

STARTING SOON



Trust Administration Workshop

May 10, 2022

For online attendees:

Download Presentation and Handouts:

Links were emailed at 11am and are also posted here:

<https://www.pierrolaw.com/resources/>

under “Estate and Trust Planning”



Louis Pierro, Esq.



David Mysliwicz, CPA

HOUSEKEEPING

- › Your mics are muted.
- › Links to **Handouts** are posted here:
<https://www.pierrolaw.com/resources/>
under “Estate & Trust Planning”
- › Type questions through the “Q&A” space
- › Please fill out the survey with feedback

WELCOME!

TRUST ADMINISTRATION WORKSHOP

PRESENTED BY LOUIS PIERRO, PIERRO, CONNOR & STRAUSS
DAVID MYSLIWIEC, CPA, TM BYXBEE CPAS

THANK YOU TO OUR SPONSOR



Michael Bates
Sr. Business Development Officer

AGENDA

- New in 2022
- Trust Planning Basics
- Trust Funding and Related Tax Issues
 - Revocable
 - Irrevocable
 - Medicaid Changes Coming
- Lifetime Administration
 - Managing as Trustee
- Tax Reporting and Accounting During Lifetime
- Trust Administration at Death



NEW IN 2022

- **GIFTING:** You can gift individuals \$16,000 without filing a gift tax form
- **FEDERAL GIFT TAX EXCLUSION:** \$12,060,000
 - Up from \$11.7mil
- **NYS ESTATE TAX EXEMPTION:** \$6,110,000
 - Up from \$5,930,000

NEW IN 2022

CAPITAL GAINS TAX RATE THRESHOLDS

<u>Tax Rate</u>	<u>Taxable Income (Single)</u>	<u>Taxable Income (Married Filing Jointly)</u>
0%	Up to \$41,675	Up to \$83,350
15%	\$41,675 to \$459,750	\$83,350 to \$517,200
20%	Over \$459,750	Over \$517,200

TYPES OF TRUSTS

- Living vs. Testamentary
- Revocable vs. Irrevocable
- Life Insurance Trusts
- Retirement Plan Trusts
- Special Needs Trusts
- Dynasty Trusts
- Asset Protection Trusts
- Beneficiary Controlled Trust



WHAT IS TRUST ADMINISTRATION?

- A Trust is a **contract** which creates legal relationships – Grantor hands over assets to Trustee to manage for Beneficiaries
- Provides **lifetime management** of assets
- Allows family to **avoid probate & assure privacy**
- Can be used to **protect assets or reduce taxes**
- Trustee is responsible for managing trust assets and administering the trust- there is a “**fiduciary duty**” to **beneficiaries**

Trust Funding

An Essential Step in Trust Planning

THE DAY OF YOUR DOCUMENT SIGNING...



- Once your documents are drafted and carefully reviewed, a document execution will be held
- You will receive originals and copies of documents listed on Form I - “Post Execution Checklist”
- **(See “Your Planning Documents” Form I)**
- Storing and Maintaining your documents

TRUST FUNDING KIT

- A. Trust Funding Letter (see **Form 2**)
- B. Certification of Trust (see **Form 3**)
 - Provided to each Financial Institution
- C. Attorney Certified Copy of your Trust
- D. Trust Funding Worksheet (see **Form 4**)



THE TRUST FUNDING PROCESS

Revocable

- All Assets included- avoid probate
 - Exceptions – see below*
- All bank accounts included

Irrevocable

- Select Assets for inclusion
- Annuity Issues- tax treatment
- Some bank accounts out

BOTH

- *IRA, 401(K) – outside trust; beneficiary designations control
- Home Star exemption, capital gains tax issues

All other assets are treated the same

TRUST FUNDING - PCS

- Tangible Personal Property
 - Assignment – (see **Form 5**)
 - Distribution – (see **Form 6**)
- Real Property
 - Deeds to Trust
- Intangible Personal Property
 - Shares – Corporations
 - Membership Interests – LLC's



TREATMENT OF RETIREMENT ACCOUNTS

- Transfer of retirement accounts would be a taxable event
- **Beneficiary designations must be reviewed & redrafted to coordinate with the Trust**
- SECURE Act effective January 1, 2020 changed the rules

