



# ESTATE PLANNING 101

Presented by Dylan Metzner, Esq., Jones & Keller

**JONES & KELLER**  
— ATTORNEYS AT LAW —

# Presenter



## **Dylan Metzner, Esq.**

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Jones & Keller

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- Counsels U.S. and international clients, including high-net-worth individuals, corporate executives, closely held business owners, and professionals, in advanced trust and estate planning strategies
- Designs estate plans that minimize tax consequences and family conflict through strategies that preserve wealth, legacies and succession for future generations
- Advises clients on tax-advantaged legal and entity structures including family limited partnerships and limited liability companies, dynasty trusts, trusts structured to hold inherited qualified plans such as IRAs and 401K, split interest trusts, grantor trusts, and life insurance trusts
- Delivers business planning around choice of entity selection, maintenance and business succession
- Represents family members, fiduciaries, and beneficiaries in resolving estate and trust-related disputes, including guardianships and conservatorships

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# Agenda



- Estate Planning Goals
- Estate Planning Overview
- Building Blocks of Estate Planning
- Using the Building Blocks to Achieve Estate Planning Goals
- Transfer Taxes
- Estate Planning Process
- Questions



# Estate Planning Goals



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# Four Goals of Estate Planning



- Planning for Incapacity
- Planning for Loved Ones and Charities after Death
- Planning to Minimize Transfer Tax (Gift, Estate, Generation Skipping Transfers)
- Planning to Minimize Risk of Litigation

# A Fourth Estate Planning Goal



- Planning to Avoid Probate



# Estate Planning Overview



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# Estate Planning Overview



- Definition of Estate Planning-
  - Planning for the management and disposition of one's property, during life and at death



# Estate Planning Overview



- Why Have an Estate Plan
  - State law imposes on every citizen a default estate plan
    - Controls the distribution of assets
    - Identifies who will serve as a fiduciary
    - Requires Court intervention

# Estate Planning Overview



- Who Prepares an Estate Plan
  - Attorneys
  - Financial Advisors
  - Bank Clerks
  - Human Resources Departments
  - Real Estate Agents and Loan Officers

**COORDINATION IS ESSENTIAL**

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# Building Blocks of Estate Planning



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# Building Blocks of Estate Planning



- Mechanisms that Affect the Control and Disposition of Assets
  - Title
  - Beneficiary Designation
- Essential Estate Planning Documents
  - Financial Durable Power of Attorney
  - Medical Directives
    - Medical Durable Power of Attorney
    - HIPAA Authorization
    - Declaration for Medical Treatment (a.k.a “Living Will)
  - Last Will and Testament
- Recommended Estate Planning Documents
  - Revocable “Living” Trust

# Building Blocks of Estate Planning

## -Financial Durable Power of Attorney



- Gives a third party the power to deal with assets held in client's name
  - Standing Power- During Lifetime
  - Springing Power- During periods of incapacity
- Power terminates at client's death



# Building Blocks of Estate Planning

## -Medical Directives



- Medical Durable Power of Attorney
  - Gives a third party the power to make medical decisions for client
- HIPAA Authorization
  - Names individuals who are authorized to receive client's protected medical information
- Living Will
  - Applies if client is in a terminal condition or persistent vegetative state
  - Allows client to make declarations as to whether life-sustaining procedures and artificial nutrition and hydration shall be continued

# Building Blocks of Estate Planning

## -Last Will and Testament



- Last Will and Testament
  - Instructs as to the disposition of only those assets held in Decedent's name at death
    - Does not control POD, JTWROS, beneficiary designations, etc.
  - Names a guardian for minor children
  - Appoints a Personal Representative (person in charge of carrying out the terms of the Will)
  - A public document which is filed in probate Court

