ASSET PROTECTION AND LEGAL LIABILITY

Family Wealth Legacy

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Watch Out for the June Luncheon Flyer

We intend to hold one Luncheon each month as part of this series. In June we plan to hold a luncheon covering a Case Study in Wealth Management, Asset Protection and related Taxation issues for a complex estate with projections of asset appreciation. This will be a fun presentation and will cover securities, stocks, personal residence, rental properties, use of Asset Protection Trust, Family Limited Partnership and LLCs to achieve your goals to maintain your wealth, retain control over the assets and avoid estate taxes. This will be a REAL WORLD scenario with actual documents used to implement the plan. Matthew Piercey will also present the innovative Family Wealth Legacy plan to eliminate toxic assets from your portfolio.

Litigation Facts

1	9 of 10 worldwide lawsuits are in USA
2	A new lawsuit filed every 30 seconds
3	1/3 chance of being named in a suit
4	Negligence or injury claim
5	Breach of contract

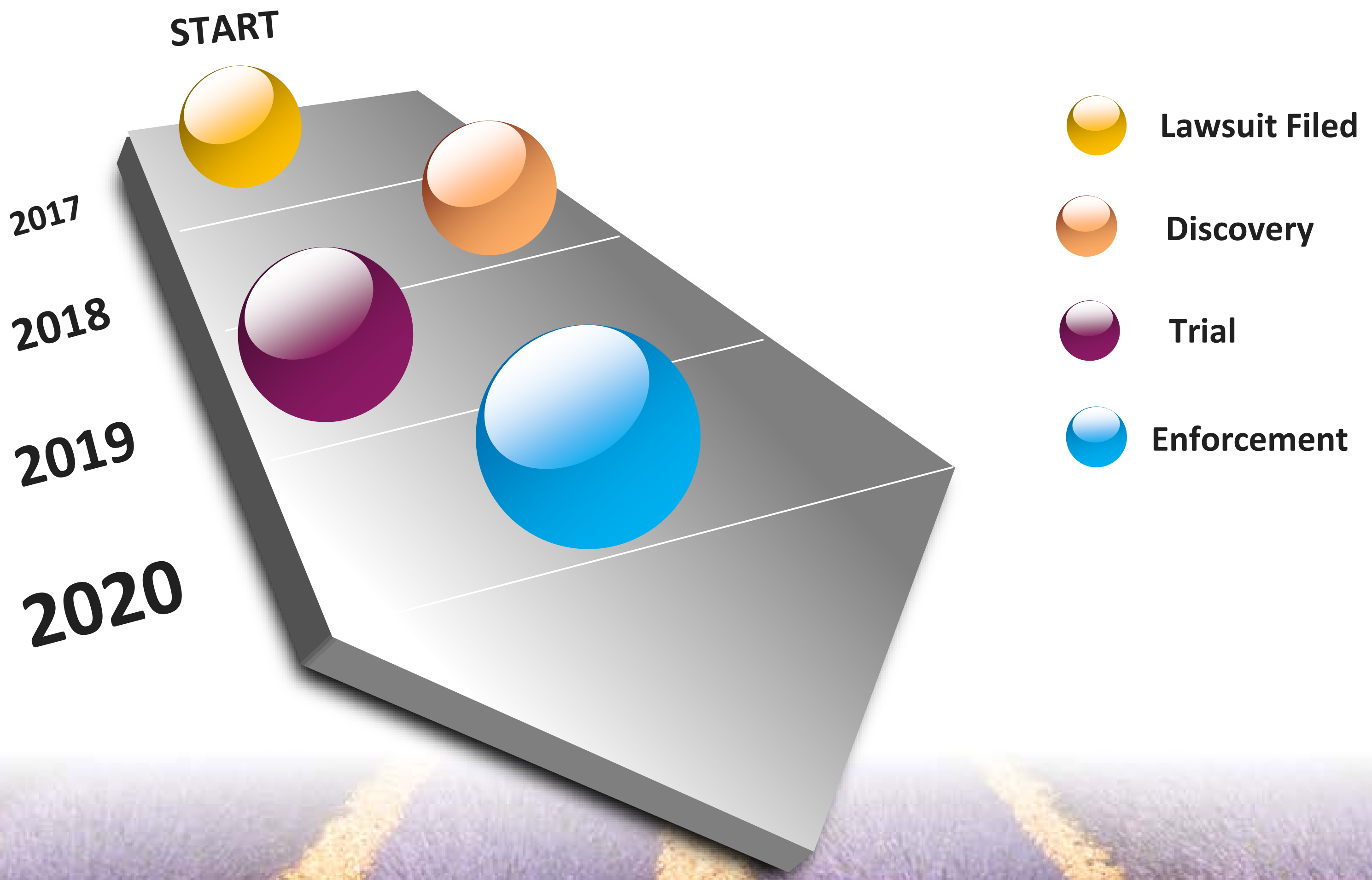
Litigation Facts

6	Professional Malpractice
7	Disgruntled business partners/employees
8	Divorce, catastrophic medical bills
9	Government fines, taxes, penalties
10	Claims of creditors/failed business

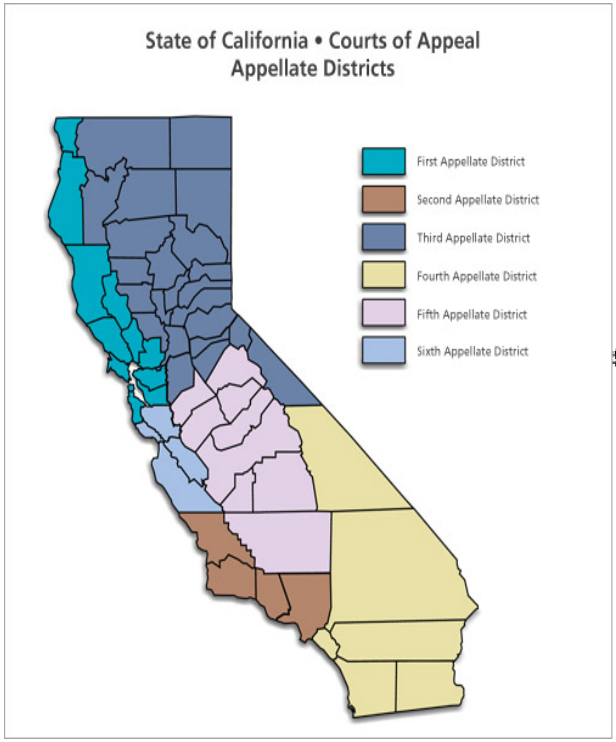
STEPS IN THE LITIGATION PROCESS

- Demand Letters Written
- Complaint Files
- Lawyer Hired
- Answer Filed
- Discovery Plan
- Written Discovery
- Depositions
- Summary Judgment
- Pretrial Motions
- Motions In Limine
- Settlement Conference
- Jury Selection
- Trial
- Post Trial Motions
- Appeals
- Debtor Exam
- Execution of Judgment
- COST $300K to $400 K

Litigation Timeline – 3 to 5 Years



Maps of California State and Federal Judicial Districts & 9th Circuit Court of Appeals



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Guaranteed Winners in a Lawsuit

- Lawyers
- Consultants
- The Court System Itself
- Court Reporters
- Filing Services
- Accountants
- LAWYERS ARE NOT MOTIVATED TO SETTLE AND LOSE THE MEAL TICKET

What is Asset Protection?

