

Estate Planning for Financial Planners: Beyond the Basics

FPA Utah

March 28, 2019

FPA
FINANCIAL PLANNING
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EP: Beyond the Basics – The Next Layer

Strategy: Limited Liability Companies (LLC's),

Strategy: Family Limited Partnerships (FLPs),

Strategy: Special Needs Trusts

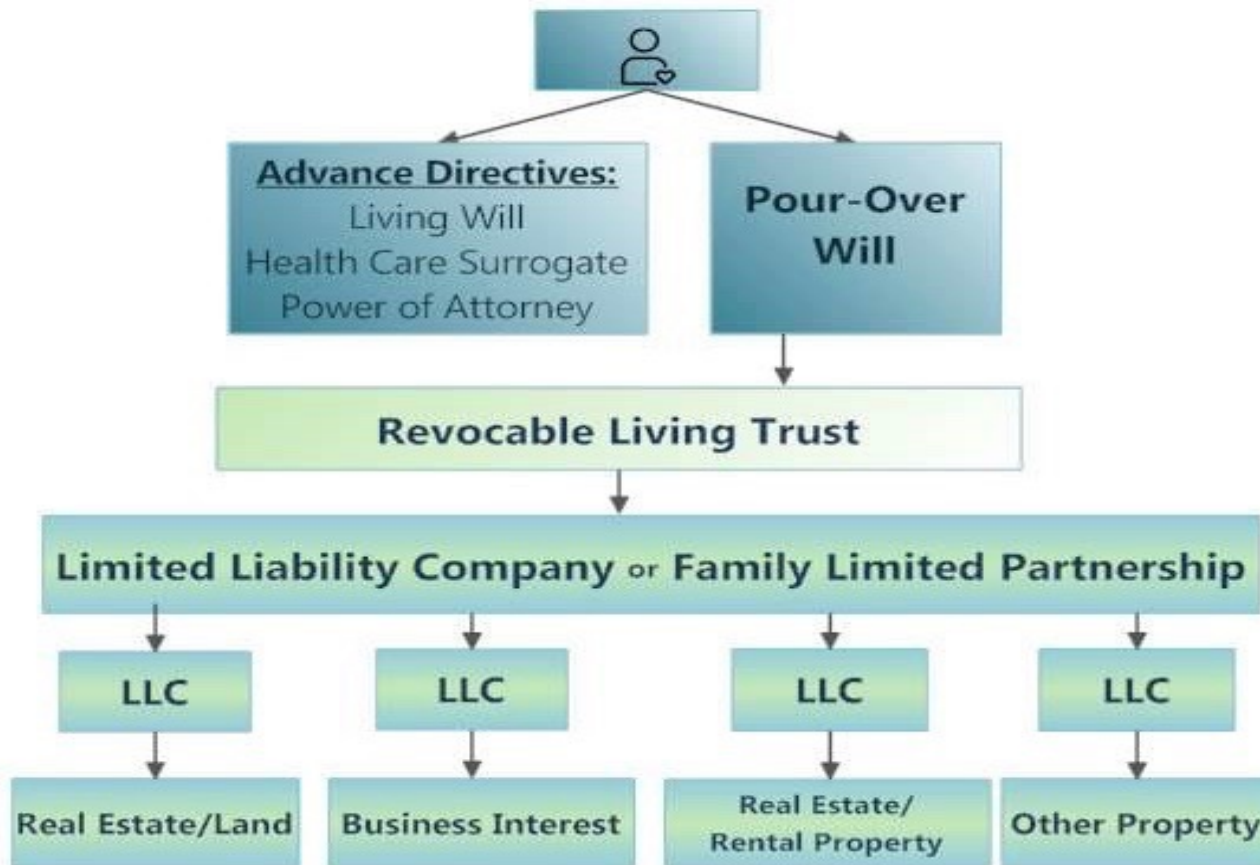
**Strategy: Domestic Asset Protection Trust
(DAPT)**

Layers of Strategies

Strategy : Using LLCs in an Estate Plan

- A limited liability company ("LLC") specifically allows for the corporate veil and efficient management of assets, and operations.
 - Potential tax benefits of running a business.

