



Four Biggest Risks

Learn what they are.

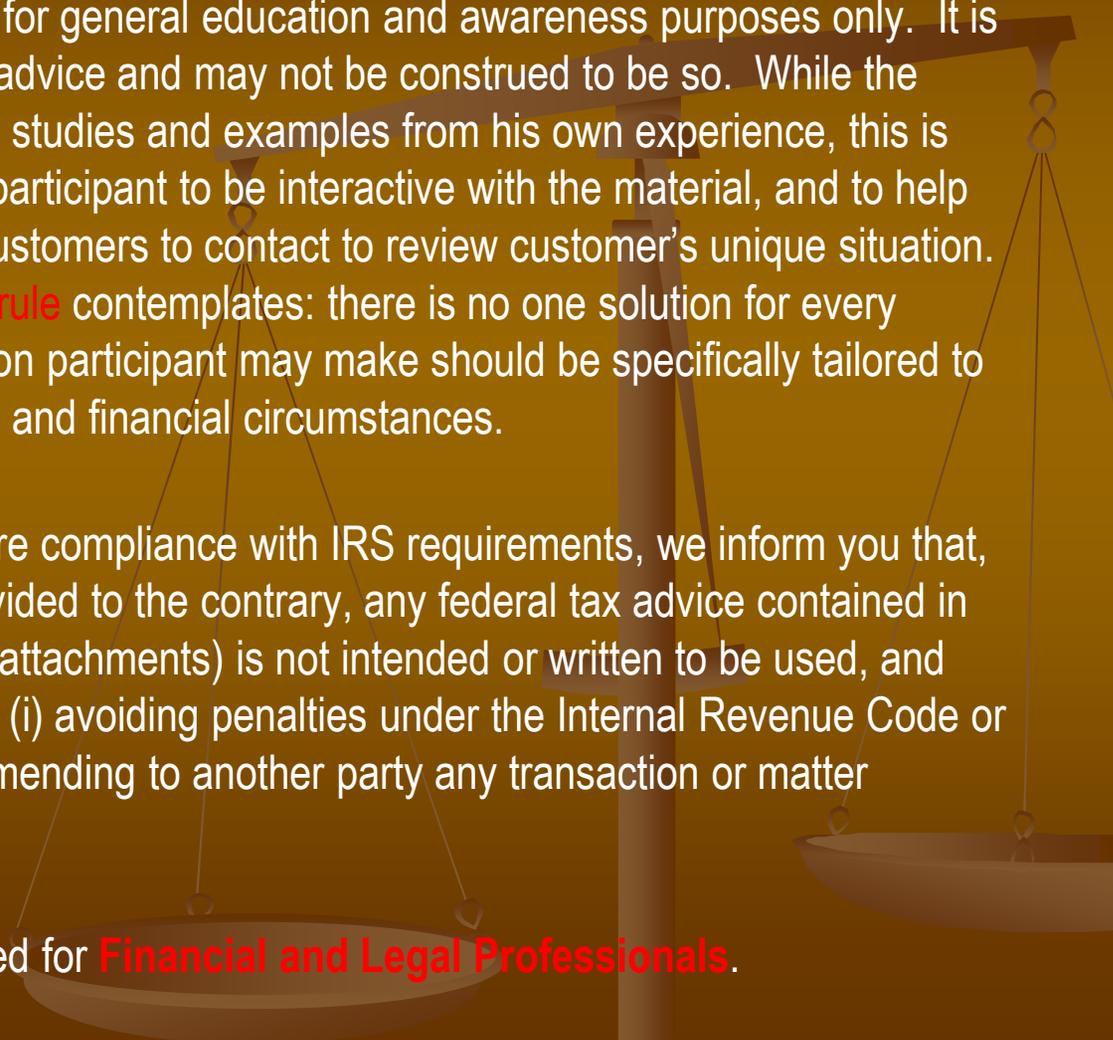
How they could ***RUIN*** your practice.

And what to do about it.

Czuchry Law Firm, LLC

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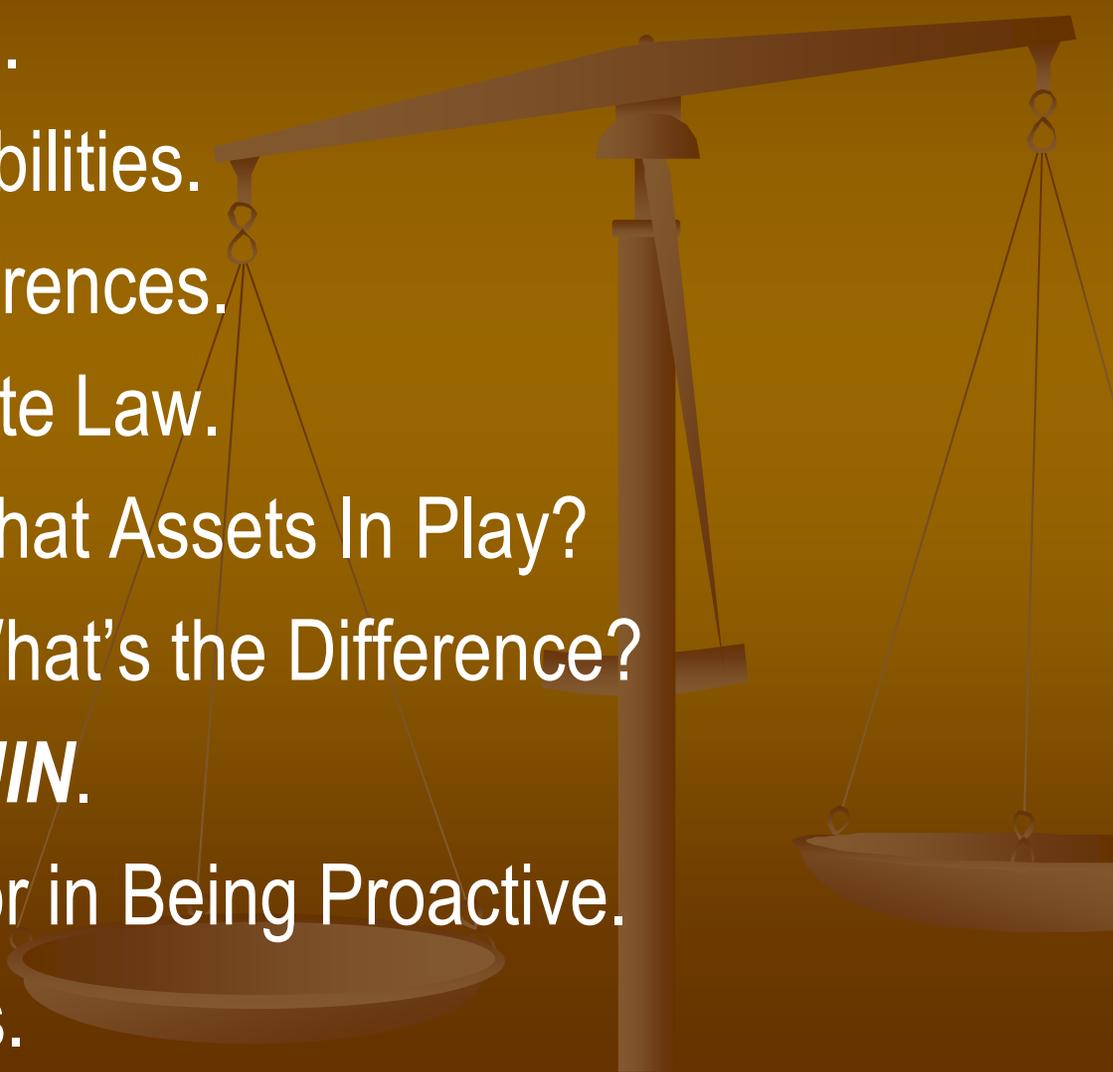


