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Attorneys at Law

ESTATE PLANNING
BUSINESS PLANNING
INCOME TAX PLANNING
CHARITABLE SECTOR
MERGERS & ACQUISITIONS



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Start the Conversation About Life Insurance in Estate Planning

Presented to
Agents Helping Agents IV

March 29, 2018

Presented by:

David Allen Brown
Partner

Shaun McNaughton
Attorney

Brown & Streza LLP
Attorneys at Law

Protecting your treasure for good, because life is more than wealth!

Brown & Streza LLP is a law firm providing exceptional, integrated legal services in the areas of tax, estate, business, and charitable planning, mergers and acquisitions, business succession planning, estate administration, real estate and emerging growth. We serve families, businesses, entrepreneurs, investors, philanthropists, and charitable organizations. We provide caring service, deep expertise, innovative solutions, and a stable, professional, and well respected staff while embracing and communicating that *life is more than wealth*.

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Charitable Sector

- Exempt Organizations
- Planned Giving
- Private Foundations
- Religious Organizations
- Social Enterprise



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Are you making the right choices for your estate?

- Estate Planning
- Estate Administration



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Mergers & Acquisitions

Our Mergers & Acquisitions department represents entrepreneurs and business owners in their quest to sell or acquire a company



DAVID ALLEN BROWN, PARTNER

E-MAIL: david.brown@brownandstreza.com

PRACTICE AREA Sophisticated Estate Planning for Medium to Large Estates

David Allen Brown is the founding partner in the law firm of Brown & Streza LLP, Irvine, California. We are a boutique law firm, focused on providing integrated legal services in the areas of estate, business, tax, charitable planning, mergers and acquisitions, business succession planning, estate administration, real estate and emerging growth. He attended USC and Loma Linda University before obtaining his Bachelor of Science degree and Juris Doctor degree in law from Western State University in 1974. He founded Brown & Streza in June, 1975 and serves approximately 4000 clients. He is a member of the California State Bar, Orange County Bar Association, National Association of Insurance & Financial Advisers, the Financial Planning Association, Orange County Advisors in Philanthropy, and Kingdom Advisors.

David is a Martindale-Hubbell AV® Preeminent™ Rated attorney, which is the highest rating possible. Martindale-Hubbell Peer Review Ratings are established by lawyers and judges who have personal knowledge of an individual attorney's work and ethical standards. David has also been included on the "Southern California Super Lawyer" list by *Los Angeles Magazine* for eight consecutive years – a distinction recognizing only 5% of the attorneys in Southern California (excluding San Diego).

Recognized as a leading authority David has lectured on the topic of Estate Planning to Insurance Companies, Financial Planning Organizations, Estate Planning Councils and Planned Giving Roundtable meetings across the Western United States. While attending law school, he was an insurance agent and member of the Million Dollar Round Table.

David has been a firm believer in the team approach to bring the best possible service to his clients by working alongside financial planners and CPAs.

David has written articles including *Tax Favored Uses of Life Insurance to Replenish Estates of Business Owners and Executives*, The Insurance Law Journal, Commerce Clearing House, April 1974 and *The Amendable Irrevocable Super Trust*, June, 1977.



SHAUN MCNAUGHTON

E-MAIL: shaun.mcnaughton@brownandstreza.com

PRACTICE AREA Estate Planning, Income Tax Planning, Property Tax Planning, Charitable Sector

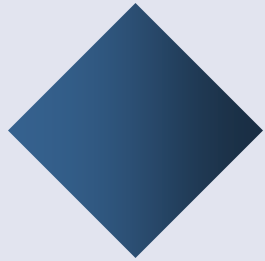
Shaun solves estate planning problems for high-net-worth individuals, families, and business owners. Much of those problems relate to income tax, estate tax, and California property tax issues, and risk exposure. He implements advanced planning techniques that reduce these taxes and risks, thereby increasing amount passing to family and charity.

Shaun earned undergraduate degrees (mathematics and philosophy) from the University of California, San Diego; a master's degree in philosophy (*magna cum laude*) from Biola University; and his Juris Doctor, from Chapman University School of Law, where he earned an Emphasis in Taxation, completing more tax courses than any Juris Doctor candidate in the history of the law school, and receiving CALI Excellence Awards for earning the highest marks in several courses.

While in law school, the Honorable Tom Campbell, Dean of Chapman University School of Law and former U.S. Congressman, chose Shaun as his research assistant for substantial work for his law review article on the severability of statutes ("Severability of Statutes," 62 Hastings L. J. 1495 (2011)), a legal topic that was at the forefront of the debate whether the Affordable Care Act ("Obamacare") was constitutional. In addition, for another article with Dean Campbell, Shaun applied a branch of higher mathematics (known as "topology") to models of competition in antitrust law.

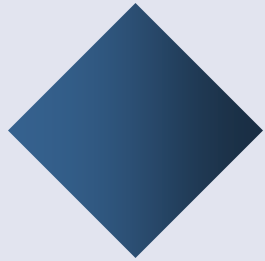
Shaun is licensed to practice law in California and is also admitted to practice before the United States Federal Court. He lives in Newport Beach where, in his spare time, frequently can be found on a paddle board on Balboa Island or reading everything he can get his hands on: technical tax treatises and journals, analytic philosophy and theology, selected areas of physics, and economics.

Life Insurance is a Woman's Issue



Women Have a Longer Average Life Expectancy than Men

- Seven out of 10 “baby boom” women - those born between 1946 and 1964 - are expected to outlive their husbands
- Not only do women have a longer average life expectancy than men, they tend to marry men older than themselves
- Thus, many can expect to be widows for 15, 20 even 25 years