Revocable Trust w/ Layered LLC



Layers of Strategies

Strategy : Using LLCs in an Estate Plan

- A series LLC is a unique form of limited liability company ("LLC") in which it specifically allows for unlimited segregation of membership interests, assets, and operations into independent series.
- States that allow: Delaware, Illinois, Iowa, Nevada, Oklahoma, Tennessee, Texas, **Utah** and Puerto Rico.

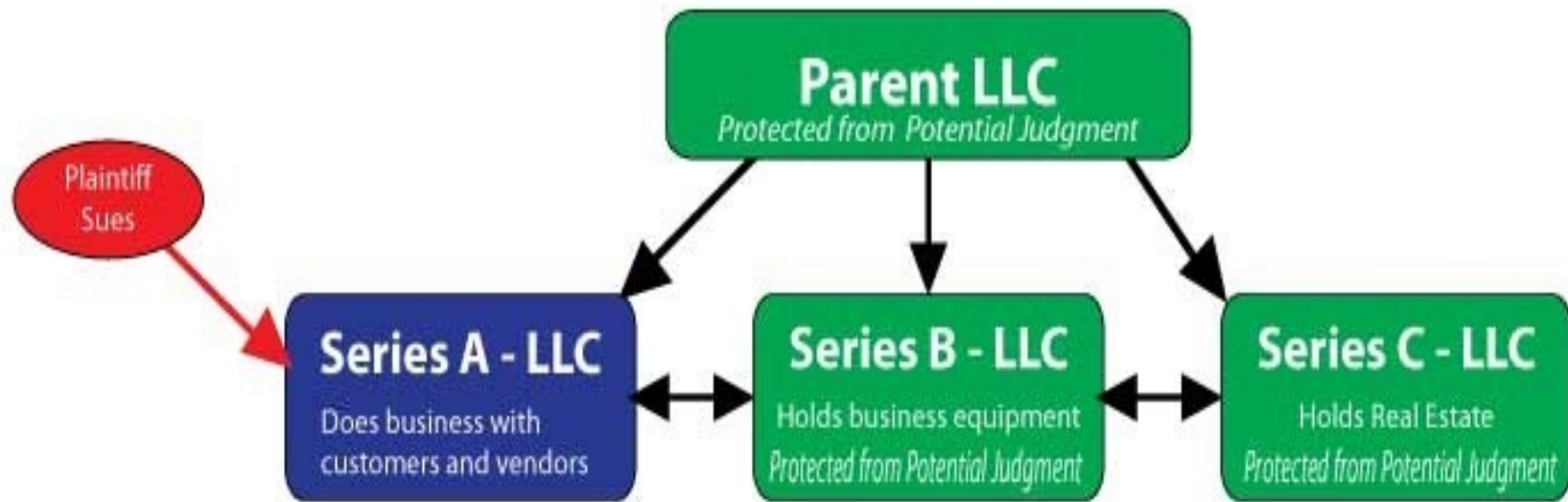
Layers of Strategies

Strategy : Series LLC and the Corporate Veil



Layers of Strategies

Strategy : Series LLC and the Corporate Veil



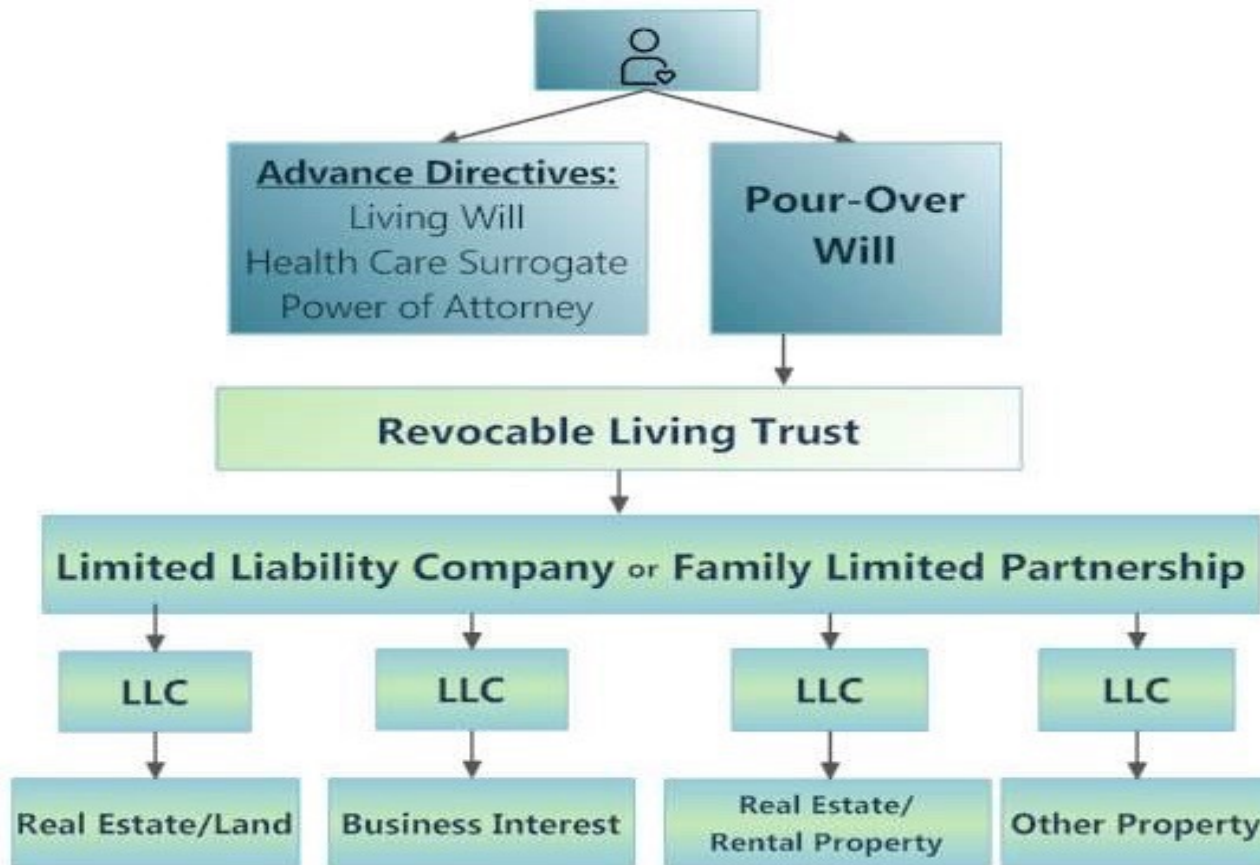
(black arrows indicate contracts between the sub-companies)

Layers of Strategies

Strategy : Family Limited Partnerships

- **family limited partnership (FLP)** is a holding company owned by two or more **family** members, created to retain a **family's** business interests, real estate, publicly traded and privately held securities, or other assets contributed by its members.

Revocable Trust w/ Layered FLP



Family Limited Partnerships

FLP Techniques:

1. Partnership is created under state law with a partnership agreement.
2. A 1% general partnership (GP) interest is created along with a 99% limited partnership (LP) interest.
3. Transferor transfers property to the FLP in exchange for the GP and LP interests.
4. The general partner is responsible for managing the FLP and maintains control over the FLP assets.
5. Over time, the GP will generally donate LP interests to family members taking advantage of valuation discounts due to lack of marketability and lack of liquidity. These donations will make use of the annual exclusion.
6. The FLP owns the assets donated, which creates a layer of asset protection for the limited partners.

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What to Avoid:

1. Creating the FLP near the death of the transferor.
2. Only transferring marketable securities, while attempting to claim a high valuation discount.
3. Contributing personal use assets in the FLP.
4. Not having a professional valuation completed as part of a discount.
5. Using FLP assets to pay for personal expenses of the general partner.
6. Making distributions that fail to follow the terms of the partnership agreement.
7. Not changing the title of assets contributed to the partnership.
8. Making too many distributions from the FLP. The FLP needs to have a valid business purpose.

Layers of Strategies

Strategy : Domestic Asset Protections Trusts (DAPTs)

DAPT - A self-settled trust that allows the grantor to be a beneficiary while protecting assets from creditors.

- Used in estate planning, wealth preservation, and lawsuit protection.
- Not all U.S. states allow DAPTs; Utah is one of the few that does.