# Building Blocks of Estate Planning

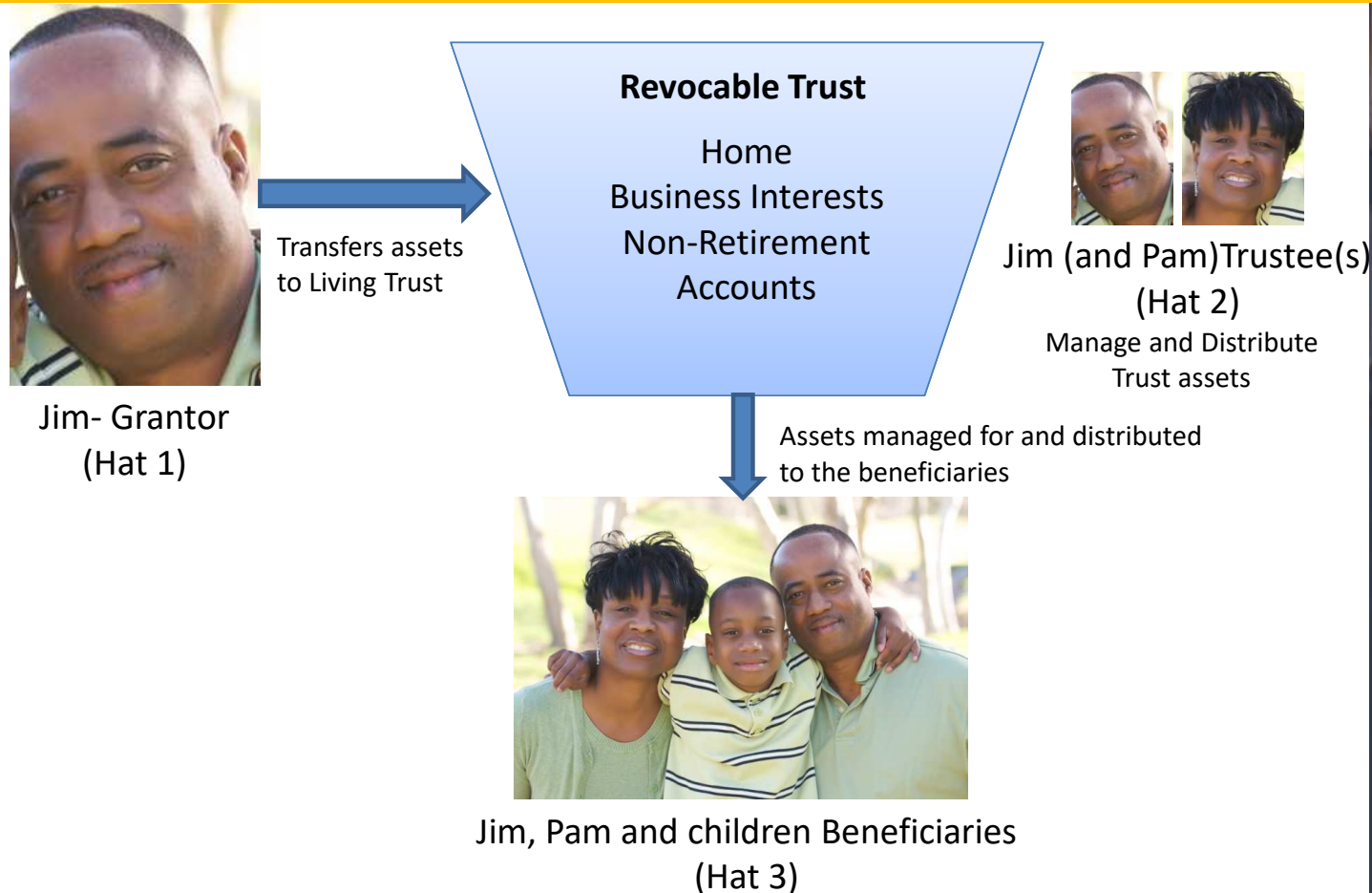
## -Revocable “Living” Trust



- Revocable “Living” Trust
  - A separate legal entity to hold assets
  - Grantor transfers legal title of assets to the trust
  - Instructs as to the management and distribution of the Trust’s assets
  - Appoints a Trustee (person who is in charge of carrying out the terms of the Trust)

# Building Blocks of Estate Planning

## -Revocable “Living” Trust



# Building Blocks of Estate Planning

## -Revocable “Living” Trust



- Why Bother with a Revocable Living Trust
  - Assets stay in trust upon Grantor’s incapacity
    - A new Trustee takes over
  - Assets stay in trust upon Grantor’s death
    - There is no need to transfer title to the assets from the name of the decedent, so
      - there is no need for probate





# Using the Building Blocks to Achieve Estate Planning Goals



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# Using Building Blocks to Achieve Goals



- Planning for Incapacity
  - Powers of Attorney
  - Medical Directives
  - Revocable Living Trust

# Using Building Blocks to Achieve Goals



- Planning for Loved Ones and Charities after Death
  - Avoid Probate
    - Probate- Court supervised process of transferring a deceased person's assets
    - Requires a number of filings with the Court
    - Required when real property is titled in the name of the Decedent
- Types of distributions
  - Outright
  - In Trust

# Using Building Blocks to Achieve Goals



- Planning to Minimize Risk of Litigation
  - Common Lawsuits relating to estate planning
    - Estate Planning Documents are Not Valid (i.e. a “Will Contest”)
      - Lack of Testamentary Capacity
      - Undue Influence
    - Breach of Fiduciary Duty
      - Fiduciary (i.e. Agent, Trustee, Personal Representative, etc) is sued by a beneficiary
        - Consider having an independent third party serving as fiduciary upon incapacity or death



# Transfer Taxes



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# Transfer Taxes



- Types of Transfer Tax
  - Gift
  - Estate
  - Generation Skipping Transfers
- \$11,580,000 estate and gift tax unified exemption amount
  - \$11,580,000 GST tax exclusion amount
  - On January 1, 2026 exemption amount and exclusion amounts revert back to ATR of 2012 values—roughly \$6,000,000.

