

Fundamentals of Estate Planning

Presented by:

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BASIC ESTATE PLANNING ISSUES

1. Financial Security
2. Health Care Decisions When Incapacitated
3. Avoiding Conservatorships and Guardianships
4. Avoiding Death Probate
5. Eliminating Estate Taxes
6. Asset Protection
7. Controlled Inheritance for Heirs
8. Charitable/Philanthropic Contributions

When Probate Can Affect You

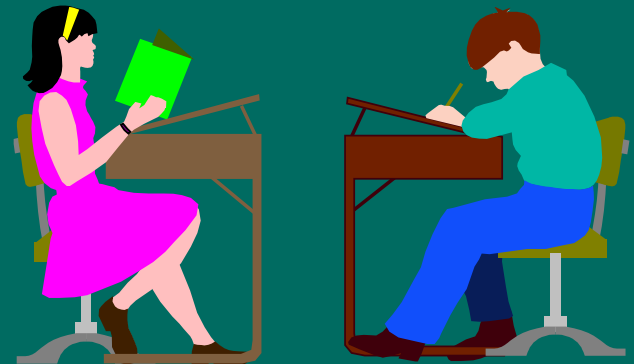
- Disability



- Death



- Minor Children



Probate is Legal Process To:

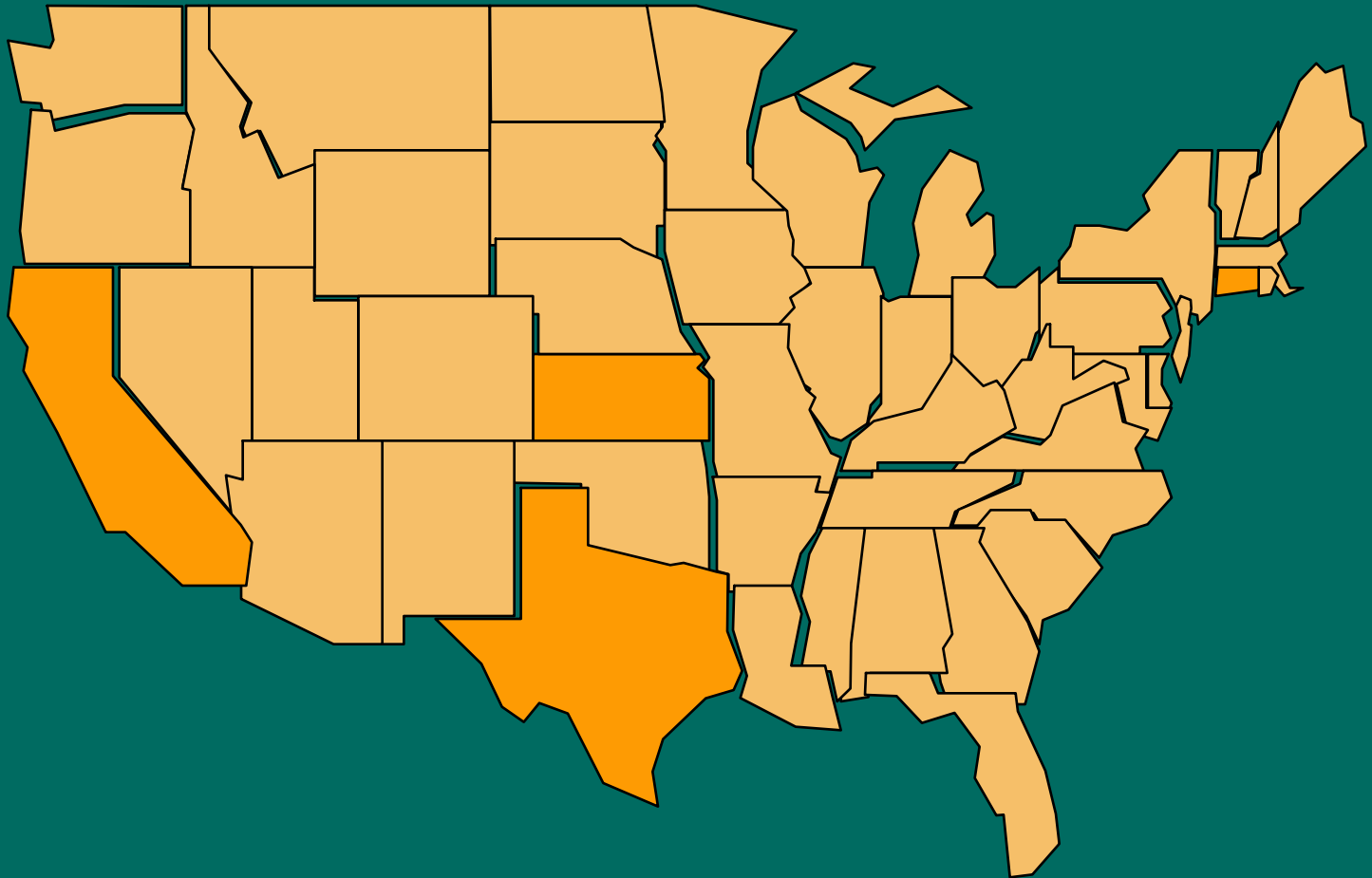
- Manage Assets of Incapacitated Person
- Manage Assets for Minor Children
- Pay Creditors
- Transfer Title of Property at Death
- Resolve Disputes between Beneficiaries/Family Members

Probate Can Be Expensive

- Attorney's Fees
- Executor / Guardian Fees
- Appraiser Fees
- Bond Fees
- Filing Fees



Multiple Probates



Probate Avoidance Techniques?

