

# **TRUSTS** - THE SWISS ARMY KNIFE OF ESTATE PLANNING

---



Presented by  
EDWARD PERKINS, JD, LL.M., CPA

Two Hour CLE/CPE Webinar

March 28, 2024



## **EDWARD L. PERKINS, BA, JD, LLM(Tax), CPA**

Founding Shareholder - GIBSON & PERKINS, PC

[tedperkins@gibperk.com](mailto:tedperkins@gibperk.com)

610.565.1708 ext. 102

### **Formerly an Adjunct Professor**

Villanova University School of Law - *Graduate Tax Program*

### **Author**

- AICPA's - Taxation of Trusts and Estates
- AICPA's - Fundamentals of Trusts
- **Drafting Wills That Work in Pennsylvania**
- **PBI - Special Needs Trusts in Pennsylvania**



• **The Pennsylvania Trusts Handbook**

• **PBI - The ABCs of Will Contests** - Co-Author Paul Fellman

**Founder** - YourOnlineProfessor.net

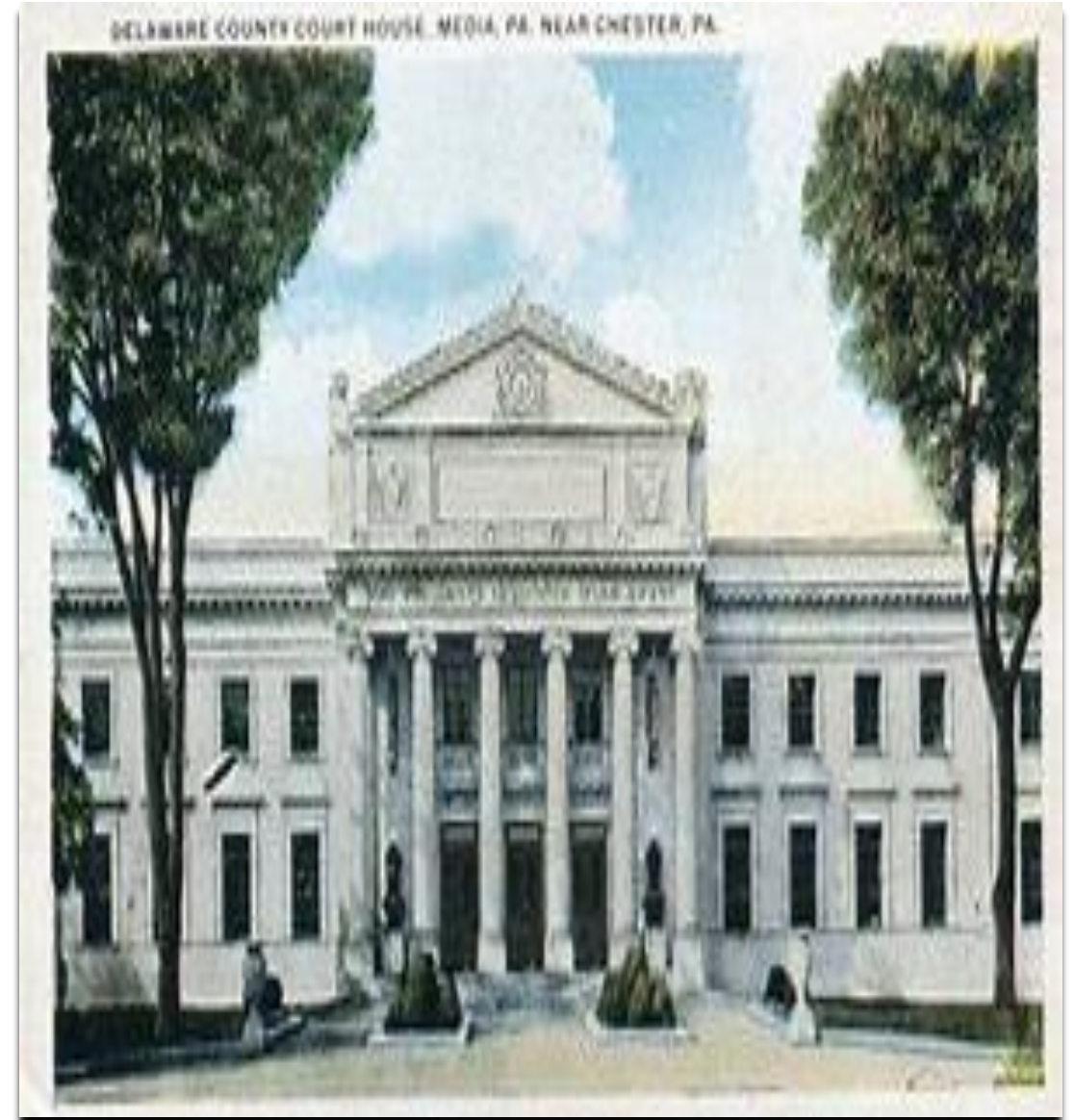
## **GP** GIBSON&PERKINS PC

Attorneys at Law

**GIBSON&PERKINS, PC** is a multi-practice law firm with offices in Pennsylvania and New Jersey. Our firm has expanded from its founding in 2001, into a vibrant and growing law firm dedicated to serving an ever expanding and sophisticated client base.

*We represent clients in matters pertaining to:*

- **Business Transactions**
- **Real Estate**
- **Estate Planning**
- **Estate Administration**
- **Tax Problem Resolution**
- **Emerging Businesses**
- **Commercial Litigation**



## CLE - Continuing Legal Education for Attorneys:

[YourOnlineProfessor.net](http://YourOnlineProfessor.net) is an *Accredited Provider for Pennsylvania Continuing Legal Education*, through The Supreme Court of Pennsylvania's Continuing Legal Education Board, registered as sponsor #7003.

This program qualifies as 2 hour - 'Live Webcast' under PA CLE Board guidelines and in the states of [Delaware](#), [New Jersey](#), and [California](#).

In most cases, credit is also available to [New York](#) attorneys through New York's "approved jurisdiction policy."

## CPE - Continuing Professional Education for CPAs:

YourOnlineProfessor.net is registered with the Pennsylvania Department of State's Bureau of Professional and Occupational Affairs as a *Program Sponsor under the State Board of Accountancy*. Our license number is **PX177605**.

This Course will count as 2.0 Hours of Group Internet Based or Interactive Self Study Credit depending on how you access the Course.

For CPAs taking an archived version of the Course for Interactive Self Study Credit successful completion of a Final Examination is required. The Final Slide will direct you as to how to access and complete the Final Examination.

# NASBA Registry of CPE Sponsors

---

YourOnlineProfessor.net is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be submitted to the National Registry of CPE Sponsors through its website: [www.learningmarket.org](http://www.learningmarket.org).

Our Sponsor No. Identification Number 137573



Where Applicable, this program is  
© YourOnlineProfessor.net - All Rights Reserved.

This material is designed for informational purposes. In providing this material, neither the author nor YourOnlineProfessor.net are engaged in rendering legal, accounting or professional service. If legal, accounting, or professional service is required, the service of a competent professional should be sought.

Inquiries regarding the use of the material contained in this Course should be addressed to:

Ted Perkins  
c/o YourOnlineProfessor.net  
Suite 204  
100 W. Sixth Street  
Media, PA 19063

## Verifying Your Attendance

Attendees will be asked to periodically verify their attendance in order to comply with CPE/CLE guidelines.

This involves typing *"I'm still here!!!"* into the chatbox and pressing 'Enter' when prompted.

It is important that you follow all such prompts in order to ensure that your CPE/CLE credits are received in full.



## TECHNICAL SUPPORT

If you have issues during the presentation, please email

**Sean Tait**

[stait@gibperk.com](mailto:stait@gibperk.com)

or

610 565 1708 Ext 109

for real-time troubleshooting assistance.

## Questions

- If you have any questions during the program, please type them into the chat box and I will try to address them during the program.
- If your question is *not answered* during the program you will receive an ' e-mail response after the program is concluded.
  - If you have questions after the program is concluded please e-mail your question to –  
[tperkins@gibperk.com](mailto:tperkins@gibperk.com)

# **TRUSTS** - THE SWISS ARMY KNIFE OF ESTATE PLANNING

---



Presented by  
EDWARD PERKINS, JD, LL.M., CPA

Two Hour CLE/CPE Webinar

March 28, 2024



# What is a Trust?



Settlor



Trustee

# A Trust is ...



Property

**TRUST AGREEMENT**

The purpose of this trust is the payment of \_\_\_\_\_ (trustable purpose) such as the health and education of the children of the State of \_\_\_\_\_.

I, \_\_\_\_\_ (settlor) state to have been the owner of the property listed in Schedule A attached and incorporated in this agreement, which I have delivered solely to the \_\_\_\_\_ (trustee) in the City of \_\_\_\_\_ State of \_\_\_\_\_ a national banking institution, herein called corporate trustee.

I hereby give, transfer, and deliver the property described in Schedule \_\_\_\_\_ to the trustee to trust for the purposes stated.

This trust shall be known as the \_\_\_\_\_ (name of trust).

Trustee, and the \_\_\_\_\_ (title) of the City of \_\_\_\_\_ State of \_\_\_\_\_ an corporate trustee, and \_\_\_\_\_ (address) City of \_\_\_\_\_ County of \_\_\_\_\_ State of \_\_\_\_\_ of \_\_\_\_\_ (date) of \_\_\_\_\_ (year), 1971 of \_\_\_\_\_ County of \_\_\_\_\_ State of \_\_\_\_\_ as individual trustee hereby agree as follows:

**SECTION ONE**  
TRANSFER OF TRUST FUNDS

Trustee hereby gives and transfers to trustee the property described in Schedule A attached hereto, together with its income and profits and any other items that may be required to execute or fulfill the purposes of this agreement, subject to trust for the uses and purposes set forth in this agreement.