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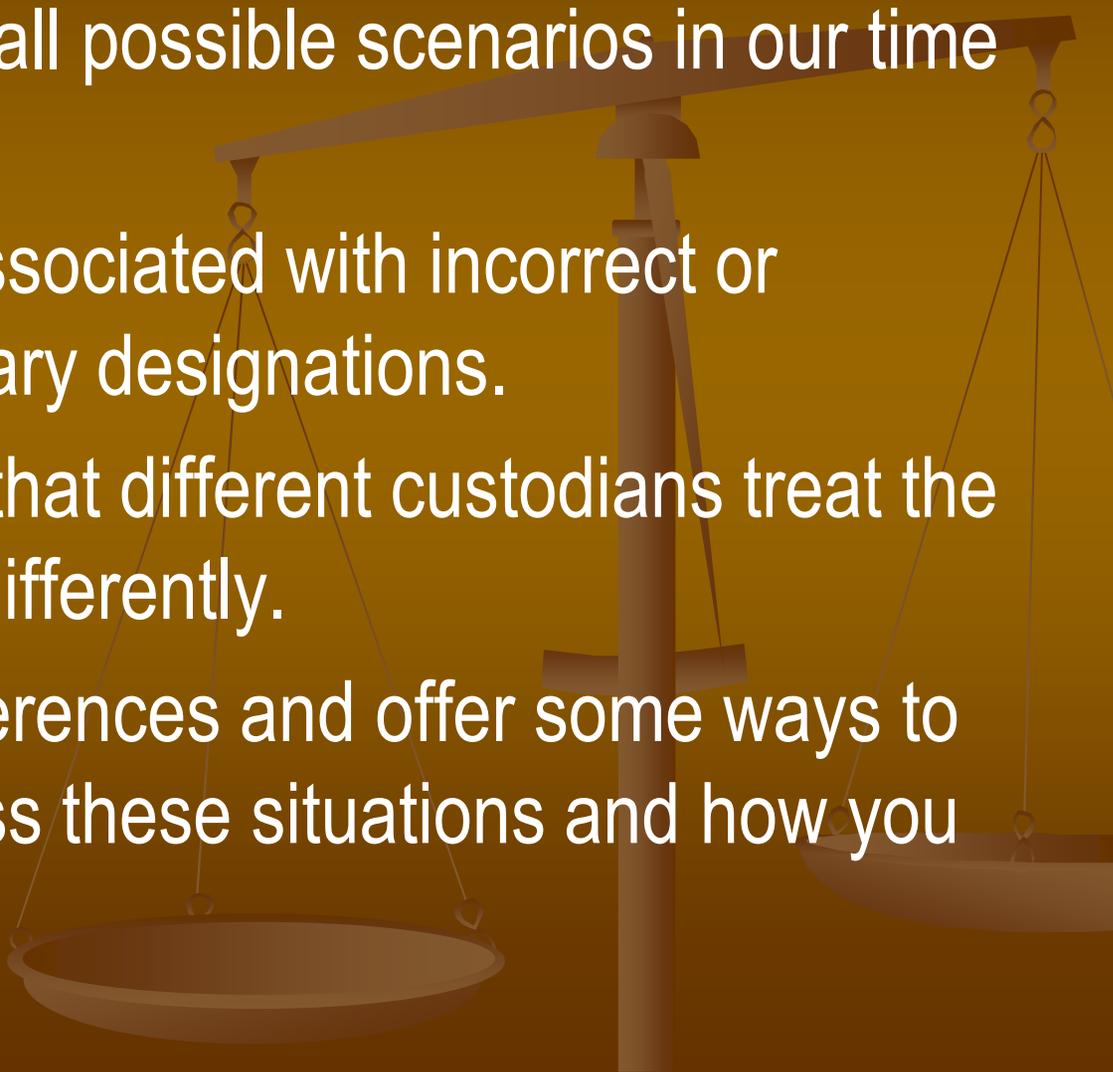
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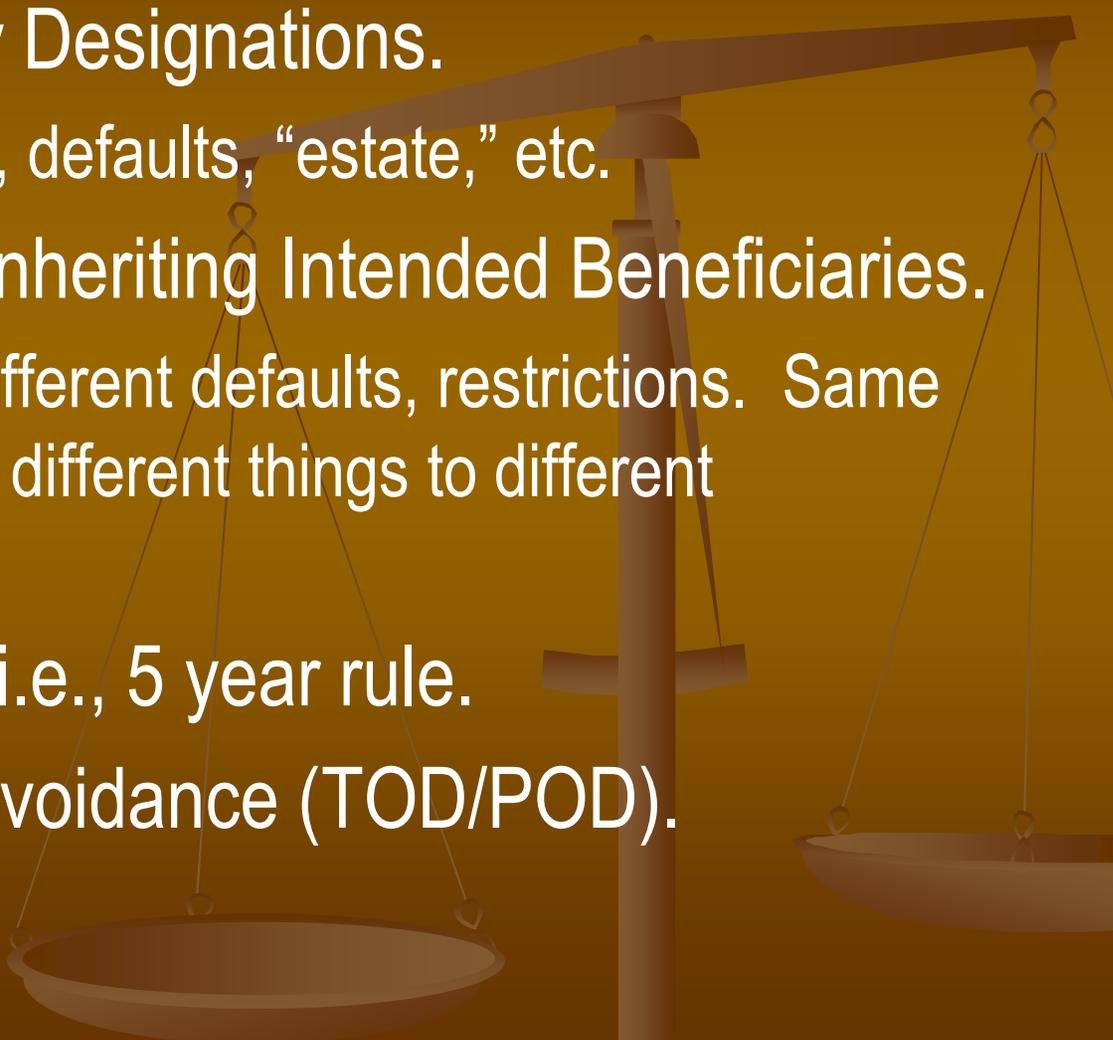
Overview

- ***RUIN*** Introduction.
 - Adviser Responsibilities.
 - Defaults and Differences.
 - Minnesota Intestate Law.
 - ***RUIN*** in Detail: What Assets In Play?
 - Advisor v. Rep: What's the Difference?
 - Fixes to Avoid ***RUIN***.
 - Benefits to Advisor in Being Proactive.
 - Application/Hypos.
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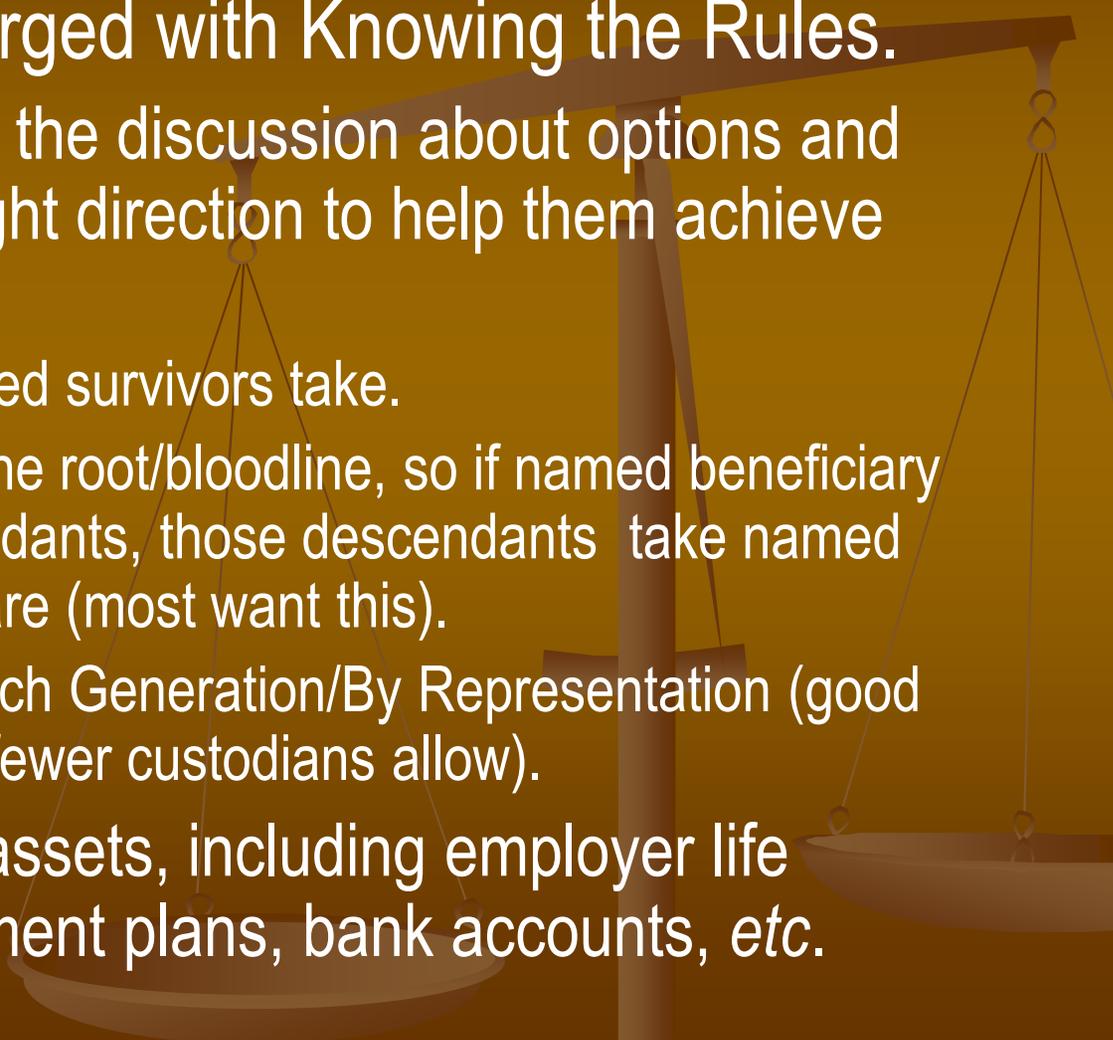
Goals/Objectives

- No one will master all possible scenarios in our time together.
 - Convey the risks associated with incorrect or inaccurate beneficiary designations.
 - Create awareness that different custodians treat the same designation differently.
 - Highlight some differences and offer some ways to competently address these situations and how you can profit.
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What Four Risks Could RUIN Your Practice?

- Routine Beneficiary Designations.
 - Minor beneficiaries, defaults, “estate,” etc.
 - Unintentionally Disinheriting Intended Beneficiaries.
 - Custodians have different defaults, restrictions. Same designation means different things to different custodians.
 - IRA Stretch blown, i.e., 5 year rule.
 - Non-trust probate avoidance (TOD/POD).
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Adviser Responsibilities



- Advisers Are Charged with Knowing the Rules.
 - Affirmatively lead the discussion about options and steer clients in right direction to help them achieve their objectives.
 - Per Capita: named survivors take.
 - Per Stirpes: by the root/bloodline, so if named beneficiary dies with descendants, those descendants take named beneficiary's share (most want this).
 - Per Capita at Each Generation/By Representation (good alternatives but fewer custodians allow).
 - Ask about other assets, including employer life insurance, retirement plans, bank accounts, *etc.*

“I’ll Get to it Later.”

- For tax-qualified and tax-deferred accounts/products, the default for most institutions is either deceased’s estate or surviving spouse.
- Rules vary by custodian as they relate to defaults, named beneficiaries, and differ again depending on account type, *cf.* IRA with TOD, which many times have different rules with the same custodian (email me at Mark@MecLawFirm.com for a cheat sheet on the rules of many popular custodians).
- Example: American Funds IRA (see next slide).