- Structure which makes assets difficult or impossible to reach.
- Putting a portion of net worth behind some obstacles.
- The more obstacles the greater the protection.
- Asset Protection is planning for future liabilities.

Complexity and Cost of Plan

Trust	Holding Company	Limited Liability Company	Asset Protection Trust	Corporations

Lack of Control

Reasons for an Asset Protection Plan

Who are you protecting it for?

You?

Your Favorite Cause?

Your Spouse?

Your Creditors

Your Heirs?

From the IRS?

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Assets to be Protected

Limited Partnership Interest

Annuities

Bank Accounts

Retirement Plans

Mutual Funds

Life Insurance

Stocks and Bonds

RULE OF 72

Take the Number 72 and divide by expected appreciation rate to determine the time to double the value of an asset. In the Example below we assume the appreciation of a personal residence is 6% a year and thus the house will double in value every 12 years. The assumed beginning FMV of the Home is $1 million

Year 12
Value of Home
$2 million

Year 24
Value of Home
$4 million

Year 36
Value of Home
$8 million

CURRENT ESTATE TAX EXCLUSION

Approximately $5.5 Million

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Asset Protection Plan Facts

1	Everyone does APP on some level.
2	Everyone needs it.
3	It can be straightforward.
4	If done improperly, it can cause its own disaster.
5	No such thing as 100% foolproof APP.

Asset Protection Plan Myths

1	It is only for paranoid people.
2	It is only for “high risk” people.
3	It is unpatriotic.
4	It is only for people who have something to hide.
5	It requires complex trusts and offshore locations.

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Maxims of Asset Protection Planning

1. A creditor stands in the same relation to your assets as you do.
2. There is no one right way to design an asset protection plan.
3. The wrong time to do planning is when you actually have a creditor.
4. Assume that a judge and opposing counsel are at least as smart as you are.
5. It is better to look ahead and plan than to look back and regret.
6. Asset protection planning should be a way of life, not a reaction to a problem.

What Is Not Asset Protection

Asset Protection is not fraud

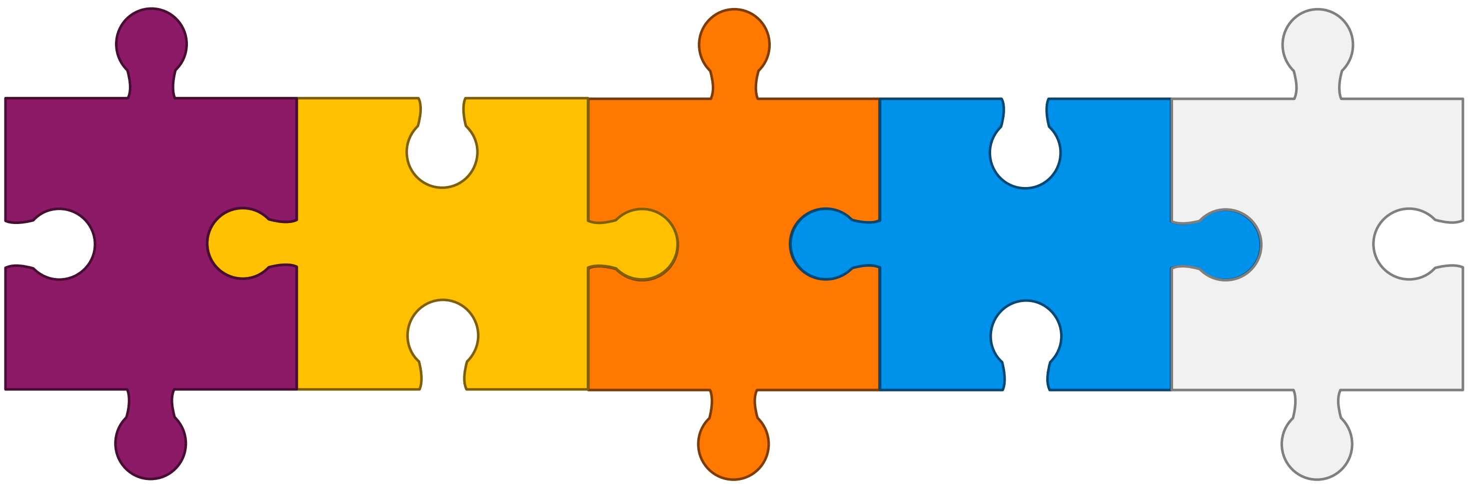
Asset Protection is not tax avoidance

Asset Protection is not transferring all assets out of your control

Asset Protection does not rely on stealth alone

Asset Protection – What will not work

Asset Protection – What Might Work



Steps to Create an Asset Protection Strategy

Getting started is the hardest part.

Step 1	Step 2	**Step 3**	Step 4
What are your assets?	*Separate "Safe" form "Unsafe" assets.*	***Obtain an expert and consult with an attorney***	*Implement strategy and vehicles. Have peace of mind*

Step One – What are your assets?

