Good morning/afternoon/evening. I'd like to welcome you to our presentation entitled, *Understanding Estate Planning and Living Trusts*. I'm delighted you could join us.

My name is _____________ and I'm (position/title) with (company/firm). (Talk about yourself for a minute or two, so people can get to know you. Be sure to include how long you've been in business, your specialty, location, etc.)

The information in this presentation will be explained in plain English—no legalese—and the entire presentation will take about 40 minutes.

So we can end on time, please write down your questions as you think of them and hold them until the end. I'll be happy to answer them then.

Now, let's get started.

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WHAT IS AN ESTATE?

First, what is an estate?

Your estate is simply everything you own—your home, other real estate, bank accounts, investments, retirement benefits from your employer, IRAs, your insurance policies, collectibles, and personal belongings.

When you start adding it up—especially when you add in the death benefits from your insurance policies—you may find, like most people do, that you actually own a lot more than you think.

Now, why do people do estate planning?

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WHY DO ESTATE PLANNING?

- **After Death**
  - **Control Who Receives Assets**
  - **Pay Minimum Legal Fees, Taxes**
- **At Incapacity**
  - **Control Assets, Medical Decisions**

Most people do estate planning because they want to control who will receive their assets after they die, and they want this to happen with the least amount going to legal fees and taxes.

But estate planning is not just about what happens after you die. A good estate plan will also protect *you* at incapacity. It will let you—not the courts—keep control of your assets *and* control of decisions about your medical care when you can no longer handle your own affairs.

So, who needs to do estate planning?

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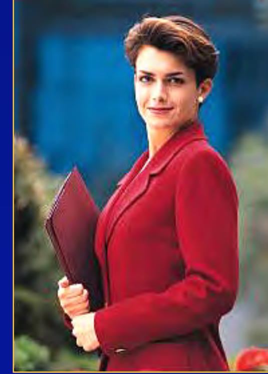
WHO NEEDS ESTATE PLANNING?



Everyone.

Certainly, the older you get, the more you start thinking about how to transfer your assets to your grown children or other loved ones.

But families with young children need to do estate planning. So do people who have children from previous marriages.

Single adults—young or old—need to plan as well.

Estate planning is not just for "wealthy" people—whatever that word means. Good estate planning is important for everyone.

Let's look at a couple of examples of people you might recognize and see how they planned their estates.

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ELVIS PRESLEY

Gross Estate	$ 10,165,434
Debts	3,878,539
Administrative, Legal & Executor Fees	1,961,128
Estate Taxes	3,339,520
To Heirs	$ 986,247

When Elvis Presley died, his estate was valued at more than $10 million. But by the time his debts and taxes were paid, less than $1 million actually went to his heirs.

Elvis had a will. But because of poor planning, more than half of his assets went to federal and state governments, legal and executor fees, probate and other "administrative" costs.

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GROUCHO MARX

- Declared Incompetent by Court
- Lost Control of
  - Assets
  - Personal Decisions
  - Privacy
  - Costs

Groucho Marx had a will, too. But he didn't plan for incapacity. The end of his life became a public circus. The court declared him incompetent, and his companion and family members battled for control over his care—and his money.

Elvis and Groucho had something in common. They had wills, but they both could have done better jobs of planning their estates. After this presentation, you'll know how to do that.

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WHEN SHOULD YOU PLAN?

- Now
  - While You Can
  - Before You Need It
- No Second Chance

The best time to plan your estate is now, while you can—*before* you need it. Because with estate planning, there is no second chance.

None of us likes to think about our own mortality or the possibility of becoming incapacitated. And that's exactly why so many families are caught off guard and unprepared when incapacity or death strikes.

So, how do you plan your estate?

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There are really only these six basic ways to plan your estate:

1) Having a will

2) Doing nothing

3) Using joint ownership

4) Making gifts

5) Using beneficiary transfers, and

6) Having a living trust.

Let's take a look at each one and see how much control they will give you.

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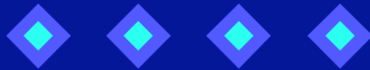
PLAN #1: WILL

- Expresses Your Wishes
- Only Controls Assets Titled In Your Name
- Enforced By Probate Court



We'll start with a will.

You probably already know that, in a will, you name who you want to handle your final affairs and who you want to receive your assets after you die.

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But did you know that your will only controls the assets that are titled in your name? Your will does not control assets that are titled in joint ownership and go to your spouse or another joint owner when you die. And it doesn't control assets with beneficiary designations, like your IRA, retirement benefits or life insurance policies.

So, to begin with, your will does not give you control over *all* of your assets.

Now, what about the assets your will *does* control? After you die, these assets will have to go through a court-controlled process called "probate."

WHAT IS PROBATE?

- **Legal Process**
  - **Will Validated**
  - **Debts Paid**
  - **Assets Distributed According To Will**
- **Only Legal Way to Change Title**

Probate is the legal process through which the court makes sure that, after you die, your will is valid, your debts are paid and your assets are distributed according to your will.