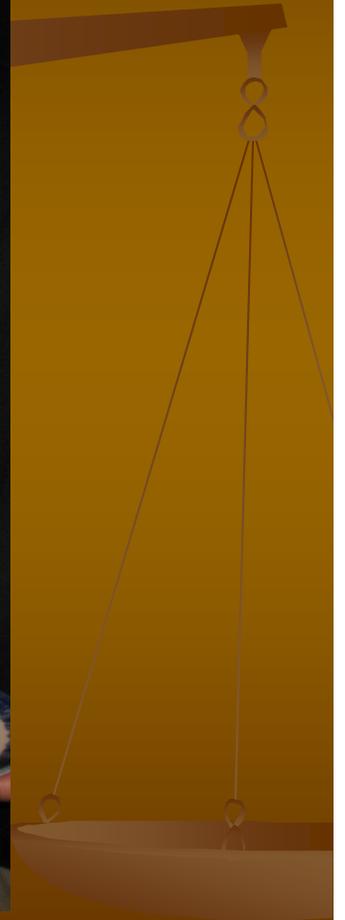
American Funds IRA

- Default is essentially, a modified “per stirpes” disposition:
 - First, all to surviving spouse, but if none,
 - then to children equally, and the share of a deceased child split evenly among that child’s children, if any, otherwise, split evenly among surviving children if any, but if no surviving descendants,
 - to estate for probate and 5 year rule for eventual heir/s.
- Named Beneficiaries: “per capita.”
- Summary: you think you’re earning your money if name beneficiaries rather than leaving this section blank, but unless you add “per stirpes” after children’s names, you just hijacked the “per stirpes” default to a “per capita.”

Scenario

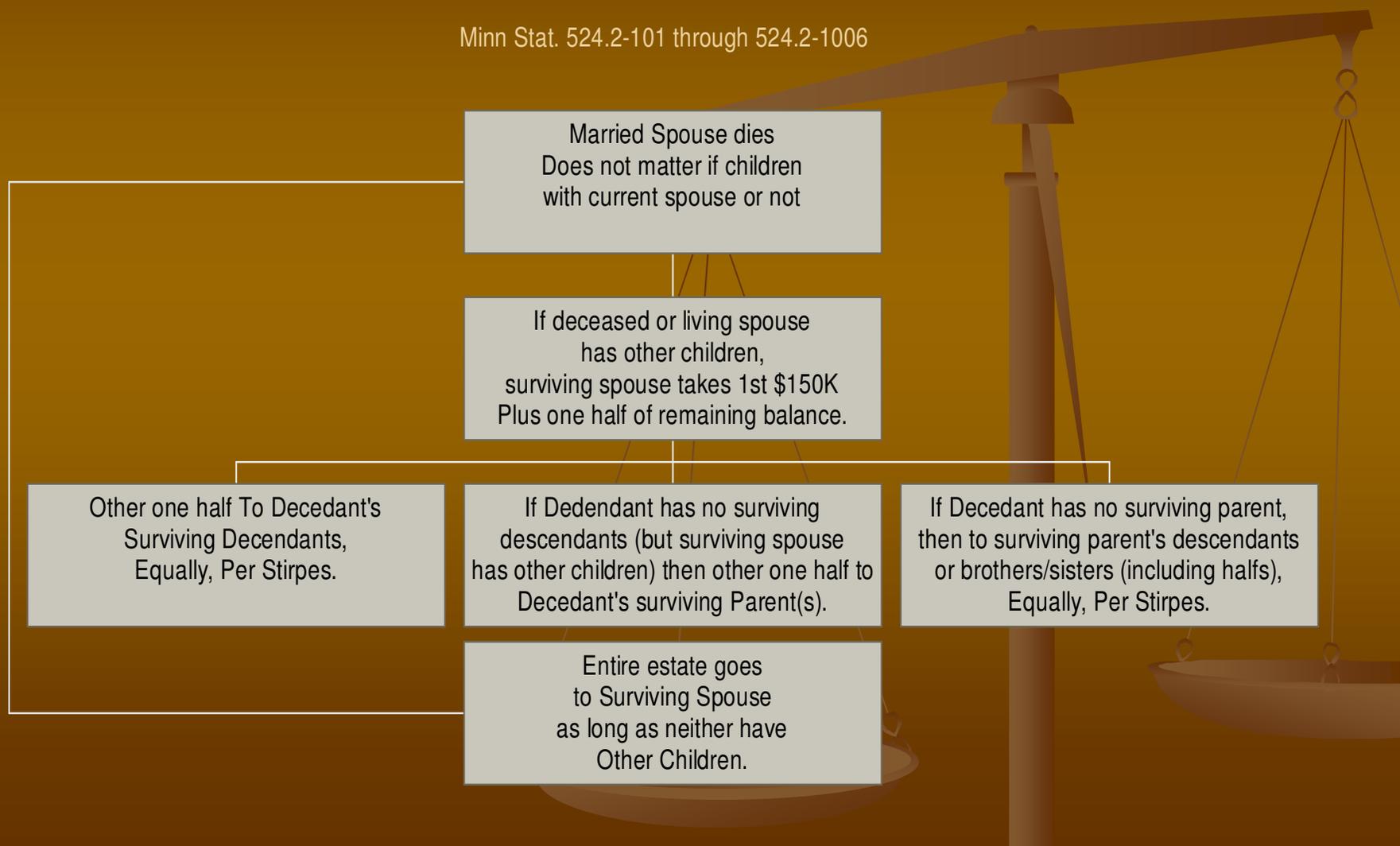
- 85 year old client with 300,000 IRA recently lost wife and before meeting with you to decide what to do with her IRA, he dies.
- Beneficiary Designation: Primary is wife, Contingent is named children equally.
- Had 3 children (A, B, C), each with 2 grandchildren, but C died a few years ago (leaving grandchildren c1 and c2) and your client never updated his beneficiary designation.
- Results: 2 children, A and B, will split 300,000 evenly (150K each).
- Had you left the default or added “per stirpes” to named children, A and B would have received their 1/3 (100K) and c1 and c2 would have split C’s 100K (50K each).
- Which result do you think most clients want? Beneficiaries?

What have you done?
C2's rather un-happy birthday party.



MN Intestate Succession

Minn Stat. 524.2-101 through 524.2-1006



“Let It Pass Through My Will.”

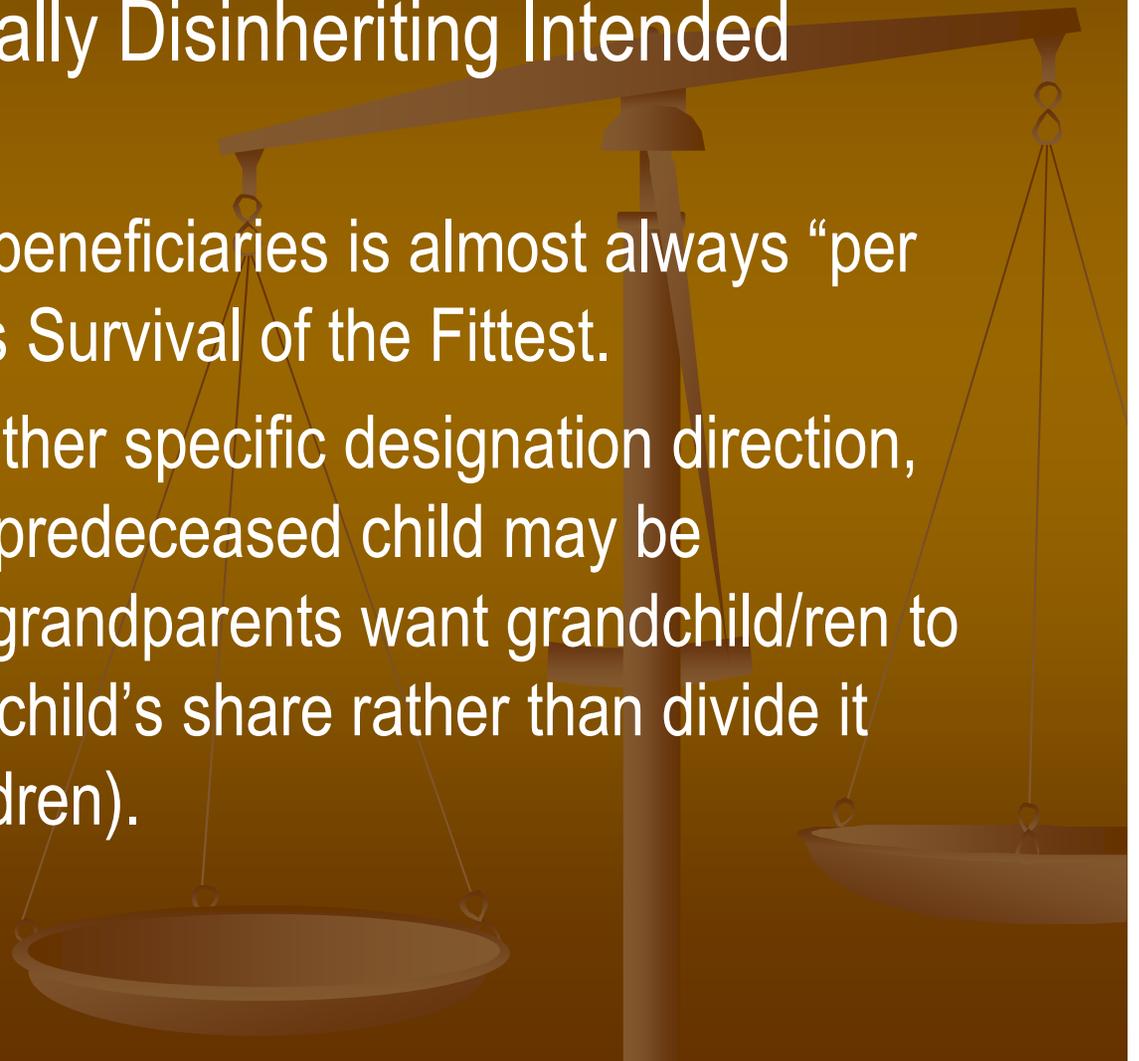
- “Estate” as Beneficiary:
 - If Death before RBD: 5 year rule to heirs.
 - If after RBD: over deceased’s remaining L/E based on IRS Single Life Table.
 - Rule: dig deep and determine who would take from the estate, and attempt to encourage client to name that/those person(s) individually.
 - NEVER: “Estate.” If you must, list “to the beneficiaries of my estate” or “the residuary beneficiaries under my will.” **Reg. Section 1.401 (a)(9)-4, A-1** says this should suffice to establish Designated Beneficiaries.

Life Insurance, IRAs, etc.

