THE LIVING TRUST ADVANTAGE

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The Living Trust Advantage

	Intestate succession (no will)	Joint tenancy	Life insurance	Simple will	Testamentary trust	Revocable unfunded living trust	Revocable funded living trust
Avoids probate at death of first spouse		4	1				4
Avoids probate at death of second spouse					2	2	4
Provides maximum tax savings			3		4	4	4
Avoids need for conservatorship							4
Provides family privacy			1				4
Establishes trust for beneficiaries					4	4	4
Allows maker to test administration during own lifetime							4
Prevents attachment of beneficiary assets					5	5	4

1 Not if payable to the estate of the decedent.
2 Yes, if in trust for spouse for life.
3 Not unless owned by a trust or other appropriate owner/beneficiary.
4 Yes, if properly established.
5 Depends on spendthrift clause.

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INTRODUCTION

Building financial resources is a lifetime effort. Estate planning allows you to provide instructions for the use of these resources to care for you during disability and to care for your loved ones after your death Caring for loved ones with your resources, love, and wisdom exactly as you would if you were there is the essence of proper planning. Thus, the Living Trust definition of proper estate planning is:

> "Planning for yourself, and giving what you have to whom you want, the way you want and when you want, and saving tax dollars, attorney fees and court costs."

These are the goals of estate planning with a funded living trust and our objective in this *LIVING TRUST ADVANTAGE* booklet is to briefly describe these goals. In doing this, we will examine traditional forms of estate planning and discuss the benefits of using the Living Trust approach to estate planning. The charts at the end of this booklet show the dynamics of how a Living Trust works for single and married people.

A CAUTION

In an attempt to bypass traditional relationships with attorneys and other professional advisers, several businesses are selling living trusts and other estate planning documents directly to the public.

Planning thoughtfully for the care of yourself and your loved ones is not a routine, do-it-yourself job. Don't put your resources and loved ones in jeopardy by becoming the victim of a sales scheme that bypasses attorneys and other planning professionals.

Your planning should meet your hopes, fears, dreams, values, and aspirations. These goals can only be accomplished by an attorney and other professional advisers working closely together on your behalf.

This material does not render specific legal advice, rather, it is designed to familiarize you with basic planning concepts. For legal advice concerning your situation, we will be happy to meet with you at your convenience.

> *Living Trust planning requires that you work closely with your professional advisers, and that they work closely with each other to enable you to attain your planning goals. Do not estate plan without the advice and counsel of an estate planning attorney and your other advisers!*

Before examining the relative advantages of estate planning with a Living Trust, let's explore some commonly-used estate planning techniques.

PROBLEMS WITH TRADITIONAL **ESTATE PLANNING TECHNIQUES**

Each of the following techniques has significant drawbacks. Let's look at these commonly used approaches to see if they satisfy your planning goals and analyze them by comparing them to the definition of estate planning.

PITFALLS OF SIMPLE WILL PLANNING

Most of us would agree that estate planning and signing one's will are synonymous in most people's minds. Yet, statistics show that from 50 percent to 70 percent of Americans don't even leave a simple will.

It's hard to believe that so many loving spouses and parents don't bother to leave instructions or attempt to save tax and probate dollars. Could it be that most of us believe that we have provided for our loved ones and our affairs even though we haven't even prepared a simple will?

If most of us do not leave a will, how do we leave our property? We simply use other methods to give our property to our loved ones.

We do so through joint tenancy or planning with beneficiary designations. *The fact is, most of us leave our property to our loved ones without relying on a will! And the majority of Americans avoid will planning with good reason.*

Wills guarantee probate.

Surprisingly enough, many people believe that a will avoids probate. And, yet, nothing could be farther from the truth, because a will absolutely guarantees probate.

While the probate concept appears to be well-known by the public, and somewhat suspect, the actual probate process remains a mystery to many. Let's look at what probate is really all about.

Simply stated, probate is the process of passing legal ownership of decedent's property to heirs. It involves a legal process — another phrase for red-tape — that can be reduced to five basic steps:

1. The will must be admitted into probate.

   The court determines whether a will is valid and hears the challenges of disgruntled heirs.

