

CRITICAL POST-DEATH FUNCTIONS OF ADMINISTRATIVE TRUSTS UNDER REVOCABLE LIVING TRUSTS

AND THE IMPORTANCE OF PRE-DEATH TRUSTEE SELECTION

PRESENTED (ZOOM) OCTOBER 23, 2020

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TODAY'S SPEAKERS

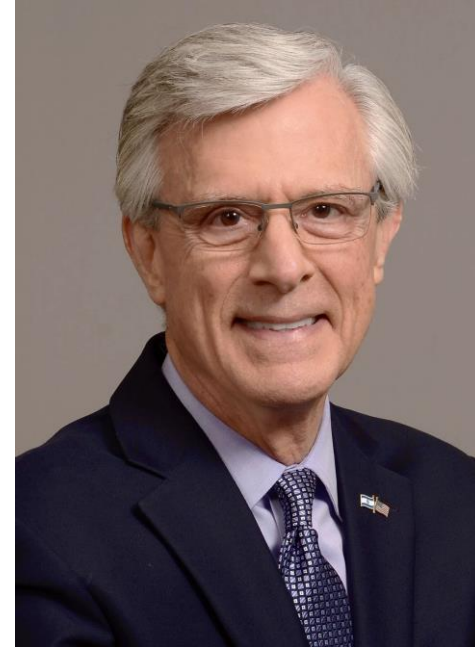


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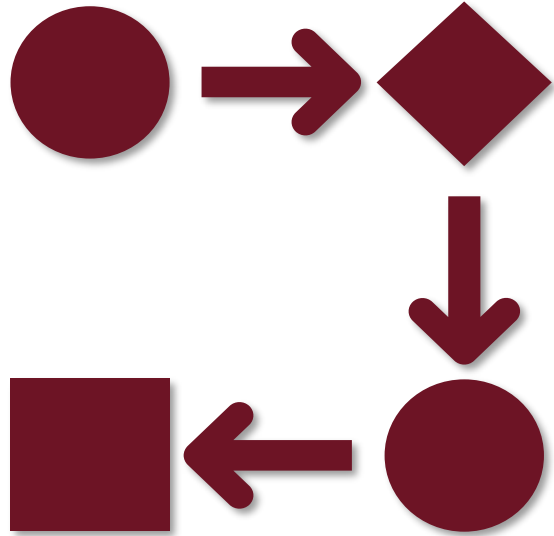
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#1



**THE TRUST
ADMINISTRATION
PROCESS**

#2



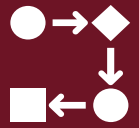
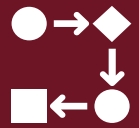
**SELECTING THE
RIGHT
TRUSTEE**

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**SELLING YOUR
TRUST
ADMINISTRATION
SERVICES**

THE TRUST ADMINISTRATION PROCESS



TRUST ADMINISTRATION PROCESS

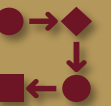


Trust Administration

Private Process

1. *Trustee accepts position*
2. *Assets gathered, valued and managed*
3. *Beneficiaries notified*
4. *Creditors notified and cleared (depends!)*
5. *Accountings approved*
6. *Tax Returns filed*
7. *Distribution to Beneficiaries*
8. *Trust Administration (Jan 1 '04)*

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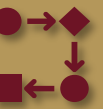
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TRUSTEE DUTIES

- Personally liable to carry out all of the duties of the estate when no personal representative
- Personally liable to creditors, taxing authorities and beneficiaries
- Clear creditors (May be 2 year statutory period!)
- Must act as a prudent investor during the administrative period
- Must ensure that distribution is in accordance with trust, law, and QRP beneficiary designations

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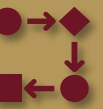
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TRUST ADMINISTRATION PROBLEMS

- Two Years to Clear Creditors (depends!)
- If made distribution and a valid creditor arises thereafter - Trustee is personally responsible
- Agreement among trustee/beneficiary for recontribution
- Run empty probate

