



Foundational Estate Planning for High-Net-Worth Families: Why it Requires More Than Just the Basics

Presented by
Michael Offenheiser

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Foundational Estate Planning
Ultra-High-Net-Worth Planning
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Practice Areas: Foundational Estate Planning, Philanthropist Representation, Nonprofit Organizations

Michael J. Offenheiser was admitted to the California bar in 2005 and has practiced as an estate planning attorney since that time. He earned his Bachelor's degree (magna cum laude) from the Catholic University of America in Washington, D.C. and his Juris Doctorate degree (cum laude) from the Ave Maria School of Law. Michael is board certified in estate planning law by the California Bar Association. He is a Blackstone Fellow and recipient of a Distinguished Scholar Award from the State of Maryland. In law school, Michael served on the Executive Board of the Ave Maria Law Review. In 2019, Michael was recognized as Attorney of the Year by St. Thomas More Society of Orange County during the 31st Annual Red Mass.

Michael has worked the majority of his career at Brown & Streza, and has taught estate planning as an Adjunct Professor of Law. In his practice, Michael works closely with individuals and families to create estate plans that reflect their unique goals and desires. This may involve the preparation of wills, living trusts, irrevocable trusts, powers of attorney, advance health care directives, special needs trusts, or the implementation of other estate planning techniques.

Michael once served as a member of the Board of Directors and as a member of the Planned Giving Committee for the Orange Catholic Foundation. He is currently a member of the Board of Directors of the St. Thomas More Society of Orange County and leads an initiative of the St. Thomas More Society called the Charles Institute.

Since 2022, Michael has been selected for inclusion on the Southern California Super Lawyers list by the publishers of *Los Angeles* magazine and *The Journal for Law & Politics* magazine – a distinction recognizing only 5% of the attorneys in Southern California (excluding San Diego). He was also recognized as a "Rising Star" by Southern California Super Lawyers in 2014 and 2015.

What is Foundational Estate Planning?



Foundational Estate Planning: Primary Goals

- Asset Distribution
- Avoiding Probate and Conservatorship
- Tax Efficiency
- Guardianship for Minors
- Healthcare Decisions
- Financial Decision-Making
- Protection for Loved Ones
- Peace of Mind

Foundational Estate Planning: Common Documents

- Trust
- Will
- Power of Attorney
- Healthcare Directive
- Property Agreement
- Personal Property Memorandum
- Certification of Trust
- HIPAA Authorization
- Deeds
- Assignments of Property
- Asset Schedules
- Funding Instructions

