

Planning the Future of Your Farm

One Lawyer's Take on Farm Succession and Transfer

Andrew Branan, Lawyer
The Branan Law Firm, PLLC
919 619 8479

abranan@gmail.com

Licensed and Registered in North Carolina and Virginia

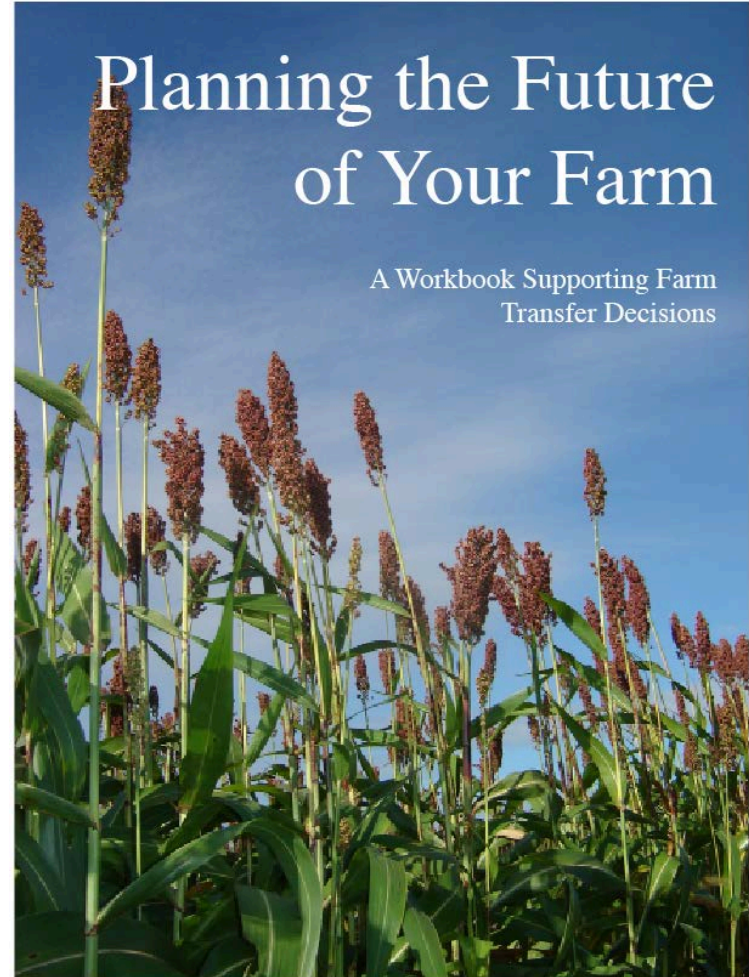


Main Messages

- Preserve Your Family: Plan against inflexibility of common law (avoid or diminish heir co-tenancy)
- Revisit trust-based estate **tax** plan: re-focus on distribution, management and efficient settlement
- You can't make it perfect, so make it flexible.
- Keep legacy and control in perspective
- Your Lawyer is a Counselor, Not a Plumber



“‘Help me’ is more
affordable,
than ‘Fix me’”



Different Lawyers' perspectives

“You owe it to your children to treat them equally...”

