



Estate Planning Strategies

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Our Presenter



Mark E. Criner III
Trust Strategist
Baird Trust Company

Mark is a Vice President and Trust Strategist for Baird Trust serving from the Scottsdale, Arizona office. He works with Baird Financial Advisors and their clients offering complex trust and estate planning guidance. He has over 20 years of experience in trust and estate administration.

Prior to joining Baird Trust, Mark spent over ten years with Northern Trust as a Senior Estate Administrator and counsel for the Gila River Indian Community. Before that, Mark spent over eight years as an attorney with Wagner, Falconer & Judd. Mark earned a Bachelor of Arts in Communications and Pre-Law, with an emphasis on Communications and Political Science from Washburn University. He also earned a J.D. from Mitchell Hamline School of Law with an emphasis on Estate Planning and Intellectual Property. Mark is a member of the Arizona and Minnesota Bar Associations. He also serves as a Board Member for Connections to Independence, an advocacy group for foster care. Mark joined our firm in 2022



Trust Myths

- You must be **dead or dying** to need a trust
- You must **have a lot of money** to create a trust or even need an estate plan



What is an Estate Plan?

- An **estate plan** is a map that tells others how you want your personal and financial affairs to be handled when you no longer can, i.e., either if you are incapacitated or after you die



Who Needs an Estate Plan?

Chances are, *you* do

- Not just for the wealthy
- Without an estate plan, you can't control what happens to your property if you die or become incapacitated
- An estate plan makes your wishes clear and helps avoid family disputes
- Proper estate planning can preserve assets and provide for loved ones

Especially if:

- You have minor children
- You care about financial privacy
- You own a business
- You or your spouse are not comfortable with financial matters
- You own property in more than one state
- Your net worth exceeds \$12+ million (the federal transfer tax exclusion amount in 2022)



Will & Probate

- Historically, a **will** is the cornerstone of an estate plan
- Directs how your property will be distributed
- Names executor and guardian for minor children
- Can help accomplish other estate planning goals (e.g., minimizing taxes)
- Generally must be in writing, signed by you, and witnessed

The Probate Process

Most wills must be probated:

- Will is filed with the probate court and becomes a public record
- Executor (or executrix) collects assets, pays debts, files tax returns, and distributes property to heirs
- Typically, the process lasts several months to a year

Probate Pros & Cons

Pros

- Court supervision; clear title
- Protection against creditors
- Time and costs are typically modest, but...

Cons

- Can be time-consuming
- Title transfer delays
- Fees
- Contests
- Ancillary probate
- Public record: will and assets



Trusts

A Will Alternative: The Living Trust

- Versatile estate planning tool
- A trust is a CONTRACTUAL ownership arrangement controlling property transferred to the trust
- Gives trust beneficiary(ies) access to trust assets, but only under the trust's terms

How Does a Revocable Trust Avoid Probate?

Ownership!

1. The trust owns the assets
 - Assets must be retitled in the name of the trust – including property in other states.
2. The trust's owner may die, but the trust does not.
3. ***Must fund the trust before your death to avoid probate – Trust under a will does not work.***