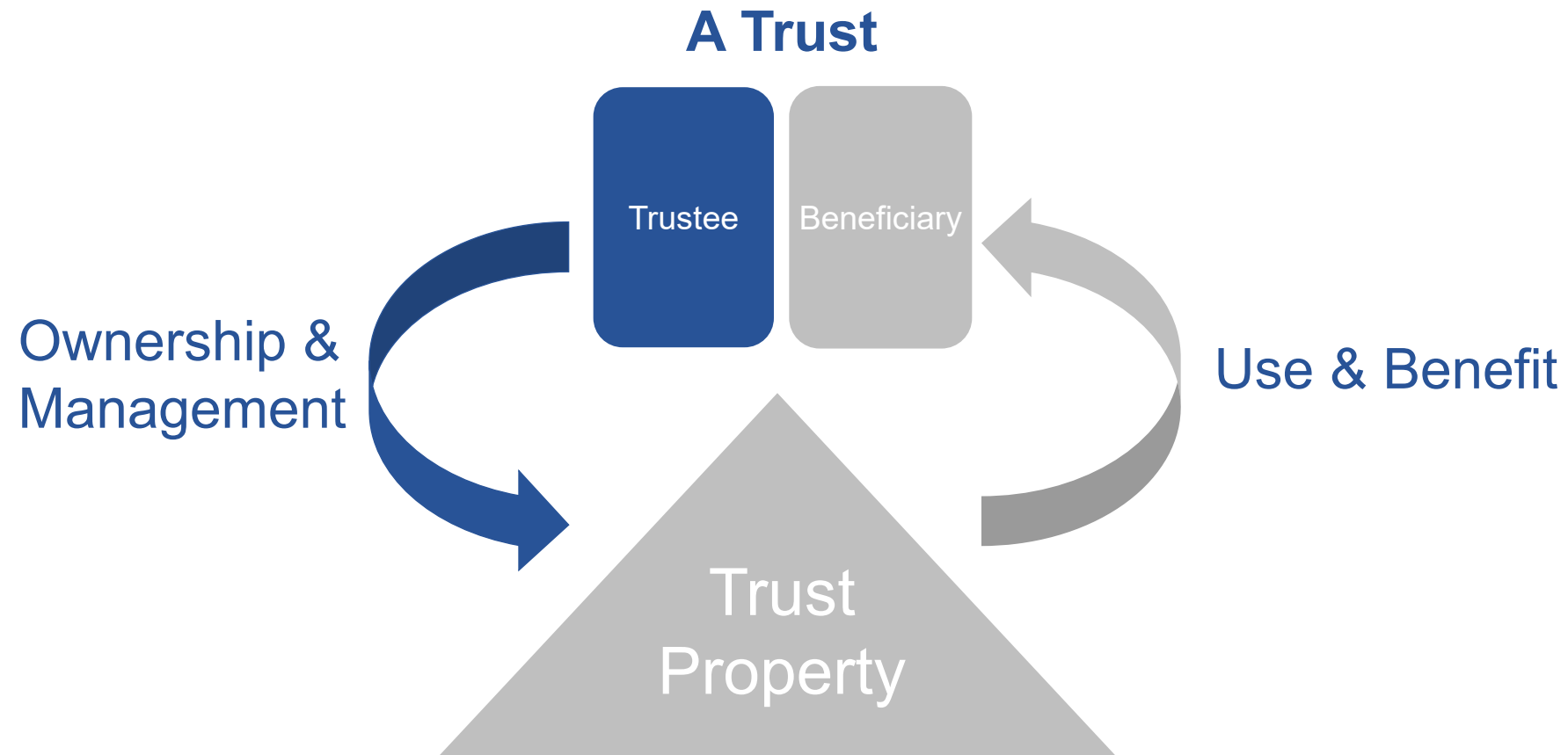
What is a Living Trust

- Established during a person's lifetime
- Property managed by trustee for the benefit of beneficiaries
 - Key players: Settlor, Trustee, Beneficiary
- Properly funded, assets will avoid probate
- Revocable/amendable before death

