

LET ME HELP

YOU PROTECT YOUR ASSETS

THE RIGHT WAY

Chasity S. Grice
ATTORNEY

About Me

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LL.M. in Elder law and Estate Planning

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What Is Probate?

Probate with a will – individual dies testate

- The will becomes an active document upon the death of the will maker and establishes the legatees for the designated property
- Will must be “filed” with the court and accepted

Probate without a will – individual dies intestate

- The state laws on intestacy are used to determine the heirs of property owned by the deceased
- Intestate laws vary from state to state

Probate vs. Non-Probate Property

Non-Probate Property consists of assets that will transfer automatically at death to a new owner by operation of law because of the way they are titled or by virtue of a beneficiary designation.

Probate Property consists of the assets that are in the Decedent's name as of death and do not transfer upon death without the appointment of a Personal Representative. The distribution of probate assets will be either pursuant to the Will or the laws of intestacy.

Probate vs. Non-Probate Property

Probate Property	Nonprobate Property
Money and/or property gifted by will or intestate succession when held severally or as a tenant in common.	Money and/or property held with right of survivorship through joint tenancy or tenancy by the entirety.
Life insurance when the estate is the beneficiary.	Life insurance with designated beneficiaries.
Testamentary trusts.	Inter vivos trusts.
Debts owed to the decedent.	Totten trusts.
Gain from the sale of businesses.	Employment pension or 401(k) plans with designated beneficiaries.
Damages awarded in civil lawsuits.	U.S. savings bonds payable on death with named beneficiaries.



What assets are handled in Probate Court?

When opening estates or filing small estate affidavits, the court only handles disposing of "probate" assets

What are "probate" assets?

Probate

- Accounts with no beneficiaries AND no joint accountholders.
- Accounts with beneficiaries who died prior to your deceased loved one.
- Accounts with minor children named as beneficiaries
- Accounts with disabled beneficiaries who receive Medicaid benefits.
- Accounts with the estate named as a beneficiary.

Nonprobate

- Real Estate
- Accounts with a named beneficiary who is not deceased at the time of the death of your loved one, a minor child, or a disabled person receiving Medicaid benefits.
- Accounts with joint accountholders or joint owners.

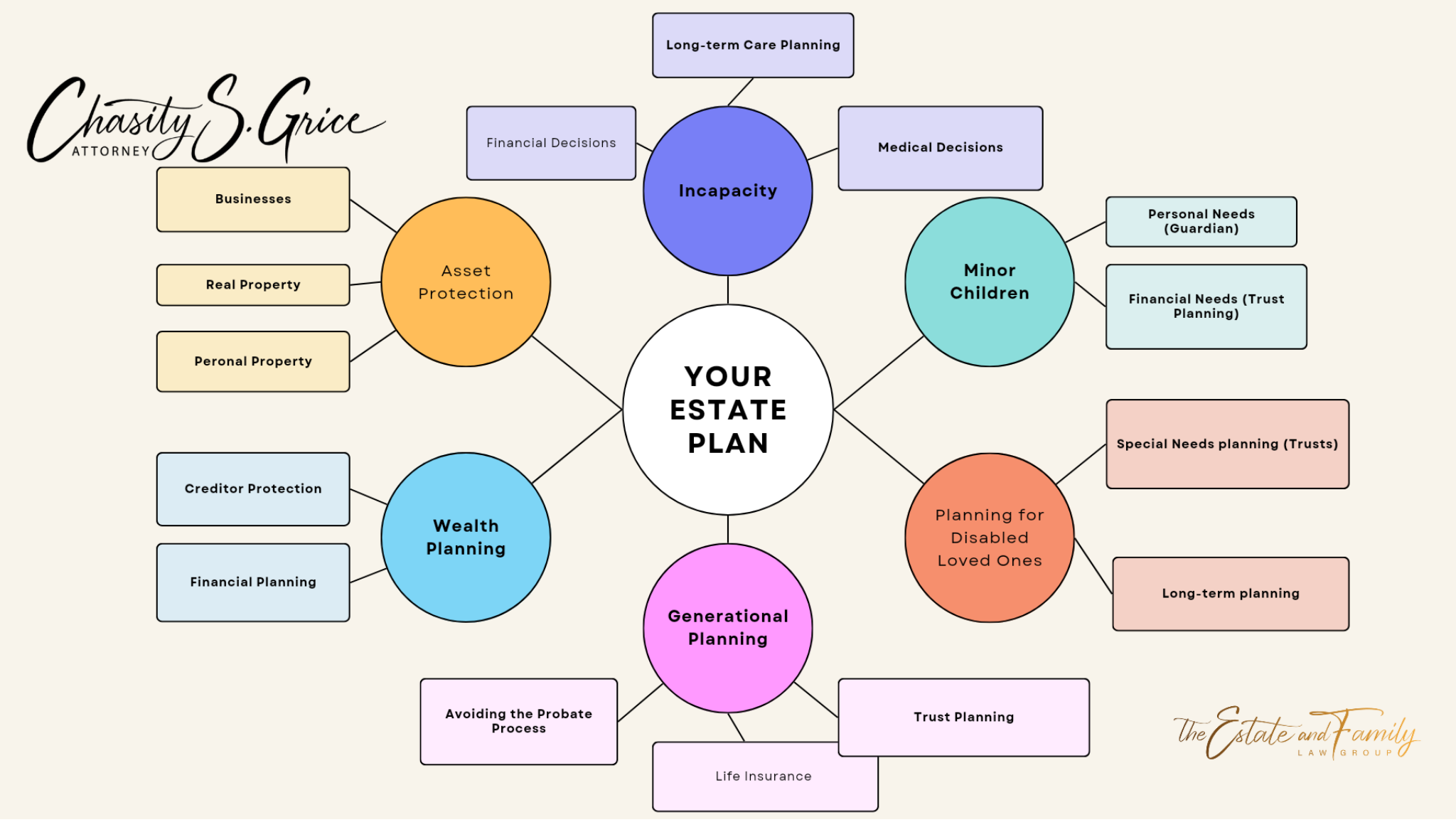
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What is estate planning?

