

# Advanced Estate Planning

An Overview of Some Sophisticated Estate Planning Strategies



# Who Needs Advanced Estate Planning?

- You have net worth over \$12,060,000 (federal gift and estate tax basic exclusion amount in 2022)
- You want to provide for grandchildren or later generations
- You own a family business/farm
- You want to donate to charity
- You want to shield assets from future creditors, an ex-spouse, or your heirs' creditors/ex-spouses



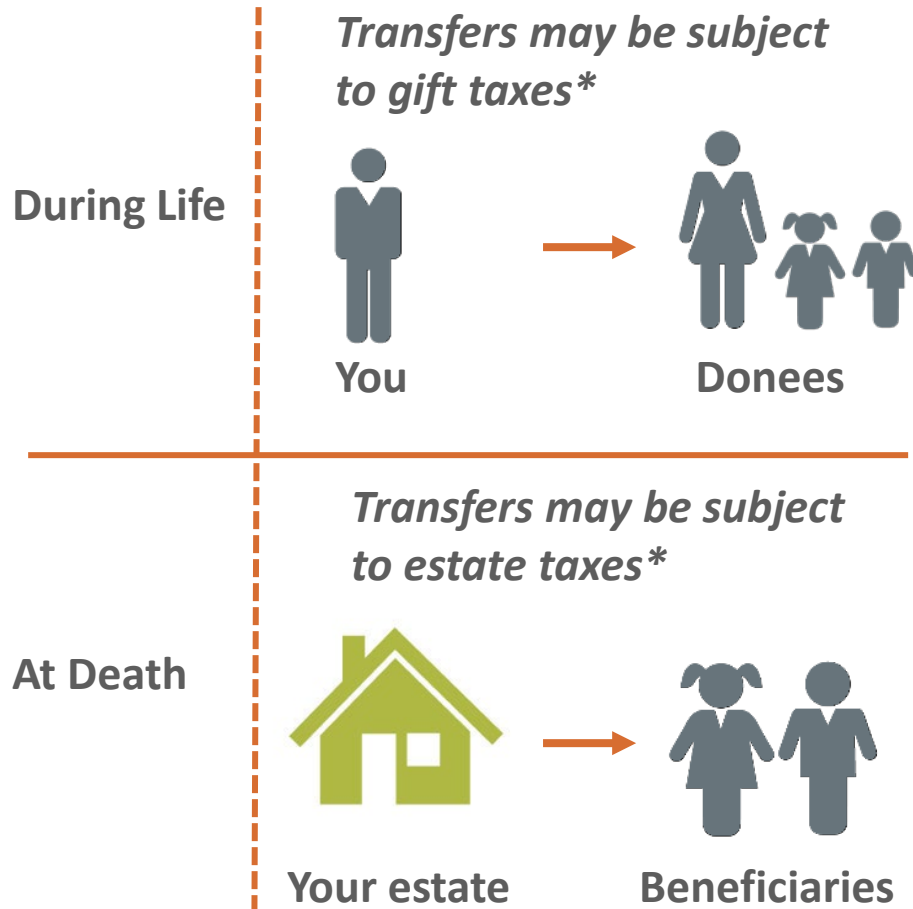
# A Balancing Act

Advanced estate planning strategies generally come with tradeoffs:

- Implementation costs
- Relinquishment of financial benefits
- Loss of control



# The Federal Transfer Tax System

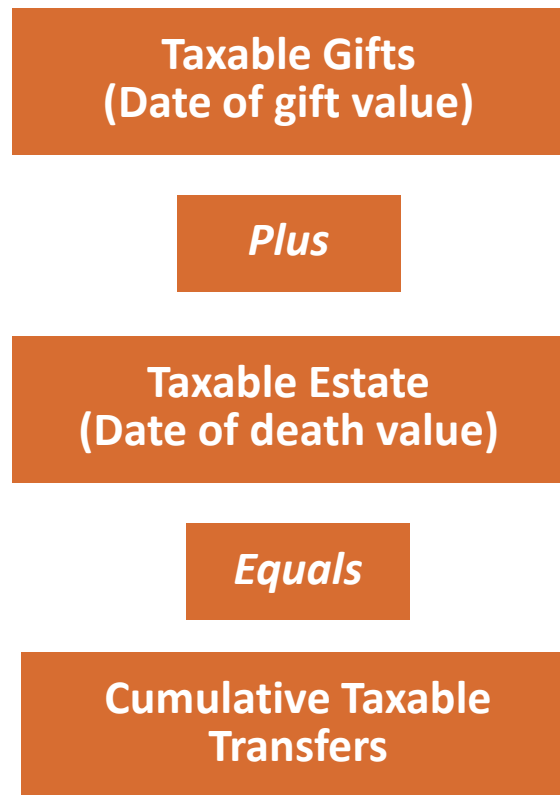


- Gift tax — lifetime gifts
- Estate tax — property transferred at death
- Generation-skipping transfer (GST) tax — transfers to individuals more than one generation below you

