



# The Building Blocks of Effective Estate Planning

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Presented by:

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## DISCLAIMER

This presentation is offered for general information purposes only. It should not be construed as legal advice for your or your clients' particular legal needs.

Everyone's situation is unique and estate planning/administration requires a customized and holistic approach. It is always encouraged to obtain legal advice from one's own lawyer, in conjunction with other relevant advisors as may be needed, while attending to estate planning or administration matters.

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# Agenda

## **1. Pre-planning**

- (a) Who to invite
- (b) Steps in Estate Planning

## **2. Estate Planning Tools**

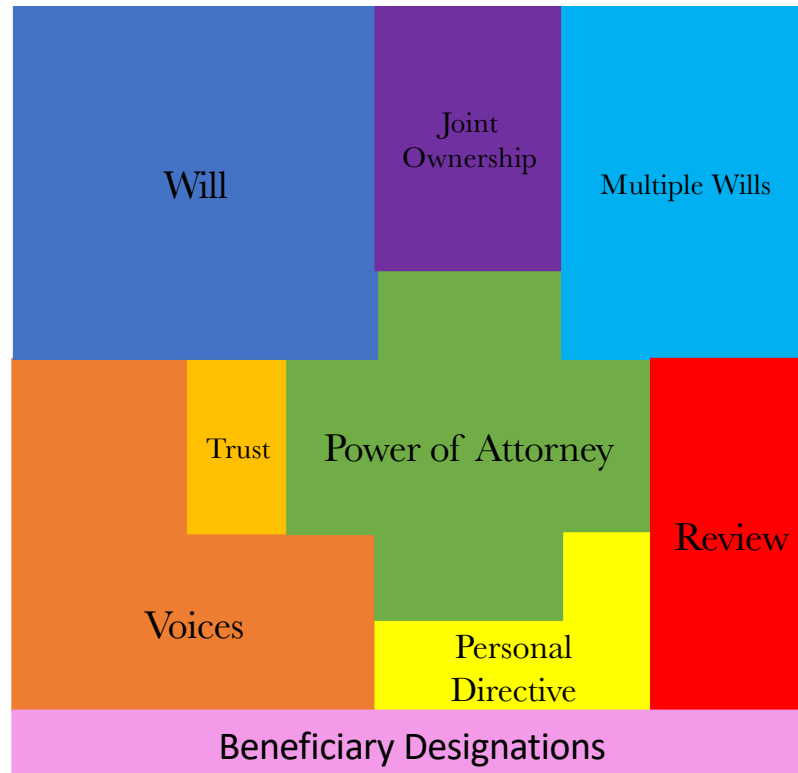
- (a) Will
- (b) Power of Attorney
- (c) Personal Directive

