

ESTATE PLANNING ESSENTIALS

YORKHOWELL
& GUYMON

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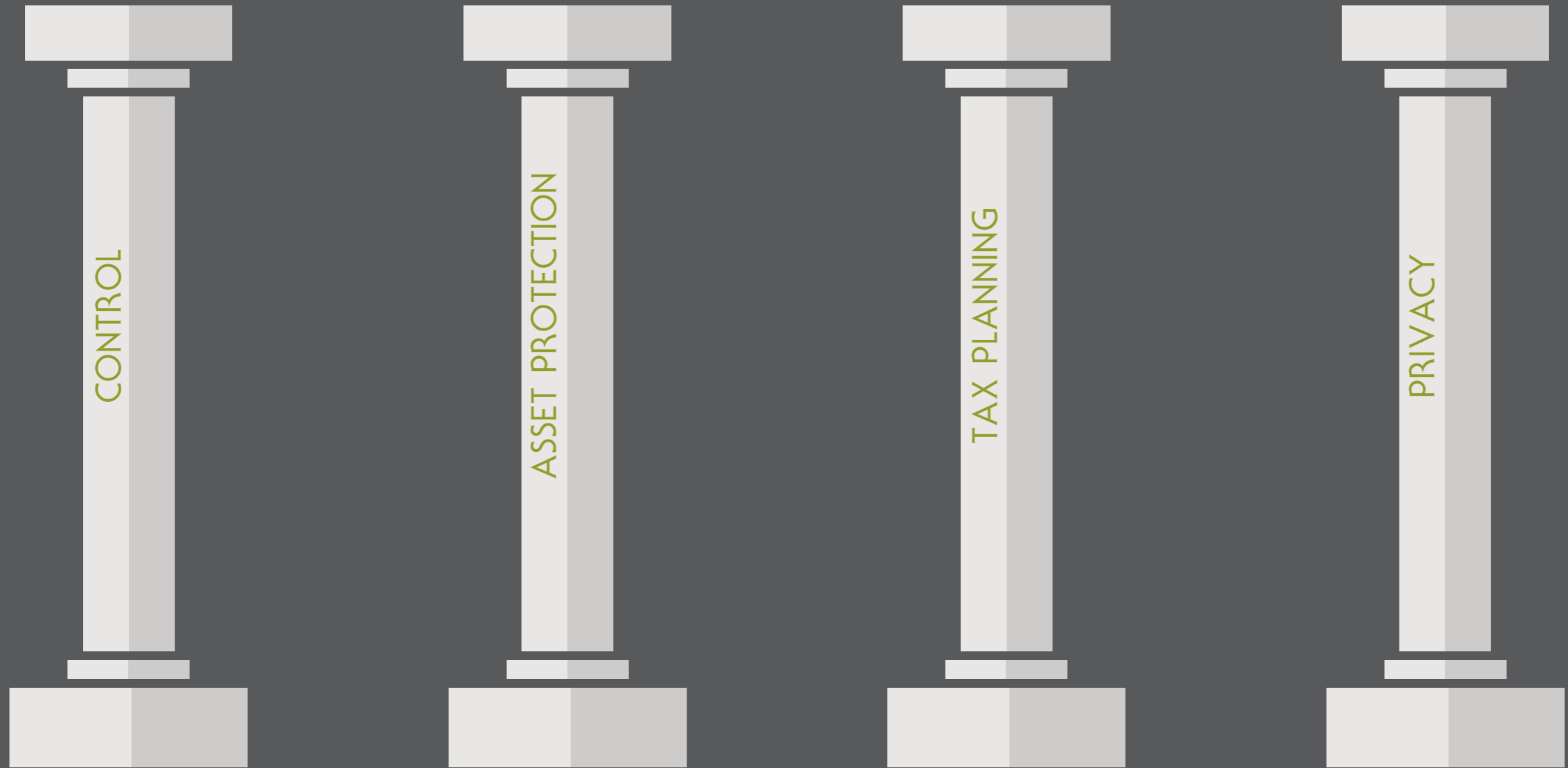
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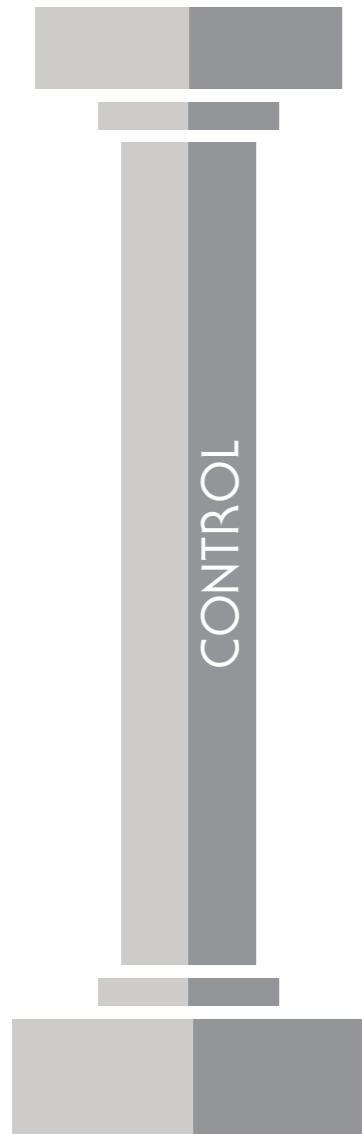
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THE WHY OF ESTATE PLANNING THE FOUR PILLARS





