Core Estate Planning Strategies

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Planning for Incapacity and Death

- Planning for Incapacity
  - Durable Powers of Attorney
  - Advance Health Care Directives
  - Conservatorship/Guardianship
- Planning for Death
  - Last Will
  - Revocable Living Trust

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Common Objectives of a Core Estate Plan

- Minimize Expenses
- Minimize Delays
- Privacy
- Minimize or Eliminate Estate Taxes
- Maximize Value Passing to Successors
- Avoid Probate
- Choose Fiduciaries
- Asset Protection
- Supplemental Needs

Durable Power of Attorney

- Creator ("Principal") appoints agent ("Attorney-in-Fact")
- Powers can be broad (general) or limited
- "Durable" power survives incapacity
- Can be immediate or "springing"
- Does not usually affect living trust
- Can provide for additional estate planning
- Refresh periodically (3-5 years)
- Usually avoids conservatorship/guardianship
- Terminates at death of principal

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Conservatorship/Guardianship

- Conservatorship
  - Court appoints conservator to manage assets of incapacitated person
  - Annual accounting and court hearing required
  - Generally expensive and intrusive
- Guardianship
  - Court appoints guardian to take care of personal needs of incapacitated person

Advance Health Care Directive

- Combines appointment of agent to make health care decisions with directive to withdraw or withhold life support into a single document
- Allows declarant to give specific direction concerning other types of medical care and treatment (not just life support)
- Physician required to determine when declarant unable to make medical decisions

Last Will

- Must be probated to effectively dispose of decedent's property
- Designates recipients of property
- Designates personal representative
- Used to designate guardian of minor children

Probate

- Legal process to:
  - Validate the decedent's will (if there is one)
  - Appoint a personal representative (executor)
    - Collect decedent's assets
    - Pay legal obligations and taxes
    - Distribute remaining assets according to will or laws of intestacy if no valid will exists
    - Cut off claims of unknown creditors

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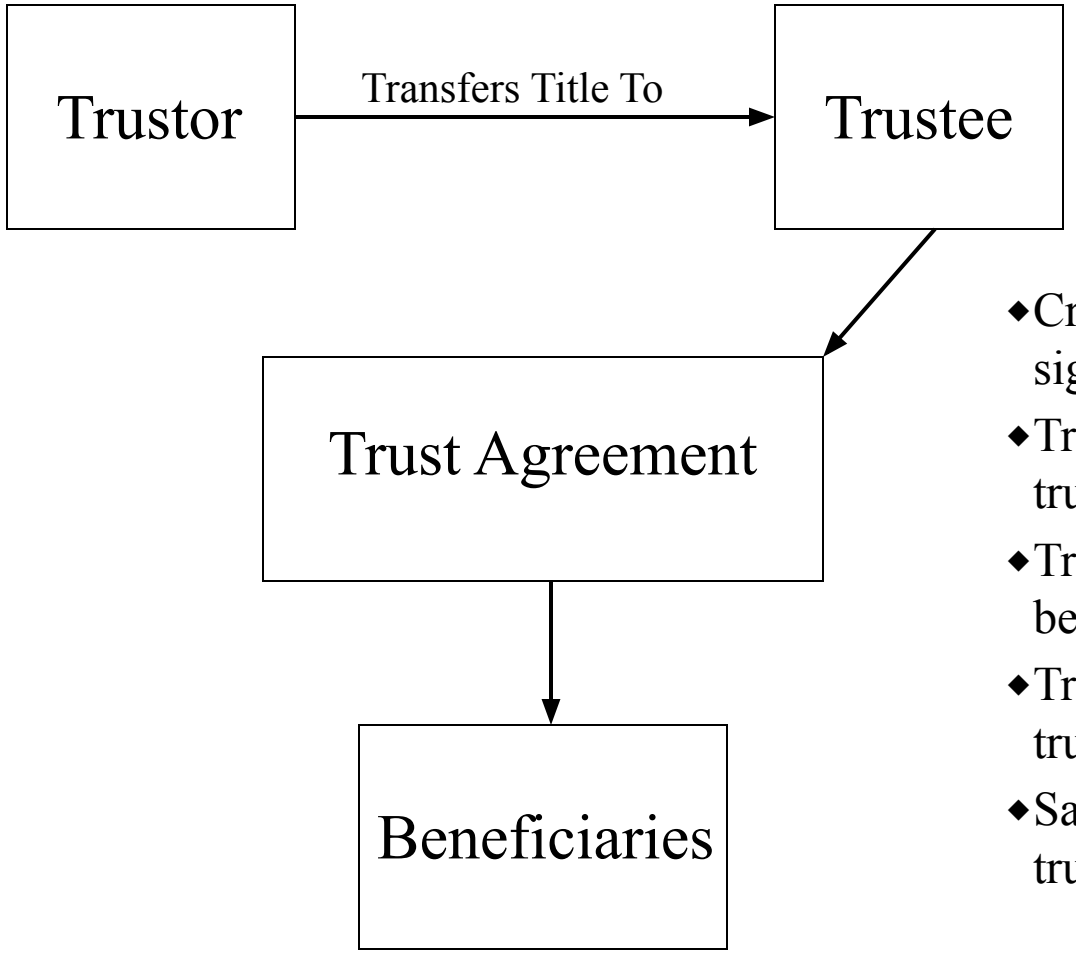
What is a Trust?



- Creator ("trustor") and trustee sign a trust agreement
- Trustor transfers property to trustee
- Trustee manages property for beneficiaries
- Trustee must carryout terms of trust agreement
- Same person can be trustor, trustee, and a beneficiary

Revocable Living Trust

- Avoids probate if funded while trustor is living
- Trustor retains power to revoke or amend while living
- Generally more private than a will
- Provides lifetime property management in the event of incapacity
- Provides property management for young or incapacitated beneficiaries after the trustor's death
- Income tax neutral until trustor's death
- Can be used to avoid multiple probates if trustor owns property in more than one state
- Can be used by a married couple to minimize estate taxes

Will Substitutes

- Joint tenancy
  - Full title passes to surviving owner at death
  - May grant co-owner (or his/her creditors) immediate rights in property
- Beneficiary designations
  - Life insurance
  - Retirement plans
  - TOD registration for bank accounts and securities
  - Partnership and LLC interests

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Does Every Person Need a Revocable Trust?

- It really depends on your objectives
  - Avoid probate? (Generally, not a big deal in Utah)
  - Seamless transition in the event of incapacity?
  - Asset protection for beneficiaries?
  - Estate tax planning?
  - Supplemental needs?

Planning for Children with Supplemental Needs

- Irrevocable trust with supplemental needs provisions
  - Allows the beneficiary to receive governmental assistance
  - Distributions from the trust to the beneficiary can only be used for supplemental needs
  - Who should serve as the initial and backup Trustee(s)?
  - Who should be named as the remainder beneficiaries?
- ABLE Accounts

QUESTIONS?