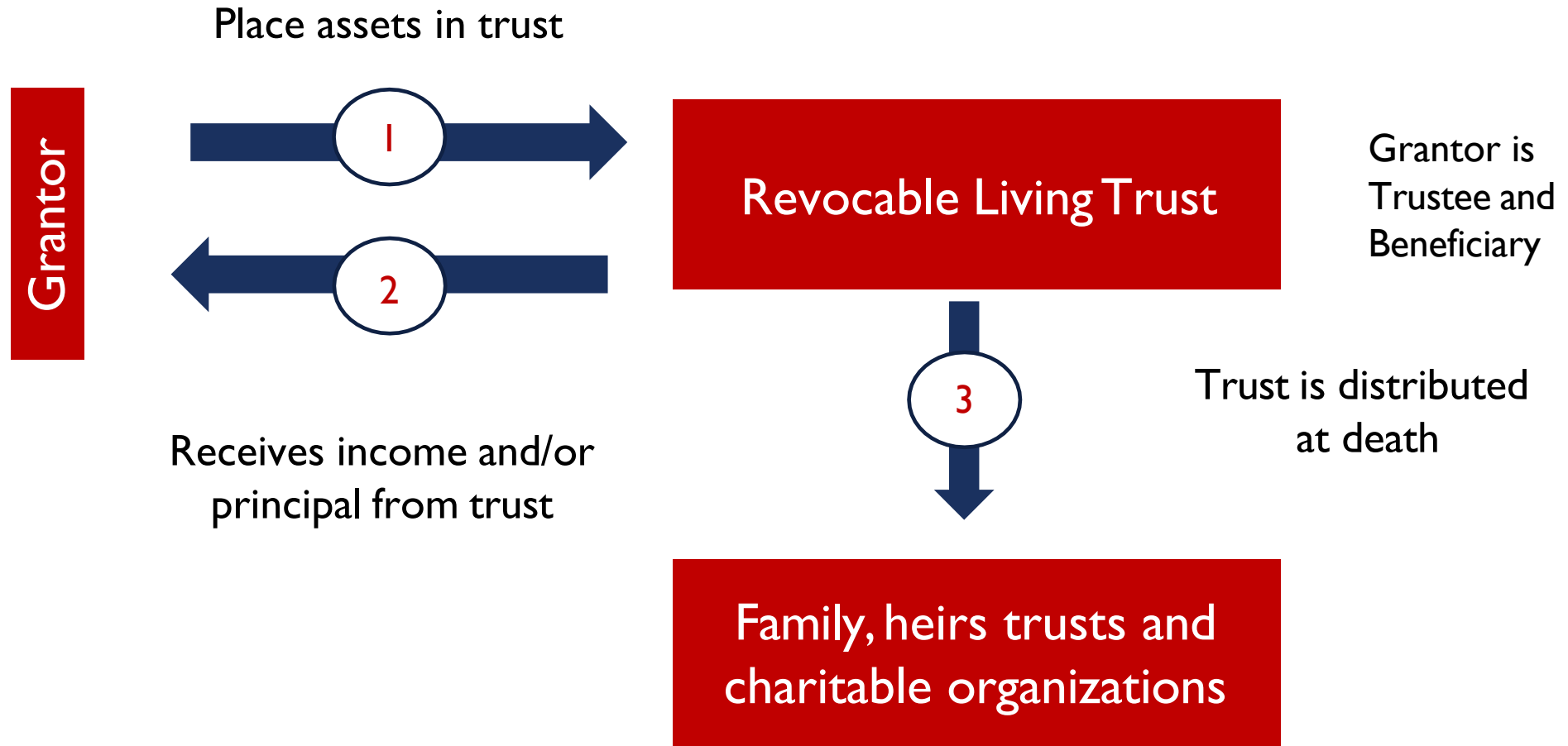


THE SECURE ACT

- Imposes a mandatory 10-year payout for all qualified retirement accounts, including 401(k)s, 403(b)s, etc. (Exceptions for spouse, disabled or chronically ill individual)
- Careful consideration must be given to naming trusts as beneficiaries
- Trust Protectors can be used to add flexibility
- All existing Trusts should be reviewed to avoid unintended consequences