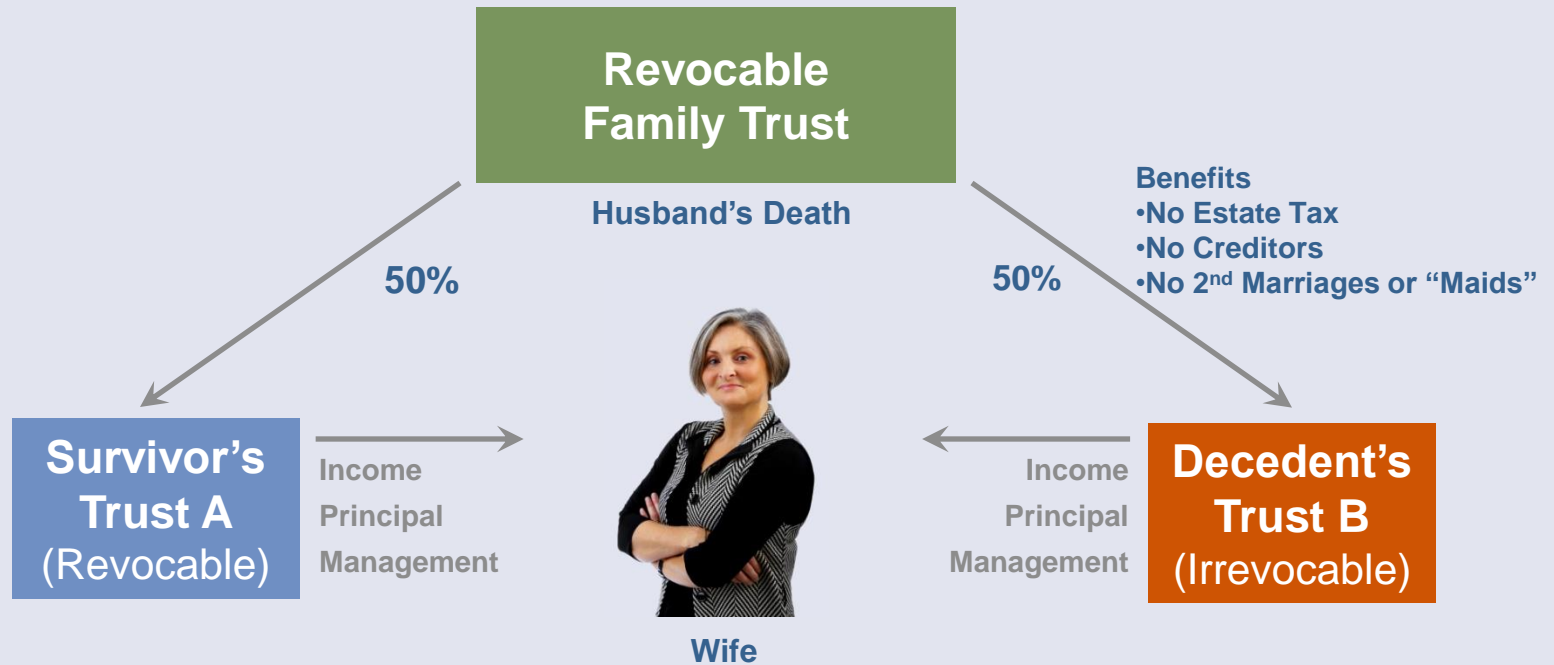


Questions to Ask Your Clients to Start the Conversation

- Are there needs for liquidity for your spouse for income or to pay off debt?
- If your spouse will live 15, 20, or even 25 years longer than you, how much is needed to maintain his/her accustomed manner of living?
- And how much will your children need for education, weddings, etc.?

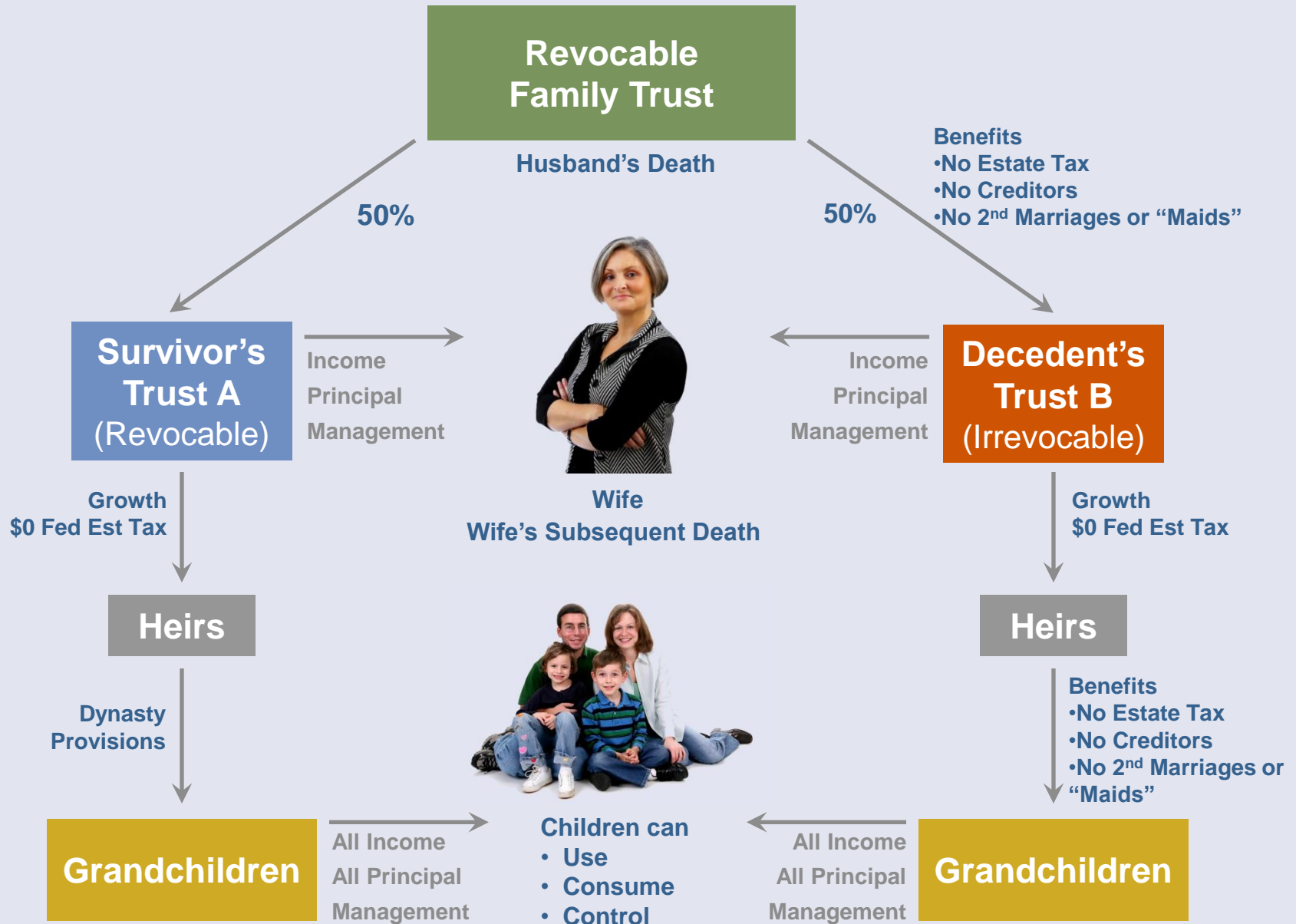
Life Insurance is to
Protect from Taxes,
Creditors, and
Predators

