Your Focus Fiduciary Solutions Team

Ted Simpson
Senior Vice President
Head of Focus Fiduciary Solutions

PROFESSIONAL EXPERIENCE

15 years as a Practicing Trusts and Estates Attorney
8 years as a Senior Wealth Planning Strategist with Wells Fargo
2 years as a Tax Attorney with Deloitte

EDUCATION

LL.M. (Tax) from University of Washington School of Law
JD from Gonzaga Law School
BA in Government/Pre-Law from Eastern Washington University

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Primary Reasons to use Trusts:
1. We don't trust our children – Spendthrift
2. We don't trust everyone else – Asset Protection
3. Taxes - Ordinary Income, Capital Gains, Estate and Gift
4. Probate Avoidance
5. Privacy
6. Guardianship Substitute
7. Special Needs - SSI
8. Charitable
9. Pooled Management of Assets

Revocable Living Trusts (RLTs)

Trustee
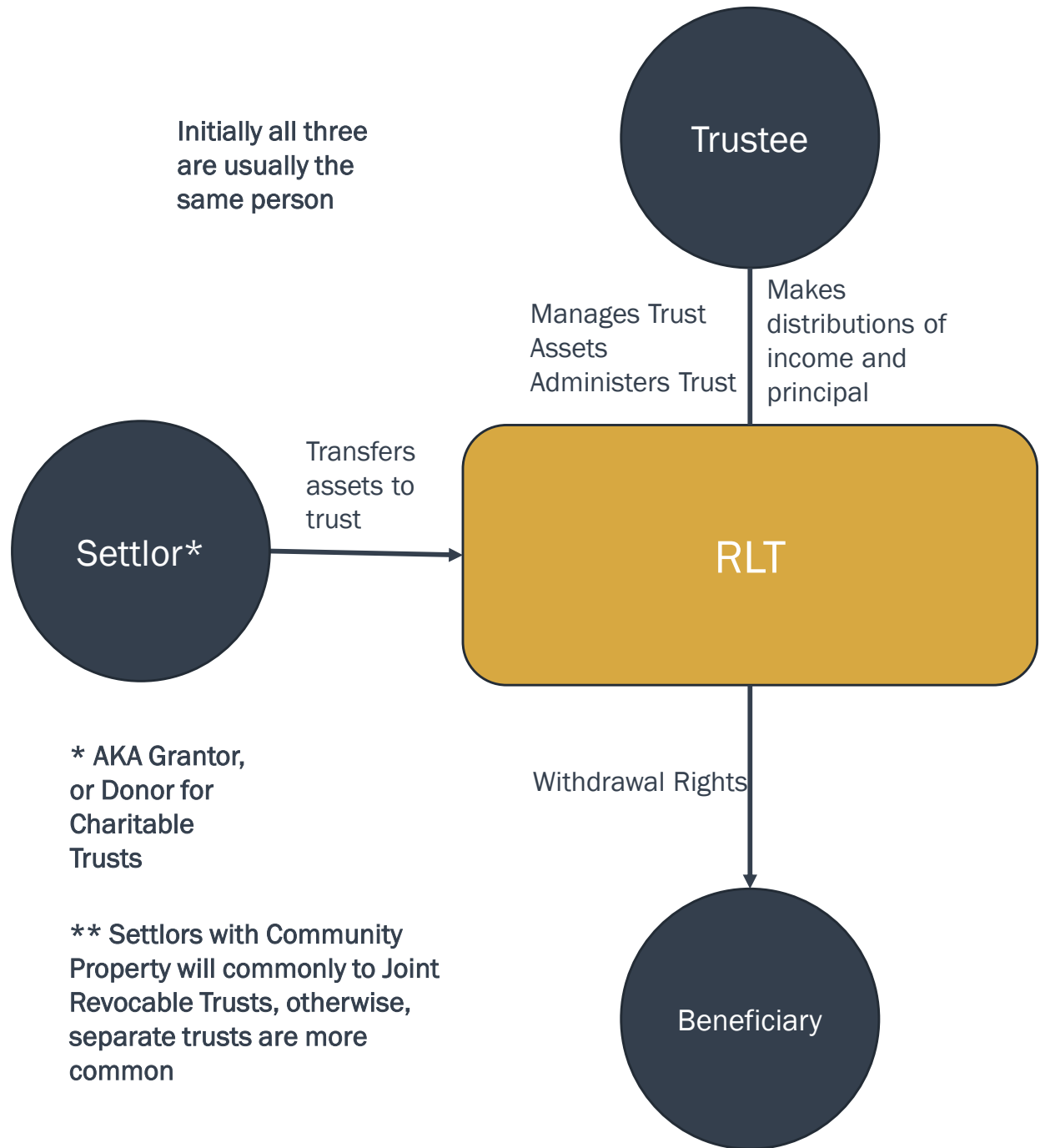
Initially all three are usually the same person

