

Estate Planning

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ATTORNEY

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LEGACY LAW
Group LLC

The Three Phases of Estate Planning

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- **Disability Planning**
 - **Purpose:** Planning for incapacity *during* life
 - **Documents:** Durable Power of Attorney, Health Care Power of Attorney, HIPAA Authorization, Living Will
- **Asset/Wealth Transfer Planning**
 - **Purpose:** Planning for the efficient transfer of your estate *at the time of death*
 - **Documents:** Revocable Living Trust, Last Will and Testament, Irrevocable Trusts
- **Inheritance Protection Planning**
 - **Purpose:** Planning for the effective transfer of values and care for loved ones *after death*

Powers of Attorney

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- **Durable Power of Attorney**
 - Appoints an agent to act on your behalf during a period of incapacity
 - ✦ Makes financial decisions
 - ✦ Pays bills
 - ✦ Cares for home, pets, and belongings
 - ✦ Makes all non-medical decisions
 - Should usually include a power to gift
 - Should be personalized to your specific needs and situation

Powers of Attorney

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- **Health Care Power of Attorney**
 - Appoints an agent to act on your behalf during a period of incapacity for all medical decisions
 - Powers **MUST** be considered carefully
 - Generally, we recommend making this power immediately effective
 - ✦ Avoids difficulty in getting doctor(s) to sign off on incapacity

Living Wills

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- Not to be confused with a Last Will & Testament
- Also known as “Directive to Physicians”
- Permanent vegetative state or terminal illness → dying will not be artificially prolonged

HIPAA Authorization

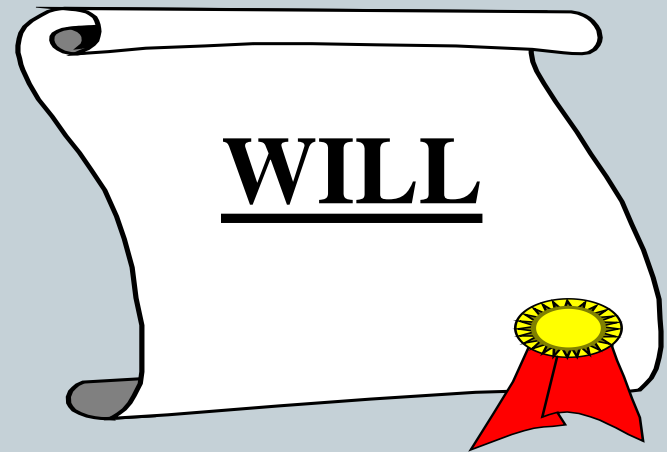
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- Addresses the HIPAA (Health Insurance Portability and Accountability Act) Privacy Rule
- Most medical providers are overly cautious about sharing any information
- Allows you to authorize who may receive medical information

WHAT IS A WILL?

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A set of instructions to the probate court telling them how you want your property to be divided when you die.



Wills

- Effective upon death
- Nominates Guardians of minor children
- Distributes property directly to beneficiaries
- Public
- Administered through probate(s)
- Names a Personal Representative

Types of Wills

- **Do-it-yourself Will**
 - Not worth the paper they are printed on
 - Your estate will likely end up in Intestacy
- **Holographic Will**
 - Not recognized in Wisconsin
- **Will with Testamentary Trust**
 - Trust that is (hopefully) created by judge during probate
- **Pour-over Will**
 - Complements a Revocable Living Trust based plan

Inheritance Protection Planning

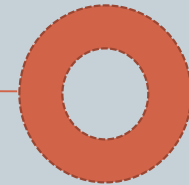
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No Protection