*\*GST tax may also apply.*



# The Federal Transfer Tax System — The Unified System



- Gift and estate taxes are unified
- Gifts made during life are added to transfers made at death on estate tax return
- Generally, gifts are valued as of date gifts were made; transfers made at death are valued at date of death
- Any estate tax owed is reduced by gift tax paid
- Generation-skipping transfer tax is separate

# The Federal Transfer Tax System — Top Tax Rates

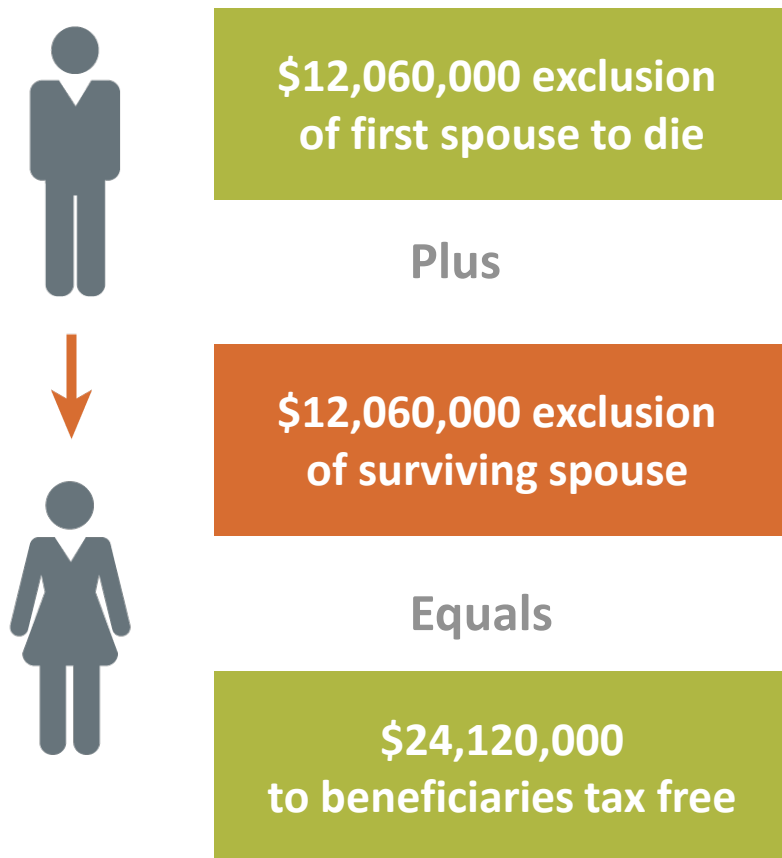
	2020	2021	2022
Gift Tax and Estate Tax	40%	40%	40%
GST Tax	40%	40%	40%

# The Federal Transfer Tax System — Basic Exclusion Amounts

	2020	2021	2022
Gift Tax and Estate Tax	\$11,580,000	\$11,700,000	\$12,060,000

Using your exclusion for gift tax purposes  
reduces your available estate tax exclusion.

# The Federal Transfer Tax System — Estate Tax Exclusion Portability



- Prior to 2011, estate tax exclusion was “use it or lose it”
- In 2011 and later, exclusion is portable between spouses
- Surviving spouse can use any exclusion left unused by decedent spouse
- May effectively double exclusion of surviving spouse
- May make minimizing gift and estate taxes easier for spouses



# The Federal Transfer Tax System — GST Tax Exemption Amounts

	2020	2021	2022
GST Tax	\$11,580,000	\$11,700,000	\$12,060,000

GST tax exemption is not portable.

# The Federal Transfer Tax System — Exclusions



- \$16,000 gift each year to as many individuals as you want (\$32,000 if you and your spouse make the gift together)



- \$80,000 (\$160,000 with spouse) to a 529 plan — gift reported over five years



- Payments made directly to an educational institution for another individual's tuition



- Amounts paid directly to a medical care provider for another individual's medical care

# The Federal Transfer Tax System — Marital and Charitable Deductions

- Transfers to U.S. citizen spouses during your lifetime or at death fully deductible
- Transfers to non-U.S. citizen spouses may qualify for \$164,000 annual exclusion (2022)
- Transfers to qualifying charities also fully deductible (may be deductible for income tax purposes as well)



# Minimizing Estate Taxes

- Equalizing each spouse's estate
- Optimizing the marital deduction
  - QTIP trust
  - Bypass (credit shelter) trust
  - Dynasty trust
  - GRAT
  - QPRT



# Minimizing Estate Taxes — Equalizing Each Spouse's Estate



**John**  
\$10 million

- \$5 million gift

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\$5 million

- \$5 million  
basic exclusion  
amount

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**No estate tax**



**Mary**

+ \$5 million gift

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\$ 5 million

- \$5 million  
basic exclusion  
amount

---

**No estate tax**

- Assume spouses have unequal estates
- Spouse with larger taxable estate can transfer assets to spouse with smaller taxable estate
- Transfer not subject to transfer tax because of marital deduction

