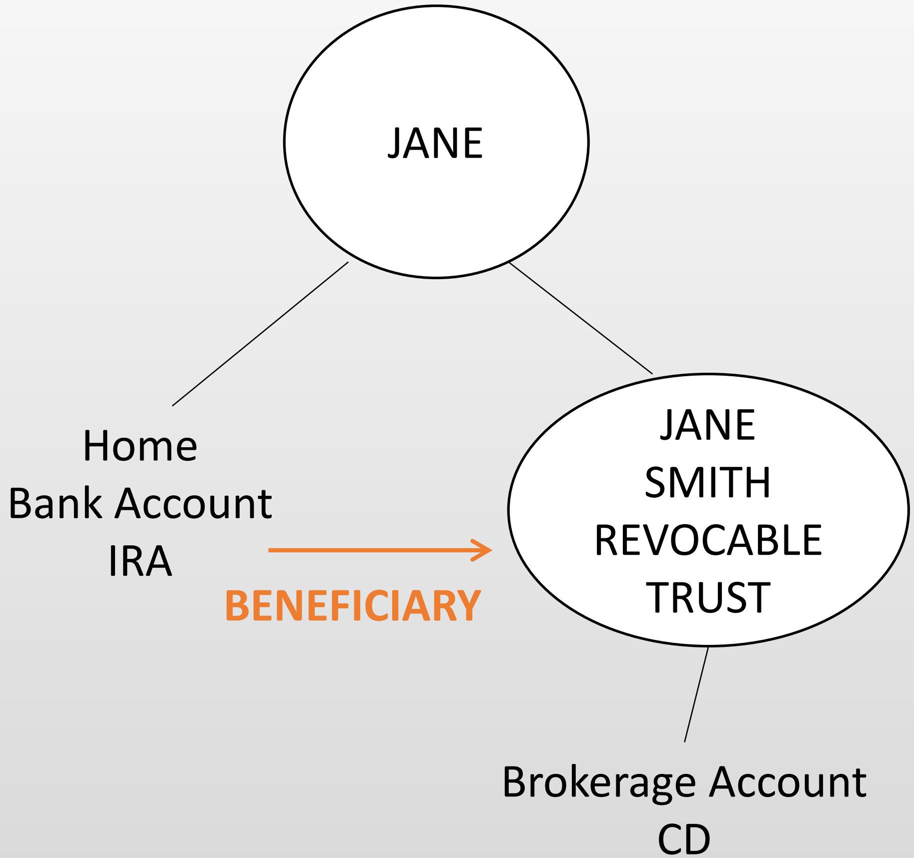

The Trust is revocable and Jane is the Trustee, so it does not need a separate tax identification number. Jane puts her brokerage account under the Trust, and may put her house into the Trust and makes her IRA payable to the trust, which will “stretch” as described later”

JANE

Home
Bank Account
IRA

BENEFICIARY

JANE SMITH REVOCABLE TRUST

Brokerage Account
CD

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).

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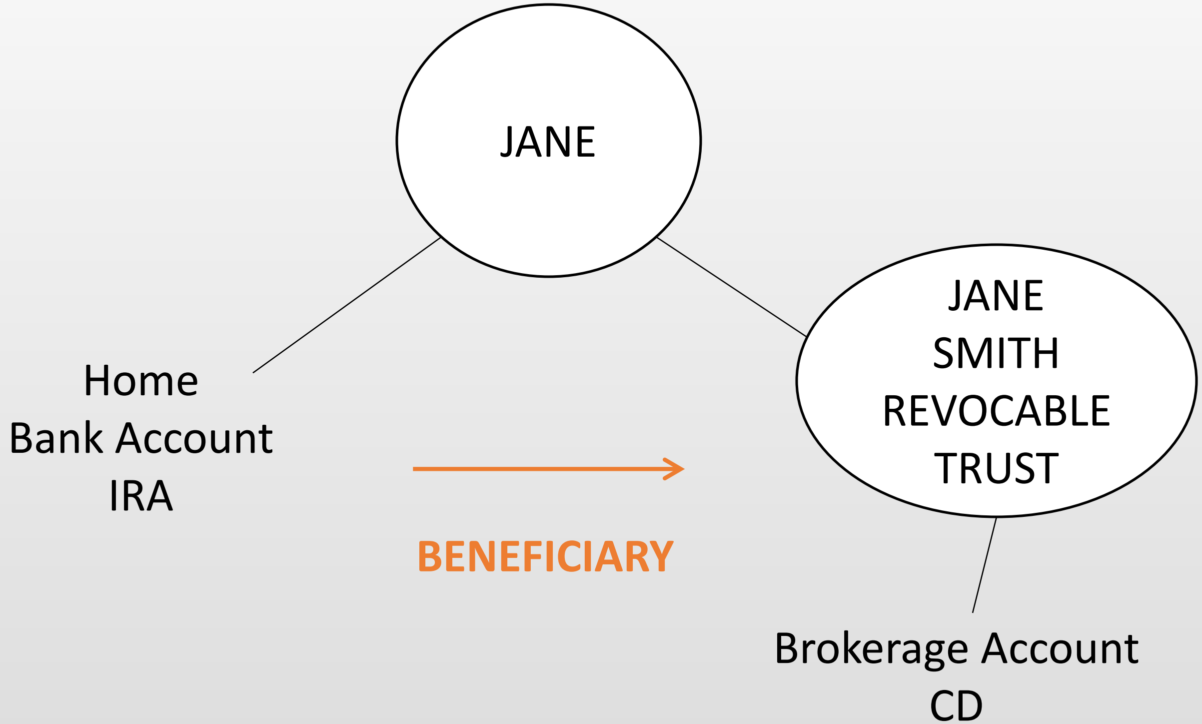

Jane should not put ownership of a life insurance policy or an annuity contract in the name of the trust, or they may no longer be creditor protected under the Florida Statutes.

JANE

Home
Bank Account
IRA
Life Insurance Policy

BENEFICIARY

JANE
SMITH
REVOCABLE
TRUST

Brokerage Account
CD

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.

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JANE

Home
Bank Account
IRA
Life Insurance

BENEFICIARY

JANE SMITH REVOCABLE TRUST

Brokerage Account
CD

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 – the vast majority of trusts do not have the needed language for this.

POLLING QUESTION

Which would you prefer to receive for free as a PDF:

A. Grow Your Medical Practice book

B. The Florida Physicians Guide to Creditor Protection

C. 8 Steps to a Successful Estate Plan book

D. Florida Federal Asset Protection Law

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About Special Needs Trusts

Many clients ask us whether we are able to draft a trust that can be used for the beneficiary without disqualifying the beneficiary from receiving public benefits, such as Medicaid.

This takes special language that would typically be different than the language that Jane's trust will provide for Sally.

If it is likely that Sally will need a "Special Needs Trust" then a lawyer who understands these rules should draft the trust.

Some law firms have language in every trust agreement that converts a trust for a beneficiary to a Special Needs Trust if circumstances are appropriate.

6 Catastrophes That Can Happen as a Result of the New Florida Durable Power of Attorney Act

1. Signing a springing power of attorney: will have no force or effect after Sept. 30, 2011.

2. Not enumerating each and every power that the Agent will need to exercise, in that a general authorization provides no power or authority – specific enumeration is required for a post September 30, 2011 Power of Attorney.

6 Catastrophes That Can Happen as a Result of the New Florida Durable Power of Attorney Act cont…

3. Authorizing the agent to conduct certain actions, without separately signing or initialing each provision, will not be sufficient to allow the agent to do any of the following:
    a. Create an inter vivos trust (living trust): the terms of the trust agreement may prevent amendment or termination by an agent under a power of attorney.
    b. Amend, revoke, or terminate a trust created by or f/b/o the principal (if the trust instrument allows it)
    c. Make a gift subject to § 709.2202(3), see page 30;
    d. Create or change rights of survivorship
    e. Create or change a beneficiary designation
    f. Waive the principal's rights to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
    g. Disclaim property or powers of appointment

4. Executing a power of attorney after Sept. 30, 2011 without having two witnesses and a notary to each signature.
    a. Before October 1, 2011, two witnesses would be sufficient if the power of attorney is not a "durable power of attorney," or if the agent will not be transferring real estate or signing other documents that require notarization and "equal dignity."
    b. Note: Healthcare powers of attorney require that the two witnesses not be related to the person giving the power.

6 Catastrophes That Can Happen as a Result of the New Florida Durable Power of Attorney Act cont…

5. An agent is **not** eligible for compensation, unless the agent is an individual who is a Florida resident that has **never** been an agent for **more than three** principals at the **same time**; or the agent is: the spouse or an heir of the principal, a financial institution that has Florida trust powers, or a Florida licensed attorney or C.P.A.

   How many illegal contracts will be entered into as the result of this?

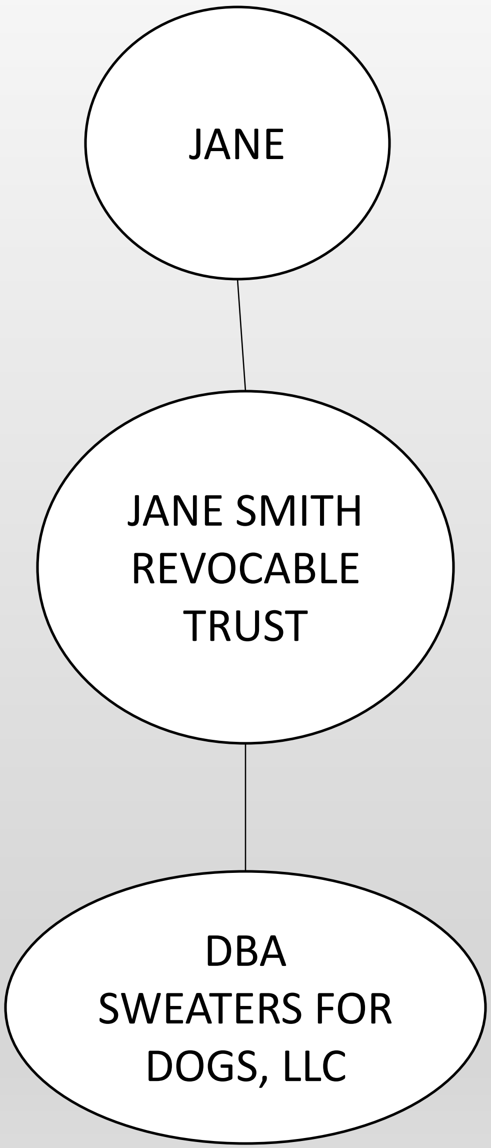
6. Granting someone a power of attorney that you do not trust 100%.
   a. Ne’er well to do agents may seek to have principals sign new powers of attorney because of recent articles and publicity, and will then take advantage of them.

JANE
Single
Member
and Owner

Sweaters for
Dogs

A Sole
Proprietorship

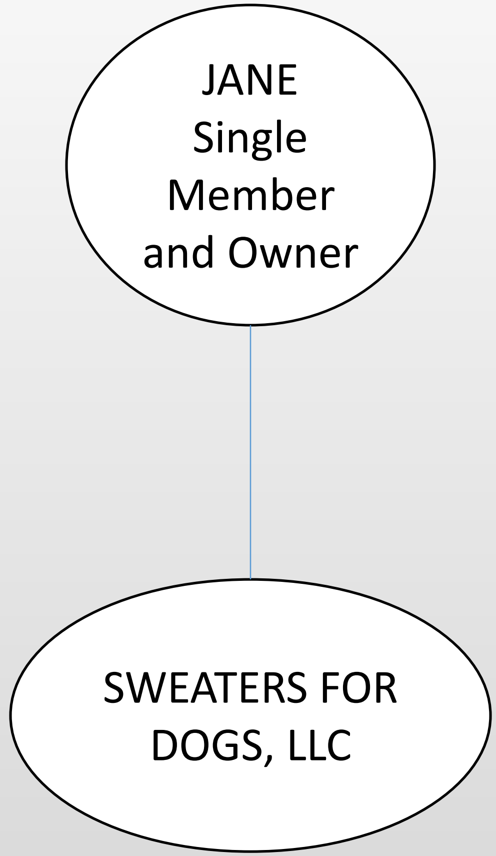
Jane starts a flea market business where she makes and sells sweaters for dogs to wear.



Jane does not want to be sued for product liability, so she establishes Sweaters for Dogs, LLC as a Florida limited liability company.

Under Florida law, a limited liability company can shield its owner(s) from liabilities. We call this "fire wall protection."