Safe Assets + Unsafe Assets = Formulate Asset Protection Plan

Segregate Your Assets into two main categories

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Safe Assets – Will not trigger a lawsuit

Cash, Stocks, Savings Account

Gold, Art

Jewelry, Personal Belongings

Asset Protection Trust or Irrevocable Trust

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Unsafe Assets – Can trigger a lawsuit

Rental Property

Business

Car

Different asset protection vehicles may be required

The Maze of Common Asset Protection Vehicles

Irrevocable Life Insurance Trust	Revocable Living Trust	Irrevocable Living Trust
Asset Protection Trust	S Corporation	C Corporation
Limited Liability Company	Family Limited Partnership	Holding Companies

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Asset Protection Vehicle Summary

Text	Sole Proprietorship	LLC	S Corp	C Corp	Asset Protection Trust	Living Trust	Irrevocable Trust
Protects Assets	No	Yes	Yes	Yes	Yes	No	Yes
Maintain Control of Assets	Yes	Yes	Maybe	Maybe	Yes	Yes	No
Flexible Management	Yes	Yes	No	No	Yes	Yes	No
Avoids Double Taxation	Yes	Yes	Yes	No	Yes	Yes	Yes
Fiduciary Duties	No	Yes	Yes	Yes	Yes	No	No
Easy to Transfer of Ownership	Yes	No	Maybe	Maybe	No	Yes	No
Pierce Corporate Veil	n/a	Yes	Yes	Yes	n/a	n/a	n/a

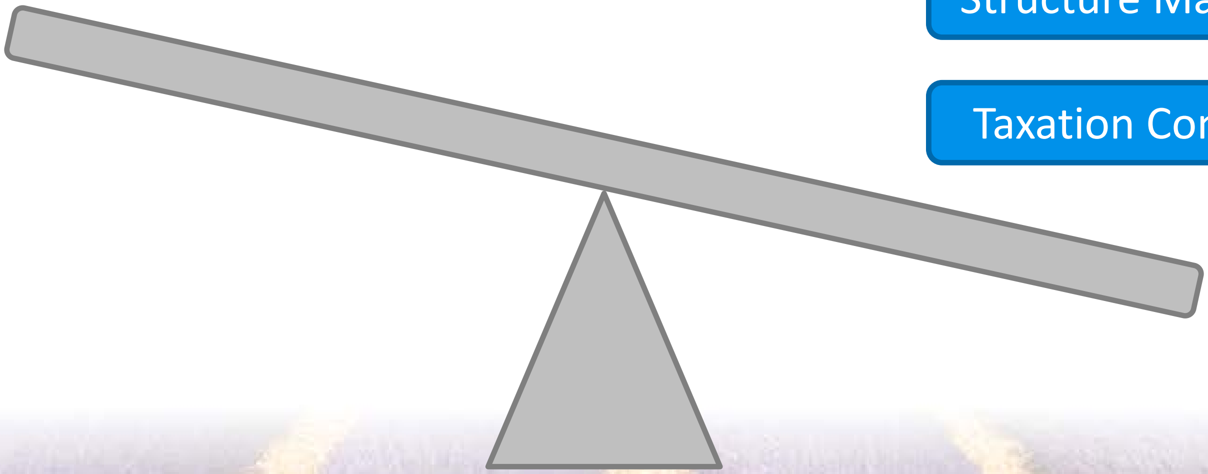
Scales – Must balance complexity and cost

Benefits

- Level of Protecion
- Greater Protection

Drawbacks

- Cost of Formation
- Transfer of Assets
- Structure Maintenance
- Taxation Complexities



Factors to Consider When Selecting Asset Protection Formation Structure

- Fees, formation costs, legal and accounting fees
- Protection of assets against personal creditors
- Management flexibility and simplicity
- Tax incentives
- Exemption from securities registration
- Holding Company registration
- Creditors Rights
- State law where entity is the formed
- State tax ramifications
- State law protection and Revised Uniform Limited Partnership Act
- Cost of licensing, rental agreements, leasing agreements

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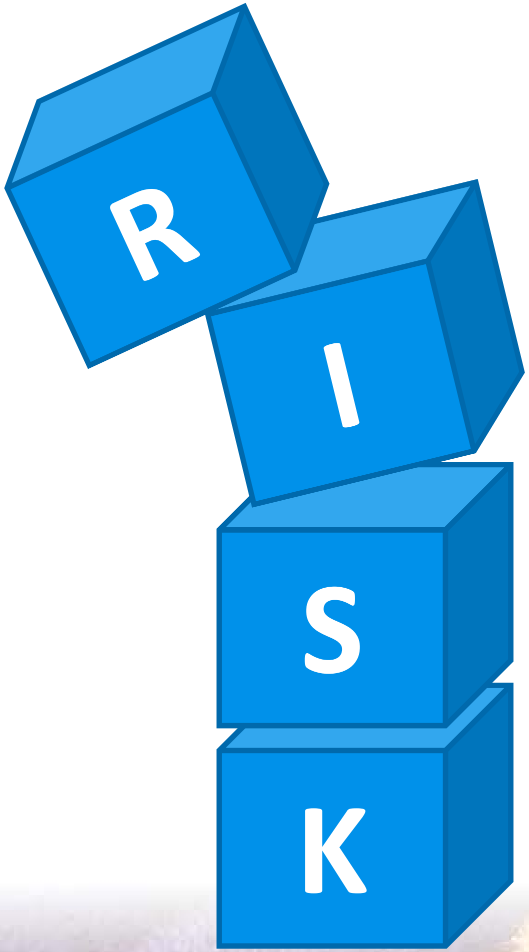
Insurance – First Line of Defense



- While insurance does provide a measure of security—and is essential for some occupations and activities—it cannot shield your assets from all threats. Insurance policies are limited in what risks they cover and how much they pay.

- Insurance can’t adequately protect you from economic downturns and inability to make payments to creditors. . If you are a sole proprietor, the creditor can levy against your personal property, as well as your business assets.

- Most policies have numerous exclusions from coverage. In one case, a company was stunned to discover that its “business interruption insurance,” would not pay because the fire that rendered the office inaccessible occurred in the building next door.

- The amount that your policy will pay is limited.

- Most insurance doesn’t protect you against far more probable events. The classic "uninsurable risk" is “punitive damages,” which go beyond merely compensating the person who sues you and "punish" you for conduct that was more than simply negligent.