A-B Trust

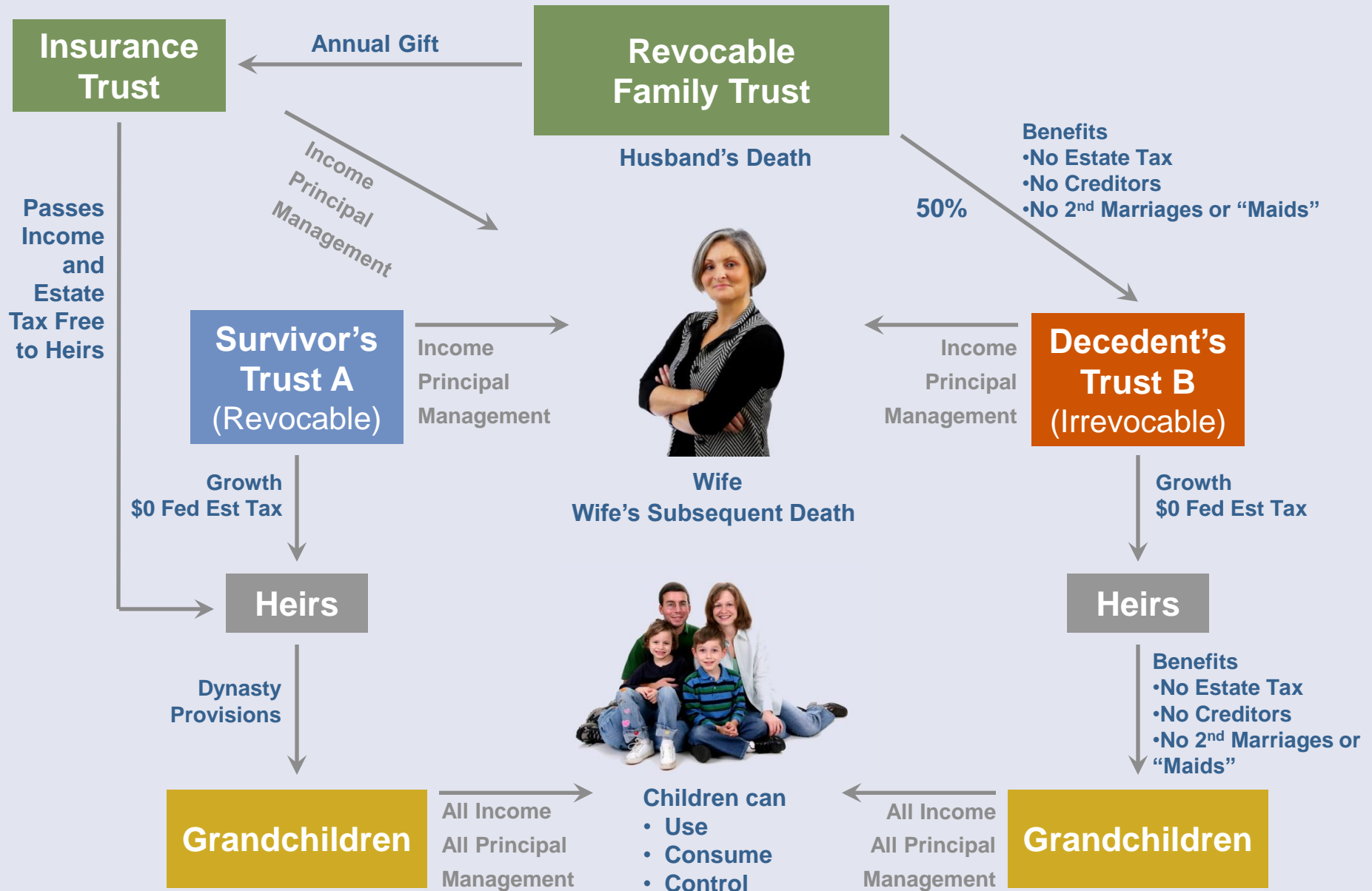


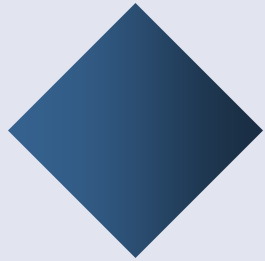
What they do not “own,”
they cannot lose!

A-B Trust



A-B Trust

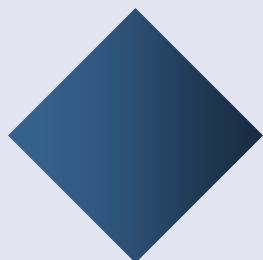




Questions to Ask Your Clients to Start the Conversation

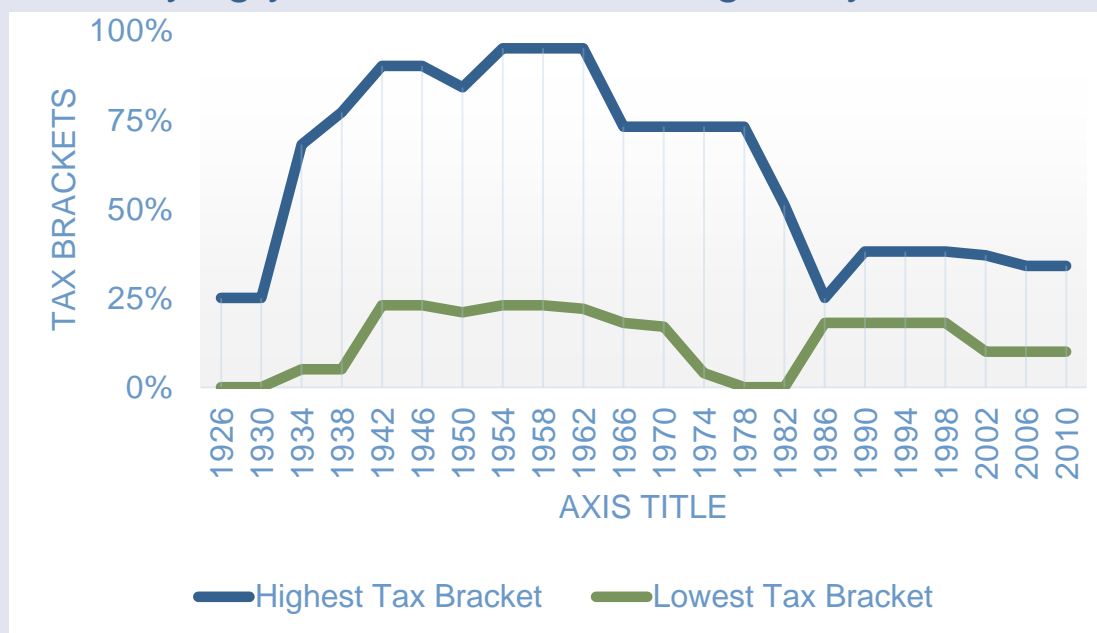
- Do you have a trust?
- Is the trust protected from your beneficiary's (future) ex-spouse?
- A trust can require a beneficiary to get a prenuptial agreement. To be enforceable by a judge, it must be balanced. Consider life insurance to help balance it.

Life Insurance is an Income Tax Issue



Where Do You Think Tax Rates Are Going?