**SECTION TWO**  
INVESTMENT AND APPLICATION OF TRUST FUNDS AND INCOME

Trustee shall hold the trust fund and, in their discretion, invest the principal in or purchase in which money is permitted to invest under the laws of the State of \_\_\_\_\_ or transfer the fund to cash, and apply the income, if any, to the trust, but in such discretion to such investment money shall derive profits, interest and income from the trust fund exclusively for the charitable, civic and religious purposes specified by the terms of the contribution by Trustee to one of these institutions specified in the Internal Revenue Code of the United States, as hereinafter in more detail specified for income tax purposes.

\*Adapted from the Uniform Trust Agreement Form for Tax-Exempt Trusts, by William M. Jensen.



Beneficiaries

# What is a Trust?

---

*“In the hands of a competent estate planner a trust can be an extremely versatile estate planning tool, limited only by the imagination.”*

- › A Relationship
- › A Method of Property Transfer
- › A Legal Agreement
- › A Legal Entity



# What is a Trust?

## A Relationship

- When a trust is created the "trustee" takes legal title to and management power over the trust property.
- In serving as trustee, the trustee stands in a "fiduciary relationship" to the trust property and the trust beneficiary and is held to certain equitable duties to deal with the property.

## A Method of Transferring Property

- In another respect, a trust is fundamentally an instrument of property transfer.
- Unlike an outright transfer, when property is transferred in trust, the transferor can define post-transfer, both the rights of the trust beneficiary in the trust property and the terms and conditions of how the property is to be administered by the trustee.
- Sometimes this trust characteristic is referred to as "dead hand control."

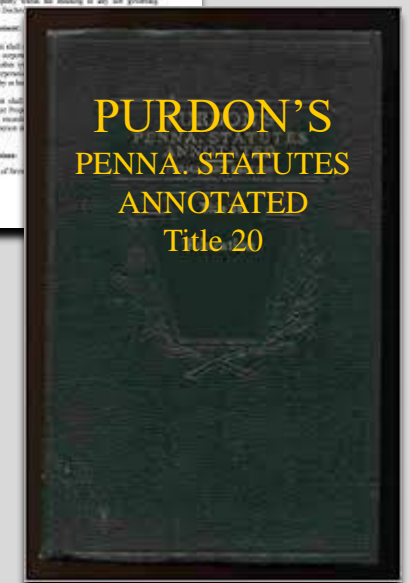
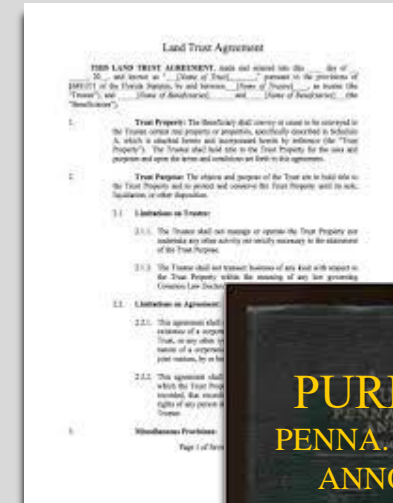
# The Laws That Govern Trusts

- ✓ The Pennsylvania Uniform Trust Act
- ✓ The Pennsylvania Supreme Court Orphans' Court Rules
- ✓ The Restatement
- ✓ The Pennsylvania Uniform Principal and Income Act
- ✓ The Pennsylvania Uniform Prudent Investor Act



# The Relevance of the Trust Instrument vs the PUTA

- The actual nature and extent of the duties of a trustee are primarily to be ascertained from the trust instrument.
- Where a trust instrument is explicit as to the duty owed, it, as evidencing the trust settlor's intent, should govern.
- This is true even if the agreement alters or modifies the relationship as it would otherwise exist under general trust law.
- Only if the terms of a trust are silent or for some reason invalid on a particular issue does the applicable law govern the trustee's duties.



# Drafting Objectives

1. Create a Trust
2. Define and fulfil the Settlor's purpose
3. Identify the Trust Beneficiaries
4. Identify the Trust Property
5. Identify the Trustee
6. Define Beneficiaries' rights to the Trust income and principal
7. Define the Powers, Duties and Discretion of the Trustee
8. Maintain Trust Flexibility

**TRUST AGREEMENT**

The purpose of this trust is the provision of \_\_\_\_\_ (state charitable purpose, such as, the health and education of the children of the State of \_\_\_\_\_).

I, \_\_\_\_\_ (state name in full) of the property listed in Schedule A attached and comprising its title reference, which I have delivered to the \_\_\_\_\_ (name) in the City of \_\_\_\_\_, State of \_\_\_\_\_, a married/bachelor/widow/widow, herein called my grantor.

Hereby give, convey, and deliver the property described in Schedule \_\_\_\_\_ to the trustee in trust for the purposes stated.

This trust shall be known as the \_\_\_\_\_ (name of trust).

Trustee, and the \_\_\_\_\_ (name) of the City of \_\_\_\_\_, State of \_\_\_\_\_, an corporate trustee, and \_\_\_\_\_ (name) of \_\_\_\_\_ (address), City of \_\_\_\_\_, State of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, an individual trustee, hereby agree to execute \_\_\_\_\_.

**WITNESSETH**

**TRANSFER OF TRUST FUNDS**

Trustee hereby gives and conveys to trustee the property described in Schedule A attached \_\_\_\_\_ together with its income and profits and any other moneys that may be withdrawn in payment of their respective shares of the terms of this agreement, to hold in trust for the use and purposes set forth in this agreement.

**RETURNS**

**ENTITLEMENT AND APPLICATION OF TRUST FUND AND INCOME**

Trustee shall hold the trust fund and, in their discretion, invest it in such manner as to which money is permitted to invest under the laws of the State of \_\_\_\_\_ as to the fund in cash, and apply the income. Trustee shall, from time to time, out of such investments in such discretion, make such payments, disburse and apply the trust fund and income from the trust fund exclusively in the charitable uses and purposes described herein, and by making of contributions to any charitable organizations from anonymous donations, and at such time and in the form of the contributions by Trustee in one of the following manners specified in the Internal Revenue Code of the United States, such as to such an charitable for income tax purposes.

Witness my hand and the Common Seal of the State of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

# Dispositional Provisions

Trustee



Income

Principal



Beneficiary

**To Whom?** - To what individual or entity may or

**What?** – Income or Principal? Whether a

**How Much?** In what amount or to what degree a

**When?** – When a distribution can or must be made

**Trustee's Discretion** – What level of discretion is vested in the trustee to determine the distributions made by the trust?



Remainder Beneficiaries

# Trustee's Discretion

---

- Discretionary
- Discretionary limited by **“ascertainable standard”**
- Mandatory



# Administration of the Trust Property

---

- Administrative Provisions
- Investment guidelines and restrictions
- Trustee Provisions



## Administrative Provisions - Powers of Trustee

---

In addition to the general powers discussed in the preceding material, PEF Code §7780.5 provides a trustee except as provided in the trust instrument will generally hold the same powers over the trust property that *an unmarried competent owner has over individually owned property*.



# **The Creation of a Trust**



# Creating a Trust

---

In order for a settlor to create a valid trust in Pennsylvania, the PUTA requires that:

- **The settlor must have the requisite capacity;**
- The settlor must sign a writing that indicates an intention to create the trust;
- **The writing contains provisions of the trust;**
- There is a definite beneficiary or beneficiaries;
- **The trustee has definite duties to perform;** and
- The same person must not be the sole trustee and sole beneficiary.





# Creating a Trust

---

## Requisite Capacity

- To create a **revocable or testamentary trust**, the settlor must have the capacity to make a will.
- To create an **irrevocable inter vivos trust**, the settlor must have the capacity during lifetime to transfer property free of trust.
- This requires a capacity to contract and represents a higher standard than required to make a will

## A Written Instrument

- A **written instrument transferring property**
- A **will or other written disposition** of property taking effect at death
- A **written trust declaration**
- A **written exercise of a power of appointment** in favor of a trustee

# The Intention to Create a Trust

---

- To create a trust, the settlor, alone or together with the trustee, must properly manifest **an intention to create a trust relationship**
- That is the transfer of property to a trustee to be held for the benefit of another.

*“I transfer \$1,000 to my friend,  
Bill, in trust...”*



# Creating a Trust

---

## Writing Must Contain Trust Provisions

The Restatement (Third) of Trusts § 22(1) provides that the required provisions should include:

- A reasonable identification of:
  - The trust property
  - The trust beneficiaries, and
  - The purposes of the trust.
- The trust should also identify the trustee.



# Creating a Trust

---

## Definite Beneficiaries

A trust is not validly created unless the trust designates a definite beneficiary or beneficiaries.

Two exceptions:

- (1) Trusts for general but noncharitable purposes, and
- (2) Trusts for a specific noncharitable purposes other than the care for animals



# Creating a Trust

---

## Duties to Perform

A prerequisite to the creation of a trust is that the trustee has actual duties to perform.

**Trustee duties are usually active** – that is, they require that the trustee affirmatively do something.

**The trustee's duties may also be passive** - implying only that the trustee has an obligation not to interfere with the beneficiary's enjoyment of the trust property



# Formalities of Execution

In Pennsylvania in order to create a valid **inter vivos trust**:

- › The settlor must sign a writing that indicates an intention to create a trust and contains provisions of the trust.
- › The trust instrument may be signed by mark or by a person other than the settlor on behalf of and at the direction of the settlor.

A **testamentary trust** must be created under the terms of a validly executed will.



# Ted Perkins Tax News

---

## ***VERIFY YOUR ATTENDANCE***

**Please type “present” into the chatbox on your screen and hit ENTER.**

**This is an important step which verifies your attendance and assures that your credit is received.**

**Thank you.**

# **The Fiduciary Duty**





# The “Fiduciary Standard”

*“A trustee is under a duty to administer the trust solely in the best interests of the beneficiary.”*

## LOYALTY AND PRUDENCE

*The trustee must act in the best interests of the beneficiary, in the absence of instructions to the contrary.*

The Trustee holds the trust property for the sole benefit of the beneficiaries of the Trust and must act in a prudent manner in administering the trust property.