View our webinar on the SECURE Act at
www.pierrolaw.com/videos

TRUST FUNDING- REVOCABLE TRUST



TRUST FUNDING- IRREVOCABLE TRUST

Medicaid Asset Protection Trust

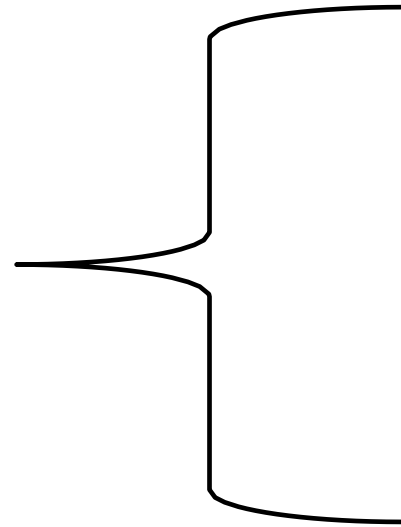
CLIENTS



- Trustee – manages trust assets
- Beneficiaries – income & principal
- Client – income for life and rights to use real and personal property
- Heirs = Remaindermen - inherit when trust ends

TRUST FUNDING- IRREVOCABLE TRUST

Home
Bank Accounts
Stocks & Bonds
Annuities
Life Insurance
Business
Real Estate



MAPT

- Income can be paid or accumulated
- Principal can NOT be given back to the Grantor directly
- Principal can be paid to children or others (who can use it for any purpose)

TRUST FUNDING- IRREVOCABLE TRUST

KEEP OUT

Cash

Bank Acct.

IRA, 401 (k)

Security Features

- Power to change Trustee
- Power to change beneficiaries
- Can revoke under NY Law with consents

MEDICAID HOME CARE



New York Medicaid Changes Effective May 16 and Fall 2022*

*Awaiting DOH Guidance



Taxation of Trusts

David Mysliwiec, CPA

TRUST & TAX ISSUES

- Separate tax returns
- New tax ID unless Grantor=Trustee- See SS-4 (see **Form 7**)
- Situs of trust- what state to file in
- Different type= different tax considerations
- Determined by terms within trust
 - Grantor
 - Simple
 - Complex
- See “Information for Tax Professionals” – (see **Form 8**)

GIFTS AND THE IMPACT ON THE ESTATE TAX



- Transfers to Trusts can be either completed as gifts or remain in the grantor's taxable estate.
- Income tax rules are different – income on an irrevocable trust can be taxes to the Grantor

Note: Trump individual tax cuts sunset 12/31/25

GRANTOR TRUST

Definition: A trust in which the grantor of the trust is treated as if he or she owns the property outright for income tax purposes

- Separate tax filing
- Income taxes paid by grantor
- No gift tax return if power of appointment is retained

SIMPLE TRUST

Definition: A trust that requires all income to be distributed to non-charitable beneficiaries at least annually.

- Trustee has no discretion
- Income tax paid by beneficiary
- Watch capital gains

COMPLEX TRUST

Definition: A trust that may distribute income or principal to its beneficiaries or make charitable contributions at the trustee's discretion

- Income tax could be shared by trust and beneficiaries
- Beneficiary brackets vs. trust brackets = **planning opportunity**

TRUST AND ESTATE INCOME TAX BRACKET

2021 Estate & Trust Income Tax Bracket

If taxable income is:

Not over \$2,650

\$2,650 but not over \$9,550

\$9,550 to \$13,050 in income

Over \$13,050 in income

The tax is:

10% of taxable income

\$265 plus 24% of the amount over \$2,650

\$1,921 plus 35% of the amount over \$9,550

\$3,146 plus 37% of the amount over \$13,050

DEFINITION OF INCOME

- Money or property received as current return from a principal asset
- Can sometimes include a portion of receipts from a sale, exchange or liquidation of a principal asset



ALLOCATION TO PRINCIPAL

- Property received
- Money received in exchange for trust's interest
- Money received in total or partial liquidation

DISTRIBUTION PLANNING

- Uneven tax brackets, net investment income tax require planning
- Year end planning and the 65 day rule to reduce income taxes
- Distributing Capital Gains