Trusts

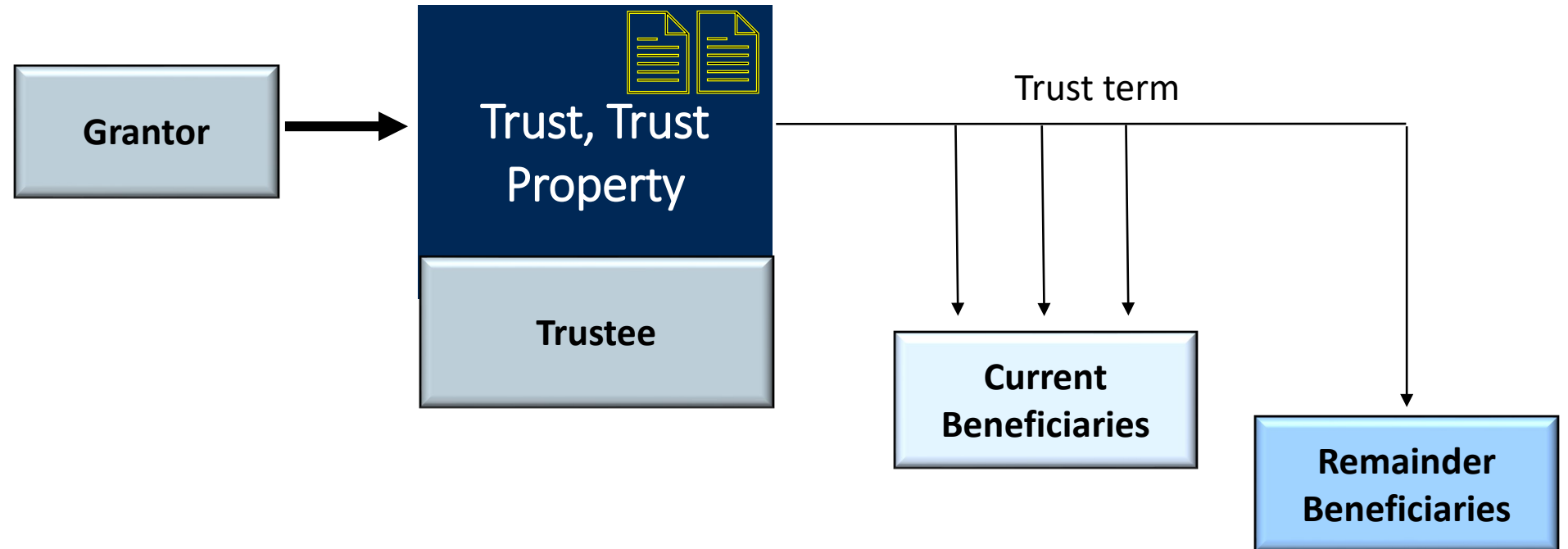
Trusts can be **Revocable** or **Irrevocable**

Revocable trusts are most common and used primarily to avoid probate, account for potential incapacity, and to consolidate asset management.

- ✓ Fully amendable or revocable until death or disability.

Irrevocable trusts are used mostly for estate tax planning or gifting.

What is a Trust?



Benefits of Using Trusts: Beyond Probate

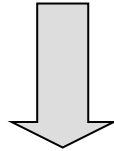
- **Privacy** of your estate by avoiding probate – **if funded during life** (a “living” trust, not testamentary)
- **Avoid** ancillary probate if assets owned in other states
- Financial **continuity** if you become incapacitated
- **Protection** from creditors (and predators)
- **Preserve** assets for heirs – blended families
- **Control** how an heir accesses wealth to preserve assets
- **Provide** for a disabled heir while protecting their benefits

Benefits of Using Trusts: Planning for Incapacity

- Incapacity can strike anyone at any time.
- Failing to plan means a court may have to appoint a guardian.
- Lack of planning increases the burden on your guardian.
- Your guardian's decisions might not be what you would want.

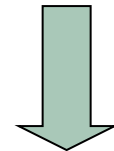
Benefits of Using Trusts: Planning for Incapacity

Joint Ownership



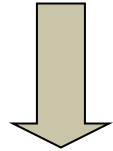
Joint owner has
same access to
property that
you do

Durable Power of Attorney (DPOA)



Lets you designate
an agent to make
decisions on your
behalf

Living Trust

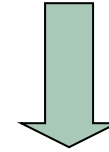


Lets a successor
trustee take over
management of
trust property

Planning for Incapacity: Medical Care Issues

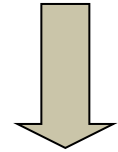
Note: State law
Dependent; use
forms familiar to
caregivers

**Durable Power
(DPOA) for
Health Care**



Lets you designate
an agent to make
care decisions
on your behalf

Living Will, etc.



Advance medical
directives expressing
last wishes for care

Benefits of Using Trusts: Control & Protect

- Leaving assets in trust for a beneficiary rather than outright lets you limit how your beneficiaries access their inheritance.
- This can protect trust beneficiaries against their own financial carelessness, as well as from claims of their creditors, so they can enjoy benefits for as long as possible and for critical needs.

Benefits of Using Trusts: Control & Protect

This asset protection is important:

- To protect inherited assets from being claimed as **marital assets in a divorce**.
- To protect assets from being **claimed in a lawsuit** against one of your heirs.
- To protect the beneficiary from being disqualified from certain **government benefits** intended to provide for the beneficiary's disability.
- To **protect trust assets from "waste"** at the hands of the beneficiary(ies) or others close to them.