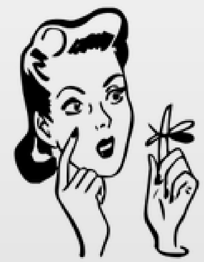
Under federal income-tax law, a single-member LLC could be completely disregarded, enabling the business to be shown on Jane's 1040 tax form, Schedule C, even though it is owned by the company.

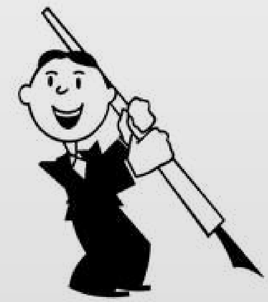


While the corporation may be disregarded for income-tax purposes, it is permitted to have a tax identification number. This is wise in order to show that the company or LLC is separate and apart from Jane. The LLC should also have a separate checking account and follow other formalities and be insured for slip and falls and other “general labiality commercial” risks

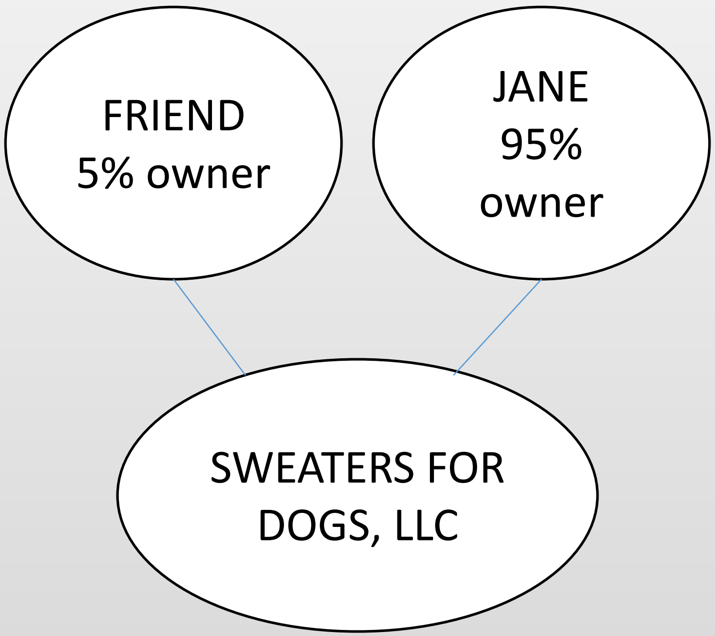
JANE
Single
Member
and Owner

SWEATERS FOR
DOGS, LLC





Jane's accountant may recommend that the company be treated as an S – corporation for federal income-tax purposes. (Many advisors mistakenly believe that only a regular corporation can be taxed as an S-corporation). Jane's LLC can make an S – election by filing a Form 2553 with the IRS. S – corporations provide fire wall liability protection, although some advisors think that they do not.



If Jane gives 5% of the company to a friend, then it would have to be taxed as a partnership unless they affirmatively elect for it to be taxed as an S – corporation or a regular corporation-it can not be disregarded.

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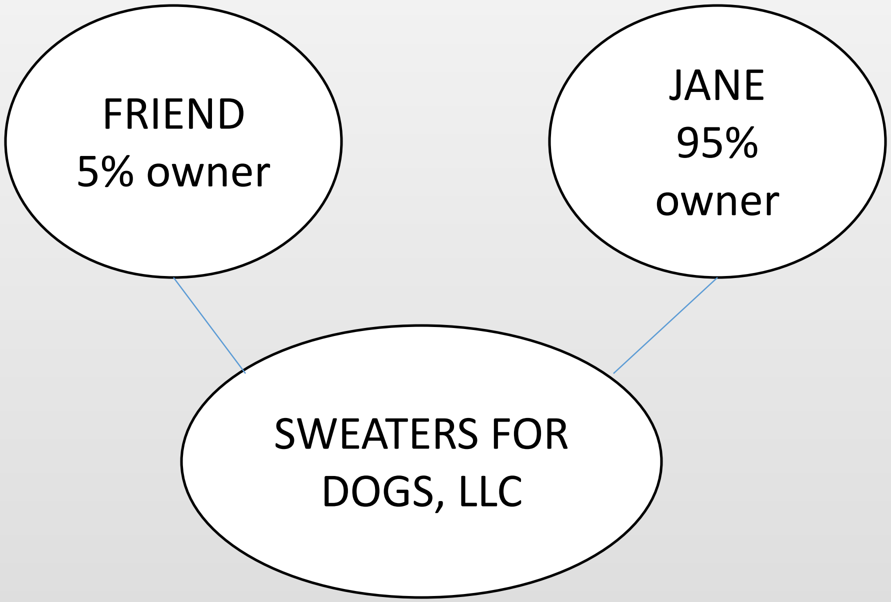

Dividends from an S – corporation are not subject to employment taxes. But dividends paid by a partnership to an active partner are subject to employment taxes.

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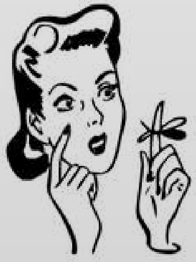
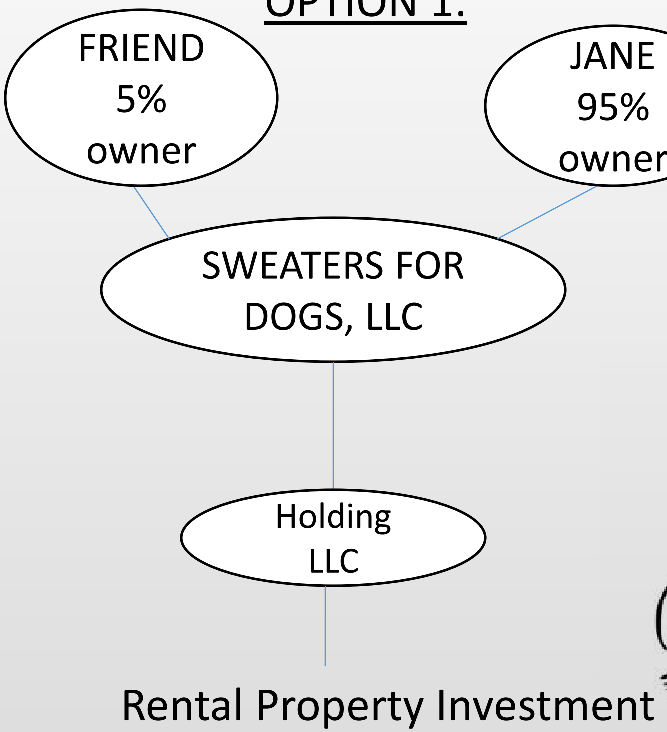
Jane's business does well, so she invests her extra money in a rental property.

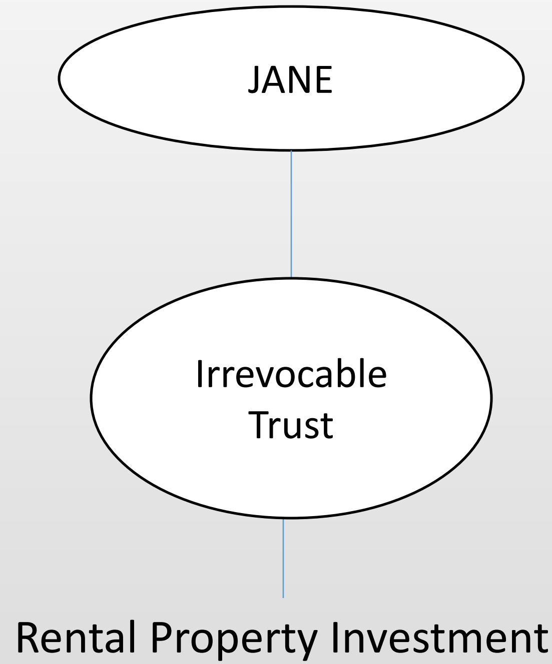
Jane does not want to be sued if a renter or someone else gets injured.



OPTION 1:

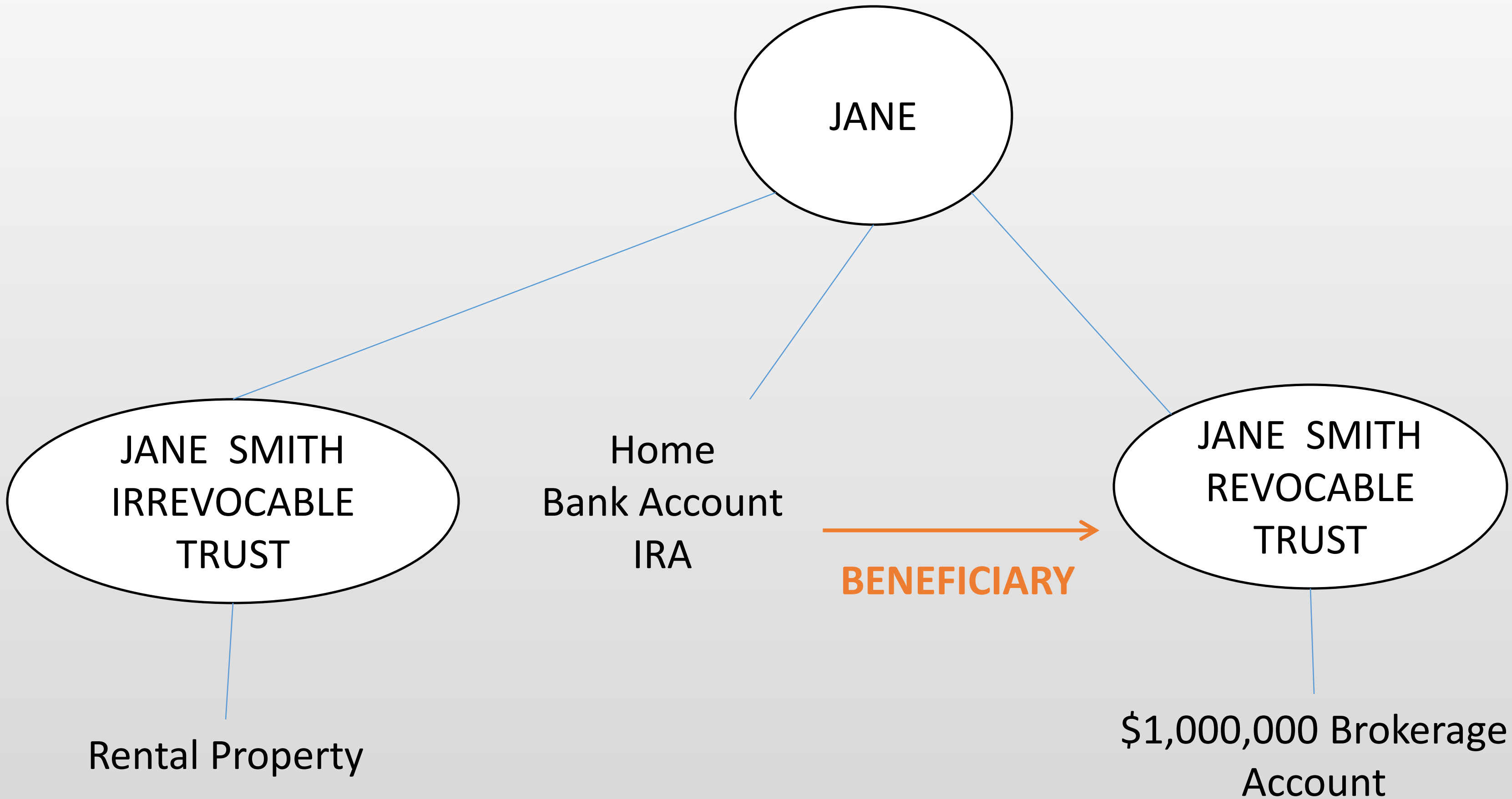


OPTION 2:

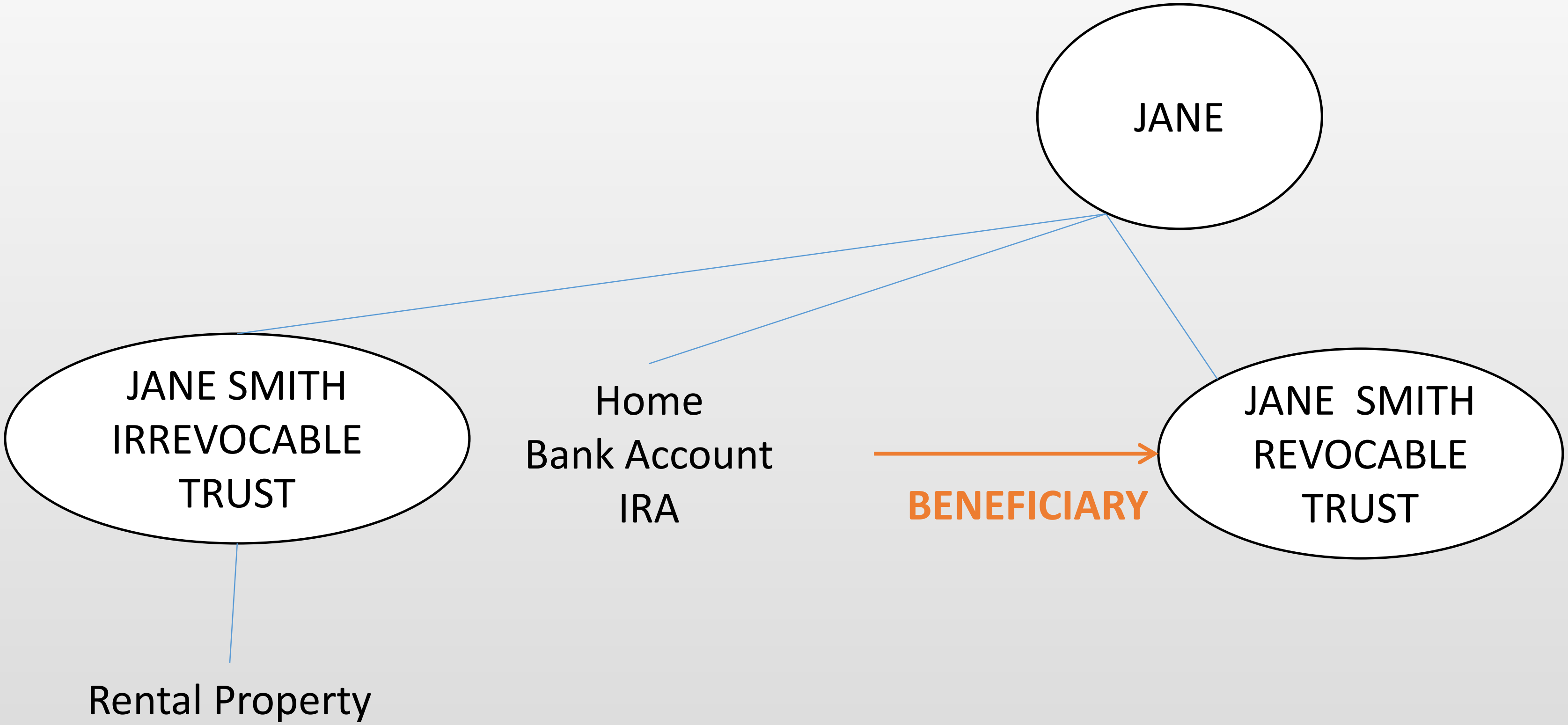


Jane may want to set up another LLC to hold the property, but liability insurance rates may be higher if she does this. She should take this into account when deciding whether to buy rental property.

If Jane feels that all of the value of the rental property will eventually be spent on Janette or other family members, then Jane may want to put the property under a irrevocable trust for Janette, especially if it would help with insurance rates.

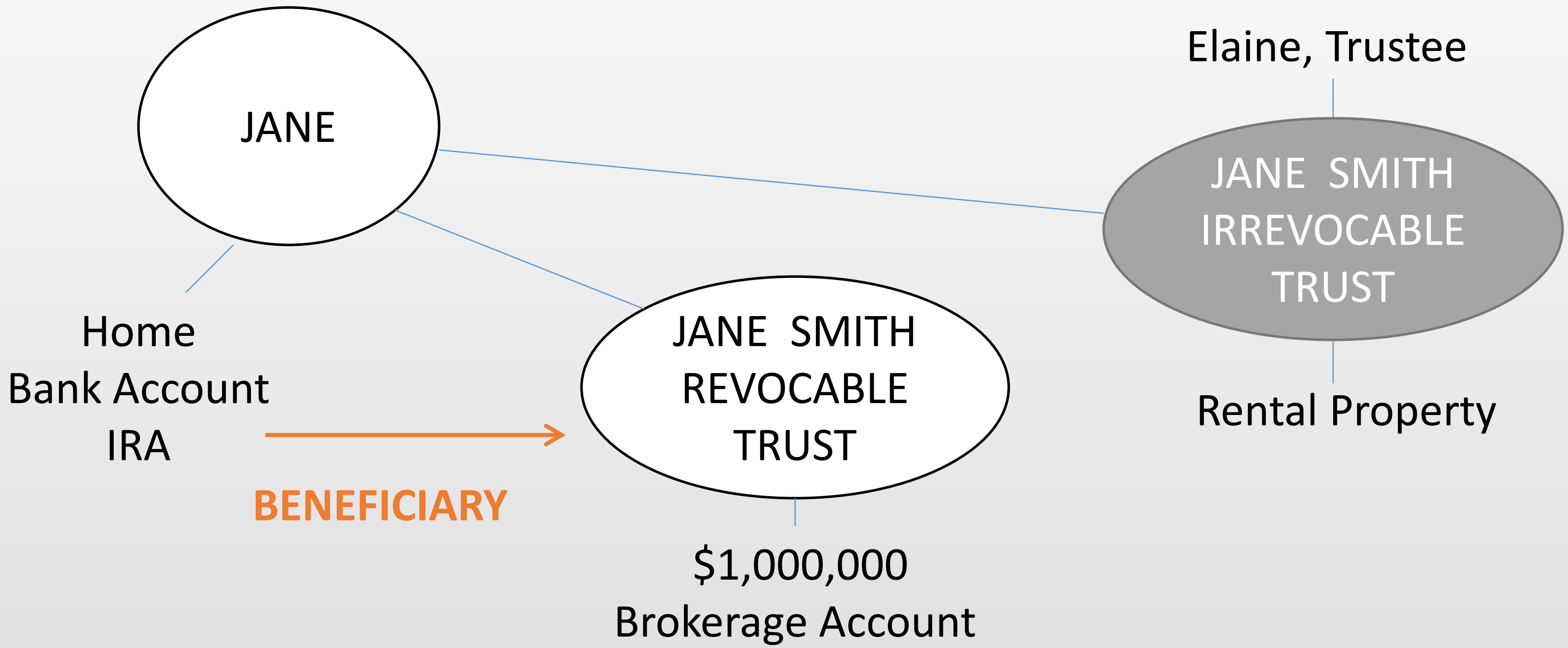


Over time, Jane has saved $1,000,000 in her brokerage account.



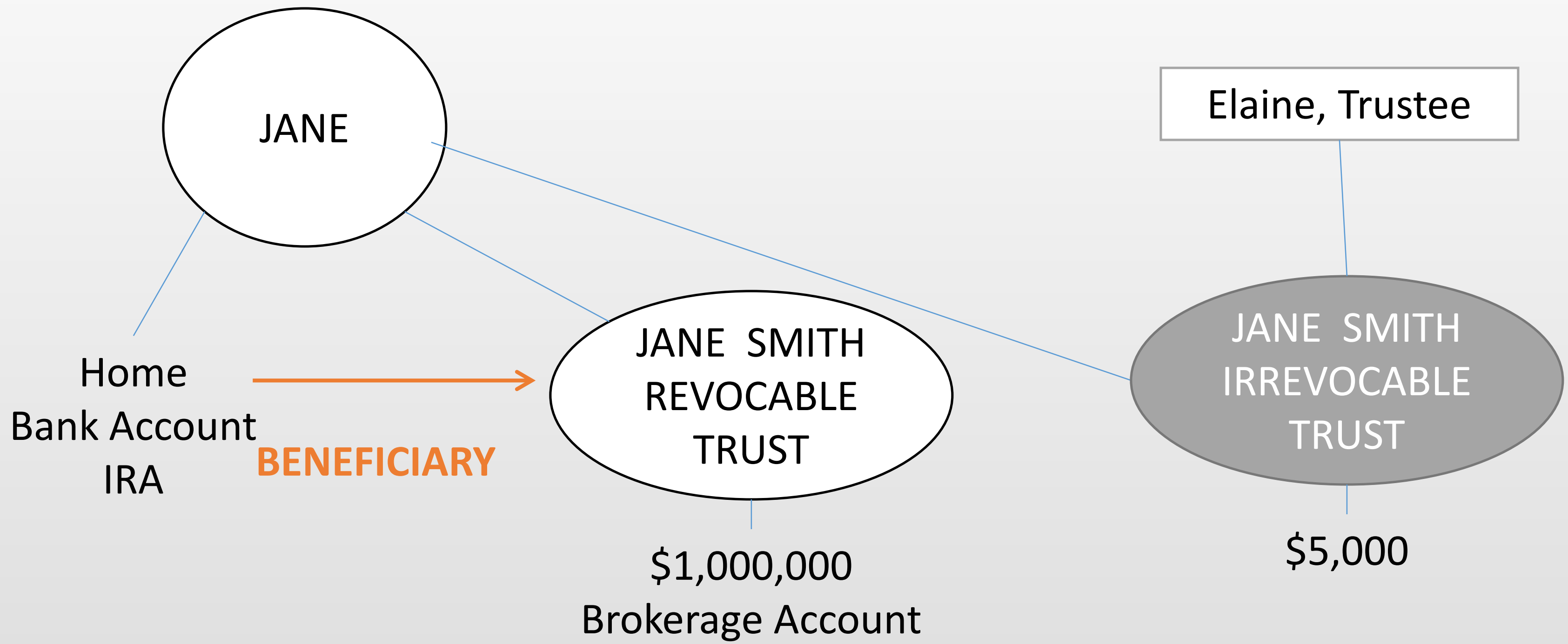
Jane did not realize that her revocable trust does not protect its assets from potential creditors.

Jane is afraid that someone may sue her, so she wants her brokerage account assets to be protected.



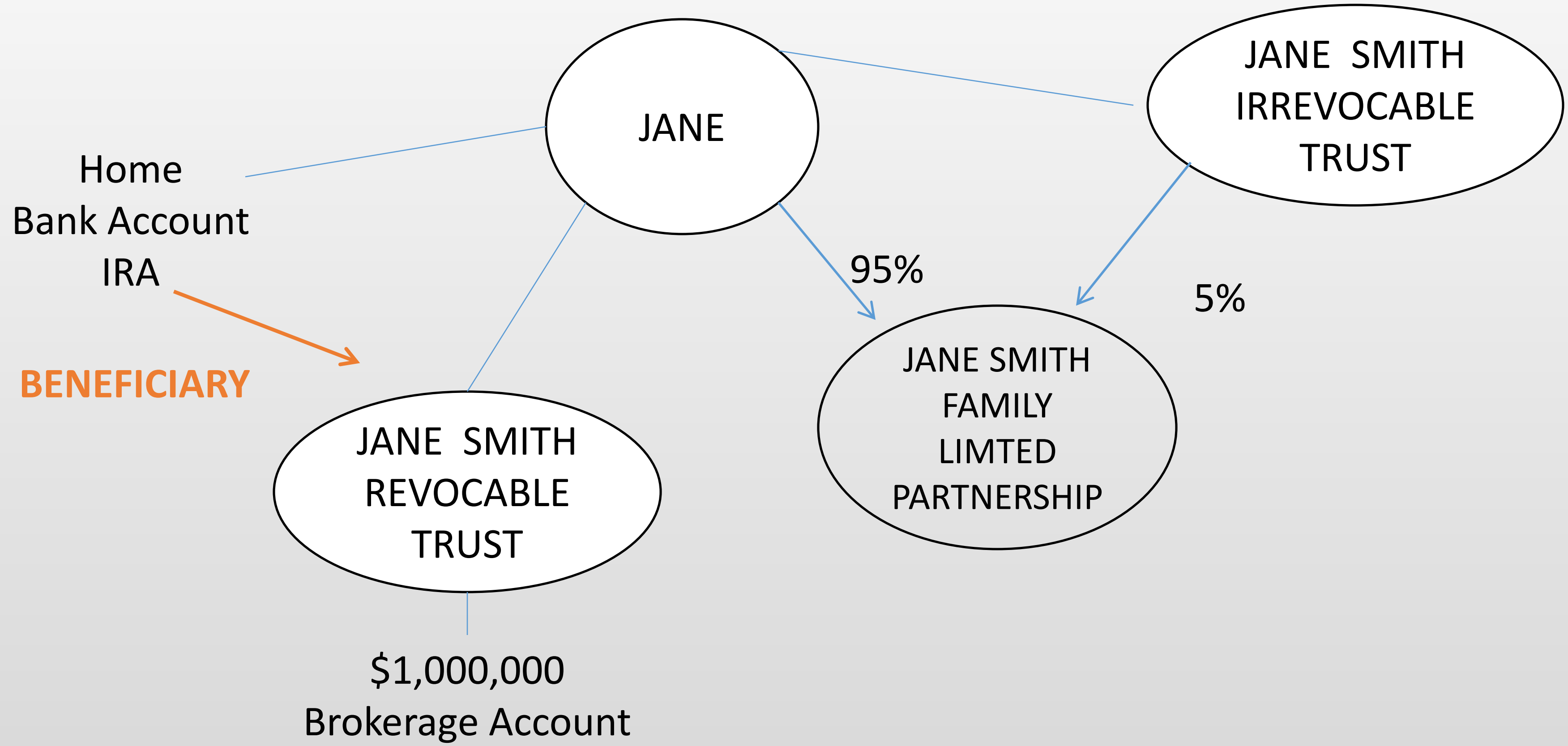
Jane also likes the idea of having part ownership of her brokerage account held for Janette.

