



Law Offices of
Boyd & Boyd, P.C.

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Hyannis, MA 02601
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What Do I Do When My Loved One Dies?

The Basics of Estate & Trust Settlement

Boyd & Boyd, P.C.
1555 Iyannough Road, Suite 1B West
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At Boyd & Boyd, P.C.

We help families like yours:

- 1. Protect the wealth you have;**
- 2. Employ strategies to increase the wealth you have; and**
- 3. Pass a legacy that can live for generations.**

This is done through Wealth Planning & Preservation:

Estate Planning

IRA Planning

Asset Protection Planning

Legacy Planning

Income Tax Planning

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Announcements

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Why is Estate Settlement Necessary?

1. Transfer of Ownership of Assets
 - a) Who receives Decedent's property?
 - i. Title, beneficiary designations, statutes & estate planning documents control
2. Settle Final Debts & Expenses
3. File Estate Tax Returns
 - a) File if required By law
 - b) Maybe file even if NOT required
4. Address Income Tax Issues
 - a) File final returns
 - b) Plan for future taxes
5. Post-Mortem Planning
 - a) What changes should be made to protect others?

How Can the Attorney Help?

Two primary functions:

1. Provide guidance, structure & proper timing
2. Oversight of all administrative acts

With Guidance, Structure and Timing

Estate settlement touches **every aspect** of decedent's life

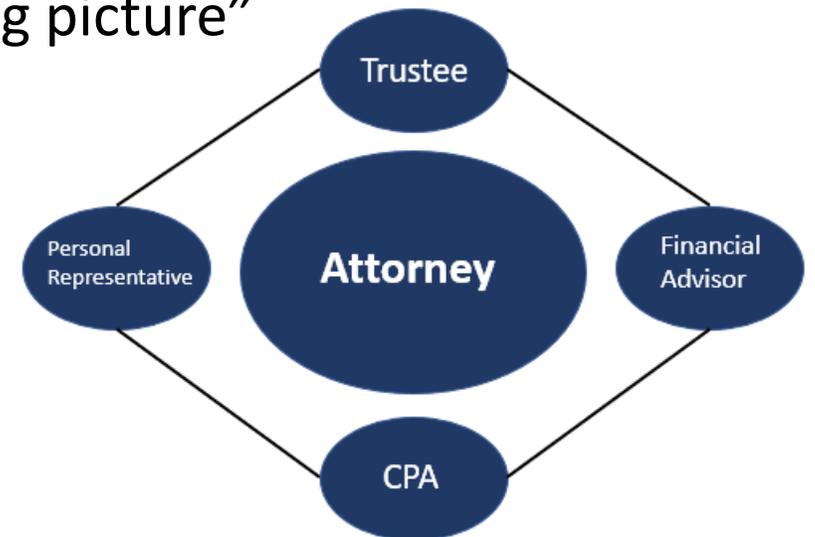
- This can impact the lives of the survivors
- Client's can be overwhelmed with the work that is required
- Where do I start? What do I do next?
- Attorney provides guidance to address issues and structure to settle the entire estate

Timing – Many deadlines not to be missed:

- 30 days after ANY change of Beneficial Ownership
 - File Report w/ FinCEN Under CTA
 - \$500 / day penalty for late filing
- 6 months after Date of Death – Alt Valuation
- 9 months after Date of Death – Disclaimer/Est Tax
- 9 months after Irrevocable Act - Disclaimer
- September 30 after Date of Death – Retirement Accts
- October 31 after Date of Death – Retirement Accts
- December 31 after Date of Death – Retirement Accts
- December 31 of year after Date of Death – Retirement Accts

With Oversight of All Acts

- Many individuals may assist with the settlement process
 - Personal representative, trustee, surviving family members, accountant, financial advisor, etc.
 - Attorney acts like a symphony conductor.
 - Oversees to make sure all team members take appropriate steps at the right time, in the most beneficial way, using the correct information
 - Separate “specialists” focus on certain issues
 - Attorney sees the “big picture”



Why is Estate Settlement Necessary?

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With Transfer of Assets:

Review ownership of all assets

Title could be held:

- Individually
 - *Probate requires – what type?*
- Joint with one or more individuals;
 - *Intentionally or by mistake?*
- Individually with beneficiary / transfer on death designation;
 - *Is a contingent beneficiary named?*
- In trust
 - *What do terms of trust require?*

TITLE CAN DRAMATICALLY ALTER TERMS OF WILL & TRUST!!!