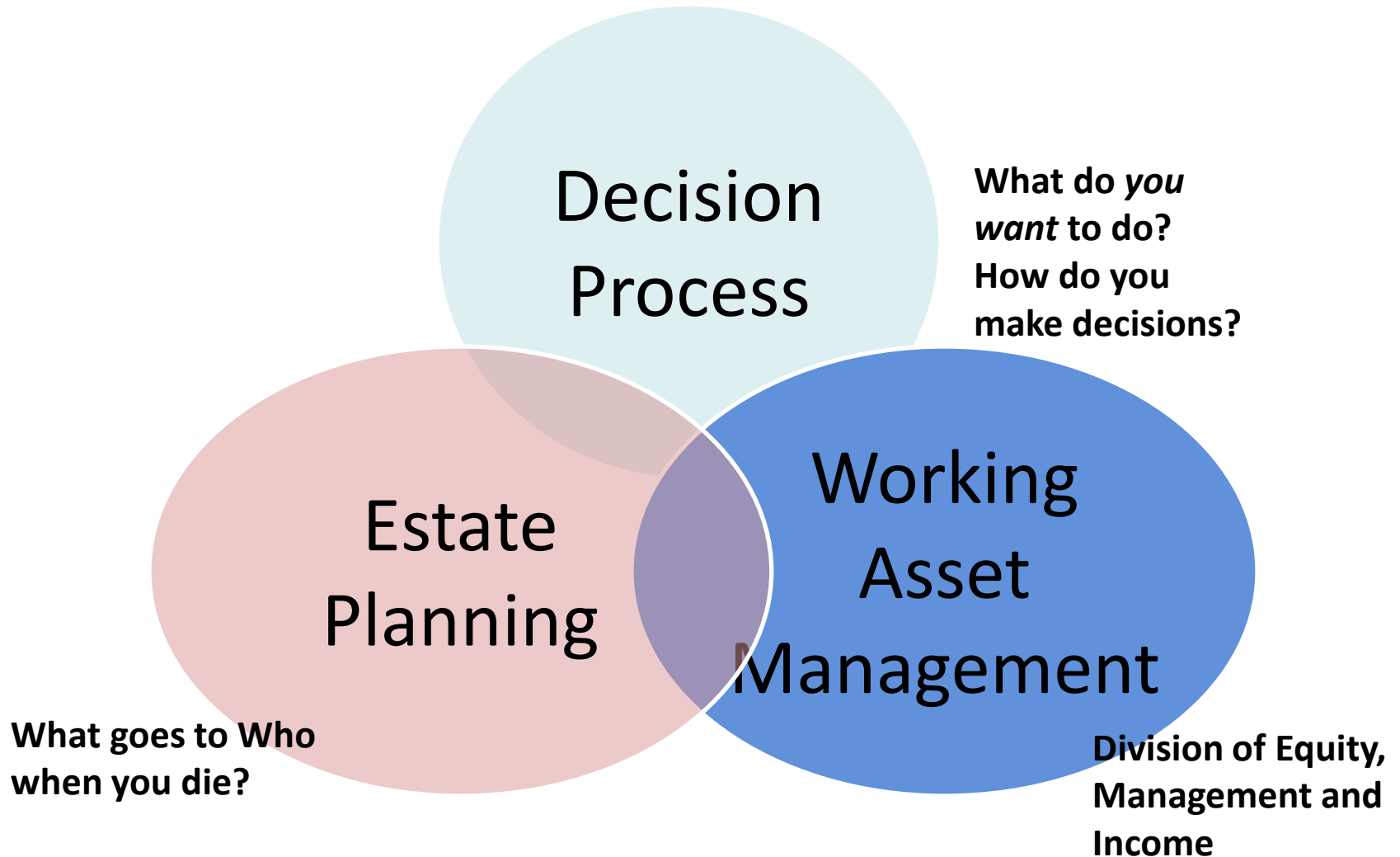
“Forget equal...”

What is the compelling reason



to *NOT* divide this up equally?

Transfer Planning and Execution



Getting the Conversation Started

1. Option A: Tell your children you are going to do an estate plan and request their input
2. Option B: You and your spouse get an estate plan done, *then* call a meeting to discuss with your children and modify plan accordingly

Conversations Depend on situation...

- **Super Firm** – operation large enough to support multiple families
- **Spin-Off** – next generation starts their own, parents wind down
- **Distribute** – farming ends for this family

What do you want?

Worksheet 1.3

RATING FAMILY VALUES

To help start your planning, read and rate the questions below. Rate the importance of each item below, with 1 = not important, 2 = somewhat important, and 3 = very important. You can use these ratings to support your family discussion. Copy and have each family member complete to help get a clearer picture of what is most important to each in the farm transfer process. Conflicting values can then be discussed.