# Transfer Taxes- Estate Tax



- Estate tax is a tax on your Gross Estate
  - Gross Estate
    - Includes life insurance proceeds, if Decedent owns the policy
    - Includes ½ of assets held in joint tenancy with spouse
    - Includes 100% of assets held in joint tenancy with a non-spouse (adjustment for contributions)
    - Excludes amounts left to spouse
    - Excludes amounts left to charity

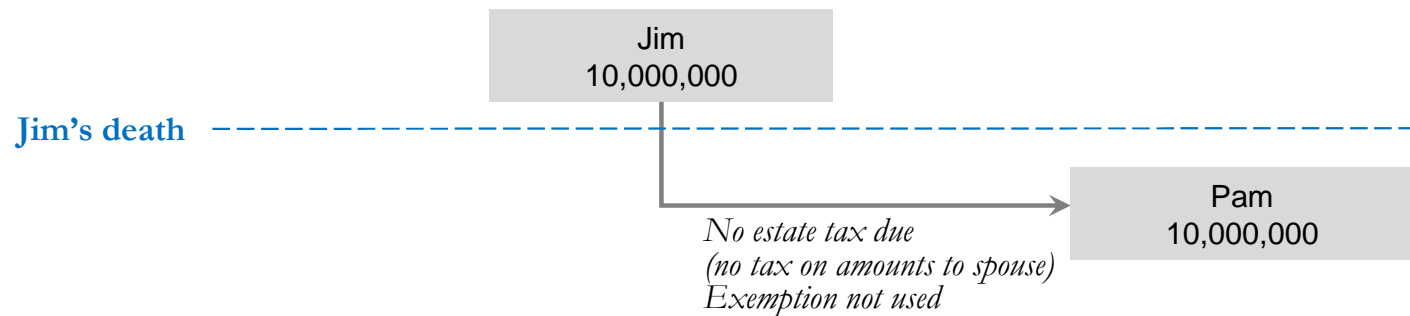
# Transfer Taxes- Estate Tax



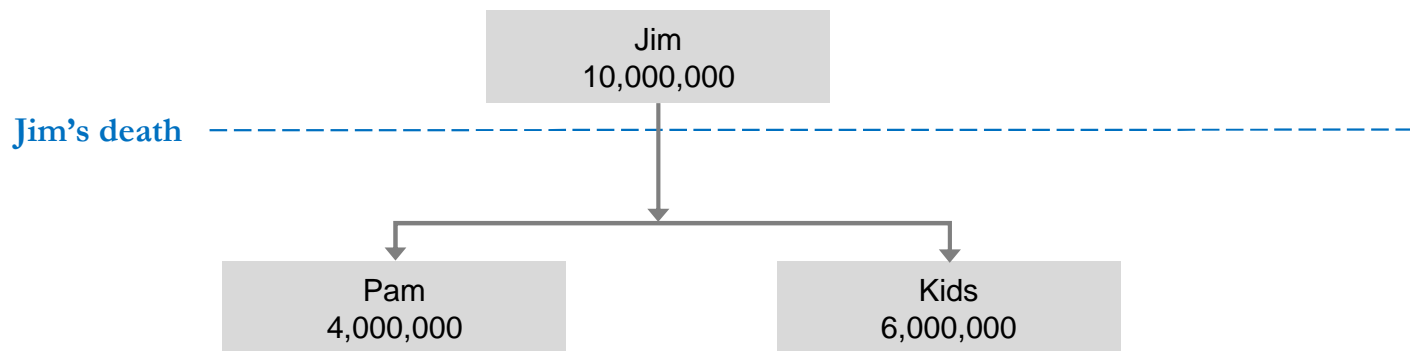
- Planning to Minimize Estate Tax
  - \$ 11,580,000 unified exemption amount\*
    - No tax imposed on first \$ 11,580,000 gifted or included in Gross Estate
    - 40% tax on excess
  - Exemption amount can be increased or decreased based on lifetime gifts or if Decedent has a predeceased spouse

\*For purposes of the following examples the assume the exemption amount goes back to ATRA 2012 Levels rounded to \$6,000,000