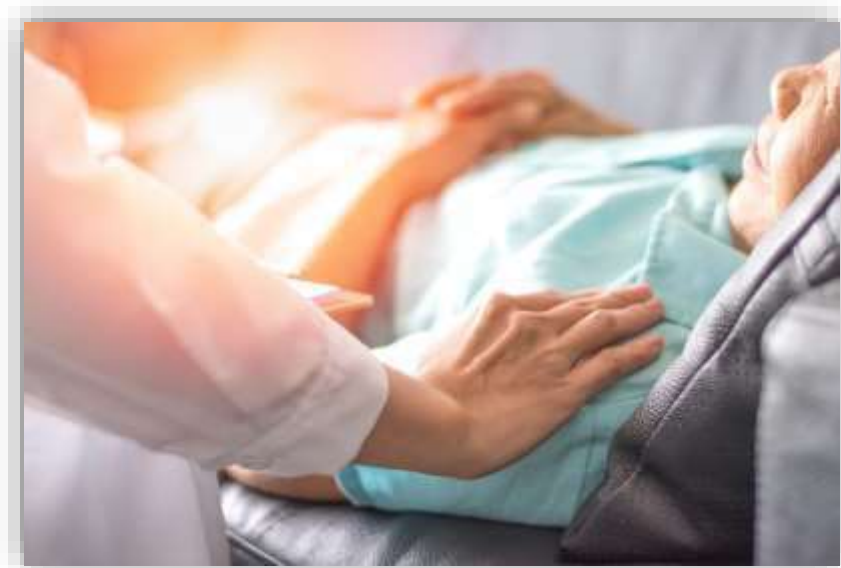
Lifetime Administration

YOUR REVOCABLE TRUST DURING YOUR LIFE

- Grantor= Trustee= Beneficiary > business as usual
- Incapacity
 - Successor Trustee takes over administration
- How is incapacity determined?
 - Physician Affidavit
 - Court Determination
 - Disappearance



YOUR REVOCABLE TRUST DURING YOUR LIFE



- Management of your Assets during Incapacity
 - Draft in provisions to cover your needs and those of your family
 - Administered for Grantor, Spouse and Dependents
 - Consider Special Needs and Spendthrifts

IRREVOCABLE- MEDICAID ASSET PROTECTION TRUST

- Grantor \neq Trustee at inception
- Income - to Grantor or Remainder Beneficiaries
 - What is income? (Principal & Income Act)
 - Sale of real property- capital gains tax?
- Principal – Remainder Beneficiaries
 - In the Trustee's discretion
 - No restrictions on use of principal distributions

WHO SHOULD BE YOUR TRUSTEE?

- You - Revocable
- Children and Family – Basic Irrevocable
- Corporate Trustee – Complex or Family Issues

TRUSTCO BANK TRUST & INVESTMENT SERVICES

Trustco Bank Financial Services

Michael Bates
Business Development Officer

TRUSTCO BANK – IN YOUR HANDOUTS

- **Menu of Services**
- **Investment Performance**
- **Trust Administration Fee Schedule**
- **Estate Administration Fee Schedule**

TRUSTCO BANK – CORPORATE TRUSTEE SERVICES

- Provide professional investment management of trust assets.
- Uphold the standards of the Prudent Investor Act when managing assets
- Professional review of clients' needs in conjunction with the trust agreement when making trust disbursements
- Preparation and filing of annual Federal and State fiduciary tax returns

BENEFITS OF USING A CORPORATE TRUSTEE

- Trust administration - a long and complicated process
- Family member can become burdened by the time and attention needed
- A bank and trust company has resources and expertise
- Corporate trustees administer trusts in unbiased manner, can make independent decisions that can be difficult for family members
- Corporate trustees are bonded, insured and highly regulated

TRUSTCO BANK - SERVICES

Estates:

- We serve as executor, co-executor, successor, and/or agent for the executor
- Work in tandem with Attorney and Accountant in performing administration
- Preparation of accounting, and filing of Estate Tax Returns, Fiduciary Income Tax Returns, and Decedent Final Income Tax Return
- Provide additional Trust services for client satisfaction

TRUSTCO BANK – INVESTMENT MANAGEMENT

- Provide professional investment management and advisory services of trust assets, incorporating an allocation of fixed income and equities
- Customized investment portfolio catered to a client or grantor's needs and wishes with respect to a trust agreement
- Management of both qualified and non-qualified accounts
- Monthly statements
- Provide detailed tax statements of income, expenses and capital gains/losses
- Bill paying services
- Fee schedule incorporates both asset management and trust services

Tax Reporting & Accounting

Return Requirements

Revocable = Form 1040

Irrevocable = Form 1041

CALCULATING TAX LIABILITY

- Income
- Less deductions
- Less distributions
- Less exemption



CALCULATING TAX LIABILITY

Income

- Investment earning-interest/ dividends
- Rental real estate
- Business income
- Pass-through income

Deductions

- Legal and accounting fees
- Fiduciary fees
- Interest
- Taxes- TCJA limitation
- Administration expenses

GRANTOR 1041

Department of the Treasury — Internal Revenue Service
Form 1041 U.S. Income Tax Return for Estates and Trusts 2021 OMB No. 1545-0092
 Go to www.irs.gov/Form1041 for instructions and the latest information.