I want the farm to remain in our family's possession. <i>Why is this important/not important to you?</i>	1	2	3
I want the farm to continue to be farmed after I/we retire. <i>By who?</i>	1	2	3
I would like to remain physically involved in the farm after I/we retire. <i>Why is this important/not important to you?</i>	1	2	3
I want our children to have the opportunity to continue management of the family farm. <i>In what capacity?</i>	1	2	3
I would like the division of farm property to be equal in dollar value among our children.	1	2	3
I want the division of property among our children to be fair (not necessarily equal).	1	2	3
I want to give financial help to our children who choose a farm career.	1	2	3
I want to have the financial resources to do new things after farming. <i>What do you want to do? (See Sketch Your Lifestyle Plan)</i>	1	2	3
It is important that our children agree with our plans for the farm's future. <i>Why is this important/not important?</i>	1	2	3
I would like to maintain some measure of financial control over the farm while I am alive. <i>Reason:</i>	1	2	3
I would like to be involved in the decision-making of the farm throughout my life. <i>Reason:</i>	1	2	3
I want to receive what the farm is worth when it is transferred. <i>What is your farm worth to you? (E.g. full market value?)</i>	1	2	3
I want our children to play a part in the decision-making for the farm's future. <i>Why is this important/not important?</i>	1	2	3
I would like everyone in the family to be satisfied with the plan for the future of the farm.	1	2	3
It is important to me that our children's requests regarding the farm transfer be honored.	1	2	3

Estate Plan
should be
framework for
client's ideas
about
distribution

Estate Orientation

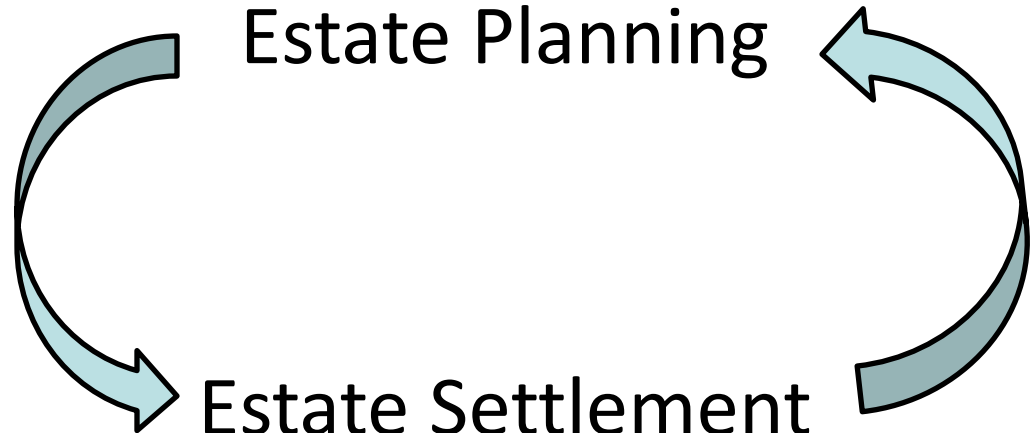
Taxable Estate

Probate Estate

Augmented Estate
(Elective Share)

Estate Planning

Estate Settlement



If you *don't* die

Power of Attorney

Healthcare Power of Attorney

Living Will

Joint Bank Accounts

Gifting of Property?

Executor and Trustee

- Inform family who will serve as Executor
 - Try to resist co-executors
- Inform family who will serve as Trustee?
 - Selection of trustee
 - Consider the Responsibility on that person
- Trust Protector?

Trusts

Trustee holds legal title

Beneficiary holds beneficial interest

Revocable or irrevocable

Intervivos or testamentary

Trustee to 'wait and see'

