

Estate Planning: Is a will or trust right for me?

- 60% of population never signs any will or trust: Being “intestate” (or without a will) increases costs and problems.
- Reasons estate planning doesn't get done: People don't like talking about death; People don't like dealing with lawyers; easy to put it off.

How most people view estate planning

“Now read me
the part again
where I
disinherit
everybody”

*New Yorker Cartoon
Dec. 7, 1940*



"Now read me the part again where I disinherit everybody."

Problems with intestacy

- A probate is guaranteed
- A “bond” must be purchased costing 1.5% of the assets *per year*
- No executor or boss is named (fights over who has control)
- Assets go to “heirs” even if you had no contact with them

Positives and Negatives of wills

- Easy to lose a will
 - Guarantees a probate
 - Often doesn't control assets due to Joint Tenancy & Beneficiary Designations
 - Notice must be given to "heirs" even if they don't inherit
- * Inexpensive
 - * No retitling of assets
 - * Will work for married couples with young children

What causes a Probate?

Probate is necessary if:

- There was real estate in deceased's own name
- Any combination of assets exceeding \$100,000 (stocks, car, bonds, CD, checking accounts) will cause a probate
- No beneficiary designations on IRAs or Life Insurance

Probate: What's the big deal?

- Probate is a court case designed to **pay creditors** of the deceased and **distribute money to rightful heirs**
- Delay of 6 months until the estate can be closed
- It's a **forum** for “**feuding**” heirs
- Filing and publication fees in Cook Co are about \$800
- **No set fee** –attorney's fees and executor's fee—both are entitled to a “reasonable” fee
- Average attorney's fee is about \$2500 and executor's fee is \$3000
- Some attorneys and executors overcharge

Wills are used sometimes

- My practice: 95% living trusts and 5% wills
- Young couples with young children-mostly do wills (online)
- Clients in pre-paid legal services
- People leaving on vacation

Benefits of Living Trusts

- Probate is avoided
- Protects against guardianship
- Privacy-no public disclosure
- Can save on inheritance taxes

Negatives of Living Trusts

- Trust must be “funded” or it won’t avoid probate
- One-time cost of living trust is more than will

Estate Tax Limit is Sky High

- The amount that is free of estate tax has *risen* to \$5.34 million in 2014
- In the past it was as low as \$600,000

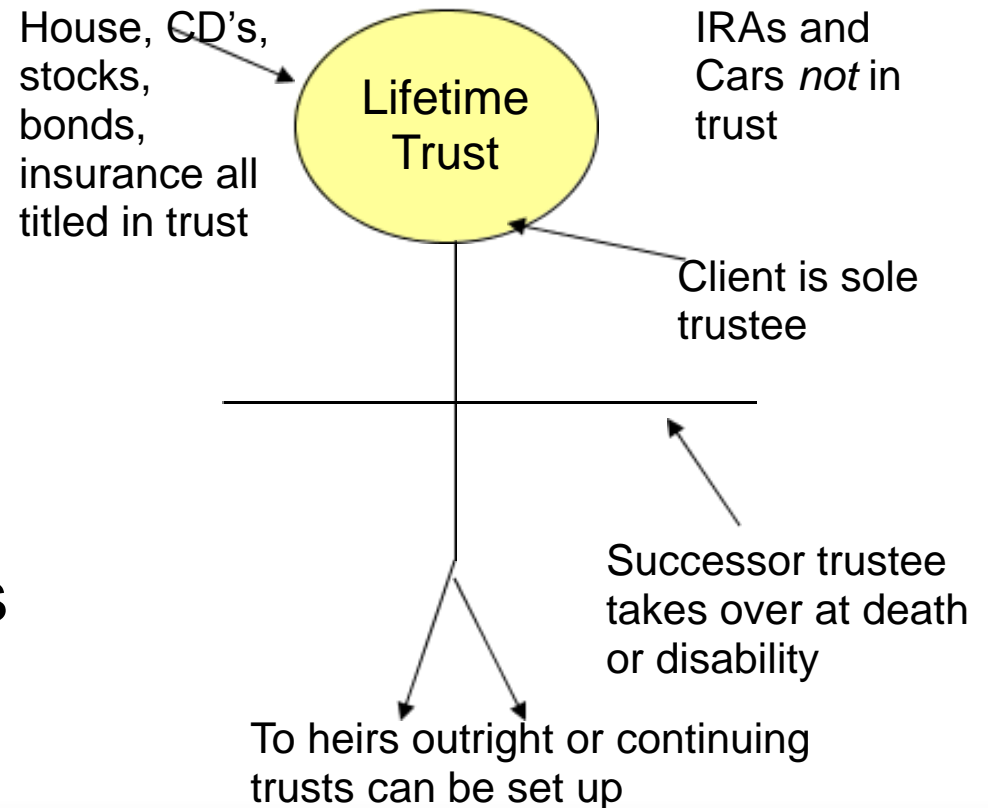
Types of Living Trusts

- **Three types of trusts**
- **1. Single, Divorced, Widowed** - Use a single trust no matter what level of assets
- **2. Married Couple with Assets *under* \$5.3 million** – Use a Joint Trust, one trust for both spouses, except that second marriage couples with blended families rarely use these – they almost always need two trusts.
- **3. Married Couple with Assets *over* \$5.3 million** – Use two trusts, one for each spouse. Saves on estate taxes.

