

Estate Planning 101: Back to Basics

Presented by Paula Clarkson Chamberlain, J.D., LL.M



About Merhab Robinson & Clarkson

Business and Estate Planning

Practice Areas

- ❖ Estate Tax Planning
- ❖ Probate & Estate Administration
- ❖ Business Succession Planning
- ❖ Asset Protection
- ❖ Charitable Planning
- ❖ Business Law
- ❖ Entity Formation
- ❖ Employment Law
- ❖ Mergers & Acquisitions
- ❖ Employment Document Audits

Our Presenter



Paula Clarkson Chamberlain is a founding partner and head of Merhab Robinson & Clarkson's Estate Planning practice. She primarily practices in the areas of estate planning, probate, trust administration, and conservatorships.



What is an Estate?

Let's start with the basics

LIFE INSURANCE

BUSINESS INTERESTS



- 401(k) / IRAs / other retirement accounts
- Bank Accounts
- Investments

What is Estate Planning?

- Incapacity and end-of-life decisions
- Asset accumulation, preservation, and transfer
- Minor children and beneficiaries
- Income, property, and estate tax reduction
- Leaving a legacy
- Providing peace of mind to yourself and your family in difficult situations

Protecting Yourself

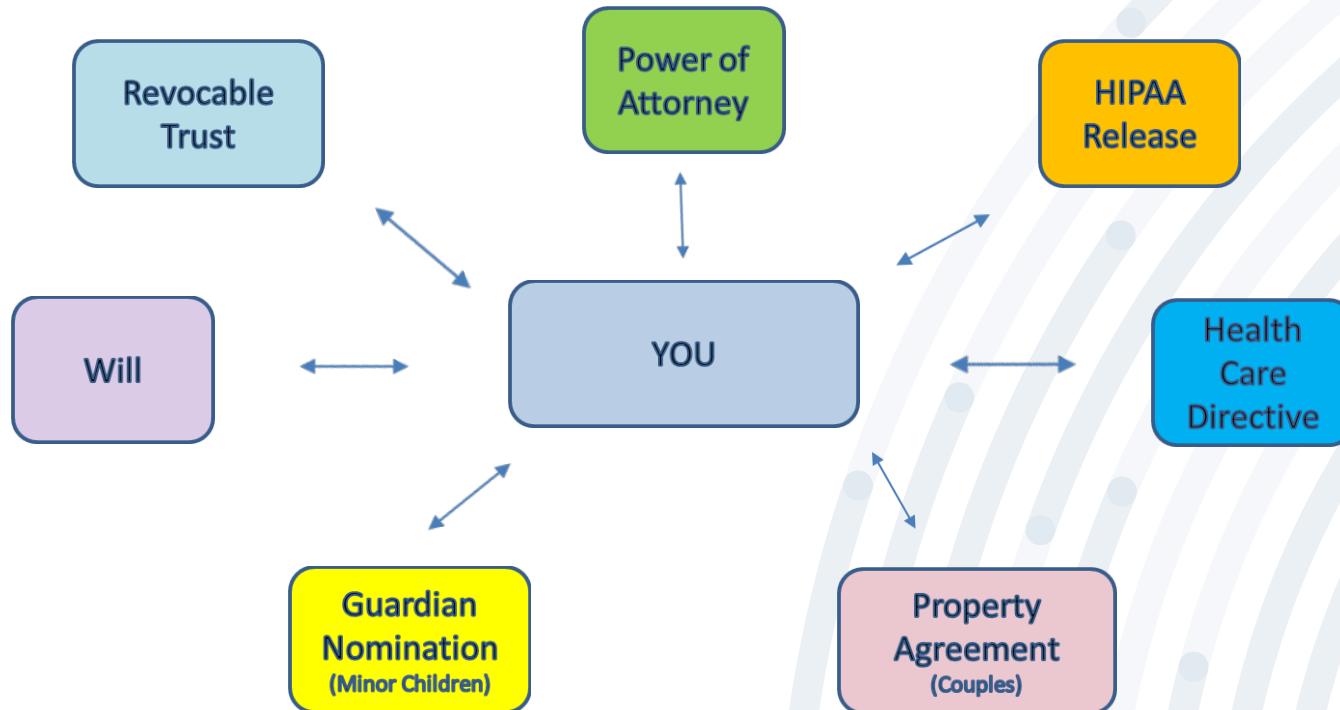
Health Care

- Planning for and appointing loved ones to make healthcare decisions for you when you are unable to do so
- Making your healthcare and end-of-life decisions known

Financially

- Planning for and appointing loved ones to make financial decisions when you are unable to do so

Elements of an Estate Plan



If you don't plan, the state will.