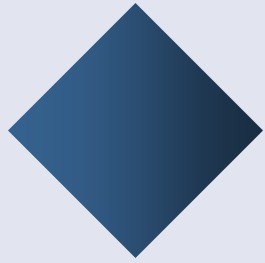
- Tax rates are currently at historically low levels, suggesting they may be higher when you retire
- Tax diversifying your retirement savings may also make Sense



The graph above illustrates the high and low marginal federal income tax rates over history. Exemptions, deductions and state and local taxes are not taken into account when illustrating the marginal tax rates. Your actual tax rates may vary from those shown on the graph. Remember that historical rates are not a guarantee of future rates.

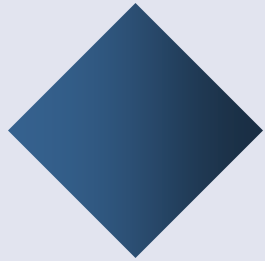
Source: taxfoundation.org/taxdata/show/151.html (2010)

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Compound Growth





Case Study

Mr. Jones
Age: 35
Married, 2 children

EMPLOYEES

25 F

25 F

45 F

COMPENSATION

\$ 3,500/month

\$ 3,500/month

\$ 4,500/month

AMOUNT CONTRIBUTED TO RETIREMENT PLAN

\$ 21,500

\$ 7,500

\$ 1,000

\$ 30,000

Amount to Personal Plan

Amount to Employer Plan

Annual Administration

Total Outlay

DEFINED CONTRIBUTION PLAN CASH FLOW PROJECTION

Contribution

\$ 21,500

Term

30 years

Total

645,000

Yield

9%

INCOME AT AGE 65

Gross Income

\$ 360,395

Income Tax

\$ 180,197

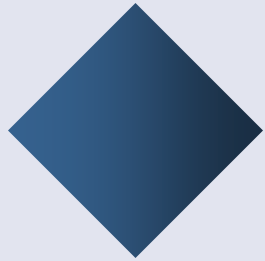
Net Cash Flow

\$ 180,197

20 Year Total

\$3,603,940

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Estate Settlement Costs

Plan Value:	\$3,338,000
Federal Estate Tax Rate:	40%
Assumed Income Tax Rate:	50%
Less: Federal Estate Tax:	<u>\$1,335,200</u>
Balance After Federal Estate Tax	\$2,002,800
Less: Lump Sum Tax on \$2,002,800 of Income:	<u>\$1,001,400</u>
Balance After Lump Sum Income Tax (50%):	\$1,001,400

You Leave This Much:	\$3,338,000
Total Taxes Paid Equal:	\$2,336,600
Your Beneficiary ends up with this Much:	\$1,001,400
Cents per Dollar Received by Heirs:	\$0.30



Alternative using Executive Bonuses

Annual Outlay	\$ 30,000
Total Income Tax	\$ 10,500
Net After Tax	\$ 19,500
Cash Value at Retirement	\$ 2,484,000

COMPARISON OF BENEFITS

	<u>Qualified Plan</u>	<u>Executive Bonus</u>
Annual Net Cash Flow	\$ 180,197	\$ 225,000
Net Estate To Heirs at Age 65	\$ 1,001,400	\$ 3,166,000
Net Assets at Age 85	-0-	\$ 500,000
Net Estate to Heirs at 85	-0-	\$ 1,200,000

BENEFITS OF “INSURED RETIREMENT PLAN” vs. QUALIFIED PENSION

(Assuming policy is owned in an Irrevocable Crummey Trust)

- More flexibility (no 59½ and 70½ restrictions and no borrowing restrictions)
- Not sensitive to IRS changes of Pension law
- No Administration
- Totally discriminatory
- Free from creditors, even after retirement
- No estate tax
- No income tax
- Self-completing upon disability
- It is simply your money!

John
Husband

John establishes a trust for the ultimate benefit of his two children, with Mary as a lifetime beneficiary



\$1.5 Million

Value of Trust
\$4,800,000
20 years @ 6%

Mary is trustee over
John's Trust

Upon Mary's
Demise

Mary a trustee has the ability to take income from the trust and principal under ascertainable standard

Exemption Amount Gift Trust

Mary
Wife

Mary establishes a trust for the ultimate benefit of her two children, with John as a lifetime beneficiary



\$1.5 Million

Value of Trust
\$4,800,000
20 years @ 6%

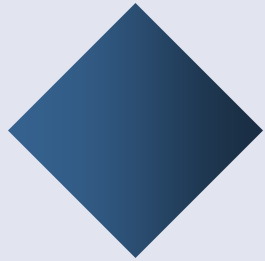
John is trustee over
Mary's Trust

Upon John's
Demise

John a trustee has the ability to take income from the trust and principal under ascertainable standard

To Children
\$9,600,000

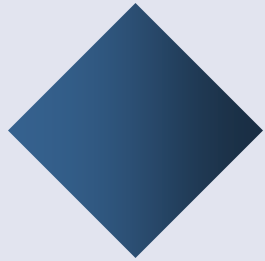
Estate Tax Savings \$3,840,000
(Assuming 40% Estate Tax Rate)



Questions to Ask Your Clients to Start the Conversation

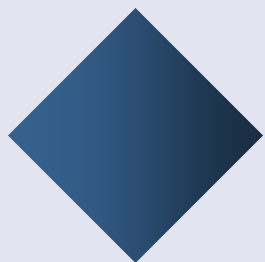
- Did you know that an insurance policy, as a retirement tool, can outperform a traditional IRA?
- There are ways to make your retirement income tax free, have you explored those?
 - Roth IRA
 - Life Insurance Cash Values
- Do you need to protect your life insurance cash value or death benefit from taxes, creditors, and predators? Consider an ILIT or a Private Retirement Trust.