Types of Living Trusts:

Single, Divorced, Widowed

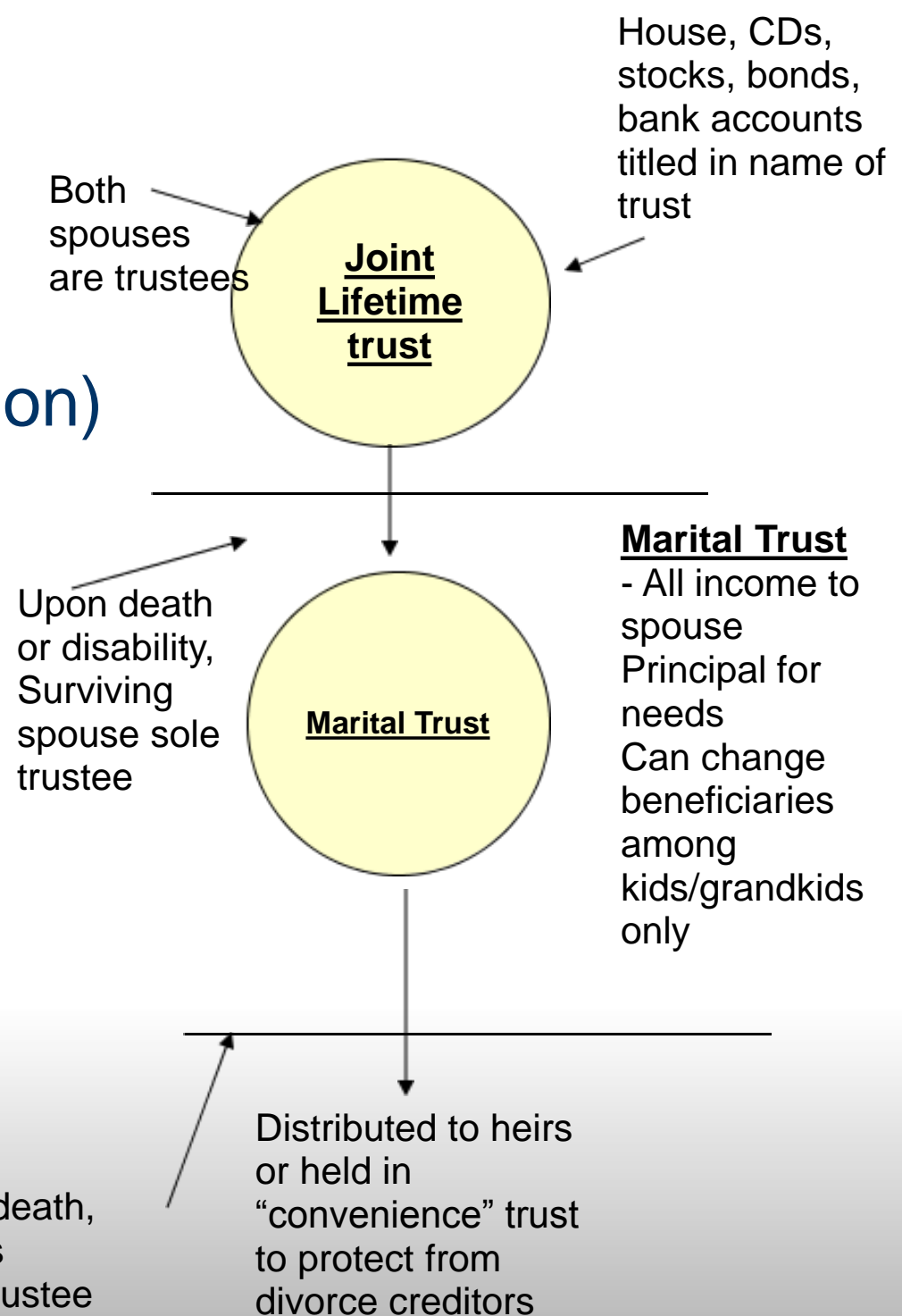
- Assets will avoid probate
- One unifying vehicle
- No disability problems
- No special tax returns
- Trust is invisible for tax purposes



Types of Trust Married Couple (assets under \$5.3 million)

- Avoids Probate
- Acts as unifying vehicle for all assets
- Disability Protection
- Easy to administer

On second death,
child acts as
successor trustee



Ways to distribute to heirs

- **Outright-** Beware of converting to “marital property”
- **Trust paying for needs and distributing at ages-**
Most often used with young children
- **Flexible Protective Trust** – Heir can leave in as long as he or she wants to protect from divorce/creditors
- **Continuing Trust for Lifetime-**For those who can't manage money
- **Substance Abuse Trust-** To allow treatment of substance abuse
- **Special Needs Trust-** For children or adults that are disabled and on SSI or who may be on SSI

Updating

- No charge for review appointments
- There is a charge for amendments/restatements
- Web site at www.lawsam.com
- Blog at <http://www.illinoislawnews.net>

What trust includes:

- Pour over wills (naming guardians if needed)
- Power of attorneys for property
- Power of attorneys for health care (with HIPAA authorization)
- Living wills
- Deed to property
- Funding table and trust binder
- Funding assistance
- Flat fee billing/visa mastercard accepted