Estate vs. Trust



Estate vs. Trust



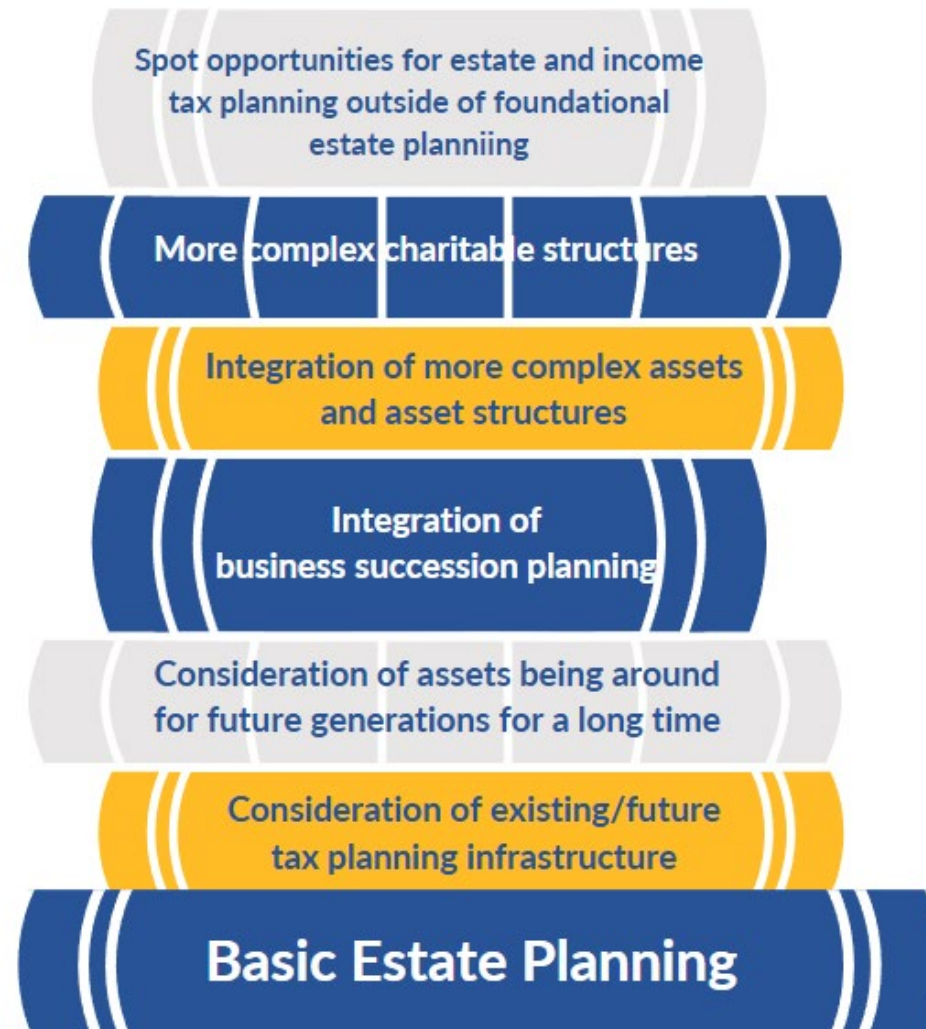
Current Estate Tax Laws

- \$13.99 million gift and estate tax exemption for 2025
- Gift and estate tax exemption is indexed for inflation