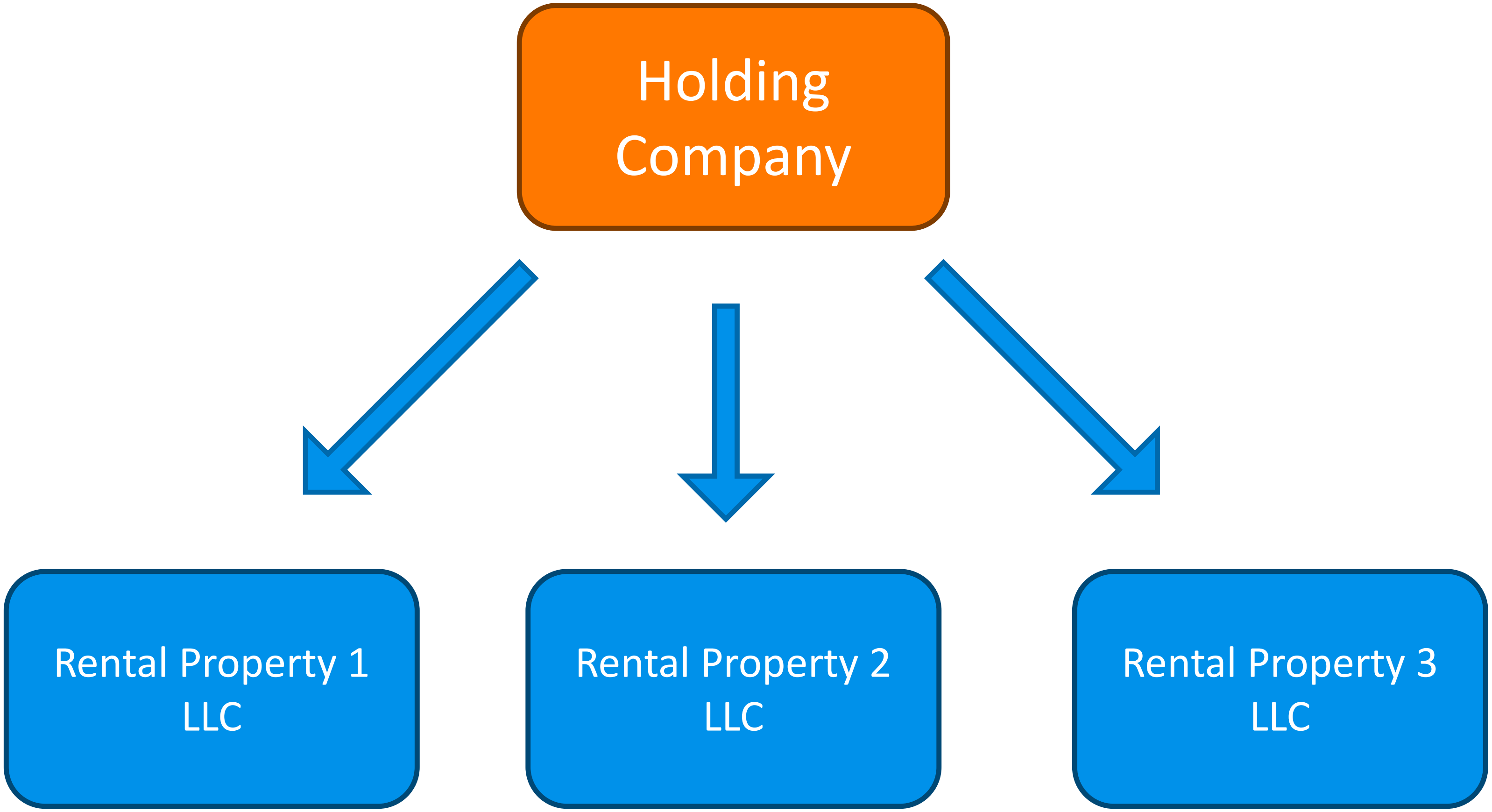
Irrevocable Life Insurance Trust

1	Greatest protection afforded by owning life insurance in Irrevocable Life Insurance Trust (ILIT)
2	ILIT protects value from creditors of insured and trust beneficiaries
3	ILIT also excludes death benefits from taxation of insured's estate
4	ILIT may be drafted to provide discretionary distributions of trust assets to spouse and/or decedents
5	May Allow ready access to cash surrender value

Irrevocable Life Insurance Trust

6	In general, law of jurisdiction where administration takes place controls
7	Trust should specifically state what state law will control
8	Have to understand where the trustee must be based to be effective
9	Alaska, Rhode Island, South Dakota and Nevada adopted legislation allowing creation of irrevocable trust providing discretionary benefits to trustmaker without assets being included in trustmaker's estate at death

UNSAFE ASSETS
Rental Properties



UNSAFE ASSETS
Rental Properties

If you owned multiple rental properties in your name, held your assets in your name, and someone were to slip and fall at one of the rental properties, all of the rental properties and all your personal assets could be taken to satisfy a judgment against one property.

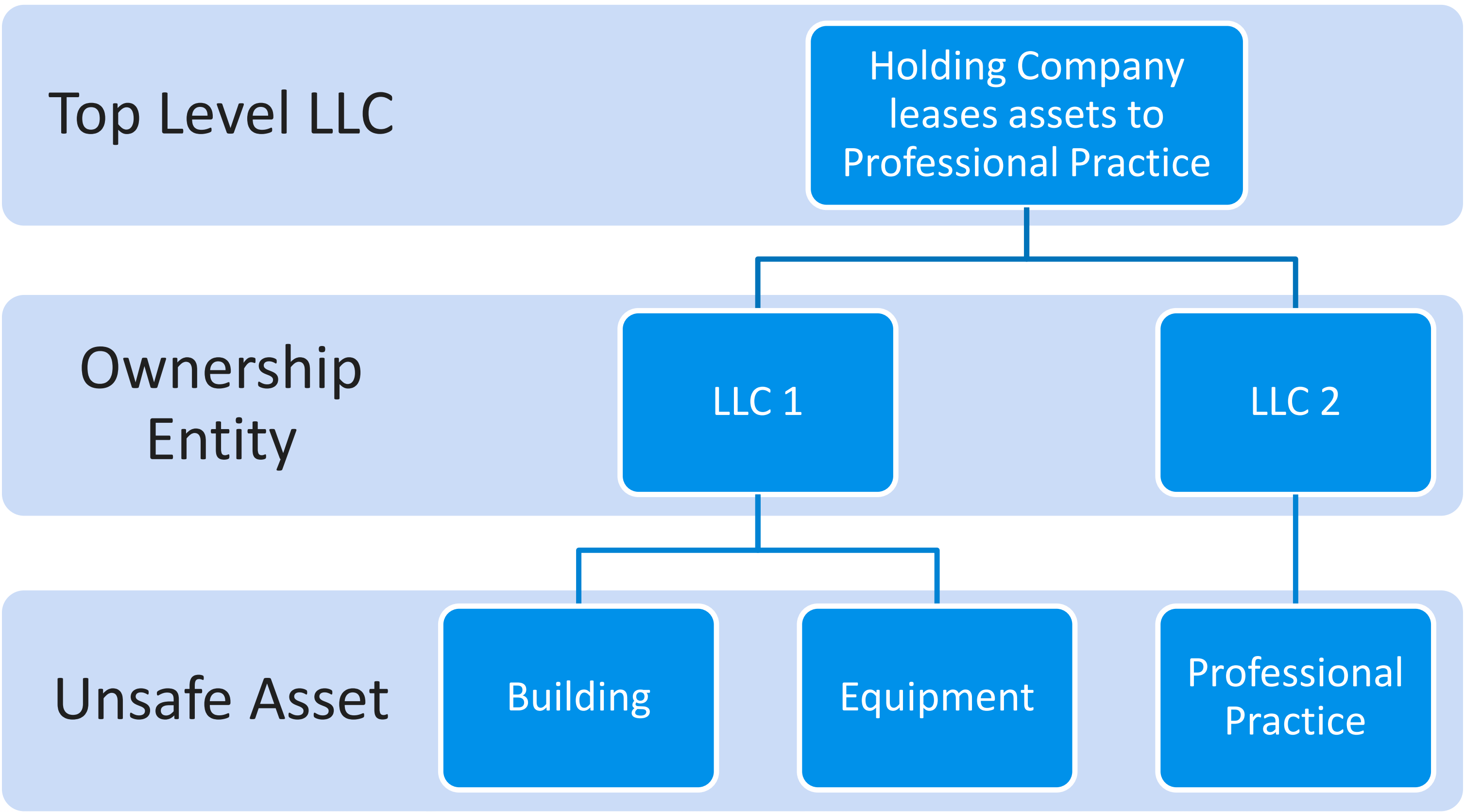
If you were to own multiple properties in one LLC, the lawsuit at one property also effects the other properties in the LLC. Only the LLC that owns the property involved in the lawsuit would be affected.