With Transfer of Assets:

Review estate planning documents

- How does title affect the will & trust?
- Who is in charge ... and are they right for the job?
- Are documents drafted properly?
 - *Errors could cause unnecessary taxes*
 - *Court intervention may be necessary*
- Are estate taxes addressed?
 - *Title problems could increase taxes*
- Identify heirs/beneficiaries & amount of inheritance

Review surviving spouse estate plan

- Decedent may have been listed as fiduciary

With Settling Debts & Expenses:

Estate representative is personally liable for improper payments

With Settling Debts & Expenses: Cont.

- With Estate Taxes:
- Determine assets subject to tax & assets NOT subject to tax
- Value properly
- File on-time to avoid penalties & interest
- Structure estate to minimize future estate taxes

- With Income Taxes:
- Proper withdrawals from retirement accounts
- Minimize future capital gains taxes

- With Post-Mortem Planning:
- Shift assets to minimize future estate tax
- Revise survivor's estate plan to make sure he/she is still protected

What You Do NOT Need the Attorney For

All funeral related functions

- Surviving spouse or next of kin has legal possession of body for burial (In RE: Spring, 380 Mass. 629)
- Public Burial Lots
 - *Pass to heirs at law (M.G.L. ch. 114 & 31)*
- Expenses
 - *Usually paid by family*
 - *Estate or trust can reimburse if not extravagant*

What You Do NOT Need the Attorney For Cont.

Automobiles

- Registration effective until expiration
- Insurance
 - *Effective until renewal*
 - *Cover blood/marriage relations of Decedent who are in proper possession of auto*

*Caution: If personal representative allows inappropriate use of car, he or she is personally liable if accident occurs

General advice: Keep car OFF the road!!!

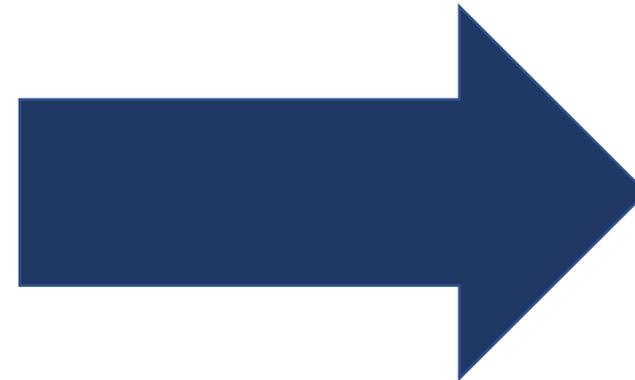
What You Do NOT Need the Attorney For Cont.

Automobiles Cont.

1. If joint between spouses
 - a) *Spouse can re-title into his/her name*
2. If owned by Decedent only
 - b) *Presumption: Title passes to spouse (M.G.L. ch. 90D &(15)(a))*
 - i. *Death certificate, affidavit & RMV form*

Initial Step

After funeral, what is the most important thing to do next?





Do NOT Act Until You Are Fully Aware of All Consequences

Even simple tasks may cause disastrous results

- Re-titling joint accounts
 - *Prevents disclaimer*
- Notifying Financial Institutions
 - *Notice may result in accounts being frozen*
- Claims on Qualified Plans (IRAs/401(k)s)
 - *Loss of lifetime of tax-deferred growth*
- Spousal Rollovers/Life Insurance Claims
 - *Unnecessary estate taxes at 2nd death*



INSTEAD ...

Contact Trusts & Estates Attorney



Attorney should specialize in estate & trust administration



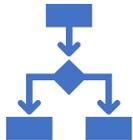
Not required to hire drafting attorney



What to expect:



Fees usually charges on hourly basis



Starts & stops



Entire settlement process: 1 year+

First Meeting with Attorney

Purpose:

- Attorney - Gather information, provide guidance and reassurance
- Client - Provide documentation and information, ask questions

**Hollywood “will reading” typically does not occur*



Important Documents to Bring

Estate planning
documents
(original)

Certified death
certificates

Prior year(s)
income tax
returns

Prior gift & estate
tax returns (if any)

Deed(s) to home
and all other real
estate

IRA, 401(k),
403(b), 457
statements

Checking, savings,
money market, CD
statements

Brokerage account
statements

Stock certificates

Savings bonds

Life insurance
contracts

Annuity
statements

Proof of debts &
expenses

Certificates of title
for vehicle

Anything else of
importance

Step 1: Compiling Inventory

Look before you leap

- Actions taken at beginning might foreclose later opportunities
- Discover problems in advance so that there is time to resolve them
- Plan of action and informed decisions are key to smooth settlement process
 - Do NOT assume
 - Do NOT rush
 - Keep an eye on the “big picture”

*“Look before you leap for as you sow, ye are like to reap”
– Samuel Butler, British Novelist*

