

# HOW TO AVOID PROBATE AND CONSERVATORSHIPS

-22ND EDITION

*INTEGRATED ESTATE &  
ELDER LAW PLANNING*

**ARTHUR S. BROWN, ESQ.**

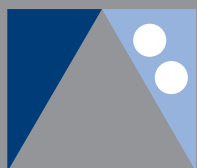
*"Your Estate Planning Attorney for Life"*

*State Bar of California*

*Board of Legal Specialization*

*Estate Planning, Trust and Probate Law*

*Certified Specialist*



Law Offices of  
**ARTHUR S. BROWN, APLC.**

# ABOUT ATTORNEY ARTHUR S. BROWN

*Certified Specialist Estate Planning • Trust • Probate Law*

***“Your Estate Planning Attorney for Life”***



**A** RTHUR STILLMAN BROWN has been certified as a Specialist in Estate Planning, Trust and Probate Law by the State Bar of California Board of Legal Specialization since 1993. He has practiced Estate Planning for over 36 years and is a full service Estate Planning Attorney. He listens to his clients' goals and objectives and emphasizes the needs of his clients. Throughout his career, he has helped numerous families save time, money and energy. Mr. Brown's personal relationship with his clients promotes their peace of mind.

He earned his bachelor's degree in Psychology from Pitzer College and his law degree from Thomas Jefferson School of Law, San Diego. He has also studied in London, Oxford and Mexico City. While at law school, he earned the American Jurisprudence Award for Excellence in Estate Planning. He was admitted to practice law before all courts in California and the United States Federal Courts. He has a vast background in **Estate Planning, Advanced Estate Planning, Taxation, Medi-Cal Planning, Elder Law and Probate Law**. He is also actively concerned with **Veterans, Veterans' Spouses, and the Special Needs of Disabled Persons**.

**Mr. Brown's** philosophy is uncomplicated: "I want to be your Estate Planning Attorney for life. I believe in the old-fashioned term of counselor. I assist clients to simplify their lives. My clients are very much aware that planning establishes a sound foundation for themselves, their estate and families. Traditional and long-term relationships are important to me and my clients. My relationship with my clients provides opportunities to consult with me on all aspects of Estate Planning as well as other client needs."

**Mr. Brown** has the unique ability to communicate the complexities of basic Estate Planning into terms every client can appreciate. In this area, he assists clients with:

- Basic Estate Planning
- Advanced Estate Planning
- Probates
- Trust Administration
- Trustee/Fiduciary Representation
- Special Needs Trusts for the Disabled
- Beneficiary Representation
- Medi-Cal Planning
- Elder Law

# ESTATE PLANNING

## WHAT VALUE IS ESTATE PLANNING TO ME?

Estate planning is a map for the future. The basic elements of estate planning can be summed up as **CREATION, PRESERVATION** and **DISTRIBUTION**.

Do you want your estate distributed according to your wishes and in the most efficient and effective manner possible? The goal of this workbook is to 1) **educate** you, and 2) **motivate** you so that you can **preserve** and **distribute** your estate as **you** want. Education without motivation has no value.