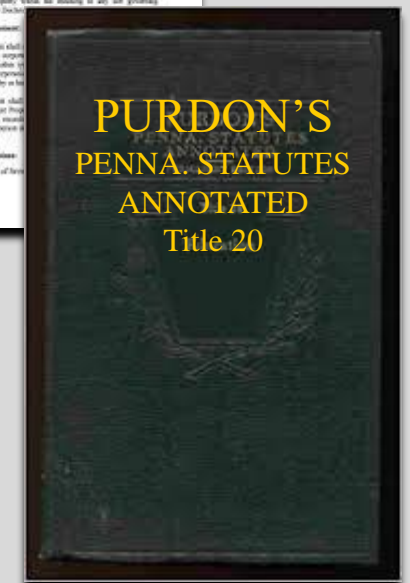
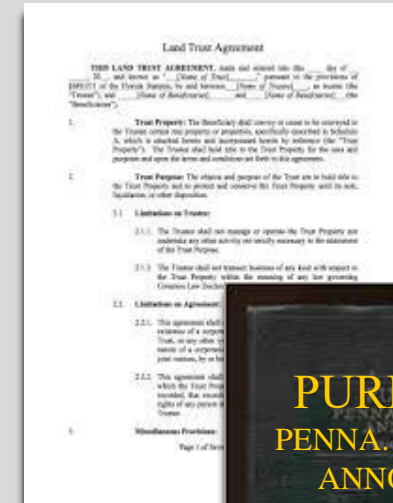
*The trustee must not engage in self-dealing, or in any transaction that of and for himself or for any other person has or may have an interest in the trust property.*

*Put another way, a trustee must not enter into a transaction or take or continue in a position in which his personal interest or the interest of a third party is or becomes adverse to the interest of the beneficiary.”*



# The Relevance of the Trust Instrument vs the PUTA

- The actual nature and extent of the duties of a trustee are primarily to be ascertained from the trust instrument.
- Where a trust instrument is explicit as to the duty owed, it, as evidencing the trust settlor's intent, should govern.
- This is true even if the agreement alters or modifies the relationship as it would otherwise exist under general trust law.
- Only if the terms of a trust are silent or for some reason invalid on a particular issue does the applicable law govern the trustee's duties.



As a general rule, the provisions of a trust instrument prevail over any contrary provisions of the PUTA. However, under 20 Pa.C.S. § 7705(b) certain mandatory rules still govern even when different from the law of the jurisdiction designated in the trust instrument.

- The requirements for creating a trust
- The duty of a trustee to act in good faith and in accordance with the purposes of the trust
- The requirement that a trust's purpose be lawful and not contrary to public policy;
- The power of the court to modify or terminate and modify a trust
- The effect of a spendthrift provision and the rights of certain creditors and assignees
- The power of the court relating to trustee's bond, and the power of the court to adjust a trustee's compensation;
- The duty of a trustee to the duty to inform and report;
- The effect of an exculpatory term relating to exculpation of trustee;
- The rights relating to limitation on personal liability of trustee
- Periods of limitation for commencing a judicial proceeding;
- The power of the court to take action and exercise jurisdiction;
- The subject matter jurisdiction of the orphan's court, and venue



# The Duty of Loyalty

- The duty of loyalty is fundamental to the fiduciary standard of conduct for trustees.
- Under 20 Pa.C.S. § 7772, the trustee is required to administer the trust solely in the interests of the trust beneficiaries.



# The Duty of Impartiality

- In administering a trust, the trustee is required, to act impartially and with due regard for the various beneficial interests provided under the trust.
- The duty to act impartially does not mean that the trustee must treat the beneficiaries equally.
- Rather, the trustee must treat the beneficiaries equitably in light of the purposes of the trust.



# The Duty of Prudent Administration

- Under 20 Pa.C.S. § 7774, the trustee is required to administer the trust as a prudent person would, *by considering the purposes, provisions, distributional requirements and other circumstances of the trust and by exercising reasonable care, skill and caution*
- Under the common law, the duty of prudence requires the exercise of reasonable care, skill, and caution



# The Duty of with Respect to Delegation

- Under the common law, a trustee had a duty to perform its duties personally and only delegate duties when it is prudent to do so.
- Under the PUTA, a trustee is permitted to delegate those duties and powers that a prudent trustee of comparable skills would properly delegate under the circumstances.



# The Duty of to Control and Protect Property



- A trustee must take reasonable steps to take control of and protect the trust property under 20 Pa.C.S. § 7779.
- The duty to take control normally means that the trustee must take physical possession of tangible personal property and securities belonging to the trust and must secure payment of any choses in action



## The Duty to Record Keep and Identify Property

- A trustee must keep adequate records of the administration of the trust, and
- Keep trust property separate from the trustee's own property.



# The Duty to Inform and Report

Under the common law, a trustee must inform the trust beneficiaries of the trust's existence, and their status as trust beneficiaries.

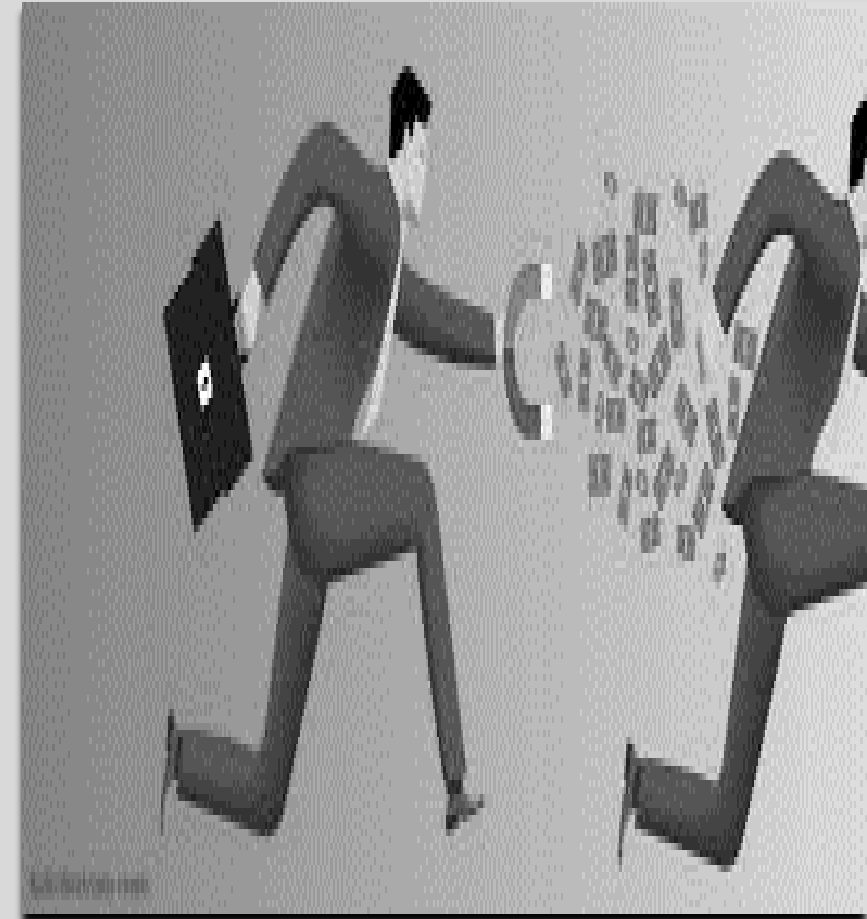
The trust must also keep the beneficiaries informed concerning the facts regarding the administration of the trust, which may be necessary for them to protect their interests.

The trustee must also promptly respond to a beneficiary's request for information related to the administration of the trust, including requests to examine trust documents and records.



# The Duty to Enforce Claims

- Under 20 Pa.C.S. § 7780.1, a trustee has the duty of taking reasonable steps to enforce claims of the trust and to defend claims against the trust.
- It may not be reasonable to enforce a claim depending upon the likelihood of recovery and the cost of suit and enforcement.
- It might also be reasonable to settle an action or suffer a default rather than to defend an action



# The Uses of Trusts



# The Uses of Trusts



***“In the hands of a competent estate planner, a trust can be an extremely versatile estate planning tool, limited in its use only by the imagination.”***

- ∅ Serves as a Will Substitute
- ∅ Streamlines Probate
- ∅ Provides dispositional control
- ∅ Manages and Conserves Property
- ∅ Controls access to Trust Assets
- ∅ Creates Opportunities for Estate and Income Tax Planning
- ∅ Provides Asset Protection
- ∅ Provides Support for Minors and Disabled Individuals
- ∅ Achieves Charitable Objectives
- ∅ Takes Care of Pets



**Why would you ever gift property outright?**



# Ted Perkins Tax News

---

## ***VERIFY YOUR ATTENDANCE***

**Please type “present” into the chatbox on your screen and hit ENTER.**

**This is an important step which verifies your attendance and assures that your credit is received.**

**Thank you.**

# Meet the Jones Family





# Meet the Jones Family



Mary – Age 48



Mary's Estate	
Real Estate	\$4,000,000
Real Estate	3,000,000
MktSec	<u>5,920,000</u>
Total	<u>\$12,920,000</u>

Chet – Age 50



Chet's Estate	
Mkt Sec	\$ 7,000,000
	.
Total	<u>\$ 7,000,000</u>

Jay – Age 23



Kristen – Age 18



Sean – Age 15



Charlie – Age 28 (in dog years)



# What if Mary has a Will that leave everything outright to the Chet and then to the Kids in equal shares?



Mary's Estate	
Real Estate	\$4,000,000
Real Estate	3,000,000
MktSec	<u>5,920,000</u>
Total	<u><u>\$12,920,000</u></u>



Chet's Estate	
Real Estate	\$4,000,000
Real Estate	3,000,000
Mkt Sec	<u>12,920,000</u>
Total	<u><u>\$ 19,920,000</u></u>



Jay – Age 23



Kristen – Age 18



Sean – Age 15



- No control of access to assets
- No management of property
- No dispositional control
- No asset protection
- No planning for minor child
- No probate planning
- No estate tax planning

## What if Mary did this instead?

Mary's Estate	
Real Estate	\$4,000,000
Real Estate	3,000,000
MktSec	<u>5,920,000</u>
Total	<u>\$12,920,000</u>



- Allows for control of access to assets
- Allows for management of property
- Dispositional control
- Asset protection
- Planning for minor child
- Probate planning
- Estate tax planning

## What if Mary did this instead?

Mary's Estate	
Real Estate	\$4,000,000
Real Estate	3,000,000
MktSec	<u>5,920,000</u>
Total	<u>\$12,920,000</u>



Last Will and Testament

Revocable Living Trust



Marital Trust

Trust for Jay



Trust for Kristen



Trust for Sean



- **Allows for control of access to assets**
- Allows for management of property
- Dispositional control
- Asset protection
- Planning for minor child
- Probate planning
- Estate tax planning

- Terms of the trust regarding distributions of income and principal
- Level of discretion granted to the trustee
- Identity of the Trustee

# Dispositional Provisions

Trustee



Income

Principal



Beneficiary

**To Whom?** - To what individual or entity may or

**What?** – Income or Principal? Whether a

**How Much?** In what amount or to what degree a

**When?** – When a distribution can or must be made

**Trustee's Discretion** – What level of discretion is vested in the trustee to determine the distributions made by the trust?