Life Insurance is a
Retirement and
Creditor Protection
Issue

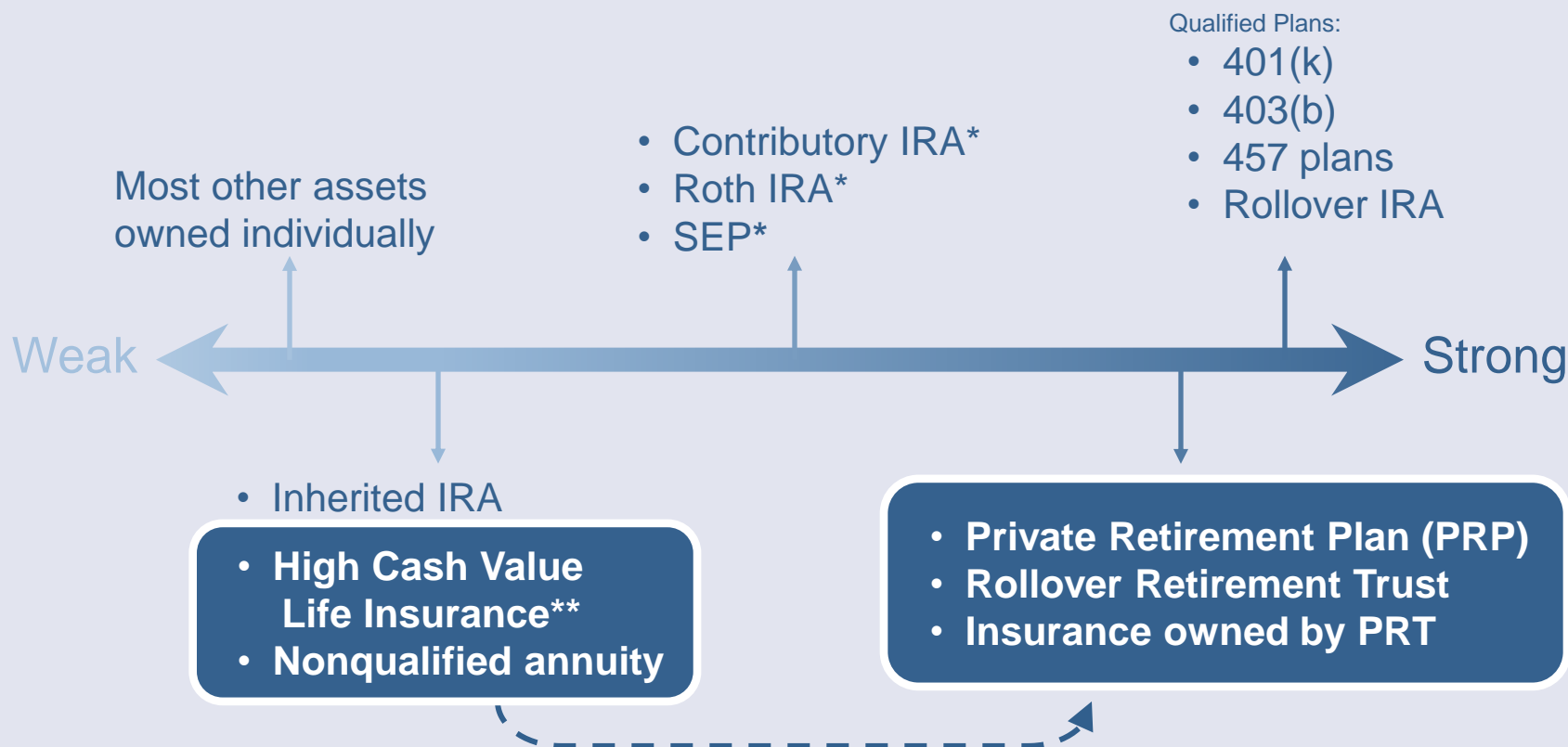


What is a Private Retirement Trust (PRT)?

- **Tax Neutral, Nonqualified Plan.** Use after-tax dollars to fund the PRT.
- **Convert Creditor Nonexempt Asset into Creditor Exempt.** With a PRT, a client has the capability of moving an asset from the weaker to the stronger side of the creditor exemption spectrum, increasing the level of protection.

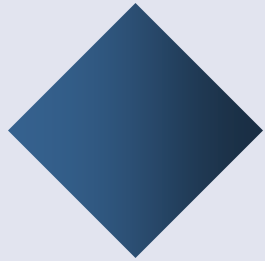


Creditor Exemption Spectrum - Levels of Protection



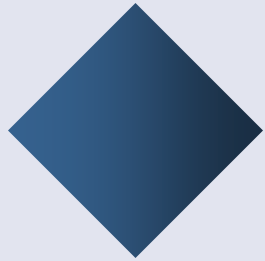
* Subject to judge's discretion re: amount needed for "support"

**Life insurance cash value is only protected up to \$12,860



What is a Private Retirement Trust (PRT)? (cont)

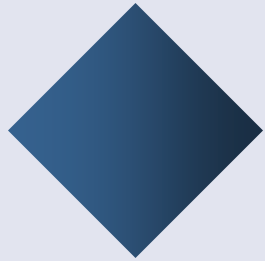
- **No statutory contribution limits.** Because there are no statutory contribution limits, the PRT allows those who have delayed funding their retirement to “catch up” more than traditional qualified plans allow for.
- **No investment limitations.** The PRT is not limited in the asset classes that it can invest in.



Who Can Benefit using a PRT?

- **Risk Exposure.** The PRT is for those with risk exposure. Retirement planning is about ensuring that funds will be there upon retirement, with which the PRT can assist.
- **Have Unique Assets?** Unique assets are “OK”. The PRT can accommodate those with unique asset classes that do not “fit” into traditional retirement plans.
- **Need to Transact with Retirement Asset?** The PRT is for those that may need to transact with an asset held by the retirement trust. Self-dealing is not prohibited.

- Entrepreneurs
- High-risk occupations
- Closely held business owners
- Real estate developers
- “Late starters”
- Licensed individuals, lawyers, physicians, architects, engineers
- Those selling securities
- Landlords



California is Friendly to Private Retirement Plans

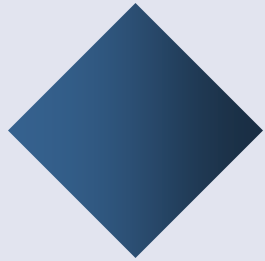
IRAs vs. Private Retirement Plans

California expressly **limits** the protection given to IRAs/ Roth IRAs to **amount of support** needed during retirement:

IRA, Roth IRAs, and qualified annuities are exempt only to the extent necessary to support the judgment debtor (and spouse and dependents) in retirement, taking into account all resources that are likely to be available for the support of the judgment debtor in retirement. CCP § 704.115(e).

But ***no such express limitation*** for Private Retirement Plans. CCP § 704.115(b).
Exception for judgements for child, family, or spousal support.

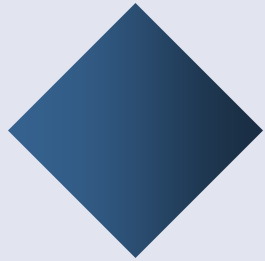
Also, all amounts ***distributed from*** the PRT are exempt. CCP § 704.115(c).