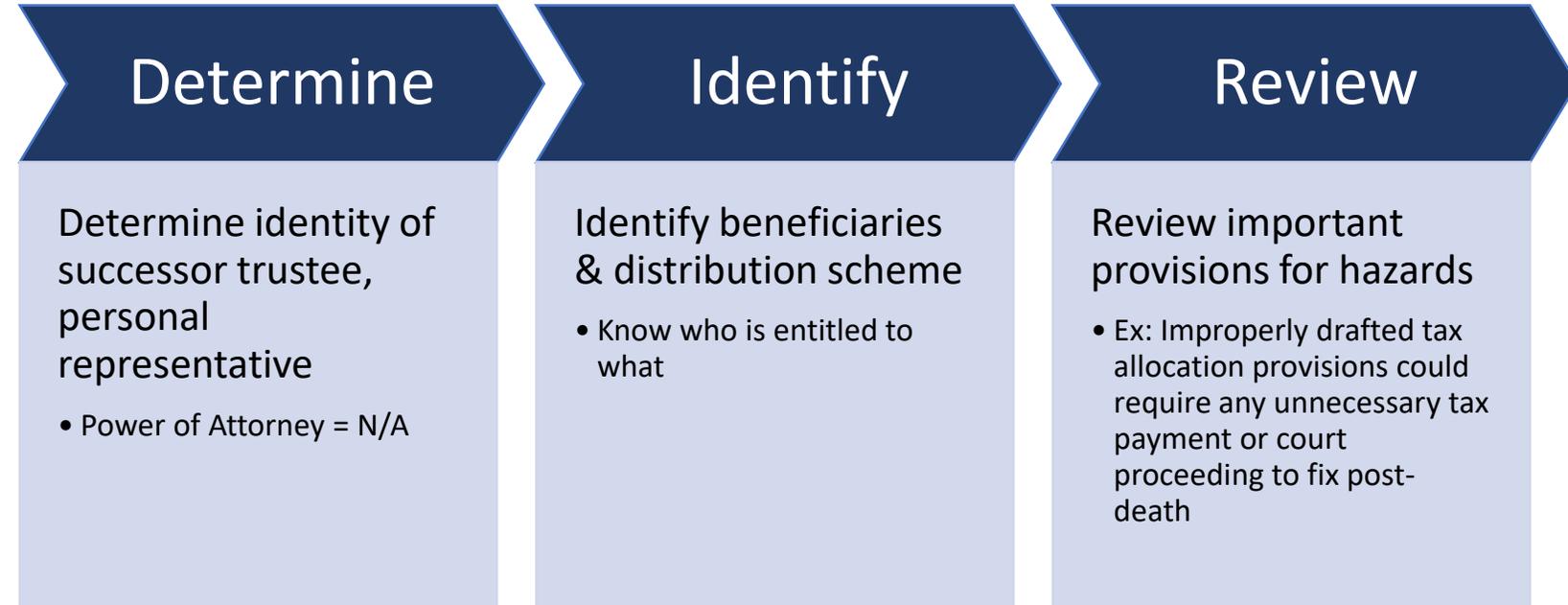
Review Estate Plan Documents

1

Review Estate Planning Documents

- Will
 - Who is PR
 - What happens to Personal Property
 - Is it a “Pour Over” Will?
- Trust & IRA Trust
 - Who is Trustee
 - Who are the beneficiaries
 - Are there special distributions

Review Estate Planning Documents



Determine: Who is in charge?

2

Have Fiduciaries Accept their role(s)

Your Choice of Fiduciary (PR/Trustee) will determine how successful the estate settlement will be

- Don't Choose too many
- Don't think the kids will work well together after your death if they don't work together while you're alive
- Don't give a busy child the job
- Don't rule out a professional

Have Fiduciaries Accept Roles

Needed:

- Successor trustee of living trust
- Successor trustee of IRA inheritance trust
- Successor trustee of real estate trust
- Personal representative of estate

Execute paperwork

- Acceptance or declination
- Authorization to disclose
- HIPAA authorizations
- Certificate of Trust

Estate Settlement Process Begins

Using the CARESSM Process

Each step in the CARESSM process is designed to honor the legacy of the deceased, ensuring that their final wishes are carried out with the utmost respect and diligence.