Outright

Full Protection



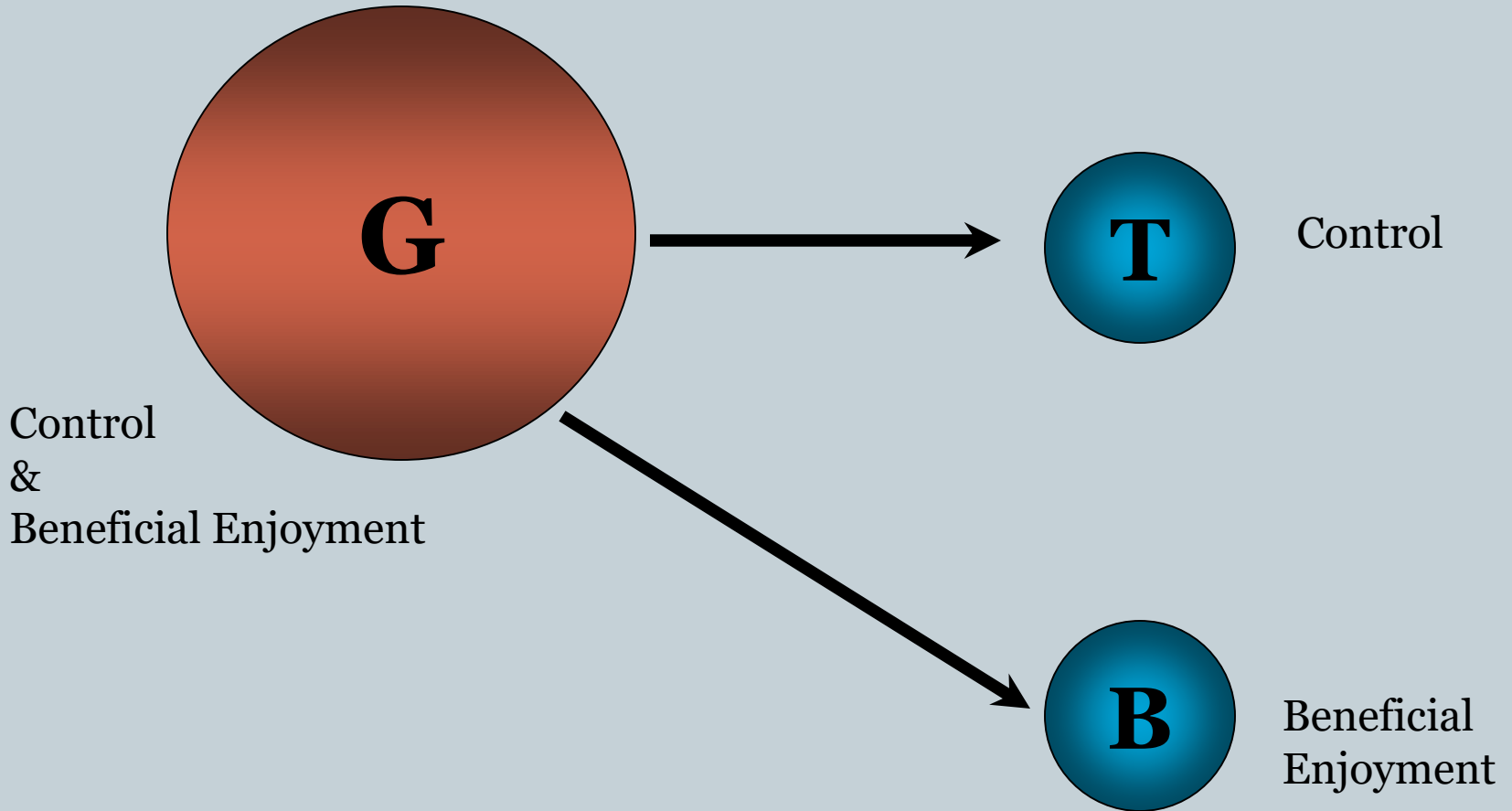
In Trust

Protects beneficiaries' inheritance from:

- Divorce
- Creditors
- Lawsuits/ Judgments
- Bankruptcy
- Themselves

What is a Trust?