The process of anticipating the disposal of your assets and arranging a plan to do so effectively.



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The Estate and Family LAW GROUP

What happens if no estate planning at all?

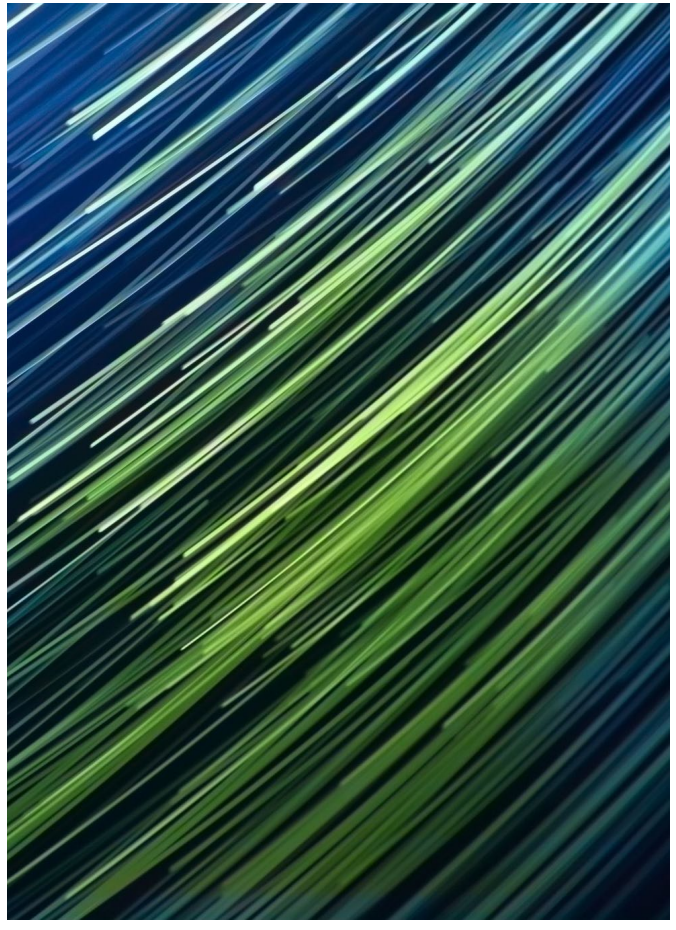
- Costly – the process may require legal fees to settle potential claims, contest the will, pay administrator, etc.
- Delays in distribution of property – process may take anywhere from 4 to 24 months depending on the assets, claims, will, etc.
- Loss of Privacy – Wills and probate proceedings are public documents
- Non-traditional partners claims (and designations from will) can be set aside via challenge to will or outside intestate laws of the state
- (DOMA – Defense of Marriage Act)
- Ancillary Probate for real property in a non-domiciled state

Intestacy

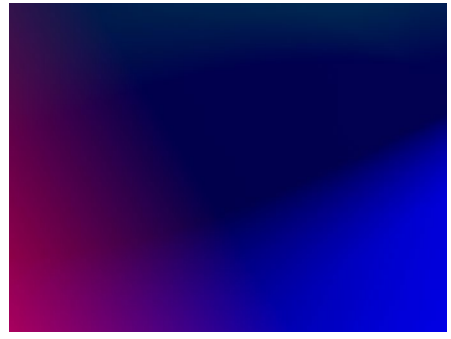
Intestate → to die without an executed will or if a court declares a will invalid

Statutes of descent and distribution/ statutes of intestate succession govern

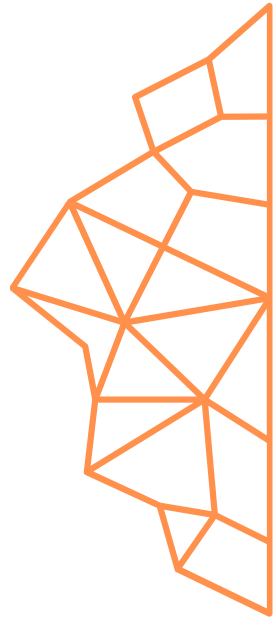
inheritance when no valid will exists.



