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Introduction to Estate Planning

Presented on March 1, 2018

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Estate Planning Overview

Introduction

- An estate plan is the process of establishing a framework for ensuring an individual's assets are distributed, during life and at death, in accordance with his or her stated desires. Specifically, an estate plan may include:
  - Disposition of an individual's assets in a tax advantaged manner.
  - Naming an agent to make financial decisions on behalf of the individual in the event of incapacity.
  - Naming an agent to make health care decisions on behalf of the individual in the event of incapacity.
  - Naming fiduciaries to care for minor children and manage their assets.
  - Planning for the succession of a family business.
  - Planning for the protection of an individual's wealth.
  - Planning for charitable giving.

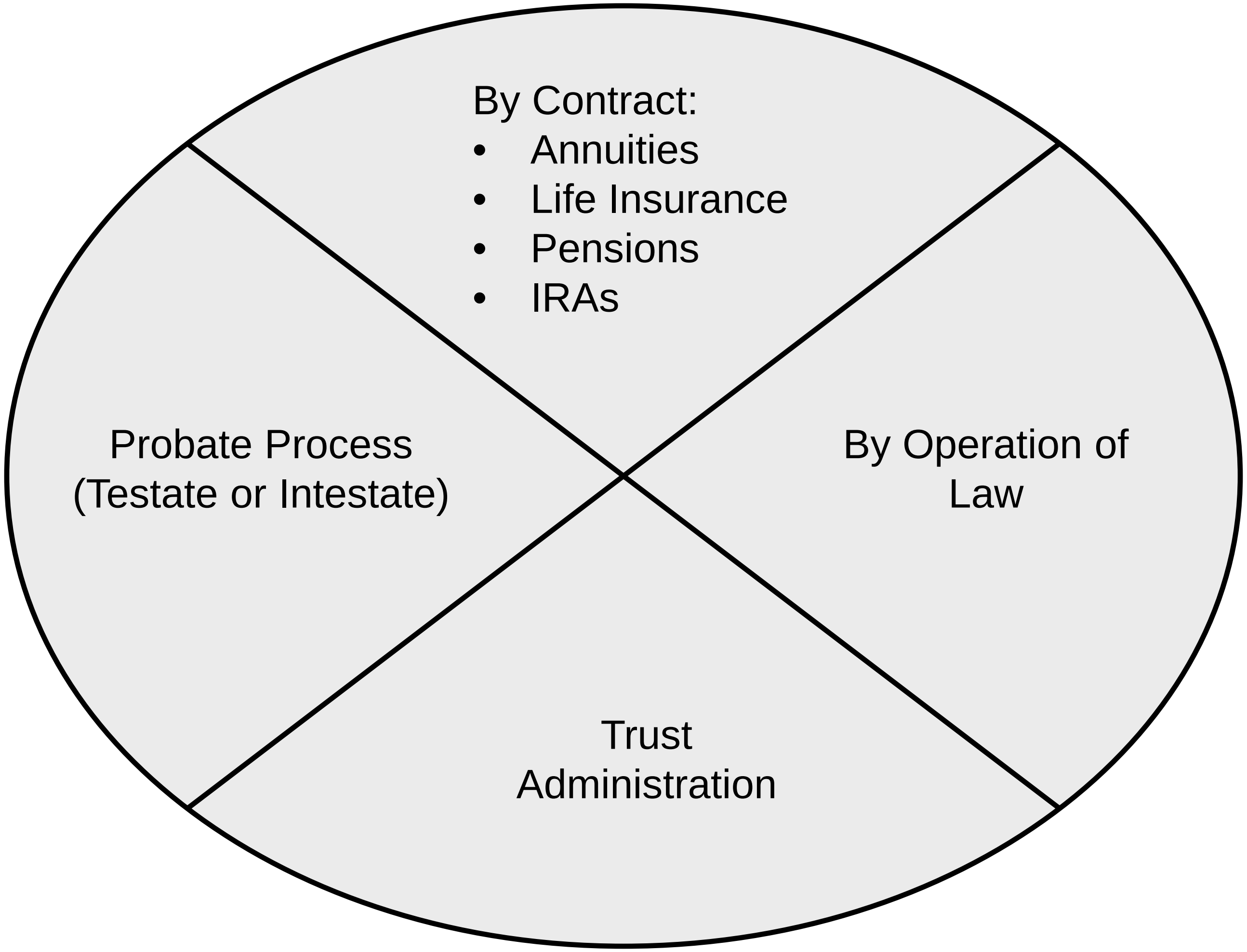
Estate Planning Considerations

Considerations

- An individual should consider many factors when establishing an estate plan:
  - The beneficiaries
  - The assets
  - Charitable inclinations
  - Goals and motivations
- After considering these factors, potential solutions can be explored and discussed. However, estate and tax laws are constantly changing, so an estate plan should be reviewed regularly.

Estate planning requires legal assistance which BMO Harris Bank N.A. and its affiliates do not provide.

Transferring Assets



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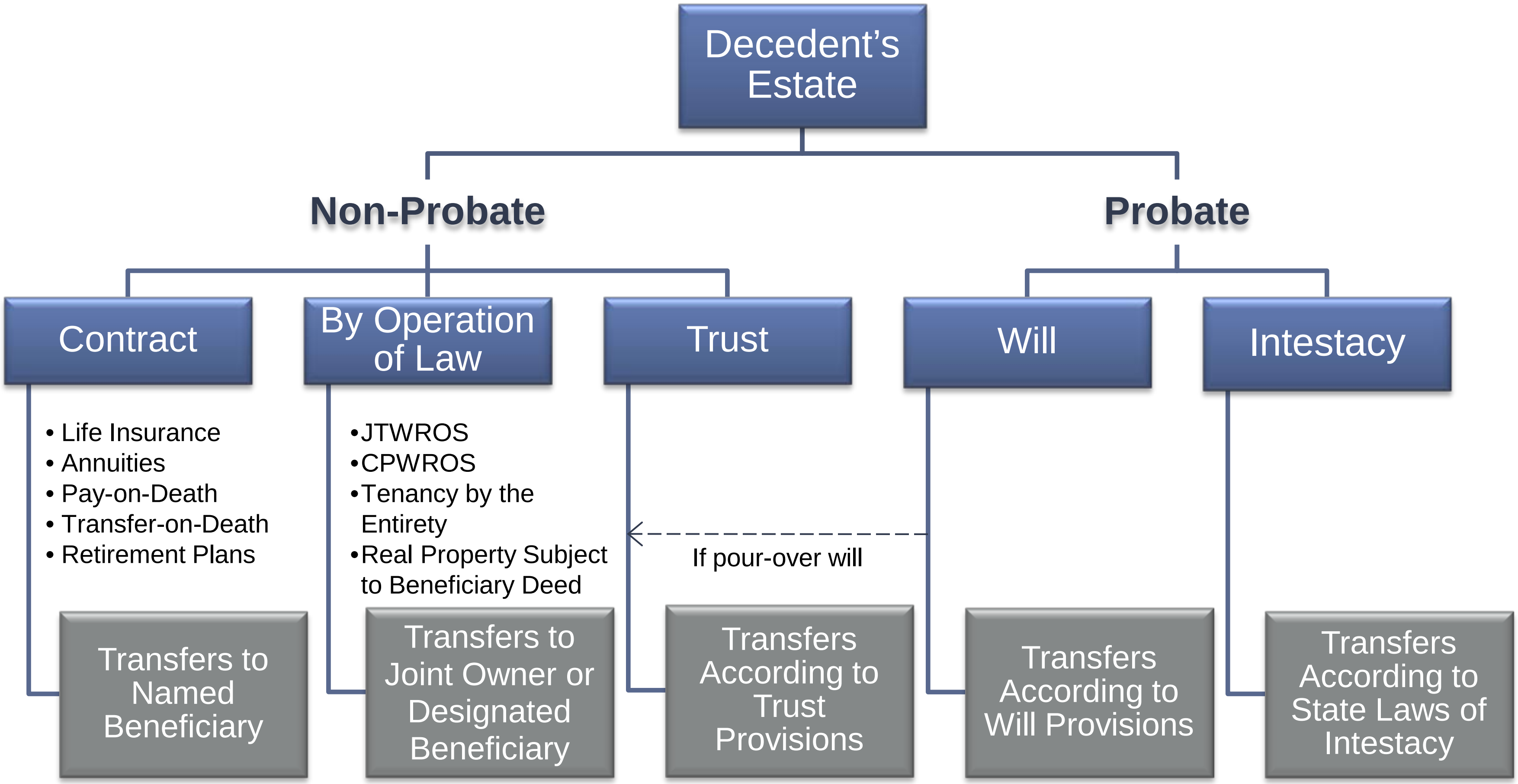
Transferring Assets, Cont.



