



Navigating Trusts

Planning and Administration

Tamara L. Harper, Esq.



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Navigating entrepreneurs, inventors, individuals, and small to mid-size companies in the green energy, real estate, bio-tech, restaurant, retail and service industries to safe harbors through the maze of employment regulations, corporate compliance, real estate and civil litigation, trademark registration and defense, business sale or acquisition, and investor capitalization, asset protection, estate and trust issues.

4333 Park Terrace Drive · Suite 120 · Westlake Village · CA · 91361

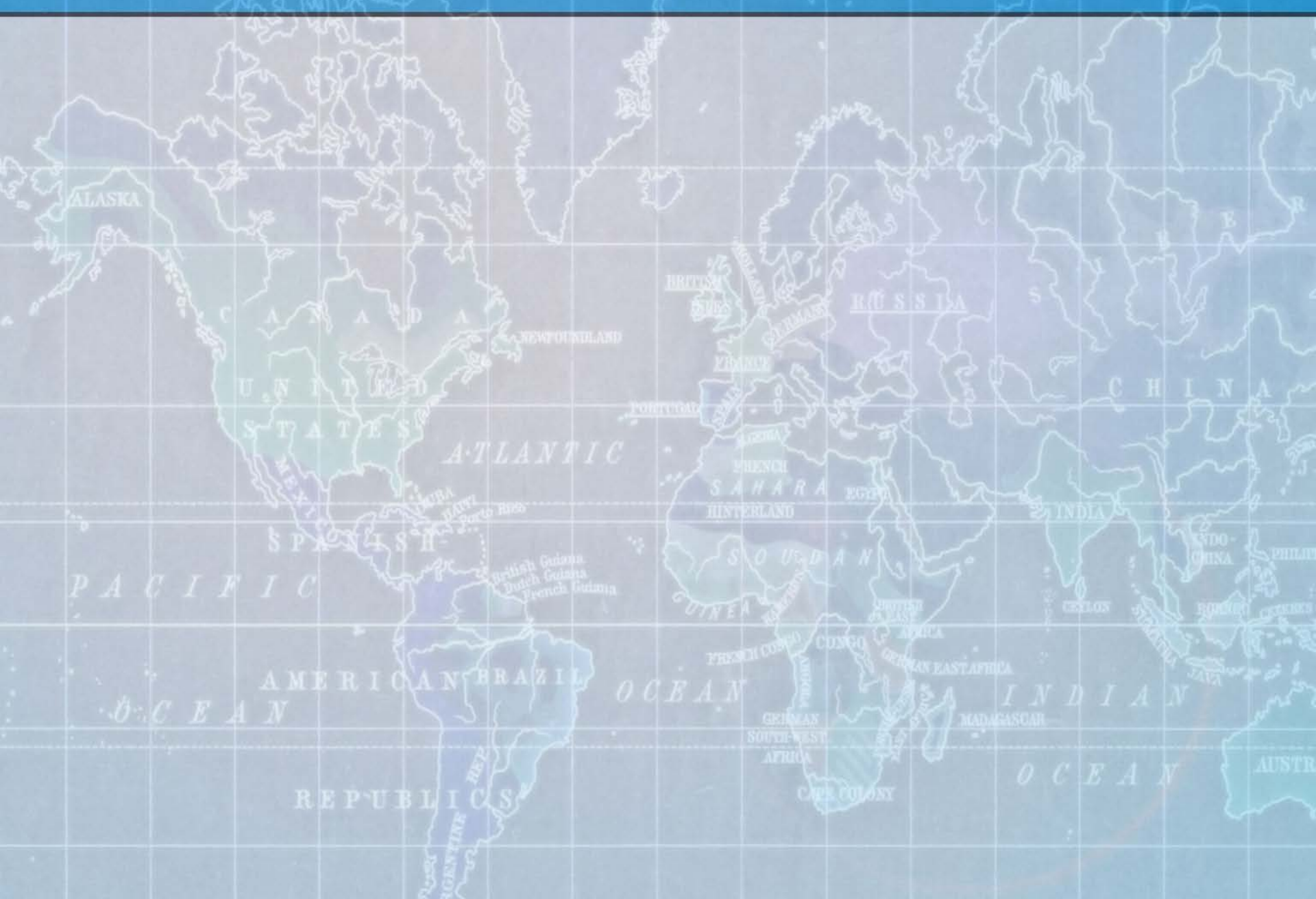
A Basic Will is Not Enough

- Your financial accounts may be frozen
- The probate process may be lengthy - your assets and bequests subject to claims of heirs and creditors
- Probate and estate settlement costs may decrease the size of your estate
- Your will is a public document
- Your will may not control all your property