# Transfer Taxes- Estate Tax Exemption Example



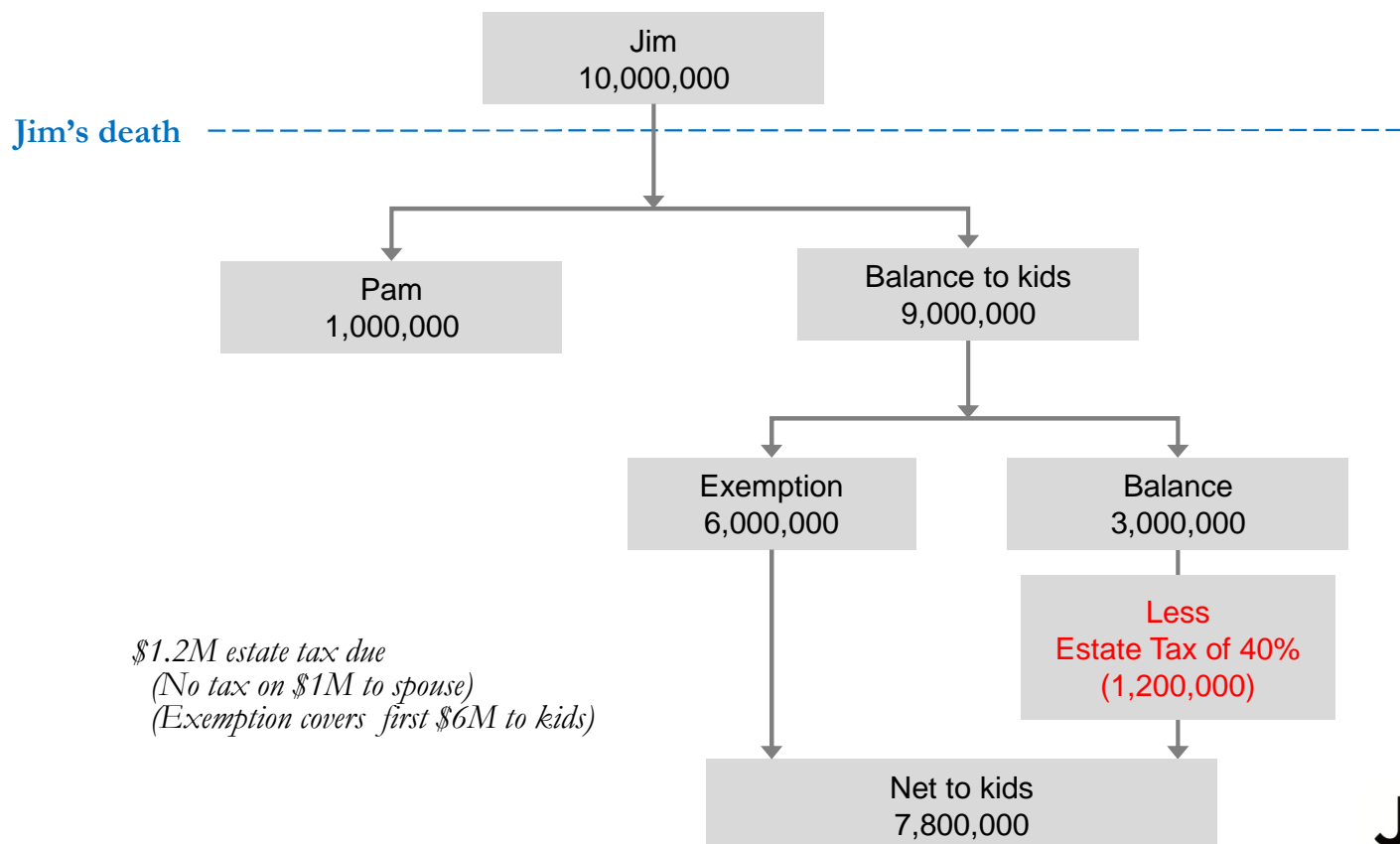
# Transfer Taxes- Estate Tax Exemption Example



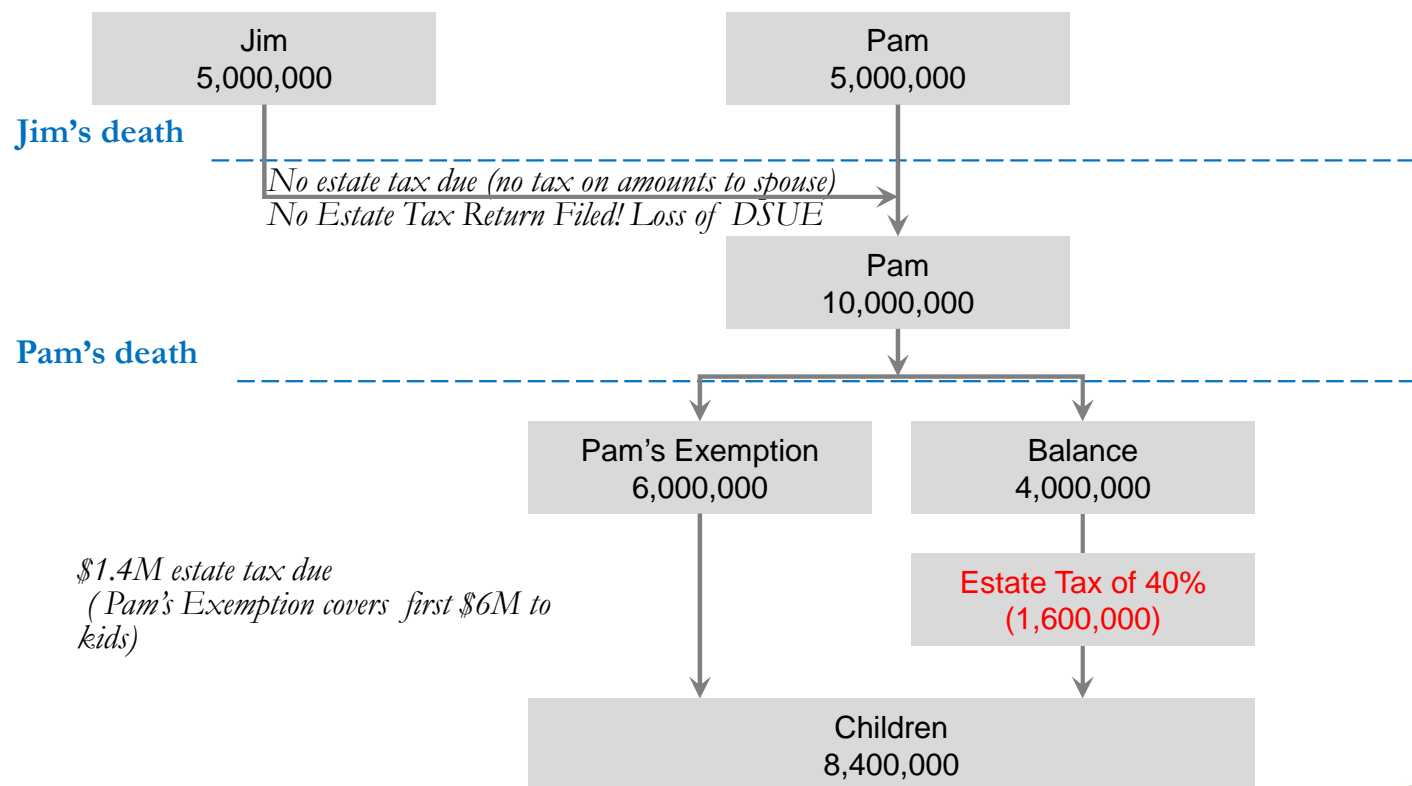
*No estate tax due  
(No tax on \$4M to spouse)  
(Exemption covers \$6M to kids)*