2. The executor and the attorney must be approved by the court.

   The executor named in the will retains an attorney to file the necessary papers and make court appearances.

   Often the executor has no experience and is totally dependent on the attorney. Sometimes the executor is also the attorney for the estate.

3. The estate property must be inventoried and appraised.

   This is done so that the executor, the attorney, the state and federal tax collectors, the estate's creditors, and heirs can be paid.

4. All expenses, creditors, and taxes are paid.

   This can, and often does, take a great deal of time. Unfortunately, loved ones often times receive only small statutory allowances from the estate to live on during this time. This is because in order to protect the estate's creditors, all of its assets are virtually frozen until this step is completed.

5. Finally, whatever is left is distributed to the heirs.

These five basic steps are a very general overview of the probate process. Let's take a closer look at some of the consequences that result from these five simple steps:

- Probate generates executor and attorney fees.

  Traditionally, these fees have been taken as a percentage of an estate's gross value. In many cases, they'll be determined on the basis of what the court determines to be "reasonable." What is "reasonable" to the court may not be "reasonable" to the heirs.

- Executor and attorney fees are taken off the top.

  The real cost of probate is very difficult to generalize. Studies seem to indicate that average probate fees run from 4 percent to 8 percent of a decedent's gross estate.

- The probate process is time consuming.

  Studies seem to indicate that even uncomplicated probates typically take somewhere between nine months to two years to complete. However, probate can take much longer than a year or two. It may last for several years or even decades in particularly complicated or contested estates.

- There can be multiple probates for the same estate.

  Each state has probate jurisdiction over the real property within its borders. If you own real property in more than one state, you'll have a probate in each of those states. For example, if you own a vacation home in another state, that home is going to be probated in that state.

  Multiple probates create complexities and costs for loved ones.

Probate is only one aspect of planning with a will. There are other potential will problems. Did you know that:

Wills are fully public.

Both during and after probate, sensitive financial information and personal matters that were well-guarded during life will be readily available to curiosity seekers and those seeking a business advantage.

We believe that one does not have to exaggerate the potential dangers of making one's affairs public to see that it may be harmful to surviving loved ones.

A will offers no plan for one's disability

Insurance industry statistics tell us that in a given year, a person is generally six times more likely to become disabled than die. If one is deemed to be mentally incompetent without having completed a plan for his or her disability, there will be a guardian will be named.

A guardianship proceeding is conducted by the Probate Court, which is public, time consuming, and expensive.

Wills are often challenged by disgruntled heirs.

Wills are often challenged by disgruntled heirs in what attorneys call "will contests." Probate critics believe that if heirs are forced to be a part of an ongoing court process, the process itself creates an environment that encourages litigation.

Wills don't control most of their makers' property.

Wills seldom control their makers' life insurance proceeds and retirement benefits. Since these types of accounts generally name individual beneficiaries, these accounts do not pass under the will This can cause inconsistencies in one's planning and unequal distributions to beneficiaries.

Jointly owned property has no rules for surviving beneficiaries.

Wills contain mostly sterile legalese.

The single greatest problem with almost all wills is that they are bare-bones documents — legally proper, but emotionally empty legal forms that don't begin to capture the hopes, fears, dreams, values, and ambitions of their makers.

Wills do not cross state lines well.

If a will is made in one state, but its maker moves to another, the laws of the new state will be used to interpret it. This can lead to unforeseen, and tragic results, which is why many state and local bar associations have produced literature encouraging the public to be sure and have their will checked immediately after moving to a new state.

Wills don't do a very good job of meeting our definition of estate planning. A will won't allow you to provide for your disability, and to give what you have to whom you want, the way you want and when you want, and it certainly won't avoid probate.

PITFALLS OF OWNING PROPERTY JOINTLY WITH LOVED ONES

Joint tenancy ownership doesn't work the way most people think it does. Joint tenancy's proper name is joint tenancy with right of survivorship. "Right of survivorship" means that whoever dies last owns the property. It's a "survivor takes all" form of ownership that cannot be controlled by wills or trusts.

Owning property in joint tenancy is easy to do. It can trap the unwary because it sounds so nice. It implies "the two of us," a partnership, a marriage of title as well as love. On the surface, at least, it appears to be the right way for people who care for each other to own property.