# Minimizing Estate Taxes — Optimizing Marital Deduction

*Maximum amount  
passing tax free  
under exclusion*



**John's estate**

*Residual estate  
to spouse*



**John and  
Mary's children**



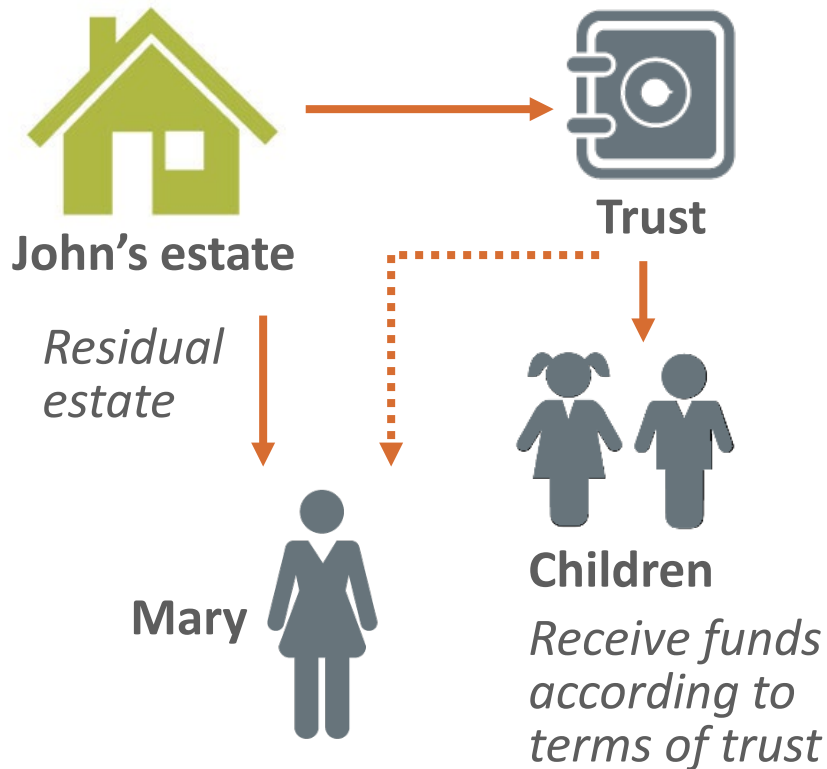
**Mary**

- First spouse to die leaves amount equal to estate tax exclusion to children (no tax — estate tax exclusion)
- Balance of estate left to spouse (no tax — marital deduction)
- Defers estate tax until surviving spouse's death



# Minimizing Estate Taxes — Bypass (Credit Shelter) Trust

*Maximum amount passing  
tax free under exclusion*

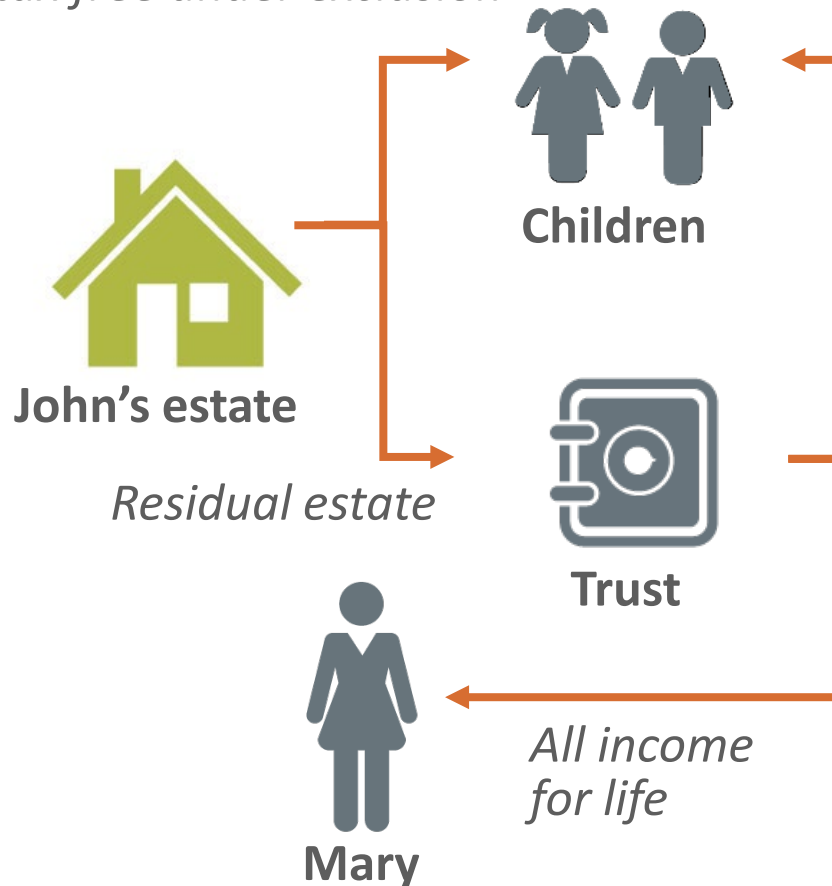


- Allows both spouses to fully utilize estate tax exclusions while giving surviving spouse restricted access to more assets
- Assets passing to bypass (credit shelter) trust utilize first spouse's exclusion
- Trust generally provides spouse with restricted access to assets
- Upon death of surviving spouse, remaining trust assets pass to beneficiaries according to terms of trust