THE BASICS OF ESTATE PLANNING



- **FUNERAL ARRANGEMENTS**
- **LAST WILL AND TESTAMENT**
- **DURABLE POWER OF ATTORNEY**
  - **“Magic language”**
- **STATUTORY MEDICAL POWER OF ATTORNEY**
- **TRUSTS**
- **DESIGNATION OF GUARDIAN FOR MINOR CHILDREN**
- **LIVING TRUSTS**
- **MEDICAL DIRECTIVES/ LIVING WILLS**

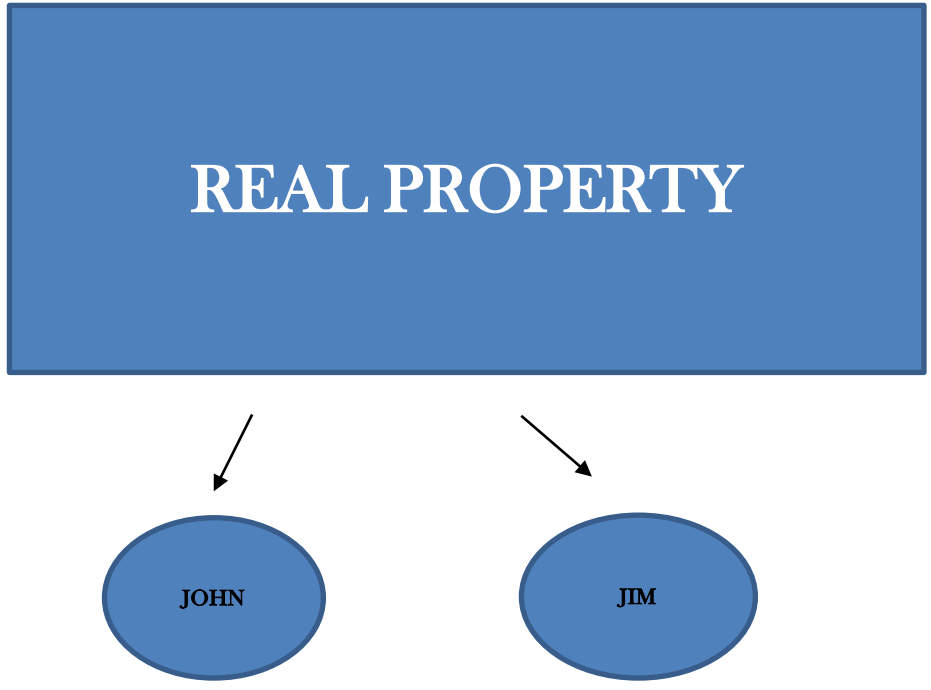


Types of Property Ownership

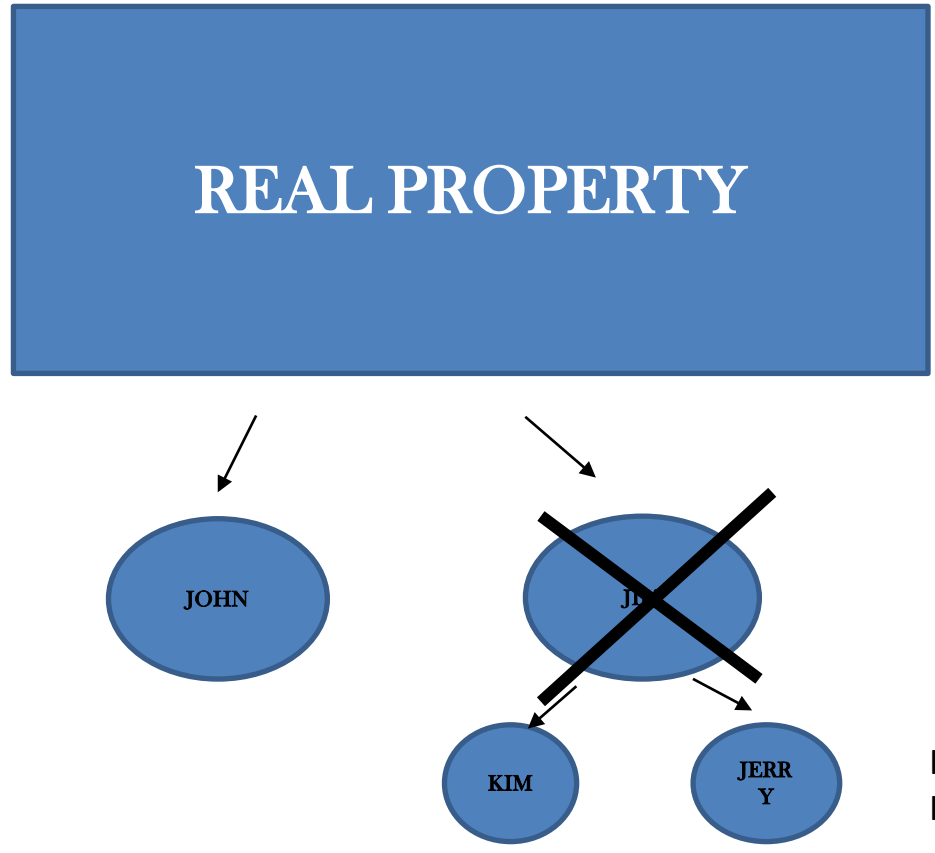
- Fee Simple/Fee Simple Absolute/ Ownership
- Tenancy in Common
- Tenancy by the entirety
- Community property
- Separate property