A properly drafted estate plan allows you to ensure that your estate goes to whom you want, when you want, and the way you want. In addition, you want a plan that can be updated over time to deal with changing circumstances and needs.

Among the questions you need to decide are:

If something happens to you, who do you want making medical and financial decisions for you?

If you were to die, who do you want to raise your minor children?

Who do you want to manage money for them until they are old enough, and when is old enough?

If you don't have children, who do you want to receive your assets in the event of your death?

Do you have special circumstances that need to be addressed (special needs children, unique assets, charitable giving desires, etc.)?



The term asset protection often means different things to different people. To some people, asset protection means trying to hide assets or avoid legitimate debts and obligations. To others, asset protection means attempting to set aside or protect certain assets from the risks associated with other unrelated business activities or ventures.

The most effective asset protection simply involves a variety of planning techniques designed to place assets outside of the reach of potential future, unknown creditors. This is most often accomplished by the compartmentalization of risk and the strategic ownership of assets. The best asset protection strategy can be fully disclosed and yet still fully effective. Asset protection is not attempting to hide assets or misrepresent the truth of the particular situation.

The two primary factors to consider when doing asset protection planning are the following:

- 1. The type and nature of your assets.** Many assets provide “natural” asset protection. For example, qualified plan assets such as 401Ks, 403Bs, IRAs, and Roth IRAs are protected under both Federal and State law. In addition, life insurance policies are also afforded a certain amount of State law protection. Other assets, however, can be more difficult to protect and State law has a tremendous effect on the level of protection afforded to your assets.
- 2. The type and source of your risks.** Risks typically come in two forms. The first is asset based risk – risk that someone has as a result of the assets that you own. Through the use of corporations and limited liability companies, we can try to compartmentalize those potential risks from other assets. The second is direct risk – risk that comes from personal and professional activities. We can help implement a variety of different strategies to deal with this type of risk, from fairly basic to the most advanced and sophisticated.