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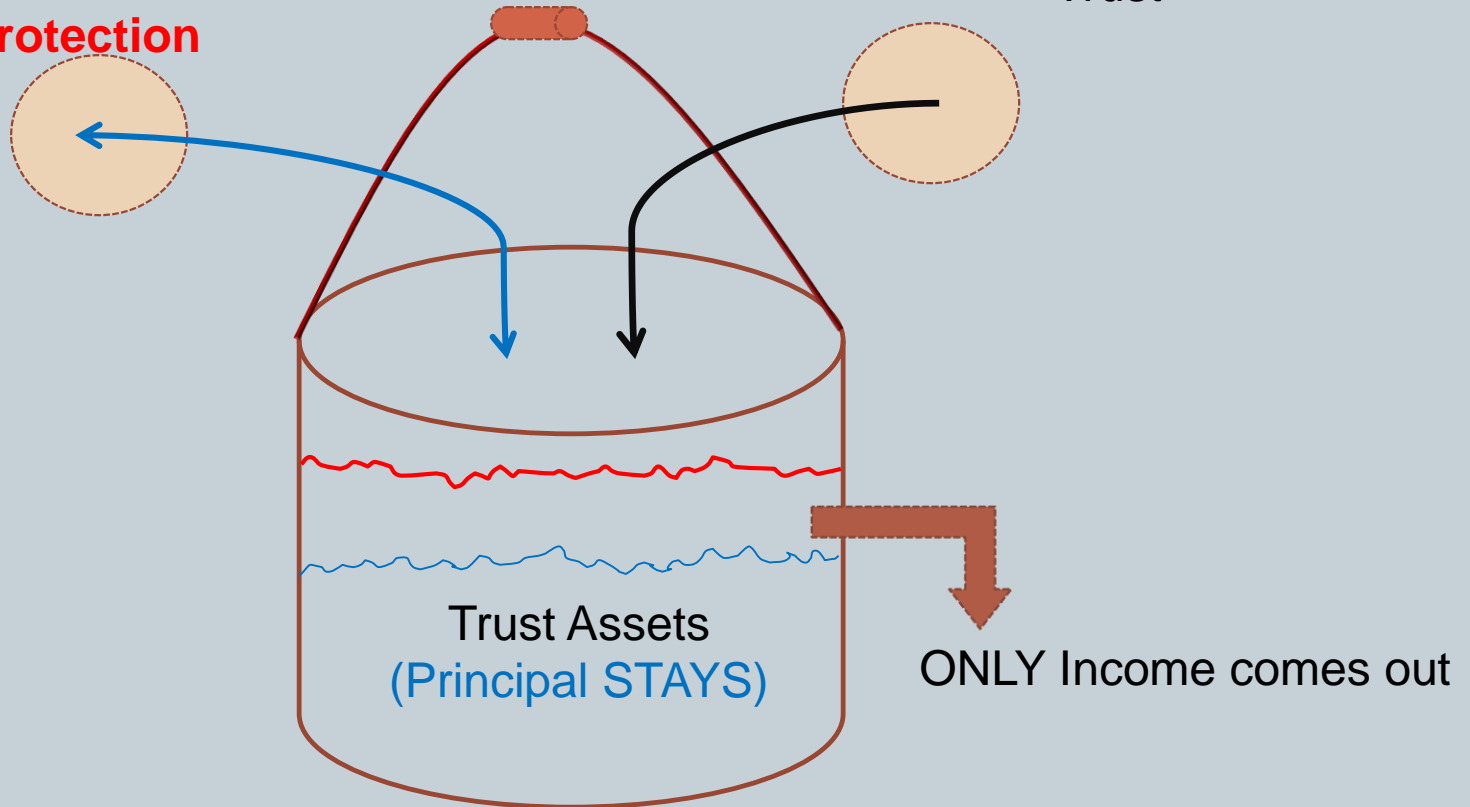
Trusts