Introduction to Revocable Living Trusts

Revocable Living Trust

- A trust is a vehicle for ownership of property under which the trustee holds legal title to the property and has the duty to manage the property for the benefit of the trust beneficiaries.
- The trust is established and funded by the grantor/trustor/settlor. The trust instrument provides the trustee with direction on how to manage and distribute trust assets.
- The grantor reserves the right to amend or revoke the trust at any time during his or her life.
- At the grantor’s death, the trust may be divided into sub-trusts for beneficiaries or to take advantage of tax planning strategies like the unlimited marital deduction.
- The use of a properly established, administered and funded trust can avoid probate at the grantor’s death, which is sometimes seen as a benefit over utilizing a Last Will and Testament in lieu of a trust.

Introduction to Wills

Last Will and Testament

- The purpose of a will is to dispose of a decedent's probate property (property owned in the decedent's name alone).
- The will appoints an executor to administer the probate estate, can appoint a guardian and conservator for a decedent's minor children, and provides for the payment of decedent's debts and last illness expenses.
- All estate plans should include a will, whether it is the estate plan centerpiece or a "pour-over" will.
- A pour-over will names the decedent's revocable trust as the beneficiary of the probate estate so that probate assets are "poured" or distributed from the probate estate to the decedent's trust estate.

Introduction to Estate Planning Support Documents

Financial Power of Attorney

- A financial power of attorney is a document under which the principal appoints an agent to act on his or her behalf with respect to financial decisions.
- The agent in effect steps into the shoes of the principal for financial decisions, but does not take title to property.
- A financial power of attorney can be used in the event of the principal's incompetency, thereby avoiding the need for a conservatorship proceeding.

Health Care Power of Attorney

- A health care power of attorney is a document under which the principal appoints an agent to act on his or her behalf with respect to health care decisions when the principal is unable to make those decisions.

Living Will

- A living will is a document under which an individual can outline his or her end-of-life decisions and can consent to or decline certain health care procedures when the individual is unable to communicate his or her wishes.
- This document can be used in conjunction with a health care power of attorney.

The American Taxpayer Relief Act of 2012 and the Tax Cuts and Job Act of 2018

American Taxpayer Relief Act

- The American Taxpayer Relief Act of 2012 (“ATRA”) significantly changed the tax planning landscape. Under ATRA, the following tax rates apply:
  - The marginal gift and estate tax rate is 40%.
  - The generation-skipping transfer tax rate is 40%.

Tax Cuts and Jobs Act

- The Tax Cuts and Job Act of 2017 (“TCJA”) made several changes to the rules set forth under ATRA:
  - The gift, estate and generation-skipping exclusion amounts continue to be unified but are increased to $11,200,000 per person, adjusted for inflation annually.

Tax Year	Estate and Gift Tax Exclusion Amount	GST Exclusion Amount	Marginal Estate and Gift Tax Rate	GST Tax Rate	Annual Gift Exclusion Amount
2015	$5,430,000	$5,430,000	40%	40%	$14,000
2016	$5,450,000	$5,450,000	40%	40%	$14,000
2017	$5,490,000	$5,490,000	40%	40%	$14,000
2018	$11,200,000	$11,200,000	40%	40%	$15,000

Taxation Basics

Federal Estate Tax

- Under ATRA, the marginal estate and gift tax rate was set at 40%
- Under TCJA, the estate and gift tax exclusions continue to be unified, but are increased to $11,200,000 per taxpayer, indexed annually for inflation.

State Estate Tax

- Certain States collect their own state estate or inheritance tax.