Any discussion of taxes needs to be very specific because Americans pay many direct as well as disguised taxes. One article recently identified 97 different types of fees and taxes that Americans pay. When it comes to estate planning, there are five primary types of taxes that we can help you address:

- 1. Federal Estate Tax.** The Federal Estate Tax is a tax on assets owned by an individual at death over a certain amount. The amount of the tax and the exemption that can be used against the tax has been in a constant state of flux since the latest iteration of the Federal Estate Tax was introduced in 1916.
- 2. Federal Gift Tax.** Introduced in 1934 as a means of restricting the transfer of funds that would otherwise be subject to the Federal Estate Tax, the Federal Gift Tax is a tax on the gratuitous transfer of funds from one person to another during life. The tax rate mirrors the Federal Estate Tax rate and, in addition to an annual exclusion from the tax, an individual can use part of the Estate Tax exclusion amount against lifetime gifts.
- 3. Federal Generation Skipping Transfer Tax.** This tax, introduced in 1986, is a tax imposed on the transfer of assets, either at death or during life, to an individual who is more than one generation removed from the donor. This tax is in addition to the applicable Estate or Gift Tax. The compounding of the Estate Tax and Generation Skipping Transfer Tax can be as high as ninety percent (90%) of the amount of the assets transferred. It is intended to ensure that tax is imposed on the transfer of assets to each generation and that the applicable Estate or Gift tax is not “skipped”.
- 4. State Estate or Inheritance Taxes.** In addition to the Federal Estate Tax, several States have an additional Estate or Inheritance Tax. An Inheritance Tax is a tax on the recipient of a transfer of assets on death, as opposed to an Estate Tax that is a tax on the Estate (or effectively on the donor).
- 5. Capital Gains Tax.** This is a tax on the difference between the purchase price of an asset (the basis) and the sales price. In general, when an individual dies the assets that are subject to Estate Tax receive a step-up in basis to avoid the otherwise potential double taxation of an appreciated asset that is sold after death. Some assets, most notably retirement plan assets, do not receive a step-up in basis at death.



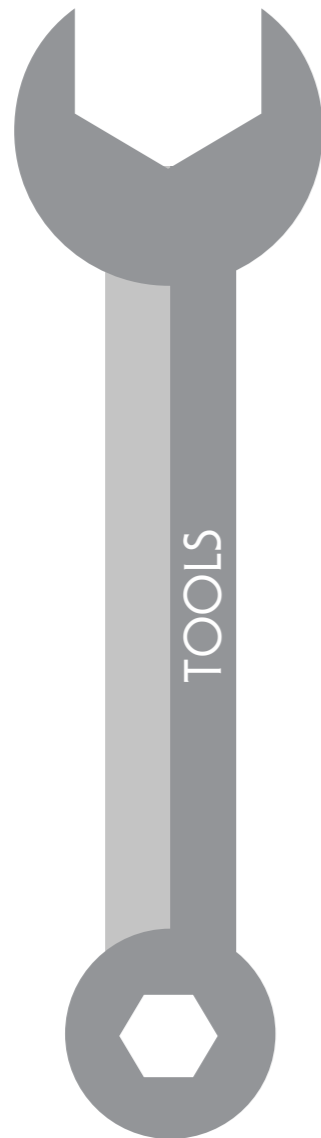
Probate is the court supervised process of changing title to assets. Probate filings are all public record, meaning that all your personal information is available to anyone who wants to look at it. This information would include details on your family, their addresses, your assets, and how you plan on dividing those assets.

By utilizing a revocable living trust and properly funding it during your life, you can avoid probate all together and avoid having to publicly disclose any of that information. Trusts are private documents and are not subject to public filings. In addition, you can save your heirs legal fees, taxes and time in settling your affairs.

By planning ahead with trusts instead of wills, you may able to accelerate the settlement process and avoid a lengthy estate proceeding. The costs savings are multiplied if you have property in more than one State, because you may otherwise have to file multiple probates.

THE WHAT OF ESTATE PLANNING THE TOOLS





MEDICAL POWER OF ATTORNEY

Pillars: Control & Privacy

This document appoints an Agent (and Successor Agents) to make medical decisions on your behalf if you ever cannot make your own current medical decisions.

Your healthcare agent will make healthcare related decisions on your behalf during your lifetime if you are unable to make decisions for yourself.

LIVING WILL

Pillar: Control

This document allows you to express your wishes with respect to end of life decisions and who you want making those decisions for you if you cannot make them yourself.