Trust Glossary

- **Living Trust:** A.k.a., a revocable living trust or *inter vivos* trust – created while settlor is alive.
- **Spendthrift Trust:** A trust structured under state law to protect the trust assets owned within the trust from third parties.
- **Credit Shelter Trust:** Refers to a trust funded with an amount of assets equal to or less than a person's federal estate tax exemption amount
- **Marital Trust:** A trust structured to ensure the assets qualify for the federal estate tax unlimited marital deduction.
- **Irrevocable Life Insurance Trust or "ILIT":** A trust designed to own life insurance that won't be included in the insured's estate for tax purposes.
- **Crummey Trust:** One designed to receive current gifts for the benefit of the trust beneficiaries.
- **Dynasty Trust:** One designed to benefit family members for generations



Common Uses of Trusts

Trusts as Your IRA Beneficiary

- A trust can be your retirement plan's beneficiary (primary or contingent).
- Recent U.S. Supreme Court case limits the asset protection afforded IRA accounts in the hands of beneficiaries once the account owner has died.
- All distributions from traditional (not Roth) retirement accounts are considered taxable income, so distributions could result in significantly higher income taxes.
- Naming a trust instead of an individual as the beneficiary can strengthen the protection of the retirement account.

SECURE ACT OF 2019

Setting Every Community Up for Retirement Enhancement

- The SECURE Act became law on Dec. 20, 2019, and makes it easier for small business owners to set up “safe harbor” retirement plans that are less expensive and easier to administer.
- The SECURE Act pushed back the age at which retirement plan participants need to take required minimum distributions (RMDs), from 70½ to 72, and allows traditional IRA owners to keep making contributions indefinitely.
- The SECURE Act mandates that most non-spouses inheriting IRAs take distributions that end up emptying the account within 10 years.
- The SECURE Act allows 401(k) plans to offer annuities.
- SECURE Act 2.0 became effective January 1, 2023

SECURE 2.0 Act of 2022

Setting Every Community Up for Retirement Enhancement

Secure 2.0 Act of 2022

Follow-up to the first Secure Act of 2019 (**Setting Every Community Up for Retirement Enhancement**). Bill addresses a number of retirement planning topics that will affect how individuals save to, or withdraw from, different retirement savings accounts

- Starting age for RMDs increased from age 72 to age 73. Increase will not impact those who were already subject to RMDs in 2022.
- Retirement account owners still allowed to delay first RMD until April 1st of the year *after* reaching the applicable age, but would have to take a second withdrawal before the end of that year.
- The Secure Act of 2019 mandates that most non-spouses inheriting IRAs take distributions that result in emptying the account within 10 years. Secure 2.0 does not provide any new clarity around the 10 year rule for beneficiaries of inherited IRAs. As a result, those beneficiaries enter 2023 with some uncertainty as to how much, if any, of the account must be withdrawn this year.

Consider and understand the types of IRA beneficiaries:

- Designated Beneficiary: A person who inherits an asset such as the balance of an IRA or life insurance policy after the death of the asset's owner
 - A living person with a life expectancy
 - A See-through trust
- Non-Designated Beneficiary
 - Estates, Charities, Non-See-through Trusts, No stretch IRA
- Eligible Designated Beneficiary
 - Surviving Spouse
 - Minor children of the original IRA owner
 - Disabled or chronically ill individuals
 - Beneficiaries who are no more than 10 years younger than the original IRA owner

Naming a Trust as an IRA Beneficiary can be advantageous when:

- Potential credit protection issues
- Concerns about spouse
- Plans that involve the use of charitable trusts
- Planning to help avoid or minimize estate taxes



Philanthropic / Charitable Giving

Philanthropic/Charitable Giving

Baird Trust provides a range of options to assist charitable organizations and other tax-exempt non-profit organizations. Charitably inclined and nonprofit clients can benefit from a conversation with Baird Trust to provide the most effective solutions.

Private Foundations

Family foundations provide opportunities to create a legacy and involve future generations in philanthropy. Baird Trust can act as a trustee/director or agent while helping to facilitate charitable gifts in coordination with the charitable intent of the family. Additional benefits may include:

- Centralized collection of grant requests
- Verification of qualified deductibility
- Receipt and recordkeeping essential to maintaining tax exempt status
- Grants and scholarships to individuals

Philanthropic/Charitable Giving, cont.