- Existing law to sunset at the end of 2025 and federal estate tax exemption is expected to be cut in half unless the law is changed

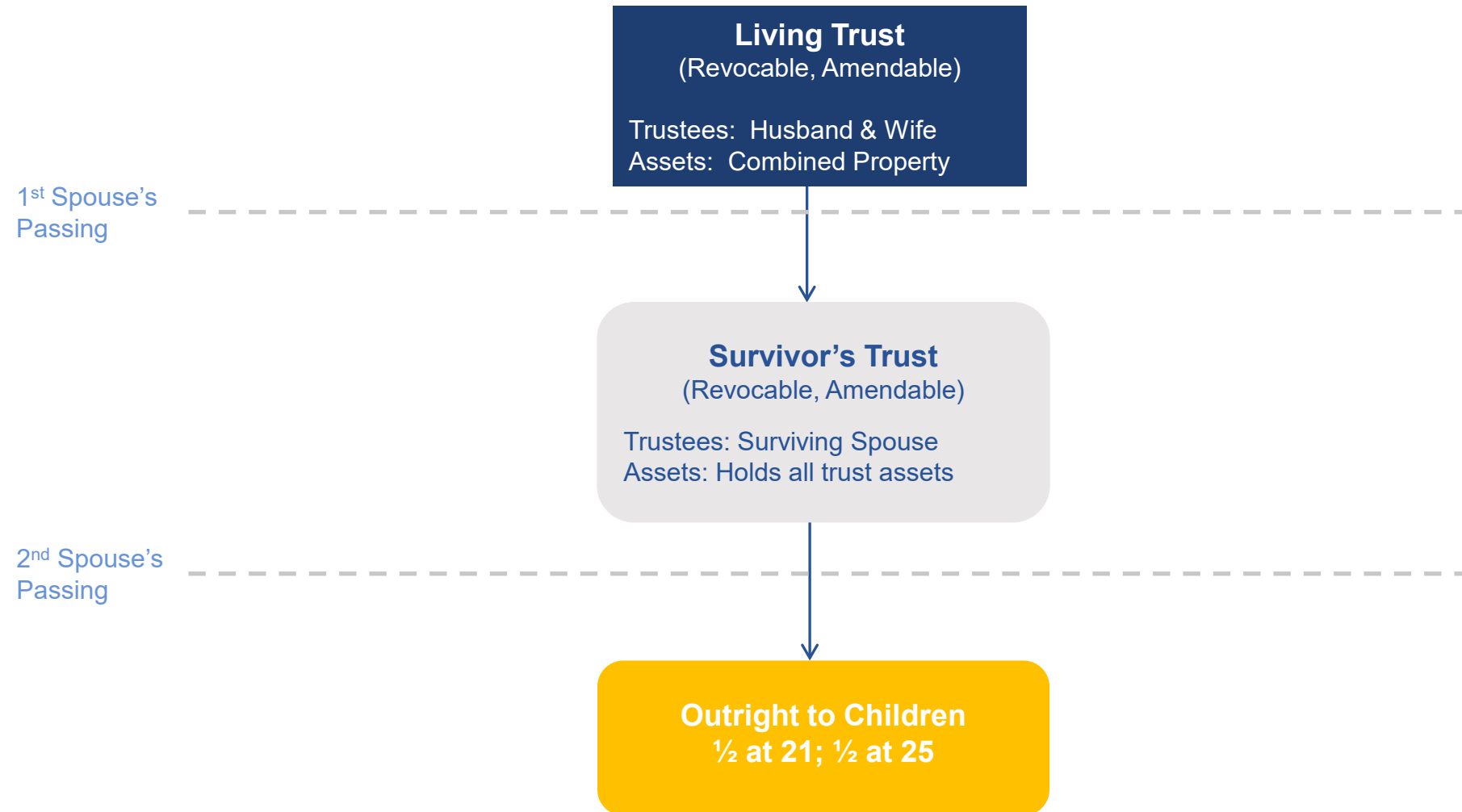
Foundational Estate Planning: High/Ultra-High Net Worth