## **3. Alternatives to transmit assets**

## **4. Trust Planning**

## **5. All done? Review**

# The Building Blocks



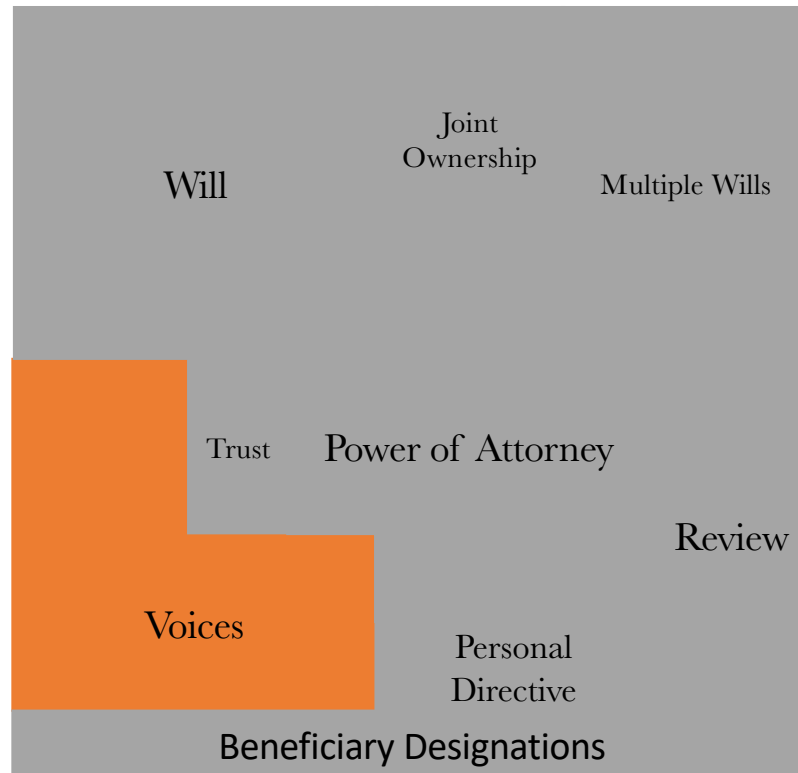


A modern office environment with several people working at desks. The office has large windows with blinds, and the lighting is bright. A semi-transparent blue banner is overlaid across the middle of the image, containing the text "1. Pre-planning – Who to invite".

# 1. Pre-planning – Who to invite

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# The Building Blocks



# Voices

## Who to invite to participate in planning?

- Clients
- Advisors
  - Lawyer
  - Accountant
  - Financial Advisor
  - Financial Planner
  - Business Specialist
  - Insurance Advisor
- Executor(s)
- Family members
  - Children
  - Siblings
  - Grandchildren?
  - Varies case by case



# The human side to planning

- Estate planning can be an incredibly uncomfortable thing for clients to work through
- Need to balance complexity with comfort and tolerance for level of complex planning
- Interpersonal relationships are often intertwined in the process
- Discussions – will happen with or without the client



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# What are the steps of Estate Planning?

- Pre-planning:
  - Overview of Assets and Liabilities
  - Overview of key people (family tree, beneficiaries)
- Planning
  - Retain a lawyer
  - Retain other advisors as needed (ie. Accountant, financial advisor)
- Key planning considerations:
  - Who should benefit? (ie. Children, family members, charities)
  - Income Tax/Probate at death
  - Distribution of personal items
  - Does your plan work, regardless of the order of death?

# What are the steps of Estate Planning?

- Key planning considerations (cont.):
  - Timing of estate distributions (immediately distributable or in trust?)
  - Appointment of Executor and Trustee
  - Incapacity Planning– do you have an enduring Power of Attorney and Personal Directive?
- Execution:
  - Meet with your lawyer to sign up planning documents
- Organization:
  - Notify executor & trustee of appointment
  - Assemble Planning Package of key info

# What are the steps of Estate Planning?

- Organization (cont.):
  - Complete any additional planning documents (ie. Letter of wishes, memorandum of articles)
- Review:
  - Aim to review documents every 5 years or if a major life event occurs – does anything need to be changed?
- Planning is an ongoing process, but if properly maintained, can provide peace of mind!