Remainder Beneficiaries

# Allows for control of access to assets held by the Trust

Marital Trust



- Distributions of income and principal can be mandatory or discretionary
- Discretion granted to the trustee can be extended
- Identity of the Trustee related or independent

“The settlor’s spouse shall be entitled all of the net income from the trust and to such distributions of principal to provide for his health, education, support, and maintenance as determined in the sole discretion of the Trustee.”

# Allows for control of access to assets held by the Trust

Trust for  
Jay



Trust for  
Kristen



Trust for  
Sean



- Unitrust interest
- Distributions in the event of marriage having a baby, starting a business
- Right to withdraw, .e.g., \$5,000 or 5%
- Outright at a certain age
- Who's the Trustee

## What if Mary d

If the Trustee determines, in its sole discretion, that such use of **alcohol or illicit drugs** is, in the opinion of the Trustee detrimental to the well-being of such Beneficiary or others, then the Trustee may, in its sole discretion, withhold distributions of principal to such Beneficiary.

I believe that making an excessive amount of money available to a young person can corrupt that person and destroy his or her initiative to realize his or her potential as a mature, productive adult. If a beneficiary has **financial difficulties because of their own or their spouse's lack of industry**, I believe that those difficulties should be addressed not by the trusts but by the beneficiary or the beneficiary's spouse.

• Independent Trustee

• Encourage Good Behavior

- No gamblers
- No drug addicts
- No prostitutes
- No politicians
- No lawyers

Last Will and Testament

Revocable Living Trust

Marital Trust

Trust for Jay

Trust for Kristen

Trust for Sean

- **Allows for control of access to assets**
- Allows for management of property
- Dispositional control
- Asset protection
- Planning for minor child
- Probate planning
- Estate tax planning



## What if Mary did this instead?

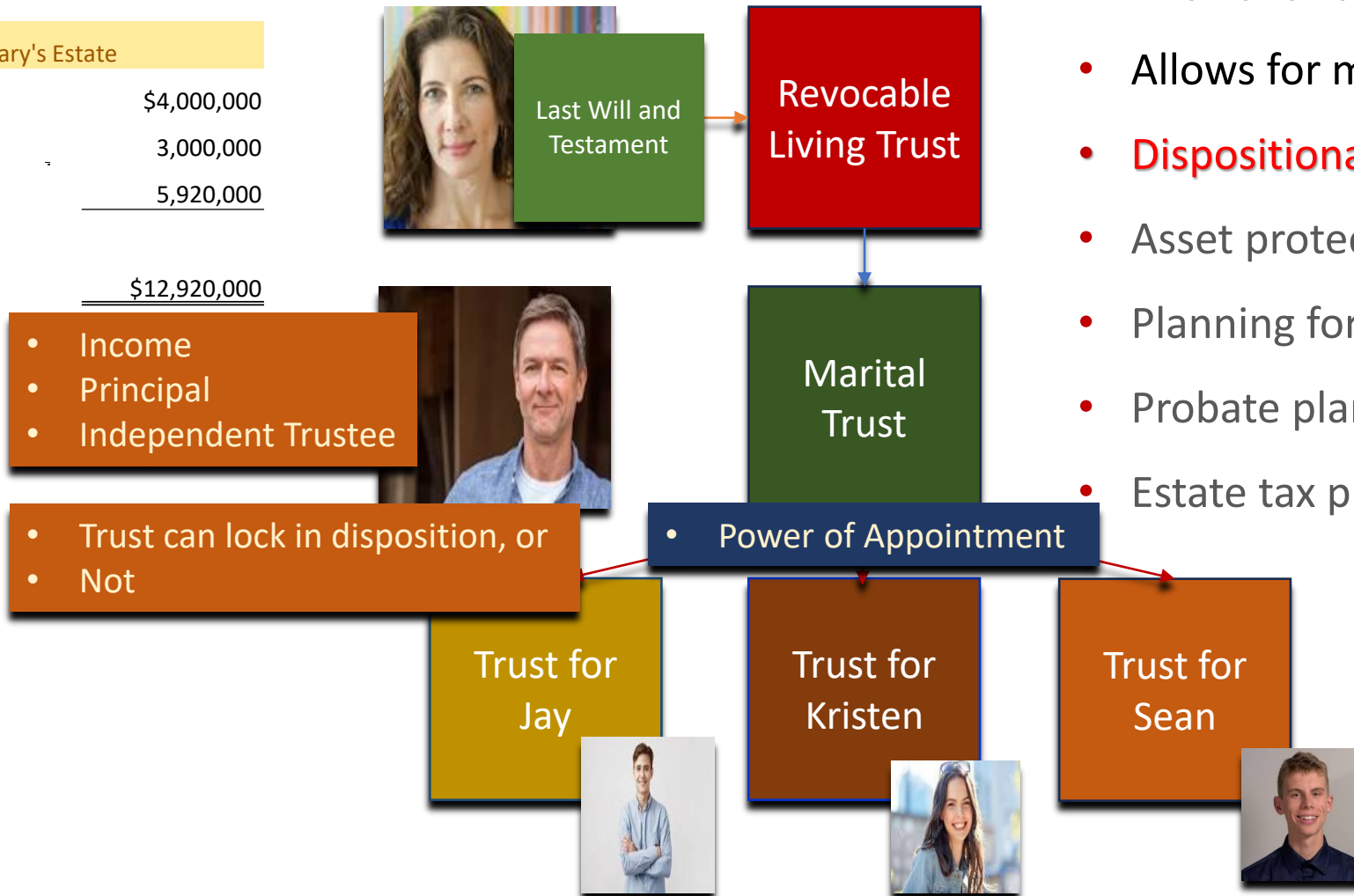
Mary's Estate	
Real Estate	\$4,000,000
Real Estate	3,000,000
MktSec	<u>5,920,000</u>
Total	<u>\$12,920,000</u>



- Allows for control of access to assets
- **Allows for management of property**
- Dispositional control
- Asset protection
- Planning for minor child
- Probate planning
- Estate tax planning

## What if Mary did this instead?

Mary's Estate	
Real Estate	\$4,000,000
Real Estate	3,000,000
MktSec	<u>5,920,000</u>
<b>Total</b>	<b><u>\$12,920,000</u></b>



- Allows for control of access to assets
- Allows for management of property
- **Dispositional control**
- Asset protection
- Planning for minor child
- Probate planning
- Estate tax planning

## What if Mary did this instead?

Mary's Estate	
Real Estate	\$4,000,000
Real Estate	3,000,000
MktSec	5,920,000
<b>Total</b>	<b>\$12,920,000</b>

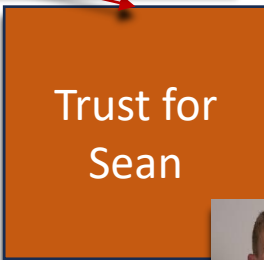
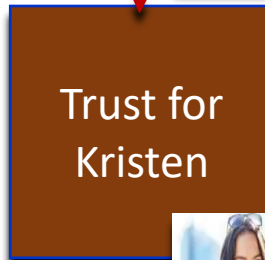


Last Will and Testament



Trustee

in disposition, or



With respect to a principal share vesting in a beneficiary who, in the opinion of the Trustee, is **unable to properly handle money or is in a position of financial distress when such share vests in him or her**: (i) to hold the share in further trust and to invest the share and all accumulations thereon; (ii) to apply so much of the income and principal as the Trustee deems advisable for such beneficiary's benefit for any reason without considering other funds available to him or her; and (iii) to deliver the balance of principal and income to the beneficiary at such time as he or she gains the ability to handle money or is no longer in a position of financial distress.