There would be no spillover effect to your other assets. The other properties and family assets would be shielded from liability under this arrangement.

The best approach for an unsafe asset, such as a rental property, is to own each property in its own entity.

Generally, the LLC is the proper way to hold unsafe assets, since no individual member or manager of an LLC can be sued for an LLC-related obligation.

Asset Protection
Professional Services



Asset Protection
Lawsuit is filed

Lawsuit Against Building	
No effect on Professional Practice	No effect on personal assets

Lawsuit Against Professional Practice	
No effect on building	No effect on personal assets

Lawsuit Against Personal Assets	
Has no effect on building	No effect on professional practice

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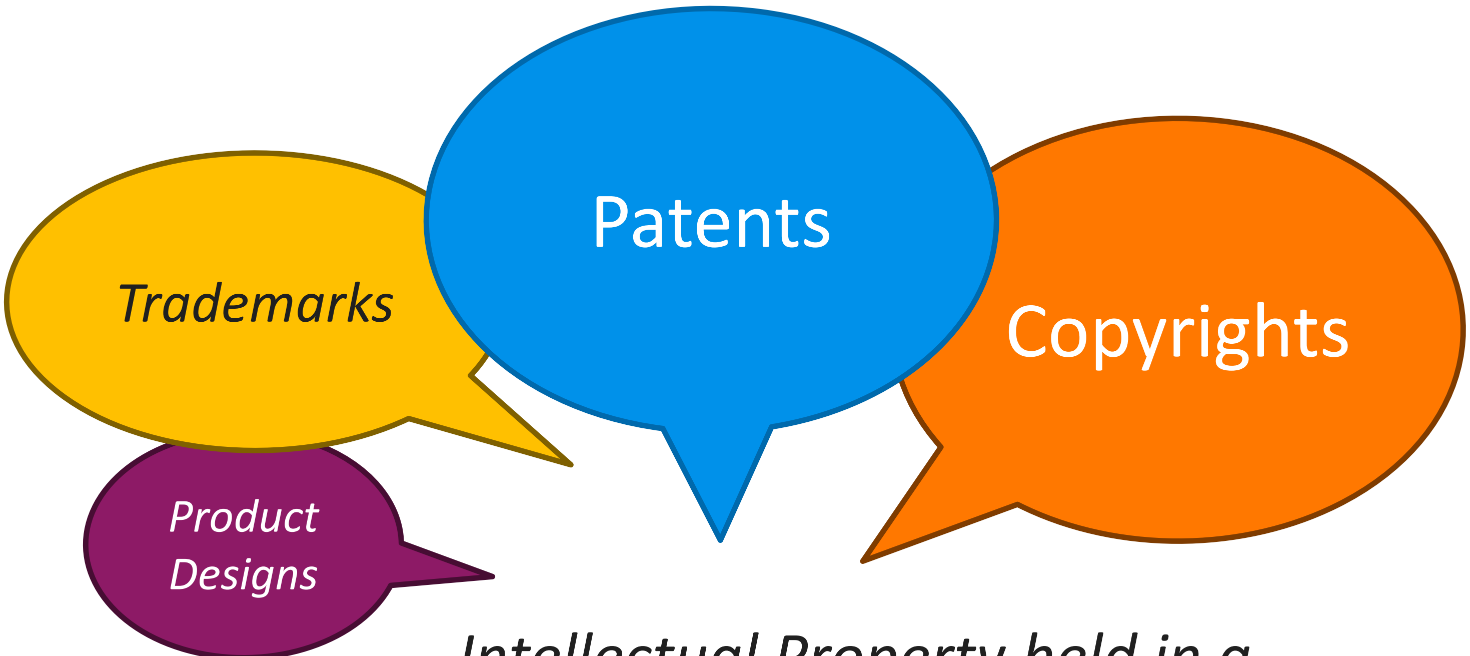
Intellectual Property

Use of Licensing Agreements



Intellectual Property held in a separate company and are made available through a Licensing Agreement

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Armageddon – It May Be Required

Bankruptcy is a tool to negotiate a settlement when other party could get nothing

Lawsuit is filed against the operating entity

Large judgment is awarded

Entity declares bankruptcy to eliminate the pending judgment without losing any assets, since the operating entity owns nothing.