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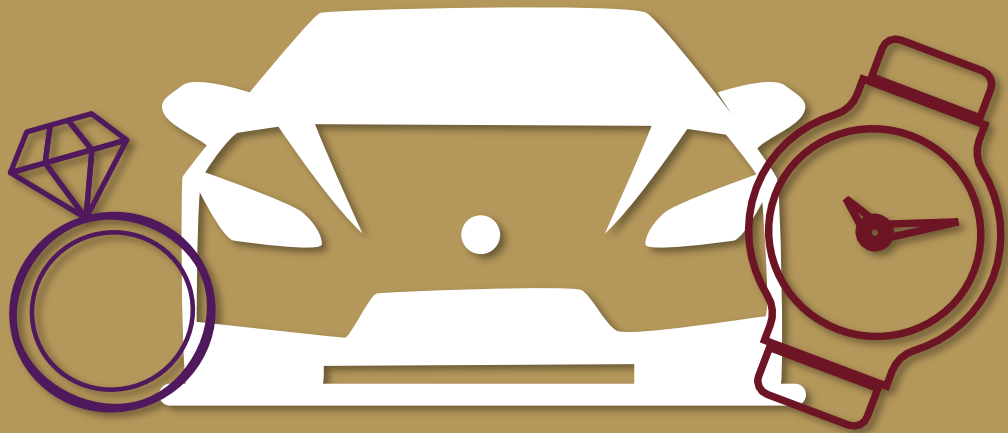
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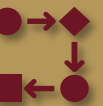


WHAT ABOUT THE ASSETS?



- Gather and value
- Prudent investor rule - short term market
- Sale of assets
- Ease of distribution
- Liquidity

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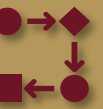
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WHAT ABOUT THE BILLS?

- Spouse may be liable under North Carolina's doctrine of necessities
- Children and other relatives usually not responsible for debts of the deceased
- Other assets, including jointly held assets, may still be subject to claims of creditors
- Beware of Trustee discretion to pay PR for debts with life insurance proceeds when Trustee and PR are the same

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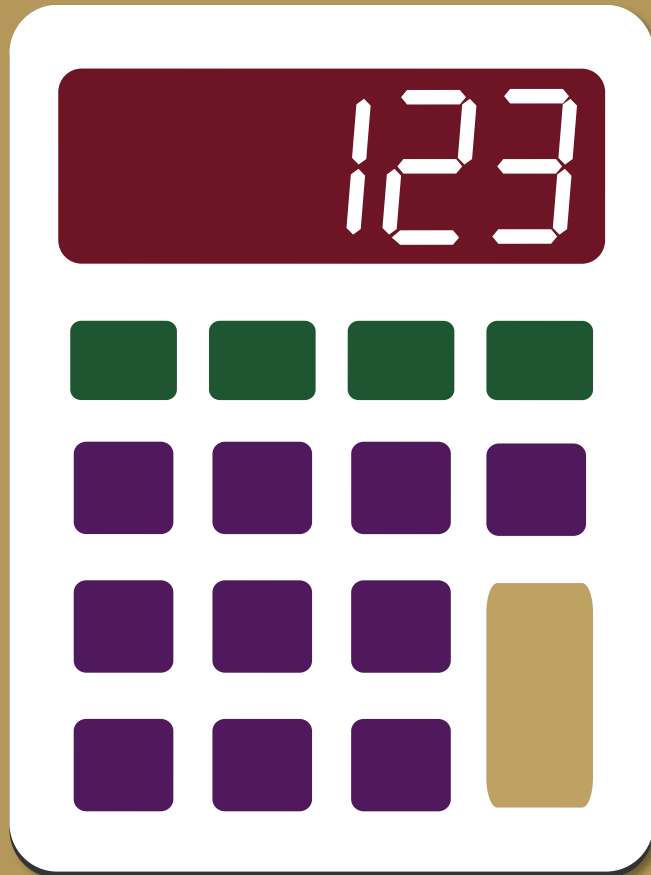
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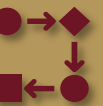