Unfortunately, joint tenancy has significant planning disadvantages.

The jointly-held property can pass to unintended heirs.

Joint tenancy is a survivor-takes-all form of ownership. This can cause significant problems if you jointly own property with individuals who are not the beneficiaries of your estate. For example, owning a house jointly with a second spouse when the beneficiaries of your estate are children from a prior marriage.

Jointly owned property does not totally avoid probate.

Many people believe that jointly owned property totally avoids probate. This isn't true. It does not avoid probate on the death of the surviving joint owner; there will be a probate on that owner's death.

Joint tenancy property can create unintended gift and estate taxes.

It is not uncommon for an older parent to designate a son or daughter as a joint owner of his or her property. This technique is meant to help the parent by involving the child in the parent's affairs. This simple change of ownership often results in inadvertent federal gift tax problems.

The surviving owner doesn't get a complete step-up basis!

In Ohio, a separate property state, if property is owned in the name of the deceased spouse, the surviving spouse gets, for income tax purposes, a 100 percent adjustment (step-up) in basis. If the property is jointly owned, there is only a 50 percent adjustment.

The fact is, joint tenancy doesn't satisfy any of the requirements of our definition of estate planning. It is a form of planning that ought to be avoided!

PITFALLS OF PLANNING WITH A BENEFICIARY BOX

There is another commonly-used traditional planning technique that we call "Planning with the Box."

The "Box" contains the beneficiary designation that specifies who will receive life insurance and other benefits, such as pension and profit sharing plan proceeds. It has significant pitfalls.

You cannot leave instructions with the "Box."

Most people lose control of a major part of their estate the instant they fill in the "Box," because the "Box" does not enable them to leave instructions.

Frequently inadvertent beneficiaries are named in the "Box."

When your circumstances alter and you forget to change a beneficiary designation, the wrong person may end up receiving the proceeds.

The "Box" won't protect your spouse.

It won't protect your spouse from unscrupulous acquaintances or from a guardianship if your spouse becomes disabled. And it won't protect your spouse from losing his or her inheritance as a result of an unsuccessful later marriage.

The "Box" won't protect and care for little ones.

Minor children can't own property. Proceeds left directly to them will be controlled by the probate court. Each child's inheritance will stay under the court's supervision until the child reaches adulthood.

Equal distributions from the "Box" can cause unequal results.

There is nothing so unequal as the equal treatment of unequals. You can love your children equally, but they often don't have equal needs.

The "Box" doesn't protect adult children.

Age does not necessarily give a person wisdom, experience does. Instant, uncontrolled wealth can change people. With the "Box," there is little opportunity to ease adult children into their inheritance.

All too often the proceeds may end up in the hands of a child's creditors or ex-spouse.

There is no control with the "Box."

Like wills and jointly held property, planning with the "Box" does not meet the goals of proper estate planning. If your life insurance proceeds, retirement benefits, or any other property requiring a beneficiary designation, are controlled by the Box, you can't provide for your disability, give your property to whom you want, the way you want and when you want, and you can't save every last tax dollar possible.

There is no federal estate tax planning.

Planning with the "Box," simple wills that leave property directly to a spouse, and owning property in joint tenancy with right of survivorship, accomplish absolutely no federal estate tax planning.

Now, you might be saying to yourself, "I don't need to have any estate tax planning. That's only for rich people." Or you may be saying to yourself, "I don't need to worry about estate tax planning. I can leave everything to my spouse tax free and don't need to do any planning."

These notions are entirely wrong!

The federal estate tax is an everything tax. Uncle Sam even taxes the face value of life insurance and retirement benefits! His tax, effective January 1, 2011 is 55 percent and Congress can increase or decrease that tax at its discretion.

There are two major exceptions to the federal estate tax. First, it allows an unlimited marital deduction. This means that if you are married and your spouse is a United States citizen, you can leave your entire estate to your spouse and your spouse won't have to pay a penny of tax on it. Of course, when your spouse passes away, your loved ones pay taxes on all of the estate. Well, not quite all.

