

# **Who Says You Can't Control from the Grave? Using Trusts to Protect Your Family**

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## **Part Four**

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**by James Lange, CPA/Attorney**

# Agenda

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- **Basic type of Trusts**
  - **Revocable/Living Trusts**
  - **Should you avoid probate?**
  - **Trusts for minor beneficiaries**

# Agenda

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- **Trusts as beneficiaries for IRAs and retirement plans**
- **Trusts for spendthrifts and other adults**
- **Trusts for special needs children and adults**
- **Alternatives to Trusts**

# Trusts: The Basics

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- **A Trust is an agreement where a Trustee administers your assets in accordance with your wishes**

# Trusts: The Basics

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- **A Trust can be funded during your lifetime (Revocable or Living Trust)**
- **Or at your death (Testamentary Trust)**
- **A Trust can be either revocable or irrevocable**
- **A Trust allows you to control from the grave**

# Revocable/Living Trusts

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- **A Revocable Trust or Living Trust is typically drafted and funded while you are alive**
- **You and/or your spouse can be trustees during your lifetime**
- **The Revocable Trust also dictates where your probate assets go after your death**
- **To avoid probate, you must transfer your probate assets to the Trust while alive**

# Graphic Depiction of Avoiding Probate

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- **Please see whiteboard**

# What are Probate Assets?

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- **All assets that typically are controlled by your Will**



# Examples of Probate Assets

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- **Individually owned brokerage accounts, typically in “after tax” accounts**
- **Individually owned savings accounts**
- **Individually owned personalty (legal word for stuff)**
- **Individually owned real estate**

# Examples of Non-Probate Assets

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- **Jointly held assets that pass by operation of law**
- **Assets controlled by beneficiary designation**
  - IRA or retirement plan
  - Life insurance
  - Annuity contracts
- **Brokerage accounts with a TOD designation**

# What is Probate?

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- **The court-supervised process following a person's death that includes:**
  - **proving the authenticity of the Will**
  - **identifying and inventorying the deceased person's probate assets**
  - **appointing someone to handle the deceased person's affairs, the executor or executrix**

# What is Probate?

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- **The court-supervised process that includes:**
  - **protecting the estate until distribution**
  - **paying debts and taxes**
  - **identifying heirs**
  - **distributing the deceased person's probate assets according to the Will**

# Disadvantages of Probate

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- **Court supervised process**
- **Delays**
- **Court costs**
- **Lack of privacy**
- **Higher executor fees**
- **Higher attorney fees**

# Choice of Executor and Trustees

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- **Personal strong bias for naming trusted family members**
- **Typically surviving spouse**
- **Second or contingent is usually one of the children**
- **Pick the child you like the least**
- **Keep control in the family**
- **Your spouse or child can hire or fire service providers**

# **Demand Hourly over Percentage Fees**

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- **Banks will typically charge fees based on a percentage of probate assets**
- **Many, if not most, attorneys will too**
- **Don't let a bank or an attorney have a windfall at your family's expense**

# How to Avoid Probate

## Second Best Alternatives

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- **Jointly held assets (sometimes best)**
- **Transfer on death account**
- **In trust for account**
- **Biggest problem is lack of flexibility after death**



# The Best Way to Avoid Probate

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- **Draft a Revocable Trust and transfer assets to the Trust**
- **If you want to avoid probate, avoid it completely**
- **If you don't transfer all the assets, you likely will have to go through probate**

# Should You Avoid Probate?

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- **Factors in favor of going through probate**
  - **Cheaper to draft wills than Revocable Trusts**
  - **Most of your assets are non-probate assets**
  - **You already have perfectly fine Wills**
  - **You don't mind your heirs having some aggravation**
  - **You don't want to go through hassle of transferring assets to the Revocable Trust**

# Should You Avoid Probate?

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- **Factors in favor of Revocable Trusts**
  - You want to reduce aggravation for heirs after your death
  - You want to reduce costs after death
  - You want privacy

# Should You Avoid Probate?

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- **Factors in favor of Revocable Trusts**
  - You are older and the chances of dementia or Alzheimers are increased
  - You have property in a different states or counties
  - You have property in Florida
  - You don't mind paying a little more up front to have everything taken care of
  - Simplification of distribution of IRAs for IRA/401(k) custodians who do not accept attachments

# Myths About Revocable/Living Trusts

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- **Reduction of taxes**
- **Allows for immediate distribution of assets after death**
- **Controls all of your assets**
- **Probate is always miserable**