Probate is the *only* legal way to change the title on an asset when the person listed as the owner cannot sign his or her name.

Now, of course, if you're not alive anymore, you can't sign your name. And your family and friends can't just sign *for* you.

Only the court can change titles after someone dies.

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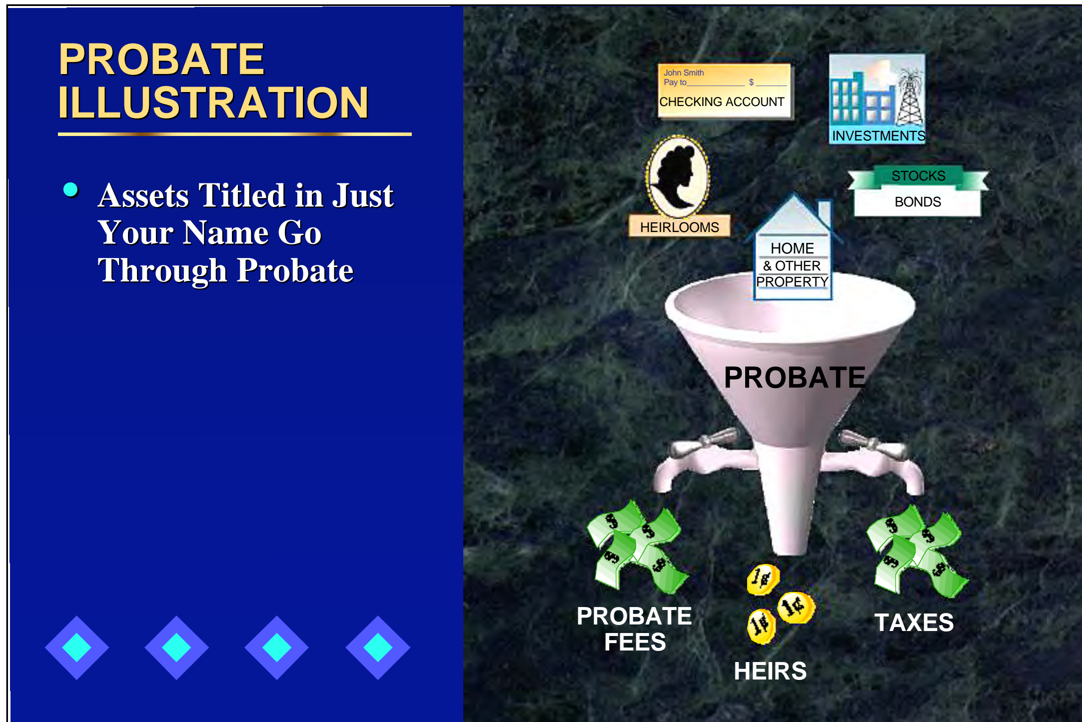

As this illustration shows, any assets that are titled in your name must go through probate so the titles can be changed.

Now, of course, this process isn't free. Let's take a look at how much it costs.

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SPEAKER NOTE: There may be income and estate taxes in addition to probate costs. Also, most states allow very small estates to bypass probate. But few qualify because the limits are very low (in some states, as low as $15,000 in total estate value). A few states also have special processes for surviving spouses.

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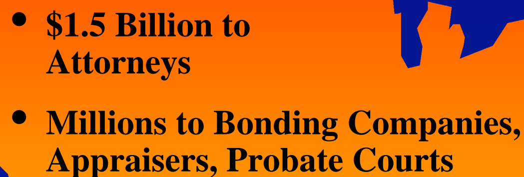
PROBATE IS BIG BUSINESS



AARP–The American Association for Retired Persons–did a survey of probate fees a few years ago.

AARP found that, nationwide, attorney fees alone could be as much as $1.5 billion a year, and that hundreds of millions more go to bonding companies, appraisers and the probate courts themselves.

Probate costs vary in each state, but they are usually estimated at 3-8% of an estate's value. If you own property in other states, your family could face multiple probates, each one according to the laws—and costs—in that state.

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SPEAKER NOTE: For your convenience, we have a Probate & Estate Tax Calculator available at our Web Site: **www.estateplanning.com**.

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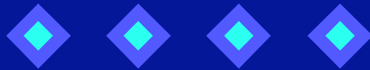
PROBATE TAKES TIME

- 9 Months - 2 Years



Probate also takes time.

In that same survey, AARP found that, even for modest estates, it takes one to two years to completely get through the probate process. If you're lucky, the probate on your estate may be completed in as few as nine months. But, on average, it takes over a year.

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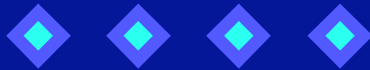
PROBATE IS PUBLIC

- No Privacy
- Easy to Contest



Probate is also a public process. Any "interested party" can see what you owned and who you owed. In fact, the process "invites" disgruntled heirs to contest your will.

It can also expose your family to unscrupulous solicitors who use probate files as a source for new business.

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PROBATE PROCESS HAS CONTROL

- **How Your Will Is Interpreted**
- **Cost**
- **Time**
- **Privacy**

The bottom line is that the probate process—not your family—has control over how your will is interpreted, how much probate will cost, how long it will take and what information is made public.