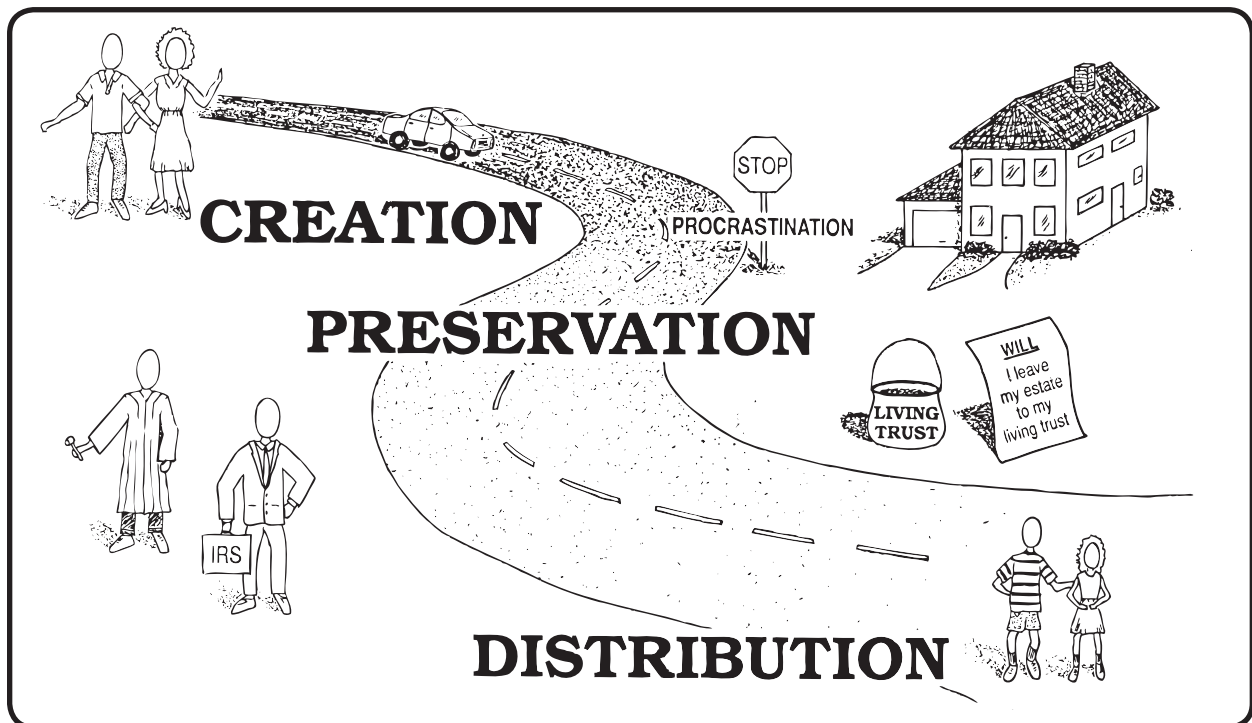
## WHAT ARE THE SETTLEMENT COSTS UPON MY DEATH?

Whether you die with a Will or not, two obligations must be met:

- 1) **ADMINISTRATION COSTS**  
and
- 2) **TAXES**

The costs will depend on the type of Estate Plan you have prepared during your lifetime. Taxes include Federal Estate Death Taxes and Income Taxes. (California no longer has an Inheritance Tax.)

The goal of Estate Planning is to minimize the **Cost of Administration, Time, and Death Taxes** in transferring your estate upon death.



# PROBATE

## WHAT IS PROBATE?

At your death, your estate will be subject to Probate. Probate is the **mandatory** court proceeding to organize and finalize all of your legal and financial matters. If you have a Will, the Probate Court reviews it and rules on its validity, paying creditors and inventorying assets. The Probate Court changes the title of all assets from your name to the names of the beneficiaries in your Will. If there is no Will, then your estate is distributed by what is known as intestate succession.

## THE PROBLEMS OF PROBATE

**1) COSTS.** By reviewing the following chart you can estimate the amount of attorney and executor fees. These fees do not include Filing Fees, Probate Referee Fee, and Publication Costs which are all associated with probate.

**2) TIME.** If your estate is between \$166,250 (2020-2022) and \$2,000,000, the average time for probate is a year and a half. For estates over \$2,000,000, the time can be as long as three years or more.

Gross Amount Accounted for in Probate Estate	Probate Fees (Attorney and Executor)
\$ 100,000	\$ 8,000
200,000	14,000
300,000	18,000
400,000	22,000
500,000	26,000
600,000	30,000
700,000	34,000
800,000	38,000
900,000	44,000
1,000,000	48,000
2,000,000	68,000
3,000,000	88,000
4,000,000	108,000



# WILLS

---

## WHAT IF I DIE WITHOUT A WILL?

If you die without a Will, it is called **INTESTATE SUCCESSION**. Intestate Succession is an Estate Plan by default. If you die without a Will, the State of California has written one for you. Probate is still required and there is **no guarantee** that your assets will be distributed as you desire.

---

## WHAT IS A LAST WILL AND TESTAMENT?

Your Will is a letter addressed to the judge of the Probate Court. “**Dear Judge: Now that I have died, I would like to give...**” It is the judge’s sworn duty to read the instructions in the letter and accomplish your objectives. A Will does not avoid Probate nor its associated costs and delays, actually it guarantees your Will must undergo these costs and delays.