A Basic Will is Not Enough

- Assets left to your spouse are subject to federal estate tax upon his or her death (rates as high as 55%)
- State inheritance or death taxes may apply
- Should you become incapacitated or incompetent, a will cannot make provisions for your care
- Interpretations of wills can vary from state to state

TYPES OF TRUSTS & PURPOSE



TRUSTS



- **A contract that outlines the management and distribution of the trust's assets**
- **Privacy**
- **Tax benefits**
- **Asset protection and estate planning**
- **Ensure that family members are provided for - especially disabled children**

Three Parties to a Family Trust

- *Grantor* transfers the rights to the property or assets to be held for benefit of the beneficiaries, over to the trustee
- *Trustee* is the person trusted by the grantor to maintain the property and use the property for the benefit of the *beneficiary*
- It is permissible for one person to set up a trust and become the grantor, trustee and beneficiary all at the same time

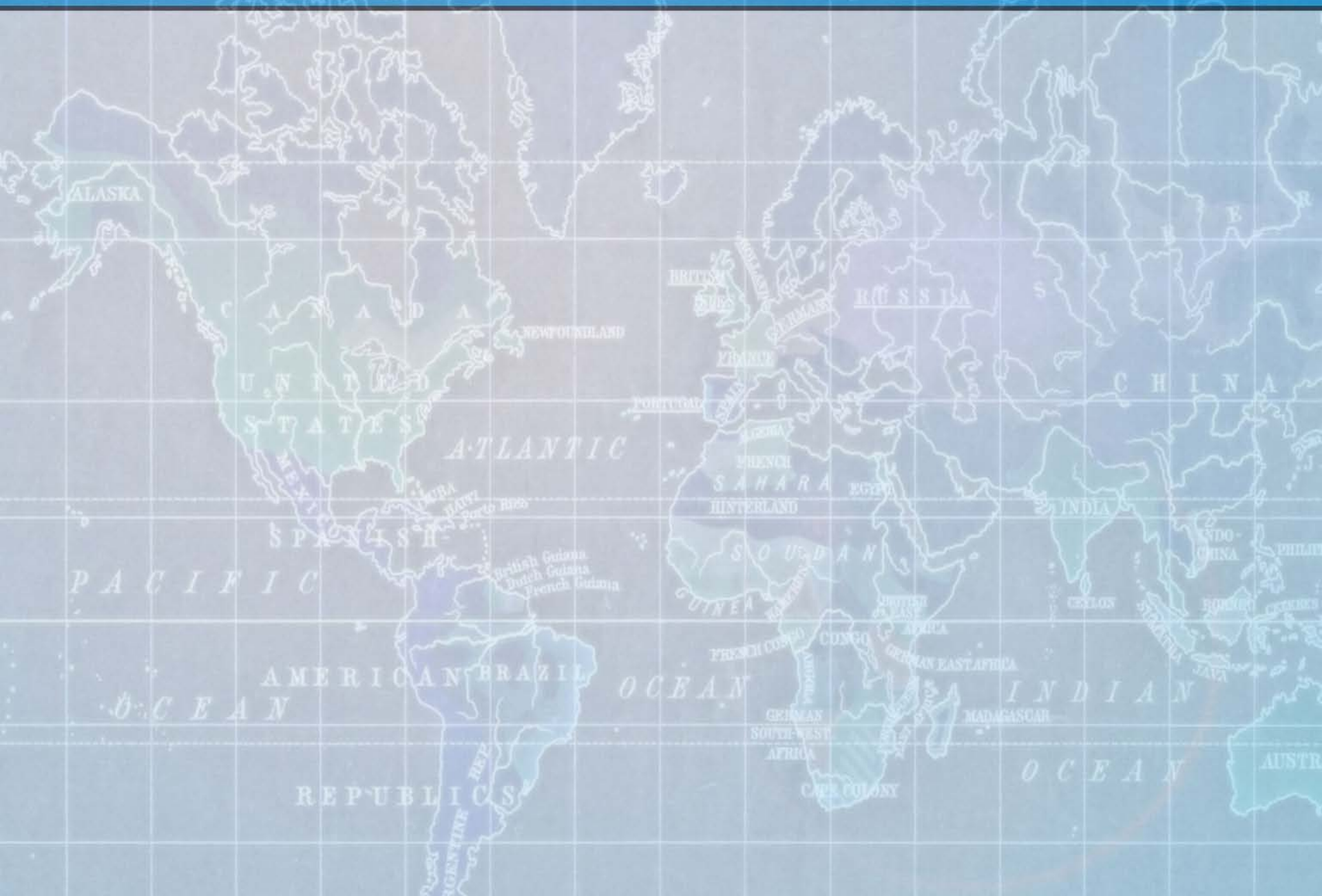
Revocable vs. Irrevocable

- Revocable Trusts
- Living or intervivos trust which can be changed
- Assets considered part of grantor's net worth and subject to taxes
- More common
- Irrevocable Trusts
- No longer has legal title to assets transferred
- Assets are protected from grantor's personal creditors
- Minimize federal transfer taxes and shelter assets
- Settlor cannot be beneficiary

A Few Types of Trusts

- **ILIT – Irrevocable Life Insurance Trust**
- **QTIP – Qualified Terminable Interest Property**
- **QPRT – Qualified Personal Residence Trust**
- **GRAT- Grantor Retained Annuity Trust**
- **CRT - A Charitable Remainder Trust**
- **SNT – Special Needs Trust**

TRUST PROTECTIVE FEATURES



FEATURES AND LIMITATIONS

- Irrevocable trusts shelter assets from creditors and tax
- Assets in the irrevocable trust are not included in the value of your estate which is taxed currently at 55%
- Spendthrift clause