Generation-Skipping Transfer Tax

- Under TCJA, the generation-skipping transfer ("GST") tax exclusion was set at $11,200,000, indexed annually for inflation.
- A taxpayer can utilize his or her GST tax exemption amount to transfer up to $11,200,000 during his or her life, or at death, to a grandchild or more remote descendant GST tax free.

Portability

- Under ATRA, portability was made permanent and allows the surviving spouse to elect to carryover the deceased spouse's unused estate tax exclusion amount.
- Portability must be elected on the deceased spouse's estate tax return.
- Portability is not inflation adjusted and does not apply to the GST tax.

Planning for Spouses

Marital Deduction

- Under current United States tax laws, U.S. citizen spouses may pass an unlimited amount of property between each other, during life or at death, gift and estate tax free.
- Using this deduction, spouses can structure their estate plan so that no estate taxes are due at the first spouse's death.
- In order to take advantage of the marital deduction at the first spouse's death, the gift must take the form of one of the following:
    - Outright gift
    - Marital trust under which the surviving spouse has a general power of appointment
    - Qualified terminable interest property ("QTIP") trust.

General Power of Appointment Trusts and QTIP Trusts

Marital Trust with General Power of Appointment

- Under a general power of appointment trust, the surviving spouse must be:
  - The only beneficiary of the trust;
  - Given the right to receive all income for life; and
  - Given a general power of appointment over the assets in the trust, which permits the surviving spouse to redirect trust assets to the surviving spouse, surviving spouse's estate, surviving spouse's creditors, or creditors of the surviving spouse's estate.
- At the surviving spouse's death, the balance of the assets in the trust are includible in his or her estate for estate tax purposes.

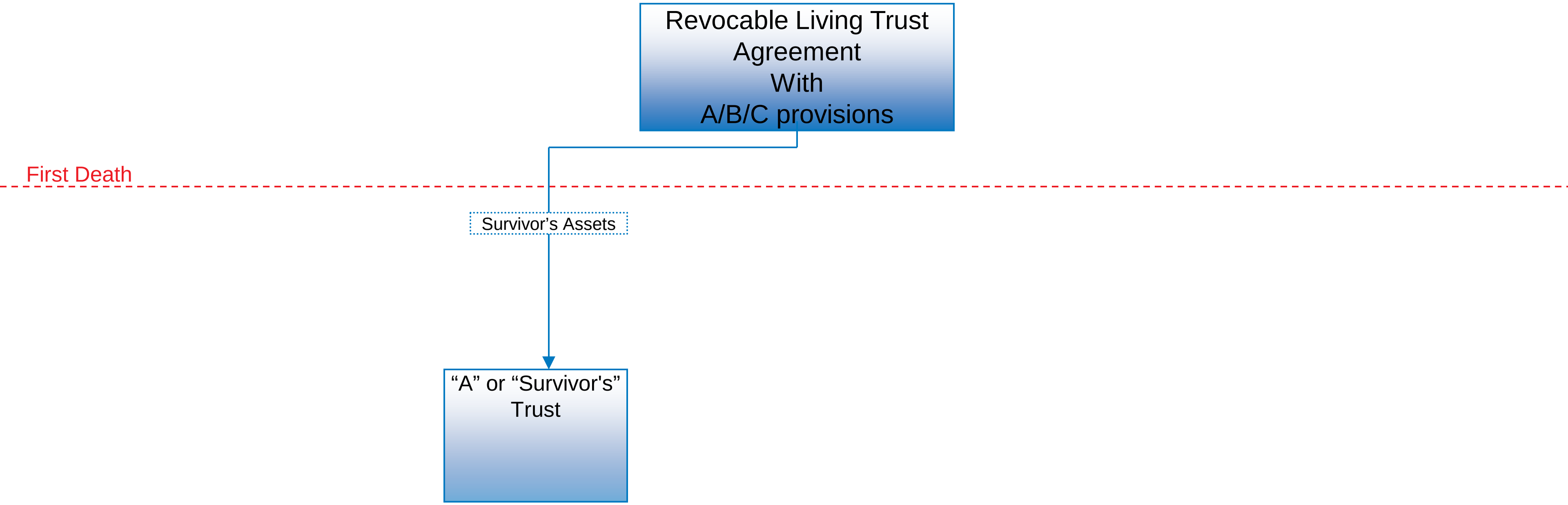
QTIP Trust

- Under a QTIP trust, the surviving spouse must be given the right to receive all income for life, at least annually.
- The executor of the deceased spouse's estate must timely file an election to qualify the property in the trust for the marital deduction.
- At the surviving spouse's death, the balance of the assets in the trust are includible in his or her estate for estate tax purposes.