TAXES



- No NC death or intangibles tax
- May be taxes on assets with situs in other states
- Federal Estate Tax for Certain Larger Estates
- Marital Deduction for assets transferred outright or in a qualified manner to spouse
- Filing form 706 for Portability (easy) and/or QTIP Election (more detail required)
- Income Tax (IRC 645 Election by PR and Trustee; Form 56 with Affidavit of Trusteeship)

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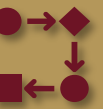
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FINAL DISTRIBUTION ... OR IS IT?

- Specific Bequests
- Outright distributions
- Ongoing trusts for surviving spouse and/or children and/or others
- Duty to fund the trusts fairly
- Possible ongoing duty to manage the trusts established

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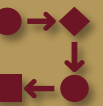


ASSETS OUTSIDE OF ADMINISTRATION



- Joint Assets with rights of survivorship (certainly)
- IRA/401(k) (possibly)
- Annuities (possibly)
- Life Insurance (possibly)

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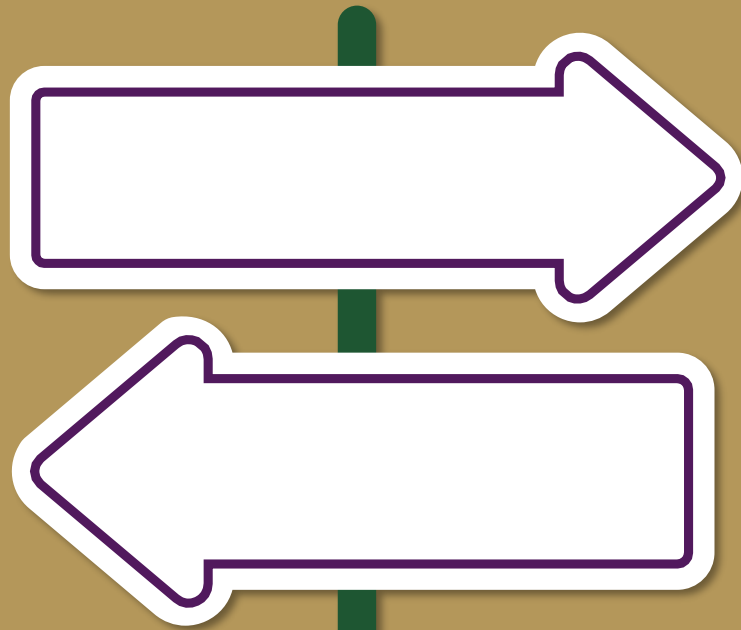




***SELECTING THE
RIGHT SUCCESSOR
TRUSTEE***

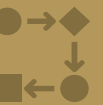


KNOWING THE OPTIONS



- Spouse
- Adult Children
- Other Loved Ones
- Bank
- Trust Company

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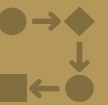
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ISSUES RELEVANT TO SELECTION

- Keeping track of assets, income, principal, expenses, distributions
- Understanding and managing complex assets, if applicable
- Willing to seek and rely upon professional advice
- Be different from Executor unless Trustee's discretion is limited regarding payment of Estate debts (e.g., protecting life insurance proceeds)
- IRC § 672 (i.e., full discretion vs. limited to ascertainable standards)
- Age, disposition (i.e., caretaker with backbone), family dynamics
- Pros and cons of Co-trusteeships (individuals vs. corporate and individual)
- Consider different Trustees for different trusts (e.g., some corporate Trustees will not accept management of real property)
- Other?