Manages Trust Assets Administers Trust

Makes distributions of income and principal

Avoids Probate:
- Reduces Costs
- Privacy

Guardianship Substitute

Settlor*

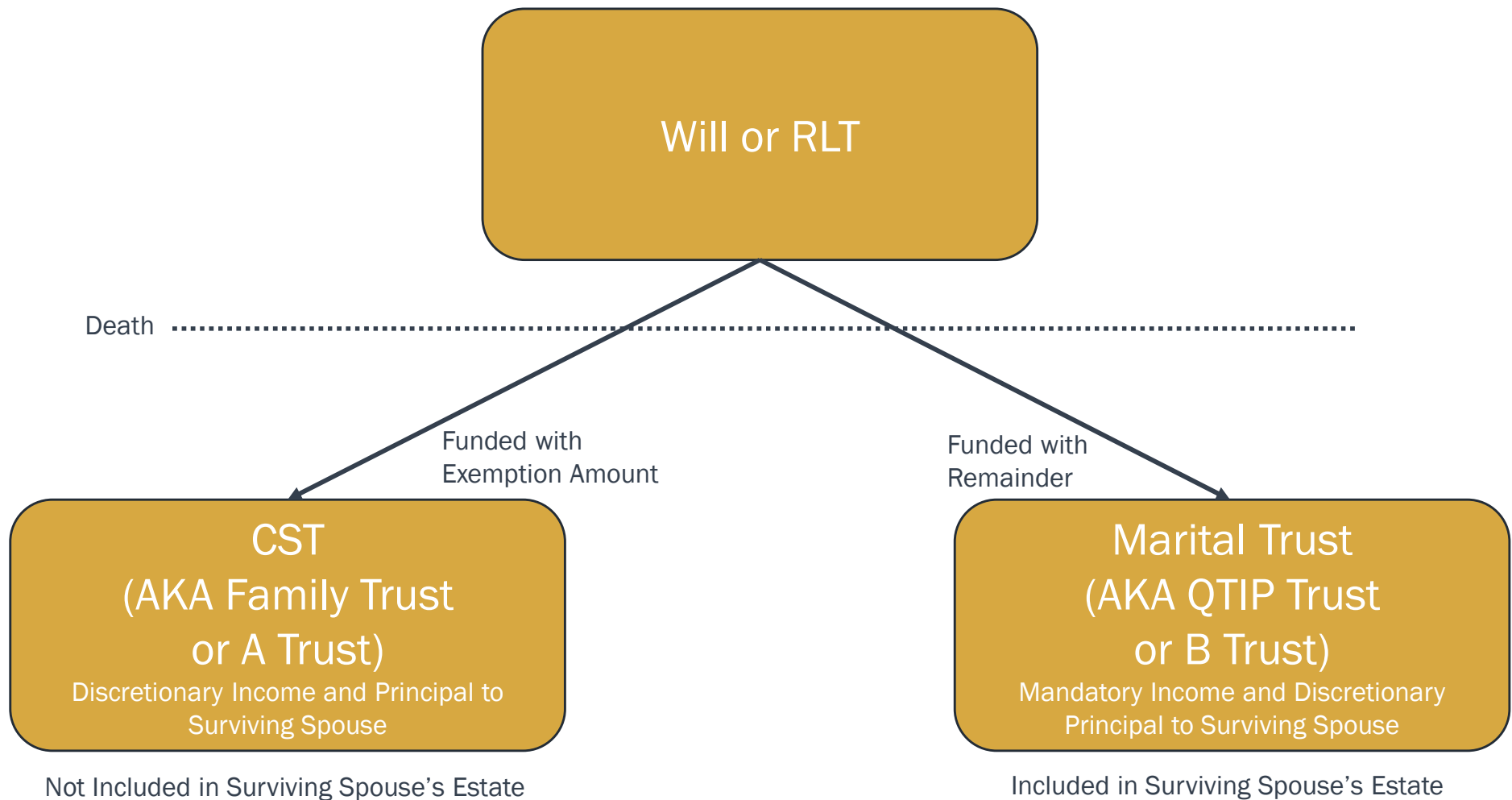Transfers assets to trust

RLT

* AKA Grantor, or Donor for Charitable Trusts

** Settlors with Community Property will commonly to Joint Revocable Trusts, otherwise, separate trusts are more common

Withdrawal Rights

Three Ways That Property Transfers at Death
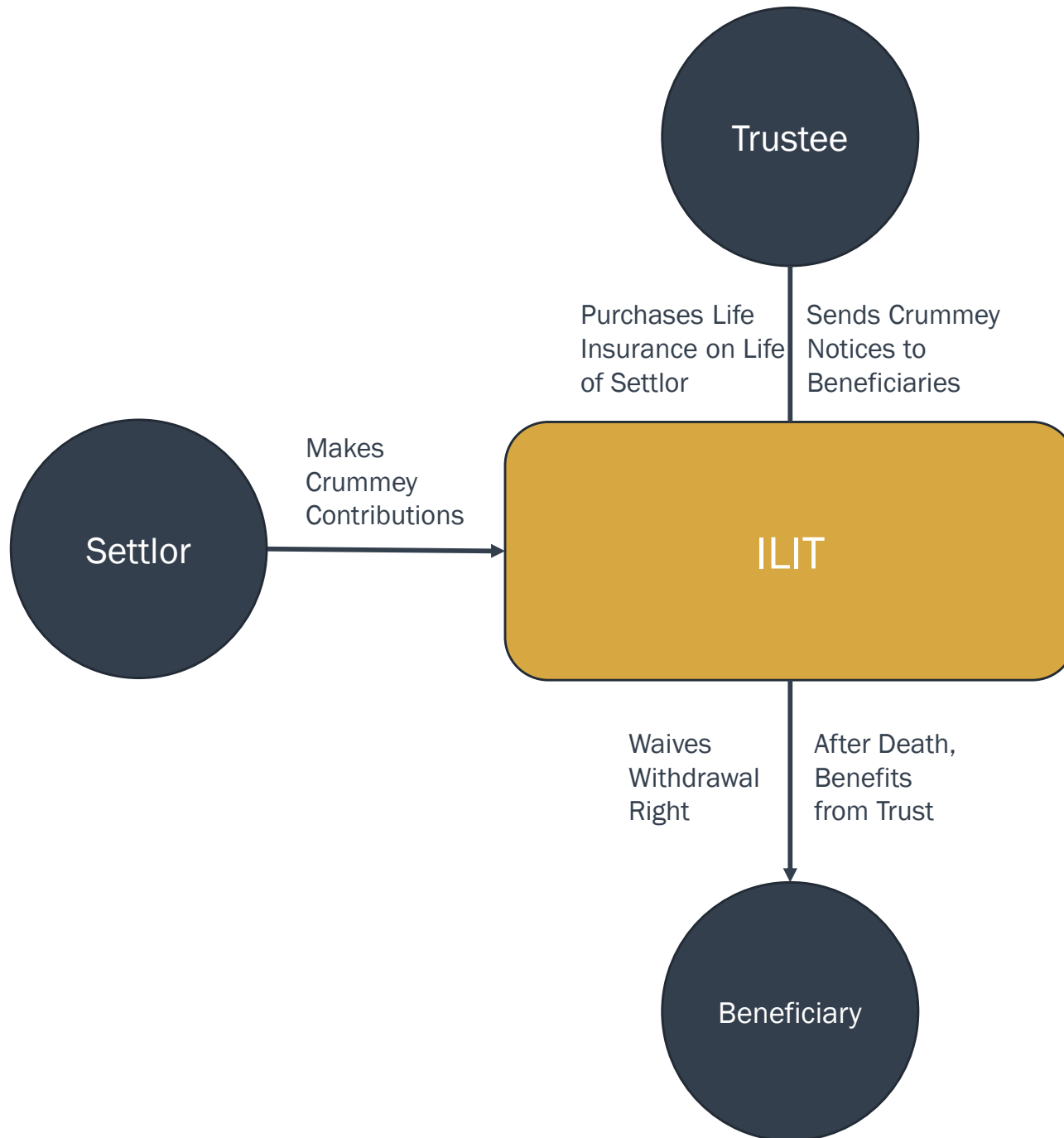- By Operation of Law
- By Contract
- By Probate

Beneficiary

Credit Shelter Trust/Marital Trust (QTIP)

Utilizes Exemption Amount (Currently $12,920,000) Upon First Death

Will or RLT

Death ···

Funded with Exemption Amount

Funded with Remainder

CST
(AKA Family Trust
or A Trust)
Discretionary Income and Principal to Surviving Spouse

Marital Trust
(AKA QTIP Trust
or B Trust)
Mandatory Income and Discretionary Principal to Surviving Spouse

Not Included in Surviving Spouse's Estate

Included in Surviving Spouse's Estate

* Because of Portability, less common, though some attorneys still prefer this method.

Irrevocable Life Insurance Trusts (ILITs)