Jane establishes an *irrevocable* trust for Janette. This may be called a Gifting Trust.

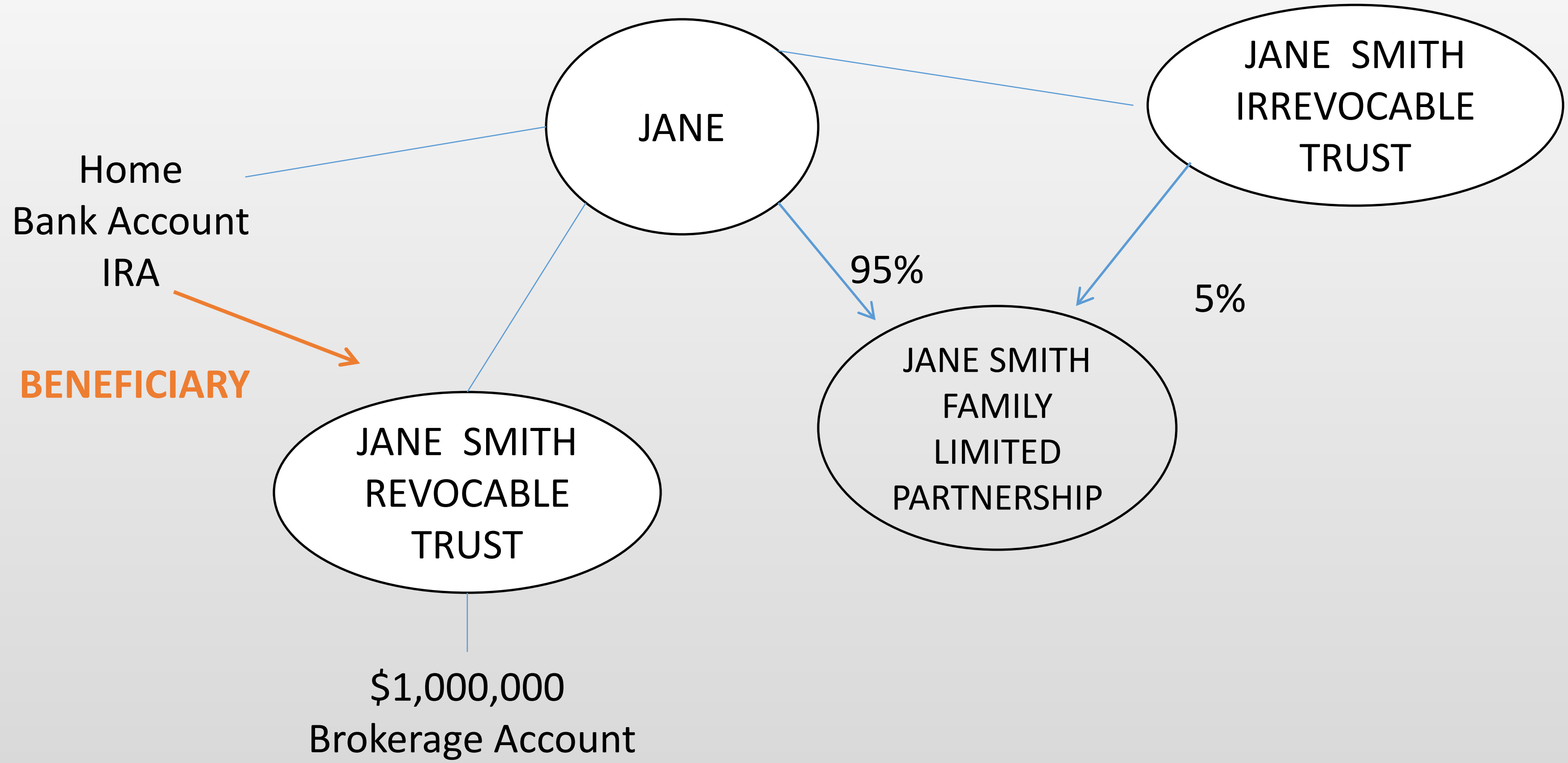


Jane's sister, Elaine, is trustee of the trust. Jane funds the trust with $5,000.
Jane retains the right to replace the trust assets with assets of equal value, so the trust can be disregarded for federal income-tax purposes.

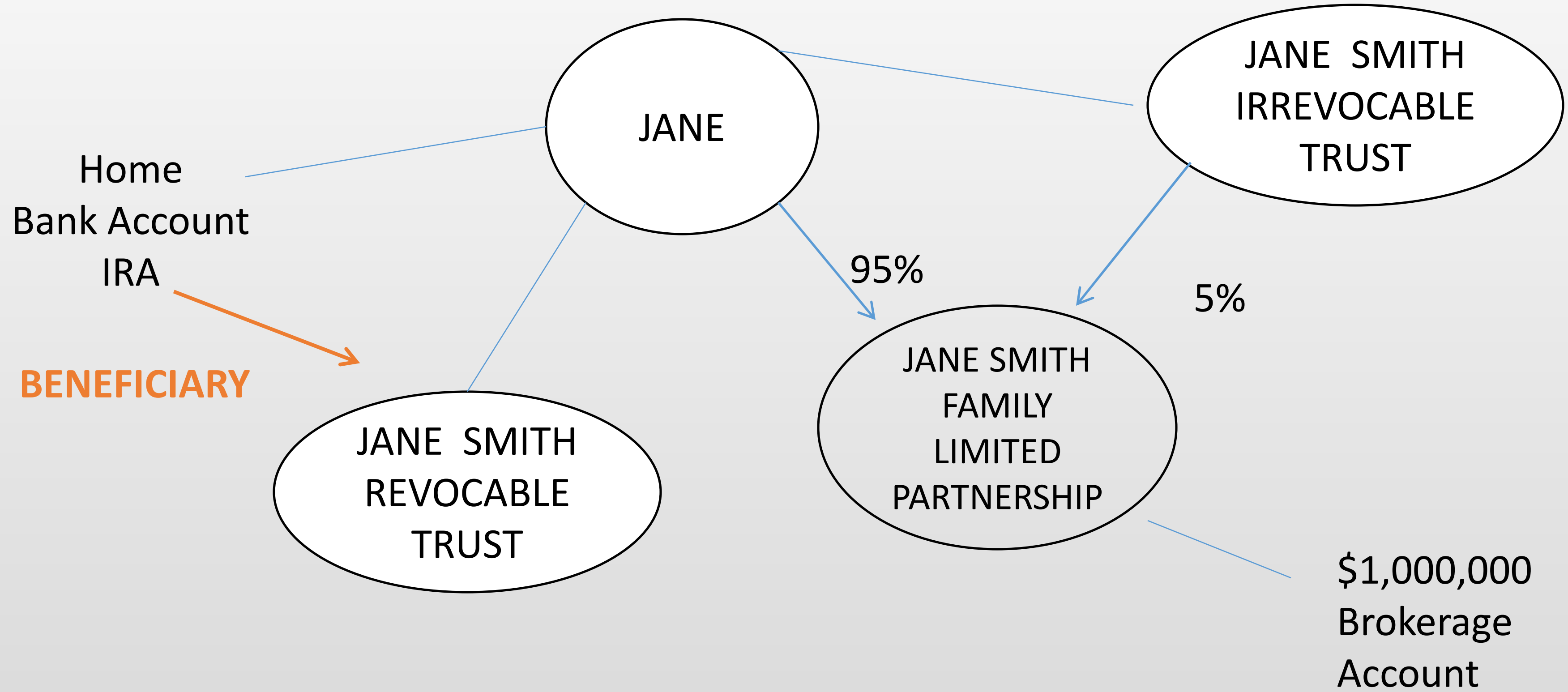
Technically, the Treasury Regulations require that the trust have a separate taxpayer identification number, but commonly this does not occur and the ultimate tax reporting results are the same because all income gets reported on Jane's FORM 1040 income tax return.



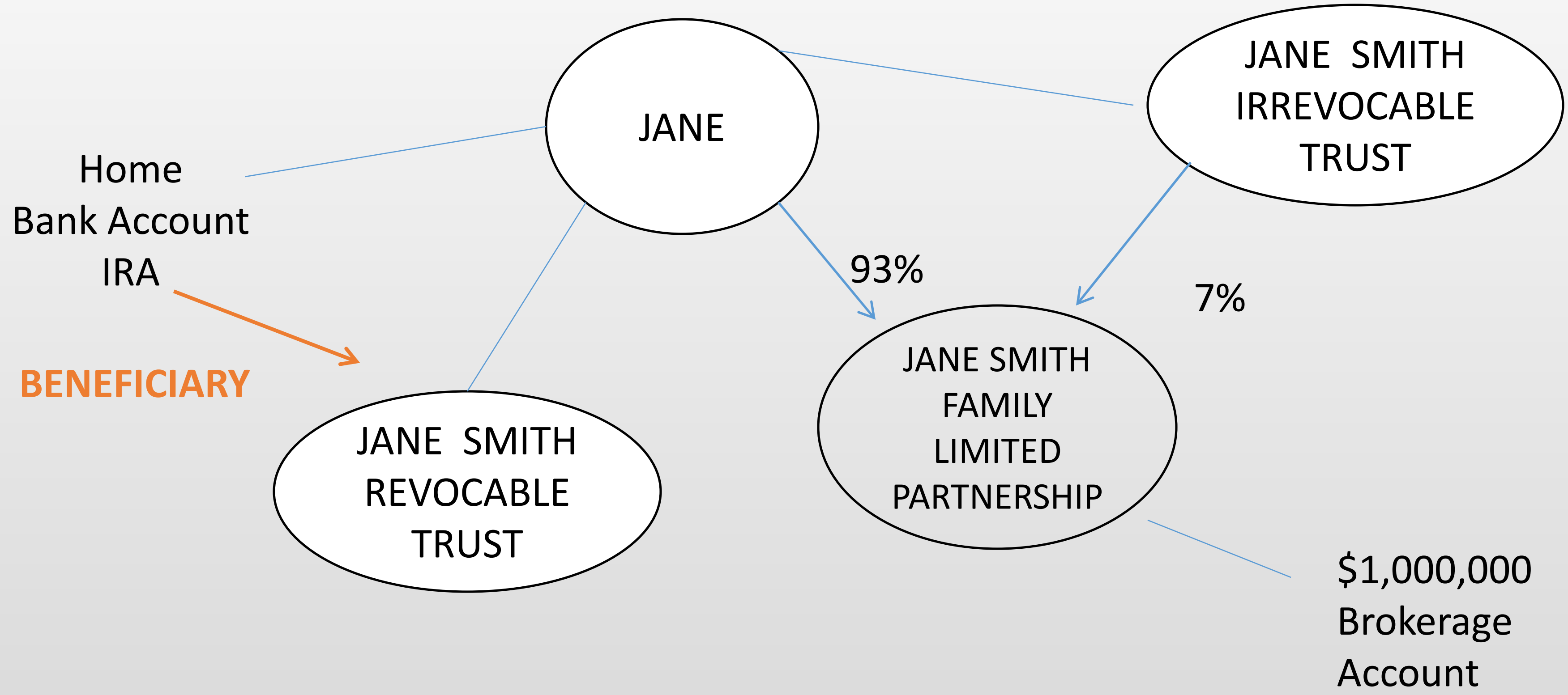
Jane also creates a limited partnership or "Family Limited Partnership" to be owned 95% by Jane and 5% by the Irrevocable Trust.