Retirement Account vs. Piggy Bank

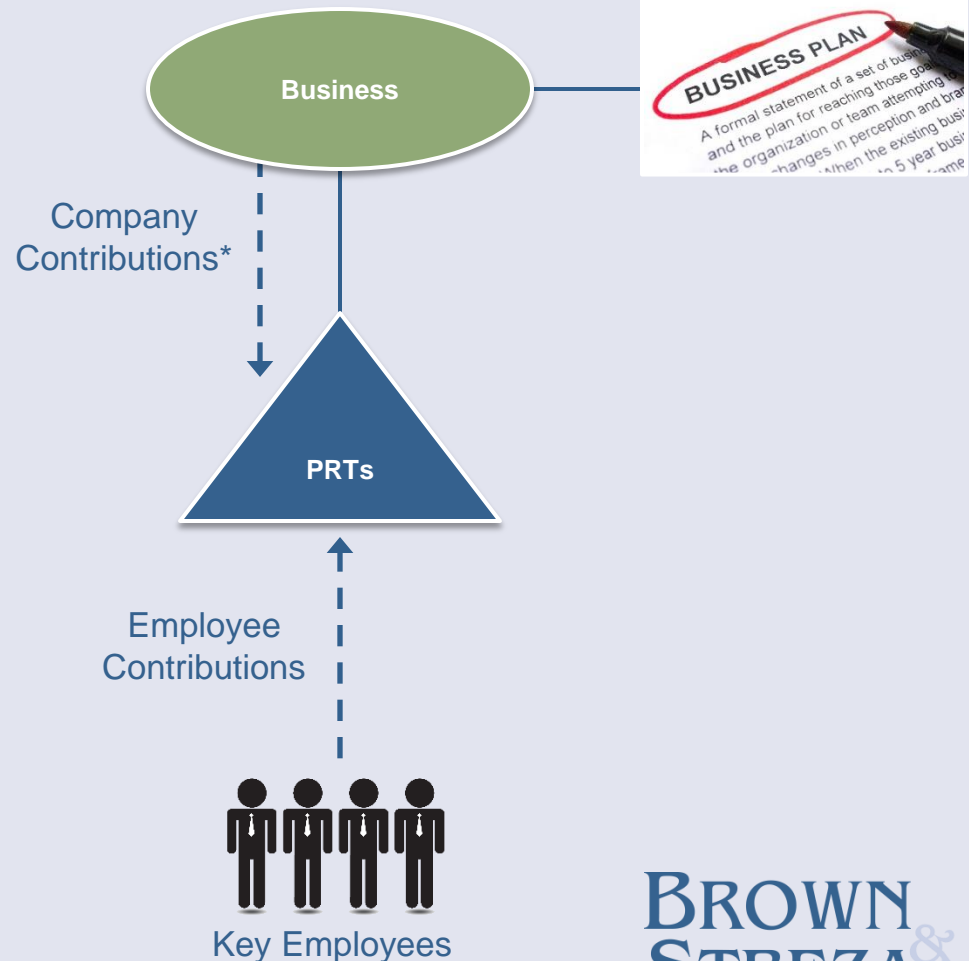
- PRPs must be “designed and used for retirement purposes”
- Administrative compliance / annual maintenance
- The plan document (PRP) and trust (PRT) must be respected



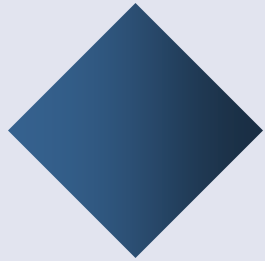


How is a PRT Structured?

- A. Need a Business Sponsor (e.g., corporation/LLC)
- B. Need a Private Retirement Plan (PRP)
- C. Need a Private Retirement Trust (PRT)



*Company contributions not always required.



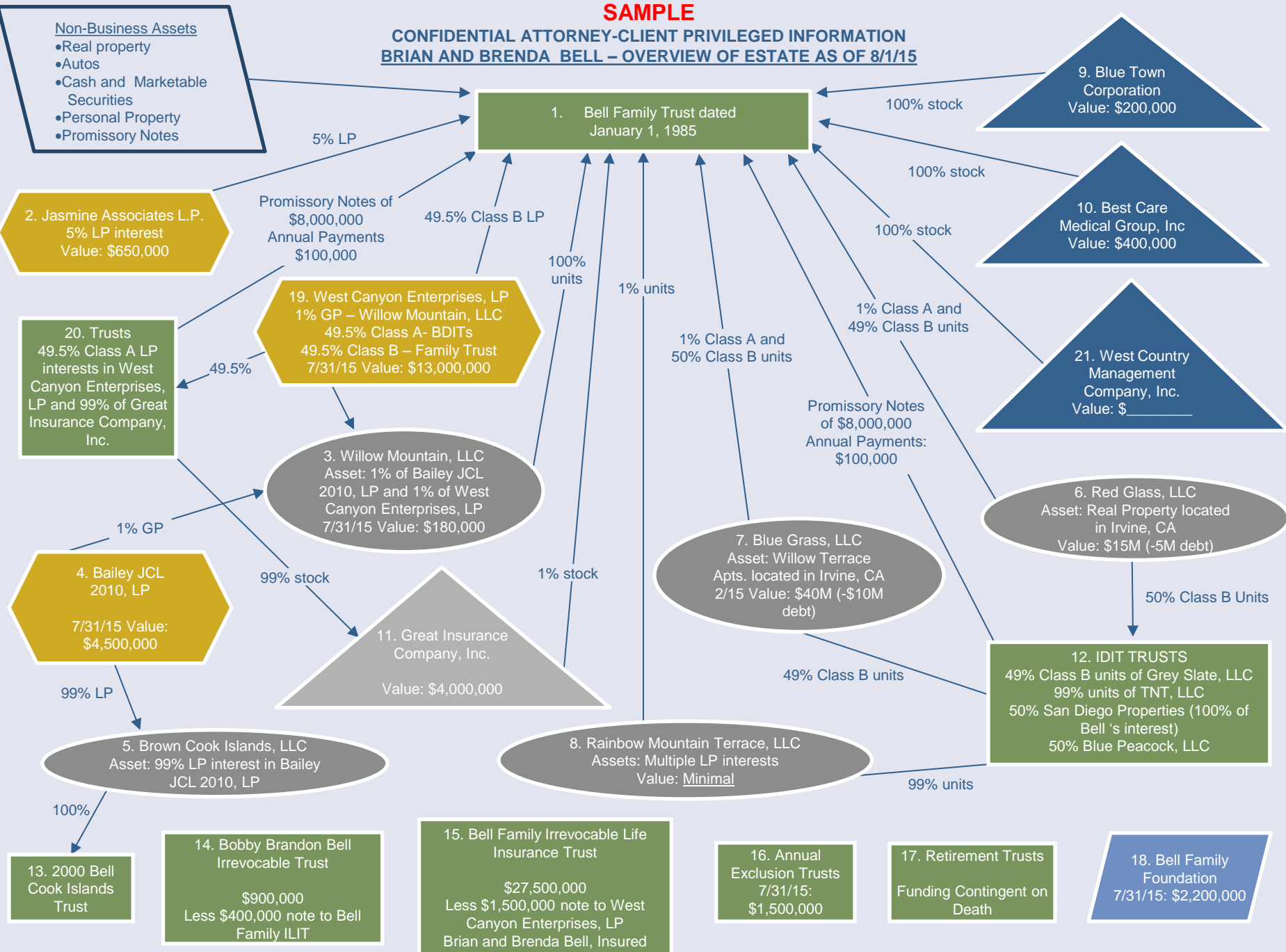
Questions to Ask Your Clients to Start the Conversation

- If you could protect your estate and insurance investments from creditors using a tax neutral retirement plan, would you want to learn more?
- Did you know that you can structure a cash value life insurance policy both for retirement purposes and have it protected from creditors similar to a 401(k) plan?
- Did you know that some retirement plans do not have annual contribution limits? These can be used with high cash value insurance products.