*Restricted access to trust*

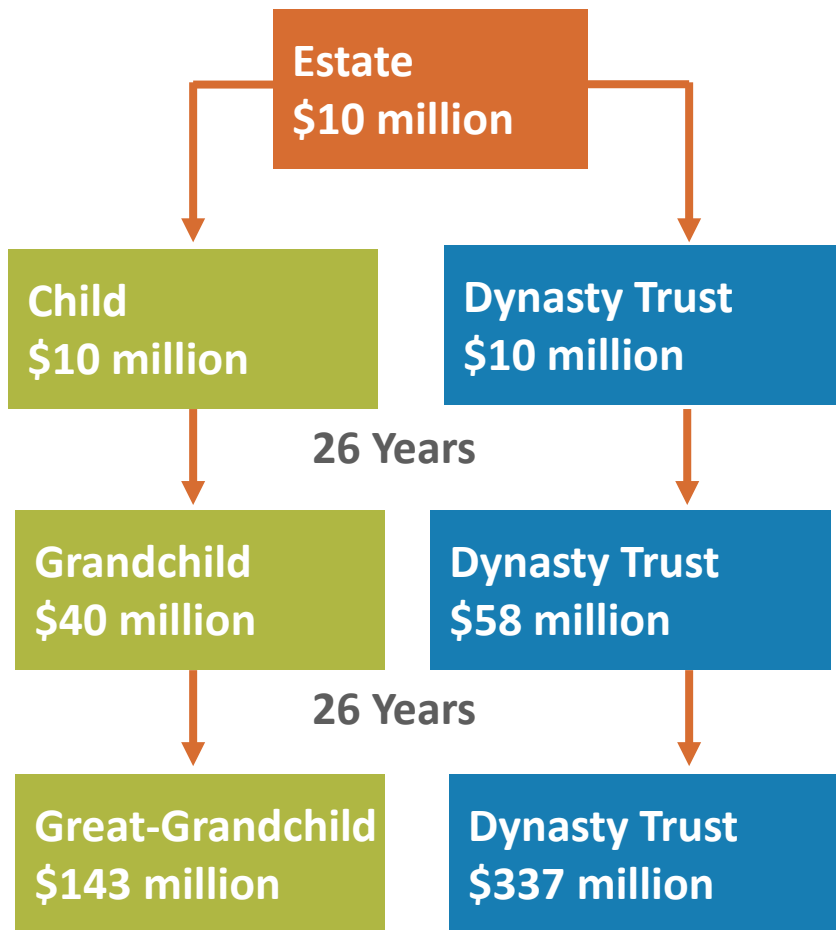
# Minimizing Estate Taxes – QTIP Trust

*Maximum amount passing  
tax free under exclusion*



- Qualified terminable interest property (QTIP) trust
- Assets passing to QTIP trust qualify for marital deduction
- Surviving spouse receives all income from trust for life, with access to principal according to trust terms
- Remaining trust assets included in surviving spouse's taxable estate when surviving spouse dies
- At surviving spouse's death, remaining assets pass to trust beneficiaries

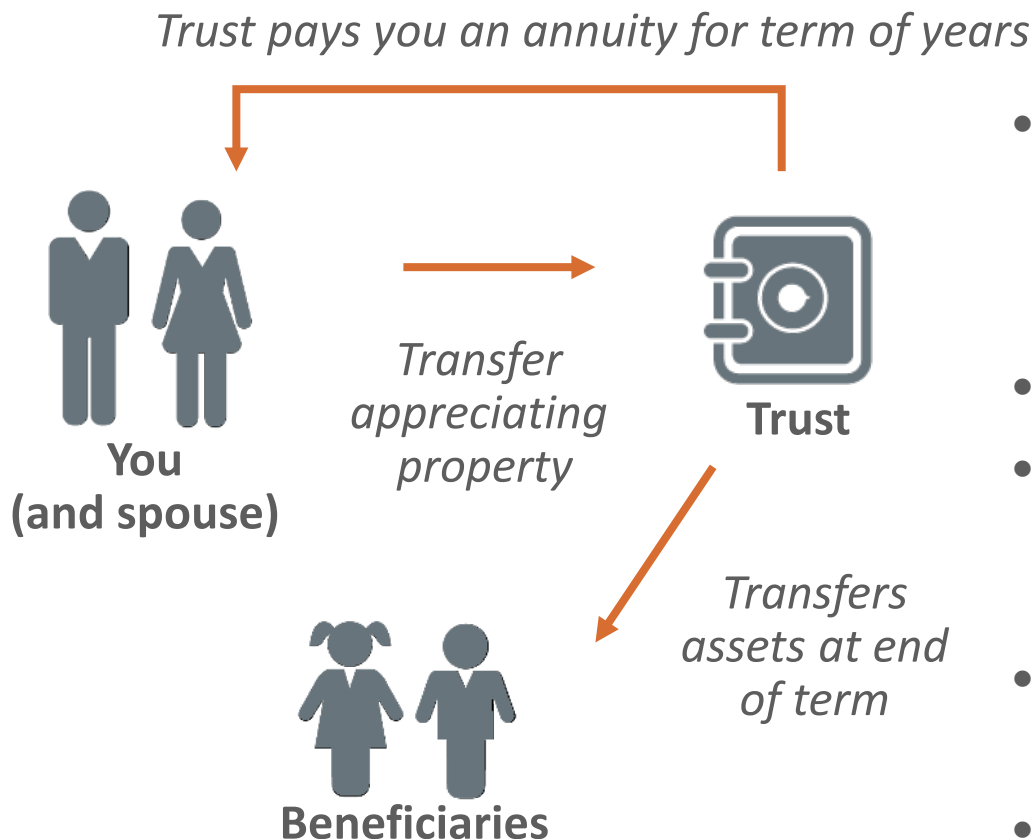
# Minimizing Estate Taxes — Dynasty Trust