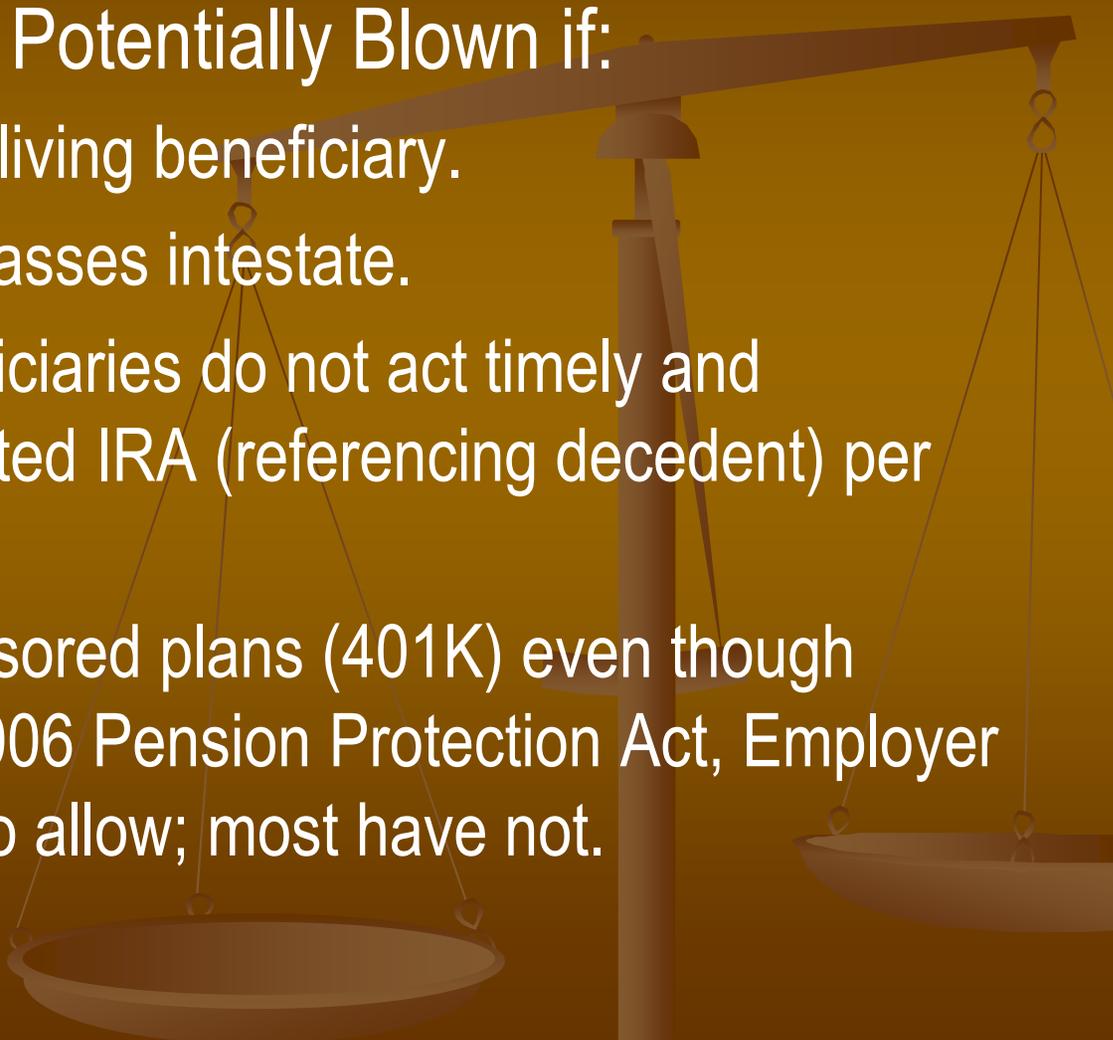
- (RUIN) Routine Beneficiary Designations.
 - To spouse, then to children, equally.
 - If to minor children, without a will naming guardian and conservator:
 - Expensive court proceeding to determine who should manage minor's assets.
 - Nominated custodian must be bonded and petition court for any non-routine distribution.
 - Court administered "trust" at nominal interest.
 - Kids get remainder at age 18; high school seniors planning their spring break to South Padre Island.

Clearing Firm's "Default" Differs From Fund Family's Rules.

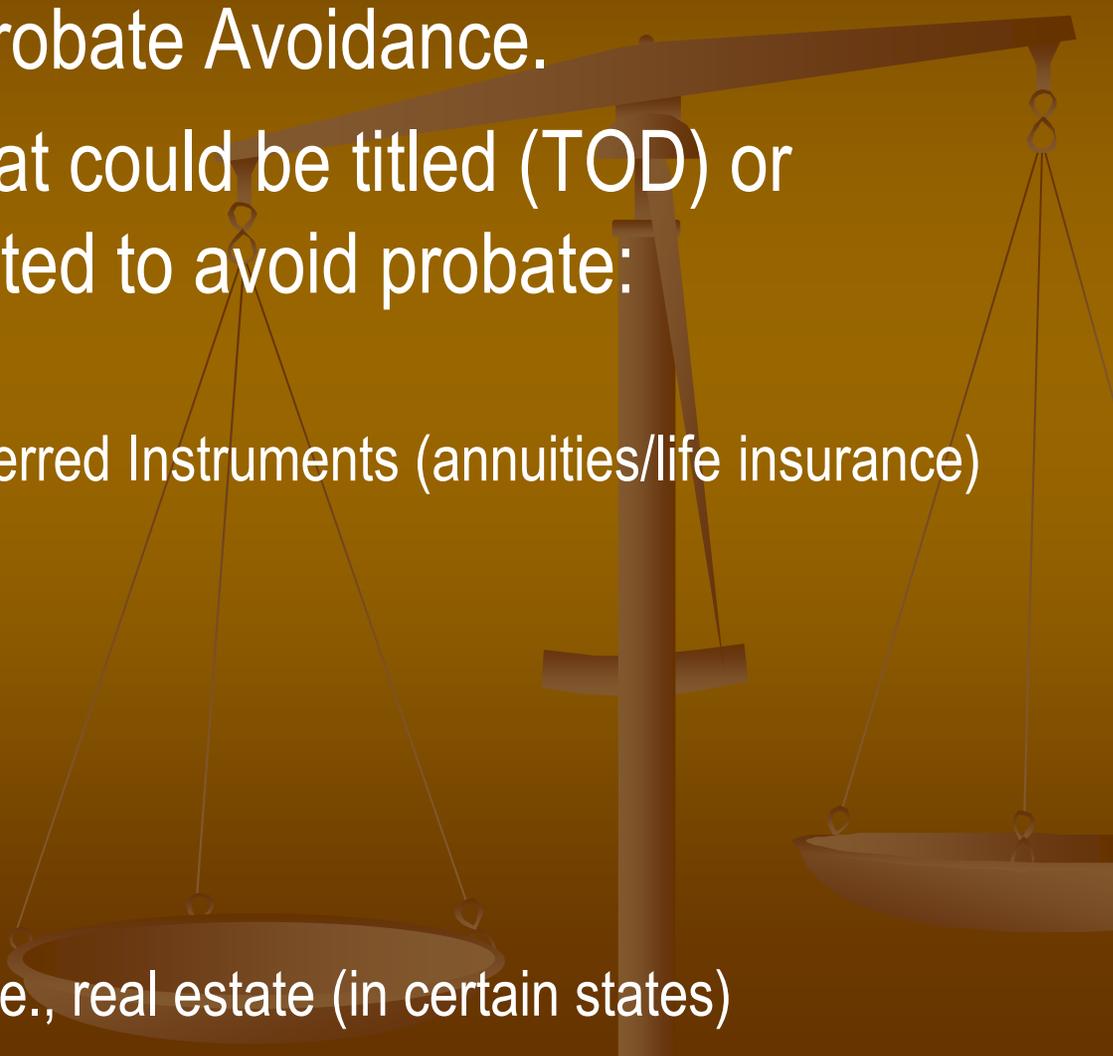
- (RUIN) Unintentionally Disinheriting Intended Beneficiaries.
 - Default for named beneficiaries is almost always “per capita,” or Darwin’s Survival of the Fittest.
 - Without a trust or other specific designation direction, grandchildren of a predeceased child may be disinherited (most grandparents want grandchild/ren to take a deceased’s child’s share rather than divide it between living children).



Now Everyone Can Stretch. . . .

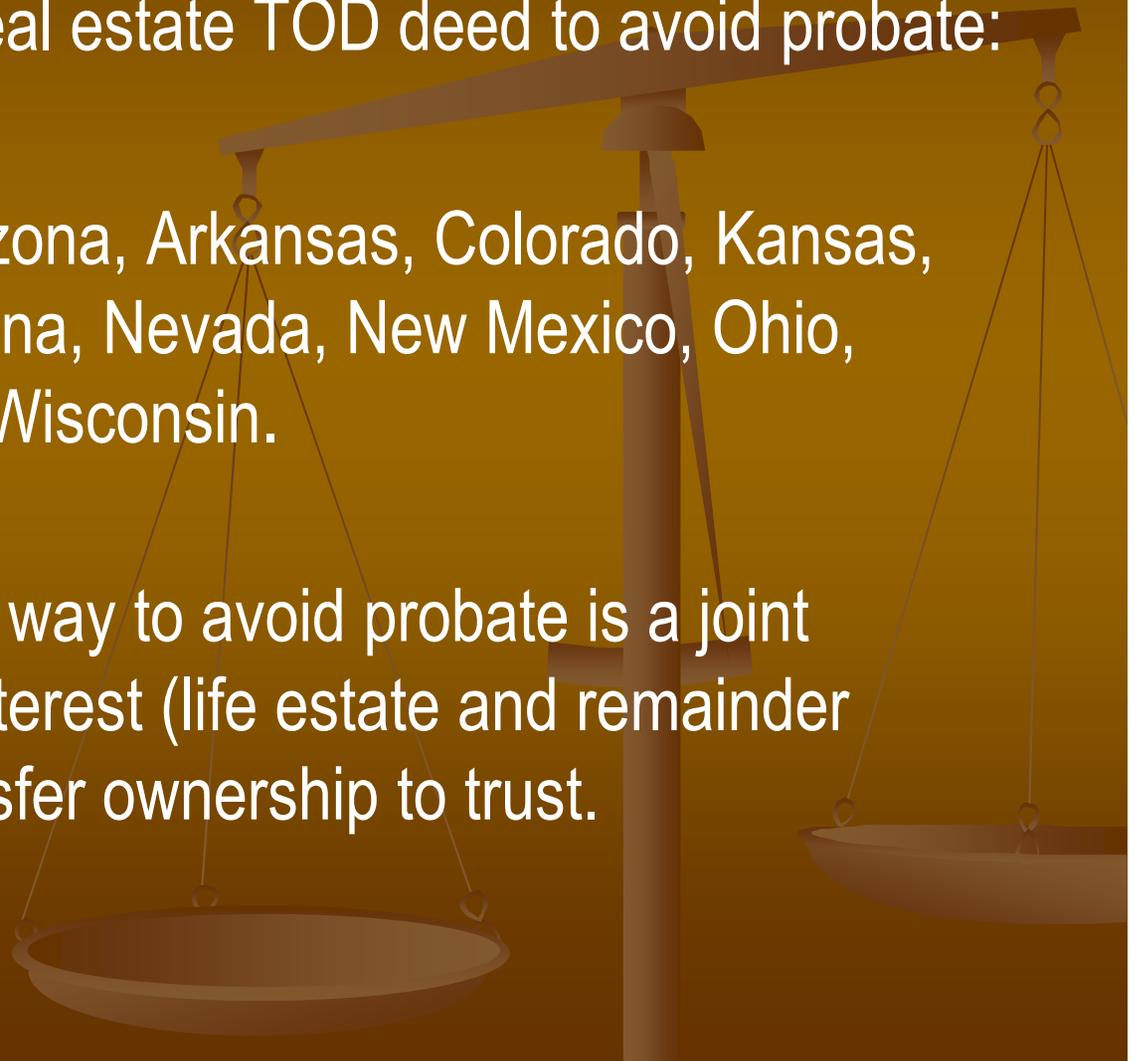
- (RUIN) IRA Stretch Potentially Blown if:
 - Fail to designate a living beneficiary.
 - Name “estate” or passes intestate.
 - Non-spousal beneficiaries do not act timely and correctly title Inherited IRA (referencing decedent) per custodian’s rules.
 - For employer sponsored plans (401K) even though allowed now per 2006 Pension Protection Act, Employer must amend plan to allow; most have not.
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What Assets are at Play?