The second exception is that every person is allowed a tax-free exemption for property left to loved ones other than a spouse. However, as with the federal estate tax rate, Congress can increase or decrease the deduction in its discretion. Effective January 1, 2011 the exemption will be $1,000,000.

PITFALLS OF BARE -BONES LIVING TRUSTS

Now, let's briefly discuss a final traditional planning alternative that is being used more and more by estate planners — bare-bones living trusts.

Many estate planners and clients use bare-bones living trusts for achieving basic federal estate tax planning and avoiding probate. These bare-bones documents have two major problems.

They often do not avoid probate.

Bare-bones living trusts are capable of avoiding probate, but often don't because their makers have not transferred their property into their trusts.

Bare-bones living trusts don't leave meaningful instructions for loved ones.

Bare-bones living trusts don't leave meaningful instructions for loved ones. They seldom share the hopes, fears, dreams, values and ambitions of their makers. They are sterile documents, written in legalese, that accomplish limited objectives.

As unbelievable as it may seem, most of us leave far more baby-sitter instructions for our children than we will ever leave estate planning instructions for them.

FUNDED
LIVING TRUST PLANNING

A funded Living Trust is a revocable living trust that is much more than a bare-bones living trust.

But, how does a funded living trust differ from a bare-bones living trust?

> *From the outside two neighborhood houses look identical. Each is a duplicate of the other. However, their interiors are as different as night and day.*
>
> *The first has an unfinished interest; light-bulbs hang on bare wires from its ceilings. The floor is plywood, the windows have no drapes. The fireplace is cold and empty.*
>
> *The second house is fully finished. It is bright and cheery. Its walls are filled with family photographs, and its rooms are filled with furniture and family mementos. The fireplace is blazing and the dining room table is set for special company.*

Even though these houses look identical from the outside, they are as different as night and day. The differences between them are not unlike the differences between a bare-bones living trust and a funded Living Trust. Living Trust planning — more than

anything else — emphasizes the hopes, fears, dreams, values and ambitions that we have for ourselves and our loved ones. It takes a funded living trust format and puts loving instructions into it. Unfortunately, these loving instructions are almost always missing in the ordinary approaches to planning. Living Trust planning allows people to fund their trusts so that probate can be avoided. It satisfies our definition of estate planning.

A Living Trust is drafted by our firm and we will work closely with your other professional advisers to make sure that all of your goals are properly implemented.

A Living Trust avoids traditional estate planning problems.

- Wills guarantee probate. *A funded Living Trust avoids it.*
- Wills cannot plan for disability. *A funded Living Trust does.*
- Wills are public. *A funded Living Trust is private and confidential.*
- Wills are easy for disgruntled heirs to attack. *A funded Living Trust is difficult to attack.*
- Wills do not cross state lines easily. *A funded Living Trust is good in every state and crosses state lines easily.*
- Joint ownership property and proceeds left directly by the "Box" cannot be controlled. *Living Trust property is always controlled by the instructions of the trustmaker.*
- Bare-bones living trusts have no loving instructions. *A funded Living Trust is full of loving instructions and guidelines.*
- Most people do little or no federal estate tax planning under the current tax code. In 2010 there is no federal estate tax. However, in 2011, the federal estate tax returns. Living Trust planning assures up to $2,000,000, or double the amount of the individual federal estate tax credit, will pass to loved ones tax-free after both spouses are gone.

A funded Living Trust is a special type of revocable living trust that contains your instructions for your own care and that of your loved ones. These instructions distinguish our funded Living Trusts from the run-of-the-mill living trusts that do not avoid probate and do not provide adequate care for your beneficiaries.

- **A Funded Living Trust is Easy to Create**
  With our help and the help ofother professional advisers, you can quickly

and comfortably establish a funded Living Trust for yourself and your loved ones.

- **A Funded Living Trust is Easy to Change**
  Your funded living trust can be changed or canceled at any time.

- **A Funded Living Trust Allows You to Maintain Control of Your Property**
  Your funded Living Trust becomes the "owner" of your property. As the maker, trustee, and primary beneficiary of your funded Living Trust you control every aspect of how your property is to be used.

- **A Living Trust Allows you to Easily Appoint Trustees**
  Both you and your spouse can be its original trustees. You can specify trustees to take care of you in case of disability and your loved ones after your death. You can name as many or as few trustees as you like. You can provide instructions on how they may be terminated or replaced.