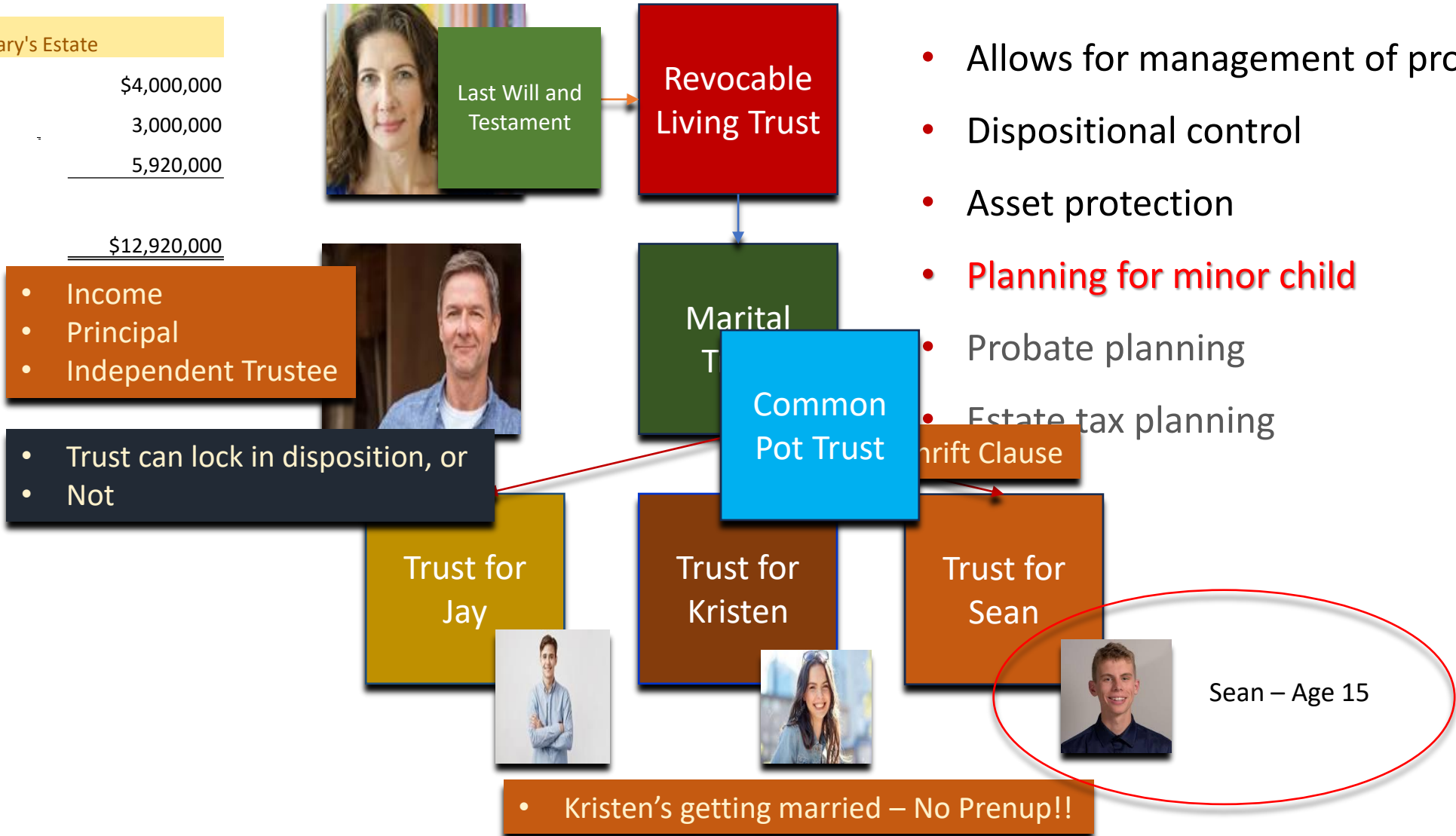
- Allows for control of access to assets
- Allows for management of property
- Dispositional control
- **Asset protection**
- Planning for minor child
- Probate planning
- Estate tax planning

• Spendthrift Clause

• Kristen's getting married – No Prenup!!

## What if Mary did this instead?

Mary's Estate	
Real Estate	\$4,000,000
Real Estate	3,000,000
MktSec	<u>5,920,000</u>
<b>Total</b>	<b><u>\$12,920,000</u></b>

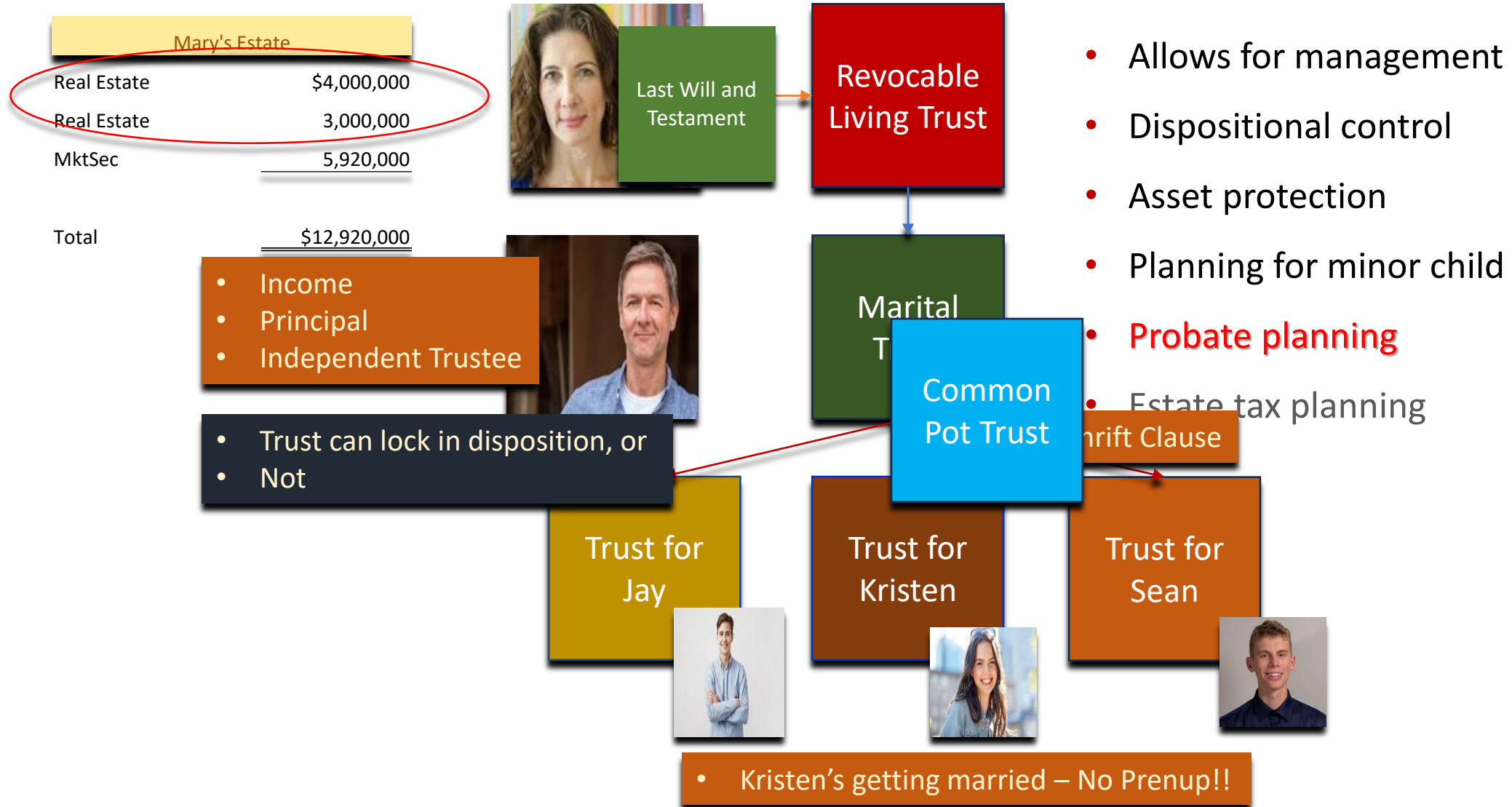


- Income
- Principal
- Independent Trustee

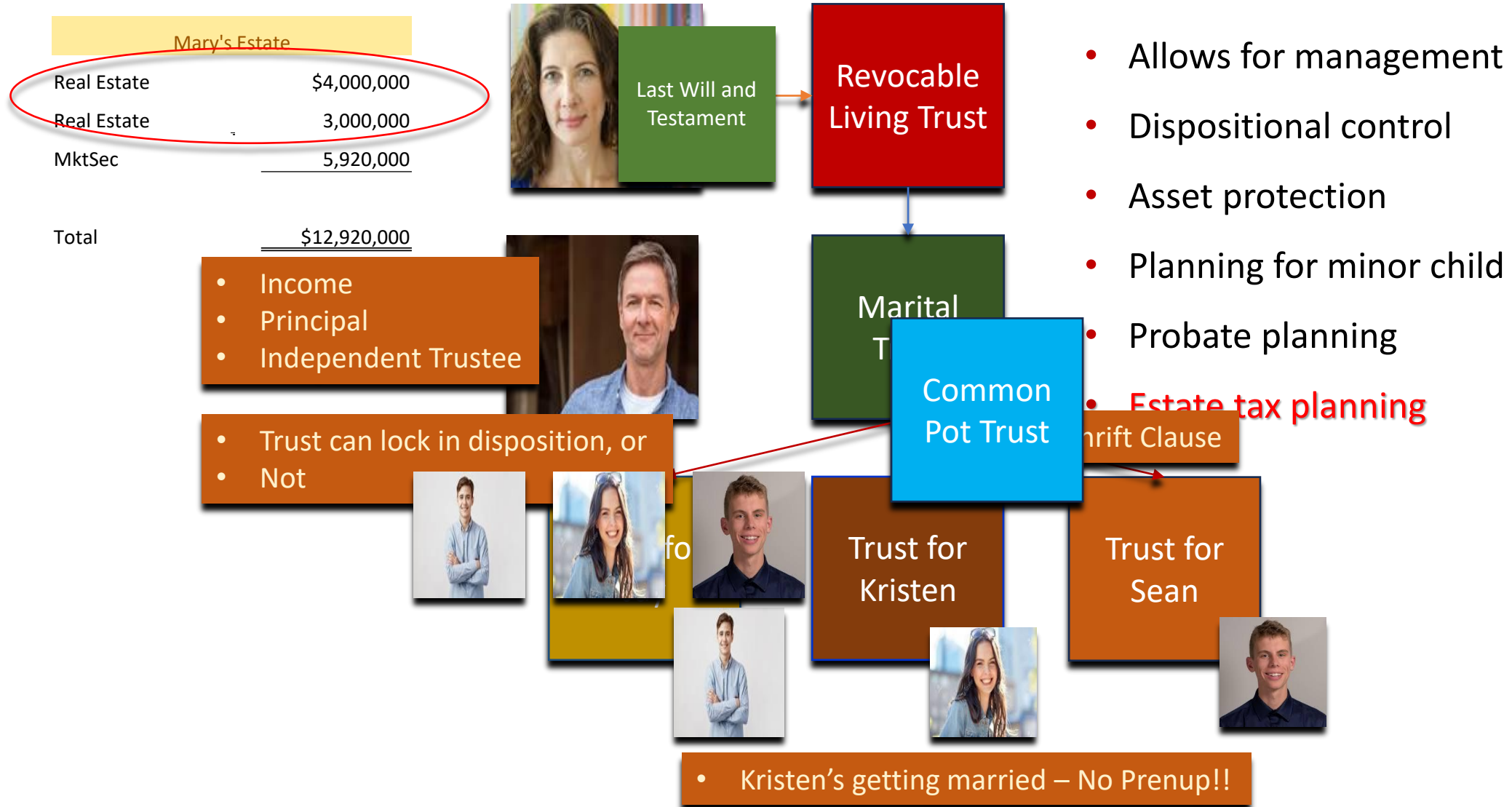
- Trust can lock in disposition, or
- Not