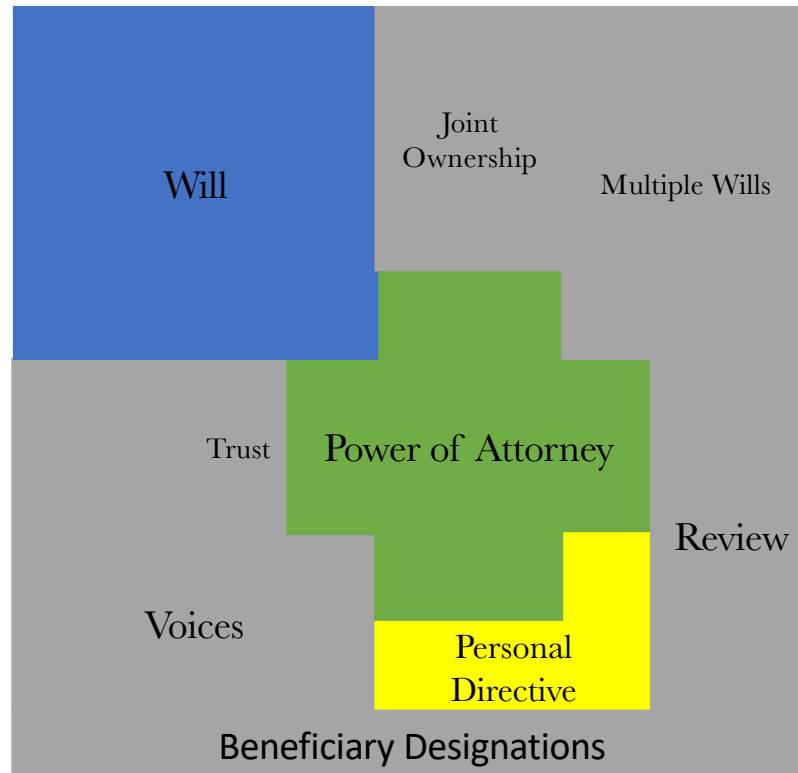


## 2. Estate Planning Tools

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# The Building Blocks



# Estate Planning in AB

## The Basics



WILL

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POWER OF ATTORNEY

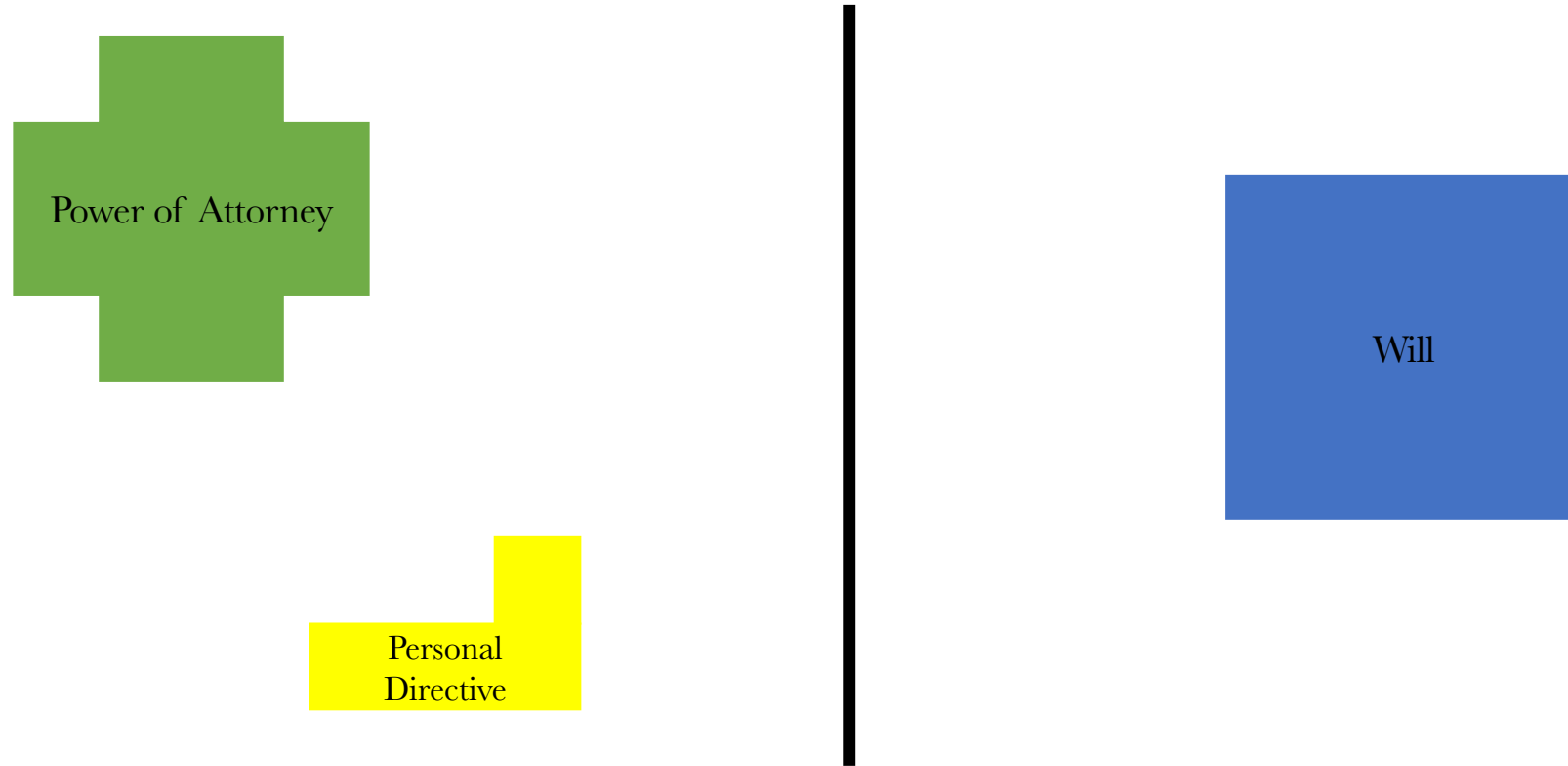
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PERSONAL DIRECTIVE