TENANTS IN COMMON: EXAMPLE 1

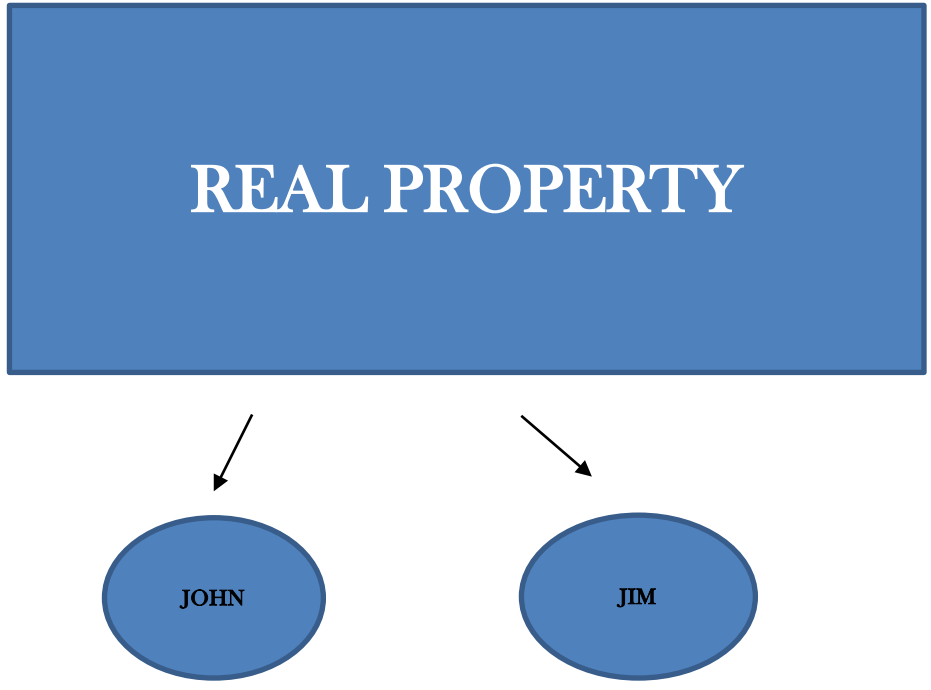


TENANTS IN COMMON: EXAMPLE 1

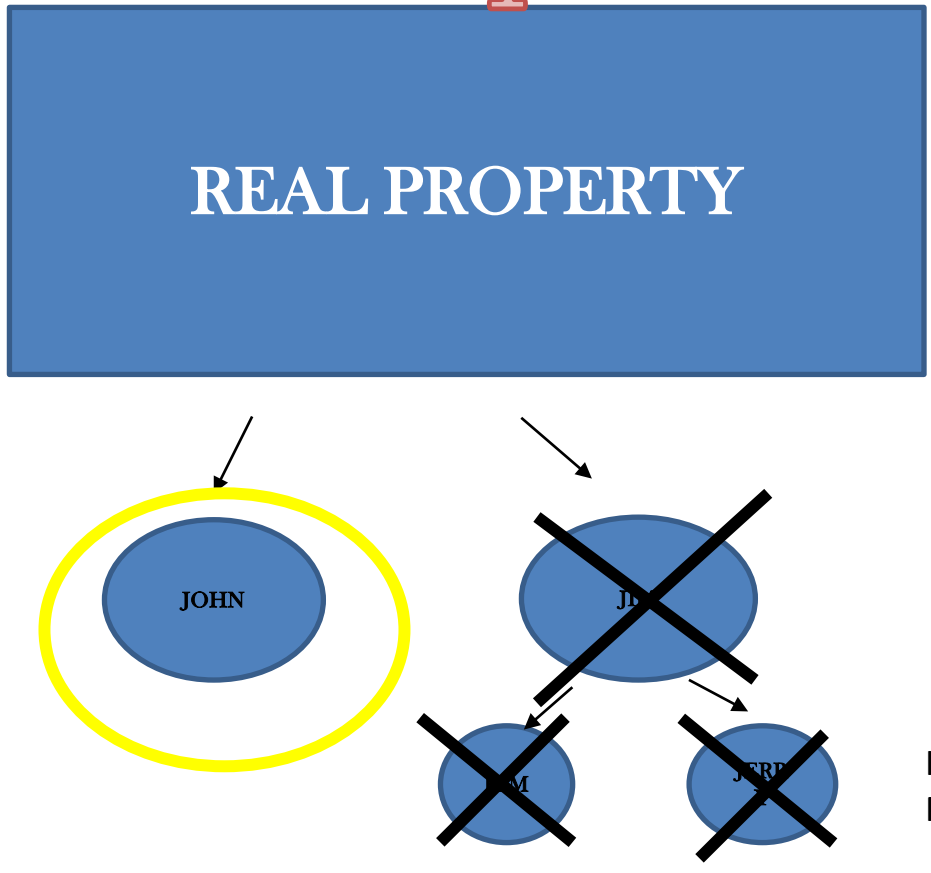


Kim and Jerry each have a ¼
Interest in the property at Jim's death.

JOINT TENANCY WITH RIGHTS OF SURVIVORSHIP: EXAMPLE 2



JOINT TENANCY IN COMMON WITH RIGHTS OF SURVIVORSHIP: EXAMPLE 1



Kim and Jerry have no interest in the Property at Jim's death.