There’s another problem with a will.

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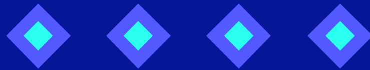
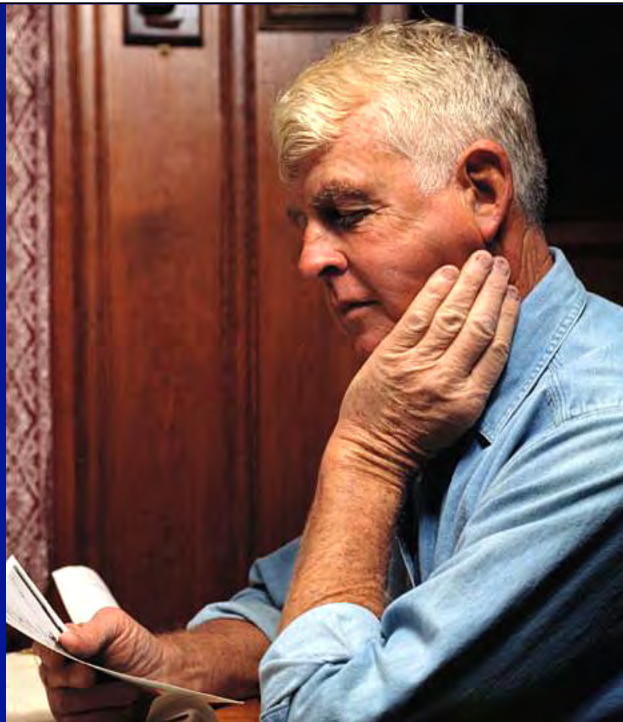
WILLS & INCAPACITY

- Will Is No Help
- Court Process
  - Expensive
  - Time Consuming
  - Public
  - Doesn't Replace Probate
- Durable Power of Attorney





A will is no help if you become incapacitated—because a will only goes into effect *after you die*. Remember what happened to Groucho?

If you can't conduct business due to mental or physical incapacity (for example, from Alzheimer's disease, stroke, or heart attack) only a court appointee can sign for you—*even if you have a will!* Having the court involved can be expensive and time consuming. It's a public process. And it *doesn't* replace probate when you die.

There is a document called a "durable power of attorney" that can allow someone to handle your financial affairs if you become incapacitated. However, some financial institutions won't accept *any* power of attorney. Others will only accept one if it's on their own form. The reason is they don't want the liability that could result from handing over your assets to someone else.

OPTIONAL STORY: When John was stricken with Alzheimer's, his son Mike needed to sell John's home to pay medical costs. But Mike couldn't sign the papers because John's name was on the title. Mike had to put his father in a court conservatorship that was expensive, time-consuming and public. When John died several years later, Mike found himself in the courts again—to probate John's will.

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WILLS & MINOR CHILDREN

- Court
  - Appoints Guardian
  - Controls Finances
- Child Inherits All At Legal Age

If you have minor children or grandchildren and you have a simple will (which many people have), it may not give you the control you want.

That's because the court (not the guardian you named in your will) will control the child's inheritance until the child reaches legal age. At that time, the child will receive the full inheritance.

This is not what most parents and grandparents would want. Most would prefer that the court *not* have control over the child's inheritance, and that the child inherit at a later age. But with a simple will, you have no choice.

SPEAKER NOTE: A children's trust in a parent's or grandparent's will lets the trustee (instead of the court) control the inheritance, but the will must be probated first. Also, the children's trust cannot go into effect at the parent's incapacity because it is part of the will (which only goes into effect after the parent has died).

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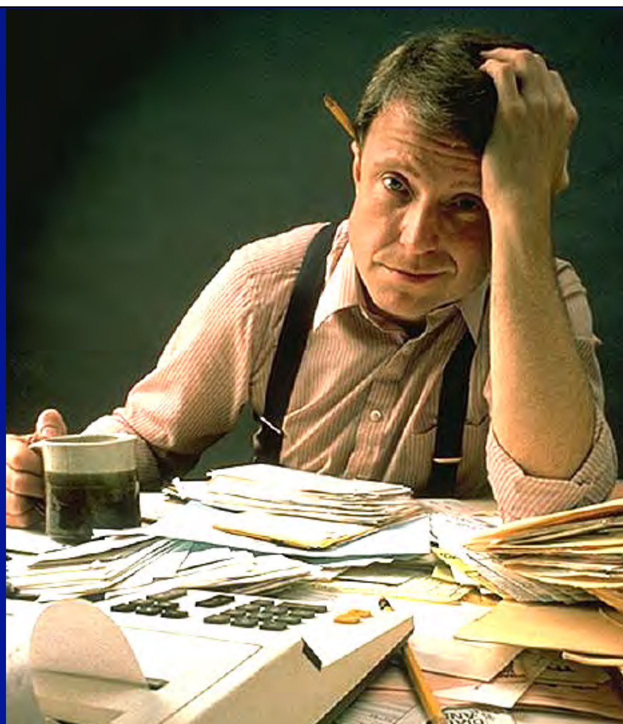
PLAN #2: DOING NOTHING

- At Death
  - Probate
  - Assets Distributed by State Law
- At Incapacity
  - Court Controls Assets



Common estate plan #2 is “doing nothing.”