A Check all that apply: For calendar year 2021 or fiscal year beginning _____, and ending _____, 20

<input type="checkbox"/> Decedent's estate	PIERRO NON-GRANTOR TRUST TRUSTEE 43 BRITISH AMERICAN BLVD. LATHAM, NY 12110	C Employer identification number 123456789
<input checked="" type="checkbox"/> Simple trust		D Date entity created
<input type="checkbox"/> Complex trust		E Nonexempt charitable and split-interest trusts, check applicable box(es). See instructions. <input type="checkbox"/> Described in sec. 4947(a)(1). Check here if not a private foundation <input type="checkbox"/> <input type="checkbox"/> Described in sec. 4947(a)(2)
<input type="checkbox"/> Qualified disability trust		
<input type="checkbox"/> ESBT (S portion only)		
<input type="checkbox"/> Grantor type trust		
<input type="checkbox"/> Bankruptcy estate—Ch. 7		
<input type="checkbox"/> Bankruptcy estate—Ch. 11		
<input type="checkbox"/> Pooled income fund		

B Number of Sch K-1 attached (see instructions) 1

F Check applicable boxes:

<input type="checkbox"/> Initial return	<input type="checkbox"/> Final return	<input type="checkbox"/> Amended return	<input type="checkbox"/> Net operating loss carryback
<input type="checkbox"/> Change in trust's name	<input type="checkbox"/> Change in fiduciary	<input type="checkbox"/> Change in fiduciary's name	<input type="checkbox"/> Change in fiduciary's address

G Check here if the estate or filing trust made a section 645 election. Trust TIN ▶

1 Interest income	1	750
2a Total ordinary dividends	2 a	32,750
b Qualified dividends allocable to: (1) Beneficiaries 32,750 (2) Estate or trust 0		
3 Business income or (loss). Attach Schedule C (Form 1040)	3	
4 Capital gain or (loss). Attach Schedule D (Form 1041)	4	
5 Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1040)	5	

Income

GRANTOR LETTER

(see **Form 10**)

2021 FEDERAL GRANTOR INFORMATION

PIERRO GRANTOR TRUST
GRANTOR
43 BRITISH AMERICAN BLVD
LATHAM, NY 12110

Grantor Name and Address	Trust Tax ID:	12-3456789
GRANTOR	Grantor ID/SSN:	123-45-6789
7 SUNNY LANE	% Ordinary Income:	100.000000
LATHAM, NY 12110	% Capital Gain/Loss:	100.000000

THE FOLLOWING INCOME, DEDUCTIONS AND CREDITS ARE TO BE REPORTED ON THE INCOME TAX RETURN OF THE ABOVE NAMED GRANTOR.

INCOME

ORDINARY DIVIDENDS
(ENTER ON LINE 9A FORM 1040)

	\$ 2,750.	\$ 2,750.
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QUALIFIED DIVIDENDS
(ENTER ON LINE 9B, FORM 1040)

	\$ 2,750.	\$ 2,750.
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NON-GRANTOR 1041

Form **1041** U.S. Income Tax Return for Estates and Trusts | **2021** | OMB No. 1545-0092

Department of the Treasury — Internal Revenue Service
Go to www.irs.gov/Form1041 for instructions and the latest information.

A Check all that apply: For calendar year 2021 or fiscal year beginning _____, and ending _____, 20

- Decedent's estate
- Simple trust
- Complex trust
- Qualified disability trust
- ESBT (S portion only)
- Grantor type trust
- Bankruptcy estate—Ch. 7
- Bankruptcy estate—Ch. 11
- Pooled income fund

PIERRO NON-GRANTOR TRUST
TRUSTEE
43 BRITISH AMERICAN BLVD.
LATHAM, NY 12110

C Employer identification number: 123456789

D Date entity created: _____

E Nonexempt charitable and split-interest trusts, check applicable box(es). See instructions.