How is foundational estate planning
different for high/ultra-high-net worth individuals?

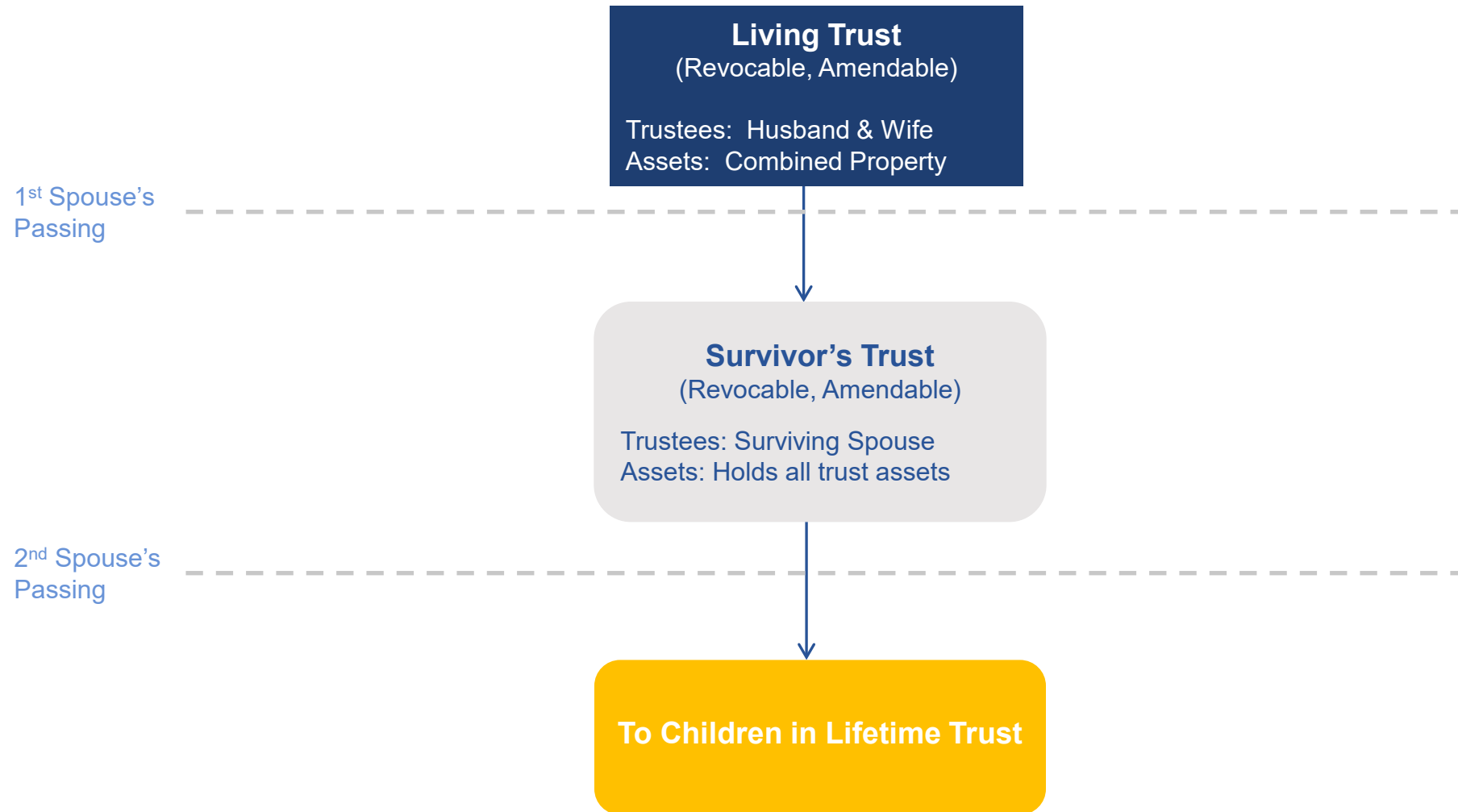
Foundational Estate Planning: High/Ultra-High Net Worth