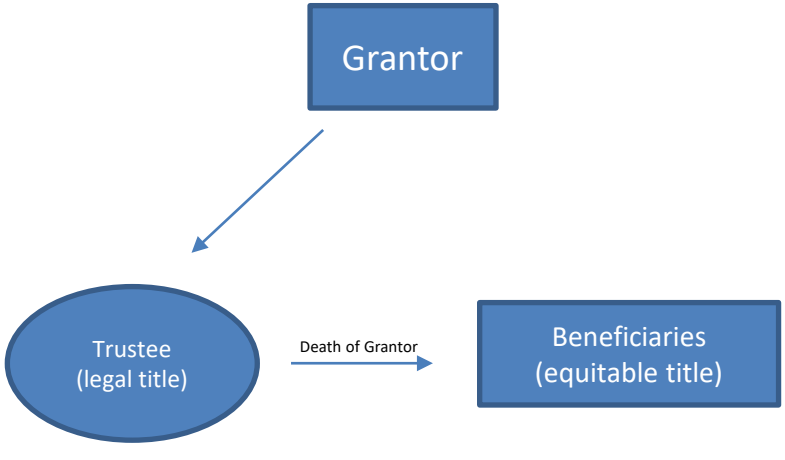
WHAT IS A TRUST?

An agreement to transfer property for the benefit of one of more people. A trust is a contract between the person transferring assets (grantor) and the person managing the assets (trustee). The person managing the assets (trustee) has the responsibility of carrying out his/her duties based upon the wishes of the grantor, which are outlined in the trust agreement.

WORDS YOU NEED TO KNOW

- Trust
- Trustee
- Grantor
- Heirs v. Beneficiary
  - Income
  - Principal
  - Contingent
  - Residuary
- Trust Principal
- Legal/Equitable Title

THE CREATION OF A TRUST





Important parts of a trust

- The Grantor who contributes property to the trust
- The Trustee who administers the trust based upon the wishes of the Grantor
- The beneficiaries who will enjoy the property of the trust
- Real and/or personal property to be transferred to the trust

Duties of a trustee

- Based upon the terms of the trust agreement. It is what YOU want!
- Sell assets
- Purchase assets
- Loan money to the beneficiaries
- Lease property
- Maintain business
- Hire professionals (certified public accountant, attorney, etc.)



Types of trusts

- Revocable
  - The grantor has the right to change the terms of the trust or to terminate the trust at any time prior to his or her death.

- Irrevocable
  - The grantor may not change the material terms of the trust and cannot terminate the trust at any time after the execution of the trust agreement and the funding of the trust.

REVOCABLE TRUSTS

THE GOOD

- Can be modified at any time prior to death
- Can be revoked at any time prior to death
- Can transfer assets into and out of the trust at any time

THE NOT SO GOOD

- No savings on estate taxes
- Must fund the trust
- No creditor protection
- Likely no protection in divorce or bankruptcy
- Likely no asset protection

LIVING TRUSTS V. TESTAMENTARY TRUSTS

Living Trusts (or Inter Vivos)

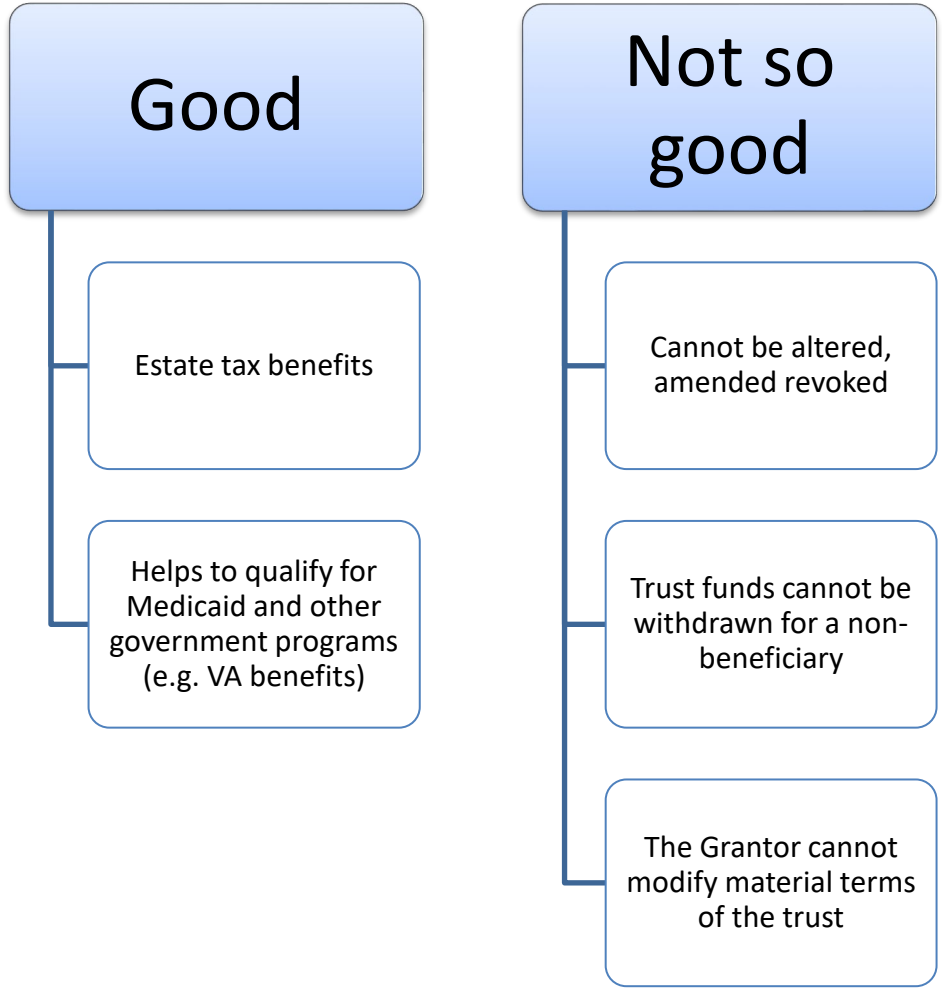
- Created during your life
- Avoid probate process altogether