- Dynasty trust preserves wealth for multiple generations of descendants
- Trust survives 21 years after the death of the last beneficiary alive when the trust was created
- Could last for over 100 years
- Trust assets remain sheltered from transfer taxes (but not income taxes) while in the trust

*Assumes that a generation is 26 years, the estate tax exclusion and GST exemption are \$6,030,000, the estate and GST tax rates are 40%, the growth rate is 7%, principal is not spent, and state variables and income taxes are ignored.*

# Minimizing Estate Taxes — GRAT



- Using grantor retained annuity trust (GRAT) removes property from estate while allowing you to retain interest
- GRAT receives property
- Annuity paid to you for specified period of years, then property passes to beneficiaries
- Transfer subject to gift tax (at discounted value)
- Property not included in taxable estate as long as you outlive term of years

# Minimizing Estate Taxes — QPRT

- A qualified personal residence trust (QPRT) is a trust that is funded with a personal residence
- You retain the right to continue living in the home for a specified number of years
- As long as you outlive the specified term of years, the home is not included in your taxable estate — but you must pay market rent if you continue to live in the home



# What Is an Estate Freeze?

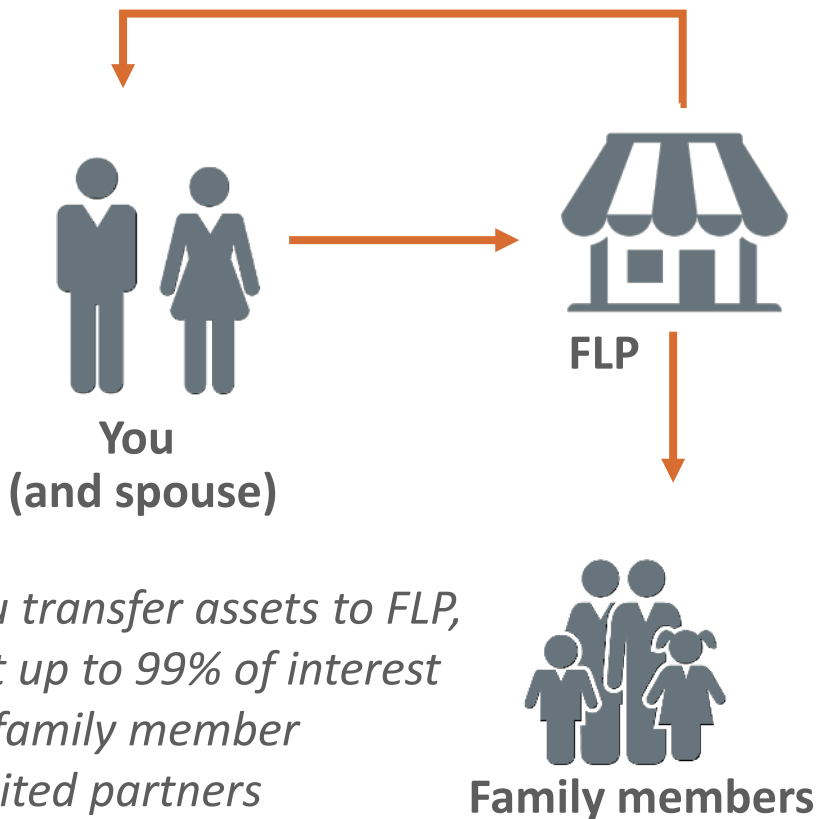
- Freezes value of property for person removing it from his or her estate
- Transfers future growth to person receiving property
- Allows retention of some control or financial benefit
- Common estate freeze strategies include family limited partnerships, private annuities, installment sales, and gift- or sale-leasebacks