- (RUIN) Non-trust Probate Avoidance.
 - Assets/Accounts that could be titled (TOD) or beneficiary designated to avoid probate:
 - Brokerage Accounts
 - Tax Qualified and Deferred Instruments (annuities/life insurance) with “estate”
 - Bank accounts
 - CDs
 - Savings Bonds
 - Share Certificates
 - Homestead /Cabins, i.e., real estate (in certain states)
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Homestead

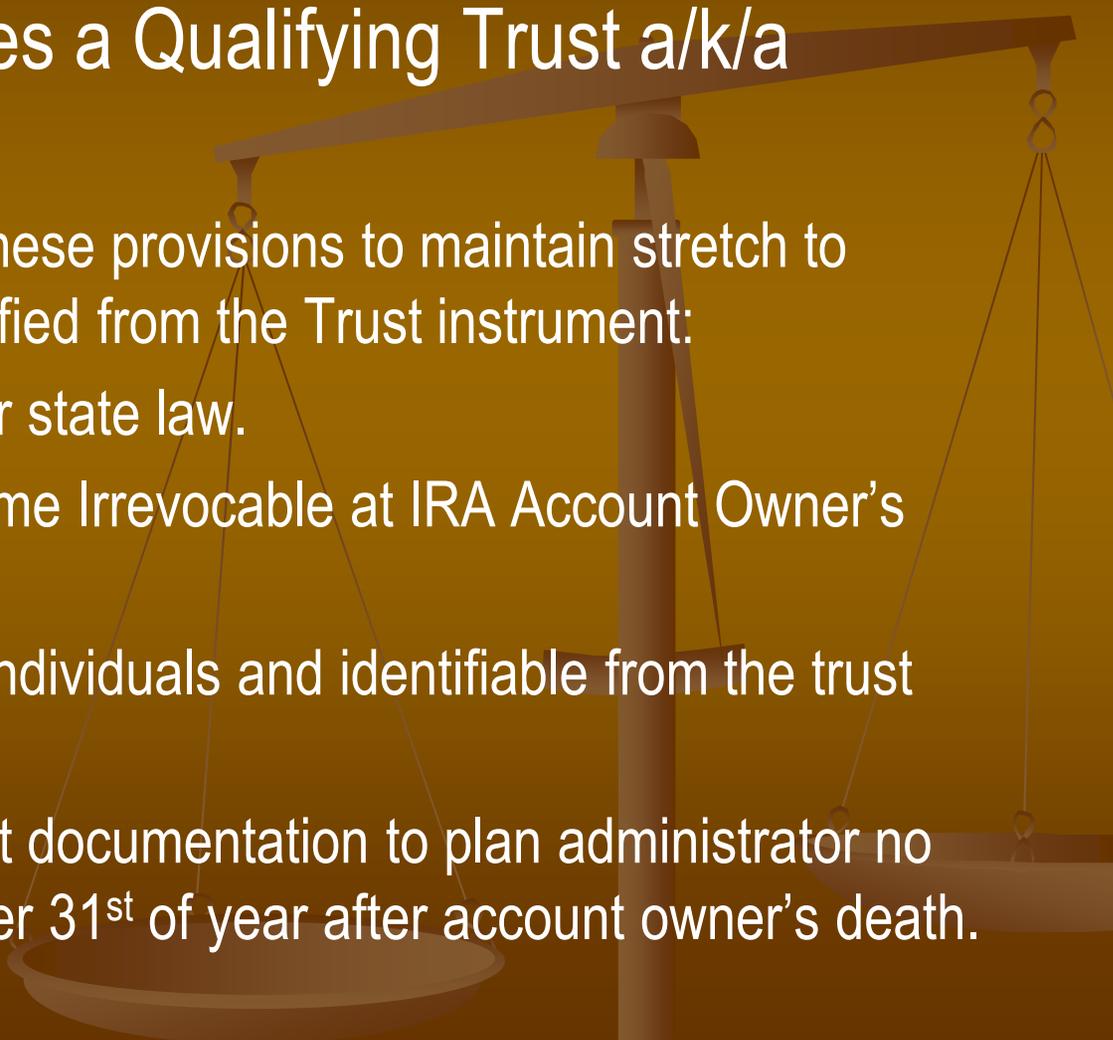
- States that allow real estate TOD deed to avoid probate:
 - **Minnesota**, Arizona, Arkansas, Colorado, Kansas, Missouri, Montana, Nevada, New Mexico, Ohio, Oklahoma and Wisconsin.
 - Otherwise, only way to avoid probate is a joint tenancy, split interest (life estate and remainder interest) or transfer ownership to trust.



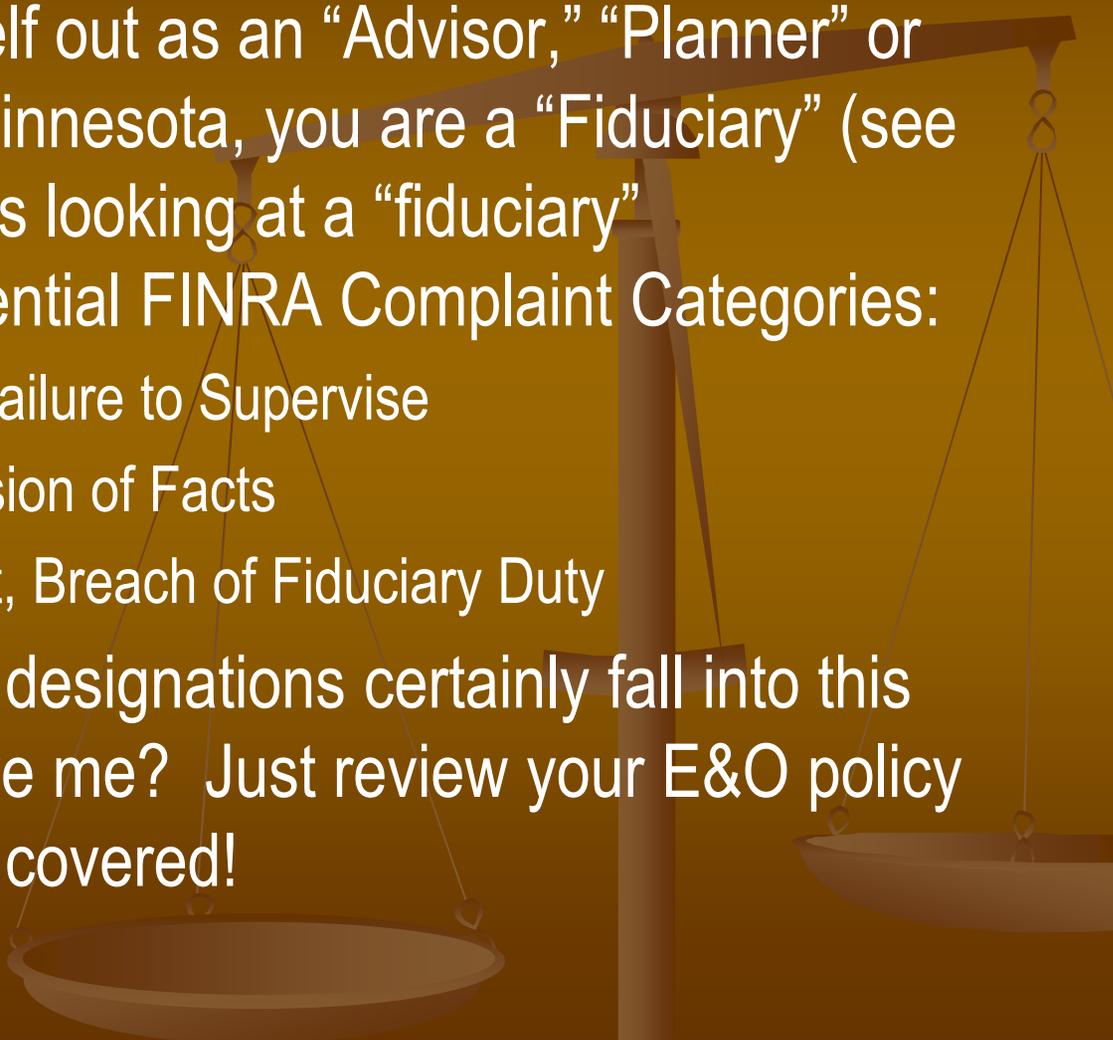
TOD Limitations; May Need a Trust.

- TODs in operation with JTWRROS.
 - Spouses open JTWRROS, with all eight children named TOD. H and W have 5 kids together, but H has 3 kids from prior marriage. Is this a good plan to assure equal distribution of assets at the 2nd spouse's death?
- Divorced dad names minor children (8 and 10 yoa) as beneficiaries. What did he just do?
 - Assured not unfit ex-wife will control assets if he dies prior to their turning 18.
 - Fix: to "brother as custodian for 8 and 10 year old children under MN UTMA." Email me at: Mark@MecLawFirm.com for specific language.