Testamentary Trusts

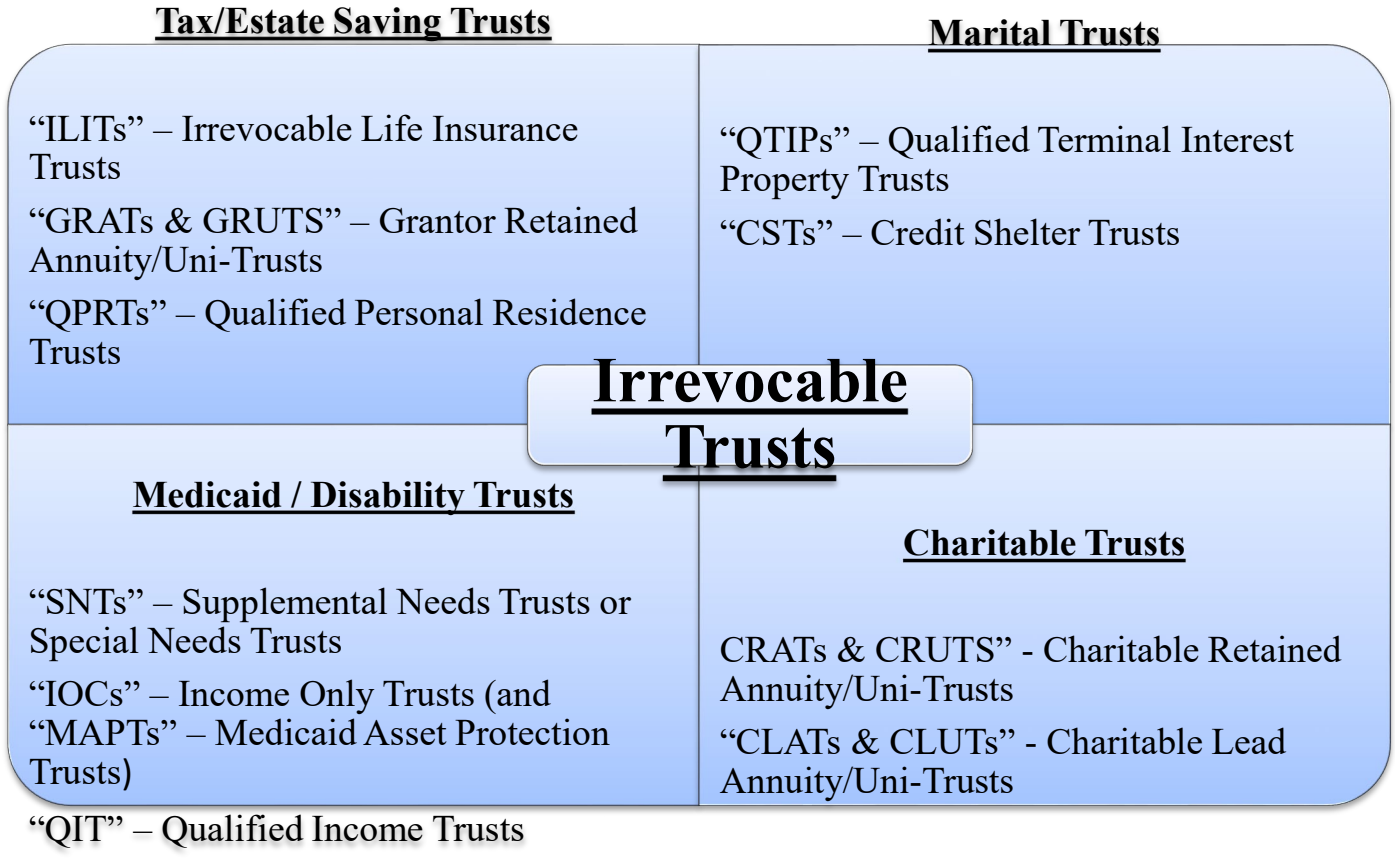
- Created at your death
- May be contingent depending on the Will or creation document

Irrevocable trusts

- All trusts become Irrevocable upon the death of the Creator. Therefore, a Revocable Trust becomes irrevocable upon the death of the Creator.
- A Testamentary Trust is by its nature irrevocable since it isn't effective until the Creator's Will is submitted to Probate.
- Irrevocable Trusts cannot typically be altered, amended, changed or revoked.
- Property placed in these trusts cannot be withdrawn (though they may be substituted for other like-valued property).
- The Grantor is typically not the serving Trustee of these Trusts, as doing this may limit the benefits of the trust.
- Some Irrevocable trusts allow the beneficiary the ability to receive government benefits.