Outright Distribution to Children vs. Distribution in Trust

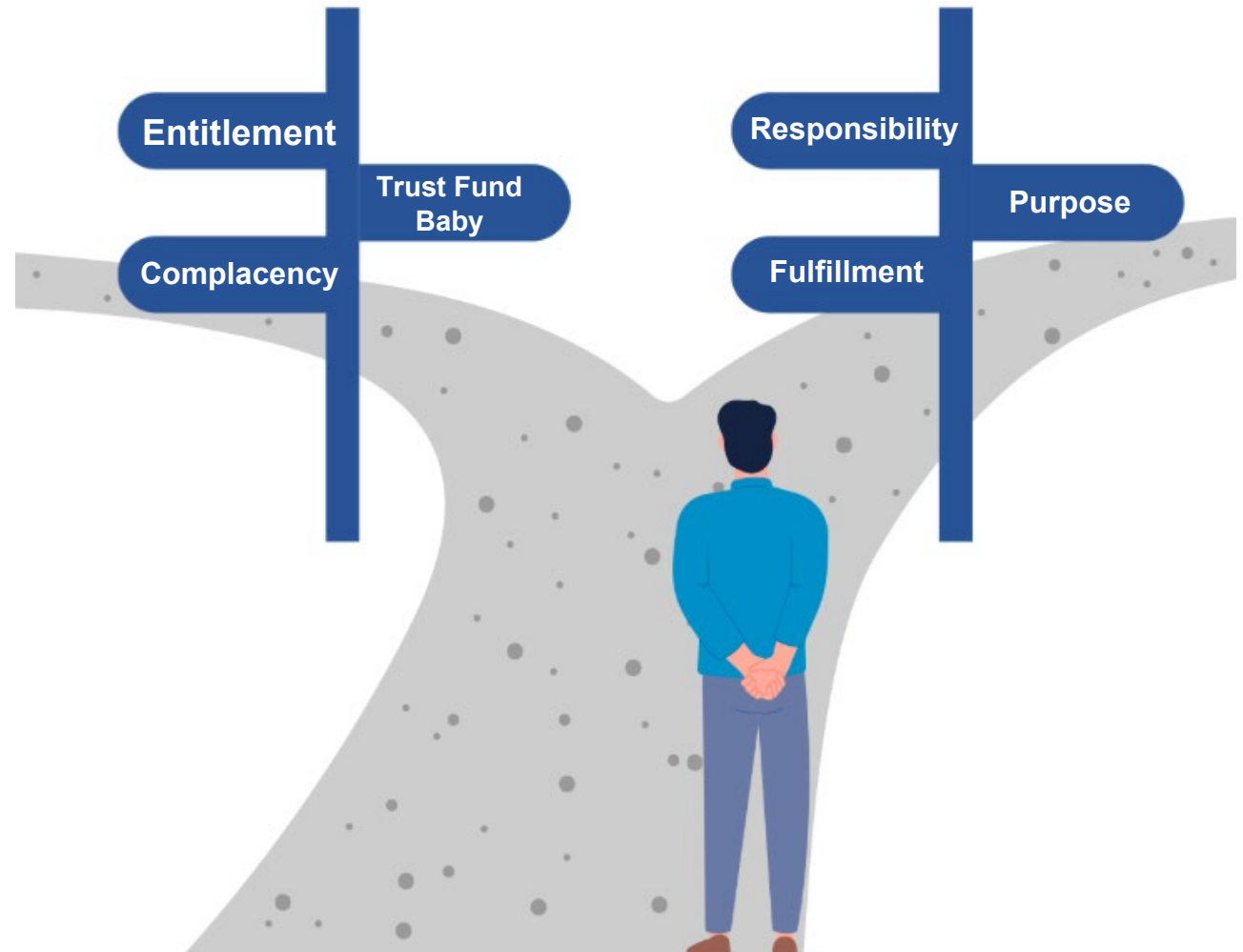


Outright Distribution to Children vs. Distribution in Trust



High/Ultra-High-Net Worth: Distribution Guidelines

- Statement of Purpose
- Distribution Guidelines



High/Ultra-High-Net Worth: Distribution Guidelines

- Another Example: Incentive Guidelines for Child Who Has Difficulty Persevering with a Job



High/Ultra-High-Net Worth: Nuts & Bolts of Guidelines

- Use incentive trusts, phased distributions, & milestone-based access.
- Provide structured distributions while promoting personal growth.
- Use small investments, philanthropic funds, & staged transitions to test transfer of wealth.
- Provide in the trust for ongoing education, coaching, & structured wealth transition (financial literacy courses).