Trustee

Purchases Life Insurance on Life of Settlor

Sends Crummey Notices to Beneficiaries

Settlor

Makes Crummey Contributions

ILIT

Waives Withdrawal Right

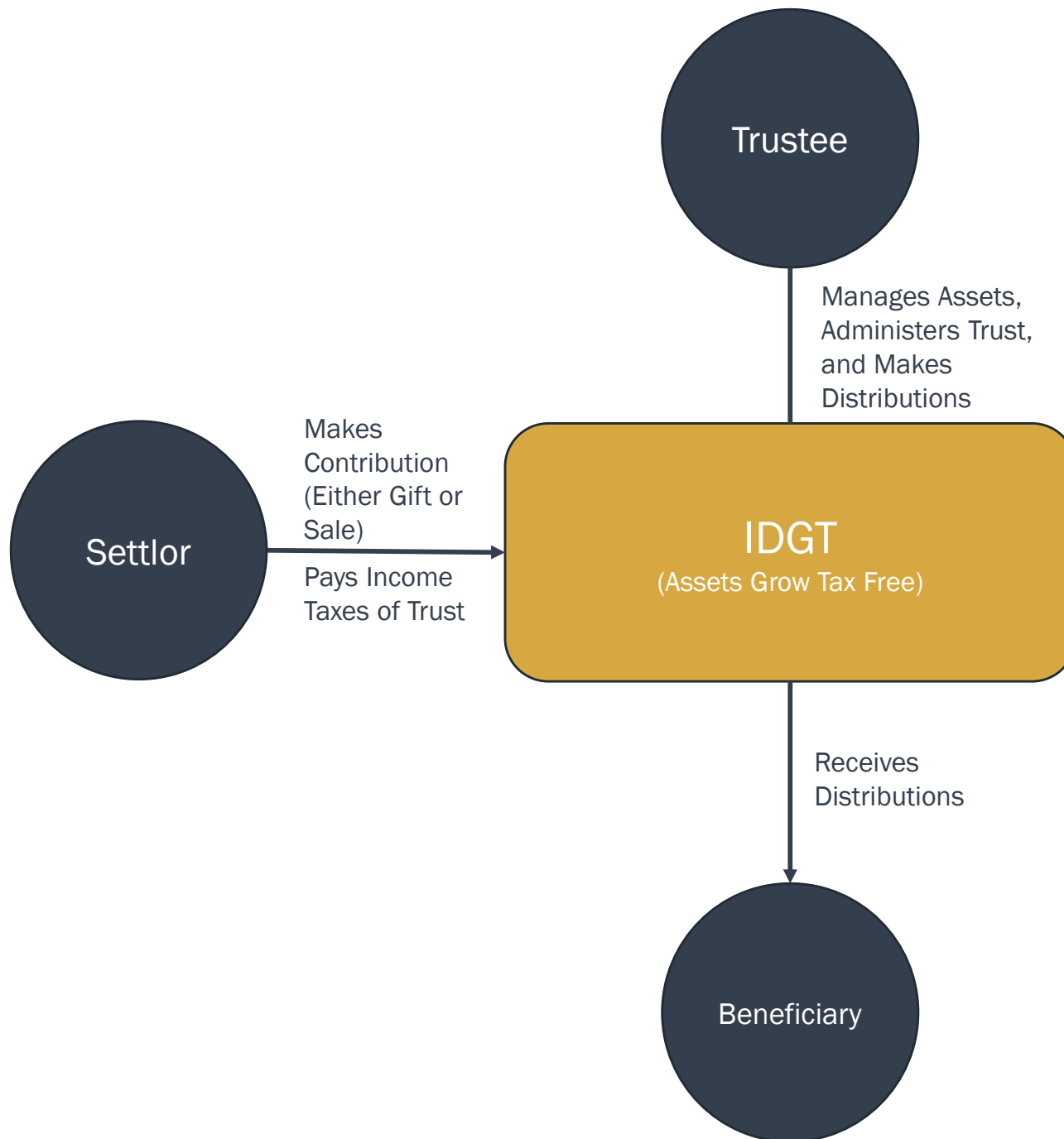After Death, Benefits from Trust

Beneficiary

Generally, proceeds from Life Insurance are Includible in Gross Estate if policy is owned by the insured. If policy is owned by the ILIT then the proceeds are not included in the Decedent's estate

This processes allows the use of the annual exclusion amount for the gifts

If purchasing very large policies, Trust can finance the premiums

Provides liquidity to pay estate tax on death

Intentionally Defective Grantor Trusts (IDGTs)

Trustee

Manages Assets, Administers Trust, and Makes Distributions

Settlor

Makes Contribution (Either Gift or Sale)

Pays Income Taxes of Trust

IDGT
(Assets Grow Tax Free)
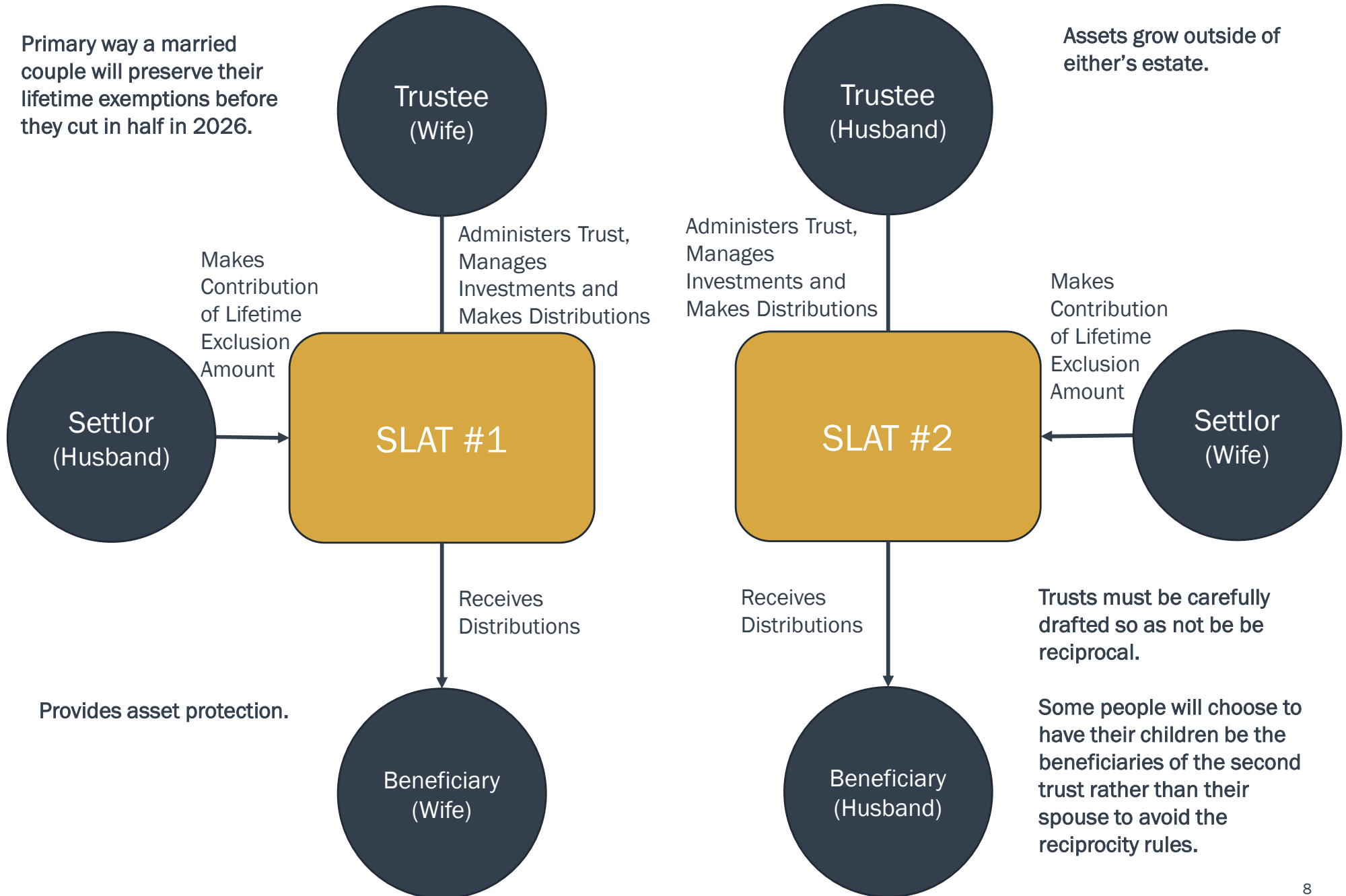
Receives Distributions

Beneficiary

Trust defective for income tax purposes because settlor retains certain rights, like swap powers.