Compiling Inventory

Appraise Assets

Retitling Assets

Evaluating Taxes

Splitting & Distributing the Estate

Step 1: Compiling Inventory



1

Locate Assets, Determine ownership of assets
& beneficiary designations

Ownership & Beneficiaries

How Assets are owned will impact all other acts of settlement process & effectiveness of estate plan*

*This is why proper funding of your Trust is **VERY** important*

- Real estate
 - *Search Registry of Deeds for ownership*
- IRAs & qualified plans
 - *Contact custodian for most recent beneficiary designation on file*
- Bank & brokerage accounts
 - *Review statement for date of death to check title*
 - *Confirm with company if unclear*
- Life insurance & non-qualified annuities
 - *Contact custodian for most recent beneficiary designation on file*

Ownership & Beneficiaries

ESTATE OF							
Estate Asset Allocation	Date of Death:	Tel #	Date Updated:				
	DOD Title	Est Value	DOD Value	Alt Value	Debts	Distribution Date & Value	Comments
Real Estate (address)							
Retirement Plan / IRA							
Stocks, Bonds, Mutual Funds and Brokerage Accounts							
Cash, Bank Accounts, CDs							
Promissory Notes							
Closely Held Business							
Life Insurance & Annuities							
Misc Property							
Totals		\$ 0.00	\$ 0.00	\$ 0.00	\$ 0.00		

**Step 2: Appraise
Assets as of Date of
Death**

Two Reasons

Set value for estate taxes

- Tax filing may/ may not be required
- Careful of pensions!

Sets Adjusted Cost Basis

- Minimizes capital gains taxes

Appraisal Issues

Not as easy as it sounds

- Real estate
 - Certifies appraiser required
 - IRS Regs prohibit use of Realtors' Market Analysis
 - Assessed Value is not market value
- Investment accounts (IRAs & brokerage accounts)
 - Do NOT use closing value for stocks, bonds, ETFs, etc.
- Bank accounts
 - Include accrued interest to date of death
 - Exclude uncleared checks (but uncleared checks are a debt)
- Life insurance & annuities
 - Policy face value may be wrong
 - Paid up additions
 - Obtain Form 712

Step 3: Retitling Assets

Change ownership to Fiduciary (PR or Trustee) or to Beneficiary of LI, IRAs

Necessary to take all future actions, including ultimate distribution

Fiduciary obligation to properly manage assets

- Review investment portfolio
- Maintain insurance

Access to funds required

- Provide for surviving spouse & family
- Pay administration costs & expenses
- Pay pending estate & income taxes

Ability to Control Assets Depends on Type of Ownership

Methods of ownership

1. Individually
2. Individually with beneficiary designation
3. Co-ownership
 - a) Pass by Operation of Law
 - i. Joint tenants
 - ii. Tenants by the entirety
 - b) Pass By Probate
 - i. Tenants in common
4. In trust
 - *Best method*: Accomplishes probate avoidance, testamentary disposition, incapacity care planning, estate & income tax planning and asset protection

Joint Property & Beneficiary Designations

Simple to take possession:

Joint property

- Passes by law to surviving owner
- N/A to tenancy in common property
- Beware of unintended consequences
 - Unintentional disinheritance
 - Creditor exposure
 - Gift Tax Issues
 - Higher estate taxes at 1st death (if > exemption)
 - Higher estate taxes at 2nd death (Spouse with too much \$)

Beneficiary designations (IRAs, life insurance, annuities, brokerage accounts)

- Passes to named beneficiary by contract
- Claim form & death certificate
- Designation effective?
- Careful with IRAs

Individual vs. Trust Owned Assets

Individually Owned (No POD/TOD/Bene Designation)

- Probate Required
- Court involvement
- Controlling document = will
- Fiduciary = personal representative

*Often will does nothing but “pour-over” estate assets into the trust

Trust Owned

- No probate
- No court involvement
- Controlling document = trust
- Fiduciary = trustee

Probate

Probate: Legal process to prove decedent's will and appoint a personal representative to carry out its terms

- Only method available to gain control over assets held in decedent's name alone
- Separate proceeding required in every state where property is located
- Three forms in Massachusetts
 - Varies in complexity
 - Form depends on fact & circumstances of each case
- Negative aspects of probate
 - Court fees
 - Higher attorney fees
 - Loss of privacy
 - Slow access to funds

Probate Process

Initial filing

1. Petition for probate and appointment
2. Original will (intestacy if no will)
3. Certified death certificate
4. Bond of personal representative
5. Military affidavit
6. Assents of interested parties
7. Uniform counsel certification form
8. Draft decree and order
9. Filing fee

Probate Process

After initial filing

- Interested parties must receive notice
 - Requirement vary depending on type of proceeding (notice prior to filing in case of informal probate)
 - Publication in newspaper
 - Proof of service must be made to court
- Return day
 - Date by which parties can object to will or personal representative
 - Usually about 8 weeks after initial filing
 - If no objection and all requirements met, court issues order
 - Admitting will to probate
 - Determining heirs to decedent
 - Appointing personal representative

