Estate Planning for Families with Special Needs

Presented by

Horn & Johnsen sc
ESTATE PLANNING CENTER OF WISCONSIN

"Estate Planning… For What Means Most to You!"

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My Family

Your Loved Ones

What Happens When My Child Turns 18?

Considerations:

- Guardianship
  - of person
  - of estate
- New benefits, including SSI and Medicaid
- Employment opportunities and skills development programs
- Living arrangements

According to a recent survey from Rocket Lawyer, over half of American adults have <u>no</u> estate plan in place!

Myth: Estate planning is <u>not</u> just for very wealthy people.

- <u>Everyone</u> needs an estate plan.
- Even younger people, especially those with minor children and/or children with special needs, need to have an estate plan in place in order to provide instructions to their loved ones in the event of a debilitating accident or untimely death.

Example:
Terri Schiavo

Goals of Estate Planning

- Different for everyone
- Plan for the present
- Plan for incapacity
- Plan for death
- Avoid probate and save taxes (*maybe*)

Your Estate

Essential Estate Planning Documents

- Property Power of Attorney
- Health Care Power of Attorney
  - Living Will
  - HIPAA
- Personal Property Memorandum
- Funeral Planning
- Will (or Living Trust)

Types of Special Needs Trusts

- "First-party" Special Needs Trust
  - Funded with assets of the individual with special needs
  - Beneficiary must be under age 65
  - Payback requirement
- "Third-party" Special Needs Trust
  - Funded with the assets of another individual (or individuals)
  - No age limits
  - No payback requirement
  - Can be established during the donor's lifetime as a stand-alone trust or upon his or her death through a will or a living trust
- "Pooled" Special Needs Trust
  - Managed by a non-profit association such as Wispact (see www.wispact.org)
  - Must be established by the beneficiary's parent, grandparent or guardian, by the court, or by the person with the disability
  - No age limits
  - Payback requirement depends on whether the sub-account is considered a first-party trust or a third-party trust

Your Will--

What It Does

- Names a guardian for minor children
- Designates a personal representative
- Establishes how assets will be distributed upon death (can include *testamentary* special needs trusts)

What It Doesn't Do

- Provide for mental incapacity (i.e., avoid living probate)
- Avoid death probate

What is death probate?

- The process of transferring title to your beneficiaries or heirs upon your death
  - *Beneficiaries are named in your Will*
  - *Heirs are the people would inherit your assets if you died intestate*
- Court proceeding
  - *Records are open to the public, including the terms of any testamentary trusts*

Property Ownership

Will/Probate: Assets pass according to the terms of your Will or by laws of intestacy

- Your name alone
- *Estate* named as beneficiary

No Probate: Co-owner or beneficiaries

- Joint tenancy
- Payable on death
- Transfer on death
- Beneficiary designations

CAUTION!