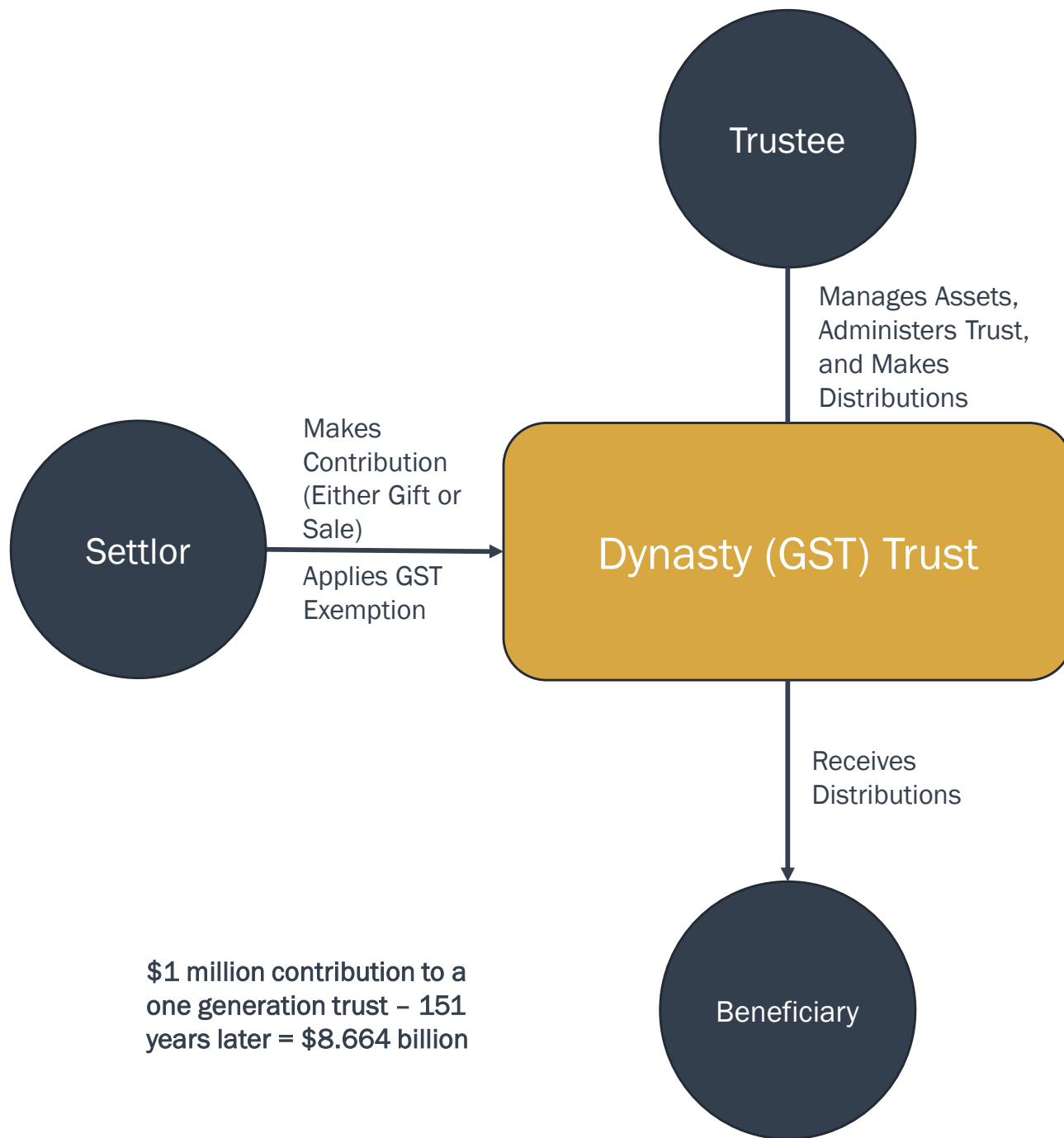Assets grow (essentially tax free) outside of Settlor's estate.

Trust provides Asset Protection.

If a Trust Protector is appointed, the Grantor Trust status can be "turned off" at which time the trust would be responsible for paying the annual income taxes.

Spousal Lifetime Access Trusts (SLATs)

Primary way a married couple will preserve their lifetime exemptions before they cut in half in 2026.

Assets grow outside of either's estate.

Trustee (Wife)

Trustee (Husband)

Administers Trust, Manages Investments and Makes Distributions

Administers Trust, Manages Investments and Makes Distributions

Makes Contribution of Lifetime Exclusion Amount

Makes Contribution of Lifetime Exclusion Amount

Settlor (Husband)

SLAT #1

SLAT #2

Settlor (Wife)

Receives Distributions

Receives Distributions

Provides asset protection.

Trusts must be carefully drafted so as not be be reciprocal.

Some people will choose to have their children be the beneficiaries of the second trust rather than their spouse to avoid the reciprocity rules.

Beneficiary (Wife)

Beneficiary (Husband)

Dynasty (GST) Trusts

Trustee

Manages Assets, Administers Trust, and Makes Distributions

Settlor

Makes Contribution (Either Gift or Sale)

Applies GST Exemption

Dynasty (GST) Trust

Receives Distributions

Beneficiary

Trust set up on jurisdiction with a long Rule Against Perpetuities, such as NV, SD or FL