---

## ADVANTAGES OF A WILL

### 1) **Low Costs:**

**The establishment costs** are low. You can write your own Will, called a **Holographic Will**, for nothing, or have an attorney prepare your Last Will and Testament.

### 2) **Simple:**

Your Will provides a plan that is simple during your lifetime.

### 3) **Personal Wishes:**

The Will instructs the Judge to distribute your assets. However there is no guarantee that your assets will be distributed as you desire unless your Will is current.

---

## DISADVANTAGES OF A WILL

1) **Probate:** A Will requires Probate with all its Administrative Costs.

2) **Expense:** A will is more expenses because of Statutory Probate Fees.

3) **Delays:** A Will forces distribution delay of assets.

---

## FOUR EXCEPTIONS TO THE GENERAL RULE

Even though you have a Will, when you die, your estate must be Probated. There are four exceptions:

1) **Joint Tenancy** with Right of Survivorship. (Joint Tenancy also avoids the directions of your Will and may direct property to a person you do not intend.)

2) **Small Estates**, with personal assets valued under \$166,250 (2020-2022), there will be no Probate.

3) **Living Trust** with assets transferred to your trust before death, and

4) **Beneficiary Accounts** with Beneficiaries do not require probate (i.e. POD and TOD Accounts).

Unless your estate falls within these exceptions, it must be Probated with all the costs and delays.

# LIVING TRUSTS

---

## WHY A REVOCABLE LIVING TRUST?

There are two basic types of trusts:

- 1) **Revocable Living Trusts, and**
- 2) **Testamentary Trusts.**

A Revocable Living Trust is created by you during your lifetime. You can modify or revoke it and you remain in complete control. A Testamentary Trust is created after your death. This is created by the instructions you left in your Last Will and Testament. The disadvantage of a Testamentary Trust is that you still have to go through Probate.

A Revocable Living Trust is simple. It is created by the Settlor (or maker) and is managed by the Trustee (or manager). The Settlor and the Trustee can be the same people.

The Revocable Living Trust is designed to avoid **Probate** and a **Conservatorship**. It has two purposes.

- 1) Designation of the successor trustee. This person takes over management of the trust if the initial trustee **dies** or becomes **disabled**.
- 2) The beneficiary designation. You will be the beneficiary until your death. At your death, the person you specified becomes your next beneficiary.

---

## ADVANTAGES OF A LIVING TRUST

- 1) **Avoidance of court interference.** If you become disabled, the Revocable Living Trust avoids having the court appoint a conservator to manage your affairs.
- 2) **Costs.** It is less expensive for your heirs. The necessity of probating your estate is avoided.
- 3) **Delay.** It eliminates lengthy delays associated with Probate.

---

## DISADVANTAGES OF A LIVING TRUST

- 1) **Initial Cost.** Establishing a Living Trust will cost more than creating a Last Will and Testament.
- 2) **Nuisance Factor.** A Revocable Living Trust requires your assets be **transferred** to your Living Trust. You must maintain the trust, and transfer new assets to it.
- 3) **Possible Mismanagement.** Since the Court will not become involved, it is essential to select a **trustworthy** person to serve as successor trustee. Sometimes two individuals, banks or institutions are appointed when a trustworthy person is not available.

# DEATH & GIFT TAXES

## Federal Gift and Estate Tax Rates

YEAR OF DEATH/GIFT	LIFETIME EXCLUSION	DEATH TIME EXCLUSION	MAXIMUM ESTATE RATE	GST EXCLUSION
2018	\$11,180,000	\$11,180,000	40%	\$11,180,000
2019	\$11,400,000	\$11,400,000	40%	\$11,400,000
2020	\$11,580,000	\$11,580,000	40%	\$11,580,000
2021	\$11,700,000	\$11,700,000	40%	\$11,700,000
2022	\$12,060,000	\$12,060,000	40%	\$12,060,000

For 2022 and beyond, a Surviving Spouse can pass more than \$24,120,000 with the portability of the Deceased Spouse's Unused Exclusion Amount (DSUEA).