# Transfer Taxes- Estate Tax Exemption Example



# Transfer Taxes- Key Planning Concept



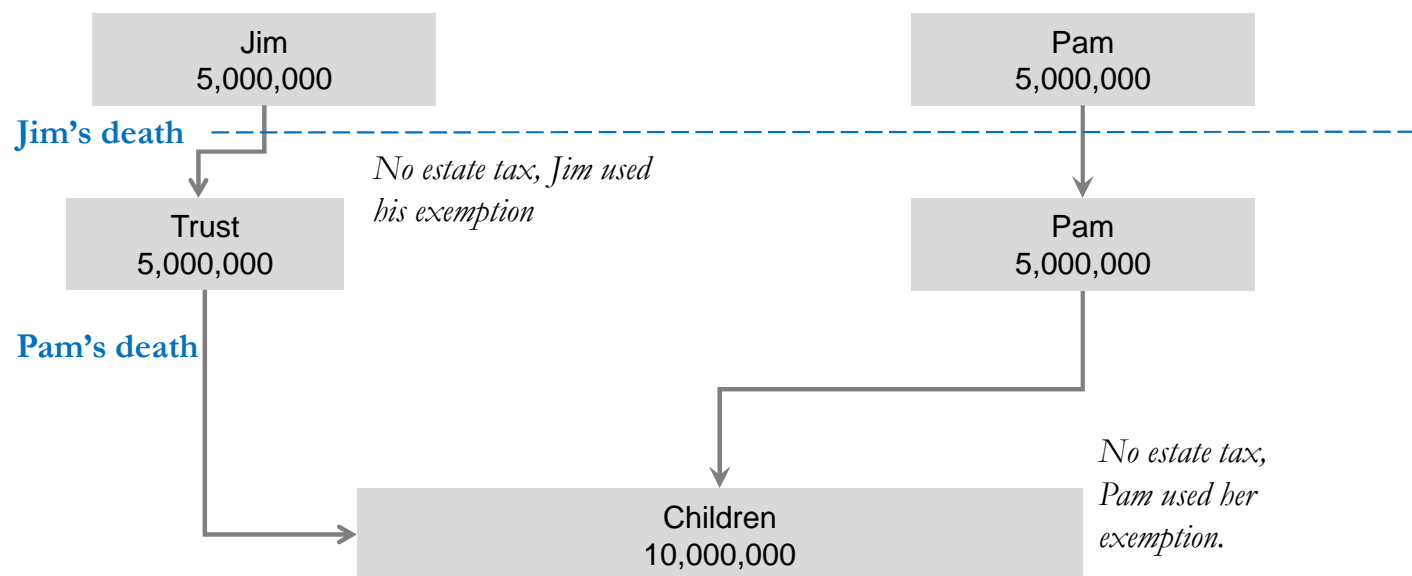
# Transfer Taxes- Key Planning Concept



- Use both spouses' exemptions
  - Together, a married couple can combine their exemptions to pass \$23,160,000 to their children, free from estate tax
- But without proper planning, the exemption of the first spouse to die can be lost

\*For purposes of the following examples we assume the exemption amount goes back to ATRA 2012 Levels rounded to \$6,000,000

# Transfer Taxes- Locking in Exemption



# Transfer Taxes- Exemption Lose it or Use it



- No Planning: A couple's net worth of \$10M gets only a \$6M exemption
  - Total tax due is \$1.6M, so \$10M turn to \$8.4M when it reaches children
- Planning: Using both spouses' exemptions allows the couple's \$10M to remain intact for children
- Two types of planning
  - Trust Planning (old school)
  - Portability (new school)