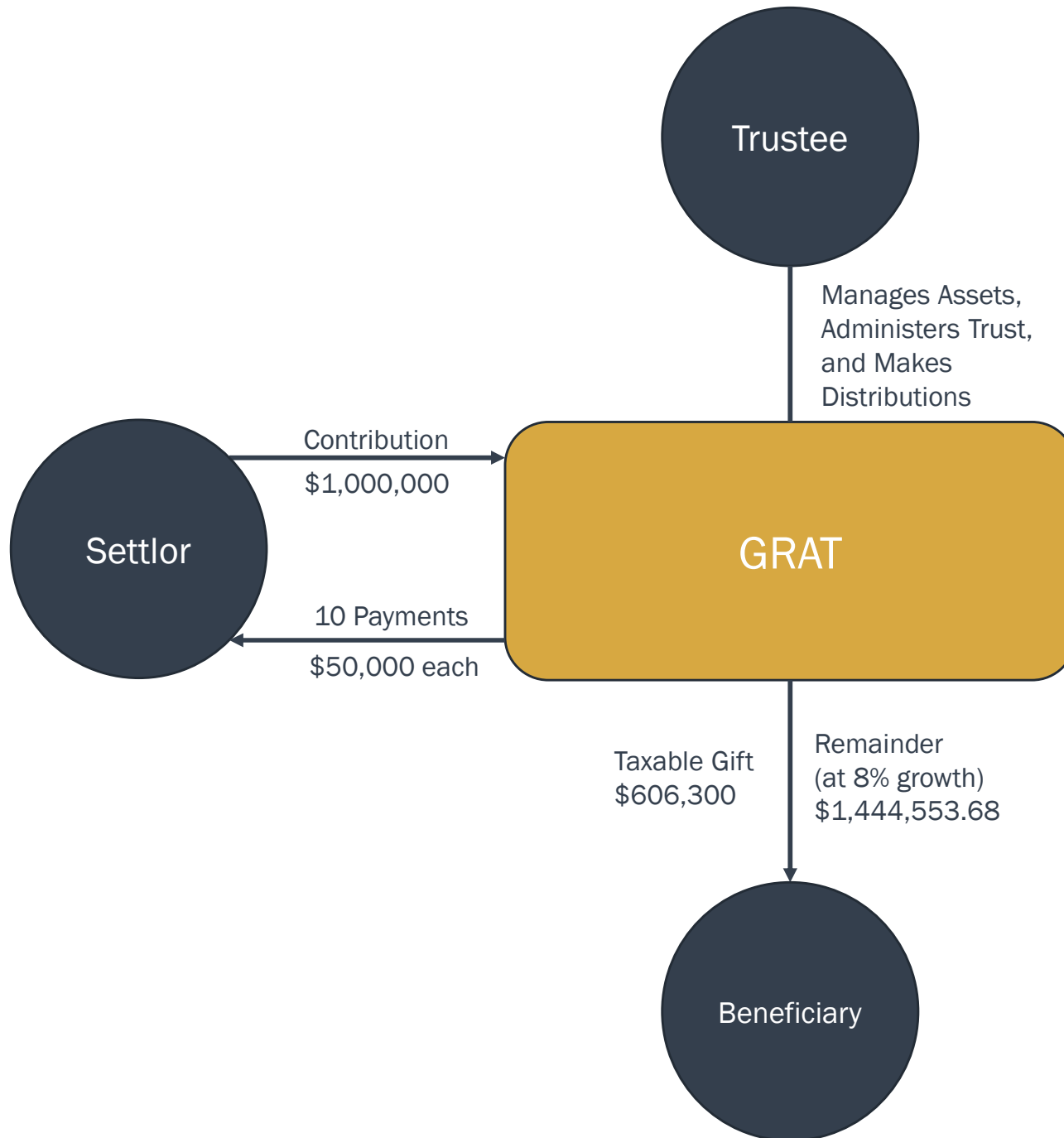Assets stay in trust for as many of generations as possible.

Assets are protected from claims of creditors

Assets not includible in future generation' estate.

$1 million contribution to a one generation trust – 151 years later = $8.664 billion

$1 million contribution to a Dynasty Trust – 151 years later = $111.426 billion

Grantor Retained Annuity Trusts (GRATs)

Trustee

Manages Assets, Administers Trust, and Makes Distributions

Settlor

Contribution
$1,000,000

10 Payments
$50,000 each

GRAT

Taxable Gift
$606,300

Remainder
(at 8% growth)
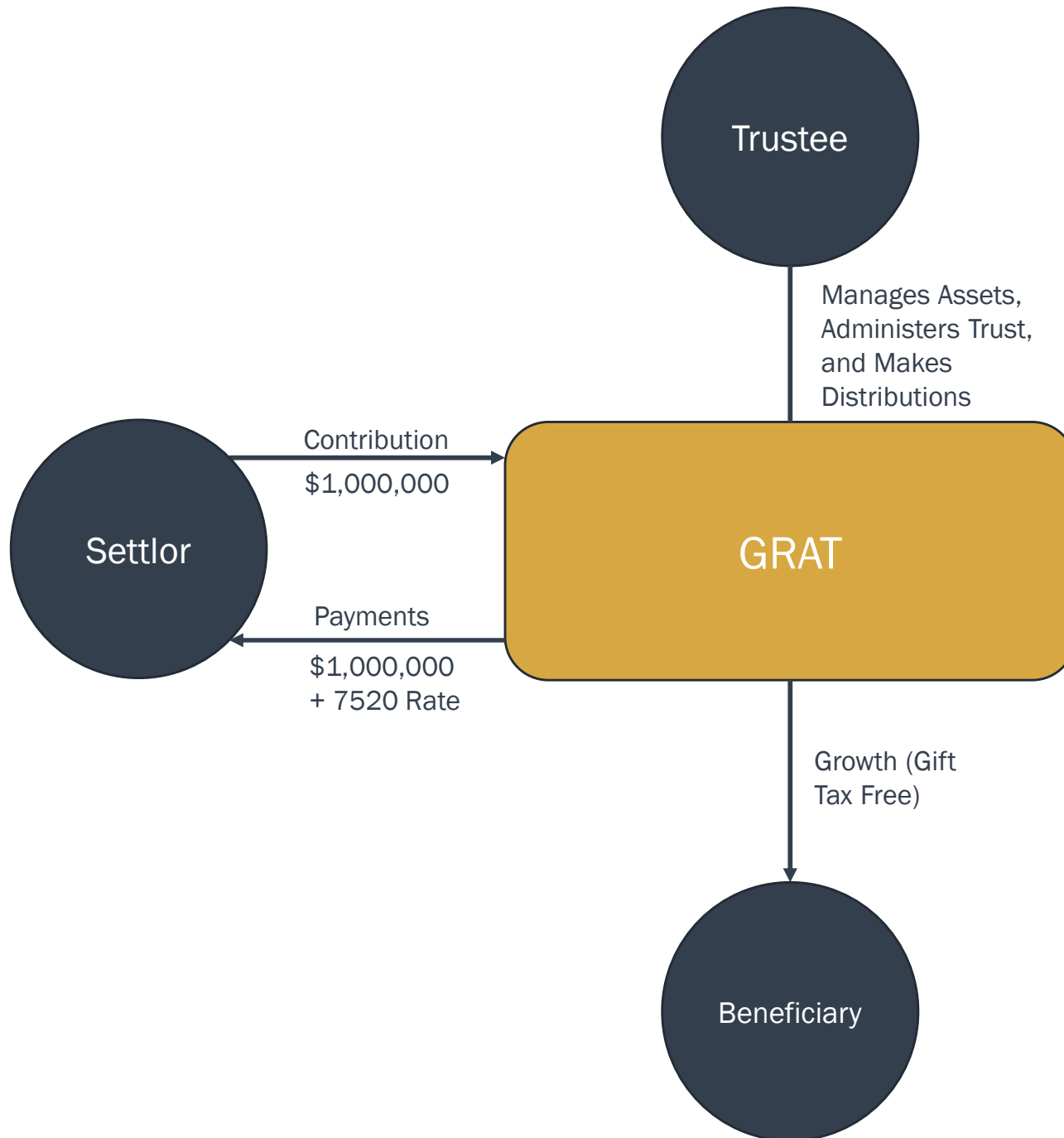$1,444,553.68

Beneficiary

One can also do Term of Years or Life, or the shorter of the two. Most common is to do a term.

Example shows a 10-year GRAT at a 7520 rate of 4.6%.