If you pass away without an estate plan, the state decides what happens to your estate. In California, this means the state decides:

- Who receives your assets
- Who manages and distributes them
- When and how your assets are received

This “default plan” is determined by state law, not your own unique family dynamics, relationships, or wishes. It may exclude people you care about or include people you wouldn’t choose, and offers no privacy, as your estate goes through public probate.

Creating an estate plan puts **you** in control.



How the Court Gets Involved

During your lifetime:

- **Conservatorship**

A protector is appointed by a judge to protect and manage the financial affairs and/or the person's daily life due to physical or mental limitations or old age.

- **Guardianship**

For minors



How the Court Gets Involved

After death:

- **Probate** is a court procedure where:
 - Assets exceed \$208,500 and don't pass another way (life insurance, 401(k), IRA, POD)
 - Will is proven to be valid or invalid
 - Process for administering a decedent's estate
 - Collection and distribution of assets
 - Creditors and debts paid



Why Avoid Probate?

- **TIME LAG.** In California, the average time to complete a probate and distribute assets to heirs lasts 1 ½ to 2 years.
- **NO PRIVACY.** Probate is a court-supervised proceeding. Thus, everything is public record.
- **COSTLY.** Attorney's fees are mandated by statute and are a percentage of the estate value. *Probate costs often deplete 5% of the estate.*
- **EMOTIONAL.** Not an easy process at a time of loss for grieving family members.

Ways to Transfer Property at Death

Operation of Law

For the benefit of...

In Trust for

Joint Tenancy

Community Property



Matter of Contract

Employee Benefits

Beneficiary Designations



The Pitfalls of Joint Tenancy

Although Joint Tenancy may avoid a probate on the first death, it creates many other concerns, such as:

- Probate on last or simultaneous death
- Lack of control over distribution
- Financial liability shared with other joint tenants
- Inadvertent disinheritance
- Potential gift tax implications
- Does not avoid a conservatorship
- Only $\frac{1}{2}$ step-up in basis on first death

Advance Health Care Directives and HIPAA Releases



- Nominates your choice for medical decision-making
- States your wishes for pain relief, life support, donations of organs, and burial
- Allows the release of medical information

What is a Power of Attorney?



- Nominates your choice for financial decision-making (usually the same as your Executor and Trustee)
- Covers assets held outside of Trust
 - Joint Tenancy Accounts
 - Taxes
 - Social Security Payments
 - Medical/Medi-Care
 - Safe Deposit Boxes



Choosing a Guardian for Minor Children

Create a short list of potential people:

- Parents, siblings, cousins, godparents, friends

Consider your values and priorities:

- School, religion, location

Match your short list with your values



What is a Will?

- Transfers your assets at death and nominates Executor
- No plan = **Probate**
- Will only = **Probate**
- Will and Trust = **Avoids probate if trust is funded**

Do you need more in your plan? *

Maybe not:

- Assets less than \$184,500
- **Young Adults:** Foundational Plan of Advanced Health Care Directive, Power of Attorney, and HIPAA Release
- **Older Adults:** Foundational Plan of Advanced Health Care Directive, Power of Attorney, and HIPAA

Yes:

- Minor children
- Assets greater than \$184,500
- Beneficiary with special needs
- Beneficiaries other than those provided by state

What is a Living Trust?

- Arrangement you create during life to provide for the financial management of your assets during your incapacity and after your death
- Arrangement where:
 - **Trustee**: (generally you) holds legal title for benefit of **beneficiary** (you)
- Trust specifies what happens to property during your life and after you die

Protecting your children and providing for your beneficiaries

- Minor children
- Avoid guardianship issues
- Pass along personal values
- Beneficiaries with special needs or financial and emotional immaturity
- Special Needs Beneficiaries
- Provide for charities of your choice



CREATE A LEGACY FOR YEARS TO COME!

Estate Planning is also Tax Planning

Income Tax Planning:

- Capital Gains
- Ordinary Income

Property Tax

Estate Tax

- Federal
- State

Gift Tax



Estate Tax Considerations

Estate Tax Exemption

\$15,000,000 per person

Maximum Estate Tax Rate

40%

Gift Tax Exemption

\$19,000 per person

Maximum Gift Tax Exemption

40%

GST Exemption

\$15,000,000 per person

GST Tax Rate

40%

Basis Step-Up

100%

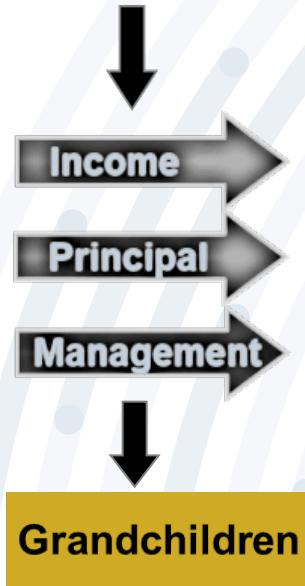
Portability

Available

Single Person/Married Simple Trust

HEIRS in
Dynasty Trusts

**REVOCABLE
FAMILY TRUST**

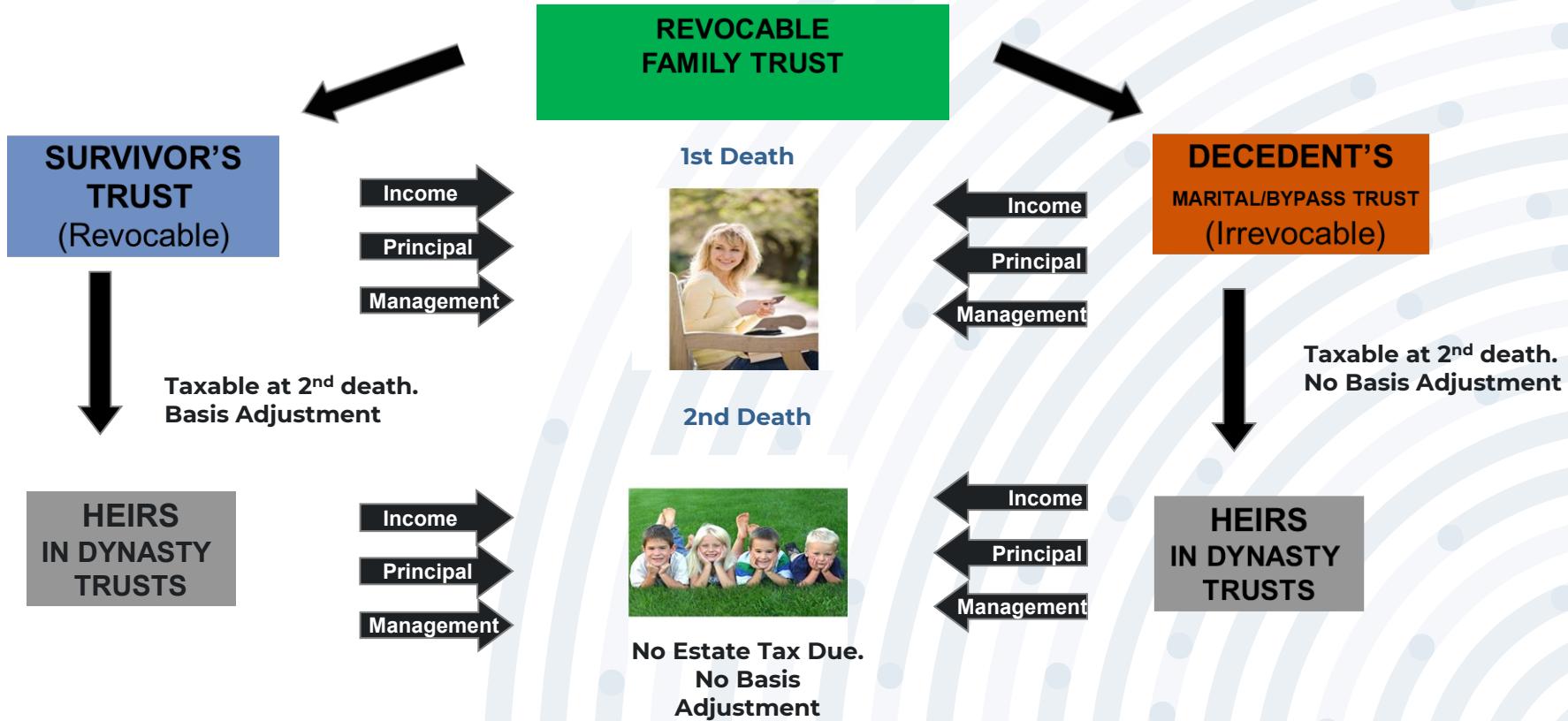


Taxable at death.
Basis Adjustment



No Estate Tax Due. No
Basis Adjustment

A/B or A/B/C Trust



Only foolproof way to avoid probate is with a fully funded trust

Re-title
investment
accounts

Sign new
signature
cards at bank

Execute deeds to
Real Property



Transfer Stock/
Bond certificates

Assign personal
property

Change life insurance and
retirement account beneficiary designations

Thank you!

Any questions?

If you would like us to speak to an organization you belong to or your business, please let us know. We are always happy to educate people about their rights on estate planning.

CONTACT US

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Ask the Attorney

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