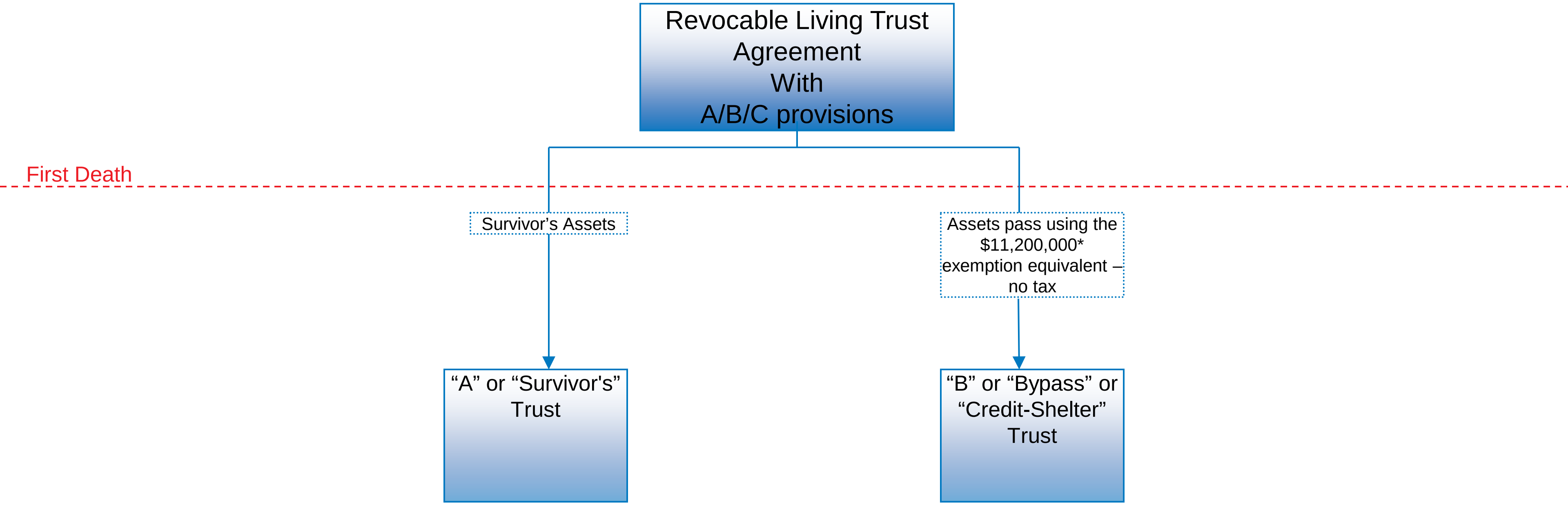
Planning with Trusts

Revocable Living Trust
Agreement
With
A/B/C provisions

Planning with Trusts



Planning with Trusts



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