Nominee in will has no ability to control assets until this process is complete

Probate Process

Further probate matters

- Preparation & service of inventory
 - Inventory = itemized list of probate assets and respective values
 - Purpose:
 - Informs heirs of assets under management
 - Set benchmark to measure performance of personal representative
 - Filed with court or served to devisees within 3 months of death
- Initiate ancillary proceedings in other jurisdictions (if required)
 - Decree of domiciliary jurisdiction required
- Other proceedings depending on facts & circumstances
 - License to sell real estate
 - Appointment of temporary personal representative
 - Petition for declaratory judgment

Probate vs. Trust

Probate

- Personal representative can only take control of assets when court allows
 - Upon receiving “letters testamentary” PR may:
 - Brokerage accounts – re-title account in name of estate
 - Bank accounts – open checking account in name of estate
 - Life insurance & annuities payable to estate – make claims and deposit proceeds into above accounts
 - Delay inherent in probate process causes problems
 - Loss of value due to market conditions
 - Family unable to use assets as needed

Trust

- Immediate access and control of assets
- Same re-titling of assets occurs

All fiduciaries have responsibility to manage assets prudently until distributed to ultimate inheritor

Step 4: Evaluating Taxes

Fiduciary Must Consider:

- Estate Taxes – Date of Death + 9 months
- Income Taxes
 - 15th day of 4th month after close of tax year
 - Decedent's Final Personal Return
 - Decedent's Final Gift Tax Return
 - Fiduciary Income Tax Returns
 - Probate Estate
 - Trust
 - Administrative Trust
 - Trust Shares
 - Other Irrevocable Trusts
 - Generation Skipping Transfer (GST) Tax
 - State & Local Taxes

Estate Taxes

Gross Estate:

- Real estate
- IRAs, qualified annuities, pensions
- Stock, bond & mutual fund accounts
- Checking, savings, CDs, money markets
- Life insurance proceeds
- Non-qualified annuities
- Automobiles & misc. personalty
- Revocable trust assets
- Deceased spouse's trust (possible)
- Powers of appointment

Deductions:

- Funeral expenses
- Final debts
- Administrative expenses
- Charitable bequests
- Assets to/for spouse
- Exemption amount

Tax Rates:
Federal: 40%
MA: ± 10%

Exemption Amounts

Year	Massachusetts Exemption Amounts	Federal Exemption Amounts
2020	\$1,000,000	\$11,580,000
2021	\$1,000,000	\$11,700,000
2022	\$1,000,000	\$12,060,000
2023	\$2,000,000	\$12,920,000
2024	\$2,000,000	\$13,610,000
2025	\$2,000,000	\$13,990,000
2026	\$2,000,000	\$ 15,000,000

*Portability Election available for US Estate Tax only

Filing requirements

Gross estate value

- Required when estate exceeds exemption amount
 - Federal - \$13,990,000 (2025) (Form 706)
 - MA - \$2,000,000 (Form M-706)
 - Valuation determined during Step 1 of settlement indicate filing requirement
- Filing still required if no tax is due

Optional filing – *Why file even if not required?*

- Federal only
 - Statute of limitations
 - Basis adjustment
 - Portability election

Portability

- New concept – transfer unused exemption amount to surviving spouse
 - Married couple can pass twice the US exemption free of federal estate tax!
 - Help insulate against future estate changes

Example:

- Spouse 1 dies in 2025 with estate valued at \$2,000,000. PR elects to “port” unused exemption amount to Surviving Spouse’s exemption to use during life or at death
- Surviving Spouse now has \$27,980,000 (her own \$13,990,000 + \$11,990,000) exemption to use during life or at death
- Use to minimize future estate taxes
 - What if exemption amount changes?
 - Be prepared to use exemption before 2026

Portability

Requirements:

- Election (not automatic)
- Timely filed federal estate tax return

Cons:

- Tolling of statute of limitations
- Filing of federal estate tax returns
- Available: US & MD only

Filing Requirements

Due Date:

- 9 months after date of death
- Automatic 6-month extension for Feds
 - MA NOT automatic but rarely refused
 - Must file extension before 9-month mark
 - Payment required at 9 months to avoid penalties and interest

Who Files:

- Duly appointed personal representative of estate –OR–
- Party in possession of assets
 - Surviving spouse, children, trustee

Filing Requirements

Closing Letters

- Liability not fully discharged until closing letter received
- MA: 2-3 months
- Feds: must be requested (can be years before rec'd)
- Settlement should not be completed until closing letters are received
 - Advance distributions possible
 - Fiduciary must be careful