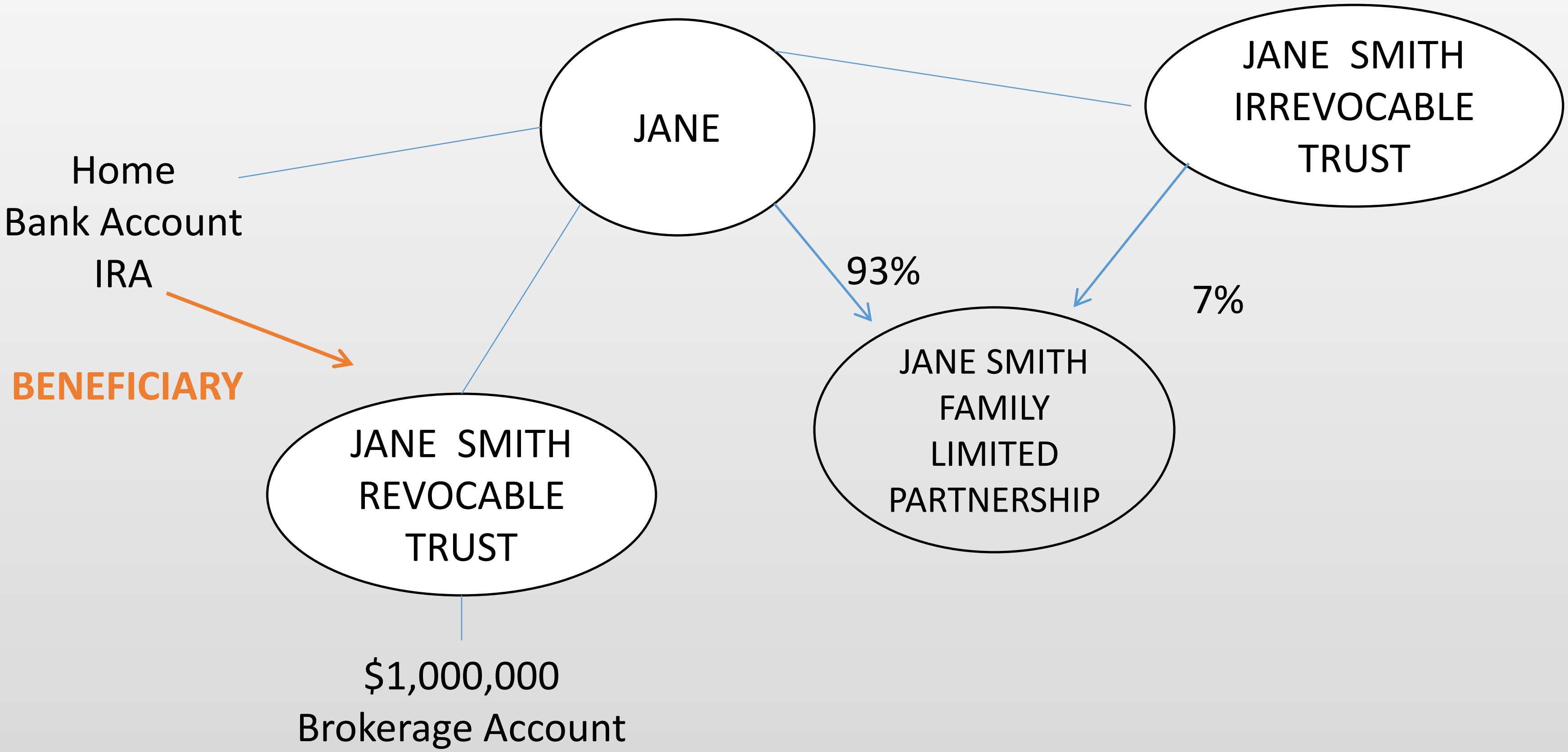
The limited partnership can be disregarded for income-tax purposes if it is owned solely by Jane, Jane's revocable trust, and/or the irrevocable trust.



Jane places her $1,000,000 brokerage account into an account under the limited partnership.



Jane then makes a gift of 2% of the limited partnership interest to the irrevocable trust. For gift-tax purposes, this is valued based upon 2% of $1,000,000, multiplied by 65%, which assumes a 35% valuation discount. This is reportable as a $13,000 gift even though it is a $20,000 value shift.



This will save Jane estate tax in the long run, and under Florida charging-order laws, an unexpected future creditor would not be able to reach into the family limited partnership (or Family LLC) because of what are called the “charging order rules.”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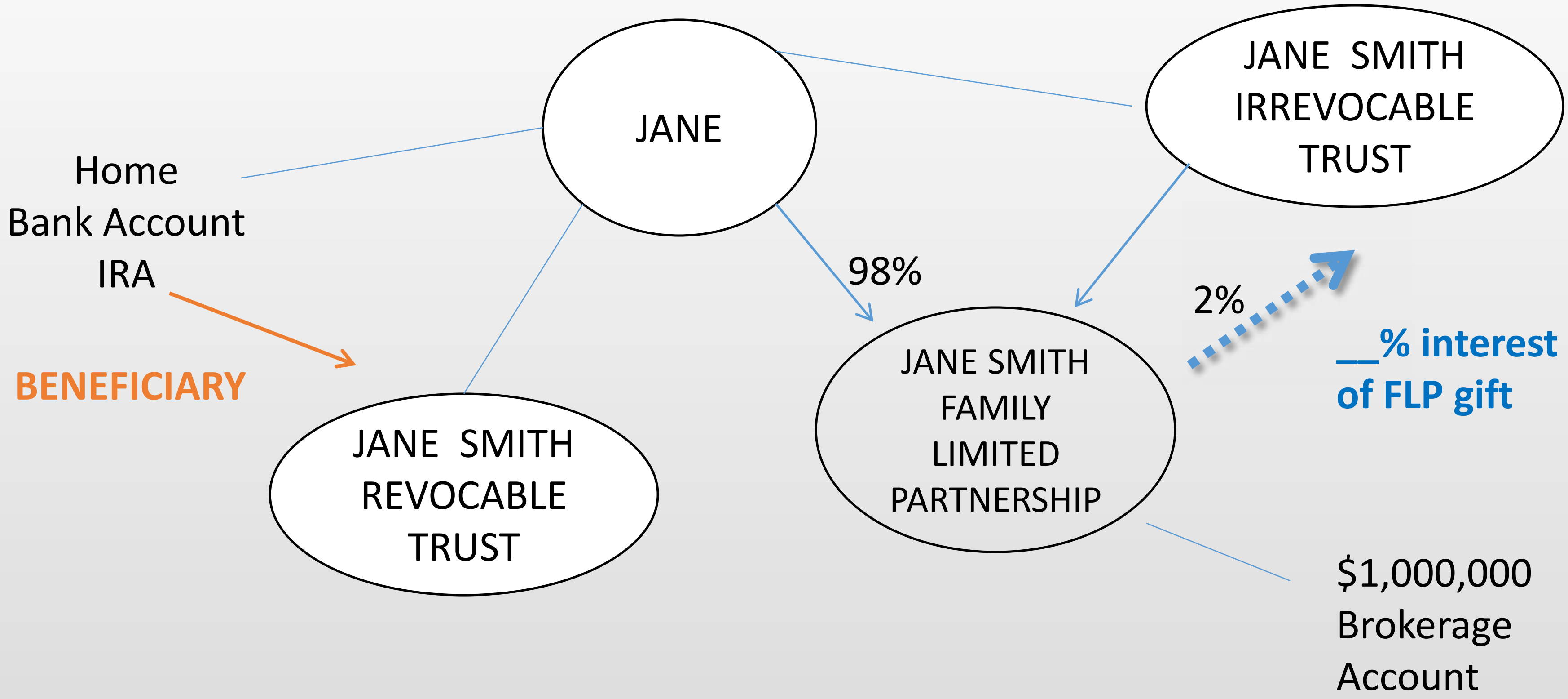
ATTORNEYS AT LAW



The charging order rules provide that the sole remedy of a judgment creditor of a partnership or LLC interest is to receive distributions from the entity if and when the entity decides to make a distribution. Creditors facing this situation typically sell it for nickels on the dollar.
Jane's other alternative would be to buy annuity and life-insurance policies, but she prefers her stocks, bonds and non-annuity mutual funds and has plenty of insurance for most risks. Yes, this is fictional.

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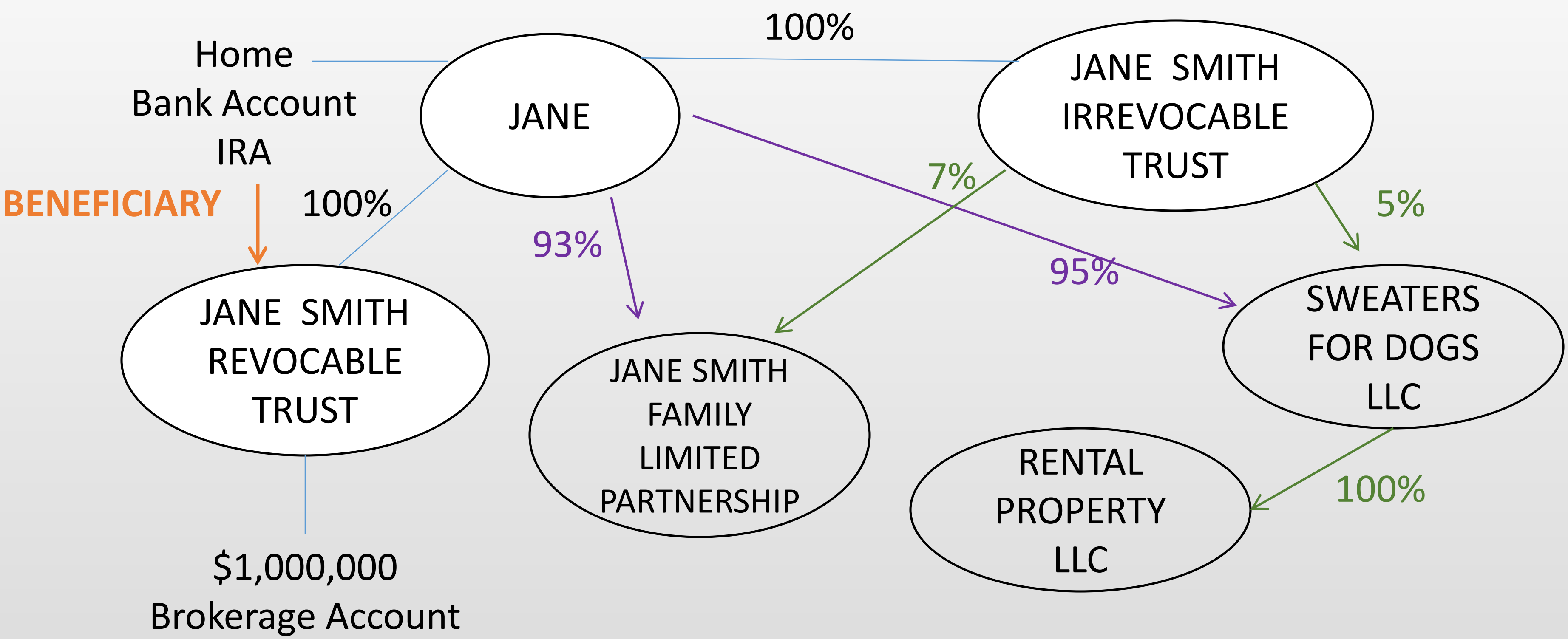

If Jane had greater creditor concerns, then she might consider a domestic (typically Nevada, Alaska, or Delaware) creditor protection trust, or an offshore protection trust.

A domestic creditor protection trust would be similar to the irrevocable trust for taxpayer identification number and tax reporting purposes.

An offshore asset protection trust requires significant tax reporting, but it is also normally tax neutral.

Partnership v. S Corporation- Which is Better to Hold Real Estate?