- Allows for control of access to assets
- Allows for management of property
- Dispositional control
- Asset protection
- **Planning for minor child**
- Probate planning
- Estate tax planning
- **Gift Clause**

## What if Mary did this instead?



## What if Mary did this instead?



# Estate tax planning

Outright



In Trust

Last Will and Testament

Revocable Living Trust

Marital Deduction Trust

Credit Shelter Trust

Trust for Jay

Trust for Kristen

Trust for Sean

Trust for Jay's Kids

Trust for Jay's

Mary's Estate	
Real Estate	\$4,000,000
Real Estate	3,000,000
MktSec	5,920,000
<b>Total</b>	<b>\$12,920,000</b>

Chet's Estate	
Real Estate	\$ 4,000,000
Real Estate	3,000,000
Mkt Sec	18,000,000
<b>Total</b>	<b>\$ 25,000,000</b>
Exemption Amt	\$ 7,000,000
	12,920,000
	19,920,000
FTE	\$ 5,080,000
FET	\$ 2,032,000

Mary's Estate	
Real Estate	\$ 4,000,000
Real Estate	3,000,000
MktSec	5,920,000
<b>Total</b>	<b>\$ 12,920,000</b>

\$18,000,000

Chet's Estate	
Real Estate	-
Real Estate	-
Mkt Sec	\$ 7,000,000
<b>Total</b>	<b>\$ 7,000,000</b>
Exemption Amt	\$ 7,000,000
	(7,000,000)
FTE	0
FET	0

# Spousal Life Access Trust

Mary's Estate

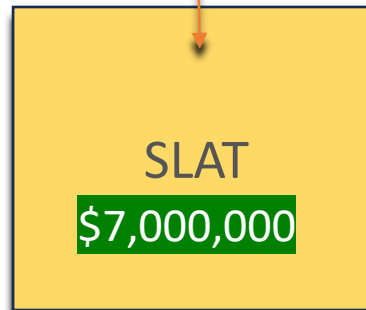
Tax Estate -0-



FET \$2,386,000



SLAT  
\$12,920,000



SLAT  
\$7,000,000

Chet's Estate

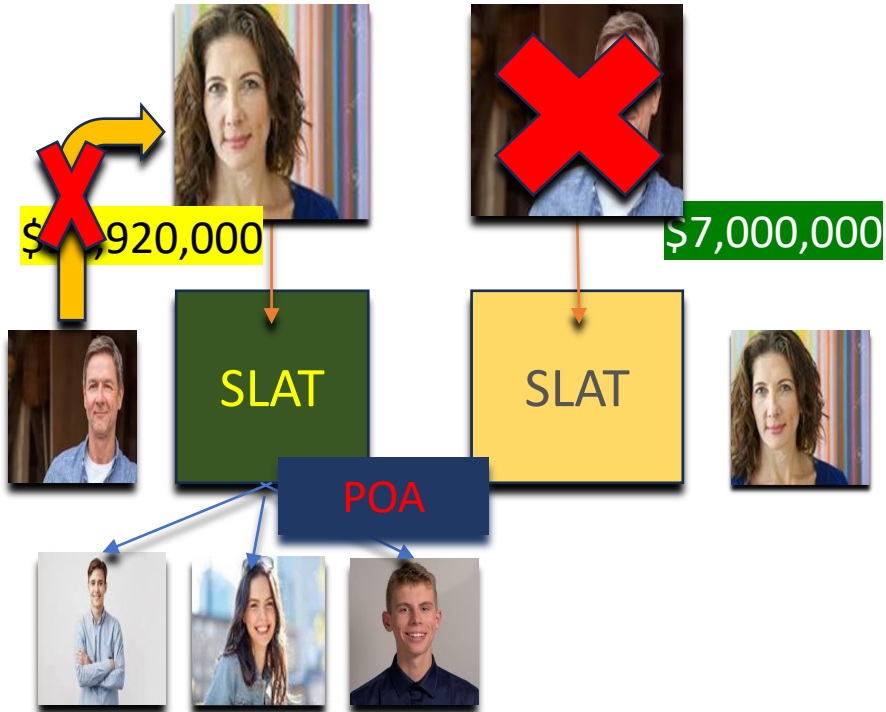
Mkt Sec \$ 7,000,000

Total \$ 7,000,000

Tax Estate -0-



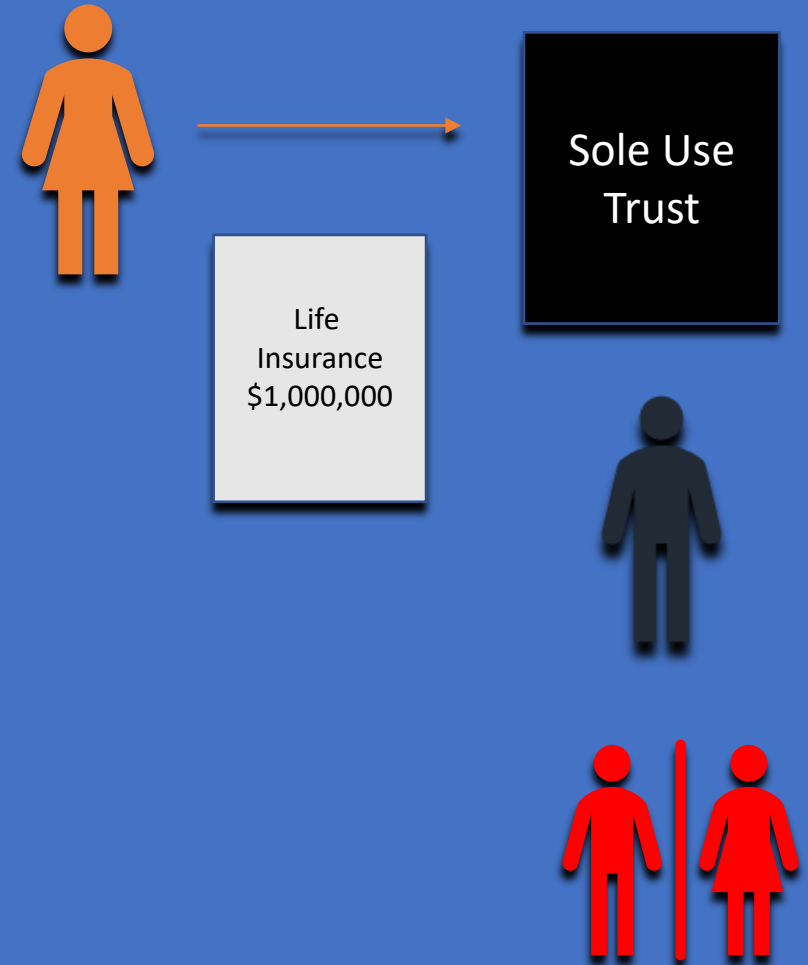
# Spousal Life Access Trust



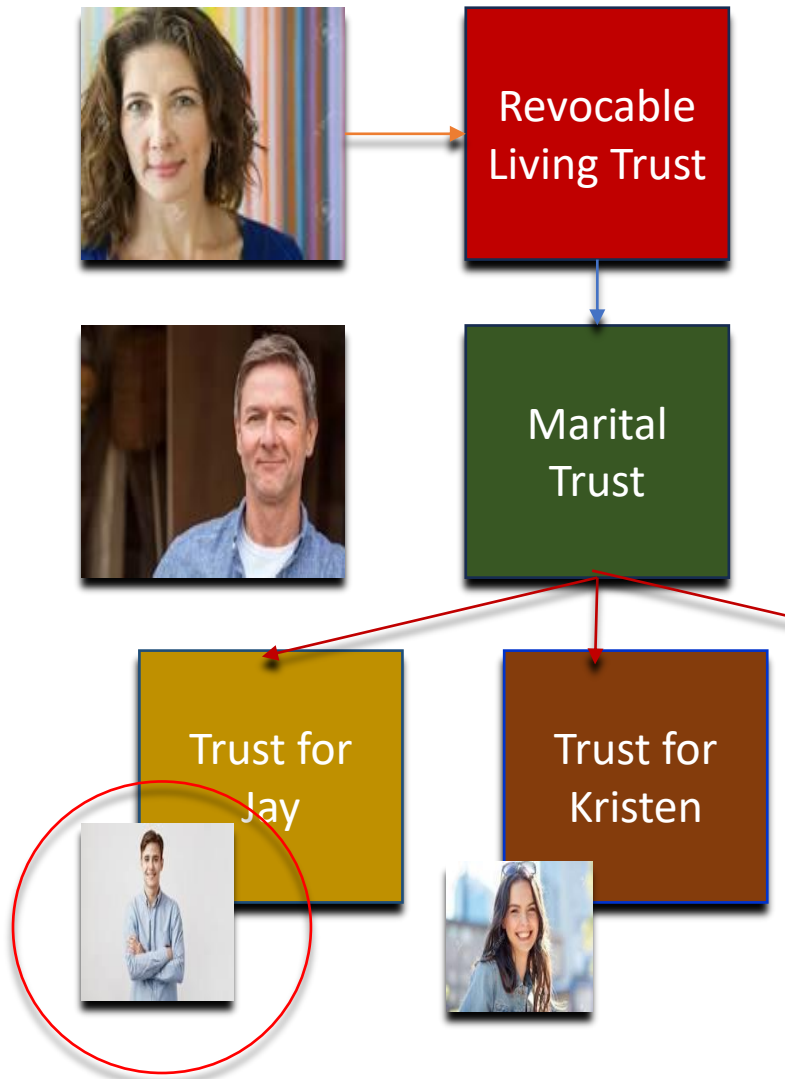
## Life Insurance - Spousal Sole Use Trust

Pennsylvania inheritance tax law allows a trust for the "sole use" of the surviving spouse to be taxed *entirely at the death of the surviving spouse*, rather than having to pay tax on the present value of the taxable remainder upon the first death, when the trust is created.