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Revocable
Living Trust

No Asset Protection

Irrevocable
Trust



Revocable Living Trust

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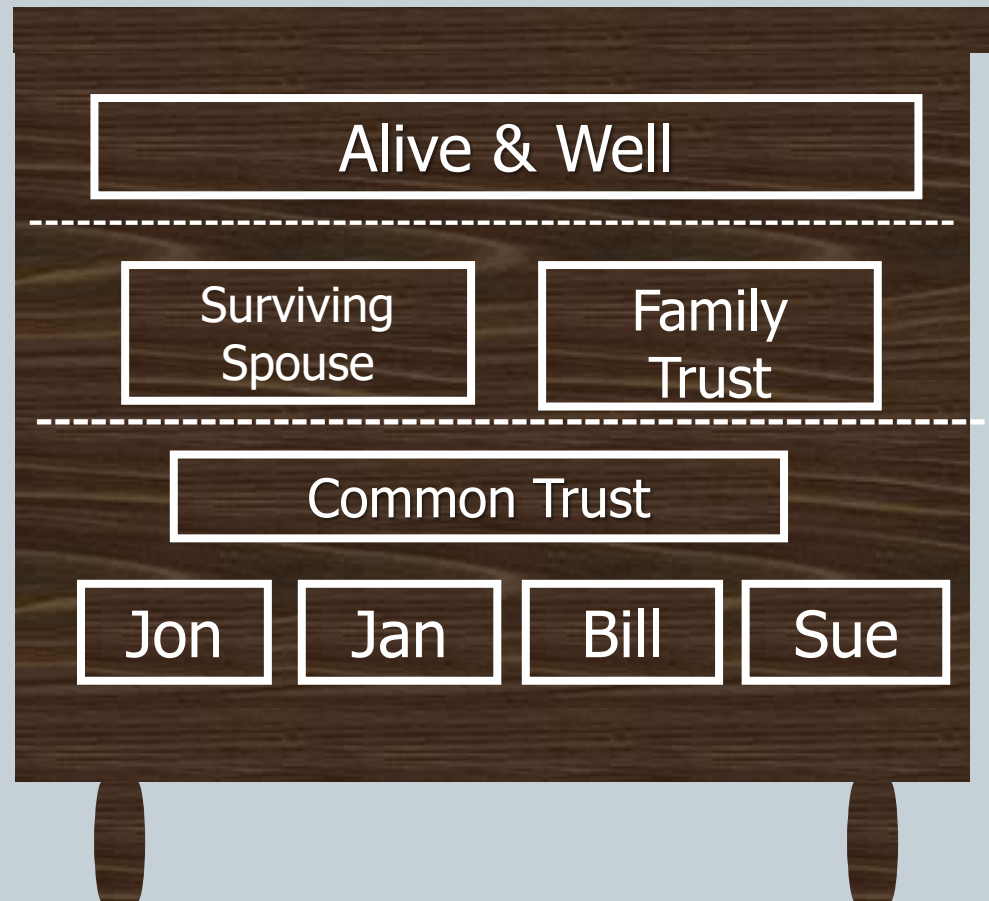
- **Trustmaker can amend it anytime**
- **NO Probate (unless not funded)**
- **Continuity in maker's affairs**
- **Good in every state**
 - **No ancillary Probates**
- **Difficult to contest**
- **Can provide asset protection for beneficiaries**
- **Will formalities are not required**
- **Comprehensive Centerpiece for entire Estate**

Designing a Trust

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Goal is to help our loved ones- not enable their bad habits nor hurt them!

- Would you give your 18 year old \$100,000?
- Asset Protection
 - ✓ Creditors
 - ✓ Divorce
 - ✓ Lawsuits/Judgments
 - ✓ Themselves
 - ✓ Bankruptcy
- Springing Special Needs Provisions



Inheritance Protection Planning

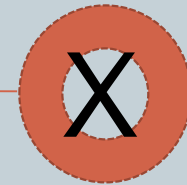
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Special Needs Planning

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- Beneficiary on federal or state aid may lose benefits if receive inheritance.
- To avoid this, beneficiary must receive inheritance in a special needs trust, drafted so as any inheritance is to supplement any aid, not replace.
- Trusts can be drafted with flexibility.

Irrevocable Trust

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- Similar to RLT, except the maker cannot revoke or amend
- Used primarily for two purposes:
 1. To move money out of estate for tax purposes (too much money)
 2. To protect assets from Nursing Home costs
- Can be used in conjunction with a revocable trust

Funding a Trust

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**Funding = putting assets into the trust =
retitling your property, changing
beneficiary designations, etc.**

- **If the asset is not in the trust, your trust does NOT control that asset**
- We help our clients fund their trusts
- Beneficiary Designations should usually be to the Trust
 - You cannot change ownership of everything (e.g. IRA's)!
- **If Trust is not funded – you will have a probate!!!**
 - This is where the Pour-Over Will would come into play

The Wild Cards – Beneficiary Designations!