Key Benefits of a DAPT

- Shields assets from creditors and lawsuits.
- Allows the settlor to maintain access to funds.
- Protects against divorce settlements.
- Used for estate tax planning and wealth transfer.
- Provides an additional layer of financial security.

How a DAPT Works

1. Grantor (you) transfers assets into the trust.
2. The trust is irrevocable, meaning it cannot be easily changed.
3. The trustee (a third party) controls distributions.
4. The grantor can receive distributions, but creditors cannot access assets.
5. A statute of limitations applies before full protection kicks in.

Utah Domestic Asset Protection Trusts

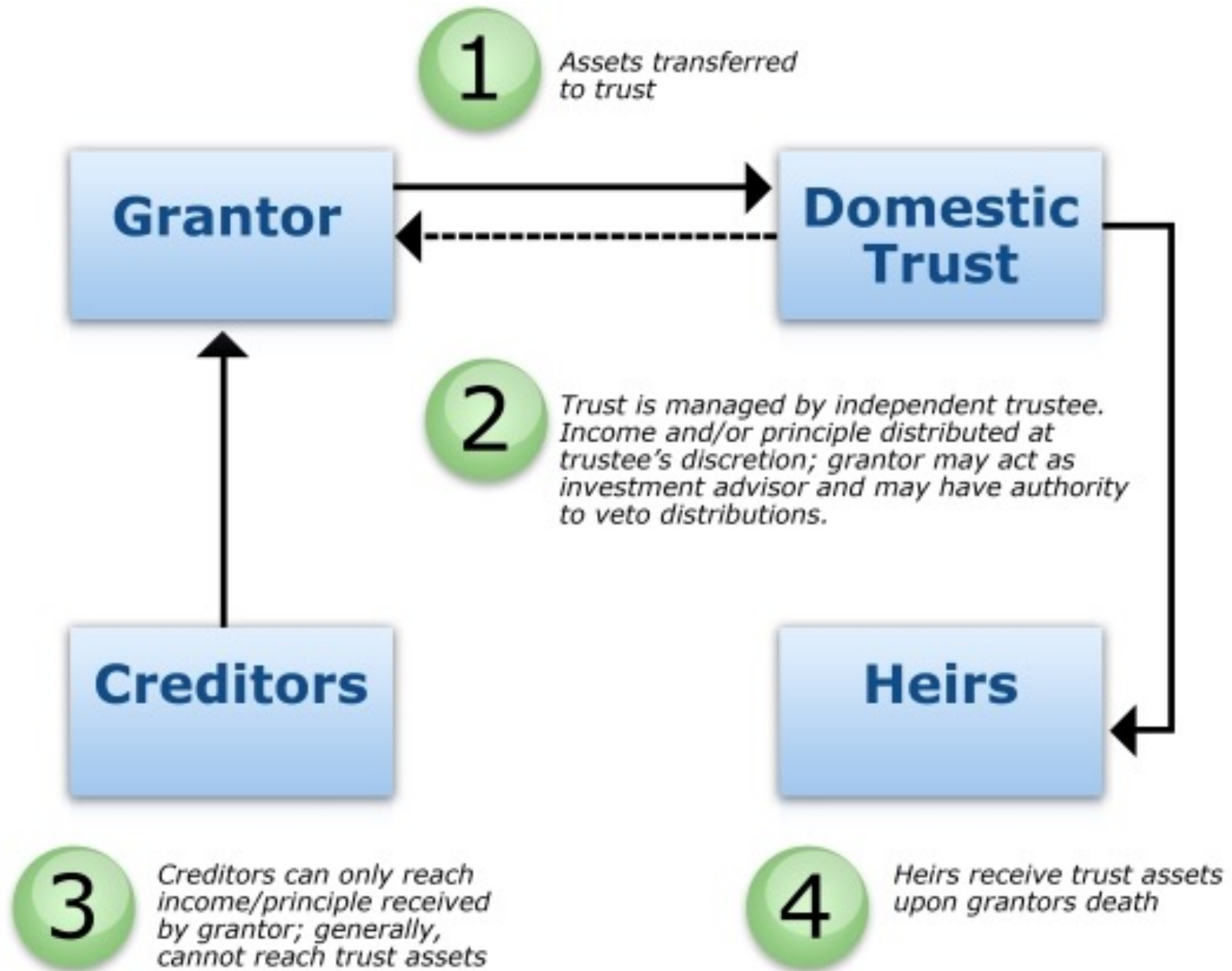
- Utah's DAPT law allows grantors to protect their assets while retaining some control.
- 2-year statute of limitations for existing creditors; 4 years for unknown creditors.
- Trust must be irrevocable and have at least one Utah-based trustee.
- Grantor cannot use the trust to defraud existing creditors.
- Best for: Physicians, business owners, high-net-worth individuals,
 - or simply equity in home