\*This example assumes the exemption amount goes back to ATR 2012 Levels rounded to \$6,000,000

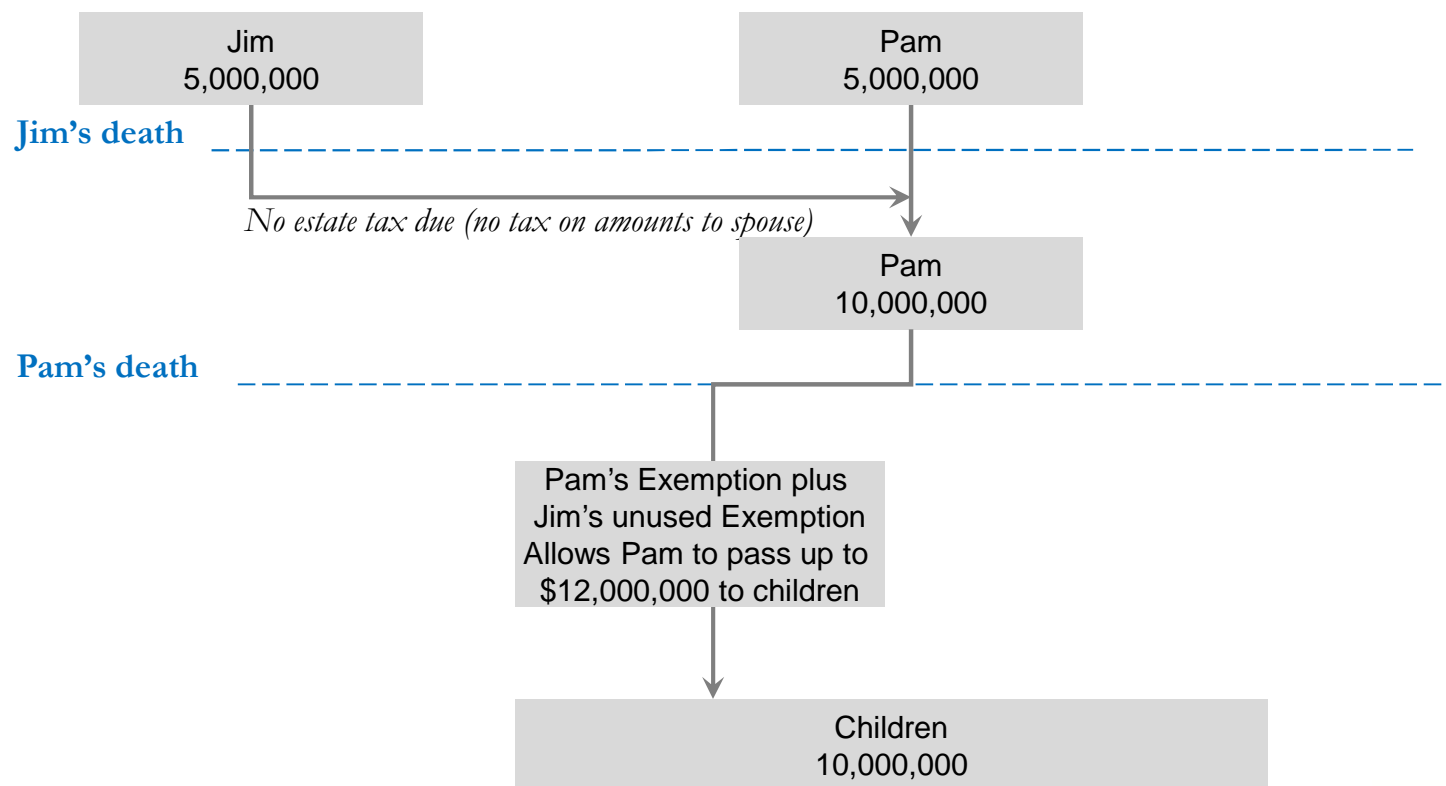
# Transfer Taxes- Portability



- Congress created a way for spouses to use both exemptions without trust planning
  - If Jim dies, and doesn't use any of his exemption, Pam can add Jim's exemption to her exemption
    - An estate tax return must be filed at Jim's death even though it wouldn't otherwise be required
    - If Pam remarries and her new spouse predeceases her, then Jim's exemption will be lost



# Transfer Taxes- Portability Planning



\*This example assumes the exemption amount goes back to ATR 2012 Levels rounded to \$6,000,000

# Transfer Taxes- Benefits of Portability Planning



- No need to set up a trust
- Step-up in basis for all assets at Pam's death
- No need to divide assets between spouses