Miscellaneous Estate Tax

- Consider alternative date valuation
- Lien release (M-792) and power of attorney (2848)

Step 5: Splitting & Distributing the Estate

Final Step in the Settlement Process

- Must follow EXACTLY the terms of Will & Trust
- Assets pass to beneficiaries & heirs outright & Will and Trust are “closed”
- Assets pass to beneficiaries & heirs in trust (PAT or IRA Inheritance Trust)
 - Better End Results (Wealth Protection):
 - Minimize future estate taxes
 - Defer income taxes
 - Avoid second probate
 - Protect assets from creditors
 - Provide & protect for family long-term

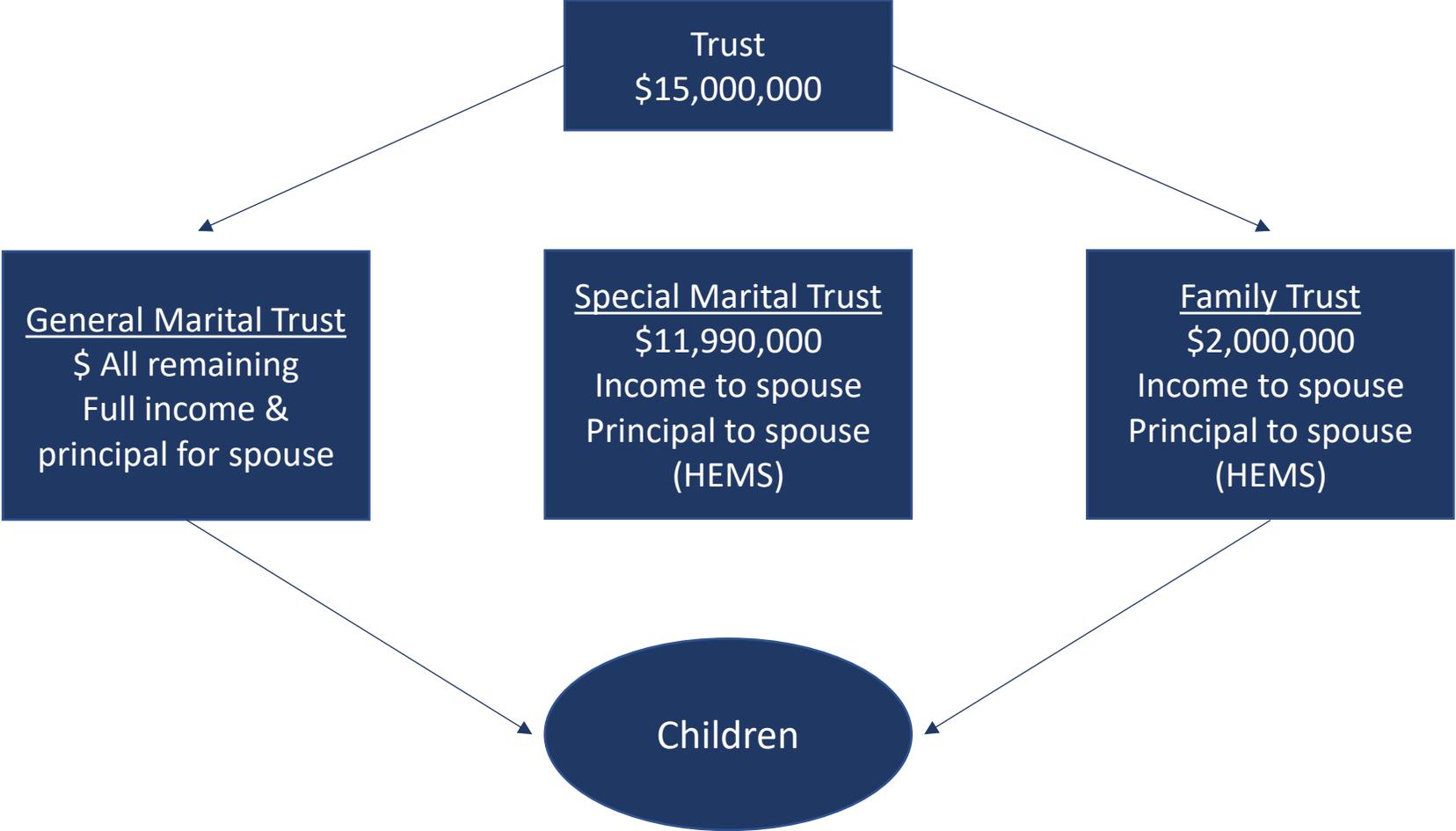
Two Scenarios

Probate: Generally, all probate assets pour into trust)