**Intentional, virtue-based parenting
that forms children in the proper
exercise of their freedom**

High/Ultra-High-Net Worth: Avoiding Trust Fund Babies

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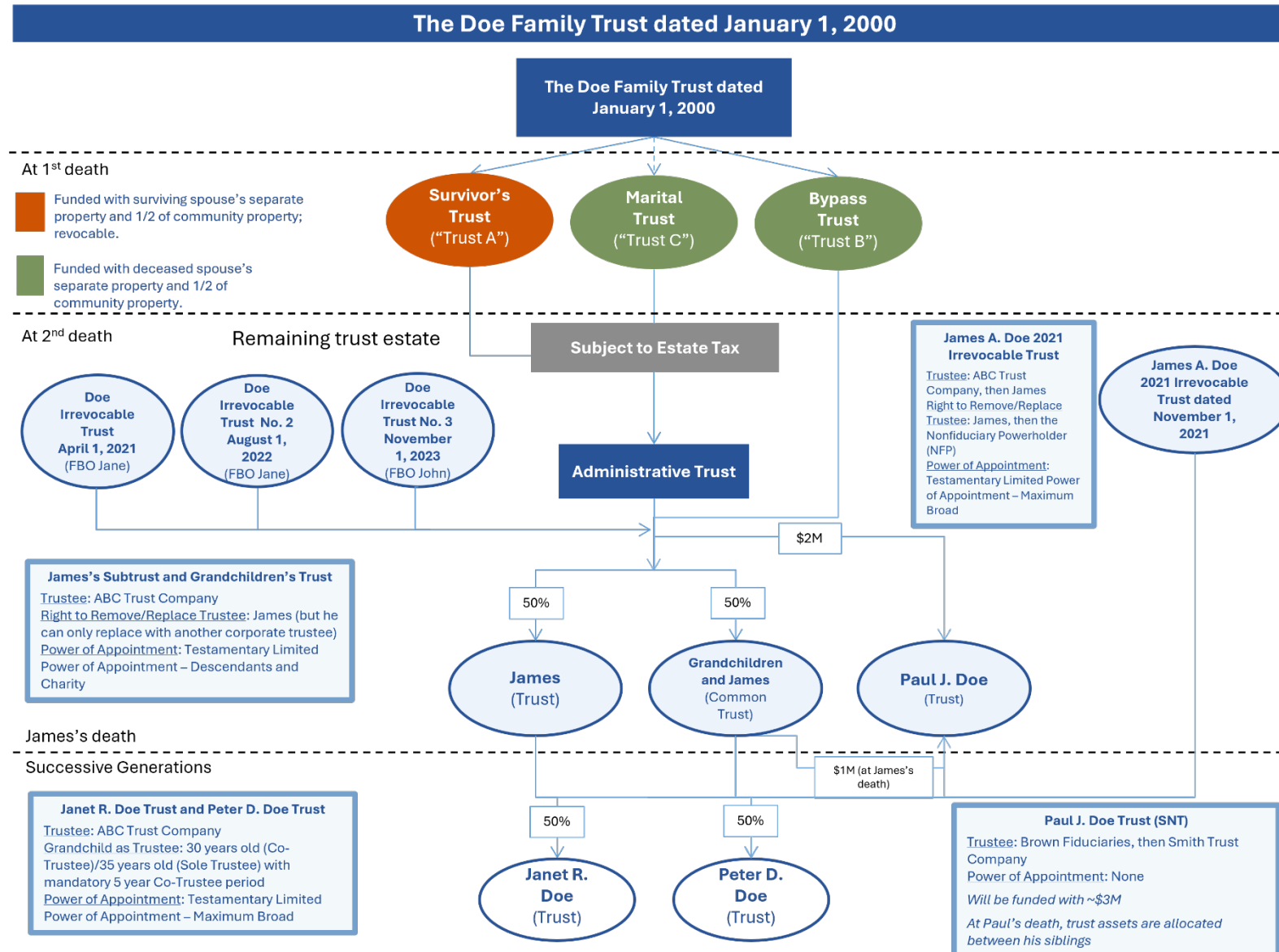
High/Ultra-High-Net Worth: Avoiding Trust Fund Babies

**Intentional, virtue-based parenting
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High/Ultra-High-Net Worth: Avoiding Trust Fund Babies

1. Instill the value of work
2. Foster a spirit of service
3. Cultivate gratitude
4. Encourage personal initiative
5. Lead by example