- Joint Tenancy
- Beneficiary Designations or Pay on Death (“POD”) Assets
- Own No Assets [Assets Held in Revocable and Irrevocable Trusts]

Possible Planning Alternatives

- Joint Tenancy
- Beneficiary Designations
- Do Nothing - Intestacy
- Wills
- DPOA and Living Wills
- Revocable Trusts and Irrevocable Trusts

The Default Rules

- Intestacy – how a deceased person's assets are distributed when they die without a valid will
- Probate laws control in the state of a decedent's last of residency
- Except real property always controlled by where the laws of where the property is located

Missouri Intestacy Rules

- The surviving spouse receives:
 - The entire intestate estate if there is no surviving issue of the decedent; OR the first \$20,000 in value of the intestate estate, plus 1/2 of the balance of the intestate estate if there are surviving issue all of whom are also issue of the surviving spouse; OR
 - One-half of the intestate estate if there are surviving issue, one or more of whom are not issue of the surviving spouse;

Kansas Intestacy Laws

- The surviving spouse receives:
 - The entire intestate estate if there is no surviving issue of the decedent;
 - 1/2 of the intestate estate if there are surviving issue
- Kansas has “common law” marriage

Trusts Types

(let me count the ways...)

(a) Testamentary or Intervivos

(b) Revocable or Irrevocable

(c) Charitable or Non-Charitable

Irrevocable Trusts

(1) 2503(c) Trusts – Minor Trusts

(2) Charitable Remainder Trusts

(CRTs)

(2) Irrevocable Life Insurance Trusts

(ILITs)

(3) Spousal Lifetime Access Trusts (SLATs)

(a few examples)

Revocable Trusts Explained

- Settlor/Grantor
- Trustee/Successor Trustee
- Beneficiaries
- Formality
- How Revocable Trusts Avoid Probate

Case Study



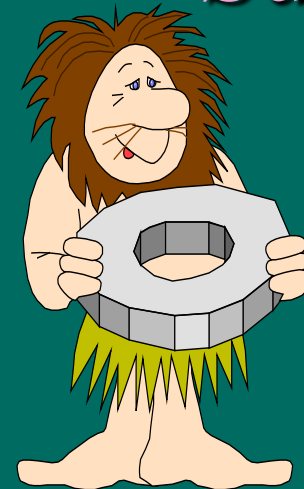
Bill



Mary



Susan



John

Bill and Mary Estate Plan

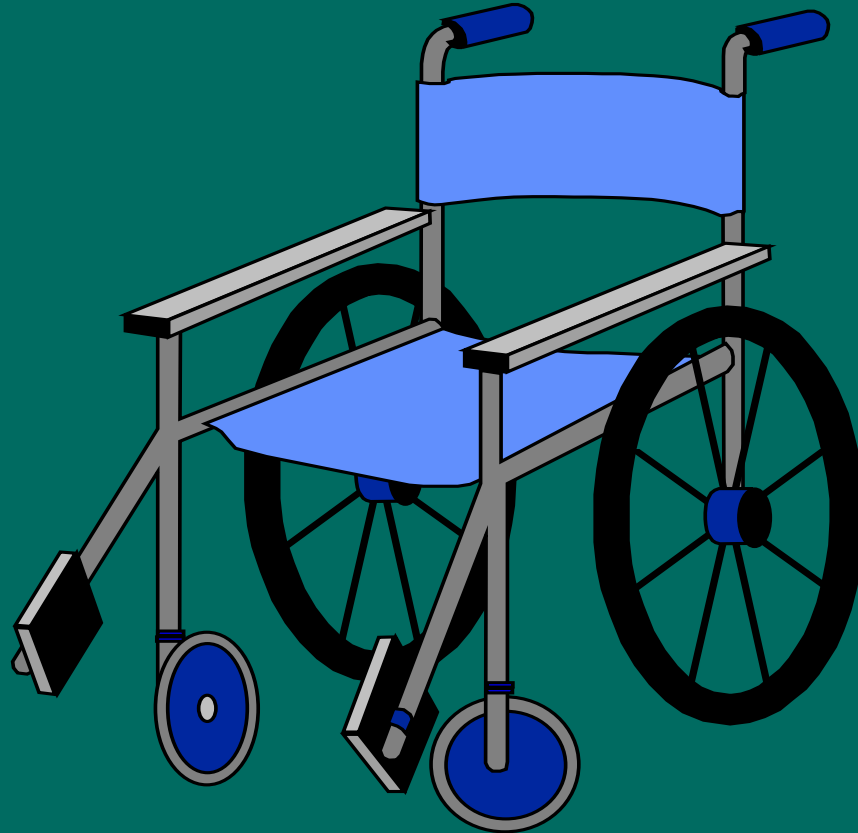
Bill and Mary went to a Bill's brother (an Patent Attorney) and paid \$500 for “simple wills”