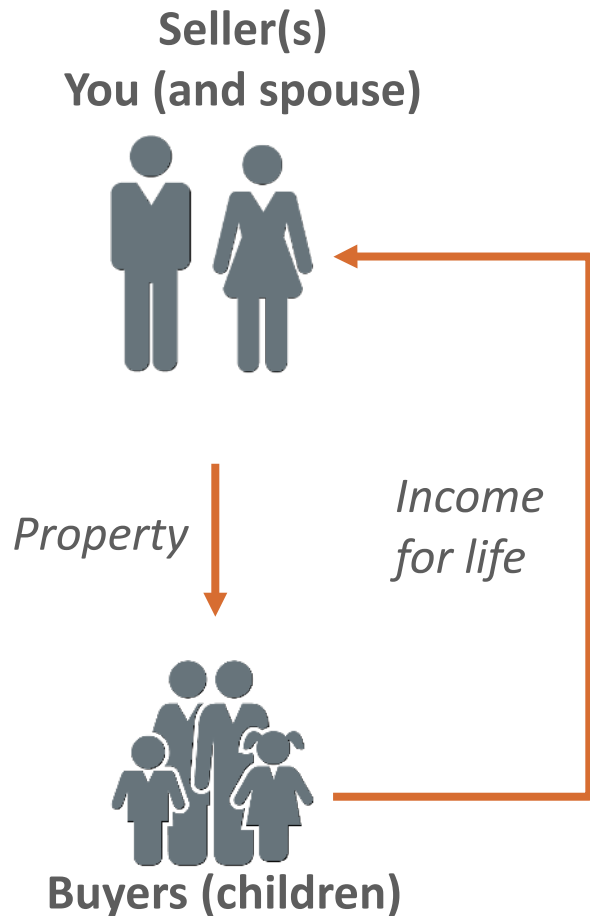
# Estate Freeze — Family Limited Partnership (FLP)

*You become general partner,  
retain as little as 1% interest*



- An FLP is a business entity that enables transfer of family business ownership to next generation
- Typically, older generation becomes general partners and younger generation becomes limited partners
- Protects limited partners from future creditors of business
- Interests gifted to limited partners valued at discounts as high as 60%
- High risk of IRS challenge

# Estate Freeze — Private Annuity



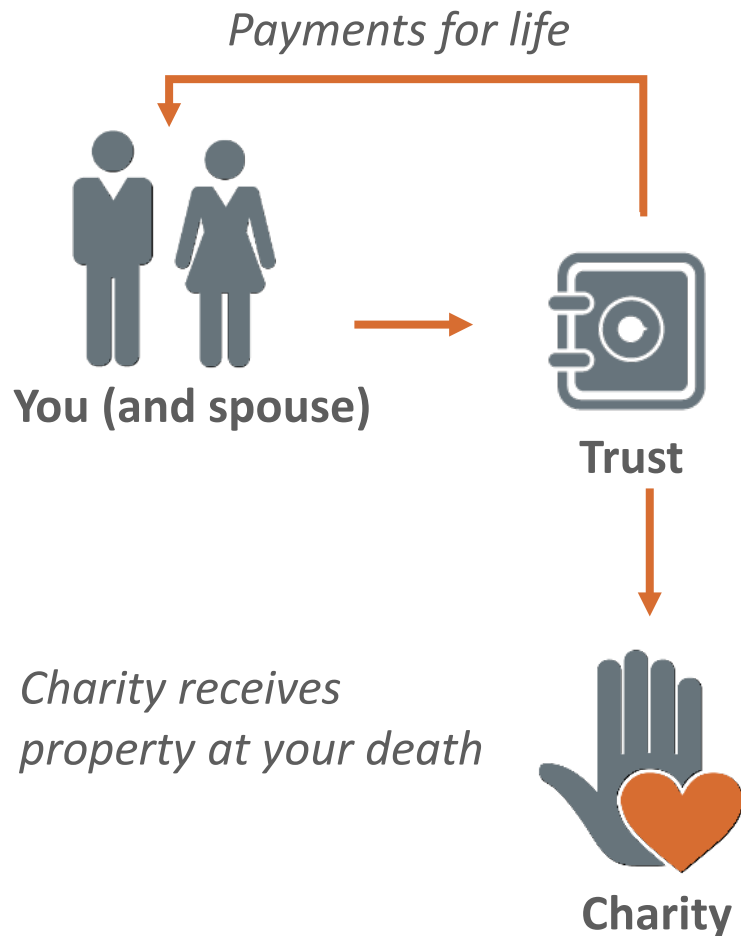
- Property sold in exchange for unsecured promise to pay specified income to you (or to you and your spouse) for life
- Transaction not subject to gift tax
- Property removed from estate entirely

# Charitable Giving

- Can be rewarding on a personal level
- Fully deductible for gift and estate tax purposes
- May also be deductible for income tax purposes
- Planned giving options include simple bequests, outright gifts, charitable trusts, charitable annuities, community and private foundations, and donor-advised funds