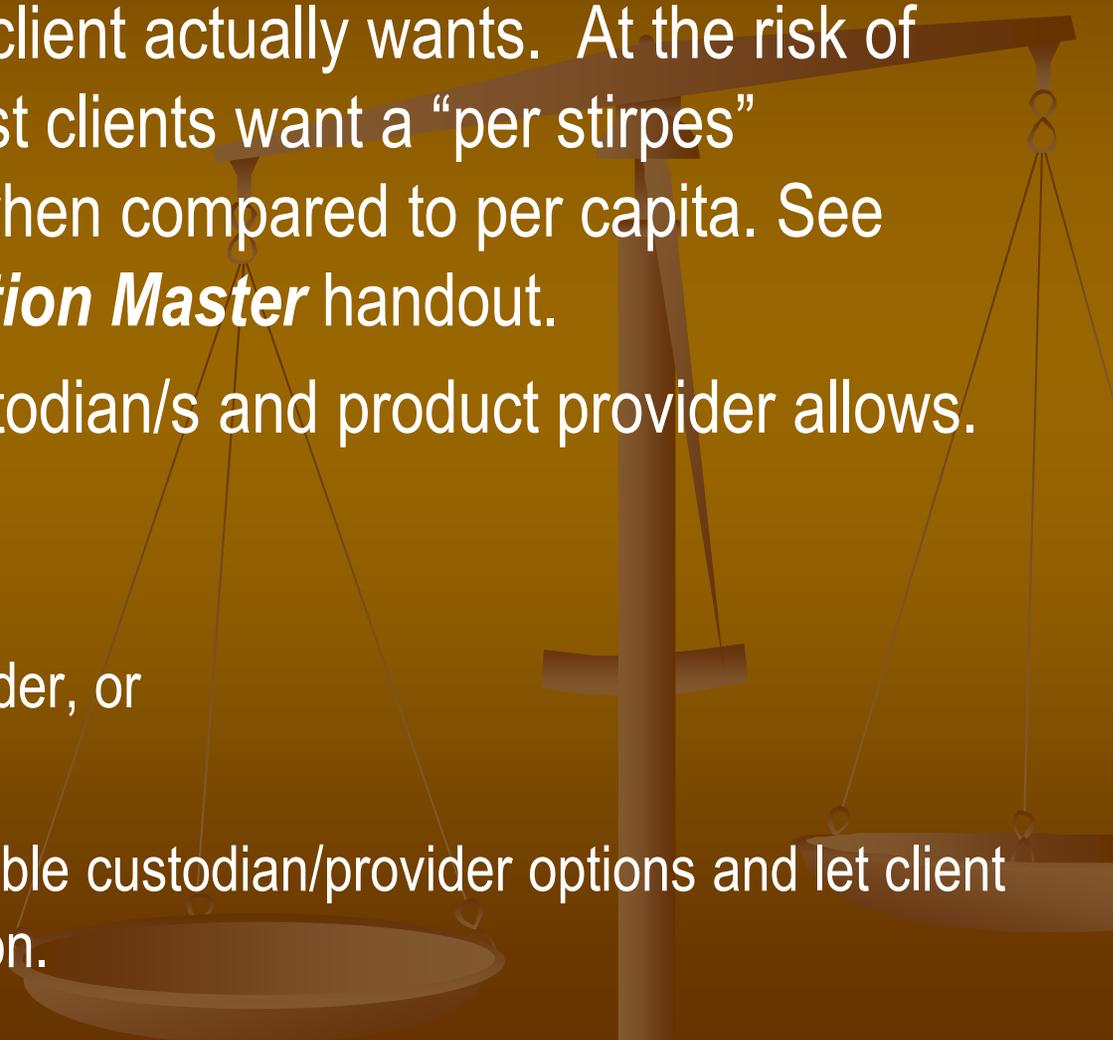
Does Naming a Trust as Beneficiary Blow the Stretch?

- Not if Client Names a Qualifying Trust a/k/a “Conduit”:
 - Must meet ALL of these provisions to maintain stretch to Benes named/identified from the Trust instrument:
 - Valid Trust under state law.
 - Trust must become Irrevocable at IRA Account Owner’s death.
 - Benes must be individuals and identifiable from the trust instrument.
 - Must deliver trust documentation to plan administrator no later than October 31st of year after account owner’s death.
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“That Option is not on the form” or “I do not manage that account.”

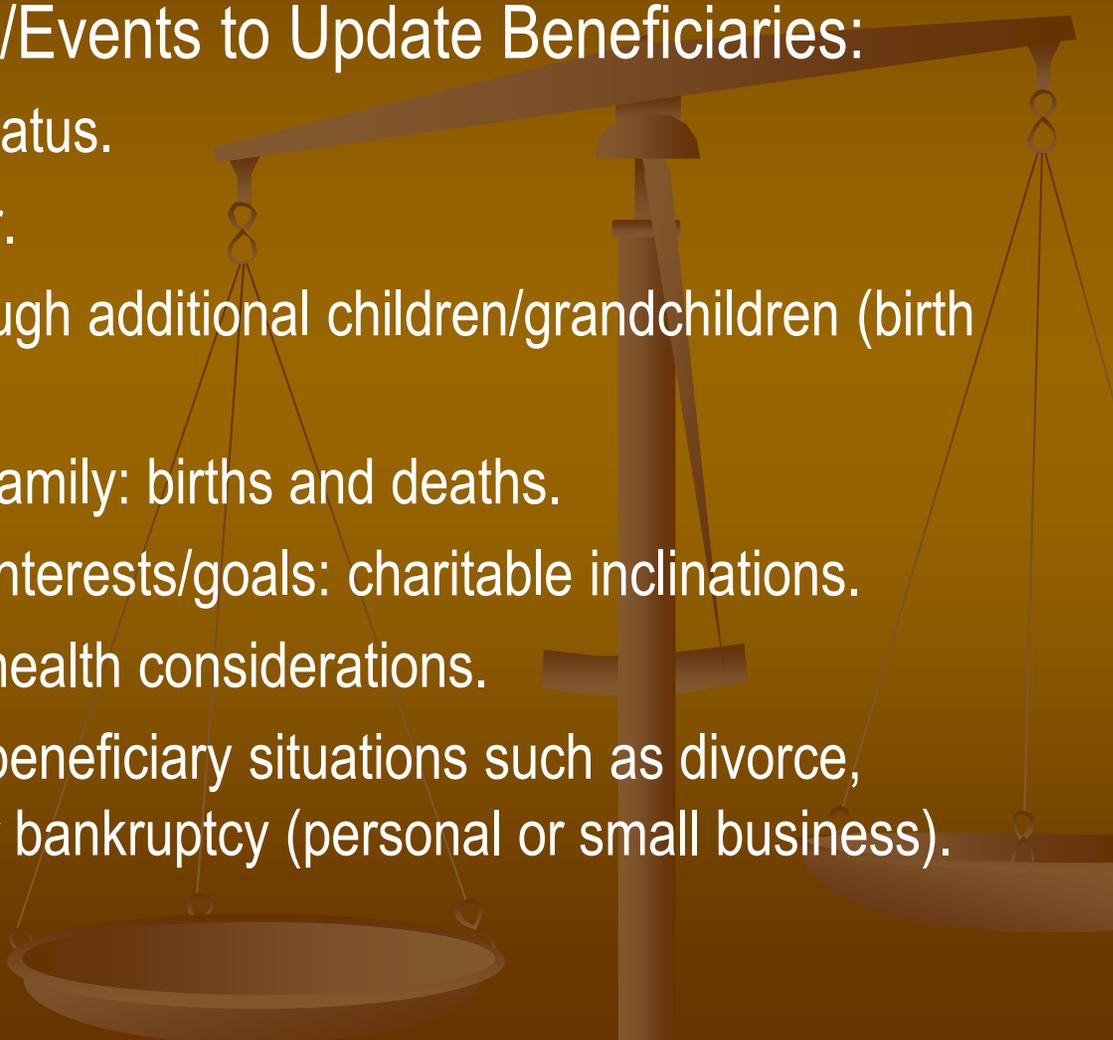
- Do you hold yourself out as an “Advisor,” “Planner” or “Consultant”? In Minnesota, you are a “Fiduciary” (see Handout). FINRA is looking at a “fiduciary” duty/standard. Potential FINRA Complaint Categories:
 - Unsuitability and Failure to Supervise
 - Negligence, Omission of Facts
 - Breach of Contract, Breach of Fiduciary Duty
 - Suitability: beneficiary designations certainly fall into this category. Don’t believe me? Just review your E&O policy and rejoice that this is covered!
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Fixes to Avoid *RUIN*.

- First, determine what client actually wants. At the risk of over generalizing, most clients want a “per stirpes” designation, at least when compared to per capita. See *Beneficiary Designation Master* handout.
 - Next, determine if custodian/s and product provider allows. If not, 3 options:
 - Use/sell another provider, or
 - Recommend RLT, or
 - Explain to client available custodian/provider options and let client make informed decision.
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Meet Annually with Every Client

■ Just Some Reasons/Events to Update Beneficiaries:

- Change in marital status.
 - Change in employer.
 - Growing family through additional children/grandchildren (birth or adoption).
 - Changing/evolving family: births and deaths.
 - Changing/evolving interests/goals: charitable inclinations.
 - Changing/evolving health considerations.
 - Changing/evolving beneficiary situations such as divorce, creditor problems or bankruptcy (personal or small business).
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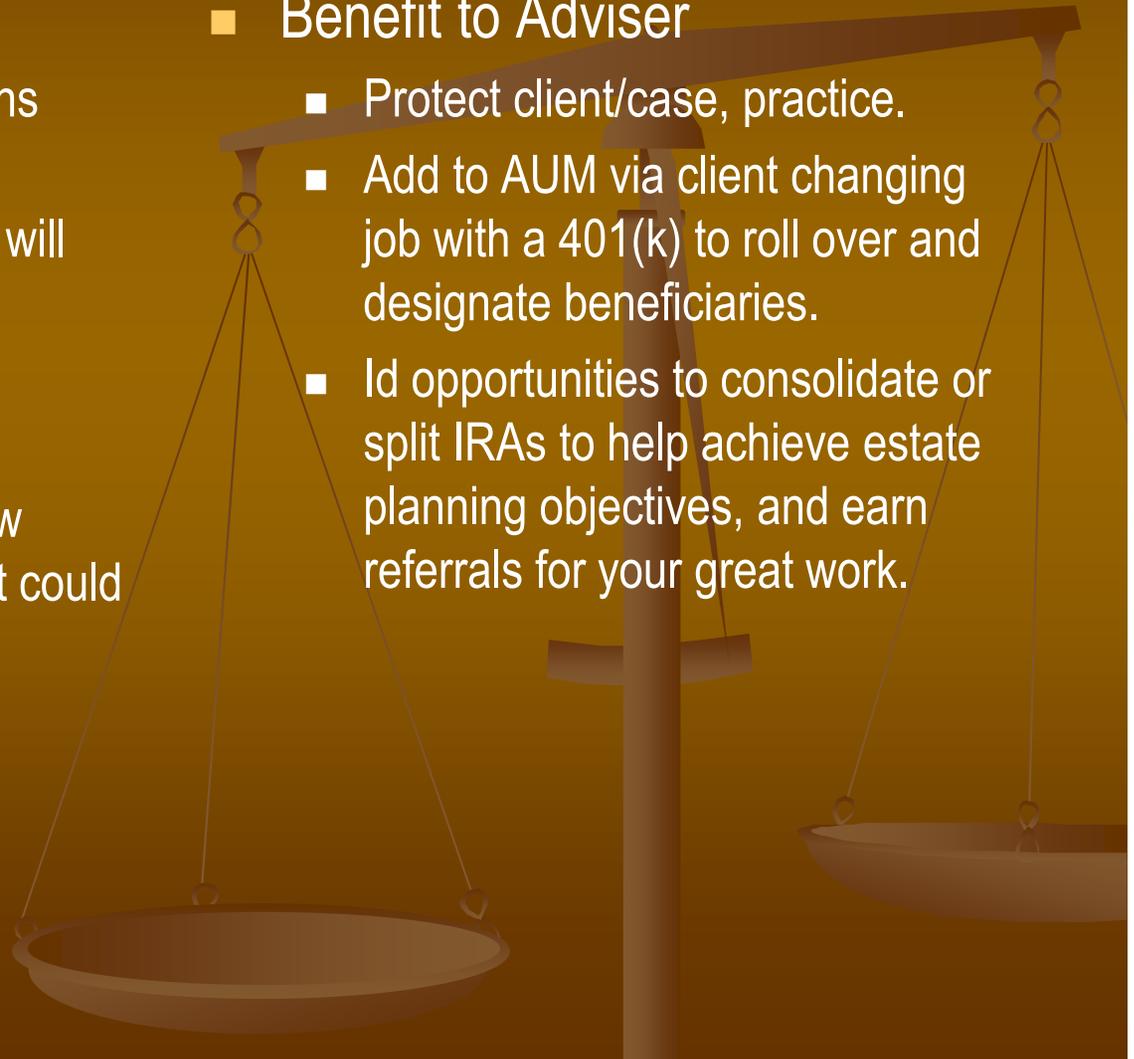
Why Review Annually Each Client's Beneficiary Designations?

■ Benefit to Client

- Coordination of designations across all accounts.
- Verify Custodian/ Provider will accept designation(s).
- New ER provided benefits, properly designated.
- Uncover any additional/new accounts at bank, etc., that could be TOD.

■ Benefit to Adviser

- Protect client/case, practice.
- Add to AUM via client changing job with a 401(k) to roll over and designate beneficiaries.
- Id opportunities to consolidate or split IRAs to help achieve estate planning objectives, and earn referrals for your great work.

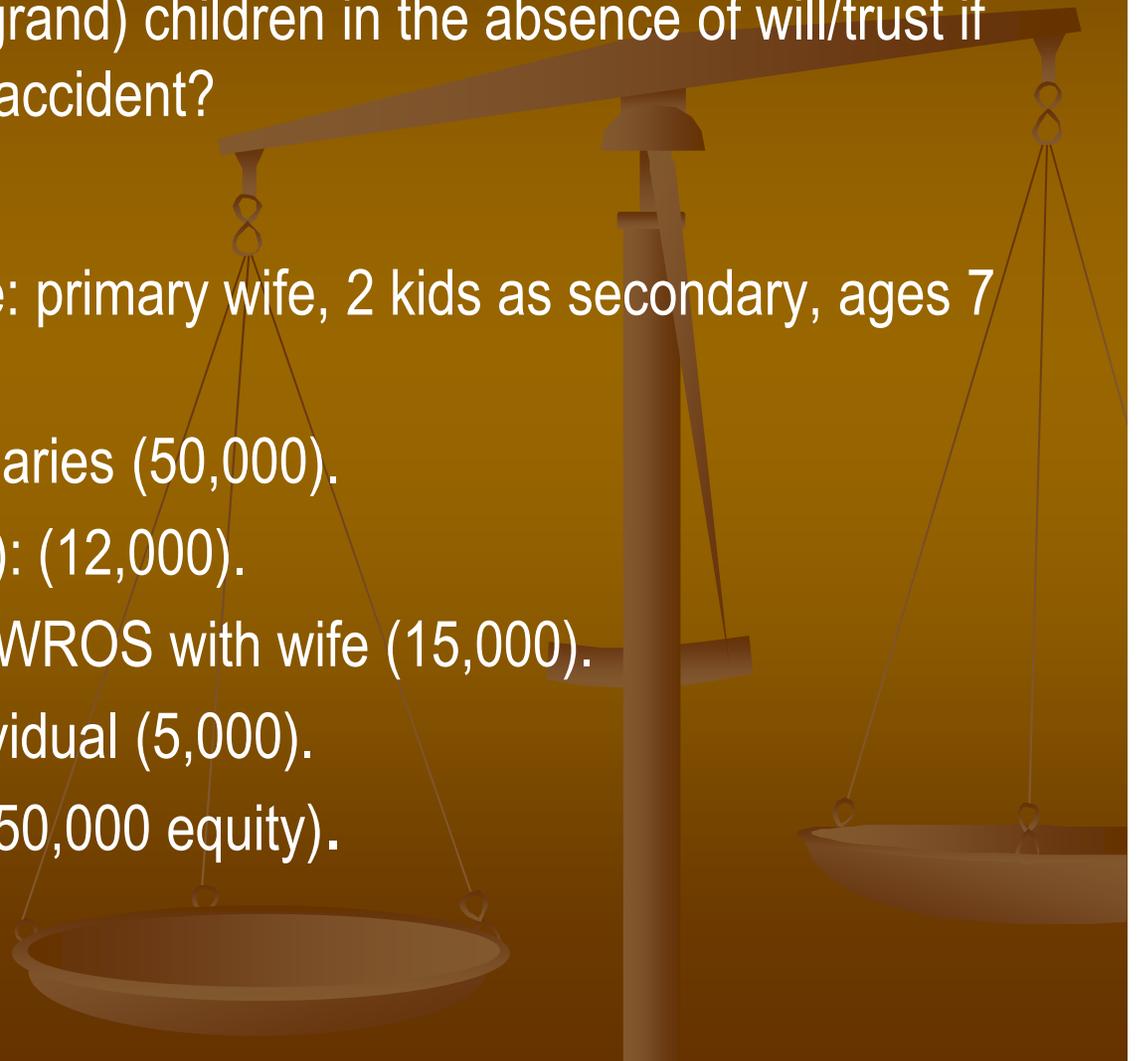


Annual Meeting Agenda

- Conduct One Hour Meeting, and Charge Financial Planning Fee of (\$400-800 or more if update IPS or other):
 - Update of essential information, discuss concerns, etc.
 - Review of Portfolio, performance, beta, etc.
 - Conduct Quarterly Markets Update (Alliance Bernstein or Oppenheimer PPTs).
 - Beneficiary designation/account title review (easy way for you to fix inaccurate info, i.e., proactively address **RUIM**).
 - Mention importance of legal documents for incapacity and legacy protection (offer "Survivor Checklist" handout).
 - Collect fee at meeting and ask for referrals because not many other advisors are providing this level of service. You earn and deserve referrals if you do this and you will gather other assets!

Nearly 80% of Americans Do Not Plan for the Inevitable: no Will or Trust.

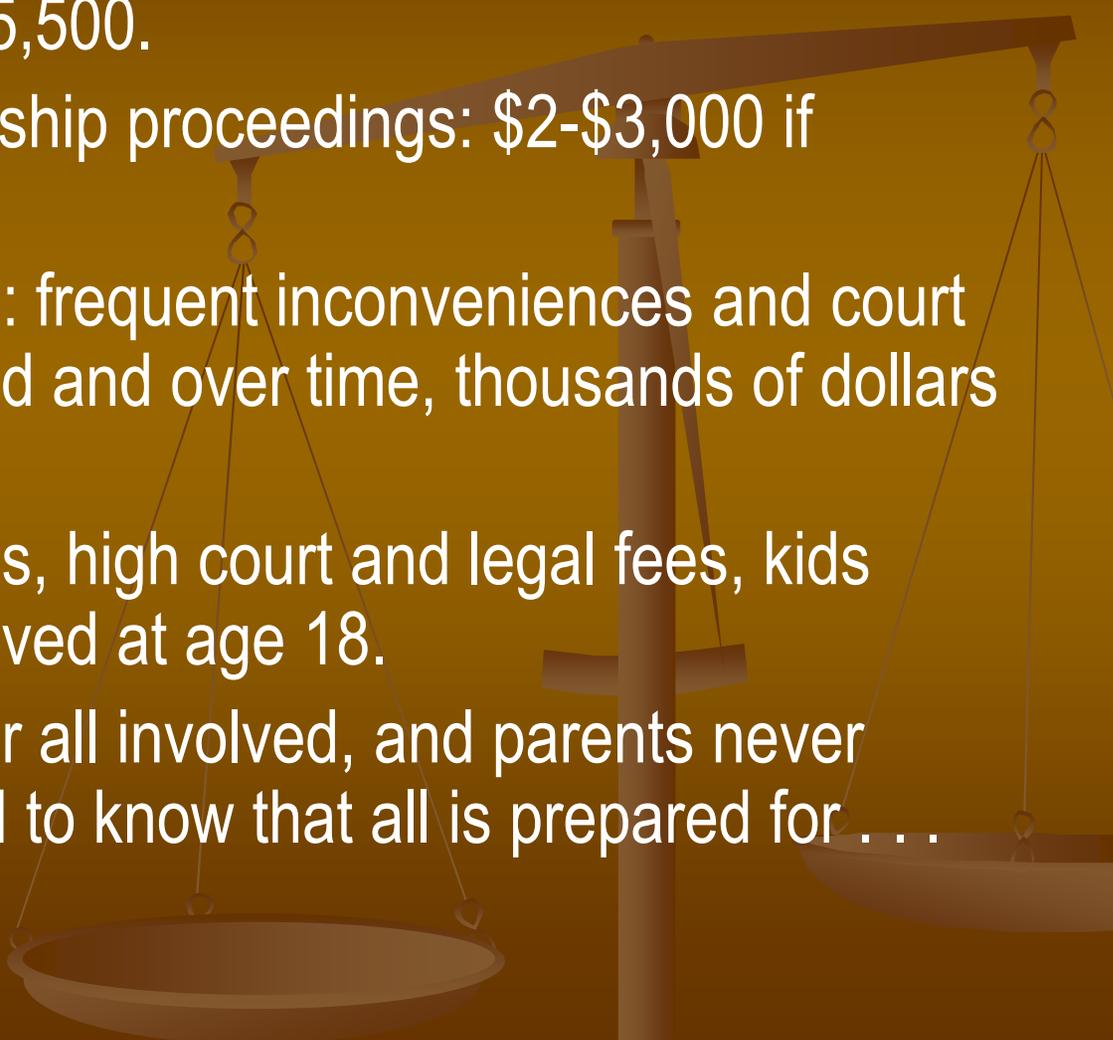
- What happens to minor (grand) children in the absence of will/trust if parents die in a common accident?
- Estate Assets:
 - Employer provided life: primary wife, 2 kids as secondary, ages 7 and 9 (100,000).
 - 401 (k): same beneficiaries (50,000).
 - E-Trade Account (NQ): (12,000).
 - Checking account: JTWROS with wife (15,000).
 - Savings account: individual (5,000).
 - Home, owned jointly (50,000 equity).