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- Life Insurance
- IRA
- 401 k
- Payable on Death

Wills vs. Trusts

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Subject	Wills	Trusts
Probate	Yes	No
Cost to Design	Less Expensive	More Expensive
Lifetime Value	None	Yes – Disability Trustee
Asset Protection for Beneficiaries	No	Yes
Springing Special Needs	No	Yes
Real Property in another state	Expensive ancillary Probates	If in trust, then no probate
Privacy	Public	Private
Potential for Contestability	High	Low
Costs at Death	Expensive	Much less expensive
Length of Estate Administration	Long	Short

Medicaid Planning & Asset Protection Planning

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Lookback vs. Penalty Period

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Lookback

- 5 years in all cases now
- The **ONLY** objective of the Lookback Period is to see if any gifts or transfers for less than FMV have been made in the last 5 years

Lookback vs. Penalty Period

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Penalty Period

- If a Gift has been made during the Lookback, then divide that gift by the average DAILY nursing home cost, as published by the State of Wisconsin, and the result is the number of days of penalty
- ALL gifts will cause a penalty.
 - This includes gifts that would pass free of gift tax under the annual exclusion. Gift taxes are separate from Medicaid qualification.

Medicaid Eligibility

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Financial Criteria →

Individual

Assets

\$2000

Income

\$45/mo

For an Individual

- **Assets**
 - Countable Assets cannot exceed \$2,000
- **Income**
 - Income Limit is Personal Needs Allowance = \$45/mo
 - Anything above that amount gets paid to the Nursing Home

Medicaid Eligibility

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Financial Criteria →

Married Couple

Assets

• ½ of all countable (non-exempt) assets, but at least \$50,000 and no more than \$119,220 (plus \$2k for IS)

Exempt Assets

- IRAs of CS
- One car of any value
- House (up to \$750K)
- Household goods
- Burial Funds
- Life Estates

Income

CS = \$2,980.50/mo *

IS = \$45/mo

*See next slide

Medicaid Eligibility

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Spousal Impoverishment Income Protections

- If the *CS's INDIVIDUAL income* is greater \$2980.50, then the **CS is allowed to keep all of it**
- If the *CS's income* is less than the MMMNA, then the IS can allocate a portion of his/her income to the CS in an amount that will bring the CS up to the MMMNA
- The \$2980.50 may be increased for shelter costs

Estate Recovery

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- **WI Medicaid Estate Recovery Program (ERP) recently changed some rules.**
 - It seeks repayment for cost of certain long-term care services paid for by Medicaid
 - Recovery is made from probate assets, non-probate assets, estates of recipients, and liens placed on homes

Estate Recovery

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- **Life Estates** created after 7/31/14-liens placed on homes to recover from life tenant's interest remaining at time of death
- Recovery will be pursued from 50% of the **surviving spouse's estate** (Medicaid member's ownership interest)
- **Joint Tenancy** property will be recovered after the death of the member
- **Life insurance** policies created after 7/31/14 will be recovered

Estate Recovery

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- Assets held in **Revocable Trusts** (living trusts) are recoverable
- Assets held in **IRREVOCAABLE Trusts** are **NOT** recoverable.
- All other non-probate property is also recoverable

Funding Options

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- **Self-fund**
 - You pay for everything out of your own pocket
- **Insurance**
 - Long-term Care Insurance
 - Seems too expensive? Let's get some perspective!
- **Medicaid**
 - From home to nursing home (no in-home care or assisted living)
 - Loss of Flexibility