# Key Principle

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- **Avoiding probate is a bonus**
- **It is not critical**
- **The Trusts that last after death (Testamentary Trusts) are critical**
- **Even Testamentary Trusts aren't as important as who gets the money (either outright or as beneficiary of the Trust)**

# Types of Revocable Trusts

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- **His Trust**
- **Her Trust**
- **Their Trust (Joint Trust)**
- **Careful about making unintended gifts when funding Trusts**
- **Step up in basis**

# Trusts for Minor Beneficiaries

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- Protects the child from himself
- Protects the money against child's creditors
- Protects the money from other parent
- You determine how money can be used
- Typically—health, maintenance, education, support
- Steps like  $\frac{1}{3}$  at 25,  $\frac{1}{3}$  at 30 and  $\frac{1}{3}$  at 35



# Trusts for Minor Beneficiaries

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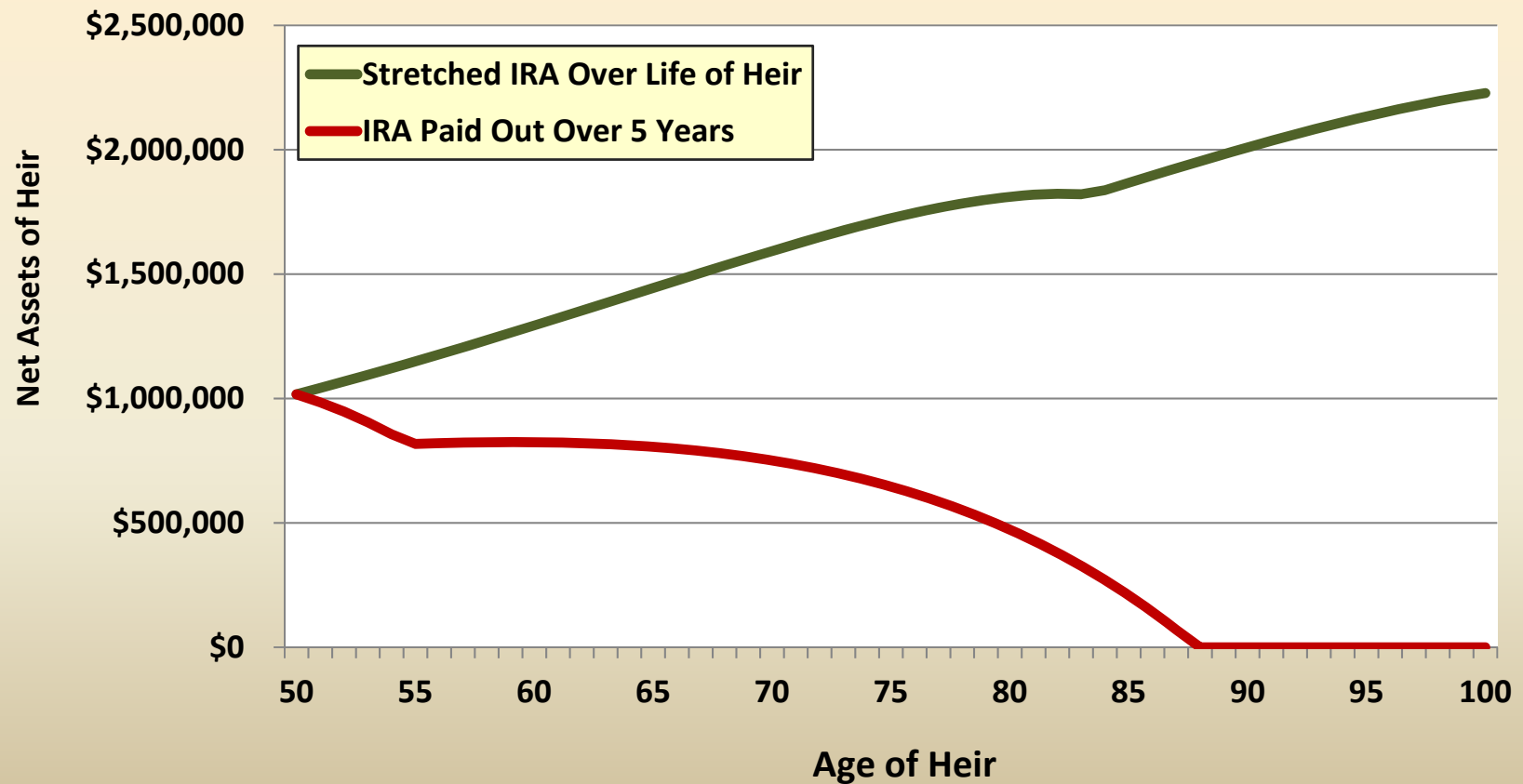
- **Draft proper Trusts as contingent beneficiaries**
- **We typically give children right to disclaim into Trusts for grandchildren**