PARTNERSHIP	S CORPORATION
Advantages	*and Disadvantages*
Partners receive basis for indebtedness incurred by the partnership	Shareholders do not receive basis for indebtedness incurred by the corporate, unless the loan is made by such shareholder.
On the death of a partner, the partnership's (inside) tax basis of its assets can receive a step-up in income tax basis, if a Section 754 election is in place for the partnership	No similar basis adjustment mechanism applies to S corporations.
When a new partner buys into a partnership corporation, their depreciation write-off and underlying basis in their partnership interest will be based upon the price that they pay.	When a new shareholder buys into an S corporation, their depreciation write-off and underlying basis if and when the real estate is ever sold has to be based upon the historic basis and depreciation taken, versus being based upon the price they pay.
Appreciated real property can generally be distributed from the partnership tax-free to the partners.	Distributions of appreciated real property to the shareholders are treated as if the property was sold at its fair market value to the shareholders.
No restrictions apply as to who can own partnership interests.	S corporations can only be owned by certain individuals and trusts, and cannot be owned by non-resident aliens, corporations or partnerships
Partnerships can have more than one class of stock, and income and distribution preferences can be drafted in virtually any manner, so long as they have substantial economic effect	S corporations cannot have a "second class of stock," and income allocation and distribution rights must be pro rata to ownership
DOI income insolvency exclusion is determined at each partner's level.	DOI income insolvency exclusion is determined at the corporate level.

DETERMINING HOW TO BEST ALLOCATE ASSETS AS BETWEEN A MARRIED COUPLE - PART II

Subsidiary Entity Techniques:
-Limited partnerships and LLCs can be used to facilitate discounts, for estate tax purposes, and for charging order protection.
-Limited partnerships and LLCs can also be used to provide "firewall protection" from activities or properties owned.

Spouse 1

Spouse 2

Trustee other than Spouse 1 or Spouse 2

Spouse 2 could be Trustee if Spouse 1is sole grantor (or vice versa)

Spouse 1's Revocable Trust

1. Assets held directly by revocable trust are subject to Spouse 1's creditor claims.
2. Direct ownership of limited partnership or LLC not in TBE may have charging order protection **(meaning that if a creditor obtains a lien on the limited partnership or LLC, Spouse 1 cannot receive monies from the limited partnership or LLC without the creditor being paid).**

FLORIDA TBE (Tenancy by the Entireties)

1. Only exposed to creditors if **both spouses owe the creditor, if one spouse dies and the surviving spouse has a creditor, the spouses divorce, or state law or the state of residence changes.**
2. On death of one spouse, surviving spouse may disclaim up to ½ (if no creditor is pursuing the **deceased** spouse) to fund By-Pass Trust on first death.

Spouse 2's Revocable Trust

1. Safe from creditors of Spouse 1 but exposed to creditors of wife (Maintain large umbrella liability insurance coverage to protect these assets.)
2. On Spouse 2's death, can be held **under a protective trust, which will** continue to be safe from creditors of Spouse 1, subsequent spouses, and "future new family."

Gifting Trust (Irrevocable)

1. Safe from creditors of both spouses.
2. If divorce occurs, should not be subject to rules for division of property between spouses.
3. May be controlled by the "entrepreneurial spouse" by using a Family Limited Partnership.

Lifetime By-Pass Trust (Irrevocable)

1. **Safe from the creditors of the Grantor's spouse.**
2. If funded by one spouse, may benefit other spouse and children during the lifetime of both spouses.
3. Otherwise can be identical to gifting trust pictured to the left.

SECOND TIER PLANNING:

97% 3% **FLP**

1% 96% 3% **FLP** — **FIREWALL LLC**

Property or activity

Spouse 1, Manager — 100% **LLC**

Leveraged Investment

A COMMON SOLUTION - to use a limited partnership or similar mechanisms and have no assets directly in the "high risk" spouse's trust, half to two-thirds of the assets held as tenants by the entireties, and half to two-thirds of the assets directly in the "low risk" spouse's trust.

8 Common LLC Planning Errors

Limited Liability companies are quite often the entity of choice for investment and business holdings. Problems can arise, however, where structuring does not take important risks and federal and state law requirements into account. Some of the most common problems we encounter in reviewing LLC arrangements for clients are:

1.) Tenancy by the Entireties Designation that Will Not Qualify as TBE

Many married couples in states that protect tenancy by the entireties assets from the creditor of one spouse or the other have their LLC interests titled jointly as tenants by the entireties, but they don't realize that there are provisions in the operative documents which are inconsistent and would, thus, annul tenancy by the entireties characterization and protection. Common examples of this are:

(a) By the rules of tenancy by the entireties, the joint interest must pass outright solely by the surviving spouse in the event of the death of the surviving spouse. Oftentimes, an operational document will provide that, on the death of a member, the interest of that member must be sold. Agreements are commonly not drafted to explicitly provide that on the death of a spouse, the other spouse will be the owner of the joint interests, without any inconsistent member agreement provisions.

(b) Similarly, provisions under an operative document which restrict transfers may actually be read to prevent one spouse from owning the entire member interest on the death of another spouse.

(c) While the certificate of ownership may be issued to both spouses as tenants by the entireties, oftentimes, the Operating Agreements or Articles of Organization will provide for only one spouse or the other to be an owner.

8 Common LLC Planning Errors

2.) Entity Documents Can Disqualify S Election

Limited liability companies may be treated as S Corporations under the federal income tax law if certain very strict requirements are met and an S election is made. If the S election is made but the S Corporation requirements are not met, then the company will be taxed as a "C Corporation," therefore exposing properties and income to double tax.

Common causes of this catastrophic treatment are as follows:

(a) An operating agreement does not provide for all income to be distributed pro rata to ownership. Commonly, "partnership style" clauses assure members that they will recapture their original investment or have some sort of an income sharing that would reflect a "second class of stock," which is not permitted under the S Corporation Rules.

(b) Although state law permits a limited liability company to have non-citizens, corporations, and other entities own LLC interests, these and certain other entities are not permitted owners of S Corporation stock and will, thus, cause disqualification.

(c) Too high of a debt equity ration could cause disqualification from S Corporation status.


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8 Common LLC Planning Errors

3.) Failure to Plan for Cash or Other Distributions/Failure to Use an Intermediary Entity

Oftentimes, a client will invest in a multiple member LLC, expecting to have charging order creditor protection, but not thinking through that positive cash flow that other members will want to assure is distributed will become accessible to a judgment creditor who has a charging order against the LLC. Many clients are well advised to establish a “Family Holding LLC” or a family limited partnership to hold the multiple member LLC interests so that positive cash flow would pass to the family LLC to be held and reinvested in a protected manner.

Clients who take ownerships in a multiple member LLC as tenants by the entireties may wish to do so under a limited liability company or limited partnership owned by the spouses and another family member in order to assure that upon the death of one spouse tenancy by the entireties status would continue, and positive cash flow from the multiple member LLC will, thus, be protected.

4.) Forced Sale Provisions

Often, well-drafted Operating Agreements will have provisions that would allow any member to force a sale of their member interests at any time or under certain circumstances, such as where another member is selling their interest (“tag along rights”). One advantage of a limited liability company under the laws of most states is that the sole remedy of a judgment creditor is a charging order – meaning that the credit cannot actually force the sale of the limited liability company interest, become a forced owner, or reach into the limited liability company. A bankruptcy or state court judge may override charging order protection where a debtor member would have the right to simply “cash out” at the time when the judgment creditor has a charging order against the debtor.

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8 Common LLC Planning Errors

5.) We "Formed it Ourselves" or "My Accountant Took Care of This."

While it is possible for any third grader to file a charter to establish the existence of an LLC with state authorities, in the author's experience, the vast majority of LLCs that have been established by non-lawyer personnel have been implemented incorrectly. In most states, it's the unauthorized practice of law for a non-lawyer to establish and implement a limited liability company for another party. Therefore, the types of non-legal firms that are willing to establish and implement limited liability companies tend to be unconcerned and ignorant, willfully or inadvertently, of the formalities, paperwork, and coordination needed to properly establish, document, implement, and operate a limited liability company. Clients who buy $99 "Total Service Incorporation Kits" run the same risks. The slogan "Pay us now or pay us later" comes to mind, but along with that comes "Pay us later and watch your assets looted by creditors and/or the Internal Revenue Service."

6.) Assuming that Limited Liability Companies are as Well Protected as Limited Partnerships in All States

Some states provide charging order protection for limited partnerships but not limited liability companies. Clients who have or will have children or other members residing in a state or jurisdiction that may not protect them may want to consider using limited partnerships or other entities in lieu of limited liability companies.

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8 Common LLC Planning Errors

7.) Failure to Properly Respect Formalities and the Existence of the LLC

It is generally very difficult to "break the corporate veil," but a debtor relying upon a limited liability company arrangement needs to be able to show that the company was the actual owner and operator of the property/business, that a charter was properly filed and maintained consistent with operational documents, accounting and tax treatment, and that the arrangement was not in reality a general partnership, a joint venture, or a proprietorship.

8.) Personal Activities May Not be Insulated by Use of an LLC

Some clients believe that they can carry on consulting, management, or related activities under the name of their LLC and not have potential personal liability.

Under general tort law, the officer of a company and the manager of an LLC will be responsible to third parties for personal negligence. Many clients are well advised to keep a low profile with respect to LLC activities and to hire third parties to handle management decision making and day-to-day activities.

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“Special Rule,” “Bad Exceptions,” and “Good Exceptions” to the Exceptions.

Special Rule

Allows an estate to calculate its estate tax credit using the higher of the exclusion applicable as of the date of the gift or the exemption amount applicable upon death

Exceptions

- Gifts that are includible in the gross estate pursuant to § 2035, 2036. 2037. 2038, or 2042, of the Code
- Unsatisfied enforceable promises to pay
- Gifts subject to the special valuation rules of § 2701 (preferred partnership freezes and similar arrangements)
- § 2702 (related to GRATs (Grantor Retained Annuity Trusts) and QPRTs (Qualified Personal Residence Trusts))
- The relinquishment or elimination of an interest in any one of the aforementioned situations that occurs within eighteen (18) months of the date of the decedent’s death.

Exceptions to the Exceptions

<u>The Five Percent Or Less Exception</u>.

Transfers where the value of the taxable portion of the transfer has not exceeded five percent of the total transfer, such as if the taxable component of a GRAT does not exceed 5% of the amounts transferred to the GRAT, then the gift component can be used to lock in use of the estate tax exemption in effect in the year of the gift, if the gift is large enough to exceed the smaller exclusion that will otherwise apply on death

<u>Termination or Lapse by Death</u>.

Transfers where the retained interests were relinquished or terminated by the termination of a durational period described in the original instrument of transfer which is either (a) the death of any person, or (b) the passage of time.

POLLING QUESTION

Which is true:

A. The Estate Tax exemption is $12,060,000

B. The Gift Tax exemption is $12,060,000

C. The annual gift exclusion is $16,000

D. All of the above

Florida Homestead:

Florida law provides that on Jane's death, she must leave the home transfers by operation of law directly to Sally if Jane is not married and Sally is not yet an adult.

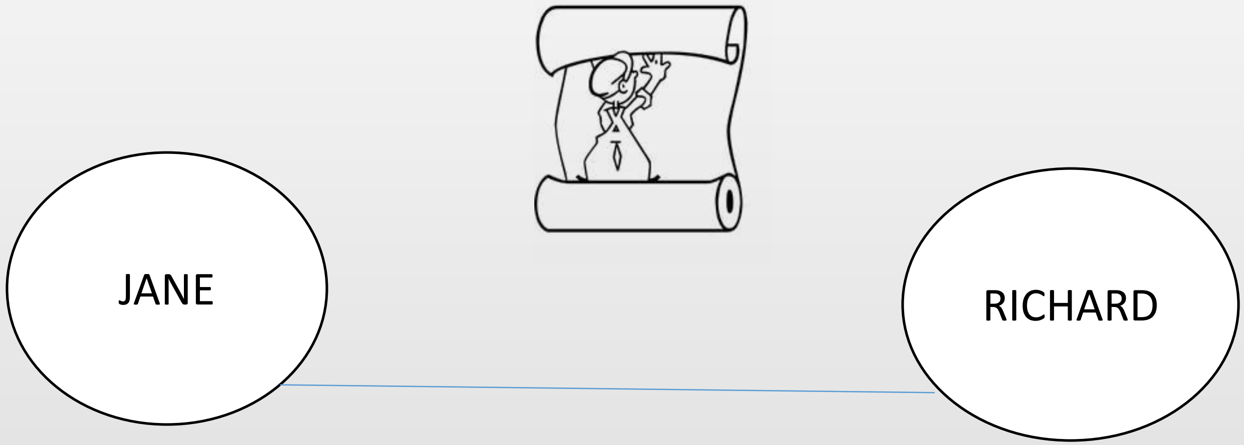
Florida Homestead:

This may be one reason to keep the homestead mortgaged in addition to the interest deduction.

If Jane becomes terminally ill, she may even want to move out of her primary residence so that it is not her homestead at the time of her death.