Described in sec. 4947(a)(1). Check here if not a private foundation

Described in sec. 4947(a)(2)

B Number of Sch K-1 attached (see instructions): 1

F Check applicable boxes:

Initial return Final return Amended return Net operating loss carryback

Change in trust's name Change in fiduciary Change in fiduciary's name Change in fiduciary's address

G Check here if the estate or filing trust made a section 645 election: Trust TIN

Income	Line	Amount
1 Interest income	1	750
2a Total ordinary dividends	2a	32,750
b Qualified dividends allocable to: (1) Beneficiaries 32,750 (2) Estate or trust 0		
3 Business income or (loss). Attach Schedule C (Form 1040)	3	
4 Capital gain or (loss). Attach Schedule D (Form 1041)	4	
5 Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1040)	5	
6 Farm income or (loss). Attach Schedule F (Form 1040)	6	
7 Ordinary gain or (loss). Attach Form 4797	7	
8 Other income. List type and amount	8	
9 Total income. Combine lines 1, 2a, and 3 through 8	9	33,500
10 Interest. Check if Form 4952 is attached <input type="checkbox"/>	10	4,500
11 Taxes	11	7,500
12 Fiduciary fees. If only a portion is deductible under section 67(e), see instructions	12	
13 Charitable deduction (from Schedule A, line 7)	13	
14 Attorney, accountant, and return preparer fees. If only a portion is deductible under section 67(e), see instructions	14	
15a Other deductions (attach schedule). See instructions for deductions allowable under section 67(e)	15a	
b Net operating loss deduction. See instructions	15b	
16 Add lines 10 through 15b	16	12,000
17 Adjusted total income or (loss). Subtract line 16 from line 9	17	21,500
18 Income distribution deduction (from Schedule B, line 15). Attach Schedules K-1 (Form 1041)	18	21,500
19 Estate tax deduction including certain generation-skipping taxes (attach computation)	19	

Trust Administration at Death

- I. Paying Bills & Costs
- II. Distributions to Beneficiaries
- III. Tax and Accounting Issues

DURATION OF PROBATE ESTATE ADMINISTRATION

- **No access to assets prior to probate-** court must issue Letters Testamentary- risk of delays
- **Minimum 7 months** for simple estates
- Larger estates with complicated assets average **12-24 months**
- Maximum timeframe: **Unlimited** in the event of litigation or other complications



POTENTIAL PROBATE PITFALLS

- Complicated assets
- Minors
- Incapacitated distributees or beneficiaries
- Predeceased distributees or beneficiaries
- Charities
- Creditors
- Disharmony
- Estate Taxes
- Unknown Heirs (Publication)
- Litigation/ Will contests

COSTS FOR PROBATE & ADMINISTRATION

- Court fees
- Heir search/ publication
- Executors commissions
- Legal Fees
- Service of process
- Bond if needed
- Accountant fees
- Appraisal fees
- GAL if needed
- Litigation expenses if applicable



Trust

VS.

Will

- No probate
- Manages assets during life and provides long term protection
- Provides for successor trustee upon death or incapacity
- Financial affairs remain private

- Probate: cost & delays
- Takes effect after death
- No provision for incapacity
- May need a guardian or other planning
- No privacy – court papers filed in probate are public record