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# Estate Planning Documents



# The Will

- Will outlines
  - Who will be executor
  - Who benefits from the estate?
  - How estate is to be distributed?
  - Any additional testamentary instructions
- If no will? Intestacy...



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# The Will

- Requirements of a valid will:

## Formal Will

- is in writing,
- has your signature
- is signed in the presence of 2 witnesses, who also sign the will in your presence

## A holograph will:

- is prepared entirely in your own handwriting and signed by you



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# Choice of Executor

Who can act as executor?

- Almost anyone
  - If individual, must be individual over 18
  - Trust company
  - Professional

Key qualities:

- Organized
- Fair
- Capacity to take on estate administration to its completion



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# Choice of Executor

Consider:

- Non-resident?
- Multiple executors?
- Distance?
- Contemporaries?
- Conflicts?
- Willingness to act?



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# What are the steps of Estate Administration?

- Gather information and locate all assets
- Redirect mail
- Check and secure vacant property
- Check assets are insured
- Notify financial institutions
- Review safety deposit box contents
- Cancel credit cards, leases, subscriptions, etc.
- Notify government agencies
- Investigate all debts
- Apply for any death benefits

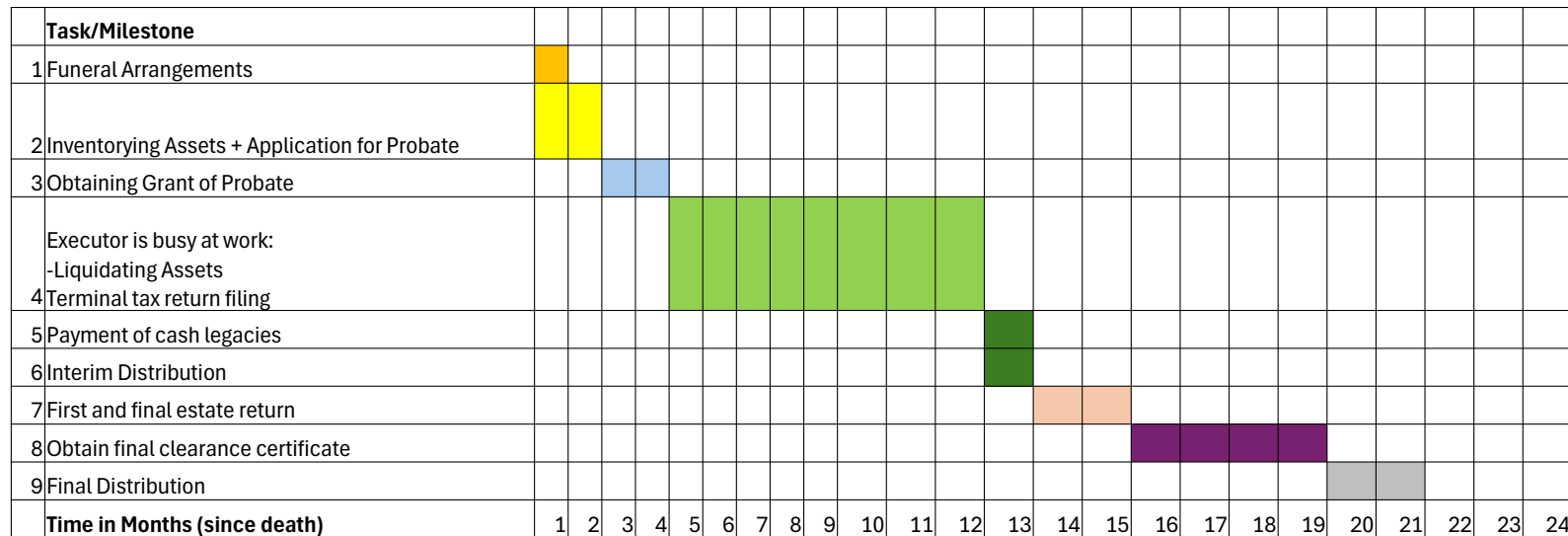
## • The Executor's Role:

- Make funeral arrangements
- Manage and safeguard the estate assets
- Apply for probate
- Settle estate expenses and liabilities
- Attend to the tax filings and tax payment
- Account to beneficiaries
- Distribute the net estate assets



# Side Bar: Estate Administration Timeline

## Average Estate Administration Timeline\*



# Incapacity Planning

## Power of Attorney:

- Who will manage your property and finances for you?

## Personal Directive

- Who will make personal care, healthcare and medical decisions for you?



# Power of Attorney

- General vs. enduring
- When is it activated?
- How is it activated?
- What is the alternative?
  - Trusteeship Application
    - Expensive
    - Lengthy
    - Court application

## Personal Directive

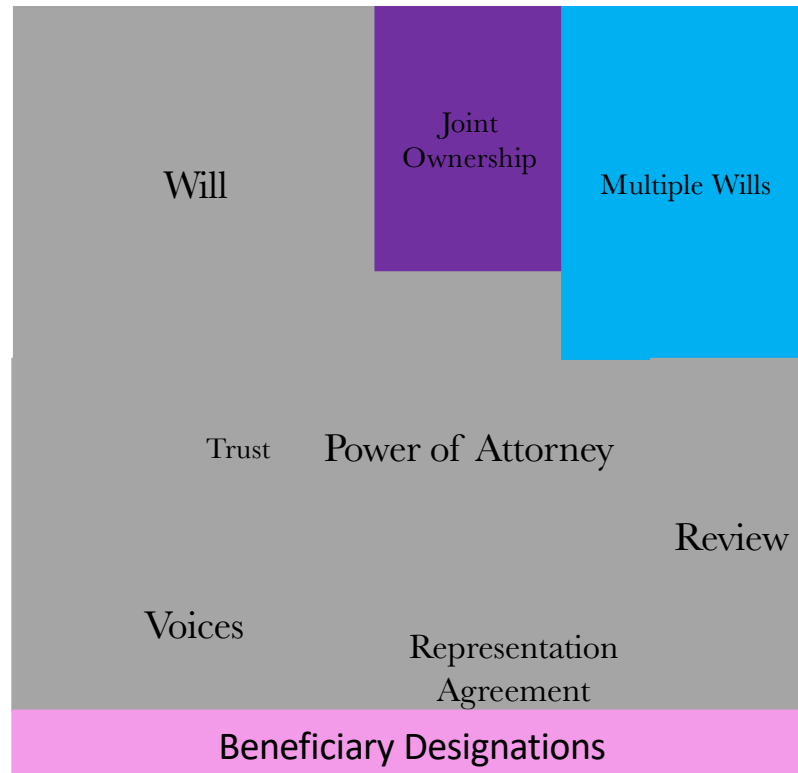
- Cannot include instructions relating to aided suicide, euthanasia or other instructions prohibited by law
- When is it activated?
- How is it activated?
- There are statutory limitations on authority of the agent
- What is the alternative?