Good
Estate tax benefits
Helps to qualify for Medicaid and other government programs (e.g. VA benefits)
Not so good
Cannot be altered, amended revoked
Trust funds cannot be withdrawn for a non-beneficiary
The Grantor cannot modify material terms of the trust

Four Types of Irrevocable Trusts



Why Use Irrevocable Trusts?

The government gives these trusts preferential tax gave their assets away and no longer have control over the assets.

If a Trust does not conform with specific governmental agency provision the Trust will lose this preferential treatment.

The Creator can't reclaim the funds (the property is no longer the property of the Creator and he cannot change or revoke the Trust).

Unless a Creator has more-than-adequate assets, is aging, will eventually apply for government benefits such as Medicaid, or is highly inclined to transferring funds to another party in order to decrease his or her later estate taxes, an Irrevocable Trust should be avoided.

However, if a Creator's situation does fit into any of these categories an Irrevocable Trust may be an option to consider.

Beneficiary & Creditor Protection

Spendthrift Provisions

- Protects beneficiaries from creditors. The Trustee will negotiate a settlement with the creditor (maybe 25 cents on the dollar, depending on the creditor) or else the Trustee will not transfer the funds (because funds are in the trust are not truly the beneficiary's money, unless the beneficiary is also the Trustee).

Substance Abuse Provisions

- If the beneficiary has a **substance abuse** issue, or likes to gamble to excess, special provisions can be inserted in the Trust allowing the Trustee to withhold distributions until these problems are cleared up. This is helpful for children who are well-intentioned but in the grasps of harmful addictive behavior.

Trusts for Disabled Loved Ones

FIRST PARTY SPECIAL NEEDS TRUST: The Beneficiary's money is used to fund the Trust

- Upon death trust funds **MUST** be used to pay back Medicaid before remaining funds are transferred to desired contingent beneficiaries
- Individual Trusts:
  - The individual's excess assets and "spend down" income can go into this Trust
  - To avoid Transfer Penalties:
  - (1) the funding Beneficiary must be under 65 years old,
  - (2) individual must be "Disabled" under Social Security Laws,
  - (3) must be established by a parent, grandparent, legal guardian or court order, and
  - (4) there MUST be a payback provision to Medicaid.
- Pooled Trusts: Available to people who are over 65 and have no one to establish the Trust (#3 above)

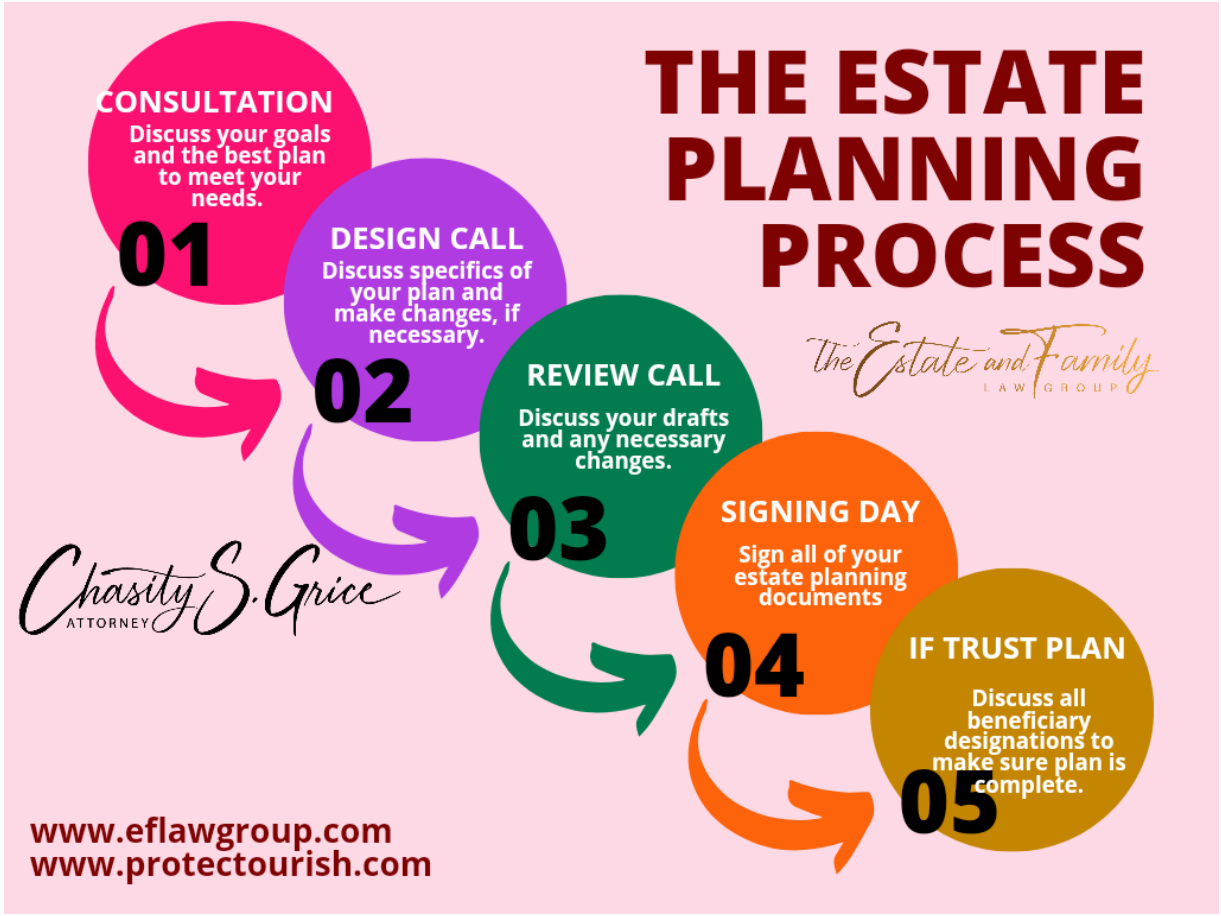
THIRD PARTY SPECIAL NEEDS TRUST: An outside individual's money funds the Trust