Or, Jane could place the residence in an LLC or an irrevocable trust before she dies to avoid Sally potentially having outright ownership after Janes death.

Jane meets Richard!
See Richard Run.
Run Richard run!
Jane catches Richard.
Jane better get a prenuptial agreement before the wedding bells start to ring!



Prenuptial agreements are enforceable as long as there is full disclosure of assets, it is not done at the last minute, there is no deception, and each party has a separate independent lawyer.

Richard has $10,000,000 of assets, has no children, and has never married. Yes, this is a true story.

Richard totally trusts Jane and wants to put all of their assets in joint names.

(Richard is an idiot!)

Still basking in their honeymoon glow after being happily married for twelve weeks, Jane decides to update her estate plan and open a joint account with Richard.

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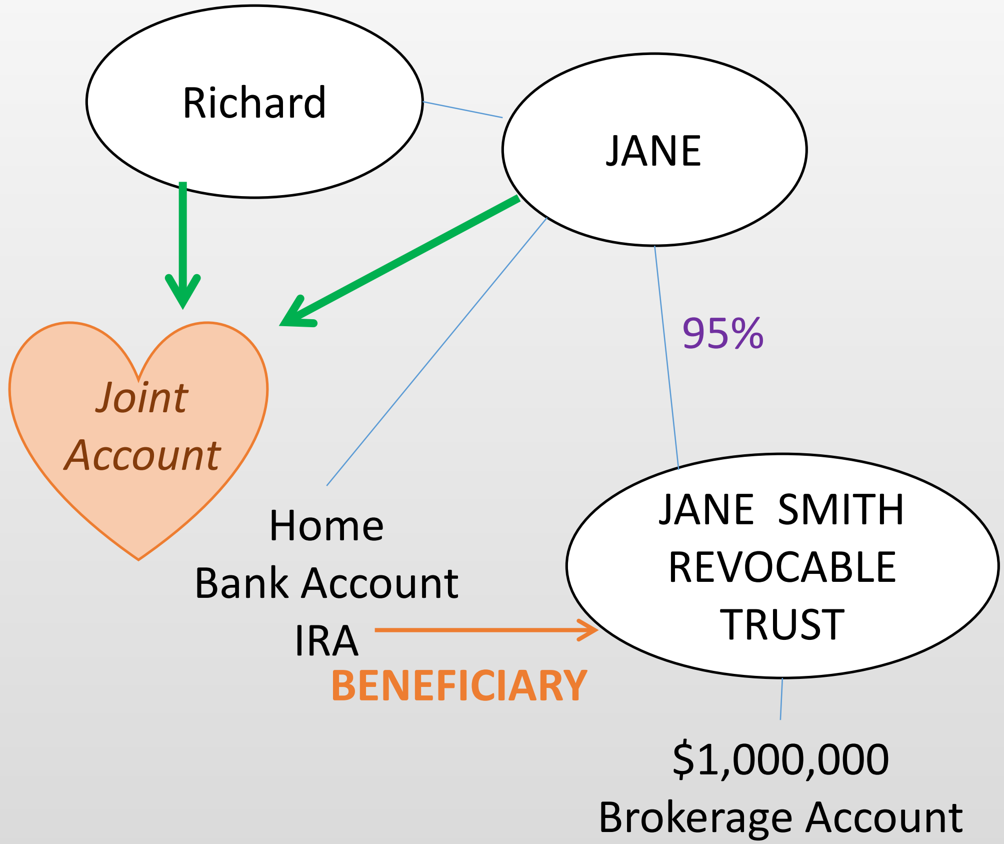

Jane and Richard recognize that with the joint account, the survivor inherits it, not the child or children of the first dying spouse.

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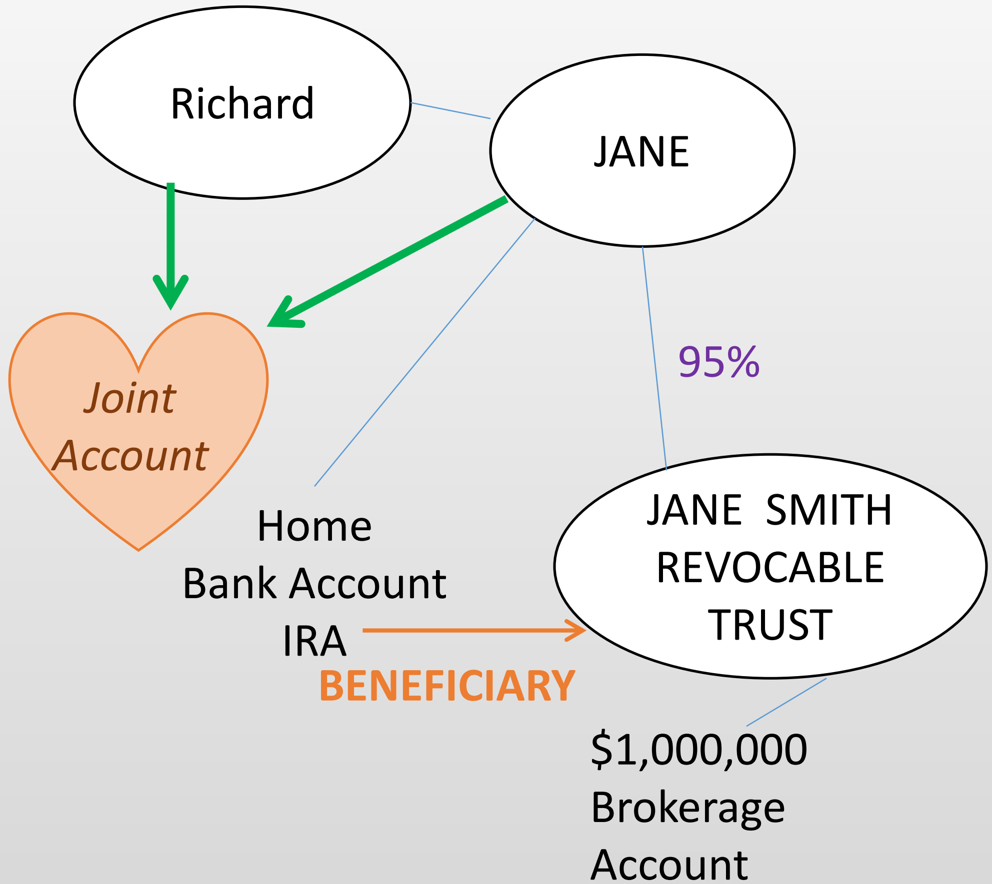

Jane's lawyer has Jane update her Will and trust documents so that the Florida statute that normally provides for a new spouse to be considered to have been added to a Will or trust document will not apply. But there is still a state elected share statue to be concerned with.

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Richard has a good income stream and Jane is concerned that if he dies, she will lose the standard of living she has become accustomed to during the twelve-week marriage. These 12 weeks have been great. She has had the opportunity to see a psychiatrist 5 times, become dependent upon sleeping pills, is driving a Porsche 911 that she will be depressed if she ever loses, and now goes to the country club to meet her friends each day for cocktails. Things can never be the same for her. Everyone at Nordstrom's likes her a lot but does not want her to work there.

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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.

POLLING QUESTION

A SLAT is:

A. A Spousal Limited Access Trust

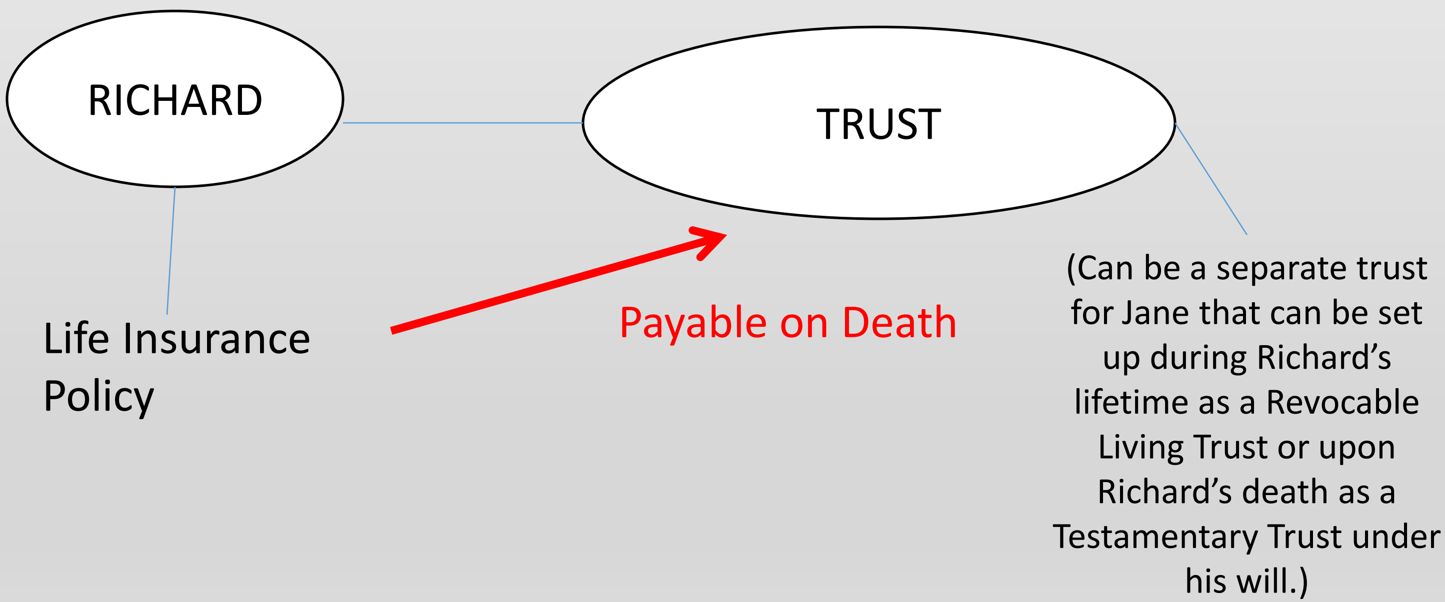
B. Often used to avoid Estate Tax

C. Not a Spousal Limited Unit Trust (“SLUT”)

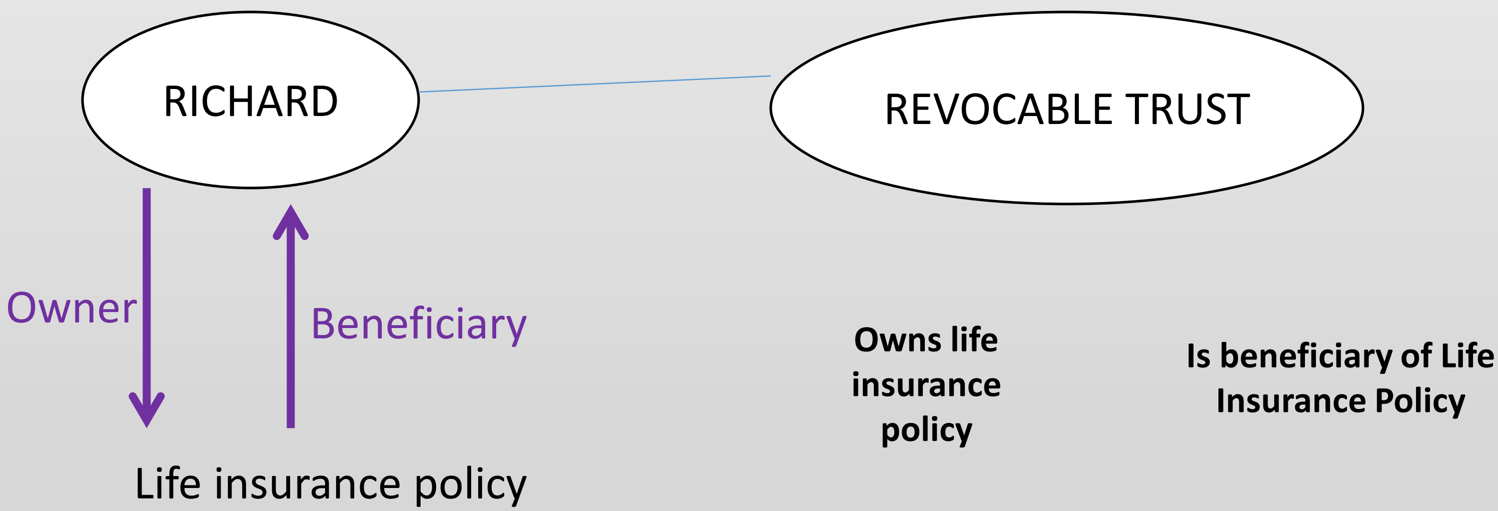
D. All of the above

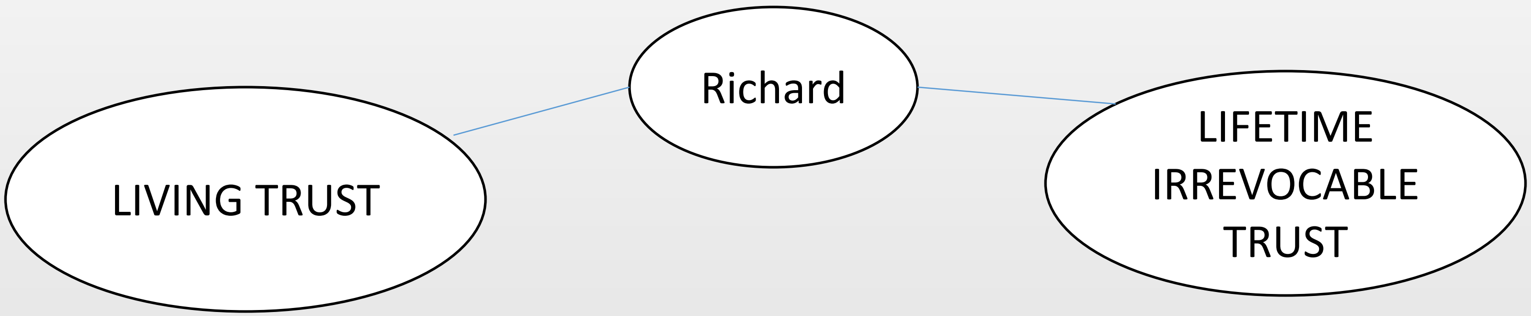
Jane can protect the $5,000,000 policy by doing one of the following:

(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.