A photograph of a woman with long dark hair, wearing a dark blazer, sitting at a wooden table and smiling at a man whose back is to the camera. A silver Dell laptop is open on the table, and a coffee cup is visible. The background shows a brick wall and a window. A semi-transparent dark blue banner is overlaid across the middle of the image.

### 3. Alternatives to transmit assets

# The Building Blocks



## Assets not subject to probate

- Jointly held assets
- Registered accounts (TFSA, RRSP, RRIF)
- Corporate Shares (under a multiple will structure)
- Assets held in trusts

# Assets not subject to probate

- Joint Ownership
  - Financial accounts and real property can be held jointly
  - Comes with the right of survivorship
- A CAUTION REGARDING JOINTLY HELD ASSETS
  - Jointly owned assets (bank accounts, property etc.) are exposed to:
    - Marital breakdown
    - Creditor liability
    - Tax liability
    - Potential loss for principal residence exemption
    - Unintentional unequal distribution of assets
    - Presumption of resulting trust

# Assets not subject to probate

- Registered Accounts
  - Specific financial accounts which are able to be designated directly to a beneficiary:
    - RRSP/RRIFs
    - TFSAs
    - Life Insurance
- A CAUTION REGARDING REGISTERED ACCOUNTS
  - Make sure to keep beneficiary designations up to date
  - Tax Flag: RRSP/RRIFs



# Assets not subject to probate

- Corporate Shares
  - Unless specific planning is in place, private company shares will pass under your will and be subject to probate
  - Multiple wills – two separate wills, one dealing with probate assets, one dealing with corporate shares
  - Non-probate Will not subject to probate fees
- A CAUTION REGARDING MULTIPLE WILLS
  - Need to name separate executors
  - Cannot be the same person as primary will
  - Possibility strategy is eliminated in the future?

A man and a woman are sitting at a wooden desk in an office, high-fiving each other. The man is on the left, wearing a light blue shirt and a striped tie, and the woman is on the right, wearing a dark blazer over a light blue shirt. They are both smiling and looking at each other. On the desk in front of them is a laptop, a glass of water, a patterned mug, and some papers. In the background, there is a brick wall, a potted plant, and a bulletin board with various papers pinned to it. The scene is brightly lit, suggesting a sunny day.

## 4. Trust Planning

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# The Building Blocks



# What is a Trust?

- A trust is a fiduciary obligation where a Settlor or Will maker (the person making the trust) gives to the Trustee (either individual[s] or corporation[s] licensed to be a trustee) property to be held for the benefit of a third party (the beneficiaries/life tenants\*)
- Property includes any property (ie. Cash, real estate, securities etc.)
- A trust is a separate legal entity – has its own tax filings, distribution rules to follow etc.

## Two types

- Inter Vivos
  - Created by person while still alive
  - Transfer of assets into trust
  - Trust document outlines how assets are to be treated and who to pay them to
  - Some income tax advantages if over 65 (Alter Ego/Joint Partner Trust)
  - Estate Planning opportunities including early estate distribution, probate avoidance



## Two types

- Testamentary
  - Created by person under the terms of their will
  - Transfers assets to trustee to be held for the benefit of individual under certain conditions outlined in will
  - Trustee can be executor or separate person
  - Trustee owns property of trust, not beneficiary
  - Trust is a separate tax-payer
  - Person may wish to create a trust in their will for a beneficiary receiving AISH benefits

Discretionary Trust	Non-discretionary Trust
-trustee is given full discretion as to whether or not funds, income or capital paid	-settlor/willmaker gives no discretion to trustee regarding dispensing funds
-trustee obligated to follow trust terms, but also given discretion regarding payment of funds	-trustee obligated to follow directions given
-beneficiary/life tenant not able to demand funds – no vesting	-the beneficiary/life tenant can demand funds at any time provided capable (and so too can creditors)