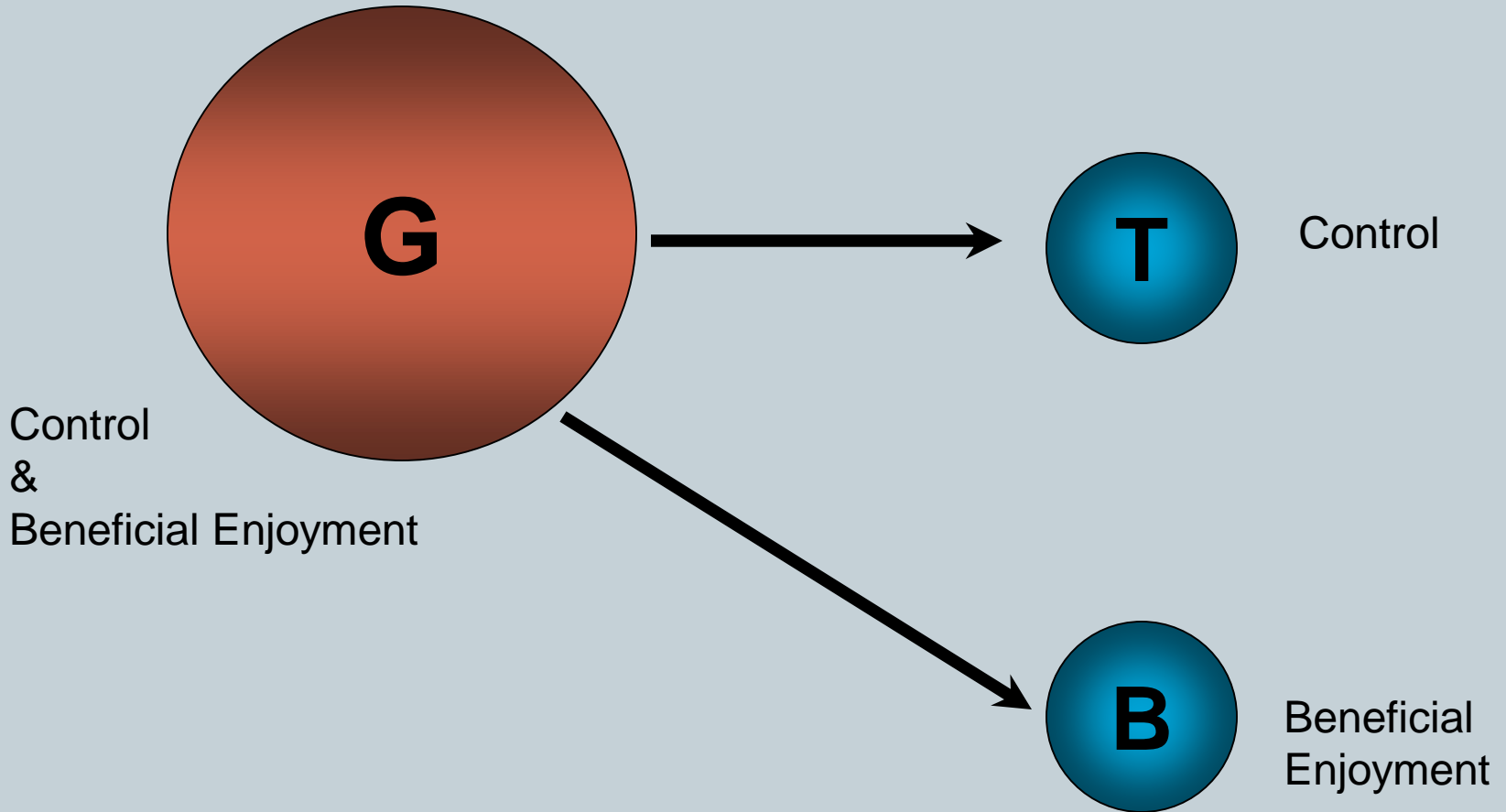
Gifts to Children

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- “I don’t need LTC insurance or a Trust, I will just gift my assets to my kids.”
 - \$14,000/person/yr is allowed for gift tax purposes (not Medicaid eligibility)
 - 5 year look back period (potential penalty)
 - Lose control
 - Assets no longer available for costs of in-home care or assisted living
 - Assets subject to children’s liabilities: divorce, creditors, lawsuits, bankruptcy, etc.

Why is a Trust a good idea?