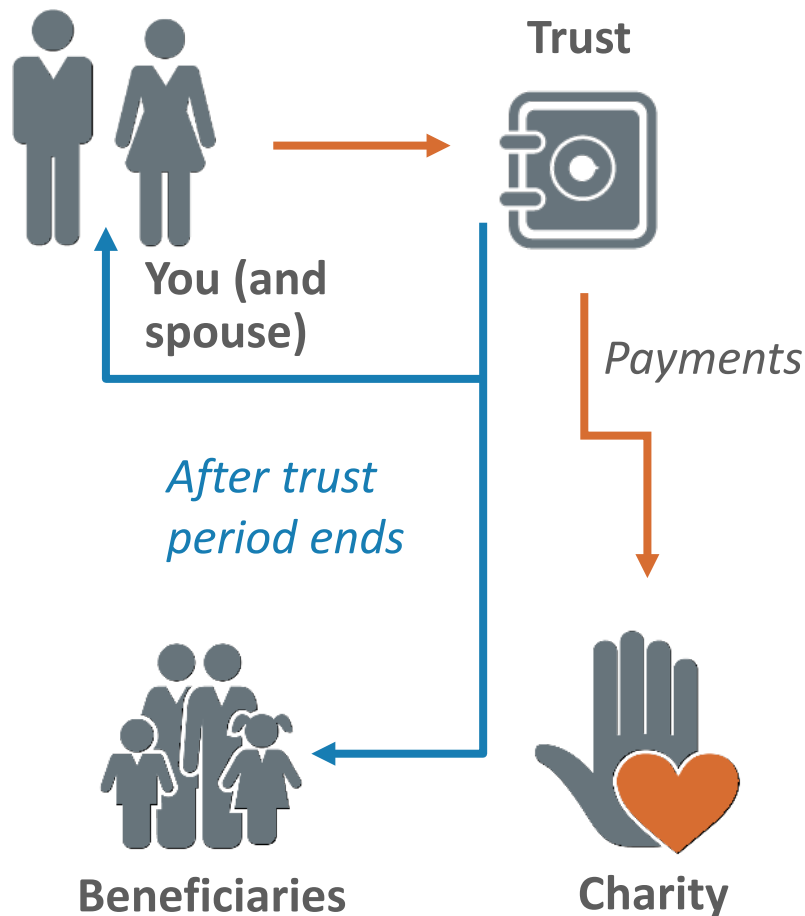


# Charitable Giving — Charitable Remainder Trust (CRT)



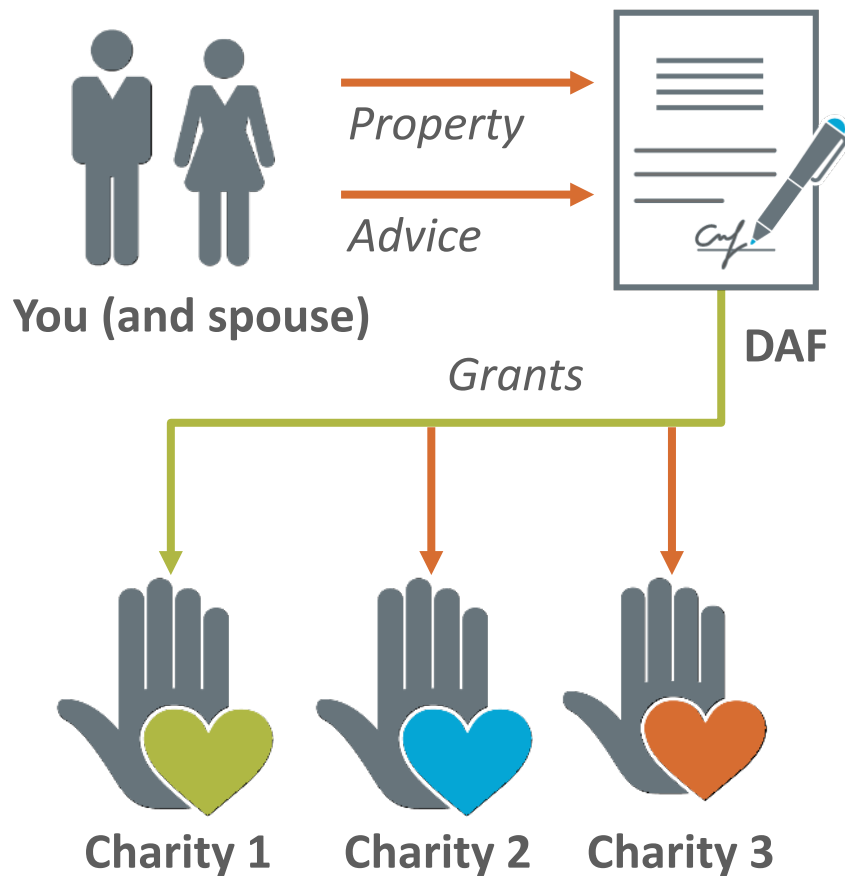
- A CRT is an irrevocable trust that provides payments to you (or you and your spouse) for life
- Charity receives property at your death(s)
- You can change charitable beneficiary at any time
- You may be able to serve as trustee and control assets