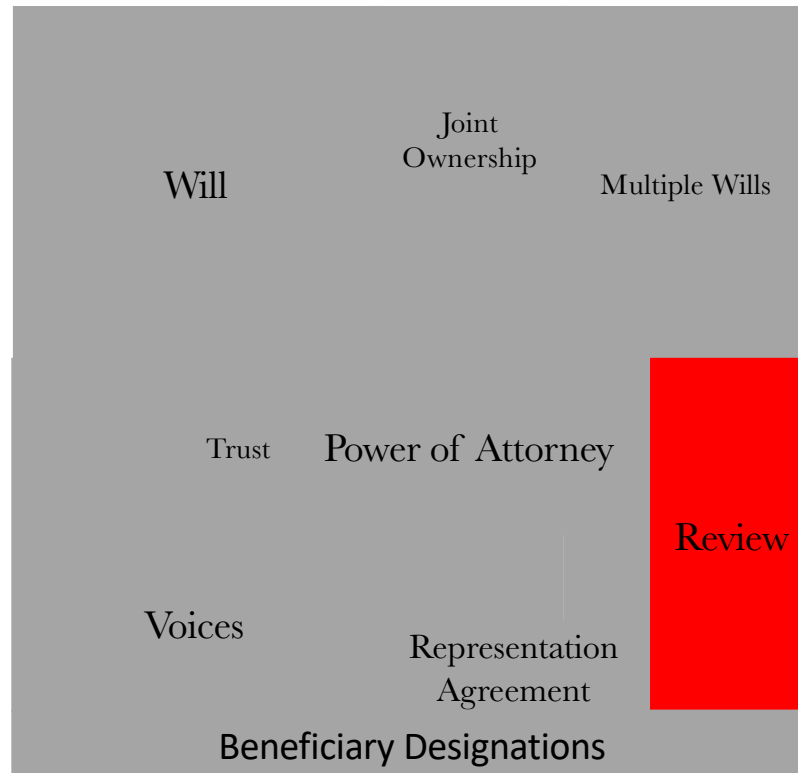
## Discretionary Trusts – A trust by many names

- Also referred to as:
  - Henson Trust,
  - Disability Trust,
  - Fully Discretionary Trust

A photograph of a modern office interior. In the foreground, a desk is equipped with a computer monitor displaying a file explorer window, a keyboard, and a mouse. A white printer sits on the desk. In the background, several people are working at their desks, which are separated by low cubicle walls. Large windows with blinds are visible, letting in natural light. The office has a clean, professional look with contemporary lighting fixtures.

## 5. All done? Review

# The Building Blocks





# Review

## Important to:

- Have estate plan
  - Will, POA, Trusts
- Review regularly
  - Not a one and done
- Understand how assets are held
- Update the will if assets or plan changes
- Collaborate with:
  - Lawyer
  - Financial advisor
  - Accountant
- Rule of thumb – review plan every five years or if major life changes occur

# Distribution of Estate – Red Flag

Norm and Eleanor attend in 2000 at their lawyer's office to make a new will. Wills get drafted and signed.

Wills provide:

- 50% to surviving spouse
- 50% equally divided between three children

2002, Norm passes away. Division?

- All to Eleanor

What happened to the assets?

→all held in joint tenancy at time of death

# Distribution of Estate – Beneficiary Designations

- Beneficiary designations allow assets to pass outside of estate
- Presumption of Resulting Trust
  - Resulting Trust – claim that asset held jointly by the Deceased and a third party belong to the estate, and should not pass directly to third party
  - Recent case law has indicated this presumption can apply to registered accounts
- If there is a high likelihood of a contentious estate should get legal advice

## Other Risks: Family Maintenance & Support Claims

- Who can make an application to vary a will?
  - Spouse? ✓
  - Minor Child? ✓
  - Adult Dependent Child? ✓

Important where there are potential conflicts to obtain legal advice.

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