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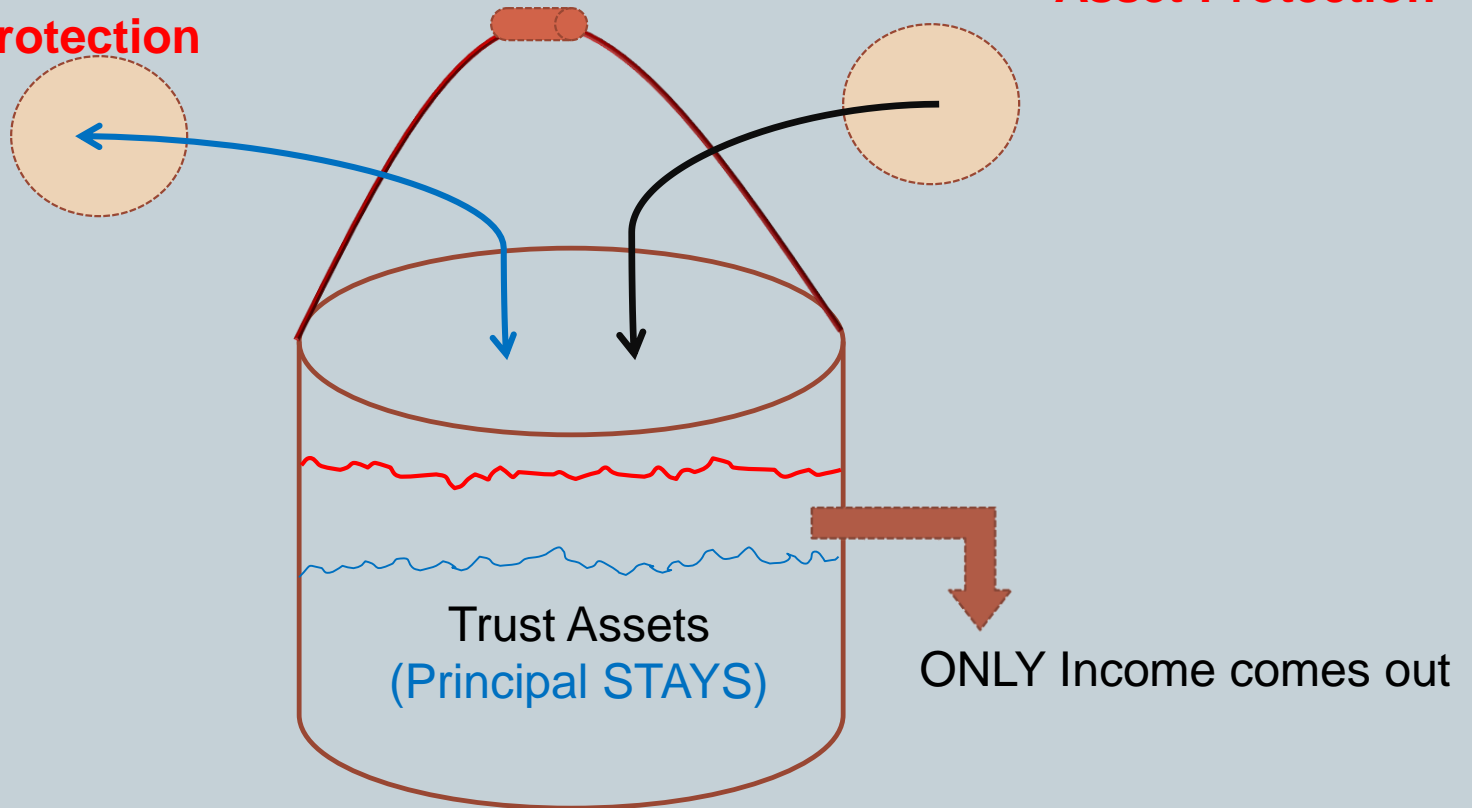
Trusts

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Living Trust

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Irrevocable Trust
Asset Protection



Trusts

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- The RLT allows you to put assets into the trust & take them out whenever you wish.
- The Irrevocable Trust locks up the assets when funded.
- The characteristics of the RLT can be changed/amended at any time, but the Irrevocable Trust will always remain the same.

Planning Strategies

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Preventative Planning

- This is for clients who will not likely be applying for Medicaid in the next 5 years
- Long-term Care Insurance either by itself, or in combination with divestments
- Works really well for Real Property
- Divestment Planning:
 - How much = unique to each situation
 - How or to whom = Irrevocable Trust best choice

Planning Strategies

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Emergency Planning

- This is for clients who are entering the NH soon or have already been admitted to institutional care
- The plan specifics will completely depend upon the situation
- **Divestment Planning:**
 - How much = unique to each situation
 - How or to whom = Irrevocable Trust (if possible), or to children (only as a last resort)
 - Will require a very good power of attorney (POA)

Contact Us

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**Estate Planning Initial Consultations are
Complimentary**



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