## WHAT ABOUT DEATH TAXES?

Effective planning minimizes administration costs and eliminates or reduces Estate Taxes. A rough estimate of death taxes can be calculated by taking your Net Estate Value less (-) your unused Personal Exclusion Amount (shown above) times (x) 40%.

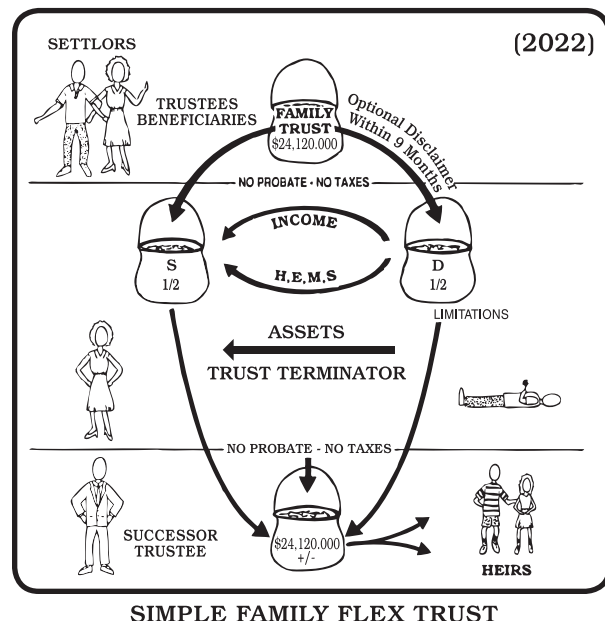
If your net worth (including insurance policies, investments, etc.) is less than the exclusion amount in the year of your death there are no Federal Estate Taxes.

## SIMPLE FAMILY FLEX TRUSTS

A married couple can have a flexible Trust that allows for the Surviving Spouse to decide whether to have one Trust or two Trusts after the death of the first spouse. The Simple Family Flex Trust allows for the creation of an Irrevocable Disclaimer Trust within 9 months of a Deceased Spouse's death. The Disclaimer Trust provides income

and principal invasion for health, education, maintenance and support of the Surviving Spouse.

Trust Terminators may be added to create greater flexibility to cancel the Disclaimer Trust if circumstances change.

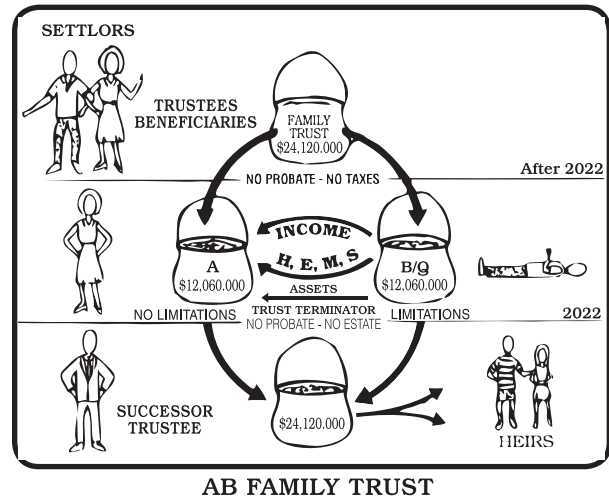


## “A-B (QTIPable)” FLEX TRUSTS

If you are married and have a net taxable estate, you can create an “A-B” Trust. This plan preserves both spouses’ tax exclusion. The “A” stands for “**above ground**” spouse, and the “B” stands for the “**below ground**” spouse. The Survivor’s Trust is the “A” Trust and the Decedent’s Trust is the “B (QTIPable)” Trust. Potentially for 2022, a couple can pass at least \$24,120,000 without gift and estate taxes!

An “A-B (QTIPable)” Trust may be necessary for a second marriage. The Surviving Spouse has unlimited access to the income and assets contained in the Survivor’s Trust. In the “B (QTIPable)” Trust, the Surviving Spouse has a lifetime use of all the income from the “B (QTIPable)” Trust