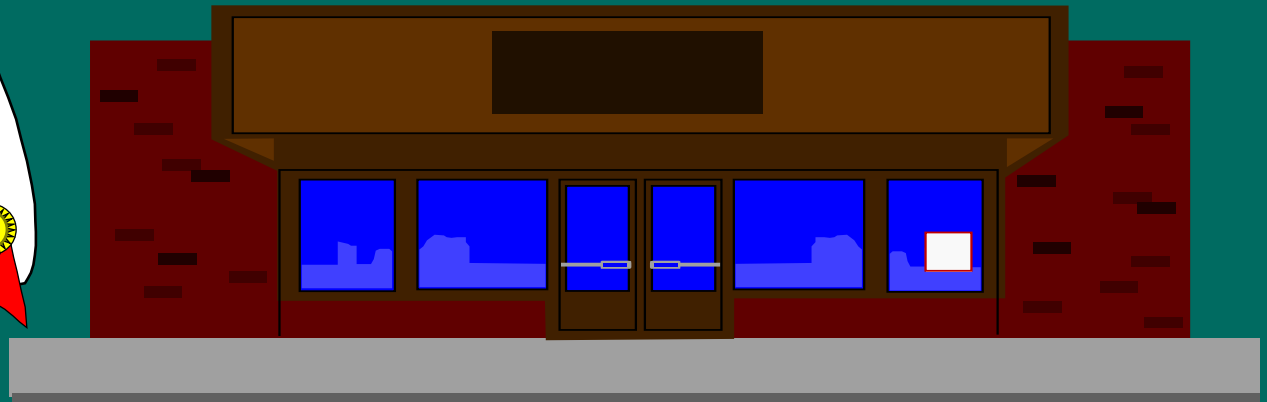
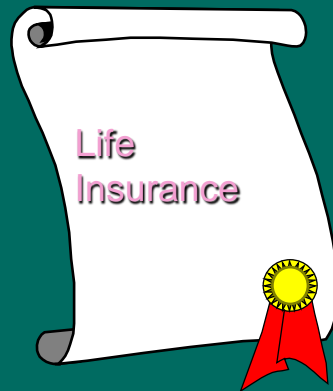
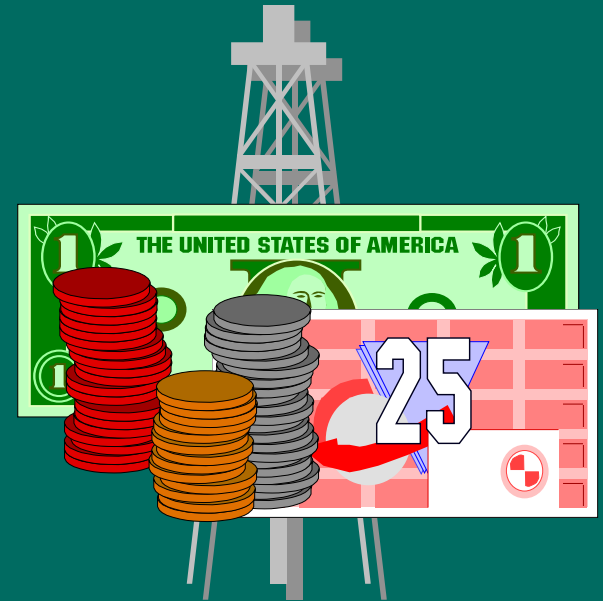
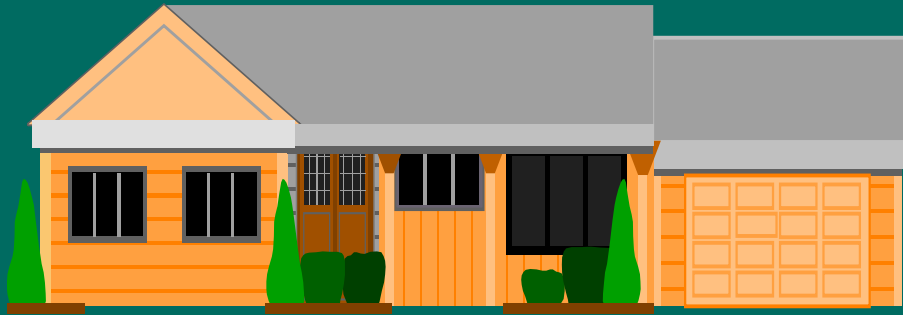
Bill and Mary's Estate

- Residence \$ 1,500,000 Joint Tenancy
- Vacation Home \$ 3,500,000 Joint Tenancy (CO)
- Stocks, Bonds \$ 2,500,000 Bill owns
- Stocks, Bonds \$ 2,500,000 Mary owns
- Business \$ 5,000,000 Mary owns
- IRA/401k \$ 8,000,000 Mary \$1,000,000
Bill \$7,000,000
- Life Insurance \$ 7,000,000 Mary \$5,000,000
Bill \$2,000,000
- Total Estate \$30,000,000

Mary Becomes Disabled

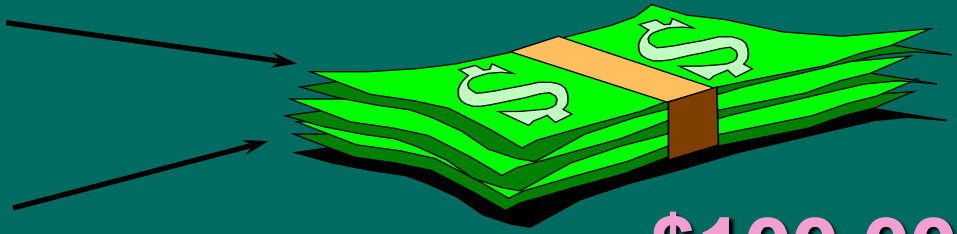


Who Will Manage Mary's Estate?