Life Insurance is a Wealth Transfer Issue

SAMPLE

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED INFORMATION BRIAN AND BRENDA BELL – OVERVIEW OF ESTATE AS OF 8/1/15



Family Assets

Real Estate	<u>\$ 50,000,000</u>
Prom. Notes	<u>\$ 9,000,000</u>
Companies	<u>\$ 15,000,000</u>
Securities	<u>\$ 4,000,000</u>
Cash	<u>\$ 942,067</u>
Other	<u>\$ 700,000</u>
Life Ins.	<u>\$ 100,000</u>
Cash Value	

Retirement Accounts	<u>\$ 1,000,000</u>
Debt	<u>\$ <1,000,000></u>

IDIT Trusts:	<u>\$ 5,000,000</u>
Less Notes:	<u>\$ 3,500,000</u>
Net Value:	<u>\$ 5,000,000</u>

Contingent Assets	
Life Ins. Proceeds	<u>\$ _____</u>

Assets

Real Estate	<u>\$ 50,000,000</u>
Prom. Notes	<u>\$ 9,000,000</u>
Companies	<u>\$ 15,000,000</u>
Securities	<u>\$ 4,000,000</u>
Retirement	<u>\$ 1,000,000</u>
Other	<u>\$ 700,000</u>
Cash	<u>\$ 900,000</u>
Life Insurance	<u>\$ 100,000</u>
(Cash Value)	
Mortgages/Debt	<u>\$ -1,000,000</u>
Total	<u>\$ 79,700,000</u>

Children's Assets

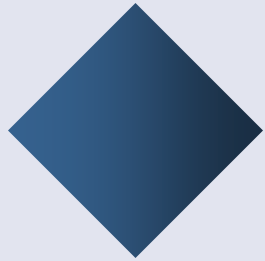
IDIT Assets	<u>\$ 5,000,000</u>
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Contingent Death Benefits:

Life Insurance	<u>\$ 100,000</u>
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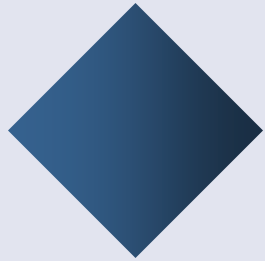
Assets to Heirs

Assets in Estate	<u>\$79,000,000</u>
Estate Tax Due (2015)	<u><\$29,936,000></u>
Net Assets to heirs	<u>\$49,764,000</u>
Life Ins. Proceeds	<u>\$ 100,000</u>
Assets already Transferred to heirs	<u>\$ 5,000,000</u>
Total Assets to heirs (2015)	<u>\$54,864,000</u>
Assets to Foundation	<u>\$ 2,257,997</u>



Questions to Ask Your Clients to Start the Conversation

- Do you have assets over \$11M?
 - If so there will be some estate taxes paid on that amount over \$11M after President Trump's temporary increase in the Unified Credit sunsets January 1, 2026
 - If this tax were \$1,000,000 where would your children get the cash to pay this if most of your estate is the business and real estate?
 - Life insurance is a good tool
- There may be imbedded capital gains in much of the estate
 - Where will you get the cash to pay for that tax if you are forced to sell assets?
- Upon death, will California real estate be "reassessed", increasing property taxes? Will the beneficiary have liquidity to pay those ongoing taxes? Consider life insurance.



Summary

- Life Insurance is a Woman's (and Family) Issue
- Life Insurance is to Protect from Taxes, Creditors, and Predators
- Life Insurance is an Income Tax Issue
- Life Insurance is a Retirement and Creditor Protection Issue
- Life Insurance is a Wealth Transfer Issue

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First Name: * ⓘ

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Enter the code shown above in the

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- Complete the form and click **Register**
- If you register on a business day you will receive same day approval via email

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Brown & Streza LLP is a law firm providing estate, business, charitable planning, administration, real estate and employment law services to individuals, corporations, philanthropists, and charitable organizations. We provide solutions, and a stable, professional team that is more than wealthSM.

We serve the individual needs of our clients and advisors by investing in education, technology, and upon loyalty and integrity.

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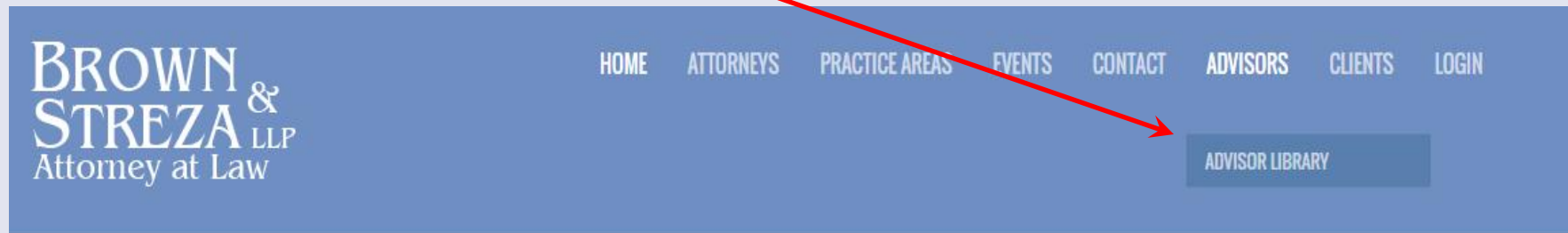
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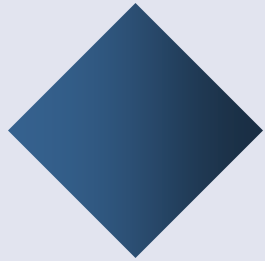
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Next Steps

For questions:

David or Shaun at 949.453.2900

or

David.Brown@brownandstreza.com

Shaun.McNaughton@brownandstreza.com

Appendix

ESTATE PLANNING RISK BAROMETER

Directions: For each “no” answer, copy the number to the left of the question in the space provided.

I COMPLETED MY ESTATE PLANNING YEARS AGO.

- 20 - Do I have a living trust? _____
- 4 - Do I have an updated pourover will? _____
- 2 - Did I sign a new pourover will the last time my living trust was amended? _____
- 8 - Are the contest clauses in my will and living trust clear and enforceable? _____
- 10 - Has my living trust been reviewed by an attorney in the last five years? _____
- 5 - Has my living trust been reviewed by an attorney in the last two years? _____
- Has my living trust been updated to address recent law changes, including:
 - 10 - Flexible Funding Clauses (Clayton QTIP Election/Disclaimer)? _____
 - 10 - Bypass Trust Basis Concerns? _____
- 10 - Is my living trust completely funded? _____

Score #1 _____

MY ESTATE IS SIMPLE, SO I DON'T NEED CUSTOMIZED PLANNING.