FINANCIAL POWER OF ATTORNEY

Pillars: Control and Privacy

This document appoints an Agent (and Successor Agents) to make financial decisions on your behalf during your lifetime. These can be powerful documents and you should only give Powers of Attorney to individuals that you absolutely trust. They can be designed to only be effective during periods of disability and/or only for specific purposes.

Your financial agent will make financial related decisions on your behalf.

POUR-OVER WILL

Pillar: Control

This document allows you to appoint Guardians for any minor children and Personal Representatives to handle your financial affairs (i.e., file final tax returns, pay last illness expenses, and direct any assets you own at death that are not already owned by your revocable trust to the trust).

REVOCABLE LIVING TRUSTS

Pillars: Control, Asset Protection, Tax Planning & Privacy

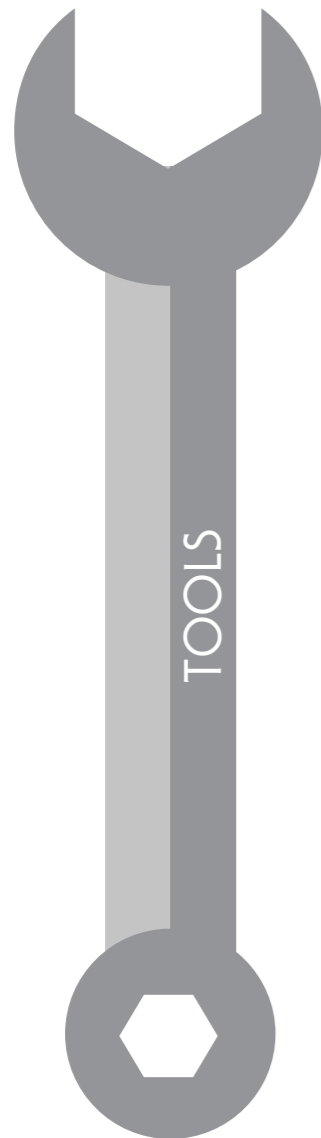
Trusts have been used for hundreds of years to effectively hold, manage, and protect assets. Trusts are the only type of entity that can engage in business and own property without any type of public filing. Trusts are established by one or more individuals called Settlers who determine the terms and conditions in which the Trustees hold and manage assets for the benefit of the Beneficiaries of the Trust. Trusts divide the assets they hold into three separate components:

Control – The control of assets owned by a trust is given to the Trustee(s) of the Trust (described in more detail below). They are responsible for the investment, management, and distribution of the assets of the Trust to the Beneficiaries pursuant to the terms of the Trust.