- Myth: creditor protection and judgment protection – An intervivos trust in California provides no asset protection
- Fraudulent conveyances prohibited

SPECIAL POWER OF APPOINTMENT TRUST

- Better statutory foundation
- Better case law to support it
- Better confidentiality
- Better scope of use
- Better flexibility
- Less hassle
- No tax problems
- Better price
- Better ethical foundation

Pitfalls of Not Planning

“Practical wisdom is the ability to perceive a particular situation in real time, knowing how to think about the circumstances (including knowing what’s morally relevant), making the right decision and taking action.”

(Practical Wisdom by Barry Schwartz and Kenneth Sharp (Riverhead Books, 2010))

Pitfalls of Not Planning

- **Avoid costly, lengthy and public probate**
- **Complication: simultaneous death**
- **Protect privacy**
- **Everyone needs Advance Health Care Directive and Durable Power of Attorney**
- **Remove decisions from family**
- **Legacy planning and family heritage meeting**

Costly Lessons

Save \$3,500 in Legal Fees –
and Lose \$40,100

Uncontested Conservatorship:

Legal Fees: Year 1 - \$6,568.77

Year 2 - \$11,923.75

Year 3: \$6,832.48

Court Costs: \$4,432.50 (just
for the court appointed
attorney for conservatee)

Bond: 1,995 per year

Probate Referee: \$884

Accounting: \$4,864

Court Filing Fees: \$2,600

- *Cost to prepare estate planning – less than \$3,500*
- *Cost of not doing it right from the beginning - \$40,100.50*
- *The anxiety of not knowing the court fees and costs of legal fees - incalculable*

- **FALSE:** A child with a parent who no longer has the ability to manage their own affairs can draft the estate planning documents and does not need a conservatorship.
- **TRUE:** By the time one is incapacitated, it is too late to prepare estate planning documents, and a court conservatorship proceeding must be filed.
- **All can be avoided with the preparation of a Durable Power of Attorney, Advance Health Care Directive, Pour Over Will and Trust with the appropriate conservatorship language.**