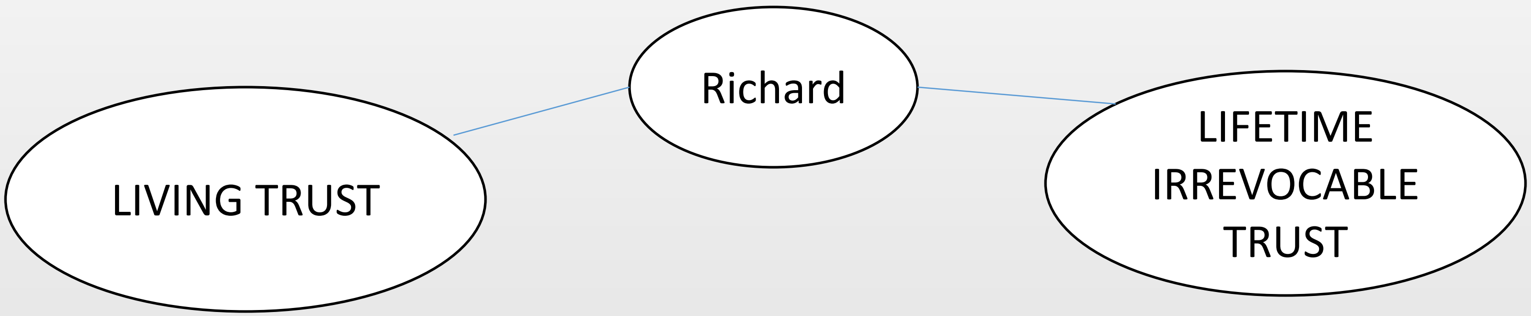


(b) Richard can set up a revocable trust that accomplishes the same goals as the trust in the previous slide, and if Richard owns the policy the trust can be the beneficiary of the policy.





(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.

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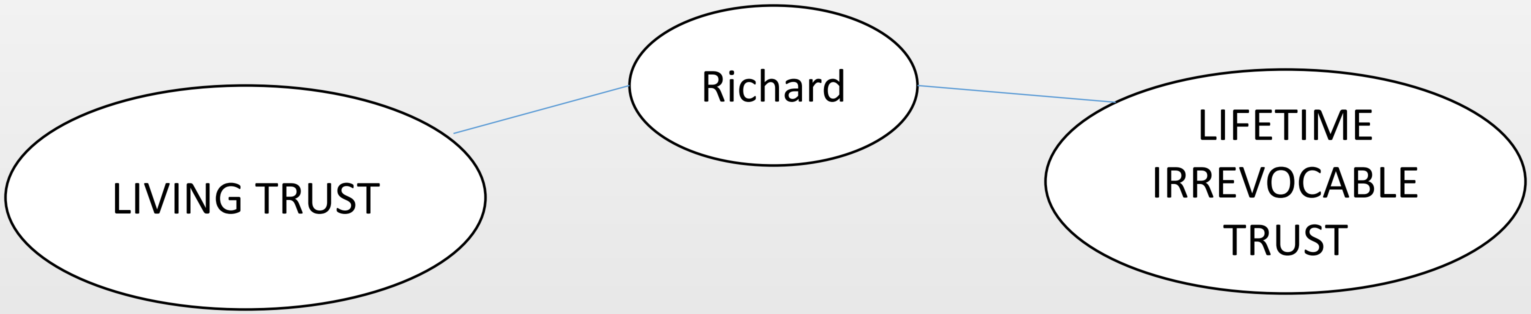
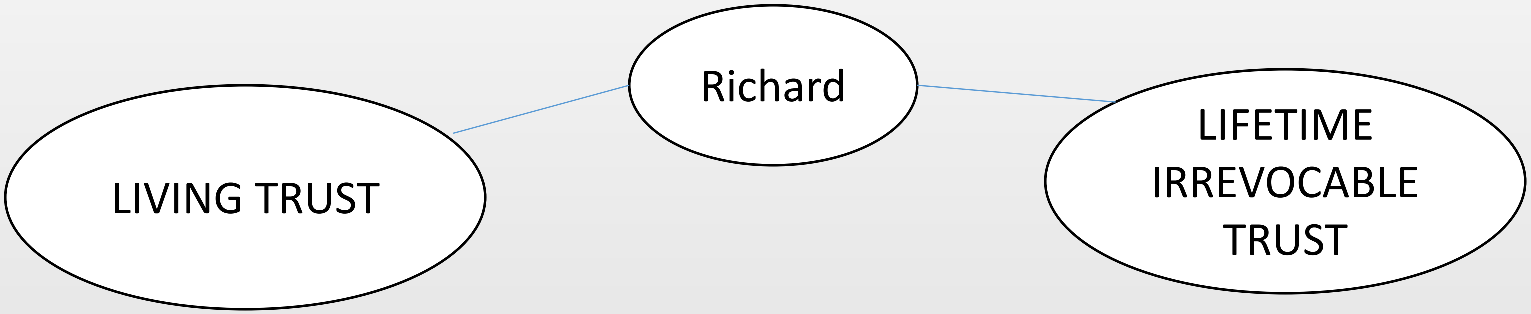


The lawyer explains that Richard has a $12,060,000 gifting allowance that can be used all or in-part during his lifetime.



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.

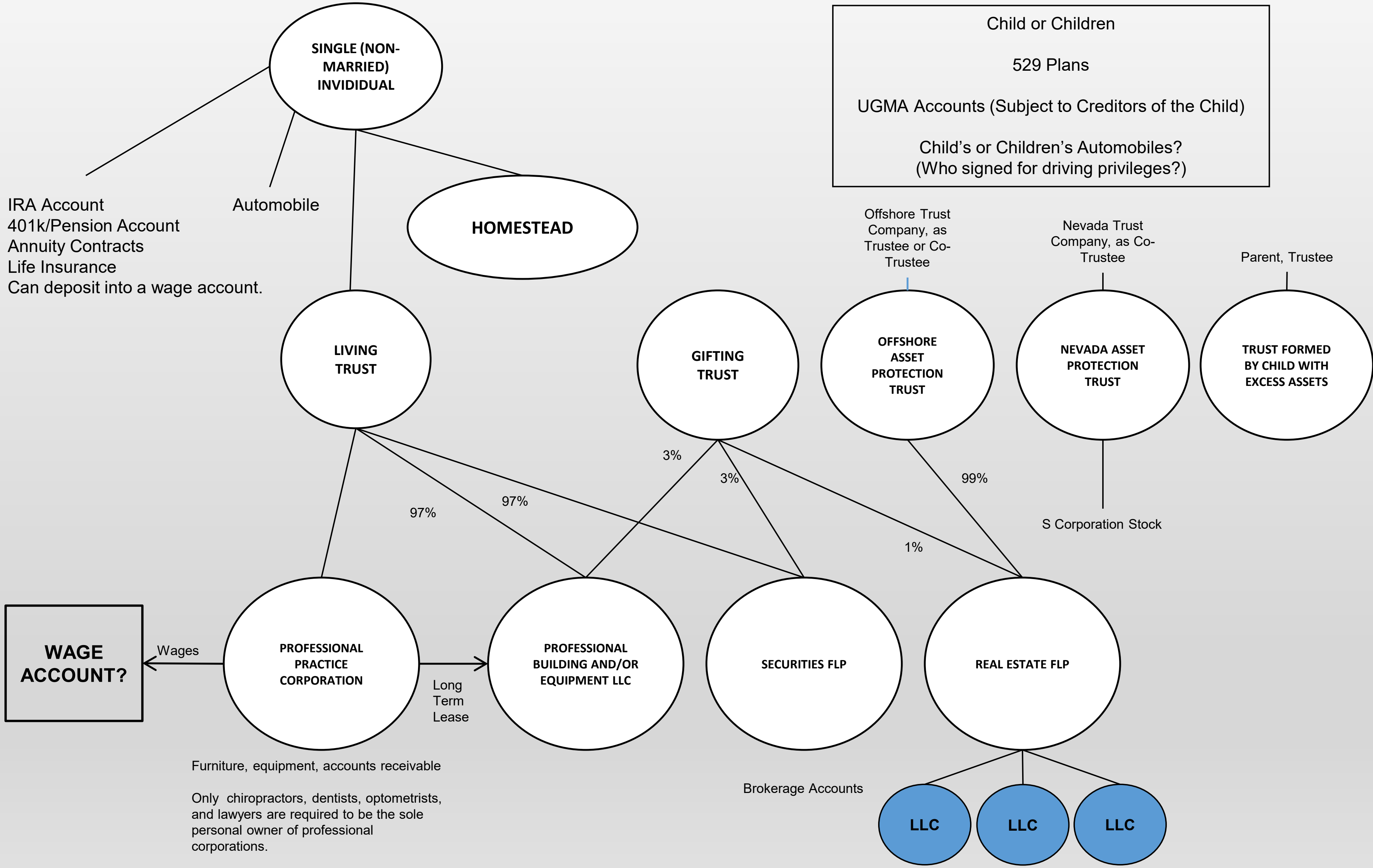
Richard also establishes a living trust so that if Richard has assets on his death, they can be held for Jane's benefit in an appropriate manner.

Asset Protection Ownership Choices

1. In my own name.
2. In my spouse's name.
3. In my mother's name. Is it really hers?
4. Tenancy by the entireties between spouses in a TBE protection state. (Such as Florida, Delaware, or Wyoming)
5. In investments that are protected from creditors. (But not the IRS, the FTC, the SEC and future government categories).
6. In LLC's and Family Limited Partnerships.
7. An offshore LLC or Family Limited Partnership.
8. An offshore trust or foundation.
9. In our children's name(s).
   - UTMA?
   - 529 Plans?
   - Prepaid college savings plans?
10. In a trust for our children.
11. In a trust for our children that we can be added to as beneficiaries if it falls apart.
    - The above in a traditional law state.
    - The above in an APT state.
    - The above for estate tax planning purposes.
12. In a foreign bank account or a Delaware bank account.
13. In an LLC owned 95% by an offshore trust.
14. In a company owned for my children or in a trust described above that earns monies for services rendered from my primary company for services offshore that are actually rendered and tax advantaged.
15. In a trust formed by my parents for me that has invested wisely, and limits what I take out to what is needed for health, education and maintenance.
16. In my assets, but subject to debt owed to others that liens or mortgages my assets.
17. In a private charity.

Where Do Trusts Fit In Logistically

ESTATE AND ASSET PROTECTION PLANNING FOR THE SINGLE PROFESSIONAL



POLLING QUESTION

Who have you received the most Estate Planning advice from:

A. An estate and tax planning lawyer

B. A lawyer who only does asset protection work all over the country

C. Legal Zoom

D. An investment salesperson who has products that provide everything needed

E. A person someone knows who lives in an island country

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