Trust:

1. If Spouse is alive
 - a) Consider Disclaimer to minimize estate taxes and provide for spouse
 - i. Remainder Share (up to state exemption)
 - ii. Special Marital Trust (up to US Exemption less Remainder Share)
 - iii. General Marital Share (amount over US Exemption)
 - b) As of 2025: Special & General Marital Shares rarely used
 - c) Surviving Spouse gets Income + HEMS
2. Spouse is deceased
 - a) Distribute assets to children (or other heirs)

Trust Divides at 1st Death

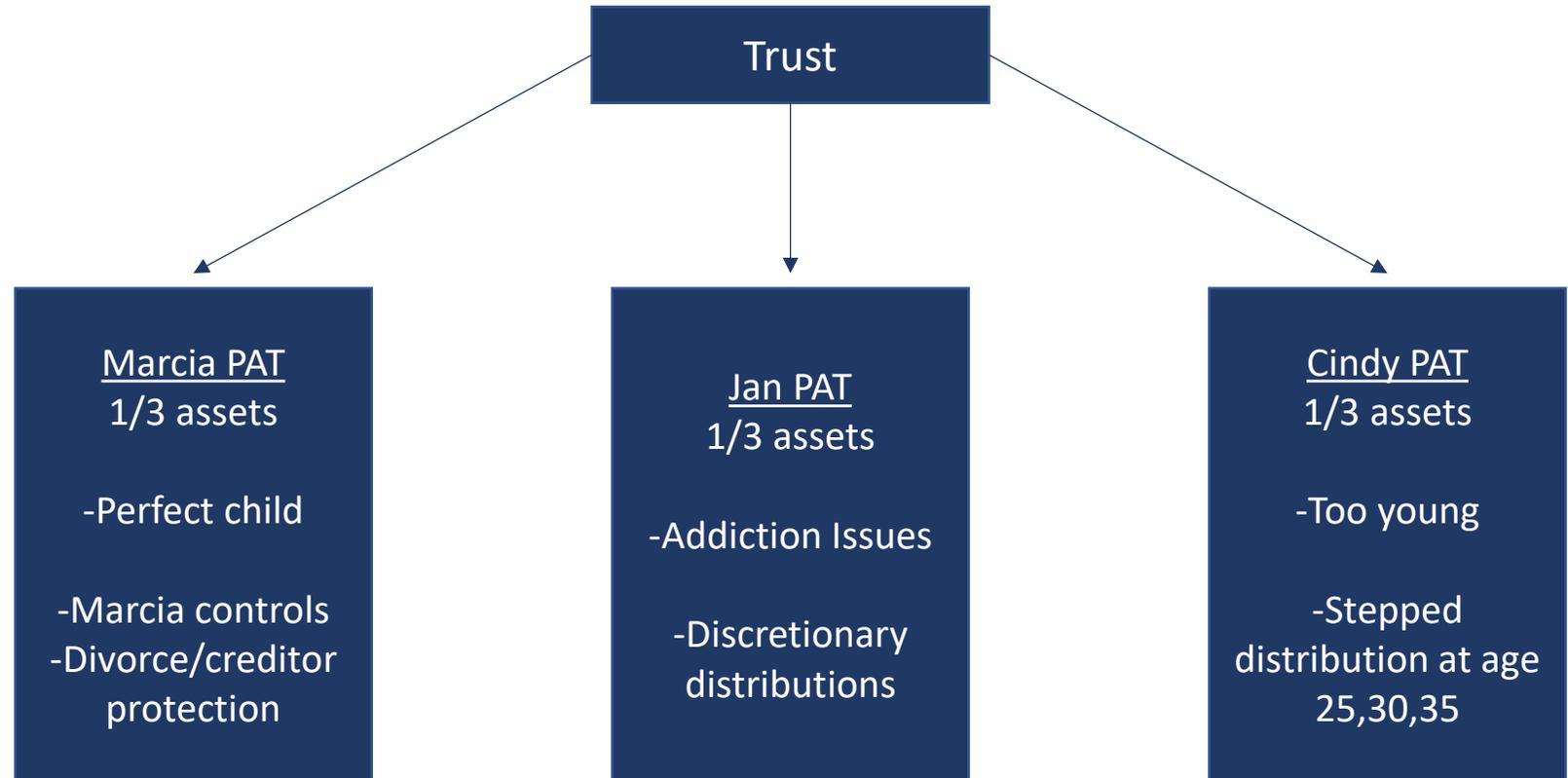


Trust Division

Notes:

- Physical division of assets occurs
- Improper funding formula can lead to unnecessary estate tax
- Improper funding valuation can cause unnecessary Capital Gains Tax
 - Funding of marital share
- Keep future projected growth & future basis adjustment in mind
 - Careful balance between estate tax vs. income tax minimization
- Status quo until death of 2nd spouse

Trust Divides at 2nd Death



Trust Distribution

Notes:

- “In-kind” distribution is usually best
 - Don’t sell everything and distribute cash
 - Taxes at Trust level or
 - Fiduciary is forcing taxes on Beneficiary
 - Let Beneficiary decide to sell
- “Personal asset trust” provisions are not automatic
- You must build your trust with PAT
- Benefits:
 - Shield assets from divorcing spouse
 - Creditor/bankruptcy protection
 - Protect government benefits
 - Avoid 2nd estate tax
 - Allow child to control (most frequent)
 - Parent maintains control (if necessary)

**Estate Settlement
Process Ends**

**Trust Administration
Begins**

Using the CARESSM Process

Each step in the CARESSM process is designed to honor the legacy of the deceased, ensuring that their final wishes are carried out with the utmost respect and diligence.

Compiling Inventory

Appraise Assets

Retitling Assets

Evaluating Taxes

Splitting & Distributing the Estate

Action Steps

Things To Do Today

- Sign up for the EPMP – Get a 10% discount!
- Order our “Successor Trustee Manual”
- Get your Hotel Vacation Voucher as our
Thank You for attending

Action Steps

Is Your Plan is Up-to-Date ?

- Update Documents if out of date (prior to 1/2020)
- Add a Contract To Plan to protect your heirs
- Upgrade your Plan:
 - Simple Plan to Basic Add PAT & IRA Trust
 - Upgrade PAT & IRA Trust with OBIT
- Merge Separate Trusts into Joint Trust to get Basis Step-Up
- Get the SECURE Act Amendment for your IRA Inheritance Trust™
- Add Irrevocable Trust – Reduce Estate Tax / Add Asset Protection
- Call Boyd & Boyd upon Death or Incapacity

Action Steps

Estate Planning Maintenance Program

- 30 min / year – no add'l fee
- Document Vault
- For You: 10% discount
- For Your Kids: 10% discount
- Cost:
 - \$166 for rest of 2025
 - \$497/year thereafter

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Dear Clients & Friends:

During conferences with new clients I am often asked:

- How will I know if my estate plan is going to work right?
- What happens when there is a change in my family situation?
- What do I do if the person I pick as successor trustee is no longer the best choice?
- How will I know if there are changes in the law that impact my plan?
- Will changes in technology impact how well my plan will work?
- How will inflation impact legal fees and my estate plan?
- Can you help my children with their estate plan?
- And will my kids' estate plan coordinate with my plan?
- How can I get high quality Legal Services at a lower cost?

To solve the problems raised by these kind of questions we have launched our Estate Planning Maintenance Program (EPMP). Clients who subscribe to the EPMP don't have to worry about these concerns. That's because they have a subscription that brings peace of mind. They know that they get:

- Thirty (30) minutes per year of phone conference, Zoom meeting and back office support from Boyd & Boyd, P.C. at no additional charge;
- A 10% discount on hourly and flat fee services;
- A 10% discount for the children of EPMP subscribers on our flat rate estate planning services;
- A 10% discount on our Annual Conference for Families and Advisors - this way everyone knows how your estate plan is going to work and what their role will be. This conference also makes sure the key players in your plan know each other and can communicate together to get your family the best result;
- Unlimited dedicated cloud storage for estate planning documents - a virtual digital safety deposit box where your trust and other records may be kept; and
- When a death or an incapacity occurs, members of our EPMP get a 10% discount on Estate Settlement services too.

Members of the EPMP can save thousands of dollars in legal fees. In fact, our estate planning fees have remained the same for six years. And with inflation causing prices on almost everything else to go up, subscribers to our EPMP actually see their estate planning fees go DOWN!

Please Note that the EPMP does not provide discounts on Filing Fees, Recording Fees, Resident Agent Fees, and other out of pocket expenses. Similarly, co-counsel fees are not eligible for discounts.

It has been a little more than a year since we first introduced an Estate Planning Maintenance Program (EPMP). For our clients who are already members - Thank You!! We will be renewing your

Boyd & Boyd, P.C.
"You create the legacy. We create the plan."
Estate, Trust & Retirement: Planning, Administration & Management,
Elder Law, Special Needs Planning, Tax Law, Business & Succession Planning, Trustee Services
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