A Word About Digital Assets

- How would your personal representatives gain access to digital information they need to manage the estate?
- Are these assets personal, financial, or business?
- Digital world will live on past your mental incapacity or death

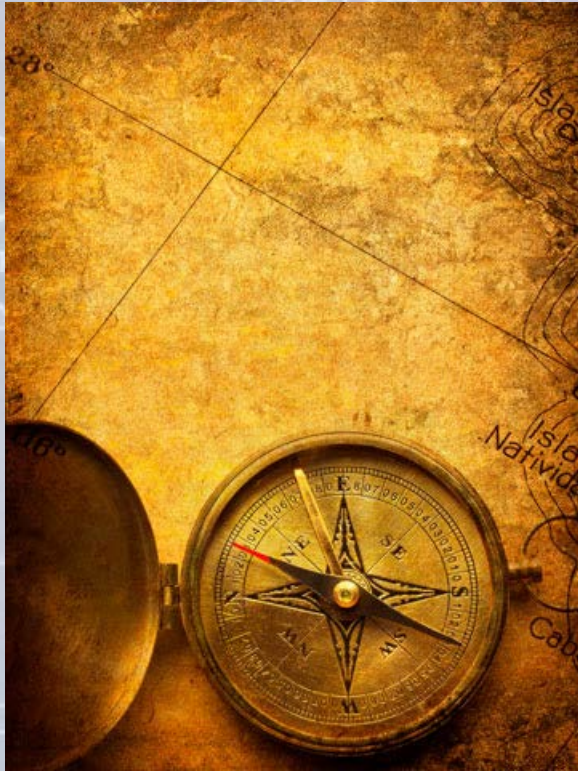
HIS, YOURS, MINE AND OURS DILEMMA

Protecting the Children's Legacy

- *Option 1* – place house into joint revocable trust that provides that at the first death it is to be held in an irrevocable testamentary trust for the survivor and remainder to Wife's daughter

Objective: To insure goes to Wife's daughter at second death

- *Option 2* – place house into irrevocable trust
- Cautions: complication of marital estate tax planning
- Refinance
- Medicaid
- Gift tax implications



NAVIGATING THE MAZE OF TRUST ADMINISTRATION

PURPOSE OF THE TRUSTEE

“The essential purpose of the trustee is to embody the cycle of the gift: to help the giver (if possible) become alive to all the possibilities of the gift, to prepare the beneficiary to receive well, and to keep the spirit of the gift alive in the family.”

(Keith Whitaker of Wise Counsel Research Associates)

PURPOSE OF THE TRUSTEE

- Hold the legal title to property for another
- Invest and manage trust assets
- Carry out legacy of grantor
- Meet changing needs of beneficiary
- Fiduciary duties
- Surcharge issues
- The reverse mortgage complication
- *Hagsted* court petition and the Pour Over Will

Navigating the Maze

- **Complicated and confusing**
- **Emotions and conflicts among trust beneficiaries**
- **Family dynamics and grieving process**
- **Can result in protracted and expensive trust litigation**
- **Competent and capable assistance is needed in the trust administration process**
- **Legacy and family heritage meeting**

Steps Involved

- Notice
- Handling the Real Property
- Collecting Other Assets
- Ascertaining and Paying Debts and Taxes
- Accounting
- Acrimony Between Beneficiaries = Formal Accounting and Seeking Court Approval
- Funding the Trusts



Estate planning and trust administration is complicated

Just as a sailor requires a compass or sextant to navigate the sea, you need to assemble an effective crew with a strong captain to prepare a map to chart the waters ahead of you.

Navigation Is Not A Secret

- You can keep sight of the coast as the first seafarers did and venture nothing achieved, which is costly;
- You can fly the direction of all the same birds of a flock and purchase boilerplate documents that do not achieve your intended result or help with your particular situation;

OR YOU CAN...





Safe Harbor

Let us navigate and chart a map of the waters and the currents you need to sail to bring you safely home to your particular harbor.

RISK MANAGEMENT AND CONTROL

- Risk Management and Control is Key
- Formulating the Right Trust is Essential
- A Collaborative, Insightful and Comprehensive Multi-Professional Team

“Collaborative advice drives successful outcomes.” *Mark Wendell, MD Wendell Wealth Partners*