- **A Living Trust Must be Written by an Attorney**
  The Living Trust process absolutely requires that you retain our services to work closely with you and your other advisers in coordinating your over-all planning efforts.

- **A Living Trust Must Have Your Loving Instructions**
  A Living Trust is a fully funded revocable living trust that is fleshed out and made alive by your loving instructions. It emphasizes caring for loved ones and follows your wishes rather than sterile, legal boilerplate forms.

- **A Funded Living Trust Meets Every Estate Planning Goal**
  A funded Living Trust meets every goal of the definition of estate planning. It allows you to plan for your disability and give what you have to whom you want, the way you want and when you want; it allows you to save federal estate tax, professional fees and court costs. It allows you to keep total control of your affairs.

A Funded Living Trust Is The Essence Of Estate Planning

QUESTIONS
ABOUT LIVING TRUSTS

Listed are some commonly asked questions about the complexities of establishing a Living Trust.

How do I begin the Living Trust Process?

Please contact our office to make an initial appointment to speak with an attorney, during which you may discuss your estate planning goals. We will work closely with your insurance agent, financial planner, stockbroker, accountant, or other advisers to coordinate your over-all planning efforts.

What are beneficiaries?

Beneficiaries are the loved ones selected by you who benefit from your estate.

What are trustees?

Trustees are the administrators of your trust; they are required, by law, to follow your instructions explicitly. While you are living, you will probably want to name yourself and your spouse as your primary trustees. This means that all your trust property will be under your direct control. There will be absolutely no constraints on your management of your financial affairs. You will continue to pay your bills, collect your income, buy and sell assets, and file your tax returns just as you did before the creation of your Living Trust.

Upon your death or disability, successor trustees must take over all these tasks. You will want to appoint individuals who are well suited for performing the tasks of caring for you, your loved ones, and your property according to your Living Trust instructions. Your estate planning advisers can help you sort through the complexities of these decisions.

Can I name trustees and beneficiaries who live out of state?

Yes. There is no limitation as to where your trustees or beneficiaries must reside.

Is a Living Trust only for the rich?

No. A Living Trust can help anyone who wants to protect his or her family from unnecessary probate fees, attorney's fees, and federal estate taxes.

Is a Living Trust a good idea for a single person?

Yes. Whether you are widowed, divorced, or unmarried, a Living Trust can avoid probate and contains your instructions for your own care and that of your loved ones.

Is a Living Trust just a tax loophole that the government will eventually prohibit?

No. The principles of the Living Trust have been authorized by the law for centuries.

Is handling assets difficult with a Living Trust?

No. At the time of creation of your Trust, we will make a funding recommendation to you, based on your specific goals. Typically, the title of each asset is transferred into the name of your Living Trust For retirement assets and life insurance policies, the Living Trust is named as the beneficiary. You will continue to file your income taxes in the same manner as previously and can continue to sell assets in the same way you currently do.

Are there special problems involved in transferring property to my Living Trust?

No. Your Living Trust is a private document that does not need to be recorded when property is transferred into it.

However, if you own any interest in real estate, the new deeds showing Living Trust ownership need to be recorded. Transfers of real estate into a Living Trust have no effect on your property taxes.

If you are only a part owner of property, you can transfer your share into your Living Trust without changing the shares owned by others. Separate property assets retain their separate property character while in your Living Trust. If there is a divorce or dissolution of marriage, all the assets come out of your Living Trust in the same way they went in: Community property is divided between the parties and separate property is returned to the party who originally owned it.

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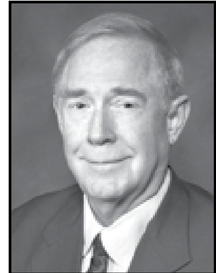
About **The Authors**

In their more than thirty years of legal service, attorneys David Resch and William Root have upheld the firm's commitment to provide informative advice, client-centered guidance, and professional estate planning assistance.

F. David Resch



F. David Resch is a principal of Resch and Root, Attorneys and Counselors at Law. His law practice is limited to the areas of Estate Planning, Charitable Gift Planning, Business Planning, And Real Estate Law.