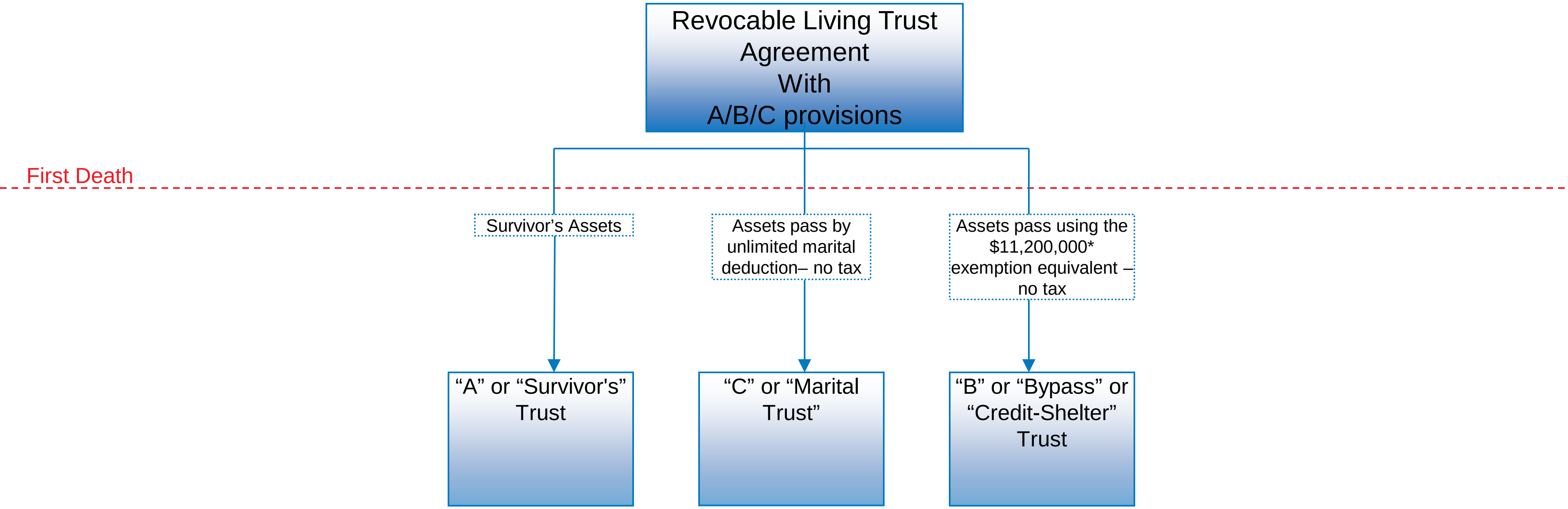
Planning with Trusts



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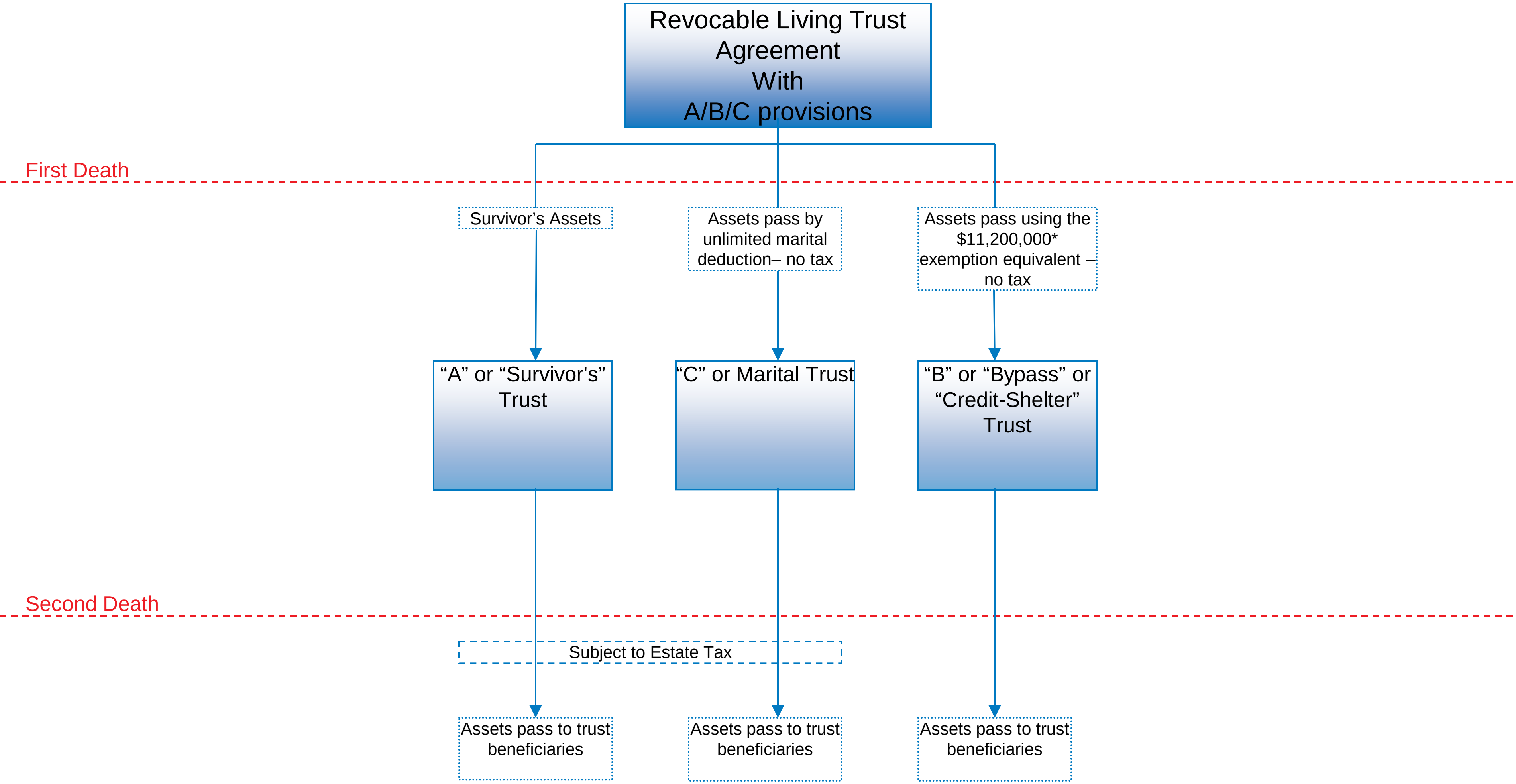
Planning with Trusts