- 20 - Will the assets I leave to my spouse and/or children be protected from divorce, creditors, predators, and unnecessary estate taxes? _____
- 50 - Have I incorporated a succession plan for my business or book of business? _____
- 4 - Does my living trust effectively dispose of my digital assets? _____
- 4 - Have I provided for my children in a manner that is fair, not in a manner that is simply equal? _____
- 4 - Does my living trust contain incentive provisions? _____
- 8 - Does my living trust govern distributions in a Results-Oriented manner so as to aid my children in participating in wealth generation or productive activities? _____
- 4 - Does my living trust contain family bank provisions? _____
- 6 - Does my living trust address planning for current or future special needs planning and/or Medicaid planning for my beneficiaries? _____
- 8 - Does my living trust contain “Safety Net” provisions for my spouse and/or children, limiting distributions if trust and beneficiary assets fall below a certain level to preserve funds needed for subsistence living? _____
- 10 - Is my Living Trust written so that my children cannot lose their inheritance to divorce or creditors? _____

Score #2 _____

MY FAMILY MEMBERS ARE MY EXECUTORS/TRUSTEES.

- 6 - Have I provided for a co-trustee to serve with my spouse? _____
- 4 - Will my bank enforce a joint signature requirement (increasingly rare)? _____
- 6 - Have I named a professional trustee (corporate or individual) as a sole trustee or co-trustee? _____
- 8 - Have I identified who can remove a trustee who is not incapacitated but is dishonest, incompetent, or just power-hungry? _____
- 4 - Have I avoided giving this power to children too young or immature to have such a power? _____

Score #3 _____

Directions: For each “no” answer, copy the number to the left of the question in the space provided.

ESTATE PLANNING RISK BAROMETER

MY FAMILY MEMBERS KNOW WHAT TO DO IF SOMETHING HAPPENS TO ME.

- 4 - Have I named a short-term guardian for my minor children? _____
- 4 - Have I named one individual as guardian for my minor children, rather than a couple? _____
- 8 - Does my living trust allow for distributions to be made to guardians to pay for a relocation, private school for my children, an addition to the home to accommodate my children, etc.? _____
- 8 - Was my Power of Attorney thoughtfully drafted? _____
- 8 - Does my Power of Attorney allow my agent to amend my living trust? _____
- 4 - Does my Power of Attorney allow my agent to make gifts to my children? _____
- 4 - Does my Power of Attorney allow my agent to make gifts to charity? _____
- 10 - Does my Power of Attorney allow my agent to engage in advanced tax, charitable, and business planning on my behalf? _____
- 8 - Does my Power of Attorney provide sufficient safeguards against abuse through drafting approach and by naming more than one agent? _____
- 5 - Have I documented my preferences for dealing with my incapacity and long-term care? _____
- 2 - Do I have a Medical Power of Attorney? _____
- 2 - Have I signed a separate HIPPA release, authorizing my attorney(s)-in-fact named under my Medical Power of Attorney to access my medical records? _____
- 2 - Does my Medical Power of Attorney clearly communicate my end-of-life decisions? _____
- 2 - Does my Medical Power of Attorney clearly communicate my organ donation preferences? _____

Score #4 _____

I AM UNDER THE EXEMPTION, SO I DON'T NEED TO THINK ABOUT TAXES.

- 10 - Have I utilized income tax planning trusts and entities for myself and my beneficiaries? _____
- 10 - Have I positioned my estate to take advantage of the basis step-up at death? _____
- 5 - Have I avoided joint tenancy of community property assets? _____
- 10 - Is my permanent (or term that will be converted) life insurance held in a separate irrevocable life insurance trust? _____
- 8 - Does my living trust allow for both asset protection and stretch-out treatment of inherited IRAs? _____
- 4 - Does my living trust allow for a conversion from a conduit retirement trust to an accumulation retirement trust? _____
- 4 - Have I directed that my IRA assets be directed toward children with lower incomes? _____
- 50 - Is my living trust irrevocable? _____

Score #5 _____

Score #1 _____

Score #2 _____

Score #3 _____

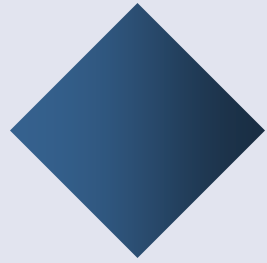
Score #4 _____

Score #5 _____

TOTAL SCORE _____

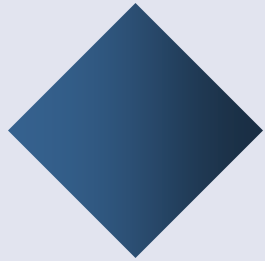
Risk
Categories

- 0-50: My lawyer is my hero, and I obey my lawyer's every command.
- 51-150: My planning may be fine.
- 151-200: My planning is so-so.
- 201-250: My planning is about the quality level expected of LegalZoom.com.
- 251-300: I have the dumbest lawyer on earth.
- 301+: I have not done any real planning.



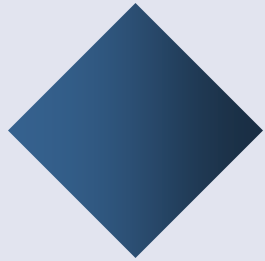
Conclusion

Questions?



Questions to Ask Your Clients to Start the Conversation

- Are there needs for liquidity for your spouse for income or to pay off debt?
- If your spouse will live 15, 20, or even 25 years longer than you, how much is needed to maintain his/her accustomed manner of living?
- And how much will children need for education, weddings, etc.?
- Do you have a trust?
- Is the trust protected from your beneficiary's (future) ex-spouse?
- A trust can require a beneficiary to get a prenuptial agreement. To be enforceable by a judge, it must be balanced. Consider life insurance to help balance it.
- Did you know that an insurance policy, as a retirement tool, can outperform a traditional IRA?
- There are ways to make your retirement income tax free, have you explored those?
 - Roth IRA
 - Life Insurance Cash Values
- Do you need to protect your life insurance cash value or death benefit from taxes, creditors, and predators? Consider an ILIT or a Private Retirement Trust.



Questions to Ask Your Clients to Start the Conversation

- If you could protect your estate and insurance investments from creditors using a tax neutral retirement plan, would you want to learn more?
- Did you know that you can structure a cash value life insurance policy both for retirement purposes and have it protected from creditors similar to a 401(k) plan?
- Did you know that some retirement plans do not have annual contribution limits? These can be used with high cash value insurance products.
- Do you have assets over \$11M?
 - If so there will be some estate taxes paid on that amount over \$11M after President Trump's temporary increase in the Unified Credit sunsets January 1, 2026
 - If this tax were \$1,000,000 where would your children get the cash to pay this if most of your estate is the business and real estate?
 - Life insurance is a good tool
- There may be imbedded capital gains in much of the estate
 - Where will you get the cash to pay for that tax if you are forced to sell assets?
- Upon death, will California real estate be "reassessed", increasing property taxes? Will the beneficiary have liquidity to pay those ongoing taxes? Consider life insurance.

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INCOME TAX PLANNING
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