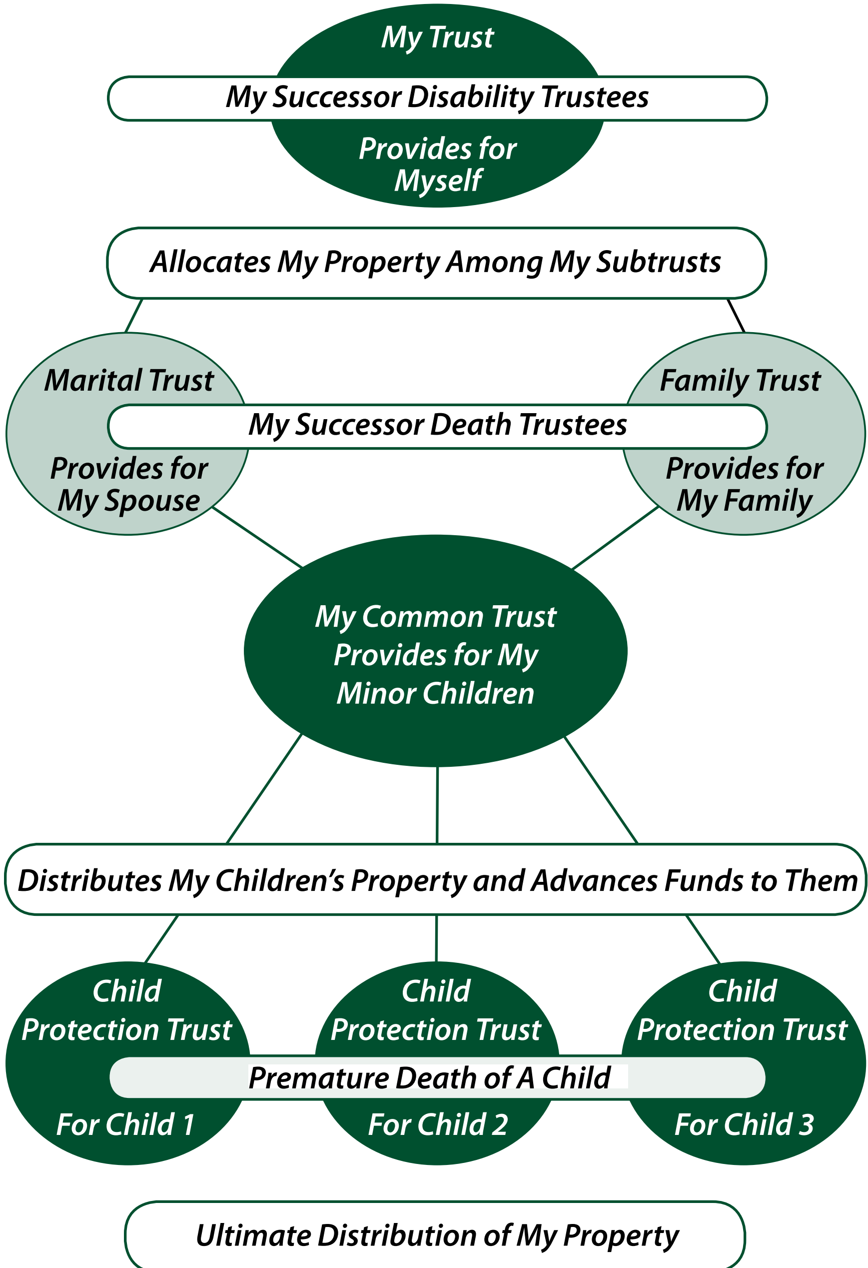
David is a Fellow of the Esperti Peterson Institute and he is on the faculty of the Ohio Institute of Estate Planning. He is a member of the Columbus Bar Association, the Ohio Bar Association, Wealth Counsel, a National Association Of Estate Planning Attorneys, and the Ohio Network of Estate Planning Attorneys. He is a frequent speaker at both public and private seminars, speaking on Wills, Trusts, Probate, Charitable Gift and Estate Planning, and Business Continuity Planning. He is a contributing author to LEGACY Plan, Protect & Preserve Your Estate, co-authored by Robert Esperti and Renno Peterson, and GENERATIONS: Planning Your Legacy.