However, the *estate can elect to pay the tax on the present value of the remainder*, essentially prepaying the tax, and there are sometimes a benefit to making that election.



## What if Jay is a Special Needs



### E. Special Needs Provisions

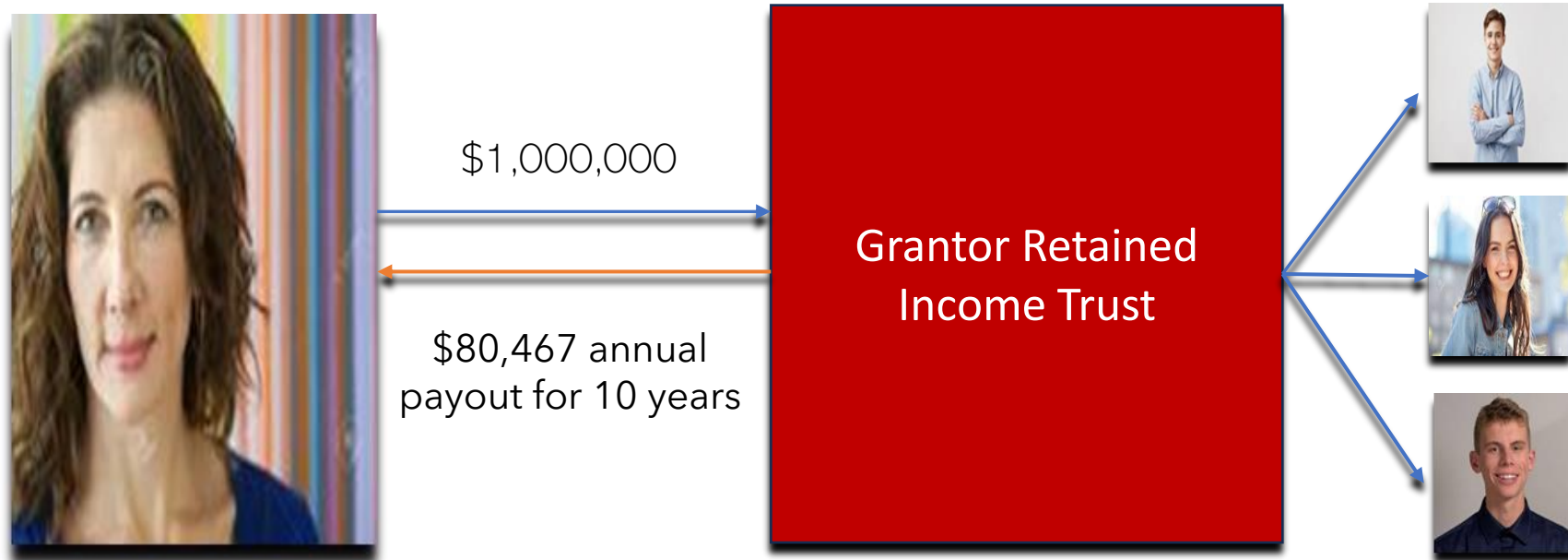
If any beneficiary under the terms of this Trust is either receiving or it is anticipated will be applying for public benefits (such as Medicaid or SSI), the share provided for such beneficiary may be retained in a separate trust for the benefit of such beneficiary and that share is to be administered as follows:

1. The Trustee is authorized, but not required, to make distributions of income and principal from the Trust to or for the benefit of the Beneficiary, in the Trustee's sole, absolute, and uncontrolled discretion.
2. The foregoing notwithstanding, the Trustee may make no distributions that would result in a loss or reduction of public benefits (such as Medicaid or SSI), unless the Trustee believes that the advantage of making such distributions outweighs the loss of such benefits. 7. POMS SI 01120.200D.2. SNT18.book Page 238 Tuesday, April 10, 2018 7:59 AM 11-3.11 The Testamentary Third-Party Trusts 239
3. The Trustee will seek support and maintenance of the Beneficiary from all available public resources, including but not limited to the Supplemental Security Income program (SSI), Old Age Survivor and Disability Insurance program (OASDI), the Medicare program and Medical Assistance (Medicaid) program, or similar or successor programs.
4. The Trustee will take into consideration applicable resource and income limitations of any of these public programs or any private agency program for which the Beneficiary is eligible in determining whether to make any discretionary distributions hereunder.
5. No part of the principal or income of this Trust may be distributed for food or shelter, or to replace any public assistance benefits for which the beneficiary may be eligible.



Pay Back Provision

# Give it away, but retain an interest...



Calculation of Taxable Gift	
Value transferred	\$ 1,000,000.00
less Annuity value	- 999,999.32
<b>Taxable Gift</b>	<b>\$0.68</b>

# How a GRAT/GRUT Works

- › A GRAT is created when a grantor contributes assets with appreciation potential to a fixed-term, irrevocable trust.
- › The grantor then retains the right to receive an annuity stream over the trust's term.
- › At the end of the term, the assets are distributed to noncharitable beneficiaries – typically, the grantor's children.
- › Note that the grantor receives the right to an annuity stream and not the income of the trust. If the trust does not generate sufficient income, the trustee must invade the principal to make the annuity payment.
- › A taxable gift is calculated by subtracting the value of the grantor's retained interest from the fair market value of the property transferred into the trust.
- › The IRS assumes that the trust assets will generate a return of at least the applicable Sec. 7520 rate in effect for the month the assets were transferred to the trust.
- › Any appreciation in excess of the Sec. 7520 rate passes to the beneficiaries free of gift tax
- › For the GRAT or GRUT to realize the tax benefits described, the owner must survive for the period during which he or she has retained the qualified interest.

# Give it away, but retain an interest - Part Two...



Calculation of Taxable Gift		
Value transferred	\$	3,000,000
less retained interest		- 1,880,100
<b>Taxable Gift</b>	<b>\$</b>	<b>1,119,900</b>

# How a QPRT Works

- › A qualified personal residence trust (QPRT) is an irrevocable trust that allows the Trustor, the creator of the trust, to remove a real primary or secondary home from the taxable estate.
- › A QPRT allows the homeowner to remain in the residence with “retained interest” until a specified date. After this date, the remaining interest and thus the ownership of the home is transferred to the beneficiary of the trust.
- › Because the homeowner retains partial interest in the property, the gift value of the property is based on the value of the property reduced by the value of the retained interest
- › At that point, the transferor can continue to occupy the residence, but a lease arrangement must be made with the trust or the beneficiaries at a fair market rental.

**This is Steve**





# This is Steve



- Steve has a significant estate, but because of Net Operating Losses through his business, he is in a zero (0) income tax bracket.
- Steve wants to make a gift of \$2,000,000 to his son, Luke to invest in a project with significant income.
- Luke is in a 37% income tax bracket.
- Can a trust help reduce Luke's income tax liability on this investment? Steve transfers \$2,000,000 to a newly created trust
- Steve retains the right to substitute property of equal value
- Trust invests in the project earning \$100,000 of taxable income which is distributed to Luke



*Who pays the income tax on the \$100,000 of taxable income?*

*Answer – Zero bracket Steve!!! Tax savings \$37,000!*

\$2,000,000

Grantor Trust

Trust provides Income to Luke



\$100,000

# What Makes a Trust a Grantor Trust

IRC §§ 673 through 677 set forth the circumstances under which the grantor or other person is treated as the owner of the trust for tax purposes. These circumstances include the following:

- If the grantor has **retained a reversionary interest** in the trust, within specified time limits (IRC § 673);
- If the grantor or a non-adverse party has certain **powers over the beneficial interests** under the trust (IRC § 674);
- If certain administrative powers over the trust exist under which **the grantor can or does benefit** (IRC § 675);
- If the grantor or a non-adverse party has a **power to revoke the trust** or return the corpus to the grantor (IRC § 676);
- If the grantor or a non-adverse party has the **power to distribute income to or for the benefit of the grantor or the grantor's spouse** (IRC § 677).



# Ted Perkins Tax News

---

## ***VERIFY YOUR ATTENDANCE***

**Please type “present” into the chatbox on your screen and hit ENTER.**

**This is an important step which verifies your attendance and assures that your credit is received.**

**Thank you.**

**Here's Bob**



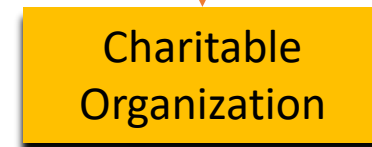
# Here's Bob



- Bob owns his own business. It has a value of \$10,000,000 and he is looking to sell.
- Bob's tax basis in his stock is only \$1,000, and he is looking to sell, but he doesn't want to pay a huge capital gains tax.
- On advice of his tax advisor Bob transfers his stock in his business to a charitable remainder trust before the sale retaining a 5% (\$500,000) for the joint lives of Bob and his wife, Rebecca.
- The trust sells the business for \$10,000,000
- Can a trust help him save income tax?



\$500,000



- No capital gain on sale
- \$500,000 Annuity for Joint Lives
- \$2,036,850 charitable deduction
- Asset removed from taxable estate

# How a Charitable Remainder Trust Works

In a charitable remainder trust:

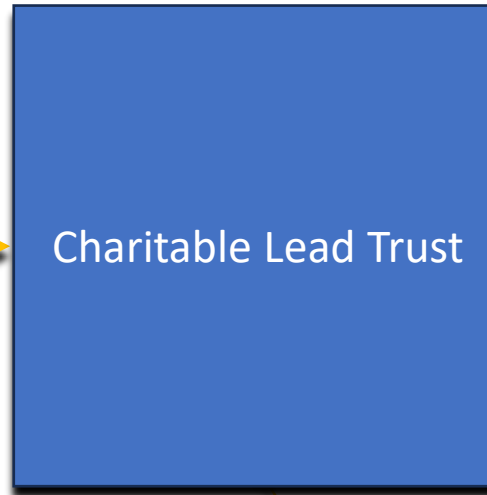
- › A donor transfers property, cash or other assets into an irrevocable trust
- › The trust's basis in the transferred assets is carryover basis, which is the same basis that it would be in the hands of the donor, for assets transferred to the trust during the lifetime of the donor
- › The trust pays income to at least 1 living beneficiary
- › The payments continue for a specific term of up to 20 years or the life of 1 or more beneficiaries
- › At the end of the payment term, the remainder of the trust passes to 1 or more qualified U.S. charitable organizations
- › The remainder donated to charity must be at least 10% of the initial net fair market value of all property placed in the trust
- › Charitable remainder trusts are irrevocable. Assets that go in can't be taken back.