If you have no estate plan—not even a will—when you die, your assets will be distributed according to your state’s probate laws. And if you become incapacitated before you die, the court will probably take control of your assets.

This is probably the worst situation because you will have NO control.

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PLAN #3: JOINT OWNERSHIP

- **Surviving joint owner has full ownership**

Estate plan #3 is joint ownership. It is one of the most common "plans" used by families. In fact, if you are married, you and your spouse probably own most of your assets jointly.

The type of joint ownership most people use is called "joint tenants with right of survivorship." It means that when one owner dies, the surviving joint owner has full ownership of the asset.

Some people think this will avoid probate and give them the control they want. Let's see. Meet Tom and Ann and their kids.

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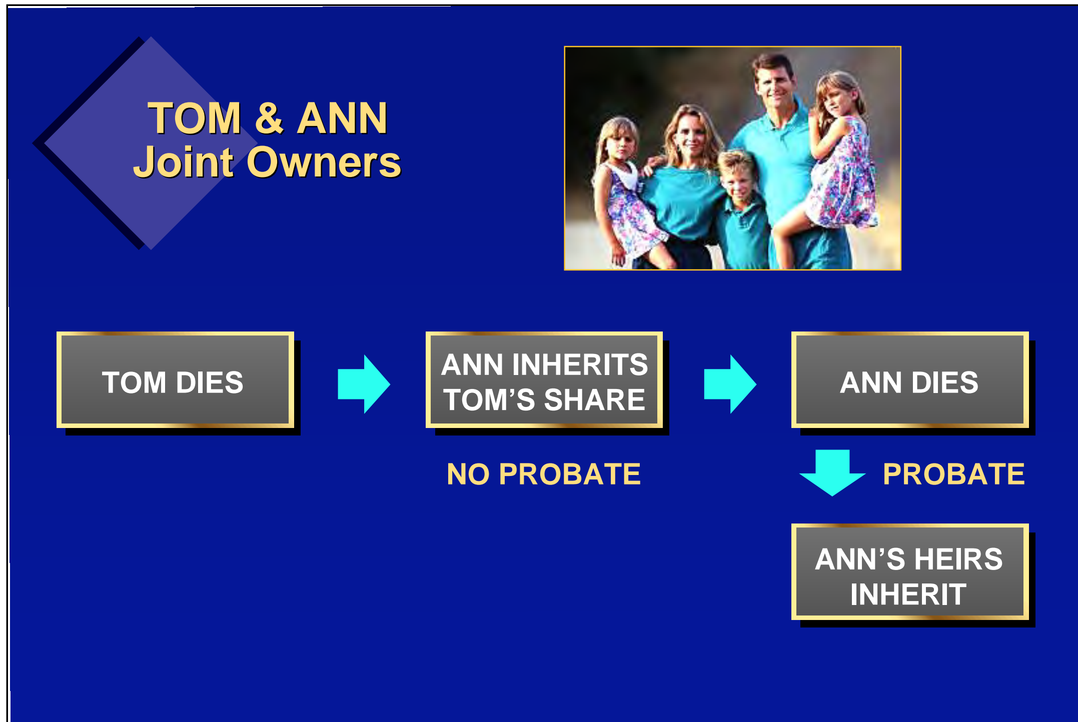

Tom and Ann, like most married couples, own their home as joint tenants with right of survivorship.

Tom dies suddenly in an accident. Immediately upon his death, Ann automatically becomes the sole owner of their home. There is no probate.

But what happens when Ann dies? Is there a probate? Yes. That's the only way to get her name *off* the title and put someone else's name *on*. So, you see, joint ownership doesn't *avoid* probate—it just *postpones* it.

Owning assets jointly can cause other problems, too.

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What if Ann remarries and puts the house in joint ownership with her new husband, Dan?

If Ann dies first, Dan owns the house. Is Dan under any legal obligation to give anything to Tom's and Ann's kids? No. The house belongs to Dan and he can do anything he wants with it.

Even if Ann had written in her will that she wanted her share of the house to go to her children, it wouldn't have made any difference. Remember, wills don't control assets that transfer automatically to a surviving joint owner.

In this example, using joint ownership caused Tom and Ann to disinherit their children!

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SPEAKER NOTE: This works great with audience participation. Choose people from the audience to portray Tom, Ann and Dan and have them "roll play" these events.

JOINT OWNERSHIP SUMMARY

1. Only Postpones Probate
2. Unintentional Disinheriting
3. Incapacity = Court Interference
4. Difficult To Remove Co-Owner
5. Lawsuits
6. Debts/Tax Problems

The bottom line is that joint ownership can cause a lot of problems:

1. It doesn't avoid probate—it just postpones it.

2. If you die first, you have no way of controlling what ultimately happens to the asset. You could unintentionally disinherit your own family.