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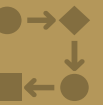
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UNFORCED ERRORS

- Inattentive
- Too busy
- Logistics
- Not understanding investments
- Not aware of financial responsibilities
- No interaction with legal and tax team

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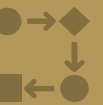
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BAD JUDGEMENT ERRORS

- Moving the account to their buddy who is a broker
- Hiring their own legal and tax advisors (especially out of state)
- Continuing DIY investments but not as adept
- Not understanding the estate plan

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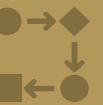


PERSONAL LIABILITY



- Clients don't know that trustees are personally liable
- If improper or untimely distributions are made, then loved one acting as fiduciary may be liable to taxing authorities, creditors and/or beneficiaries

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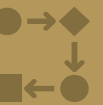


CONFLICT OF INTEREST



- Child as beneficiary/ fiduciary
- Blended family issues
- Family feuds
- Growth vs. income

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LEGAL AND TAX ISSUES

- Pending lawsuits, claims or other legal matters
- Access to your prior 1040s - carry forwards
- Is everything saved electronically?
- Ongoing CPA/Tax return preparer?

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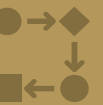


FAMILY ISSUES



- Supporting a loved one
- Moochers who keep begging for more

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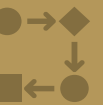
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PROVIDING SUPPORT

- Who is their financial advisor?
- Do they have a trust department?
- FINRA issues with financial advisors serving as trustee

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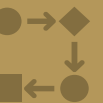


CORPORATE TRUSTEES



- Frank conversations with client's family
- Include attorney in discussions
- Fashion a strategy
- Implement the strategy

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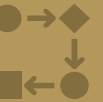
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CLIENT INTERVIEW QUESTIONS FOR FINANCIAL INSTITUTIONS

- Scope of services provided and fees?
- Fees not charged until you act?
- Fees on cash and equivalents? LOR assets? Non-financial assets?
- Interaction with your legal and tax professionals?
- Will you file tax return or work with my CPA?
- Trust officers visit your home? Local or 800 numbers?
- Scope of services provided and fees?
- Fees not charged until you act?
- Fees on cash and equivalents? LOR assets? Non-financial assets?
- Interaction with your legal and tax professionals?
- Will you file tax return or work with my CPA?
- Trust officers visit your home? Local or 800 numbers?
- How are distribution decisions made?
- How will you work with my named co-trustee?
- What happens if you don't agree with my co-trustee?

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CLIENT DISCUSSION POINTS WITH FAMILY MEMBERS

- Share client expectations
- Introduce client's children to your advisors
- Discuss the duties and responsibilities that will be imposed
- Build client support network
- Do client's children know that they will be expected to play a role?
- Do they know what role they are expected to play?
- How do they feel about this responsibility?

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#3



***SELLING YOUR
TRUST
ADMINISTRATION
SERVICES***



SELLING TRUST ADMINISTRATION SERVICES

- Client perception is that trusts avoid probate, so why pay an attorney?
- What value are you adding to the administration?
- Most attorneys get too technical
- Start with “why”

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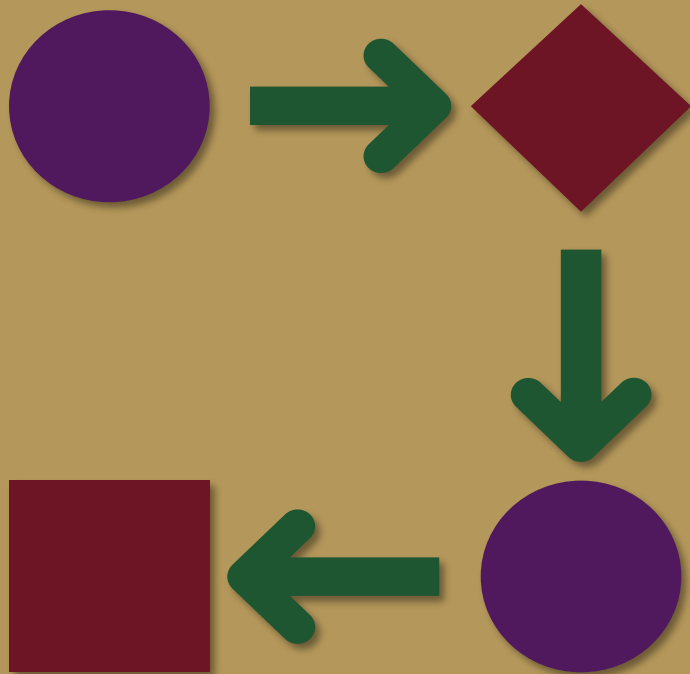
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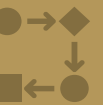