Piercing the Corporate Veil – Loss of Liability Shield

Signing a Personal Guarantee	Offering your property as collateral	Signing a contract in your own name	Using credit cards or personal loans to fund a business
Evidence of Fraud or Misrepresentations	Sloppy recordkeeping	Alter Ego	No real separation between the company and its owners
Creditors suffered an unjust loss	Failure to follow corporate formalities	Co-mingling assets	Personal use of company assets without proper documentation
Undercapitalized organization	Corporation is a sham	Officers or directors not functioning in their business capacities	For payment of payroll taxes, including federal and state withholding and FICA taxes

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Revocable vs. Irrevocable Trusts

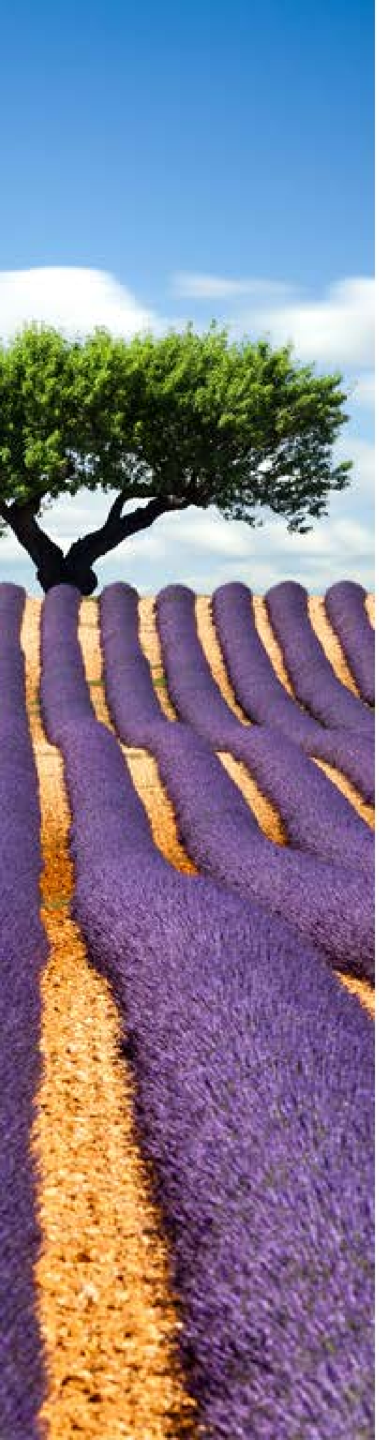
Ownership of the Property	Once assets are placed in an irrevocable trust, the property no longer belongs to the Grantor; it now belongs to the trust. That does not mean that one can no longer live in the house that they have lived for 30 years or that one can no longer drive the car owned by the trust, it just means that you don't own it. Just like renting a house or leasing a car, the assets are still there for your benefit and a trust can sell the house and buy another that can be lived in. A properly set-up, implemented, and funded irrevocable trust can provide the best possible protection of assets from claims by creditors, as the assets have literally changed ownership. This is very different from a revocable trust situation where the Grantor retains completed ownership of the property.
Modification	An irrevocable trust agreement generally cannot be changed, amended, modified or revoked even with a court order, thus offering the coveted asset protection, whereas a revocable trust allows the instrument to be modified or revoked at the Grantor's discretion; this means that the assets in a revocable trust are still available for anyone to take. The term 'irrevocable' generally implies that the trust cannot be changed under any circumstances, but this may not be the case: A special power of appointment in the trust document may allow the Grantor the freedom to modify the named beneficiaries at his discretion without affecting the benefits of the irrevocable trust.
Estate Taxes	With an irrevocable trust, since the Grantor no longer owns the property, it is not included in calculations of the total value of property at the time of death. With a revocable trust, since the Grantor still owns the property, the value of the property in the trust will be included in the calculation of the total value of property at the time of death.

Revocable vs. Irrevocable Trusts

Protection of Assets	With an irrevocable trust, since the assets in the trust no longer belong to the Grantor, they are generally protected from creditors or from other claimants. This serves to protect assets from the claims of creditors, Medicaid, and even divorcing spouses. This device has been used to avoid Medicaid restrictions which require an elderly person who is going into a nursing home to spend a majority of his own money before Medicaid provisions kick in (referred to as spend-down provisions). This advantage also comes into play for individuals seeking to shield assets from legal claims. In opposition, with a revocable trust, the assets are not protected: since the Grantor retains full control and power over the assets, he is still liable for legal claims against the assets.
Medical Planning	With an irrevocable trust, one of the prime benefits sought during elder planning is to enable the elderly Grantor to obtain Medicaid benefits if he moves into a nursing home: By placing assets into an irrevocable trust five years ahead of the actual need, the Grantor has secured his assets for the benefit of named beneficiaries. This does not work in the case of revocable trusts, where the Grantor remains ownership of the assets.
Appointment of a Trustee	With an irrevocable trust, the Trustee generally is, and should be, an independent person chosen by the Grantor in order to create a fiduciary duty to protect the assets - family members as a Trustee does not offer this same benefit. The Trustee will manage the assets in the trust and is bound by its provisions. By having a Trustee who is a separate entity from the Grantor, it is apparent that the Trustee is exercising independent control over the trust assets. With a revocable trust, the Grantor often also serves as the Trustee, maintaining control over the assets in the trust.

Revocable vs. Irrevocable Trusts

Income Tax Return	With an irrevocable trust, generally, the trust has its own tax identification number (EIN), files a 1041, and then either pays the tax itself (not typical) or issues a K-1 to the Grantor (or the Beneficiaries if Grantor is deceased) for income which flows through to the recipient's 1040 return through Schedule E. With a revocable trust, there is no such discrepancy, the taxpayer files everything on their 1040 as if they personally owned the assets that generated income - because they do own the assets if they are within a revocable trust!
Purpose of Irrevocable Trust	After reviewing the major differences between irrevocable and revocable trusts, it is clear that the main purpose of an irrevocable trust is to protect assets: It prevents the property from being included in the valuation of total assets of the decedent at the time of death, thereby protecting the assets within the trust from estate taxes as well as the probate process, and it protects the assets from creditors because they no longer own the asset.
Purpose of Living Trust	In contrast, the main purpose of a revocable trust is to avoid the process of probate, thus simplifying the transfer of assets to named beneficiaries and removing the probate court from the process. Deciding whether one of these two devices will meet the needs of the Grantor depends upon the ultimate goals for the trust. If you keep assets in your personal possession, they can be targeted by persons suing you. Assets you are leaving behind to loved ones can also be targeted Revocable living trusts do not protect assets from creditors or claimants



IRREVOCABLE TRUST

Requirements for Creditor Protection

- Transfer to trust cannot be fraudulent conveyance.
- Transfer cannot render Trustmaker insolvent.
- Transfer cannot be intended to remove assets form the reach of a specifically known, or anticipated, creditor
- States that allow such transfer have different Statute of Limitations to commence suit claiming fraudulent conveyance (Nevada 2 years, Alaska 4 years).
- Trustmaker cannot retain power to revoke the trust.
- Trustmaker cannot retain entitlement to income or principal from trust; rather may be eligible for discretionary distributions in the discretion of a trustee other than the Trustmaker.