# Charitable Giving — Charitable Lead Trust (CLT)



- With a CLT, charity receives payments during your life, or the lives of you and your spouse, or for a term of years
- You or your beneficiaries receive trust principal when trust period ends
- Value of transfer reduced by value of payment stream to charity
- Channels future appreciation to beneficiaries estate tax free

# Charitable Giving — Donor-Advised Fund (DAF)



- Donor-advised fund (DAF) is an alternative to a private foundation, but easier to create and manage, and requires less money
- DAF invests your donations and makes grants to charities
- You can offer advice, but DAF is not required to follow your suggestions
- Grants can be made in your name or anonymously
- Immediate income tax deduction



# Asset Protection

- Your wealth may be vulnerable to future creditors
- State and federal law may provide a degree of protection
- Adequate insurance protection sufficient for most
- Advanced strategies include forming business entity to hold business assets and transferring personal assets to a protective trust



# Asset Protection — Business Entity

## Business owner



*Business owner creates business entity and transfers business property to the entity. Business entity owns the business property.*

## Business entity



## Business assets



## Personal assets



*Creditors can only reach business assets.*



## Creditors of the business entity

*Creditors cannot reach business owner's personal assets.*



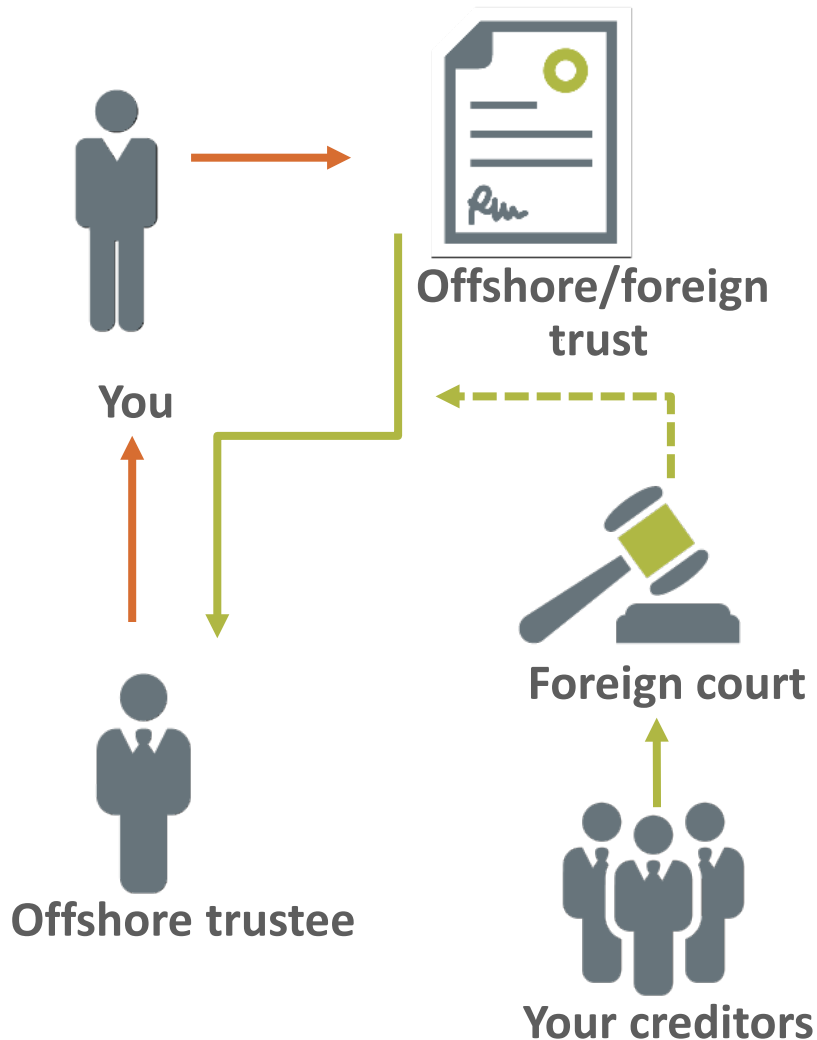
- Separate legal entity owns business assets
- Business entity responsible for all business debts
- Personal assets not at risk for acts of business
- Several considerations, including income tax consequences, need to be evaluated in choice of business entity

# Asset Protection — Self-Settled Domestic Trust



- You can name yourself as primary or even sole beneficiary of self-settled domestic trust
- Trustee has discretion to distribute or **not** distribute trust property
- Creditors can only reach property you have legal right to receive
- Creditors are unable to reach property while in the trust
- Creditors *can* reach property once it is distributed to you

# Asset Protection — Offshore/Foreign Trust



- U.S. courts have no jurisdiction over foreign trusts
- Creditors must commence suits in courts of foreign jurisdiction
- Creditors must engage attorney in foreign jurisdiction, and may have to pay fees and bond up front
- Obstacles may deter creditors from pursuing action

# Conclusion

- Is estate tax a planning concern for you?
- Do you plan to give or leave property to your grandchildren?
- Do you plan to give or leave significant property to charity?
- Do you own an interest in a business or farm?
- Is asset protection a concern for you?





# Thank You





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