*Indexed for inflation

Portability

Does portability make bypass trust planning unnecessary?

- Potential bypass trust advantages include:
  - Potential creditor protection.
  - Greater control over the distribution/use of the trust assets.
  - Future growth of trust assets removed from surviving spouse's estate.
  - Allows for decedent's use of GST tax exemption.
- Potential bypass trust disadvantages include:
  - May be more costly and time consuming to establish and administer.
  - May be less flexibility for the surviving spouse during his/her life.
  - May result in loss of basis step-up on decedent's assets at surviving spouse's death.

Strategies for Minimizing Estate Taxes

Below are several strategies a taxpayer may consider in order to potentially reduce future estate tax liability. Additionally, employing certain minimization strategies during a taxpayers lifetime may "freeze" assets values when appreciating assets are transferred by removing future appreciation from a taxpayer's estate.

Spending Assets

- Taxpayers can spend assets during their lives, thereby reducing the size of their taxable estate.

Gifting Assets

- Taxpayers can use lifetime gifting strategies to remove assets from their estate by making gifts outright or in trust. These gifts may use a taxpayer's annual gift exclusion, estate and gift tax exclusion amount and/or require the payment of gift or estate taxes for gifts in excess of the exclusion amounts. Taxpayers may also consider strategies involving assets that qualify for valuation discounts.

Charitable Gifts

- Taxpayers can donate assets to charities, either during life or upon death.

Selling Assets

- Taxpayers can sell assets to family members. Taxpayers may also consider strategies involving assets that qualify for valuation discounts.

Paying Estate Taxes

Generally, estate taxes must be paid within nine months of the decedent's death. Payment of estate taxes can sometimes cause hardship when an estate is largely composed of illiquid assets, such as real estate or businesses.

Sources for Paying Estate Taxes

- Liquid assets, such as cash or investment accounts.
- Sale proceeds from the sale of illiquid assets.
- Life insurance proceeds.
- Loans.

Key Takeaways

Next Steps:

- Review your asset titling.
- Check your beneficiary designations.
- Work with professionals.
  - Estate planning attorney
  - Tax professional
  - Financial Advisor

Disclosures

Please note that the information and planning considerations above are meant for a broad audience and are not intended to be individual legal or tax advice or relied upon by recipients. Stoker Ostler and its affiliates do not provide legal advice to clients. Each person's tax situation is unique and the proposed legislation will impact each person differently. Therefore, you should discuss with your legal and tax advisors how the legislation might impact your situation and the planning considerations that are right for you.

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