- Upon the Beneficiary's death any remaining funds go to the contingent beneficiary.
- NO Medicaid Payback is required (because the Trust was never the Beneficiary's property).
- HOWEVER, a Spouse cannot avoid support obligations.



READY TO MOVE FORWARD?

- cgrice@eflawgroup.com
- 901.290.0650
- Protectourish.com


THE ESTATE PLANNING PROCESS
The Estate and Family LAW GROUP
CONSULTATION
Discuss your goals and the best plan to meet your needs.
01
DESIGN CALL
Discuss specifics of your plan and make changes, if necessary.
02
REVIEW CALL
Discuss your drafts and any necessary changes.
03
SIGNING DAY
Sign all of your estate planning documents
04
IF TRUST PLAN
Discuss all beneficiary designations to make sure plan is complete.
05
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FUNDING YOUR TRUST

1. DID YOU NAME THE TRUST AS BENEFICIARY ON ACCOUNTS?
2. DID YOU NOTIFY THE ATTORNEY ABOUT ALL BUSINESS INTERESTS?
3. HAVE YOUR VEHICLES/VALUABLE PERSONAL PROPERTY TRANSFERRED TO TRUST?
4. DO YOU HAVE YOUR FILED CERTIFICATION OF TRUST?
5. HAS ALL OF YOUR REAL ESTATE BEEN PROPERLY TRANSFERRED (TO TRUST OR LLC OWNED BY TRUST)?

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901-290-0650

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LIST OF FEES

SIMPLE WILL PLAN

WILL
HEALTHCARE POA
FINANCIAL POA
LIVING WILL
NO TRUSTS

$2,500

WILL PLAN (WITH TESTAMENTARY TRUST)

WILL
HEALTHCARE POA
FINANCIAL POA
LIVING WILL
TESTAMENTARY TRUST

$3,500

TRUST PLAN

WILL
HEALTHCARE POA
FINANCIAL POA
LIVING WILL
REVOCABLE LIVING TRUST OR
IRREVOCABLE TRUST

$4,500

LIST OF FEES- WITH PROMOTION

SIMPLE WILL PLAN

WILL
HEALTHCARE POA
FINANCIAL POA
LIVING WILL
NO TRUSTS

~~$2,000~~ $1,000

WILL PLAN (WITH TESTAMENTARY TRUST)

WILL
HEALTHCARE POA
FINANCIAL POA
LIVING WILL
TESTAMENTARY TRUST

~~$3,000~~ $1,500

TRUST PLAN

WILL
HEALTHCARE POA
FINANCIAL POA
LIVING WILL
REVOCABLE LIVING TRUST OR
IRREVOCABLE TRUST

~~$4,000~~ $2,000

Add ons - Special Pricing

PLANNING FOR KIDS

- Designation of Guardian - Kid planning package $750
- Additional Trust planning (special pricing)

PLANNING FOR DISABLED LOVED ONES

- Special Needs Trusts $2,500
- ABLE accounts (special pricing)
- Planning for Long -term care needs (special pricing)
- Medicaid planning (special pricing)

BUSINESS PLANNING

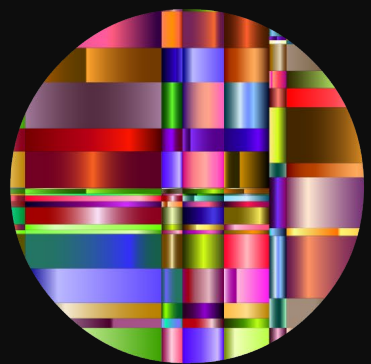
- Wealth preservation
- Business succession planning
- Collaboration with financial advisor to provide a comprehensive financial and estate plan
- Asset Protection

HOW DO I GET THE PROMOTION?

- Choose your package TODAY
- Pay your deposit by 5:00 p.m.
- Schedule your design call
- Review your drafts and get it DONE!

***You can change packages as long as you pay the difference!





What can I do for you?



01 HELP YOU ORGANIZE YOUR AFFAIRS

02 ENSURE THAT WHAT YOU WANT TO HAPPEN TO YOUR ESTATE ACTUALLY HAPPENS

03 ENSURE THAT YOUR MINOR CHILDREN ARE CARED FOR IF YOU ARE UNABLE TO

04 MAKE SURE THAT YOU UNDERSTAND EVERYTHING ABOUT YOUR PLAN

05 HELP GIVE YOU PEACE OF MIND ABOUT YOUR AFFAIRS

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