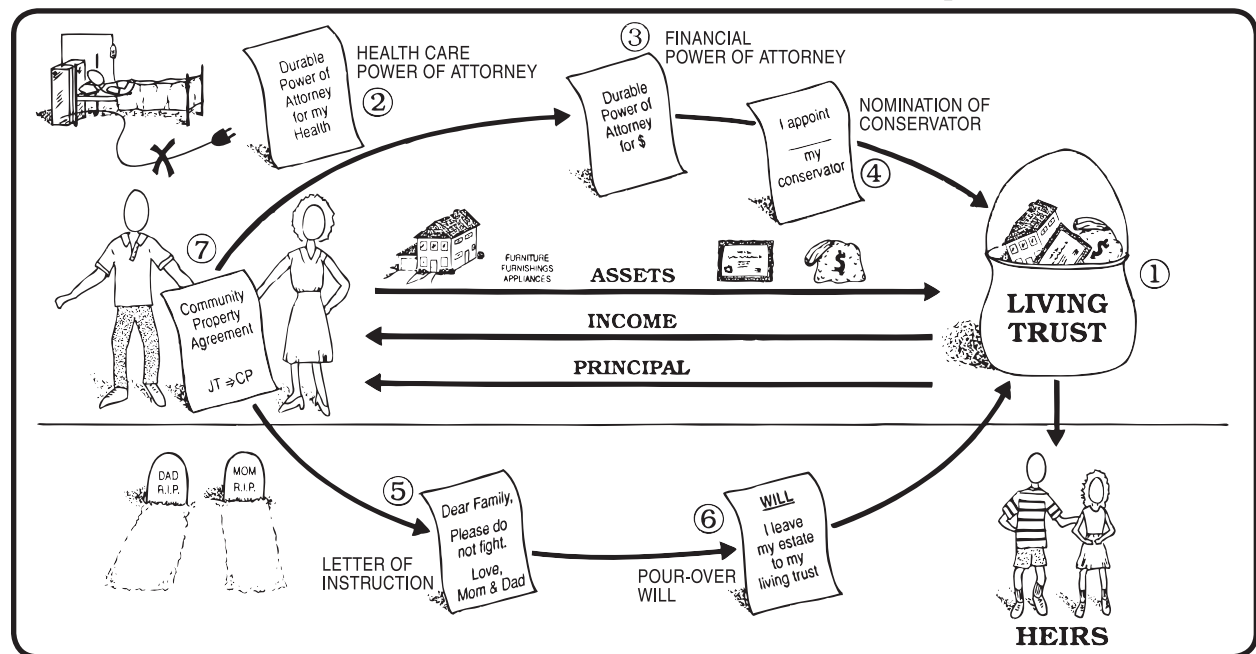
plus principal for health, education, maintenance and support. On the death of the Surviving Spouse, there will be no probate, no death taxes on the “B (QTIPable)” Trust and no death taxes for the surviving spouse if the “A” Trust and “B (QTIPable)” assets are below the exclusion amount.



# A COMPREHENSIVE ESTATE PLAN

The necessary documents for a comprehensive estate plan include:

- 1) Living Trust
- 2) Health Care Power of Attorney
- 3) Financial Power of Attorney
- 4) Nomination of Conservator
- 5) Letter of Instructions
- 6) “Pour-over” Will, used when a Living Trust is chosen
- 7) Community Property Agreement (for married couples)



---

## HEALTH CARE POWER OF ATTORNEY:

This power of attorney allows an entrusted person to legally bind doctors and hospitals as to medical decisions which may include termination of life support.

---

## FINANCIAL POWER OF ATTORNEY:

By this document you grant someone the legal authorization to manage and control your assets by granting an entrusted person the legal authority to sign your name. This is only valid during your lifetime.

---

## NOMINATION OF A CONSERVATOR:

This is the legal guardian of a disabled adult. There are two types, the **conservator of the estate** (this can be compared to the executor of an estate for a person who is deceased) and the **conservator of the person** (the personal guardian). Nomination avoids family dispute and you have the right to select the person you believe will do the best job. **CAVEAT:** When a Living Trust is used, the conservatorship is eliminated but a conservator of your person may still be required, for example when someone has Alzheimer's disease.

---

## LETTER OF INSTRUCTION:

This letter covers personal matters, perhaps the instructions for your funeral, persons or institutions to be notified on your death, locations of various documents and disbursement of personal effects of sentimental value.