# This is Bill, Bob's brother...

- Bill is the opposite of Bob in many ways.
- Bill wants to transfer \$1,000,000 to his son, Chad at the lowest gift tax value and free of Federal Estate Tax.
- On advice of his tax advisor Bill transfers \$1,000,000 to a charitable lead trust, providing a \$100,000 annual annuity to a 501(c)(3) organization for ten years.
- After ten (10) years the balance in the trust reverts to Chad.



\$1,000,000



\$100,000  
Annual  
Annuity for  
10 years



Chad

Grantor Trust	
Income Tax Deduction	\$ 947,130
Gift	\$ 52,870
Income	Taxed to Bill
Estate Tax	0
Non Grantor	
Income Tax Deduction	0
Gift	\$ 52,870
Income	Taxed to Trust, offset by unlimited income tax deduction
Estate Tax	0

# How a Charitable Lead Trust Works

A "charitable lead trust" is a split-interest trust with the first or lead interest benefiting a charitable beneficiary, and the residual interest passing to non-charitable beneficiaries chosen by the settlor or reverting to the settlor.

Contributions to a charitable lead trust qualify for an income tax deduction equal to the value of the income interest.

If upon the termination of the lead interest the trust property is distributed to named beneficiaries other than the settlor, there is a taxable gift but limited to the value of the remainder interest.

In order to qualify for a charitable contribution deduction, the value of the lead interest must be in the form of either an annuity trust interest or a unitrust interest.



## What about the Pets?



# Leona Helmsley



- The will left her Maltese dog, Trouble, a \$12 million trust fund.
- This sum was subsequently reduced to \$2 million as excessive to fulfill its purpose.
- Her choice was branded 3rd in Fortune magazine's "101 Dumbest Moments in Business" of 2007

# Countess Carlotta Liebenstein

Countess Carlotta Liebenstein left Gunther III her German Shepherd a nice nest egg.

The beloved German Shepherd inherited \$80 million when his owner, Austrian Countess Carlotta Liebenstein when she died in 1991.

Gunther III passed a month after his master, and the fortune went to Gunther IV, one of III's pups.



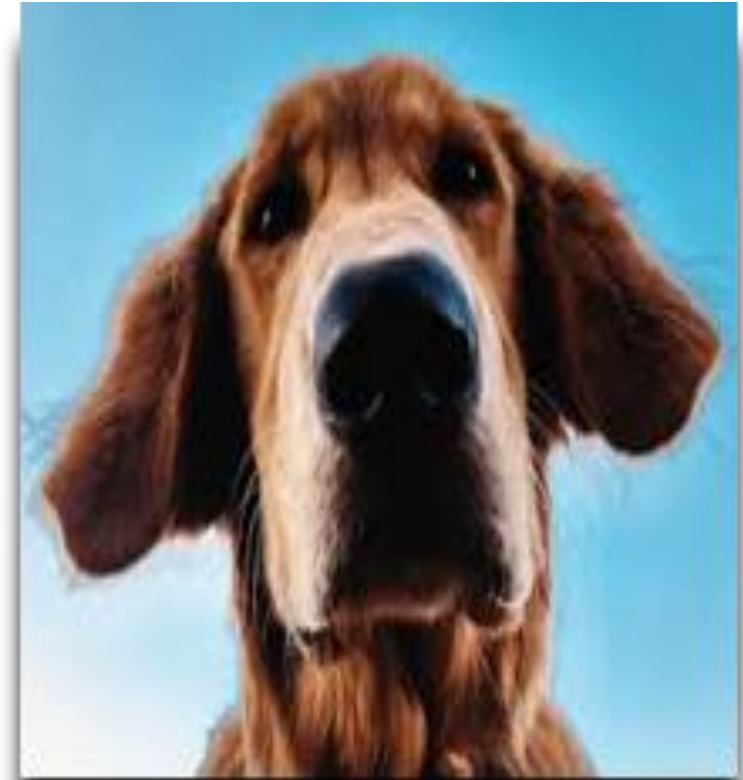


---

## Pet Trusts

- In the past, a trust which benefited a pet with no human beneficiary was not allowed
- However, now every state, including Pennsylvania, allows trusts to be established to provide for the continued care and maintenance of pets and animals
- American Society for the Prevention of Cruelty to Animals - Pet Trust Primer

<https://www.asPCA.org/pet-care/pet-planning/pet-trust-primer>





## ***So here's what trusts can do..***

- ∅ Serve as a Will Substitute
- ∅ Control access to Trust Assets
- ∅ Provide dispositional control
- ∅ Manage and conserve Trust Property
- ∅ Create Opportunities for Estate and Income Tax Planning
- ∅ Streamline Probate
- ∅ Provide Asset Protection
- ∅ Provide Support for Disabled Individuals
- ∅ Achieve Charitable Objectives
- ∅ Take Care of your dog

GIBSON&PERKINS

---

**INCOME TAX  
AND  
ESTATE TAX UPDATE**

3/21/2024

[www.delcoestateplanning.com](http://www.delcoestateplanning.com)

[www.gibperkbusiness.com](http://www.gibperkbusiness.com)

# **Decision Holding Corporate Transparency Act Unconstitutional Appealed**

- The U.S. Justice Department (DOJ) appealed a federal court decision that held the Corporate Transparency Act (CTA), P.L. 116-283, which requires the reporting of beneficial ownership information (BOI) by businesses, is unconstitutional.
- On Monday, the DOJ filed its appeal of the March 1 decision by a federal district court in Alabama to grant the plaintiffs' motion for summary judgment regarding the constitutionality of the law in the case of National Small Business United v. Yellen, No. 5:22-cv-1448-LCB (N.D. Ala. 3/1/24).
- The holding affects only the plaintiffs, which include the 65,000 businesses that were National Small Business Administration (NSBA) members as of March 1.

# Biden Tax Proposals

- President Biden has lots of tax proposals. They are dead on arrival in an election year. However, taxes will be a top issue in 2025.
- Biden is starting to lay the groundwork ahead of a looming fight on the fate of the tax changes in former President Trump's 2017 tax reform law, many of which will expire at the end of next year.
- End of Basis Step Up
  - › Currently, a decedent's unrealized gains aren't hit with income tax at death, and heirs get a step-up in basis in inherited assets equal to fair market value. Biden wants to end the effects of stepped-up basis for wealthy individuals.
  - › His proposal generally doesn't adopt carryover basis, by which the heir would take the same federal tax basis in the inherited assets as the decedent.



# Biden Tax Proposals

- › It would instead treat death as a realization event for income tax purposes... essentially a deemed taxable sale of the decedent's capital assets at fair market value, with capital gains and losses reported on the decedent's final income tax return. The heirs would continue to get a fair-market-value basis in assets they receive.
- › Gifts would also be treated as a realization event for income tax purposes. Unlike current law, the donees would take a fair market value in gifted property.
- › There is a \$5 million lifetime gain exclusion.
- › Plus other exceptions:
  - › Property left to a surviving spouse wouldn't be taxed until that spouse's death, but the spouse would take a carryover basis in those assets.
  - › Charitable donations would be exempt.
  - › Family-owned businesses would escape tax if the heirs run them.
  - › Also, heirs can opt to pay the decedent's income tax over 15 years on nonliquid assets.

## Supreme Court Will Decide How Life Insurance Funding for a Stock Redemption Affects Estate Tax Values

- In [Connelly v. United States](#) , 70 F3d 412, 2023 WL 3769233 (8th Cir. 2023), cert. granted, 2023 WL 8605743, No. 23-146 (S.Ct. Dec. 13, 2023), the Supreme Court has granted certiorari to review the decision of the Court of Appeals for the Eighth Circuit, which held that the estate tax value of closely-held stock that was the subject of a redemption buy-sell agreement, must be increased to reflect the proceeds of a company-owned life insurance policy used to finance the redemption.
- The Eighth Circuit's opinion conflicts with the opinion of the Eleventh Circuit in [Estate of Blount v. Comm'r](#), 428 F.3d 1338, 1342-43 (11th Cir. 2005), aff'g in part, rev'g in part, T.C. Memo. 2004-116.

# Calihan Estate (O.C Div Allegh.)

- Upon consideration of a motion for reconsideration, the trial court concluded that while 24 P.S 6901.316, which exempts only Pennsylvania 529 Plans and not 529 Plans established in other states from Pennsylvania inheritance tax, is unconstitutional as written.
- According to the Court the statute shall be interpreted so as to not violate the Pennsylvania Constitution, as follows: all qualified State tuition programs, as defined by section 529 of the Internal Revenue Code of 1986, as amended, shall be treated the same as a Tuition Account Program Contract.

[www.delcoestateplanning.com](http://www.delcoestateplanning.com)

[www.gibperkbusiness.com](http://www.gibperkbusiness.com)



# Ted Perkins **Tax News**

---

## ***COURSE EVALUATION***

**Thank you for attending our program.**

**You will shortly receive an email with a link to the replay of today's Course and a link to the Course Evaluation form.**

**Please complete this form, which helps us comply with the requirements of issuing CPE and CLE in various jurisdictions.**

## Questions

- If you have any questions during the program, please type them into the chat box and I will try to address them during the program.
- If your question is *not answered* during the program you will receive an ' e-mail response after the program is concluded.
  - If you have questions after the program is concluded please e-mail your question to –  
[tperkins@gibperk.com](mailto:tperkins@gibperk.com)

SHIL  
END