3. If your co-owner becomes incapacitated, you could find yourself with a new co-owner—the court!

4. Adding a co-owner is easy, but taking his/her name off the title is not. If your co-owner doesn't agree, you could end up in court.

5. You could end up in a lawsuit if your joint owner is sued over an accident that involves the jointly-owned asset.

6. You expose the asset to the other owner's debts, and the property could be seized as settlement.

SPEAKER NOTE: If you are discussing estate taxes, you can add that using joint ownership can also cause you to pay too much in estate taxes. This is explained in our presentation entitled, *Understanding Estate Taxes*.

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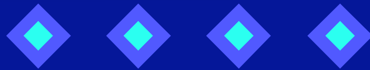
PLAN #4: GIVING AWAY ASSETS

- You Lose Control



Giving away assets is another estate "plan" people use.

Parents often give their assets to their children, thinking it will make things easier if they become incapacitated and after they die.

But what happens if you want—or need—the asset later? Will your children give it back to you? Maybe, maybe not.

You know the old saying, "Never say never." Here's one time to ignore it. *Never* give away an asset you may need later—not even to your children!

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OPTIONAL STORY: Frank and Elizabeth, an elderly couple, put everything they owned—including their home—in their married daughter's name. A year later, Frank died. Several months after that, their daughter died in a car accident. Elizabeth never thought she would survive both her husband and daughter. And now she owned nothing in her own name. Soon, she found herself in probate, fighting her son-in-law over what used to be *her assets*!

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STEPPED-UP BASIS

	Lifetime Gifts (Your Basis)
Selling Price	$ 250,000
Basis	- 50,000
Gain	$ 200,000
Capital Gains Tax	$ 30,000

Another problem with giving away assets is that you might be giving the recipient an income tax problem.

Here's an example. Let's say Bob bought his home back in 1955 for $50,000 and today it's worth $250,000. He gives it to his son Tom, who then sells it for $250,000.

Because Bob transferred title to Tom while he was living, the house keeps Bob's old cost basis of $50,000. Remember, that's what he paid for it.

That means Tom now has a $200,000 gain on the sale. And, under current tax law, he will have to pay $30,000 in capital gains tax.

Let's look at what happens if Bob had left his home to Tom as an inheritance through a will or trust.

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STEPPED-UP BASIS

	Lifetime Gifts (Your Basis)	Transfers At Death (New, Stepped-Up Basis)
Selling Price	$ 250,000	$ 250,000
Basis	- 50,000	- 250,000
Gain	$ 200,000	$ 0
Capital Gains Tax	$ 30,000	$ 0

As shown here on the right, Tom sells the house for the same $250,000. But because he received the house as an inheritance after Bob died instead of as a gift while Bob was living, the property receives a new *stepped-up* basis. The basis is now the value as of the date of Bob's death—$250,000.

So now when Tom sells the house, there is *no* gain on the sale—and *no* capital gains tax to pay.

By not giving the house to him while he was alive, Bob would save Tom $30,000 in capital gains tax.

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PLAN #5: BENEFICIARY TRANSFERS

- **Court Interference if Beneficiary:**
  - **Incapacitated**
  - **Dies First or at Same Time**
  - **"My Estate"**
  - **Minor**

Estate "plan" #5 is transferring assets through beneficiary designations.

Many assets—including insurance policies, IRAs, retirement plans and some bank accounts—let you name a beneficiary. And when you die, these assets will usually be paid directly to the persons you have named as your beneficiaries, without probate—*but not always*.

If your beneficiary is incapacitated when you die, the court will probably take control of the funds for that person.

If your beneficiary dies before you, or you both die at the same time, the asset will have to go through probate so it can be distributed with the rest of your estate.

If you list "my estate" as beneficiary, the probate court will have to determine who "my estate" is.

And if you list a minor child or grandchild as a beneficiary, the court will probably get involved to "protect the child's interests," even if the child's parents are living. That's because insurance and financial companies will not knowingly pay large sums of money to a minor.

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Keeping Control with a REVOCABLE LIVING TRUST

Our last “plan” is a revocable living trust.

It is being used more and more by people of all ages, marital status and wealth—instead of a will and the other plans you’ve just seen.

Now we’ll look at what a revocable living trust is, how it works and how it lets you keep more control than other plans.

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	WILL	REVOCABLE LIVING TRUST
Used 100s of Years	Yes	Yes
Names Someone To Handle Final Affairs	Yes	Yes
Names Whom You Want To Receive Assets	Yes	Yes
Avoids Probate		Yes
Avoids ”Living Probate”		Yes

Let’s first compare a revocable living trust and a will.

Both are legal documents that have been around for hundreds of years.

In both, you name someone to handle your affairs after you die. In a will, this person is called an executor or an administrator. In a living trust, this person is called a trustee.

And in both, you name whom you want to receive your assets after you die.