# Transfer Taxes- Downsides of Portability Planning



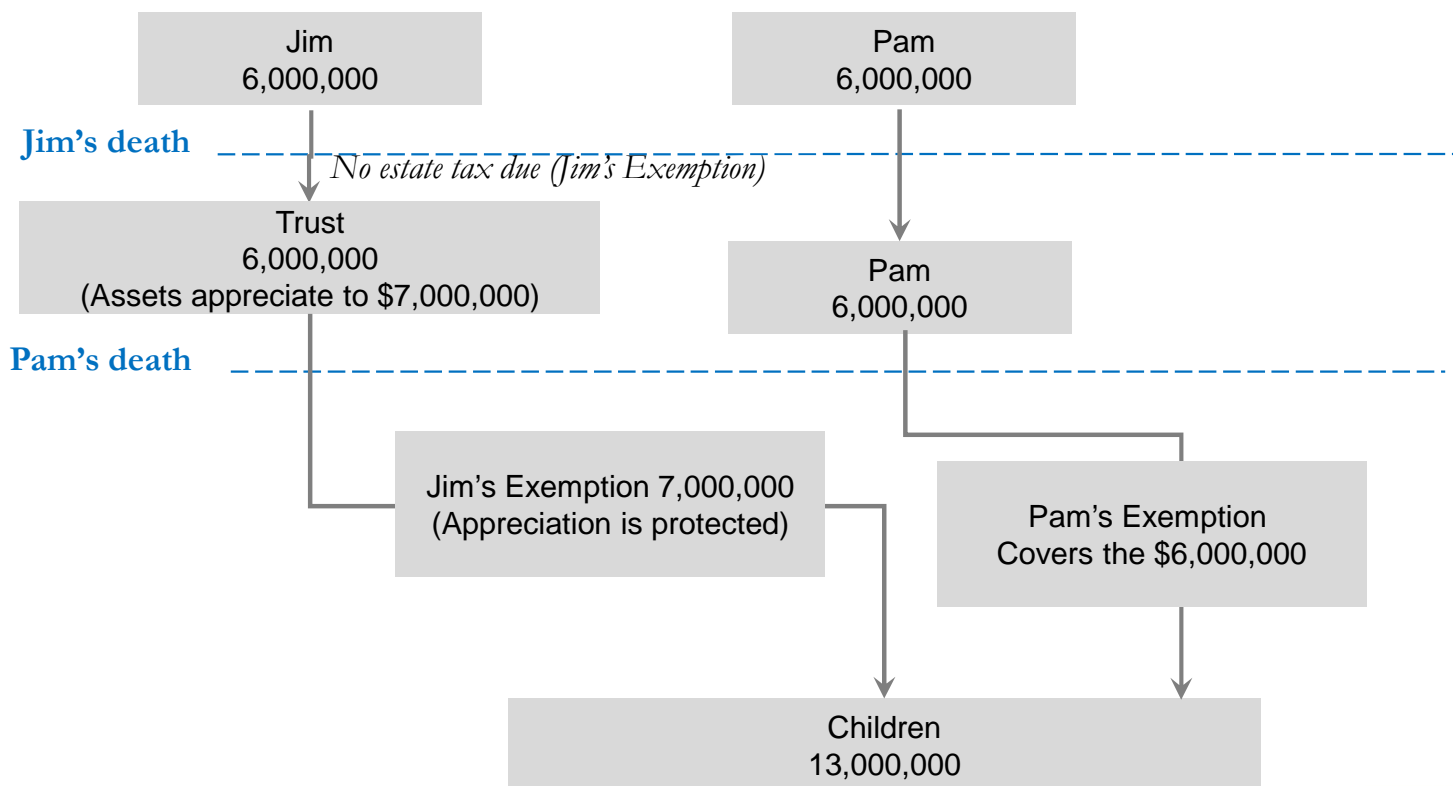
- Can only be done by filing an Estate tax return at Jim's death.
  - Attorney/CPA fees
  - Not always clear whether Pam will end up needing or using Jim's exemption
  - Jim's exemption is at risk of being lost if Pam remarries

# Trust Planning is Not Dead



- Trust holding Jim's exemption can "grow" free of estate tax between his death and Pam's death
- Jim's exemption is locked in and is not at risk of being lost if Pam remarries
- Jim can control where his assets go at Pam's death

# Transfer Taxes- Trust Planning



\*This example assumes the exemption amount goes back to ATR 2012 Levels rounded to \$6,000,000

# Trust Planning vs. Portability Planning



Advantage	Trust Planning	Portability Planning
Protect growth on Jim's exemption between deaths from estate tax?	Y	N
Jim can control Jim's exemption?	Y	N
Lock in Jim's exemption?	Y	N
Step-up in basis for Jim's exemption at Pam's death?	Maybe	Y
Avoid trust administration effort, cost?	N	Y
Avoid need to divide assets?	N	Y



# Planning for HNW Clients



- Individuals or families with a net worth in excess of \$20M (\$10 for a non-married person) can minimize taxes by engaging in lifetime gifts.
  - Remember ATRA 2012 amounts come back on January 1, 2026
- 2503(b) annual exclusion gifts
  - \$15,000 per donee per year
- Estate and Gift Tax Exemption Amount can be used for lifetime gifts
- Gifts to Charity are always tax free and, if made during life, may result in income tax deduction

# Gift vs. Estate Taxes



- Gift Tax- Tax Exclusive
  - Tax is imposed only on the amount of the gift, excluding the amount paid in tax
- Estate Tax- Tax Inclusive
  - Tax is imposed on the amount of the entire estate, including the amount paid in tax

# Gift vs. Estate Taxes



- Gift

• Money for Junior	\$1,000,000
• Money for IRS	<u>\$ 400,000</u>
• Total Needed	\$1,400,000

- Bequest

• Gross Estate	\$1,666,667
• Less: Estate Tax (40%)	<u>(666,667)</u>
• Net for Junior	\$1,000,000
• Total Needed	\$1,666,667

- Beware of adjustment for gifts made within 3 years of death

# A Closing Thought on Transfer Taxes



Don't cry because it's over.  
Smile because it happened.  
Dr. Suess

**Or, in the case of this section:**

Don't cry because it happened.  
Smile because it's over.