If settlor dies during term, assets included in estate – for longer terms, or if the health of the settlor is in question, it is common to do tiered GRATs

GRATs are a more attractive technique in a low interest rate environment

Rolling GRATs

Trustee

Manages Assets,
Administers Trust,
and Makes
Distributions

Contribution
$1,000,000

Settlor

GRAT

Payments

$1,000,000
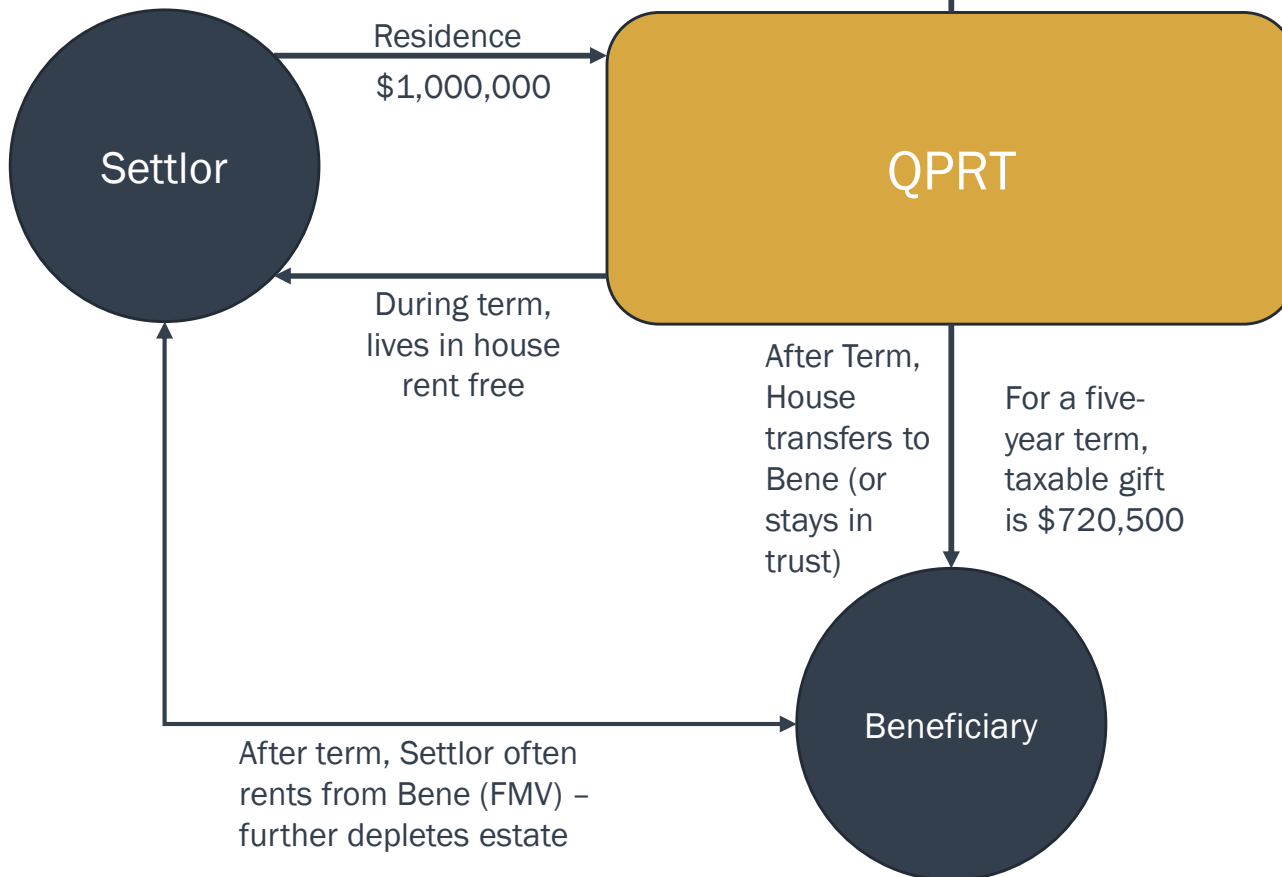+ 7520 Rate

Growth (Gift
Tax Free)

Beneficiary

This example is a Rolling
GRAT – made famous by
Walton Family – most
common type

Most common is one- or
two-year terms

Common to zeroed out the
gift, so only the growth
transfers to the beneficiary
gift tax free

After the term, the settlor
simply sets up a new GRAT
with the same terms.

Qualified Personal Residence Trust (QPRT)

Trustee

Manages Assets, Administers Trust, and Makes Distributions

Settlor

Residence $1,000,000

During term, lives in house rent free

QPRT

After Term, House transfers to Bene (or stays in trust)

For a five-year term, taxable gift is $720,500

Beneficiary

After term, Settlor often rents from Bene (FMV) – further depletes estate

This example is based on a five-year term and a 4.6 percent 7520 rate

If settlor dies during the term of the trust, the entire amount is included in his/her estate

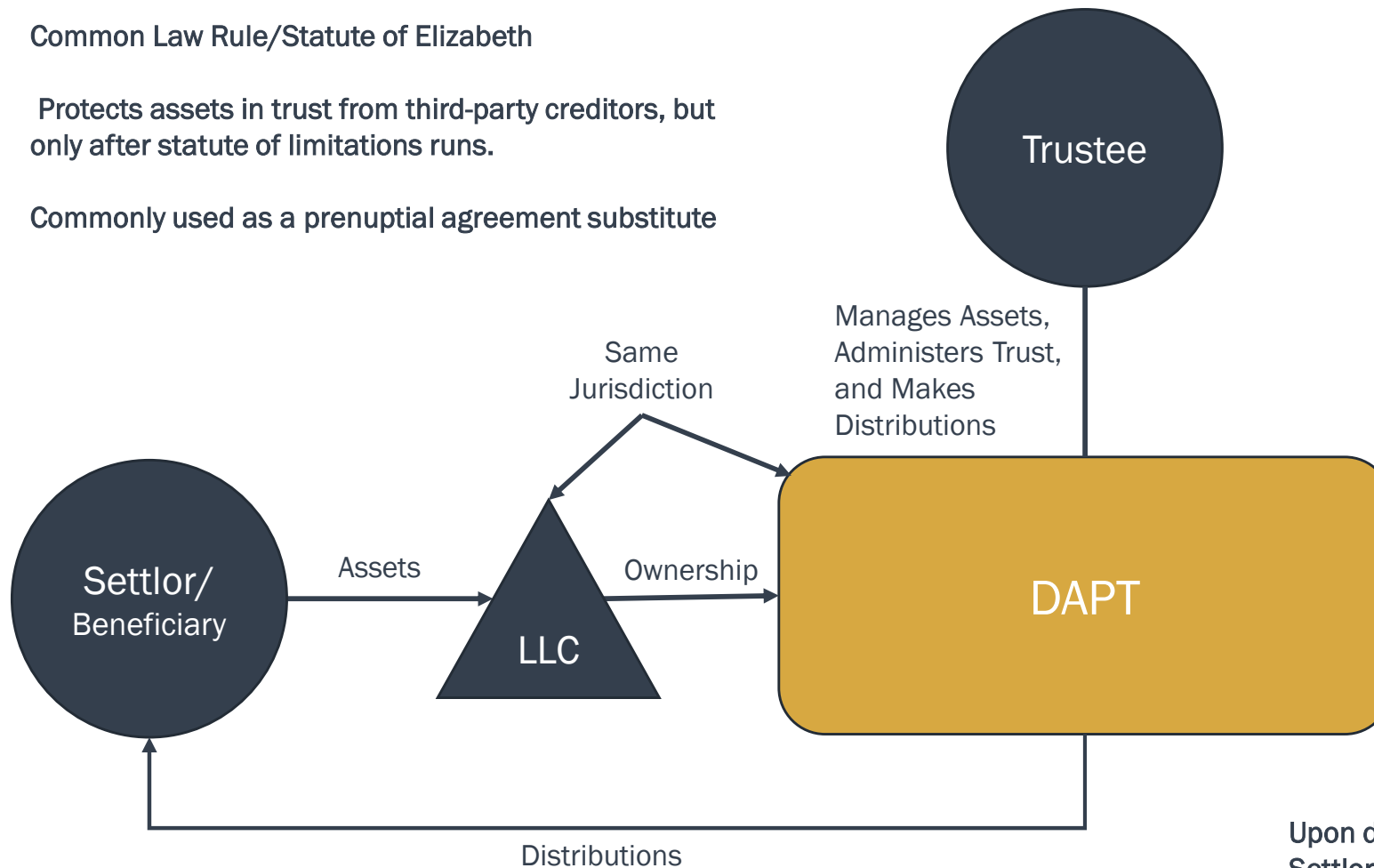# Domestic Asset Protection Trusts (DAPTs)

Irrevocable

Common Law Rule/Statute of Elizabeth

Protects assets in trust from third-party creditors, but only after statute of limitations runs.