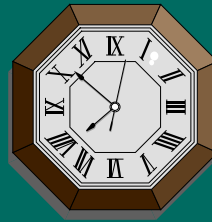
Mary's Guardianship/ Conservatorship

- Attorney's Fees
- Filing Fees
- Other Costs



\$100,000+

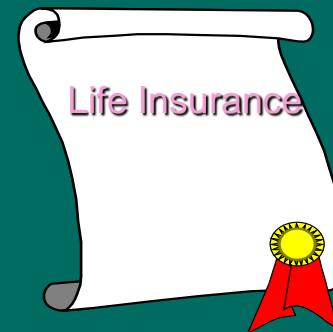
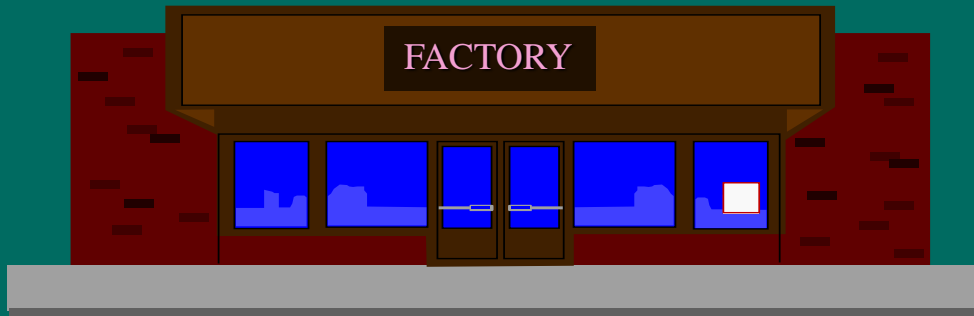
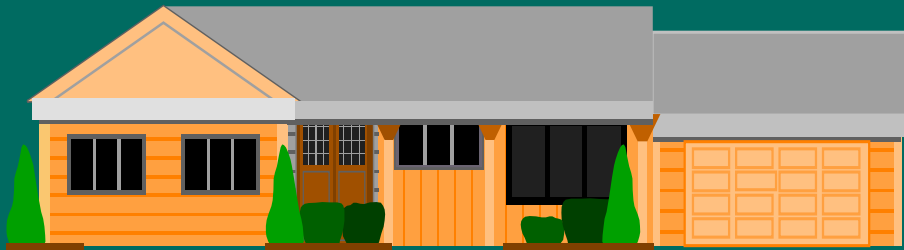
- Time Delay
- Public Reports



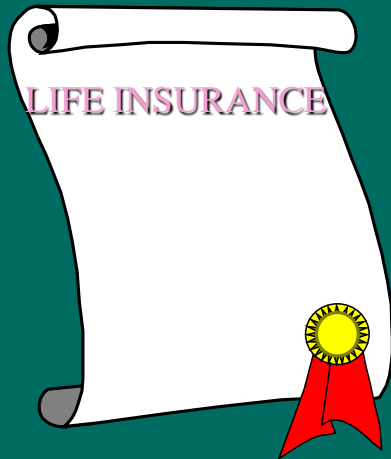
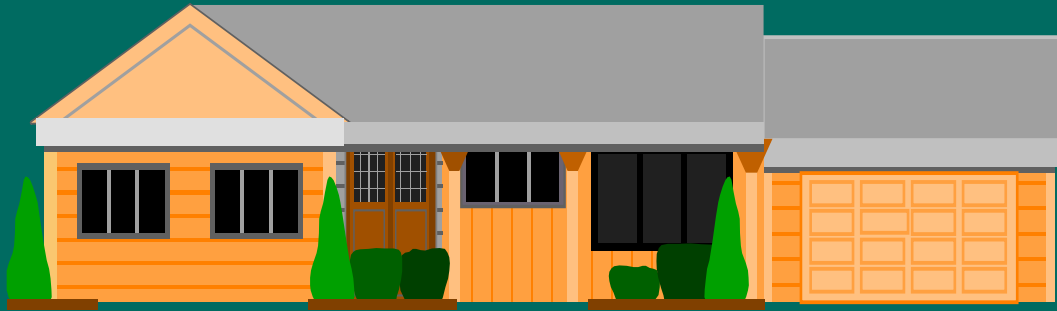
Mary Dies



How Will Mary's Estate Be Distributed?