---

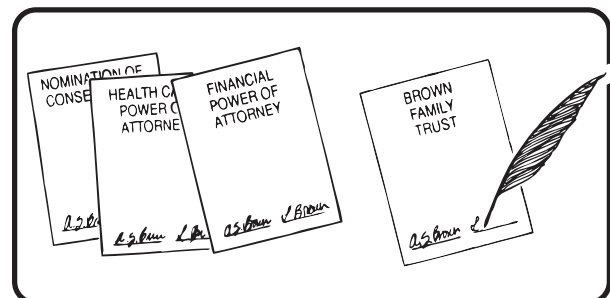
## "POUR-OVER" WILL:

This is needed only in a Living Trust. It covers the "left-overs," such as assets which were not transferred to your trust within your lifetime. It transfers them through the probate process into the living trust, or without the need for probate if the items outside your trust are less than \$166,250.00 (2020-2022).

---

## COMMUNITY PROPERTY AGREEMENT:

Executed by a husband and wife, the primary purpose is to declare the nature of the assets. When all assets are jointly owned, the agreement changes the property to community property. If either spouse wishes to have certain items remain as separate property, the Community Property Agreement assists in the division.





# DANGERS OF JOINT TENANCY

Joint Tenancy may be appropriate between husband and wife, as long as they have signed a Community Property Agreement. However, **joint tenancy**, with few exceptions, is **inappropriate** between anyone else.

The dangers of joint tenancy between husband and wife are:

- 1) Deferral of probate; and
- 2) Loss of complete step up in basis of appreciated assets.

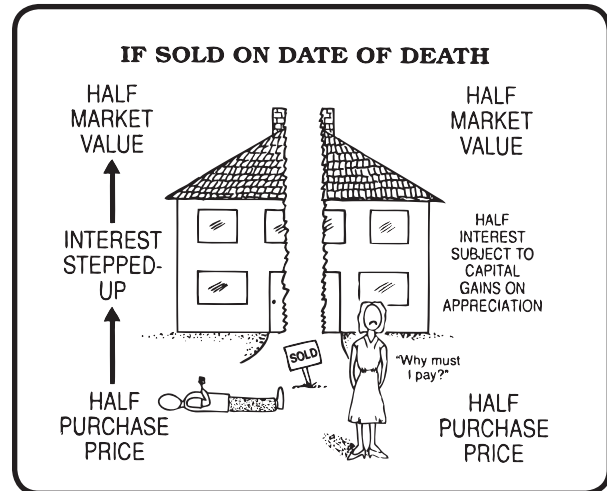
If assets are held in community property: The basis or acquiring price will be completely stepped up to market value at time of death of one of the spouses.

**The dangers are considerable.** When you place a non-spouse on property as a joint tenant:

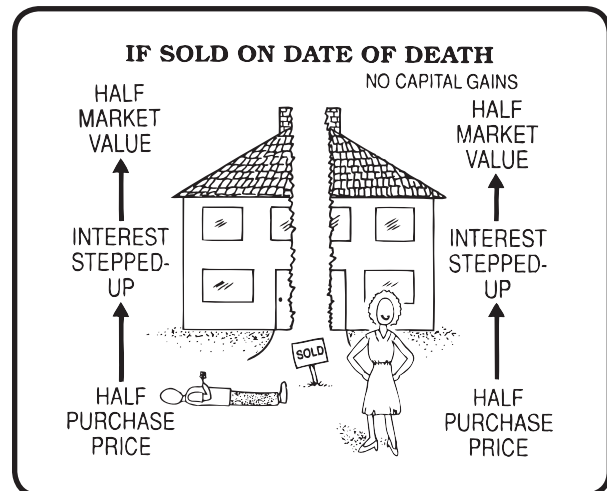
- 1) The transfer may be subjected to gift tax if over \$16,000 (2022).
- 2) The non-spouse tenant has the right to sell without the other tenant's approval.
- 3) The non-spouse tenant may be subject to financial difficulties which may eventually lead to liens and attachments of your property.