But, unlike a will, a living trust avoids probate when you die, can control all of your assets *and* prevents the court from controlling your assets at incapacity. This process is sometimes referred to as a “living probate.”

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FUNDING YOUR LIVING TRUST

When you set up a living trust, you transfer your assets from your name to the name of your trust. For example, from “Bob and Sue Smith, husband and wife” to “Bob and Sue Smith, trustees of the Smith Family Trust dated (insert the date you sign your trust).”

This is called “funding” your living trust.

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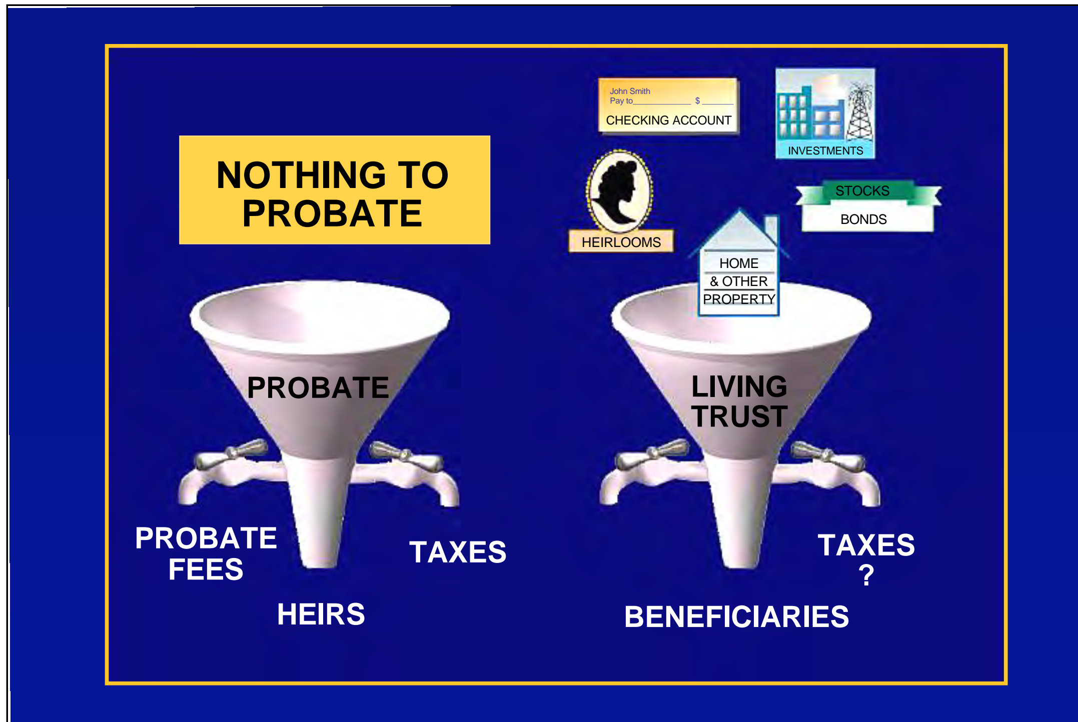

When you change the titles of your assets from your name to your trust, YOU no longer own anything. So, when you die, or if you become incapacitated, there is nothing for the courts to control.

The concept is very simple, but this is what keeps you and your family out of probate.

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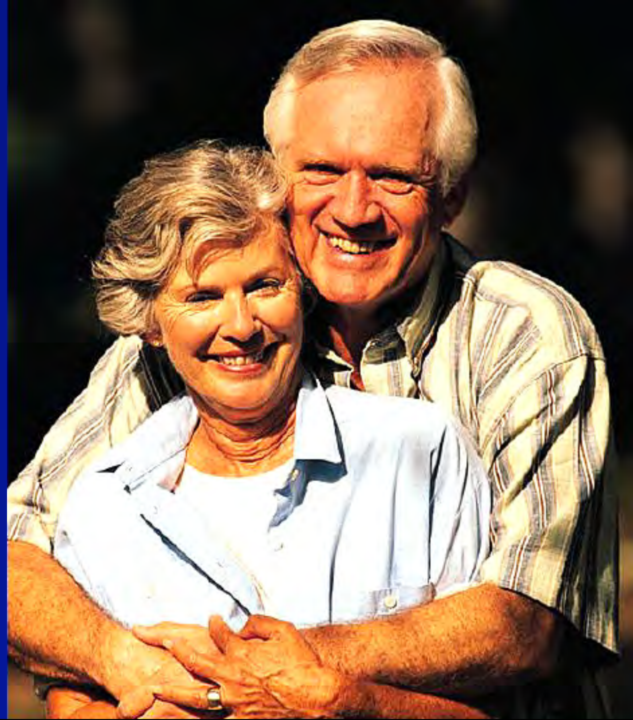
YOU KEEP CONTROL

- Buy/Sell Assets as Before
- Change/Cancel Any Time
- Trust Contains Your Instructions



You still have full control of the assets in your trust. As trustee of your trust, you can do anything with your assets that you could do before you put them in your trust.

You can buy and sell assets, change your trust or even cancel it—that's why it's called a *revocable* living trust.