Property Passing Outside of Probate

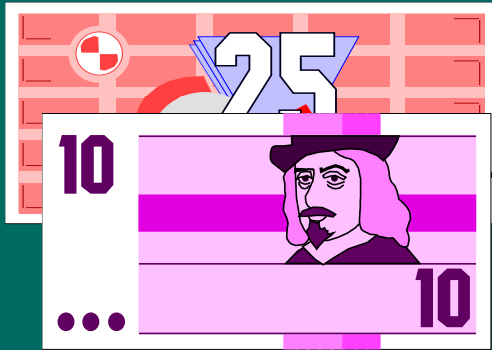


IRA



Bill

Property Passing Through Probate



Stocks & Bonds

\$375,000

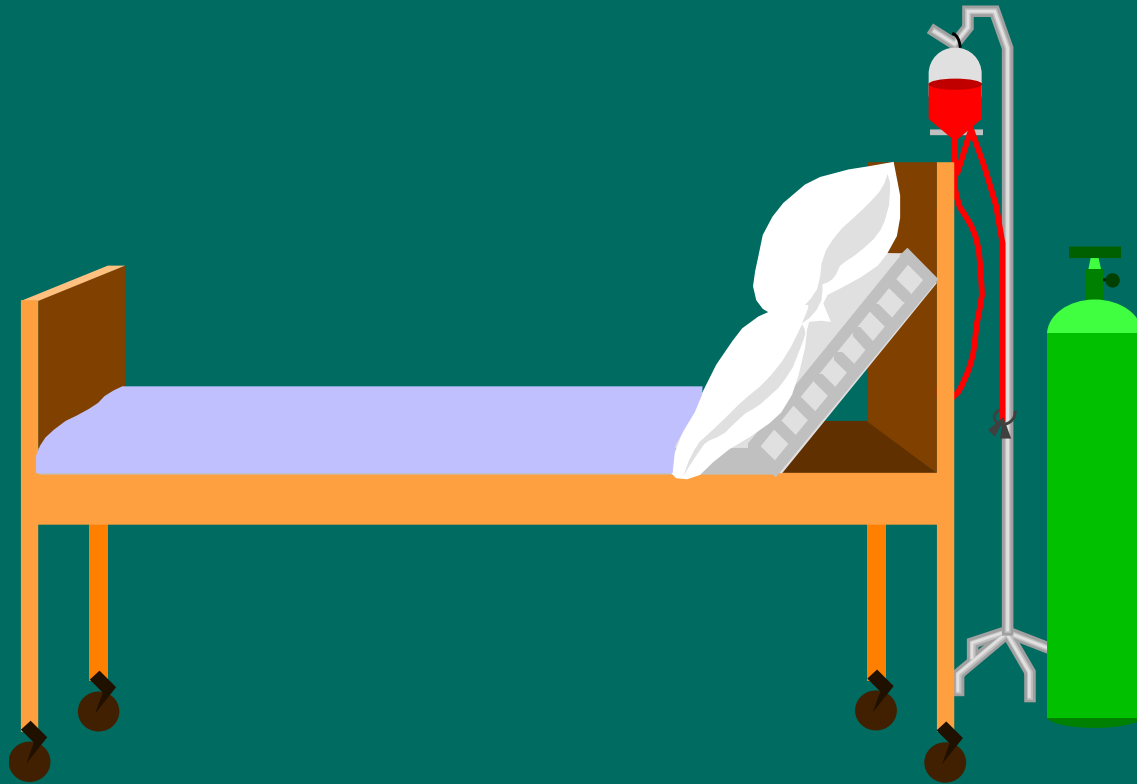


Bill



(Assumes 5% Probate Cost)

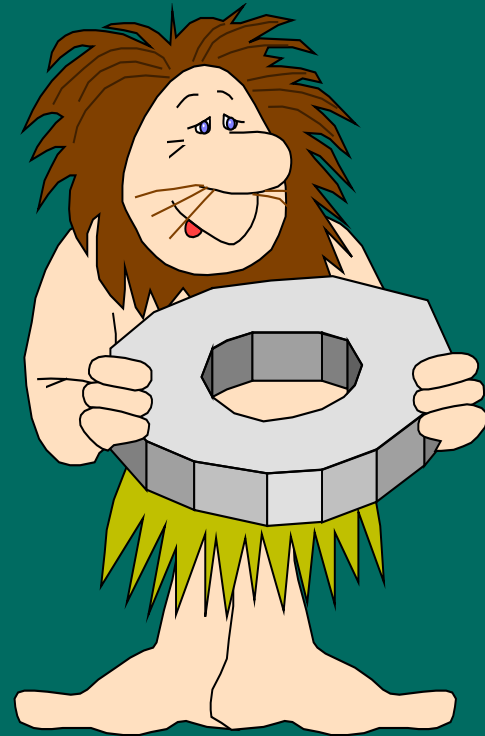
Bill Becomes Disabled



Who Will Manage Bill's Property?



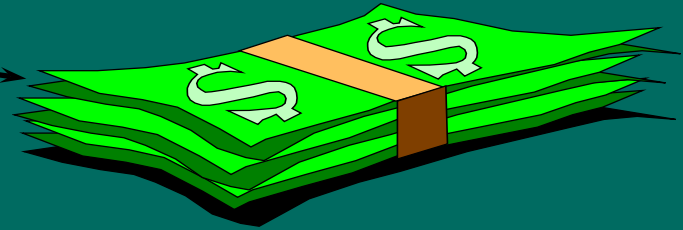
Susan



John

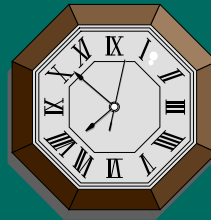
Bill's Guardianship/ Conservatorship

- Attorney's Fees
- Filing Fees
- Other Costs



\$100,000

- Time Delay
- Public Reports



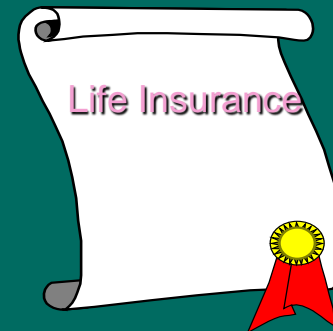
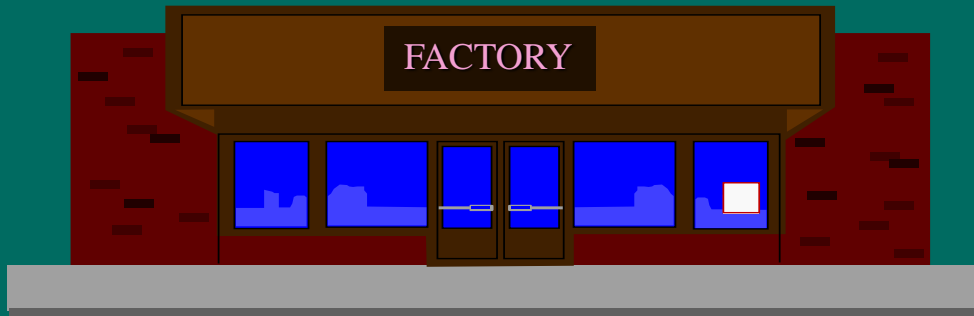
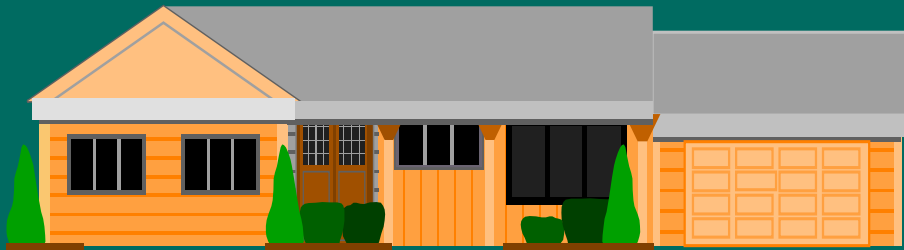
Bill Dies