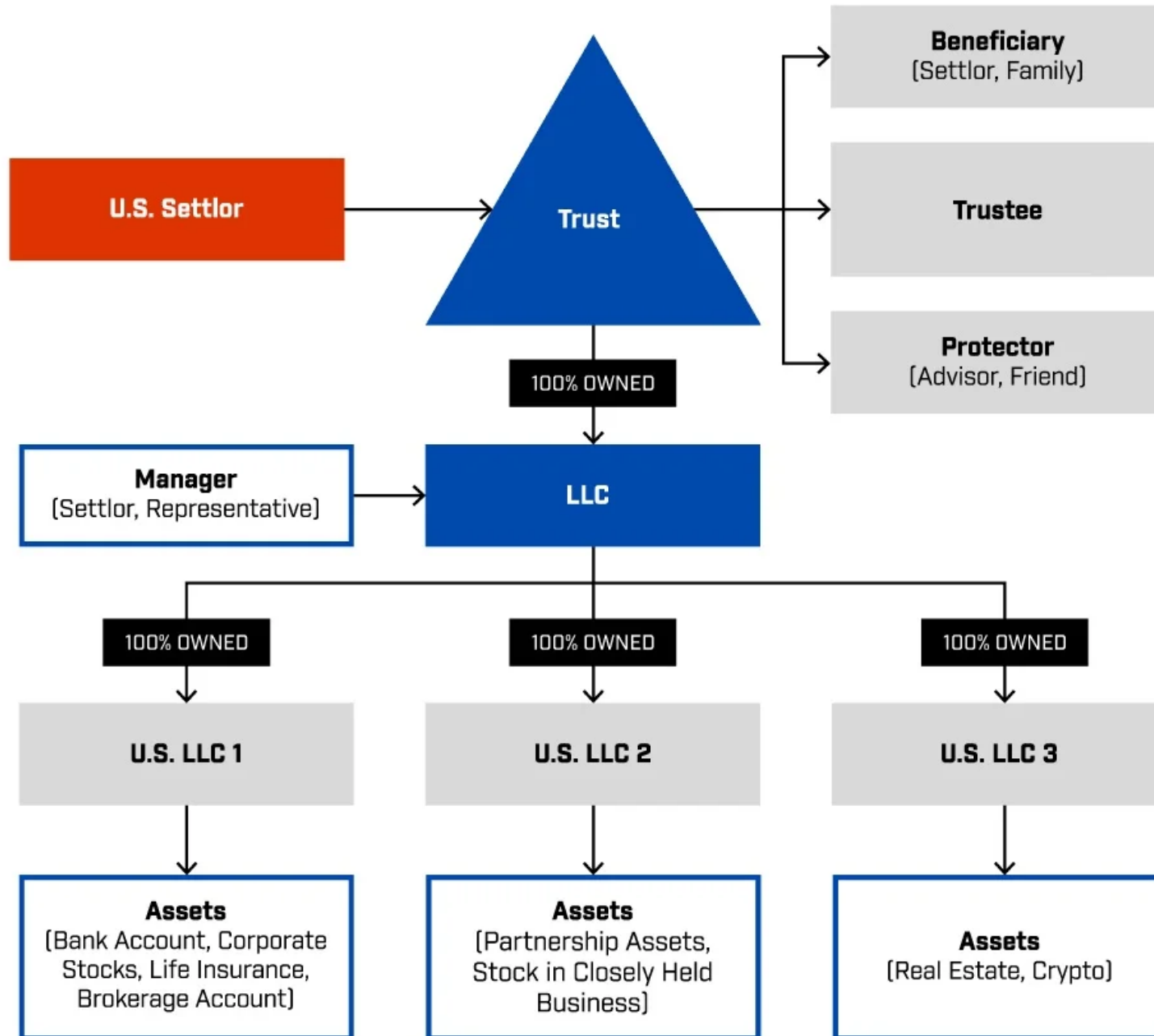
Considerations and Limitations

- Not all states recognize DAPTs; creditors from other states may challenge them.
- Requires strict compliance with Utah laws to be effective.
- Best when combined with other estate planning tools like LLCs or FLPs.
- Federal laws (like bankruptcy laws) can still affect asset protection.

Other Considerations

- A Utah DAPT can provide strong asset protection if structured properly.
- Consult with an estate planning attorney to ensure compliance.
- Consider combining a DAPT with other wealth management strategies.
- Evaluate whether a DAPT aligns with your financial goals.



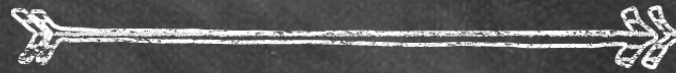


Layers of Strategies

Strategy : Special Needs Trusts / Planning

- **Medicare** is a federally funded health insurance program primarily designed for individuals over the age of 65.
- **Medicaid** is also a health insurance program sponsored by the federal government and administered by the states, but it is primarily intended to benefit certain low-income individuals and families.
 - Long-term care is one of the primary benefits of Medicaid.
 - Asset & income tests
 - Look back period

SPECIAL NEEDS TRUSTS



THERE IS A PLAN AND A PURPOSE,
A VALUE TO EVERY LIFE, NO MATTER WHAT
ITS LOCATION, AGE, GENDER OR DISABILITY

-SHARRON ANGLE

Common Misconceptions

- Too many practitioners focus exclusively on preservation of public benefits in their Special Needs Trusts

Miss Big Picture:

- Not poverty planning
- Affluent families also have disabled loved ones
- Benefits are merely a tool
- **Objective is quality of life**

First / Primary Party Trust

- Source: funds benefits recipient
- Sole benefit of special needs beneficiary
- Under more scrutiny – federal regulations