DISTRIBUTIONS TO BENEFICIARIES

Revocable Trust Administration: First Spouse's Death

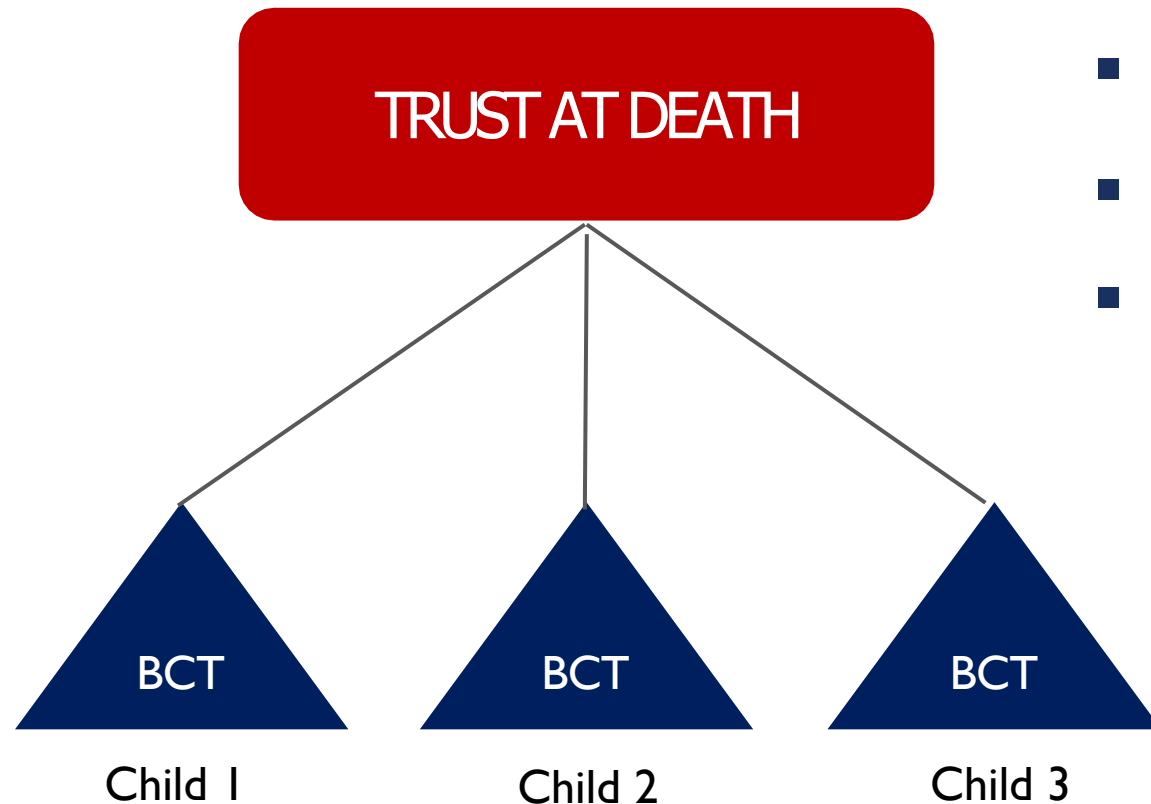
- Generally, all to Survivor- joint trust considerations
- Survivors' credit shelter and marital deduction sub-trusts- creditor protection
- Testamentary Trusts (SNT option)
- Funding formula
 - Pecuniary
 - Fractional Share
- Disclaimers
- QTIP's

DISTRIBUTIONS TO BENEFICIARIES

Revocable Trust Administration: Second Spouse's Death

- Outright to children & beneficiaries
- Lifetime Sub-trusts-Beneficiary Controlled Trusts
 - Creditors
 - Divorcing Spouses
 - Spendthrift
 - Predators
 - Government Benefits – Special Needs Trusts
- Beneficiary – income discretionary, unitrust
- Principal – discretionary, HEMS
- Beneficiary as trustee – NY Rule

BENEFICIARY CONTROLLED TRUSTS



- Child can be trustee and beneficiary = Control
- Can use assets for themselves and descendants
- Guarantees the family's legacy- assets stay in the bloodline, exempt from:
 - Divorce
 - Lawsuits
 - Bankruptcy
 - Medicaid

TAX FILINGS



- Decedent's final 1040
- Estate 1041
- Estate 706 or ET-706?
 - (claim portability- federal)
- Trust 1041
- Timing issue- if expenses and fees paid late, may lose deductions due to distribution of corpus

ACCOUNTING REQUIREMENT

To whom does the trustee account?

- To each beneficiary that income or principal is required or authorized in the trustee's discretion to be currently distributed

What is accounted for?

- Every incoming and outgoing transaction

Will or Trust can/should waive formal accounting

MAINTAINING YOUR PLAN

- Laws and circumstances are subject to frequent changes
- Maintaining your plan is crucial- what are your options?

P.A.L.M.S

Professional Advocates Lifetime Maintenance System

(see Form 12)

NEXT TRUST WORKSHOP

September 2022 - date TBD!

Registration opening in August

www.pierrolaw.com/events

Find More Learning Resources at

<https://www.pierrolaw.com/>

GUIDES

BLOGS

VIDEOS



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