Advantages/Disadvantages of a FLP

General Partner has 1% ownership and has liability and control

Limited Partners have no liability for entity debt

Charging order not attractive to creditors

General Partner has liability, but only subject to corporate assets

Limited Partner has No Liability and No Control

Can transfer assets likely to appreciate and minimize estate tax

Can begin transfer ownership of assets without control.

Can get discounts to minimize gift tax

Family Limited Partnerships have gained popularity

Creditors of limited partner can get charging Order

Costs (Attorney's fees, Appraisals and upkeep) Complexity

Ownership Transfer is Irrevocable

Abuse has invited scrutiny from the courts and IRS

Case Study

Dean Homayouni Law Office

Dean Homayouni is an advisor who operates a successful litigation law practice. He owns the building and equipment that has a fair market value of $2 million.

Case Study

Dean Homayouni Law Office

Step One:

Implement a plan where Dean Homayouni Professional Corporation owns the business

Dean Homayouni is the sole owner of the business.

Family Limited Partnership

Step Two:

Real Estate

$ 2
Million

Transfer

Family Limited Partnership

200 Total Shares

2 General Partner Shares
198 Limited Partner Shares

1 Share = $10,000

Limited Liability Company vs. S Corporation

Ownership

Ownership of S Corporation has some restrictions. S corporations are restricted to U.S. citizens as shareholders. An S corporation cannot be owned by C corporations, other S corporations, partnership, LLCs and many kinds of trusts. LLCs have no such restrictions. Both have pass through taxation. Furthermore, unlike corporations, a return of capital from the LLC to a partner/LLC member usually doesn't trigger a tax and a distribution of profit need not be proportional to one's ownership interest in the company.

Taxation

An LLC may be taxed as a C corporation, S corporation or partnership if owned by multiple taxpayers or as a disregarded entity if owned by only one taxpayer. Partnership taxation is often seen as preferable to S or C corporate tax status, because it avoids a C corporation's double taxation and the structural limitations required of S corporations. S corporations also can have an advantage with the payment of self-employment taxes. It is generally assumed that most income from an LLC is subject to self-employment taxes, whereas the dividends from an S corporation are not.

Asset Protection

Not suitable for estate planning vehicle, as control is ultimately in the hands of the stockholders. In a planned gifting scenario, once majority control passes to children from parents, children can take full control of the company.

Limited Liability Company vs. S Corporation

Ability to Transfer Ownership	The main benefit of corporations is its stock may be freely transferred without the consent of other shareholders or corporate management. This is essential for any publicly traded company. LLC ownership generally is not freely transferrable . The operating agreement generally requires approval from the other members before ownership can be transferred.
Management	Certain corporate decisions require stockholder votes. Important decisions must be through formal corporate board meetings. Failure to observe these formalities may allow creditors to pierce the corporate veil and directors and/or shareholders can then be personally responsible for company debts. LLC managers have broad leeway to make decisions without formality — except in those few instances defined in the LLC's operating agreement.
Asset Protection	LLC would be more likely to offer superior liability protection over an S corporation based on the individual state laws where the entity is incorporated. If your corporation is sued, all of the assets owned by your corporation can be taken to satisfy the judgment. The corporation does provide some protection of personal assets with what is called the corporate veil. The corporate veil is supposed to prevent a creditor from going after personal assets to satisfy a business debt. However, the corporate veil can be pierced, enabling your personal assets to be seized to satisfy a judgment against your business.

Avoiding Probate is Part of the Asset Protection Process

Probate is the court supervised process, controlled by state law, which transfers title to your assets to you heirs upon your death if you die intestate or with a will.

SUMMARY COMPARISON

Probate vs. Living Trust

	PROBATE	LIVING TRUST
Cost	≈7% of the Estate	\$2,000 - \$5,000
Time	1 – 2+ Years	4 - 8 Weeks
Privacy	None	Maximum
Contesting	Easy	Difficult
Incapacity	“Living Probate”	No Probate
Minors	Guardianship	No Guardianship
Control	None	Maximum

PROBATE FEES

CALIFORNIA PROBATE FEES (§10800 et sec)
These fees can be charged by the attorney…..and the Court.

California Example – Every State is Different

$ 15,000	$ 1,200
100,000	8,000
200,000	14,000
500,000	26,000
1,000,000	46,000
2,000,000	66,000
5,000,000	126,000

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Common Purposes of a Trust

- **Avoid Probate [time and costs]**
- Preserve Estate **Tax** Exemptions
- **Control** Distributions and Conditions of Inheritance
- Maintain **Privacy** of Your Affairs

Asset Protection and Estate Planning

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Top 10 Reasons for Failure to Implement an Estate Plan

1	I just don't see the need to do estate planning.
2	After I'm gone, I don't care. Let 'em fight it out.
3	I don't plan on dying anytime soon.
4	I don't want to pay for it.
5	I don't want to spend the time.