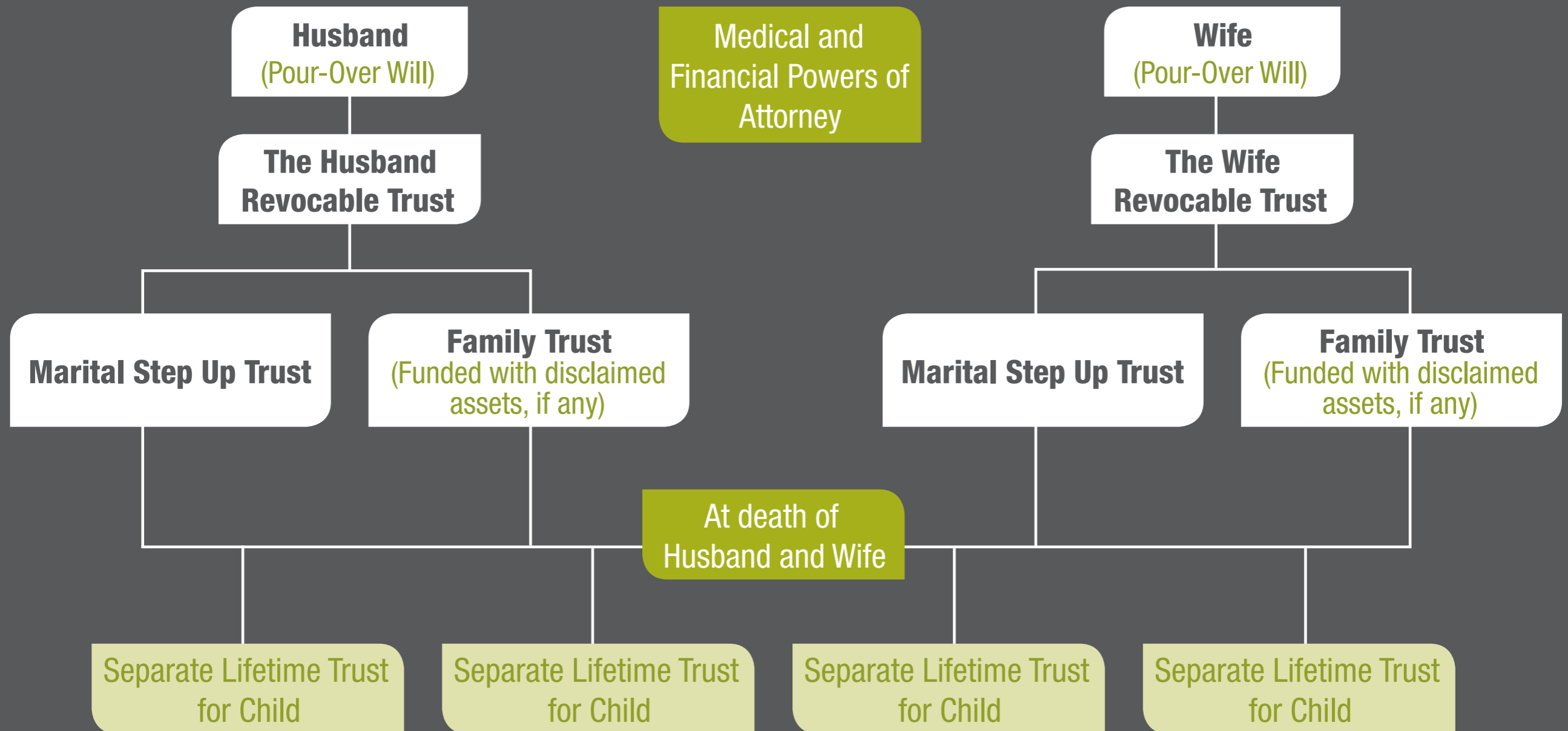
Use – The Beneficiaries have the ability to the use of the assets of the Trust as determined by the Trustees. A Trust can own real property, business interests, marketable securities, and even vehicles and allow the Beneficiaries of the trust the right to use and enjoy those assets.

Ownership – Although the Trustees manage and control the assets and the Beneficiaries have the ability to use and enjoy the assets, the Trust itself is the legal owner of the assets. This means that properly structured Trusts can hold and manage assets for the benefit of Beneficiaries without the assets of the Trust being subject to the claims of potential creditors of either the Beneficiaries or the Trustees.

Revocable Living Trusts are used to allow you to establish a succession of control, protect assets for beneficiaries on your death, minimize potential taxes, and maintain privacy by avoiding probate.