SELL A PROCESS, NOT A TRUST ADMINISTRATION



- Describe the process, including all the steps
- Better if you have a graphical representation (for an example, see floridaprobate.com)

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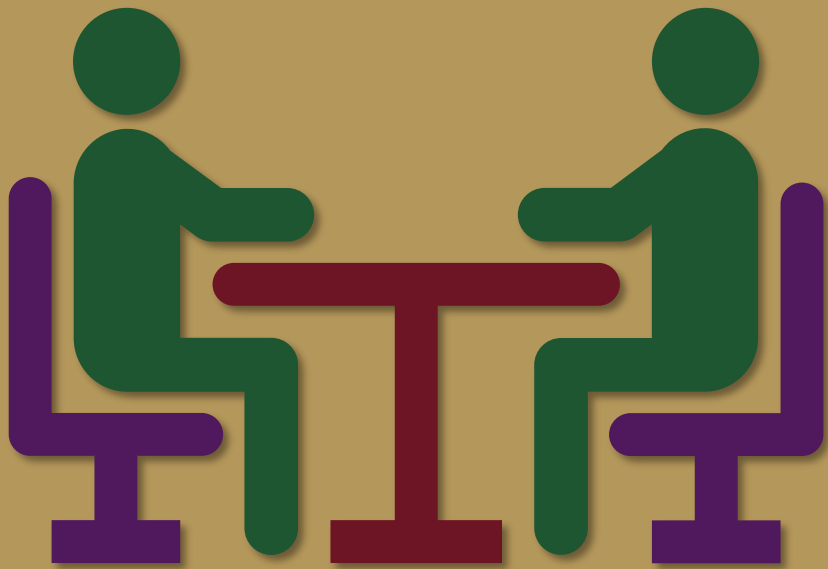
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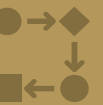


THE INITIAL MEETING



- Prepare a list of what to bring
- Talk to the client about the dangers, opportunities & strengths that their family is facing
- Don't spill all the candy in the lobby
- The goal of your initial meeting should be to get your firm engaged

#1



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TODAY'S SPEAKERS

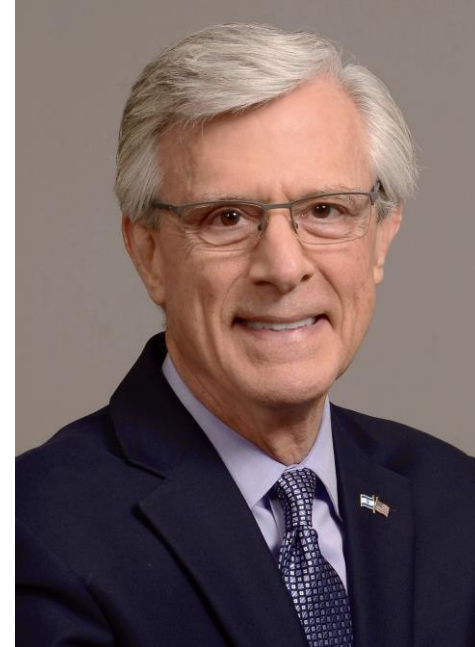


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