If you want to remain in complete control and avoid Probate, the only **appropriate method is the REVOCABLE LIVING TRUST.** Even if you are married, joint tenancy will only avoid probate upon the death of one spouse. On the death of the Surviving Spouse, **PROBATE WILL BE REQUIRED.**

## JOINT TENANCY VS. COMMUNITY PROPERTY



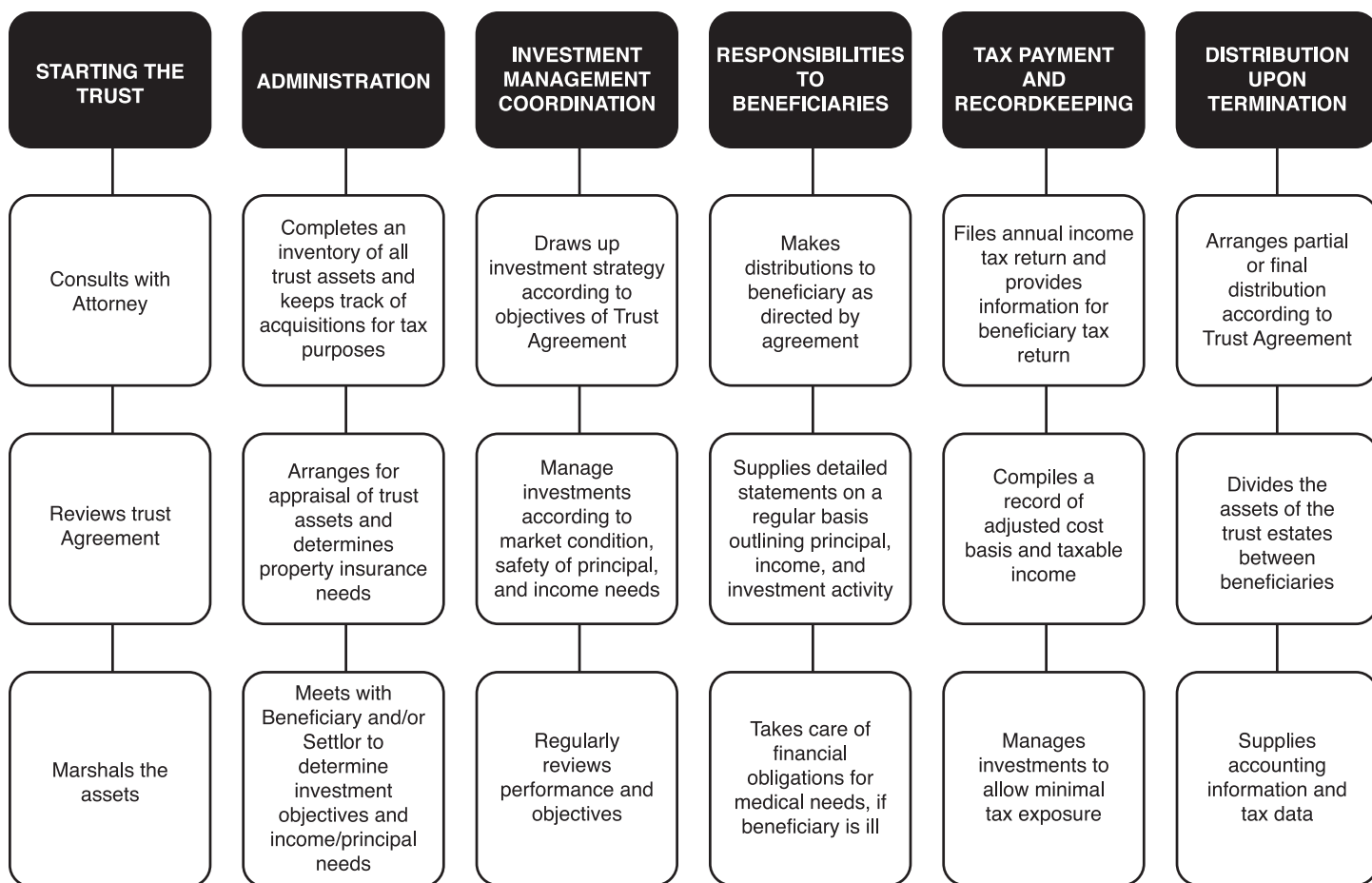
Joint Tenancy does not allow a complete stepped-up basis to current market value upon one spouse's death.



Community Property allows complete stepped-up basis to current market value upon spouse's death, thus reducing capital gains.