Bill's Estate

- Residence \$ 1,500,000 Bill Only
- Vacation Home \$ 3,500,000 Bill Only
- Stocks, Bonds \$ 2,500,000 Bill Only
- Stocks, Bonds \$ 2,500,000 Bill Only
- Business \$ 5,000,000 Bill Only
- IRA/401k \$ 8,000,000 Bill Owns all now
- Life Insurance \$ 7,000,000 Mary's Proceeds (\$4MM)
_____ Bill's Policy (\$1MM)
- Total Estate \$30,000,000

How Will Bill's Estate Be Distributed?

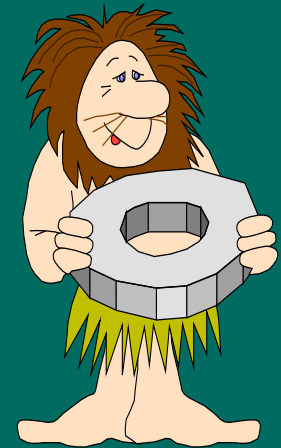
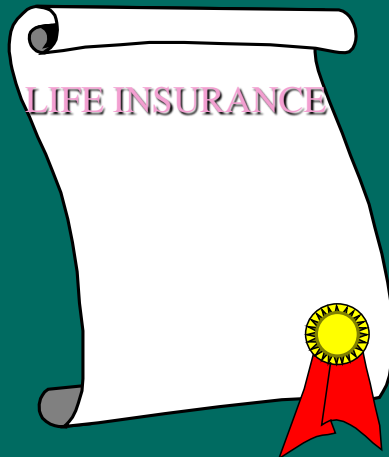


Property Passing Outside of Probate

IRA

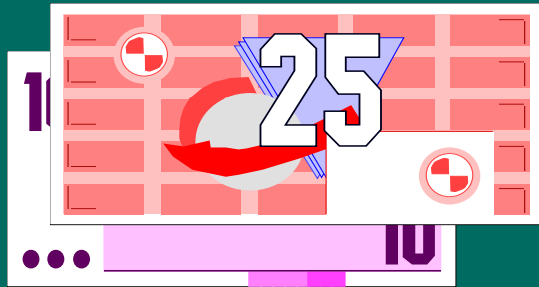


Susan



John

Property Passing Through Probate



Stocks & Bonds

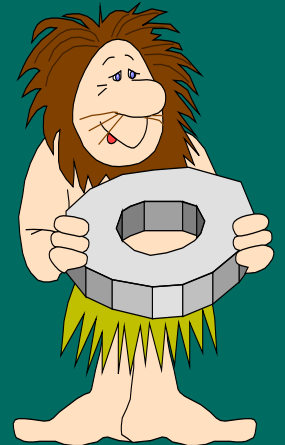
Residences (2 Probates!)



\$750,000



Susan



John

(Assumes 5% Probate Cost)

Estate Shrinkage

\$30,000,000

- 100,000 Mary's Guardianship/
Conservatorship
- 375,000 Mary's Death Probate
- 100,000 Bill's Guardianship/
Conservatorship
- 750,000 Bill's Death Probate

\$28,675,000

Unnecessary Probate Expense

...

\$1,325,000

Federal Estate Tax Due ...

\$30,000,000	Estate at Second Death
-	0 Mary's Federal Estate Tax Exemption (no DSUE filing)
<u>-1,325,000</u>	Probate Expense
\$28,675,000	Subject to Federal Estate Tax

Federal Estate Tax Due ...

\$28,675,000	Estate at Second Death
- 7,000,000	Bill's Federal Estate Tax Exemption (died in 2026)
<u>-1,325,000</u>	Probate Expense
\$21,675,000	Subject to Federal Estate Tax

Federal Estate Tax Due

\$8,670,000

Estate Shrinkage

\$30,000,000	Combined Estate
- 100,000	Mary's Guardianship/ Conservatorship
- 375,000	Mary's Death Probate
- 100,000	Bill's Guardianship/ Conservatorship
- 750,000	Bill's Death Probate
-8,670,000	Federal Estate Tax Due
<hr/>	
\$20,005,000	Net to Susan and John

What Would Probate Cost Have
Been with a Revocable Trust?

\$0

\$ 0 Bill's Guardianship Probate
\$ 0 Bill's Death Probate
\$ 0 Mary's Guardianship Probate
\$ 0 Mary's Death Probate
\$ 0 Federal Estate Tax
\$ 0 Costs with