 - Medicaid recovery upon death of beneficiary

Third Party Trust

Source: funds from someone other than benefits recipient

- More latitude
 - Multiple beneficiaries
 - Turn on/off
- No recovery upon death of benefits recipient

Choosing a Trustee

- Must:
 - Use discretion in best interest of disabled beneficiary
 - Must understand public benefits and keep up with changes in law
 - Can wisely invest and conform to all statutory fiduciary requirements
 - Understands taxes
 - Keeps perfect books
 - Provides advocacy and prevents abuse
 - Is immortal

Robinson Case Study 1 of 3

- Mark and Susan Robinson come to you with terrible news
 - Mark diagnosed with cancer
 - Prognosis 6 months to live
- Daughter, Joy
 - Joy has severe birth injuries
 - Been a struggle for family to provide for her care
- Susan terrified of losing Mark and providing for Joy
 - Joy's care will cost a minimum of \$60,000 a year
- Primary Assets:
 - Substantial resources, including several million dollars in life insurance, and
 - Each have substantial IRAs

Robinson Case Study 2 of 3

- Plan:
- Divert portion of IRA to Special Needs Trust for Joy
 - Rather than to Susan
- Beneficiary designation forms updated on IRA:
 - Primary beneficiary: Susan
 - Contingent beneficiary: Joy's SNT
 - Upon Mark's death,
 - Susan disclaims ½ of IRA to Joy's special needs trust.

Robinson Case Study 3 of 3

- \$50,000 a year transferred from IRA to SNT
 - \$50,000 paid directly to caregiver
- Since Care giving is tax deductible, almost all expenditures will be tax free, after the applicable taxable floor
- Money remains under management for a long time
- Susan gets the relief she needs
 - Joy gets superior care.

ENSURING CARE: HOW SPECIAL NEEDS TRUSTS AND GOVERNMENT PROGRAMS WORK IN TANDEM



Conclusion (The End)

- Questions?