# TASKS OF A SUCCESSOR TRUSTEE



## POST-DEATH INSTRUCTIONS TO SUCCESSOR TRUSTEE

1. Obtain Death Certificates (10-15 Copies)
2. Meet with Attorney and Review Trust
3. Obtain Separate Taxpayer ID Number for the Trust
4. Transfer Trust Assets into Name of Successor Trustee
5. Obtain Appraisals on Real Properties
6. Pay all Creditors of the Decedent
7. Prepare and File Final Tax Returns for the Decedent
8. Prepare Accounting for the Beneficiaries
9. Meet with Attorney and Review Trust Accounting
10. Meet with Attorney to Finalize Trust Administration
11. Make Distributions of Trust Assets to the Beneficiaries
12. Obtain Receipts

# WHY ATTORNEY ARTHUR S. BROWN?

We listen to our clients and recognize every client is unique and special. Our mission is to provide our family of clients the most up to date Estate Planning and Elder Law Services available in a friendly, caring and professional setting.

## FREE ESTATE PLANNING NEWSLETTER

Sign up on our website, [www.WhyProbate.com](http://www.WhyProbate.com), to receive our FREE informative Estate Planning newsletter.

For further information, please call

**The Law Offices of  
ARTHUR S. BROWN, APLC**

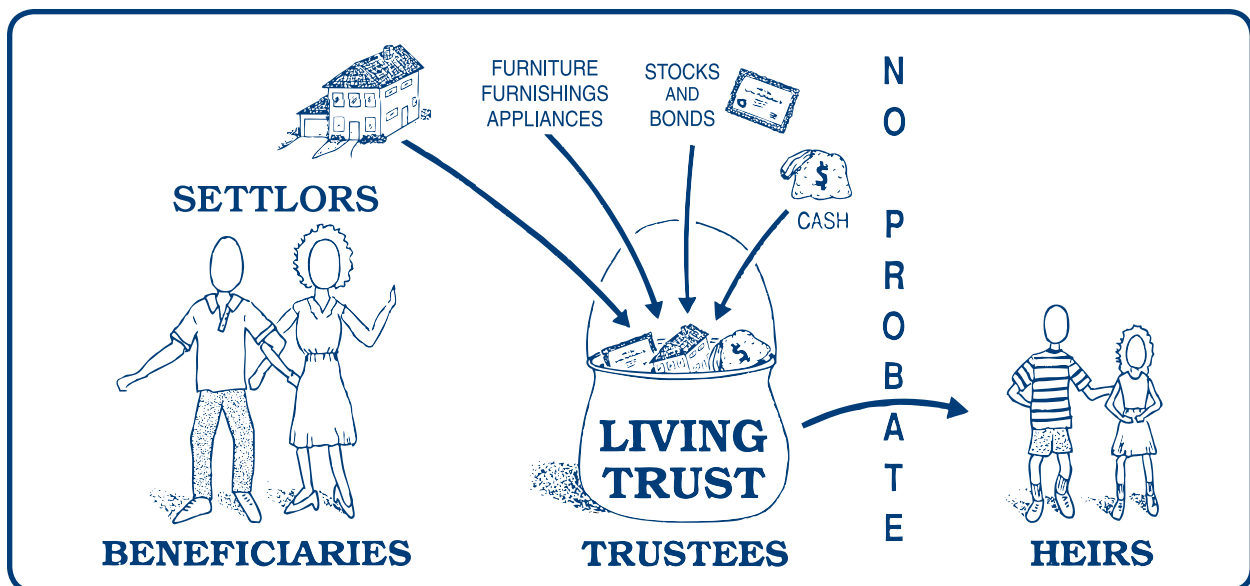
**FARADAY BUSINESS PARK  
5741 Palmer Way, Suite B  
Carlsbad, California 92010  
(760) 438-5599  
(760) 438-8140 Fax**

**ARTHUR S. BROWN, ESQ. \***  
Arthur@WhyProbate.com

**KATHRYN S. KAUFMAN, ESQ. \***  
Kathryn@WhyProbate.com

**RUBIE PELEGREEN, Office Mgr.**  
Rubie@WhyProbate.com

*\* Estate Planning, Trust and Probate  
Law Certified Specialist*



**Find us at: [WhyProbate.com](http://WhyProbate.com)**