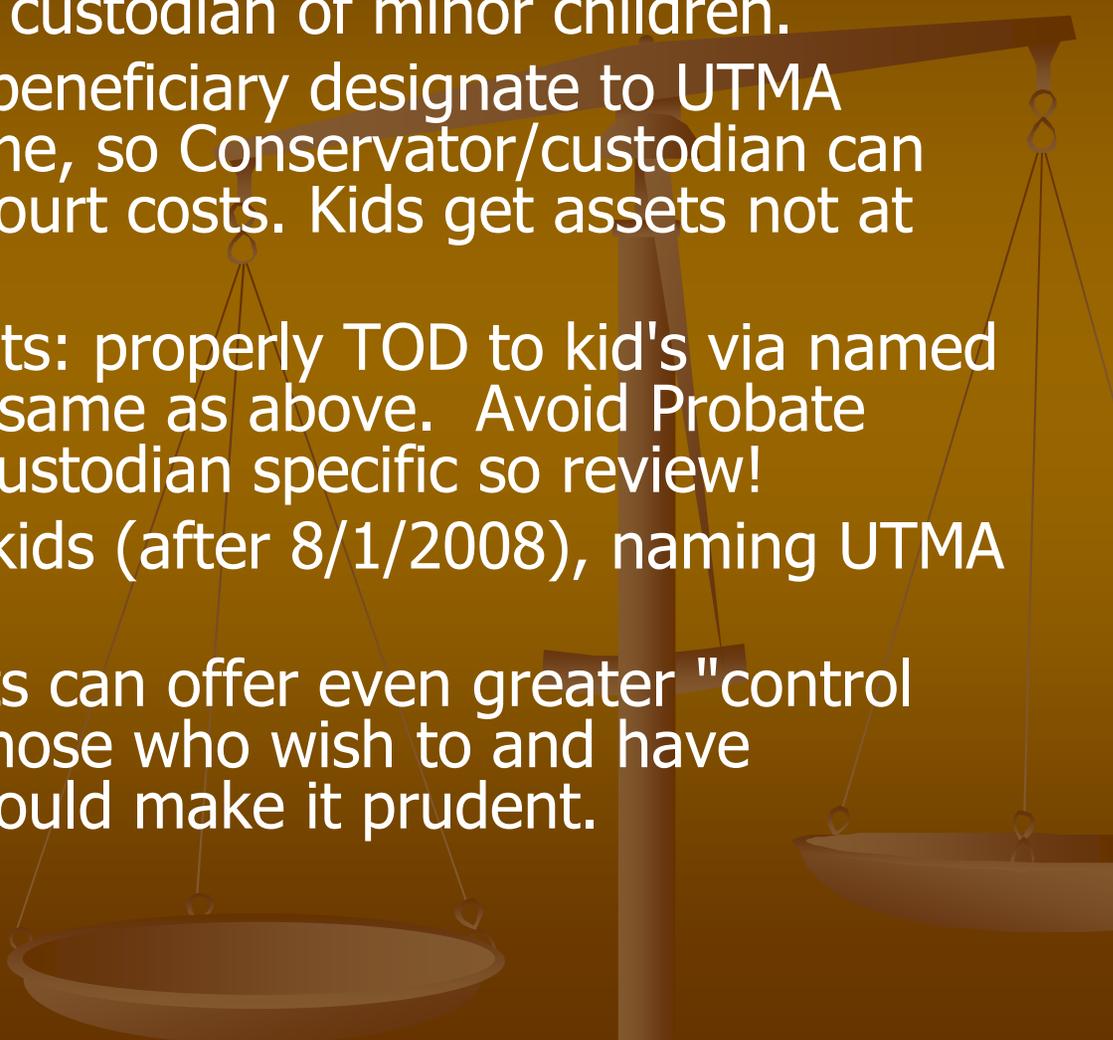
Legal Proceedings

- Kids become wards of the court, in search of a Guardian/ad-litem.
- Life insurance proceeds go to state created trust, administered by court-appointed Conservator until age 18, then distributed to high school seniors preparing their trip to South Padre Island for Spring Break. After they buy everyone on the beach cocktails because you were not around to instill your values in them, there is precious little left for college. Don't forget that every time Conservator wants money for kid's Karate lessons, s/he needs to petition the court for a distribution, which is time and money, each time reducing the asset base (exaggerating for effect!).
- 401(k): review custodian's terms, but custodial account for the kids who need to take taxed distributions every year. More conservator fees, etc.
- E Trade account: probate. Intestate rules leave to kids, so court needs to search a for conservator, and add to assets to manage.
- Checking/savings: probate and same herein.
- Home: probate and same herein.

What Results?

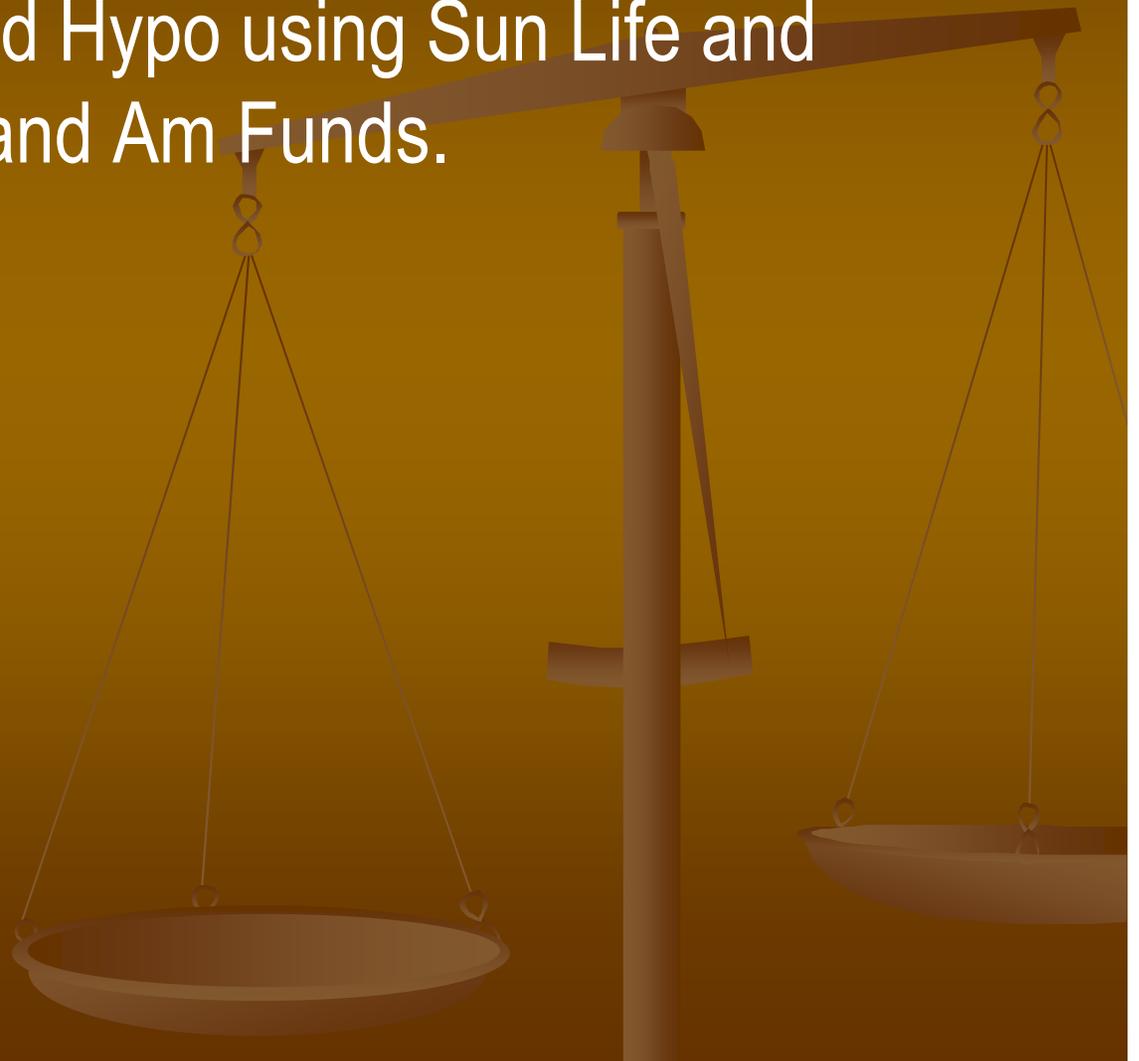
- Probate fees: \$3,500-5,500.
 - Guardian/Conservatorship proceedings: \$2-\$3,000 if uncontested.
 - Conservatorship costs: frequent inconveniences and court fees of several hundred and over time, thousands of dollars for distributions.
 - Risks: uncertain parties, high court and legal fees, kids blow funds when received at age 18.
 - Results: headaches for all involved, and parents never achieve peace of mind to know that all is prepared for . . . just in case!
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How to Add Value and Improve Client's Current Estate Situation.

- Will names guardian, custodian of minor children.
 - 401(k)/life: Properly beneficiary designate to UTMA custodian in kid's name, so Conservator/custodian can manage assets w/o court costs. Kids get assets not at 18, but 21.
 - E-Trade/Bank accounts: properly TOD to kid's via named UTMA custodian and same as above. Avoid Probate expense and time. Custodian specific so review!
 - Home: TOD deed to kids (after 8/1/2008), naming UTMA custodian.
 - Revocable living trusts can offer even greater "control from the grave" for those who wish to and have circumstances that would make it prudent.
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Unintentionally Disinherited, thus Disgruntled, Heirs.

- VA and Mutual Fund Hypo using Sun Life and Hartford, with Pac and Am Funds.
- See Handout.



Stay Current



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- Czuchry Law Firm, LLC, has offices in Victoria, and St. Louis Park, MN, and referral relationships with estate planning attorneys in most states.
- 952-443-4004 or 952-212-2465.
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- Thank you!