# Estate Planning Process



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# Estate Planning Process



- Initial Intake
- Design Meeting
- Signing and Implementation Meeting
- Reviews



# Estate Planning Process- Initial Intake



- Compile Asset Information
  - Estate Planning Balance/Action Sheet
- Compile Family Information
  - Family Tree

# Estate Planning Process- Initial Intake



- Compile Asset Information
  - Estate Planning Balance/Action Sheet
- Compile Family Information
  - Family Tree
    - Blended Marriage
    - Special Needs Family Member
    - Spendthrift Family Member
    - Omitting Spouse or Child

# Estate Planning Process- Design Meeting



- Discuss the building blocks of estate planning
- Identify client's specific goals
- Select fiduciaries
- Design structure of distributions

# Estate Planning Process- Design Meeting



- Identify the Fiduciaries
  - Guardian and Conservator for minor children
  - Attorney-in-fact or Agent under Financial Durable Power of Attorney
  - Attorney-in-fact or Agent under Medical Durable Power of Attorney
  - Authorized Recipients of protected healthcare information (HIPPA Authorization)
  - Personal Representative
  - Trustee

# Estate Planning Process- Design Meeting



- Identify the Possible Beneficiaries

- Spouse
- Children
- Charity
- Other relatives
- Friends
- The IRS

# Estate Planning Process- Signing and Implementation Meeting



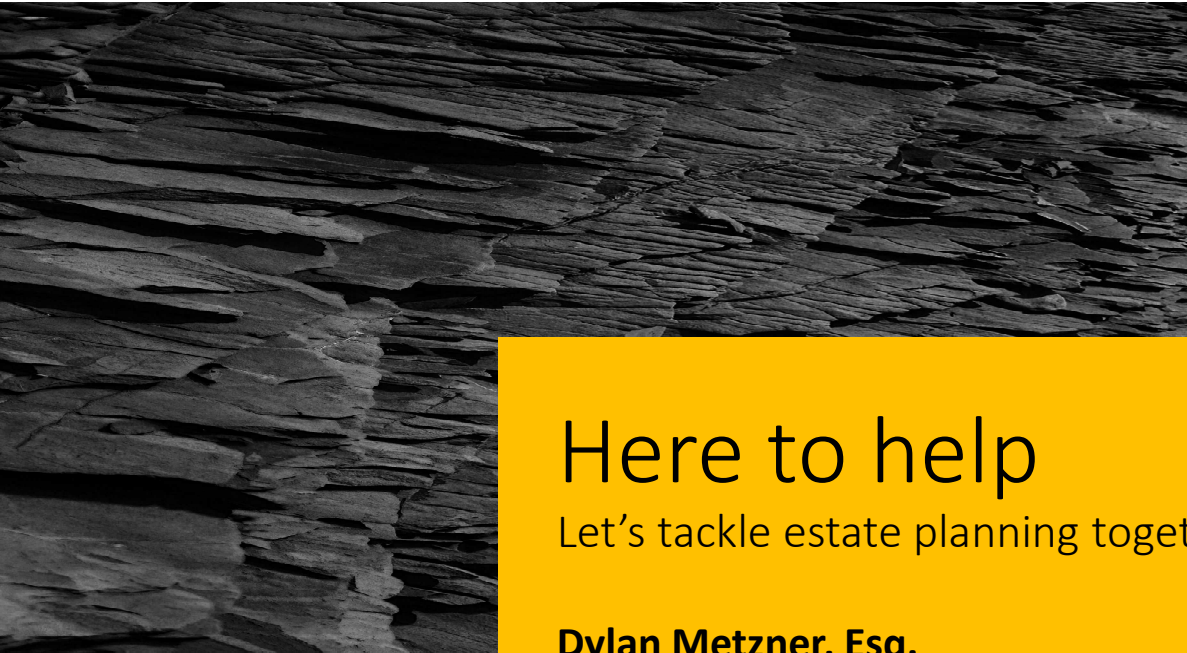
- Review schedule of assets and title/beneficiary designation recommendations
  - Action items:
    - Changing title to non real property
    - Changing beneficiary designations for life insurance policies and retirement accounts
- Sign all Estate Planning Documents



# Estate Planning Process- Reviews



- Review current estate plan
- Update based on changes in law
- Update based on changes in client's needs
- Review Estate Planning Balance/Action Sheet
  - Incorporate newly acquired property
  - Confirm title and beneficiary designations are accurate



# Here to help

Let's tackle estate planning together.

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