You even file the same tax returns. *Nothing changes*—except the names on the titles.

Plus, your trust contains your written instructions for what you want to happen to your assets if you become incapacitated and when you die.

In fact, you'll actually have MORE control with your assets in a living trust than you do now.

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To understand how a trust works, you need to know these four legal terms.

1.The "grantor" (sometimes called settlor, trustor or creator) creates and controls the trust. You are the grantor of your trust. And only you, as the grantor, can make changes to your trust. That's how you keep control.

2 The "trustee" manages the assets you put into your trust. Most people choose to be their own trustees. If you and your spouse are co-trustees, either of you can act and have instant control—with no court interference—if one of you becomes incapacitated or dies. You can also select a corporate trustee to act as your trustee or co-trustee. More about them in a minute.

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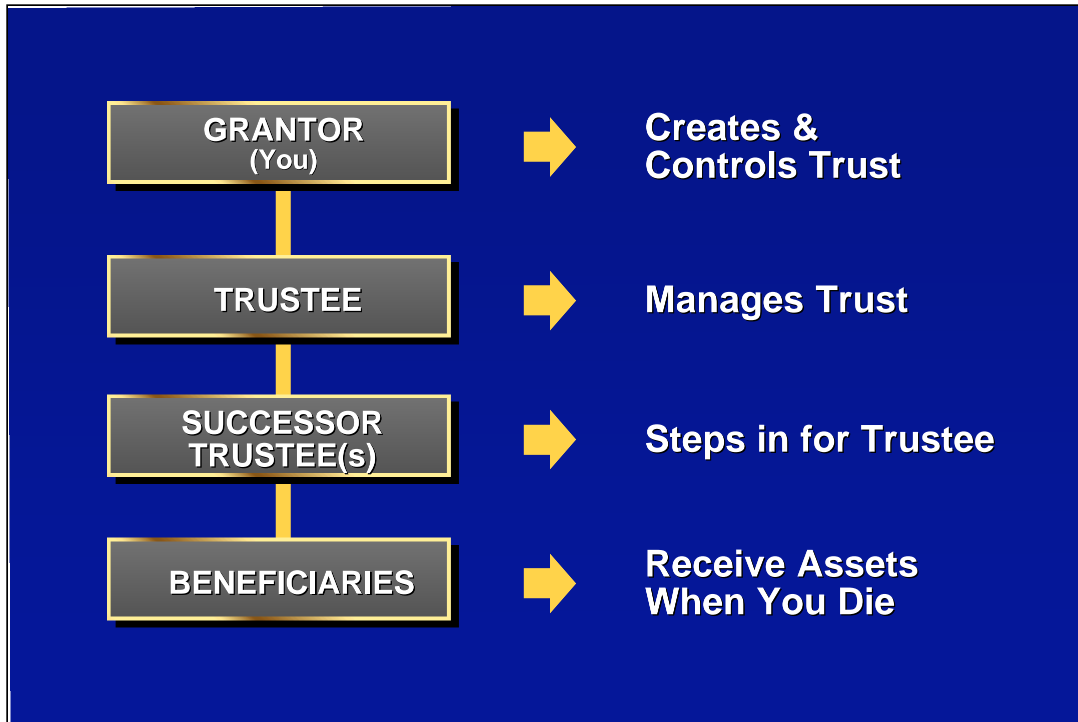

3. The "successor trustee" will manage your trust according to your written instructions if the trustee is unable to act. So, if you and your spouse are co-trustees and something happens to *both* of you, or if you are the *only* trustee, your handpicked successor trustee will step in.

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If you become incapacitated, your successor trustee looks after your care and manages your financial affairs for as long as needed. When you die, your successor trustee pays your debts and distributes your assets. All this is done quickly and privately, according to the instructions in your trust, without court interference.

Most people name an adult child, trusted friend or corporate trustee as their successor trustee.

4. The "beneficiaries" are the people and/or organizations who will receive your assets after you die.

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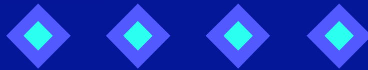
BENEFITS OF CORPORATE TRUSTEE

- **Experienced**
- **Professional Asset Managers**
- **Government Regulated**
- **Reliable**
- **Objective**



A corporate trustee is a bank or trust company that specializes in managing trusts. Some people select a corporate trustee to act as trustee or successor trustee for them, especially if they don't have the time, ability or desire to manage their own trusts.

Corporate trustees are experienced investment managers. They are government regulated, reliable and objective. They receive special training, and have a full network of resources available—including reports, analysts and researchers—to help them evaluate various markets and make decisions. As a result, they are often able to achieve better performance than an individual, who usually has less experience, time and resources.

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Corporate trustees do charge a fee for their services, but only when they begin to act as trustee.