Revocable Trust Planning

Review

Cost to Bill and Mary with Their Will Plan

\$1,325,000 Probate Expense

\$ 8,670,000 Federal Estate Tax

\$ 9,995,000 Total Costs

Cost to Bill and Mary with Revocable Trusts

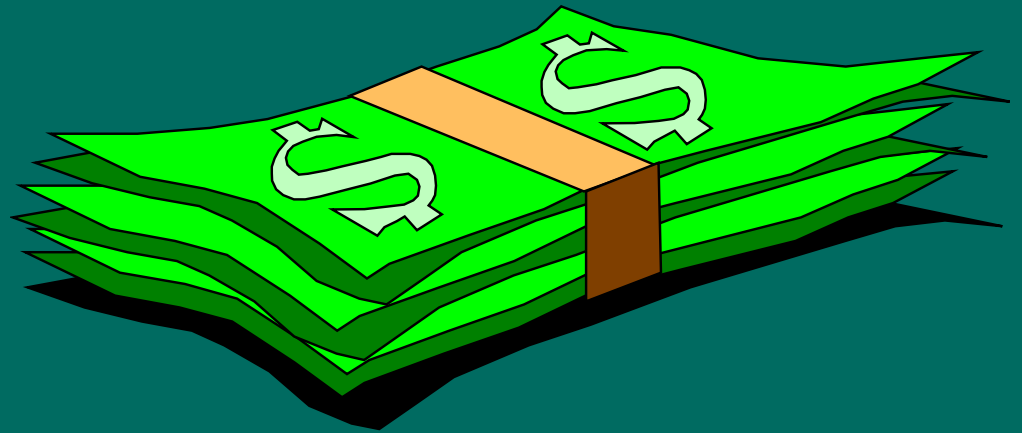
\$ 0 Probate Expense

\$ 0 Federal Estate Tax

\$ 0 Total Costs

Bill and Mary Thought Their Will Plan Cost \$250 ...

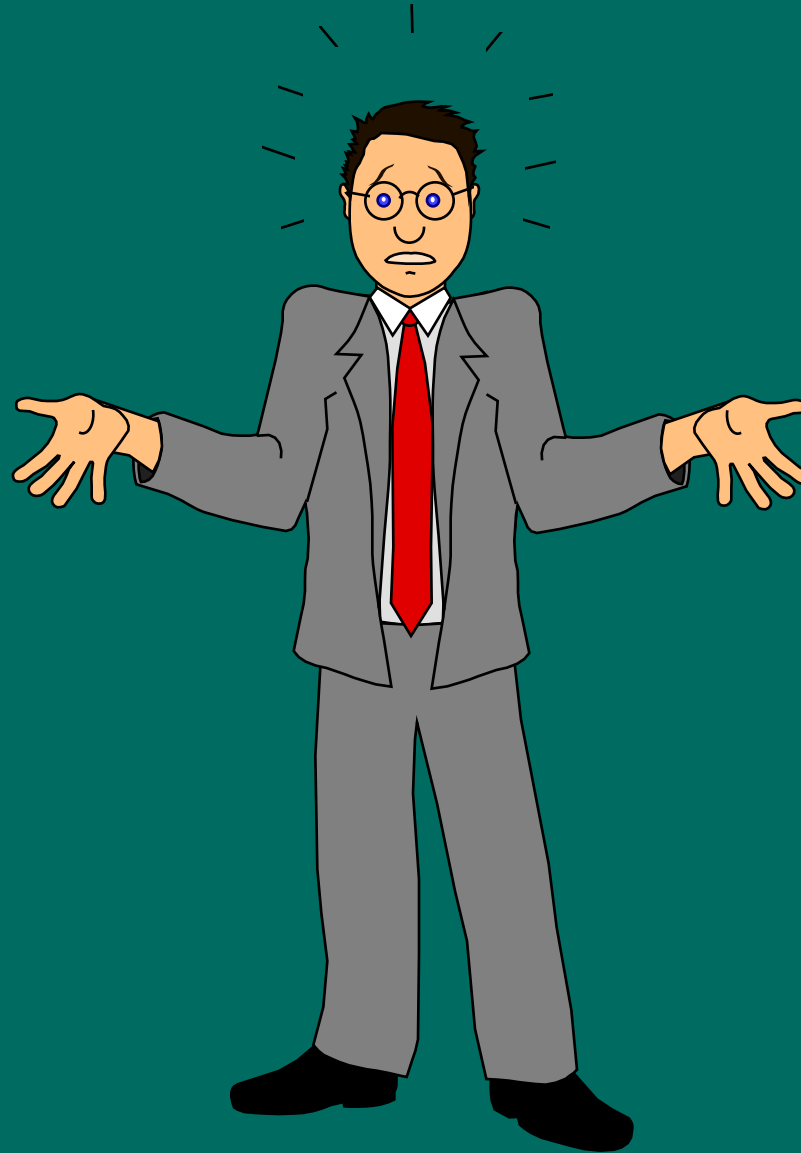
- Actual Cost of Bill's & Mary's Planning Was
- \$250 Plus
- \$ 9,995,000



Basic Estate Planning Documents

- Revocable Trust
- Pourover Will
- Durable Power of Attorney
- Health Care Directive
- Irrevocable Insurance Trust

How Do You Proceed



Federal Estate Tax Rules

- Current Tax Rate 18% to 40%
- Long history of increased exemption amount
- \$10,000,000 in 2017 under TCJA
- (subject to annual inflationary adjustment)
- \$13,990,000 in 2025
- “Sunset” of TCJA on January 1, 2026
- Unlimited Marital Deduction; Portability
- Unlimited Charitable Deduction

Federal Gift Tax Rules

- Current tax rate 18% to 40%
- \$13,990,000 gift tax exemption amount (Unified System)
- Unlimited marital and charitable deduction
- \$19,000 annual exclusion, per donee, per year.
- 529 Plan 5 year Gift Acceleration
- Unlimited educational/medical exclusion

Irrevocable Life Insurance Trust (ILIT) Basics

- Death proceeds taxed for estate tax purposes
- Can set aside in an irrevocable trust so trust owns and is beneficiary of policy
- Avoids estate tax at death; death proceeds frequently used to pay estate tax
- Commonly used; commonly administered improperly
- Crummey Notices
- GST Automatic Rules