High/Ultra-High-Net Worth: Exercising Powers of Appointment

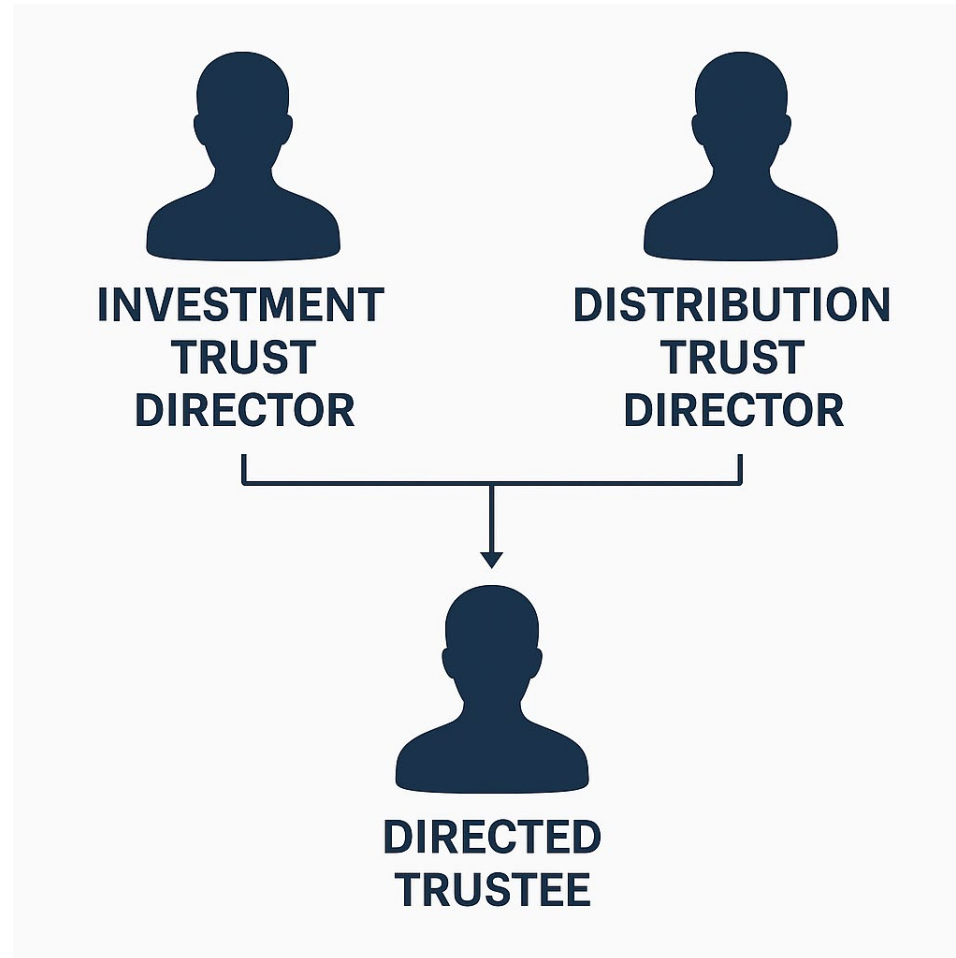


High/Ultra-High-Net Worth: Directed Trust



TRUSTEE

High/Ultra-High-Net Worth: Directed Trust



High/Ultra-High-Net Worth: Apportionment of Estate Tax Exemption



High/Ultra-High-Net Worth: Protection in Event of Estate Depletion



High/Ultra-High-Net Worth: Equalizing Lifetime and Estate Gifts



High/Ultra-High-Net Worth: Charitable Considerations

- Gifts to charity of a dollar amount instead of a percentage
- Caution about gift to charity not being definite enough
- Caution about giving partial interests in an entity to charity
- Pourover of assets to existing or testamentary private foundations, donor advised fund.
- Ensuring succession of management of private foundation

High/Ultra-High-Net Worth: Many Other Special Considerations

- How to treat business for which one child works and others don't
- Move control of business without moving too much value
- Succession of management under business documents is consistent with estate planning
- Conferring on beneficiary right of first refusal to purchase estate property
- Allowing distributions during incapacity to persons who are dependent on the trustors for support
- Permitting a relative to continue living in residence or other property free of rent or reduced rent

High/Ultra-High-Net Worth: Many Other Special Considerations

- Addressing issues in prenuptial agreement and divorce order
- Ensuring transmutations for tax planning purposes not nullified by form property agreement
- Large estates with majority of value in retirement assets (outright distribution vs. trust distribution)
- Effect of outright distribution of retirement accounts on division of assets at death of first spouse
- Robust guardian provisions that allow for stipend, maid, nanny, family vacations, etc.
- Integrating foreign and out-of-state assets
- Stock options

High/Ultra-High-Net Worth: Many Other Special Considerations

- Bequest to incomplete class of grandchildren
- Directed trust law to divvy up duties of trustees among different people
- Giving beneficiaries the flexibility to make charitable gifts without conferring the rights of a beneficiary on charity
- Fluctuating estate values and desire to give beneficiaries a certain percentage of estate with either a floor or ceiling.
- Forced prenuptial agreement between beneficiary and spouse

High/Ultra-High-Net Worth: Many Other Special Considerations

- Beneficiary with substance abuse issues
- Clients receiving outright distributions of inheritance from parents
- Separate trust and community property trust talking to each other

Conclusion

Questions?



Additional Resource

For a copy of *The 5 Most Common Things That Make a Revocable Living Trust Outdated*, please reach out to Michael at Michael.Offenheiser@brownandstreza.com



Thank you for attending

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Thank you for your time!