Commonly used as a prenuptial agreement substitute

Best DAPT States
1. NV
2. SD
3. OH
4. MO
5. CT
6. DE
7. TN
8. AK
9. RI
10. IN
11. NH
12. WY
13. MI
14. MS
15. HI
16. UT
17. OK
18. VA
19. WV

Trustee

Manages Assets, Administers Trust, and Makes Distributions

Same Jurisdiction

Settlor/ Beneficiary

Assets

LLC

Ownership

DAPT

Distributions

Upon death of Settlor/Beneficiary, assets can remain in trust for Settlor's spouse, children & descendants

* There is no protection if the transfers are fraudulent

Incomplete Non-Grantor Trusts (INGs)
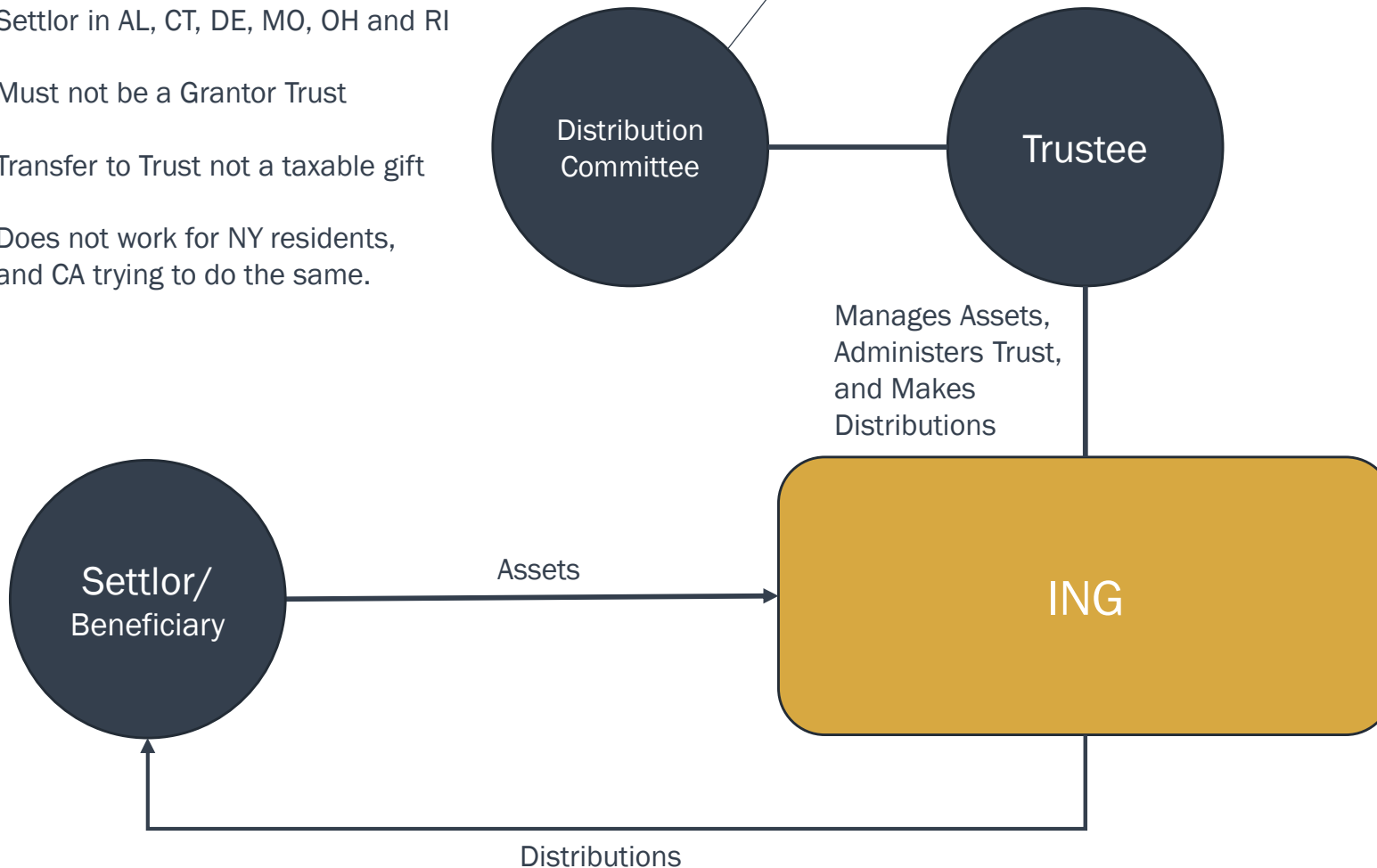
Purpose: enable avoidance of state income tax

Trust must be established in state that does not tax trust. Does not work for Settlors in DC, IL, ME, MD, MI, MN, NB, OK, PN, VT, VA, WV and WI. Also, no beneficiary may be resident of same states as Settlor in AL, CT, DE, MO, OH and RI

Must not be a Grantor Trust

Transfer to Trust not a taxable gift

Does not work for NY residents, and CA trying to do the same.