SPEAKER NOTE: If you are a corporate trustee, you will probably want to add some information about your organization to personalize this presentation. For example, how long you've been managing trusts, your fees, what size trusts you manage, areas of specialty, investment performance, etc. You may also want to give each attendee our brochure, *Understanding Corporate Trustees—Seven Reasons To Have A Professional Help You Build, Manage and Protect Your Wealth.*

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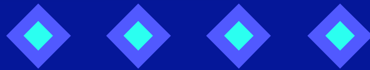
YOU CONTROL INHERITANCE

- All At Once
- Installments
- Income Only



One of the most powerful benefits of a trust is, unlike a will, a trust doesn't have to die with you. Assets can stay in your trust, managed by the trustee you select, until your beneficiaries reach the age(s) you want them to inherit.

Does this remind you of anyone in your family? If so, you may prefer to give children or grandchildren their inheritances in installments, so they have more than one opportunity to use the money wisely.

Or if you are concerned about the spending habits of one of your beneficiaries, you could provide periodic income and keep the rest in the trust.

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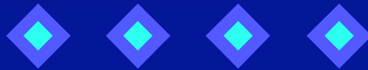
YOU CONTROL INHERITANCE

- Special Needs
- Supplemental Income
- Minors
- Protect from Creditors/Predators



You can provide for a loved one with special needs without disturbing valuable government benefits. You can safeguard a minor child's inheritance. You could also supplement the income of a child who wants to be a teacher or do other low-paying—but very important—community service work.

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Even if you feel that your beneficiary would handle the inheritance well, you may want to keep the assets in the trust to protect them from creditors, current spouses, ex-spouses, potential lawsuits and future death taxes. Your trustee can make distributions to the beneficiary as needed, but the assets that remain in the trust would be protected from these creditors and predators and, if invested well, could even help provide for future generations.

Most people like to leave their children or grandchildren with enough so they can do anything they want, but not so much that they do nothing. With a trust, you can do this and more. No other estate plan gives you this much flexibility and control.

OPTIONAL: If you would like to include an explanation of how a living trust can save estate taxes, insert the following slides from our presentation, *Understanding Estate Taxes*: 2, 3, 4, 5, 8, 9, 10 and 11.

LIVING TRUST SUMMARY

- **Avoid Probate at Death**
- **Prevent Court Control of Assets at Incapacity**
- **Provide Maximum Privacy**
- **Allow Quick Distribution of Assets to Beneficiaries**
- **Keep Assets in Trust**
- **Prevent Unintentional Disinheriting**
- **Reduce or Eliminate Estate Taxes if Married**

As you have seen, a living trust gives you far more control than any other estate plan. For example, a living trust can:

1. Avoid probate at death;

2. Prevent court control of assets at incapacity;

3. Provides maximum privacy;

4. Allow quick distribution of assets to beneficiaries; or

5. Let you keep assets in the trust until *you* want your beneficiaries to inherit;

6. Prevent unintentional disinheriting; and

7. Reduce or eliminate estate taxes if you are married. Your living trust can include a provision that will let you and your spouse use both of your estate tax exemptions, saving a substantial amount for your loved ones. Also, some states have their own death or inheritance tax that can be reduced or eliminated with proper planning.

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Now, as good as a living trust is, remember that it can only control your assets. At the beginning of this presentation, we explained that a good estate plan will let you keep control over your financial and medical decisions. Let's look at two documents that pertain to medical decisions, and see how much control they each give you.

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FOR MEDICAL DECISIONS

- **Living Will**
- **Advance Directive for Health Care**

The first is a "living will." Although the name is similar to a living trust, it does something very different.

A living will lets your physician know the kind of life support treatment you would want in case of a terminal illness or injury. It is very limited—it only applies to life support in terminal situations. And in some states, your physician is under no legal obligation to follow it. So, a living will doesn't give you a lot of control.

An "advance directive for health care" is better. It lets you give legal authority to another person (like your spouse or adult child) in advance to make *any* health care decision for you—including the use of life support—if you become unable to make them yourself. This document is much broader than a living will, and it can be legally enforced.

If you want an estate plan that will give you all this control—both financially and medically—here's what you need to do.

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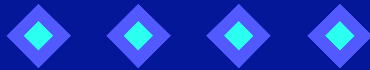
FIVE-STEP ACTION PLAN

1. Write Down Your Objectives
2. Inventory Your Assets and Debts
3. Select a Professional to Help
4. Have Legal Documents Prepared
5. Change Titles



Follow our Five-Step Action Plan:

1. Write down your objectives. Who do you want to receive your assets after you die—and when? Who do you want to manage your financial affairs—and make medical decisions—for you when you can't?

2. Inventory your assets and debts. Find out how much you own.

3. Select a professional to help. Someone you will be comfortable sharing this information with, who can answer your questions and who will be there when you need him or her.

4. Have the legal documents prepared.

5. Change titles to your living trust. Remember, a living trust can only control the assets you put into it.

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You've been a great audience today/tonight. I hope I've been able to convince you of the importance of estate planning to save you and your family time, anxiety and money.

If you set up a living trust, you'll be able to relax with your family and friends, knowing your good planning will have a happy ending. And that will give you the biggest benefit of all…peace of mind.

I'd like to thank you again for coming, and for letting me share this important information with you.

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