Charitable Remainder Trusts (CRT)

Provide an income stream to the donor

- Defer recognition of capital gain from the sale of a business
- Offer significant charitable deductions

Charitable Lead Trusts (CLT)

CLTs are also structured as either annuities or unitrusts and can:

- Automate lifetime giving
- Pass remainder interest to family members outside of a taxable estate

Nonprofit Organizations

Board members of nonprofits may reduce their liability and add development resources by delegating their investment management to Baird Trust. Other benefits may include:

- Developing a tailored Investment Policy Statement
- Investment social screens
- Dedicated contact for donor stock gifts, reporting, and commission-free trades; and
- Seminars showing donors how to give more efficiently



Planning for Fiduciary Access to Digital Assets

Planning For Fiduciary Access to Digital Assets

What are Digital Assets?

Digital Assets can be defined as “Any material owned by an enterprise or individual including text, graphics, audio, video and animations. Any item of text or media that has been formatted into a binary source that includes the right to use it”.

Digital Assets can be separated into four categories:

Personal Digital Assets

- Photos, videos, emails, contact lists, music, medical records, blogs, e-books, gaming assets, avatars, home security systems, loyalty programs

Social Digital Assets

- Facebook, Twitter, LinkedIn, etc.

Financial Digital Assets

- Bank and credit card accounts, tax documents, PayPal, Apple Pay

Business Digital Assets

- Business-oriented social media, domain names, customer and vendor information, intellectual property

Fiduciary Access to Digital Asset Information in a Paperless World

As part of the estate planning process, one should create a **digital inventory** to be included along with testamentary documents (Wills, Trusts, Deeds, TODs). At the very least, a hard copy of the digital inventory secured by a trusted family member or advisor.

- If you bank online, you should list the financial institutions and accounts, in addition to investment and retirement accounts
- E-mail accounts with internet service providers (ISP) such as Yahoo and Google are owned by the ISP and licensed to the user. The license usually expires at death, and access is usually cut off as soon as the ISP learns of the user's death
- *In re Estate of Ellsworth* (Mich. Prob. Ct. May 11, 2005) a Michigan probate case, the family of Justin Ellsworth, a marine who was killed in Iraq, sued Yahoo for access to Justin's e-mail account after his death. The Michigan probate court ordered Yahoo to turn over copies of the e-mails.
- Work e-mail addresses should never serve as usernames or portals for access to any personal digital content

Planning For Fiduciary Access to Digital Assets

Most businesses would never allow a fiduciary to access a deceased employee's email account because the account will contain proprietary and confidential information about the business and its clients.

Revised Uniform Fiduciary Access to Digital Assets Act (UFADAA) 2015

The Uniform Law Commission summarized the RUFADAA as follows:

The Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) governs access to a person's online accounts when the account owner dies or loses the ability to manage the account. A fiduciary is a person appointed to manage the property of another person, subject to strict duties to act in the other person's best interest. Common types of fiduciaries include executors of a decedent's estate, trustees, conservators, and agents under a power of attorney. This act extends the traditional power of a fiduciary to manage tangible personal property to include management of digital assets. The act allows fiduciaries to manage digital property like computer files, web domains, and virtual currency, but restricts a fiduciary's access to electronic communications such as email, text messages, and social media accounts unless the original user consented to fiduciary access in a will, trust, power of attorney, or other record.

- Until recently, anyone could notify LinkedIn or a user's death and shut down an account with little or no documentation.
- Facebook began the practice of "memorializing" the accounts of deceased users in 2005 after one of their then 40 employees died in a bicycle accident.
- Twitter currently allows family members to remove an account after presenting the company with proper documentation (Authorization and Consent Form).
- Authorization and Consent for Release of Electronically Stored Information document.
- What happens when posts, updates and tweets go viral and actually generate revenue after the user's death?

Final Comments

One's digital assets could dissolve into cyberspace unless there is an up-to-date list to help one's heirs and family members find and unlock them

One can no longer exclude digital assets from the estate planning process. To do so would risk losing family photos, financial and tax records, and even money. Now is the time to prepare a digital inventory, including usernames and passwords. The digital inventory should be updated regularly as new digital assets are acquired and passwords are changed. Estate plans must catch up with our digital world.

Estate Planning Overview

Questions and Thank You



Important Information

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