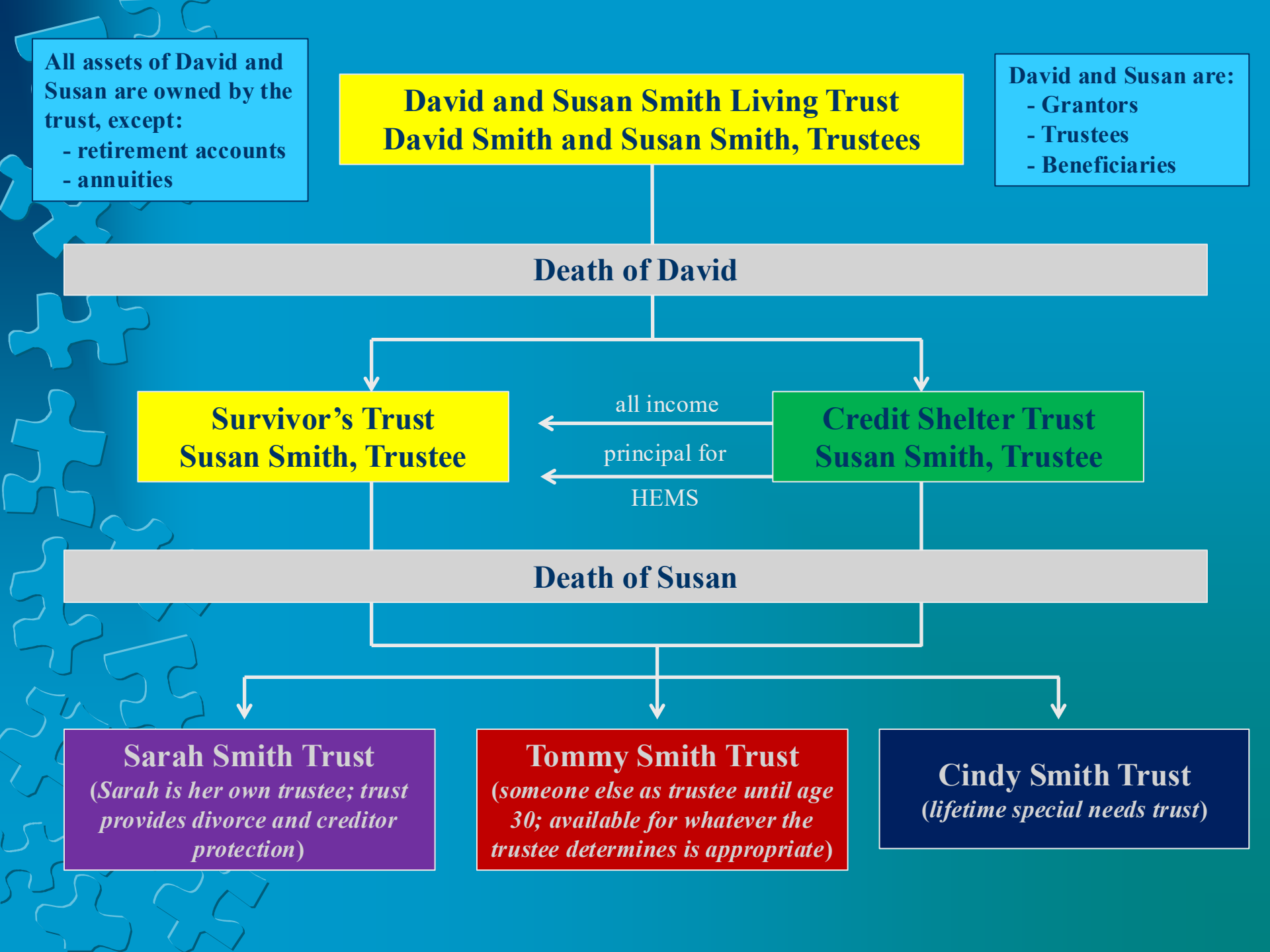
What about future marriages?

How can I avoid death probate?

1) Name direct beneficiaries on all of your assets.
2) Create a fully funded revocable living trust.

How does a revocable living trust work?

- A revocable living trust is a legal document utilized as a “will-substitute”.
- The grantors create the trust, then transfer their assets into the trust.


All assets of David and Susan are owned by the trust, except:
- retirement accounts
- annuities
David and Susan Smith Living Trust
David Smith and Susan Smith, Trustees
David and Susan are:
- Grantors
- Trustees
- Beneficiaries
Death of David
Survivor's Trust
Susan Smith, Trustee
all income
principal for
HEMS
Credit Shelter Trust
Susan Smith, Trustee
Death of Susan
Sarah Smith Trust
(Sarah is her own trustee; trust provides divorce and creditor protection)
Tommy Smith Trust
(someone else as trustee until age 30; available for whatever the trustee determines is appropriate)
Cindy Smith Trust
(lifetime special needs trust)

The Moral of the Story:
Don't be like Prince!

"Prince was a major star and a cultural influencer, but he was a human being… It comes down to taking care of business. If you don't take care of it, you're leaving a mess to the family or the courts."

- The New York Times

Questions?