ESTATE PLANNING STRUCTURE



MARITAL STEP UP TRUST AND FAMILY TRUST

Pillar: Tax Planning

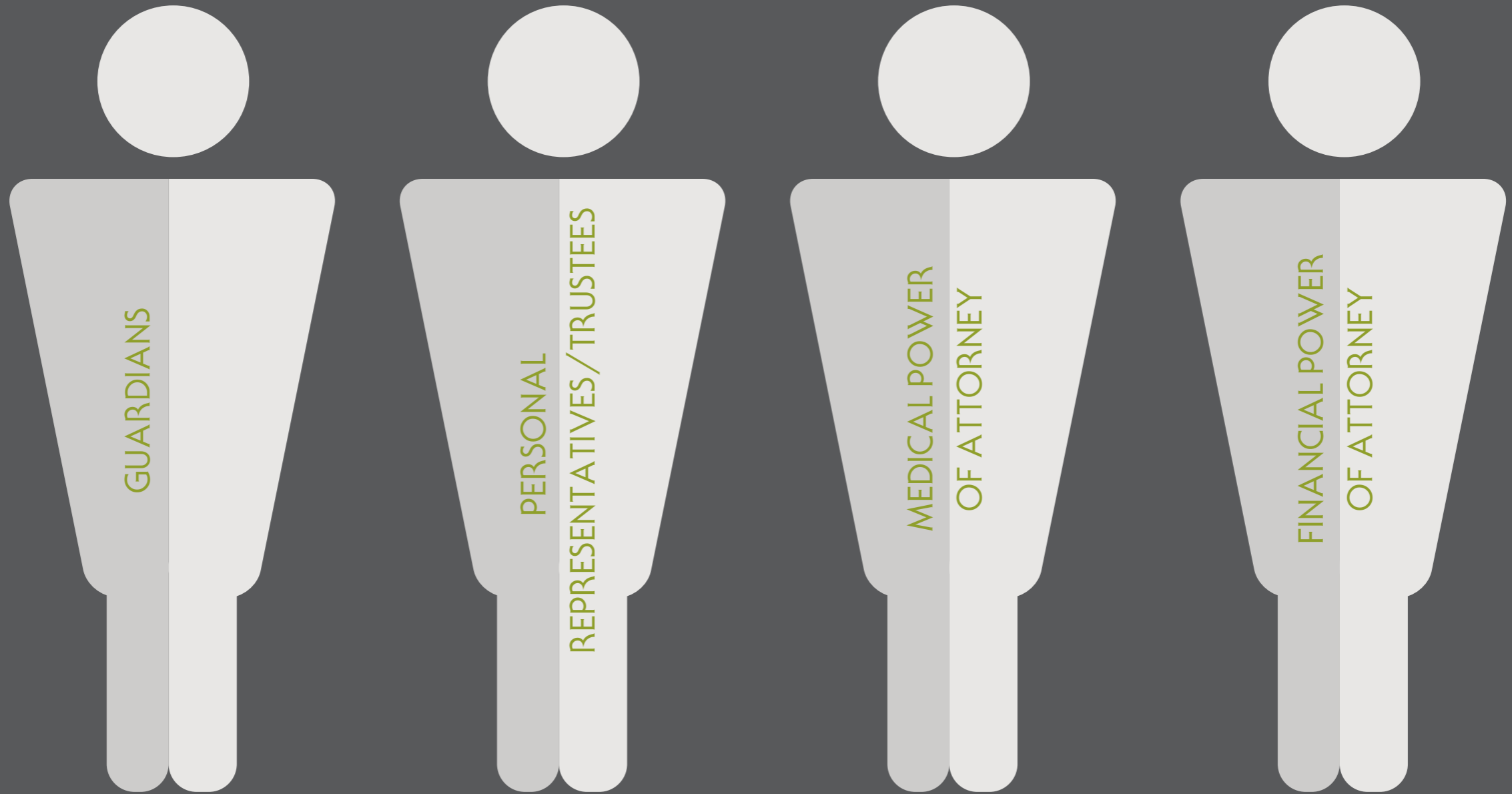
Upon the death of a spouse, the Revocable Trust typically holds the assets pursuant to one of two trusts built right into the Revocable Trusts: the Marital Step Up Trust or the Family trust. These trusts are used to minimize any potential taxes (estate, generations skipping, and capital gains taxes) while still providing for the surviving spouse. They are designed to be as overall tax efficient as possible.