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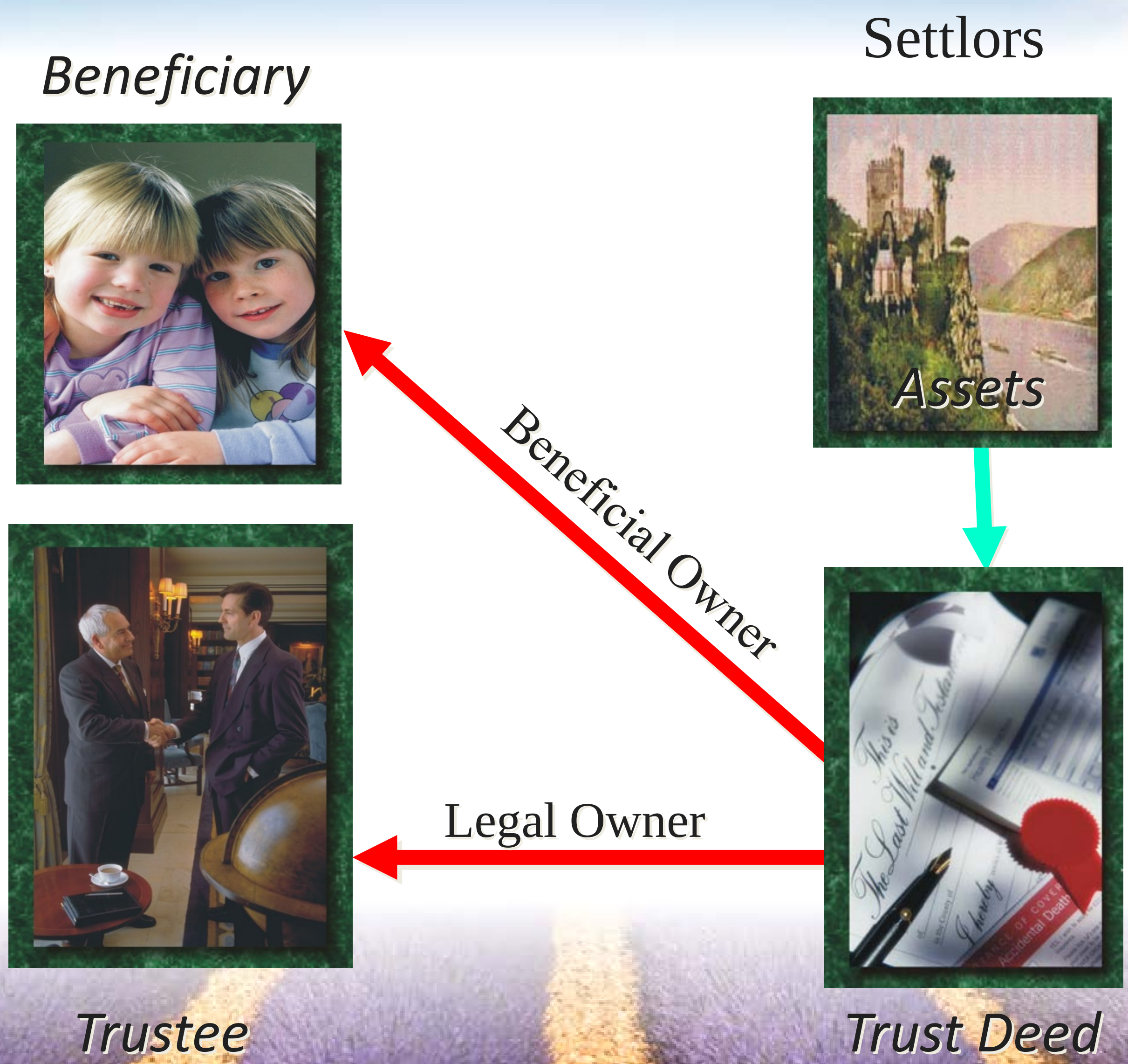
Top 10 Reasons for Failure to Implement an Estate Plan

6	I don't want to talk about my family.
7	I don't want to talk about my money.
8	I don't even want to talk to my kids.
9	I don't want to ruin my kids.
10	I don't trust my kids.

What is a Trust

In general terms all Trusts behave the same…



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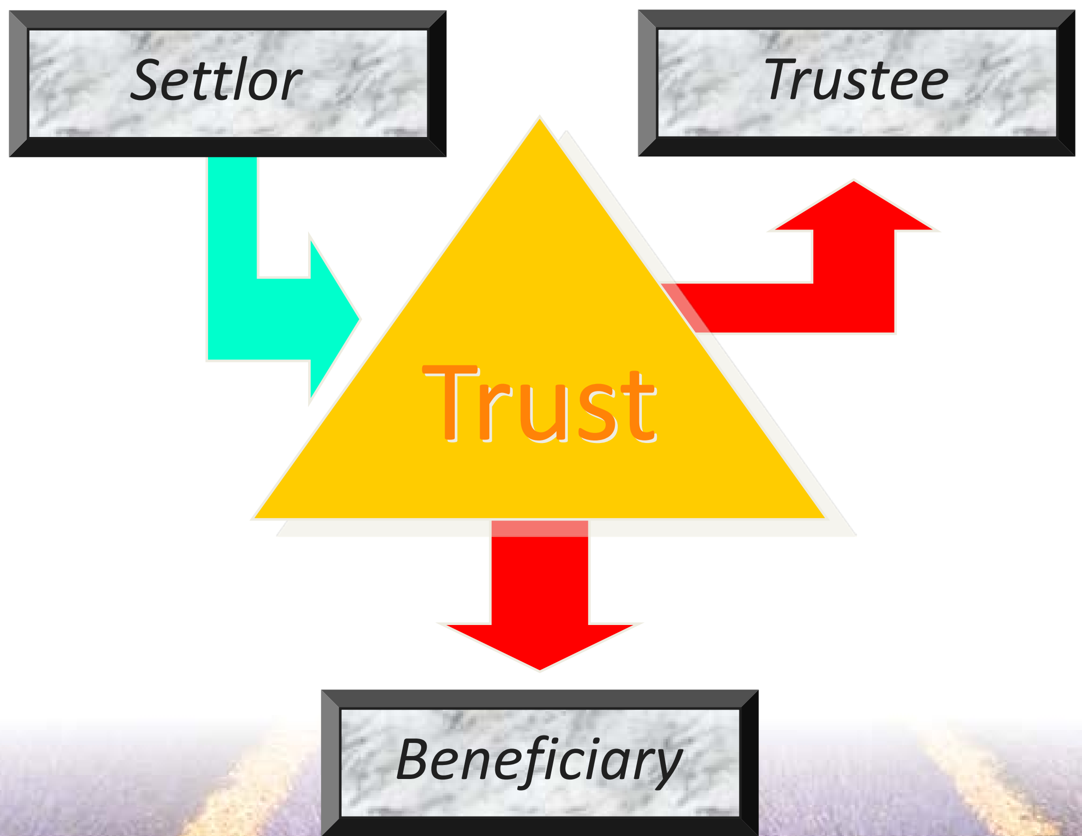
What Is A Trust?

Revocable vs. Irrevocable



How a Funded Revocable Living Trust Works

Husband's Separate Property

Co-Owned Property of Husband & Wife

Wife's Separate Property

Revocable Living Trust of Husband & Wife

At 1st Death

No Probate

Decedent's Bypass Trust: $5,000,000 in 2011 Estate Tax Exclusion Amount

Surviving Spouse's Trust: $1,000,000 in 2014 Estate Tax Exclusion Amount

At 2nd Death

No Probate

Outright to Children

Do you have any questions?

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Contact Information

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