Administering ILITs

- Trustee cannot be Insured
- Trust needs a bank account to pay premiums
- Trust owns the policy
- Insured has no control over policy once gifted

Payment of Premiums

- Policy owned by trust
- Premiums due; in advance of premium due date, donor gifts funds to ILIT sufficient to cover premium due
- Trustee pays premium
- Trustee obtains Crummey Notices

“Crummey” Notices

- Not bad notices; Acknowledgment of gift of premiums
- Named after Plaintiff in tax case - Mr. Crummey
- Secures present interest gift status for annual gift tax exclusion
- Must be signed every year a gift is made

ILITs and Gift Tax Returns

- Gift to an ILIT is a reportable gift
- May have GST Tax implications
- No GST Tax Annual Exclusion
- Automatic Allocation of GST Tax Rules – complicated

Unlimited Marital Deduction

What is “portability”?

- Allows a surviving spouse to inherit any unused portion of their deceased spouse's estate and gift tax exemption.
- This means that if one spouse does not use up their full exemption, the surviving spouse can effectively double their exemption amount when it comes to their estate tax liability.

Understanding DSUE

- Deceased Spouse Unused Exclusion (DSUE)
- A surviving spouse can utilize the DSUE to lower or even potentially avoid their own estate or gift tax liability entirely.
- Within 5 years of first death, must file a Federal Estate Tax Return at first spouse's death to ELECT portability
- Rules about successive marriages

Benefits of Electing DSUE

- Preserves unused estate tax exemption in situations where estate passes entirely to spouse and no estate tax due under the unlimited marital deduction
- Especially beneficiary if estate tax credit decreases with sunset rules

Unlimited Charitable Deduction – Why not?

- Just like during life, every dollar you leave to charity is NOT going to the IRS
- Avoids Probate
- Multiple ways to leave assets to charity

Charitable Giving...Let me count the ways!

- Outright gift at death (cash or property)
- Name charity as Beneficiary of property (IRA, Life insurance, real estate, cash)
- Charitable Trust
- Private Foundation
- Donor Advised Fund

Types of Charitable Trusts

- Charitable Remainder Trust
(CRAT v. CRUT)
- Charitable Lead Trust
(CLAT v. CLUT)
- Private Foundation Trust
- Donor Advised Fund

Private Foundation and Donor Advised Fund Comparison

	Private Foundation	Donor Advised Fund
Start up time	Can take several months	None
Start up cost	Legal Fees	None
Ongoing Administrative cost	Typical annual investment costs; Annual Form 990 filing	Less than 100 basis points typically; no annual filings
Income tax deduction limits for cash gifts	30% of AGI	60% AGI Limit
Income tax limits for gifts of real estate or stock	20% of AGI	30% of AGI

Private Foundation and Donor Advised Fund Comparison

	Private Foundation	Donor Advised Fund
Grant distribution requirements	5% of net asset value annually	None
Excise Tax on Investment Income	Excise tax on net investment income annually (>1%)	None
Privacy	Names of individual donors are not disclosed to the public, and grants can be made anonymously	Must file informational returns, which are available to the general public, disclosing detailed information on grants, investment fees, trustee names, staff salaries, etc.
Investment Control	Foundation dictates how assets are invested	Typically operate under the direction of the sponsoring charity
Administrative Responsibility	Manage assets, keep records, select charities, administer grants, file state and federal tax returns, maintain board minutes, etc.	Recommend grants to favorite charitable causes

Alphabet Soup

- BDITs, SLATs, ILITs, IDGTs
- GRATs, GRITs, GRUTs, SNTs
- QTIPs, QDOTs, QPRTs
- CRUTs, CRATs, CLATs, CLUTs, CGA
- NimCRUT, NiCRUT, FLIP CRUT
- SLATs (no SLUTs), FLPs, SCINs
- DPOA, HCD, RLT, POD, TOD
- TIC, JWROS, TBE, TPP

Somethings Never Change

Historical Estate Tax Exemption Amounts (Per Person)		
Year	Estate Tax Exemption	Top Estate Tax Rate
1997	\$600,000	55%
1998	\$625,000	55%
1999	\$650,000	55%
2000	\$675,000	55%
2001	\$675,000	55%
2002	\$1,000,000	50%
2003	\$1,000,000	49%
2004	\$1,500,000	48%
2005	\$1,500,000	47%
2006	\$2,000,000	46%
2007	\$2,000,000	45%
2008	\$2,000,000	45%
2009	\$3,500,000	45%
2010	\$5,000,000 or \$0	35% or 0%
2011	\$5,000,000	35%
2012	\$5,120,000	35%
2013	\$5,250,000	40%
2014	\$5,340,000	40%
2015	\$5,430,000	40%
2016	\$5,450,000	40%
2017	\$5,490,000	40%
2018	\$11,180,000	40%
2019	\$11,400,000	40%
2020	\$11,580,000	40%
2021	\$11,700,000	40%
2022	\$12,060,000	40%
2023	\$12,920,000	40%
2024	\$13,610,000	40%
2025	\$13,990,000	40%
The Tax Cut And Jobs Act expires at the end of 2025		

Estate Planning is Not One of Those Things

- So many significant changes over the last 25 years
- Many clients have plans that are overly complicated and do not understand what they do have
- Let's KISS – Keep It Simple Stupid
- Joint Trusts on the rise, but fraught with problems if practitioner does not understand

Questions & Answers

- What questions do you have from the field?
- Estate Planning is not cheap and not a one-time event
- Cannot predict the future, but...
- No legal advice provided