SEPARATE LIFETIME TRUSTS

Pillars: Control and Asset Protection

We also recommend that instead of distributing your assets directly to your heirs at your death that you provide that upon death (and the death of your spouse if married), all assets going to your heirs be held in lifetime trusts for their benefit. Lifetime trusts serve two primary purposes. First, they can be drafted to utilize each of your generation-skipping transfer tax exemption, which maximizes the amount of funds that would go to your heirs' children without being subject to estate tax at your heirs' death. In essence, we could keep a portion of the assets of the trust out of your heirs' estates for estate tax purposes and "skip" them directly to the next generation. Second, because the trust is created and funded by you and not your heirs, the assets of the trust would be protected from the claims of any of their potential creditors, or even potential ex-spouses. This is so even though the trust could be drafted to allow your heirs to be the trustees of their own separate trusts and manage them for their own benefit.

THE WHO OF ESTATE PLANNING FIDUCIARIES



THE WHO OF ESTATE PLANNING – FIDUCIARIES

Guardians (for minor and/or disabled children)

These individuals would be responsible for raising your minor children (children under 18) as well as any disabled children. Guardians would not be responsible for the assets you leave your children, unless they are also named as the Trustees. They would be responsible for educational, housing and medical decisions.

Personal Representatives/Trustees

As Personal Representative, the people you name would be responsible for paying your last illness and burial expenses, probating any assets that you own outside of a Trust, and ensuring the appointment of the guardians and conservators of your minor children, if any. They were formally known as the “executors” of an estate. As Trustee, the people you name would be responsible for the management and investment of all Trust assets, including determining the amount and frequency of distribution to the beneficiaries of the Trust.

Medical Power of Attorney

If you were physically unable to make medical decisions on your own behalf during your lifetime, who would you want to make those decisions for you?

Financial Power of Attorney

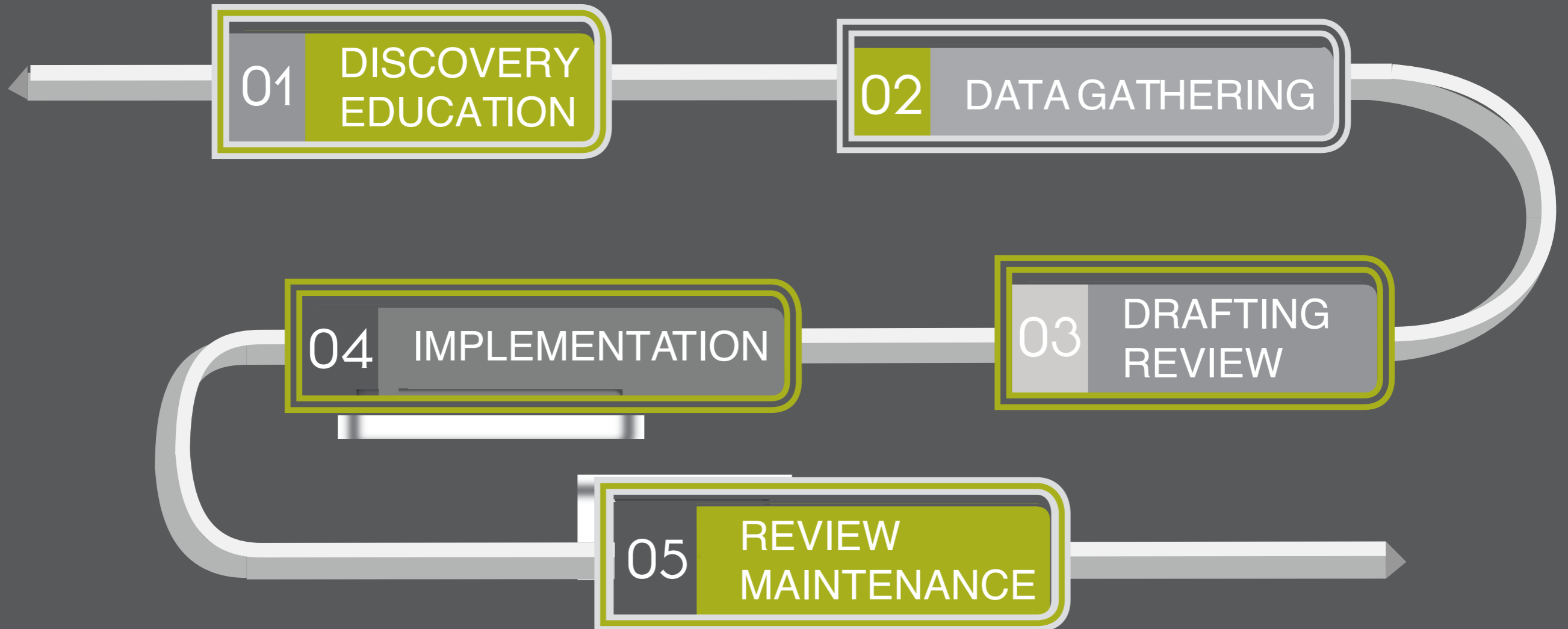
Is there anyone you want to empower to make financial decisions on your behalf? (Note: A Financial Power of Attorney is a very powerful document and should only be given to individuals you have absolute confidence in, but is very beneficial if you were out of town or were disabled and could not make such current decisions.)