William K. Root

William K. Root is a partner of the firm and limits his practice to estate and wealth strategies planning for individuals and closely held businesses. As a parent of a special needs child, he is also dedicated to planning for families with special needs.

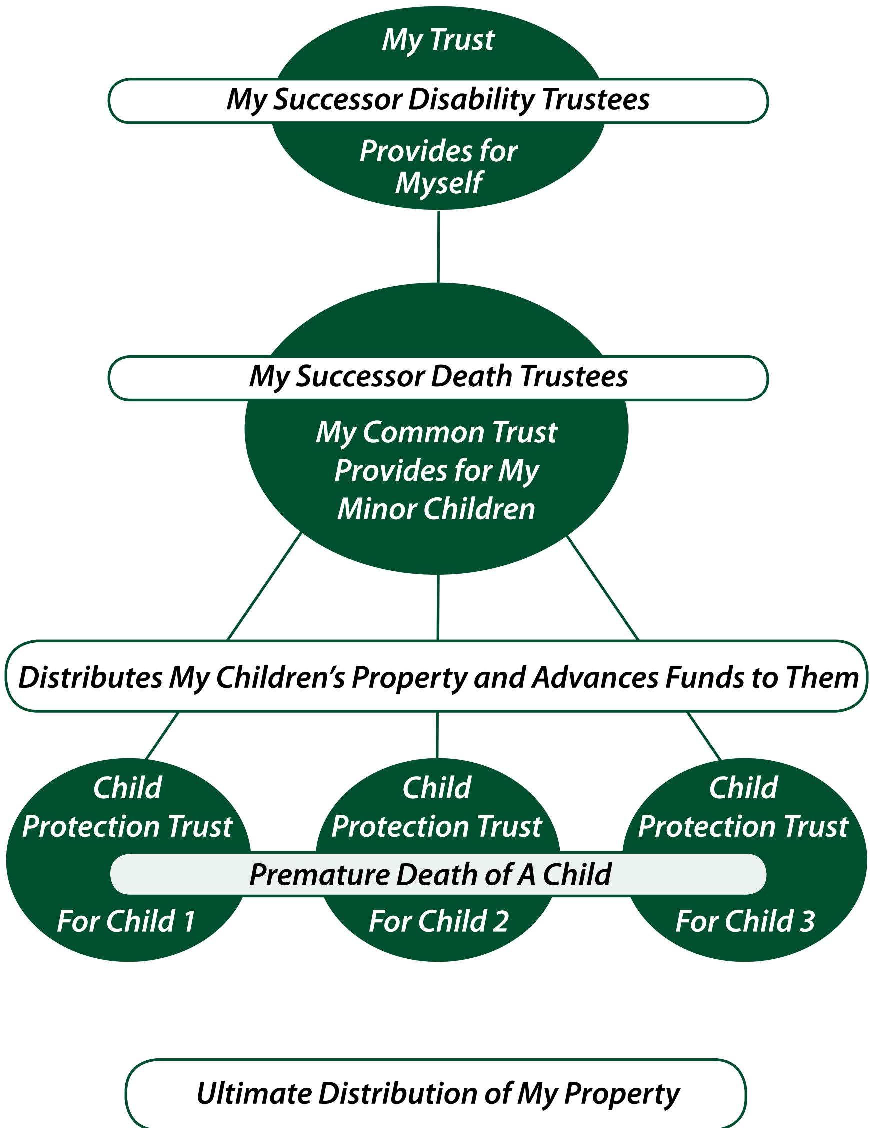
Bill Root is a fellow of the Esperti Peterson Institute and has completed its Masters Program in Advanced Estate Planning. He also teaches estate and retirement planning to students in the Family Financial Management Program in the College of Education and Human Ecology at The Ohio State University. Bill frequently speaks at programs and conferences for professionals in estate planning.

My Living Trust If I Am Married



My Living Trust Diagram If I Am Married (Resch and Root, LLC)

My Living Trust If I Am Single



My Living Trust Diagram If I Am Unmarried (Resch and Root, LLC)

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