Can include Settlor, but must include two other independent individuals

Distribution Committee

Trustee

Manages Assets, Administers Trust, and Makes Distributions

Settlor/ Beneficiary

Assets →

ING

Distributions

No Income Tax on Trusts
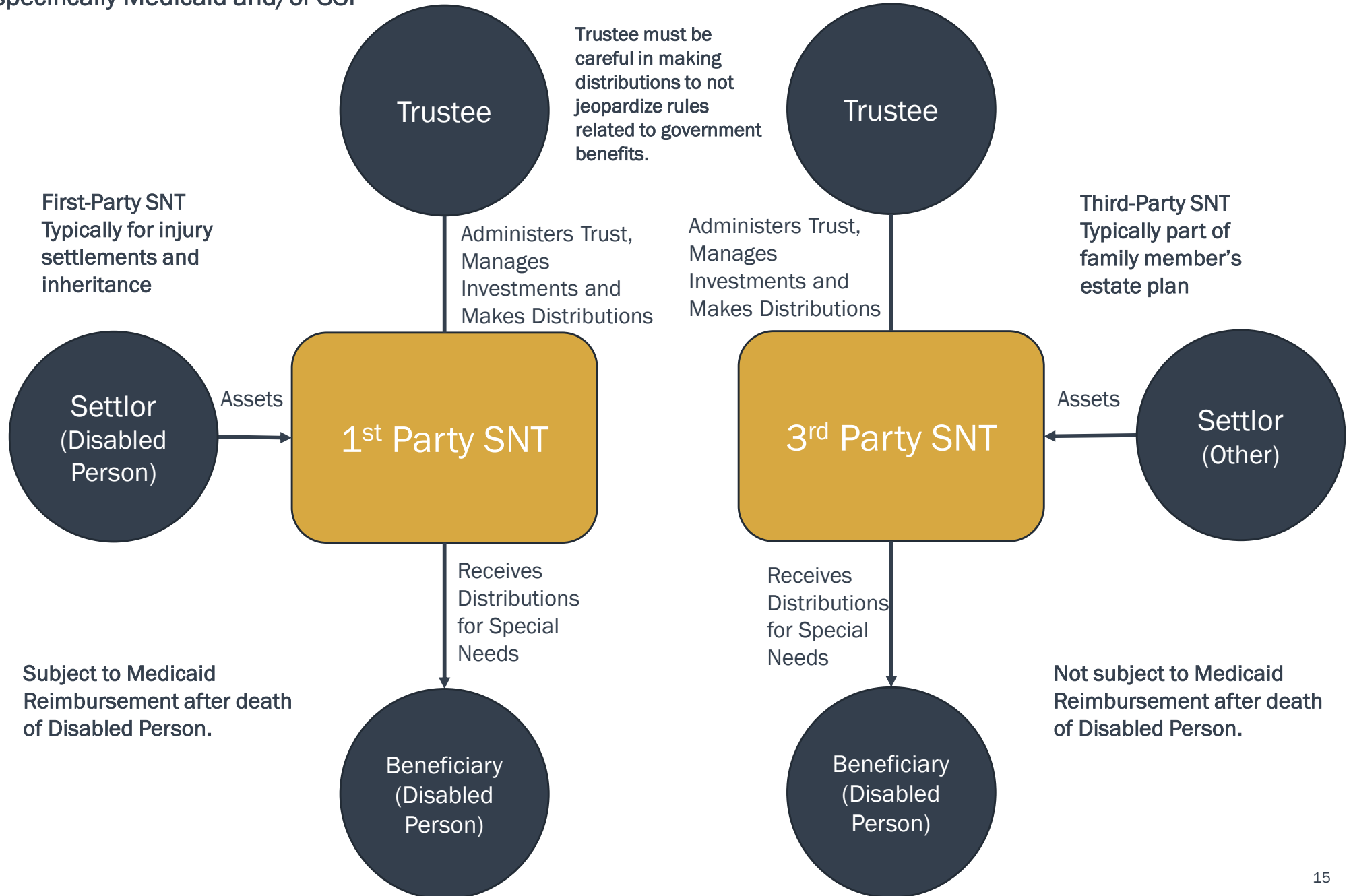1. AK
2. FL
3. NV
4. NH
5. SD
6. TX
7. WA
8. WY

No Income Tax on Trusts of Non-residents
1. AL
2. AR
3. CT
4. DE
5. DC
6. IL
7. ME
8. MA
9. MI
10. MN
11. MO
12. NB
13. NJ
14. NY
15. OH
16. OK
17. PN
18. RI
19. VT
20. VA
21. WV
22. WI

* The IRS is no longer issuing PLRs on these transactions

Special Needs Trusts (SNTs)

To Provide for a beneficiary who has a disability, chronic illness, or injury and relies on government assistance, specifically Medicaid and/or SSI

Trustee

Trustee must be careful in making distributions to not jeopardize rules related to government benefits.

Trustee

First-Party SNT Typically for injury settlements and inheritance

Administers Trust, Manages Investments and Makes Distributions

Administers Trust, Manages Investments and Makes Distributions

Third-Party SNT Typically part of family member's estate plan

Settlor (Disabled Person)

Assets →

1st Party SNT

3rd Party SNT

Assets ←

Settlor (Other)

Subject to Medicaid Reimbursement after death of Disabled Person.

Receives Distributions for Special Needs

Receives Distributions for Special Needs

Not subject to Medicaid Reimbursement after death of Disabled Person.

Beneficiary (Disabled Person)

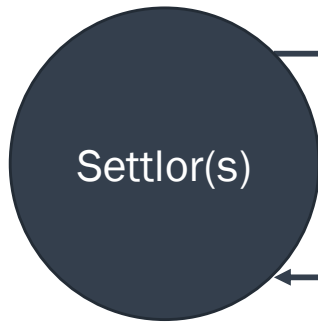**Beneficiary (Disabled Person)**

Charitable Remainder Trusts (CRTs)

Either Setup for a term of years (not to exceed 20 years) or for life

Trustee

Manages Assets, Administers Trust, and Makes Distributions

Makes Contribution

Receives Charitable Deduction

Settlor(s)

Receives either Annuity or Unitrust Payment

CRT

Receives Remainder After Term

Charity

Other variations include:

Net Income (NICRUT)

Net Income with Makeup (NIMCRUT)

Spigot NIMCRUT

Can use the best of the last three months 7520 Rate (higher is better)

Typically used to transfer assets to be sold (CRT does not pay tax, and tax is deferred until Settlor receives payments)
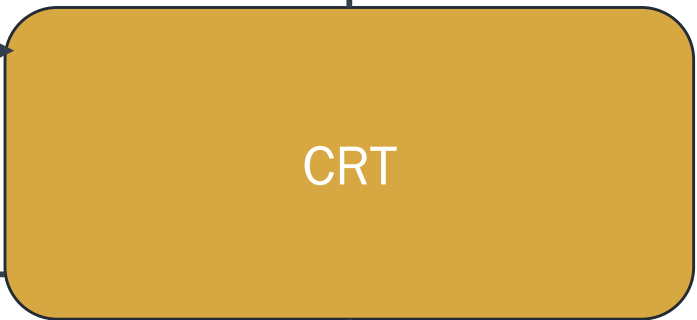
$1 million contribution to a CRAT at a 5.2% 7520 Rate (Dec) over a 20 years period at an 8% growth rate results in:

Charitable Deduction of $144,832.53

Annual payments to Settlor of $69,789.08 (subject to tax)

Remainder to Charity of $1,467,271.76

16

Charitable Lead Annuity Trust (CLAT)

Either Setup for a term
of years or for life

Trustee

Can use the best of the last
three months 7520 Rate
(lower is better)

Typically used after use of
lifetime exemption amount
either before or after death

Manages Assets,
Administers Trust,
and Makes
Distributions

Settlor(s) — Makes Contribution → **CLAT** — Receives Annuity Payment → **Charity**

Receives
Remainder
After Term

Either set up as a Grantor Trust with
Settlor receiving the charitable
deduction, but recognizing income of
the trust, or as a Non-Grantor Trust
where the CLAT receives the
charitable deduction, but also
recognizes income.

Beneficiary

$1 million contribution to a
CLAT at a 4.6% 7520 Rate
(Feb) over a 10 years period at
an 8% growth rate results in:

Charitable Deduction of
$1,000,000

Total payments to Charity of
$1,355,551.30

Remainder to Beneficiary of
$403994.21 Gift Tax Free

Changing Irrevocable Trusts

Even though an Irrevocable Trust implies that it cannot be change, there are several ways an Irrevocable Trust can be changed:
- Pursuant to the terms of the Trust
  - Trust Protectors
  - Power of Appointment
  - Trustees
  - Majority of the Income Beneficiaries
- Nonjudicial Settlement Agreement
  - Trustee and the beneficiaries can agree to make certain changes
  - Limited to administrative provisions
- Judicial Settlement Agreement
  - State law determines how broad the court's power is
- Decanting
  - Trustees perform this method alone
  - Often, Trustee can make certain changes to beneficial interest
  - Trustee must have certain powers regarding distributions in original trust
- CAVEATs:
  - Possible adverse tax consequences
  - Trustee breaching their fiduciary duty to beneficiaries

The
End