OTHER CONSIDERATIONS

It is also important that a comprehensive estate plan also address the following:

- 1. Tangible Personal Property** - This includes property such as jewelry, heirlooms, artwork, firearms, vehicles, and furniture. Often times, this property carries with it significant sentimental value to your family and, if not handled properly, can sometimes cause conflicts or disputes. It is important that you clearly communicate your wishes with respect to how you want your tangible personal property distributed such as a specific list of the items beneficiaries or outlining a process for the family to follow in allocating these items among each other.
- 2. Funeral and Burial Requests** - It is also important that your family and loved ones know your specific funeral and burial requests and instructions. Leaving detailed information with respect to these matters not only can help to ensure that your wishes are effectuated, but can also alleviate stress and concern on the part of your family as they attempt to make those decisions.

THE PROCESS OF ESTATE PLANNING



DISCOVERY AND EDUCATION

Your family, assets, and circumstances are unique, which means that your estate plan should be unique as well. The best estate plan is one that is based on your specific situation and one which advances your goals, values, and beliefs.

That said, every estate plan we design is built on four basic pillars:

Control, Asset Protection, Tax Planning, and Privacy.

At York Howell & Guymon, we will first start by getting to know you and educate you on the issues you face and then explain options available to you.

DATA GATHERING

Once we've gotten to know you and your specific situation, then we will work together to gather all of the information we would need to design and implement a plan which is tailored to you and designed to assist you with your specific goals and objectives.

We will do this by completing a Confidential Data Sheet which will gather the following information:

1. Details on your family/heirs and how you want to leave assets
2. Selection of the people that will implement your wishes (i.e., guardians, trustees, medical and financial powers of attorney)
3. Summary of your assets and current titling

DRAFTING AND REVIEW

Once we have identified your goals, values and objectives and gather all of the necessary information, we will draft documents to review with you. The documents will take into account your specific situation, assets, and objectives.

We will then walk you through all of the documents and review how they address Control, Asset Protection, Tax Planning, and Privacy.

IMPLEMENTATION

Ensuring that your assets are properly titled and/or have appropriate beneficiary designations is critical to ensure that your plan is fully effective and probate can be avoided. Once you have reviewed all of your documents and we have answered any questions that you have, we will assist you in properly executing all of the documents.

We will retain electronic copies of all of your documents and can provide you with a USB of your documents as well as an encrypted portal which would allow you to access your documents online.

We will then assist you in funding your plan by helping you re-title your assets to properly fund your Trust.

REVIEW AND MAINTENANCE

For an estate plan to remain effective, it is important to properly review and maintain your plan.

York Howell & Guymon provides an Annual Maintenance Program which gives you the peace of mind to know that we will review all of your planning with you on at least an annual basis to ensure your plan takes into account your different life circumstances, evolving assets, and ever changing laws.

NOTES

This booklet is intended for general information and is not intended as legal advice or as a substitute for specific legal advice based upon all of your particular facts and circumstances.

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