# Trust as Designated Beneficiary of an IRA

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- To get the stretch IRA, the Trust must meet five specific conditions
- Critical to preserve stretch
- One HUGE mistake is bad titling after death
- Lange and Steiner vs. *The Wall Street Journal*

# Cost of Blowing the Stretch



# Judgers vs. Free Spirits

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- **Carl Jung teaches us about judgers and free spirits**
- **Judgers like others to conform to their world view**
- **Judgers like to plan**
- **The free spirits like to conform themselves to the world**
- **Free spirits say it's all good**

# Trusts for Adult Beneficiaries

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- **Protect adult children from blowing inheritance, blowing tax planning, and living under a bridge**
- **Protect adult children from creditors**
- **Protects children against future ex-spouses**

# Problems with Trusts

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- **Adds complications to estate**
- **If underlying assets are IRAs, extreme care needed**
- **Trustee must file an extra annual tax return**
- **Different treatment of siblings**
- **Who to name as Trustee?**

# Simple Alternative to Spendthrift Trusts

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- **Give power to executor to purchase immediate annuity for a spendthrift beneficiary**

# **I Don't Want My No Good Son-In-Law To Inherit One Red Cent Of My Money Trust**

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- **Especially important when there is:**
  - marital strife
  - undue influence
  - when you don't trust your no good son-in-law
  - same for daughter-in-law



# The No Good Son Or Daughter-In-Law

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- **A complimentary solution—even for a good son or daughter-in-law is a pre- or even post-nuptial**
- **I like introducing the idea early before your child even has a boyfriend or girlfriend**
- **If introduced late, great way to start a family fight**
- **If introduced late, make me the bad guy**

# Special Needs Beneficiaries

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- **For our purposes, a special needs beneficiary is someone who is now or could in the future receive state or federal aid**

# Exemption Equivalent Trust (B Trust)

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- A type of Trust originally drafted to avoid federal estate taxes at second death
- The original purpose was to save federal estate taxes
- Since we can protect an estimated \$22.8 M now anyway, purpose is gone and is usually a bad idea

# Best Choice of Beneficiary of Wills and Trusts and IRAs

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- It depends
- Problem is uncertainty of the future
- Typical choices are
  - Surviving spouse
  - Kids equally
  - Trust for grandchildren

# Solution: Lange's Cascading Beneficiary Plan

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- **Cascade stream as follows:**
  - **Surviving spouse**
  - **Children (sometimes in Trust)**
  - **Trust for grandchildren (practically always in Trust)**

# **Solution: Lange's Cascading Beneficiary Plan**

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- **Works for Wills, Revocable Trusts**
- **Works for IRAs and retirement plans**
- **Works for Roth IRAs**

# History of the Solution

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- **Early 90s**
- ***The Tax Adviser, 1998***
- **Jane Bryant Quinn, 2001**
- ***Newsweek***
- ***The Wall Street Journal***
- ***Kiplinger's Retirement Reports***
- ***The Wall Street Journal* again**
- ***Retire Secure!, 2006, 2009 & 2015***

# Solution Isn't in Left Field

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- **Endorsement of Cascading Beneficiary Plan or at least endorsed book advocating plan:**
  - **Charles Schwab**
  - **Jane Bryant Quinn**
  - **Ed Slott**
  - **Larry King**
  - **Burton Malkiel**
  - **Roger Ibbotson**
  - **Dozens more estate planning/financial experts**



# What You Learned

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- **Revocable Trusts to avoid probate**
- **Trusts for minors**
- **Trusts as beneficiaries of your IRA and/or retirement plan**
- **Spendthrift Trusts**
- **The best estate plan for married couples**

# The Estate Planning Homerun

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- **Combine strategies of:**
  - **Ideal Trust and estate planning**
  - **Long-term multiple year Roth IRA conversion strategy**
  - **Optimal Social Security planning**
  - **Integrated plan for all your assets after “running the numbers”**
  - **Consider Death of the Stretch IRA changes**
  - **Low cost index investing**

# Thank You for Attending

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