5 Basic Estate Planning Choices

1. Simple Wills - No Trust: This alternative is not advised because there are no probate advantages, minor children are not as well protected if you predecease and there is no trust mechanism to help manage your assets if you have mental incapacity prior to death.

2. "A" Trust: A Living Trust is set up, but all goes to the survivor upon the first death. (see below).

3. "A-D" Trust: All goes to the surviving spouse, but the surviving spouse has up to 9 months to shunt some of the first spouse-to die's assets to a "Disclaimer Trust." Estate tax potential savings would be the reason the surviving spouse would use this. There is no need to make any decision on use of the Disclaimer Trust until someone dies. This is the basic level trust.

Disadvantage? The surviving spouse has total control - and there is no mechanism to focus the first-to-die's assets on the kids when the surviving spouse dies. The surviving spouse can change the Trust to give everything to a new spouse, a charity, etc.

4. "A-B" Trust: The "first-to-die's" assets - up to $11.58 million (for 2020 – limits drop dramatically beginning January 1, 2026) shift to a "By-Pass Trust". The Bypass Trust assets survivor "rents" the income on his/her life - and may - depending on how the trust is drafted - have restricted access to some principal (access has to be restricted to help preserve estate tax exemptions and help preserve assets for the children). Upon the surviving spouse's death, the Bypass Trust's remaining assets go to the children. The "Survivor's Trust" goes to the children too, unless the Surviving Spouse has changed the game plan. Disadvantage? The surviving spouse has restrictions on the assets in the ByPass Trust - by design. The surviving spouse may chaff under these restrictions. The restrictions, however, are designed to protect a goal of directing funds to children instead of another beneficiary. The surviving spouse might have less financial flexibility when access to principal is restricted, particularly if he/she is in a "die broke" spend down mode.

5. "A-B-C" Trust: This adds another layer on top of the "A-B" if a couple's assets exceed $10,680,000. The "C" Trust preserves, for the children, that part of the "first to die's" assets over the applicable estate tax exemption.

BUTTERFIELD SCHECHTER LLP
ATTORNEYS & COUNSELORS

For More Information

Please contact Robert K. Butterfield:

Butterfield Schechter LLP
10021 Willow Creek Road
Suite 200
San Diego, California 92131
Telephone: (858) 444-2300
Facsimile: (858) 444-2345
www.bsllp.com
rbutterfield@bsllp.com

Quick Guide to Using Trusts

TYPE OF TRUST	MAIN PURPOSE	DESCRIPTION
Asset Protection Trust	Asset Protection	An irrevocable trust (with gift tax implications) that can, in limited circumstances, protect assets from creditors by: (1) Preventing the assignment of transfer of a beneficiary's interest, (2) Rendering a beneficiary's interest unascertainable, (3) Limiting the trustee's distributions to ascertainable standards, (4) Allowing the trustee discretionary distributions to multiple beneficiaries or (5) Changing or terminating a beneficiary's interest upon the occurrence of certain events.
Bypass or Credit Shelter Trust	Estate tax planning	Used by married couples whose combined net worth exceeds the applicable exclusion amount ($5.0 million for 2011 and 2012). Protects trust property from estate tax as it passes from one beneficiary to another. The trust is normally funded with property equal to the estate tax applicable exclusion amount ($5.0 million for 2011 and 2012). Typically provides income to surviving spouse for life and trust property passes to trust remaindermen at survivor's death. The trust assets are included in decedent's estate, but areshielded from estate tax by the applicable exclusion. They aren't included in the surviving spouse's estate.
Charitable Lead Trust (CLT)	Estate tax and charitable planning	Similar to a GRAT or GRUT, except the term interest is given to charity. Remainder usually passes to family members. Can be either an inter vivos trust or a testamentary trust. Charitable lead interest must be a qualified annuity or unitrust interest.
Charitable Remainder Trust	Estate tax and charitable planning	Beneficiary is given a "Crummey" withdrawal power (i.e., a limited, noncumulative power to withdraw principal or income.) This power enablesthe transfer to the trust to be eligible for the gift tax annual exclusion ($13,000 for 2011).
Crummey Trust	Gift tax planning	Similar to GRAT or GRUT, except the remainder passes to charity. Usually an inter vivos trust.
Irrevocable Trust	Estate tax planning	Assets are transferred to a trust with no retained power to alter, amend, or revoke.
Minor's or Discretionary Trust [aka Section 2503(c) Trust]	Gift tax, estate tax and education planning	Inter vivos trust for the benefit of a minor before attaining the age of 21. Accumulated income and corpus passes to minor upon reaching age 21. The trust becomes a grantor trust at age 21 if the trust instrument extends the term of the trust beyond age 21.
Personal Residence Grantor Retained Interest Trust [aka Qualified Personal Residence Trust (QPRT)]	Gift and estate tax planning	Inter vivos trust in which grantor retains right to occupy trust property as a personal residence for a term of years. Remainder to family members. The grantor cannot be the holder of an interest in more than two such trusts at the same time.
Pourover Trust	Estate Planning	Useful as a receptacle for insurance proceeds, IRA benefits and qualified retirement plan benefits. May also receive a portion of probate estate under the will.
Qualified Terminable Interest Property (QTIP) Trust	Estate Planning	Provides a surviving spouse with an income interest for life. Enables a decedent to control the disposition of the remainder interest in the trust after the surviving spouse's death, but the transfer can still qualify for the marital deduction and is included in the gross estate of the surviving spouse.
Revocable Living Trust	Estate Planning	Assets are transferred to a trust subject to grantor's power to alter, amend, or revoke (becoming an irrevocable trust at death and avoiding probate). Typically used to avoid having to probate the will (often a time consuming and costly endeavor). Also used to allow for professional asset management.
Supplemental or Special Needs Trust	Financial/Eldercare Planning	Distributions from the trust provide a disabled or elderly person with financial assistance without affecting the government benefits available to that person.