Trustee: You, then spouse, then designate

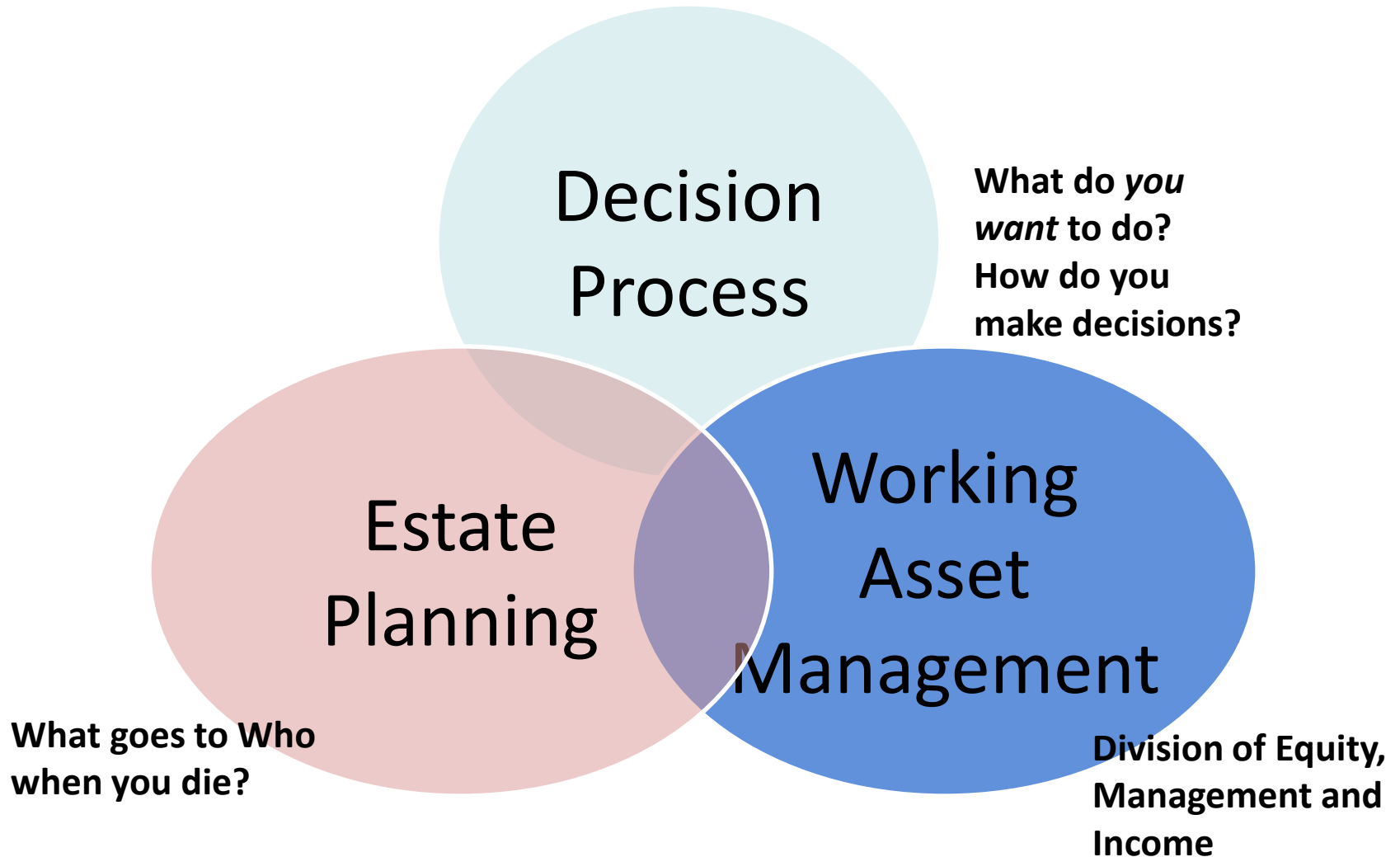
Balance of "executing creator's intent" with "well-being of beneficiaries"

Uniform Prudent Investor Act. "A trustee shall invest and manage trust assets as a prudent investor would"

Trusts in Farm and Forest

- Distribution to ‘farming heir’ of assets and land
 - Options to purchase on specified terms
- Allow Trustee to operate a farm or manage land or be a member of LLC
 - Express intent to relieve Trustee of burden to maximize asset value
 - Authority superseded by LLC Operating Agreement
- Protect “against” spouses for grandchildren
- Protect assets from “troubled” beneficiaries

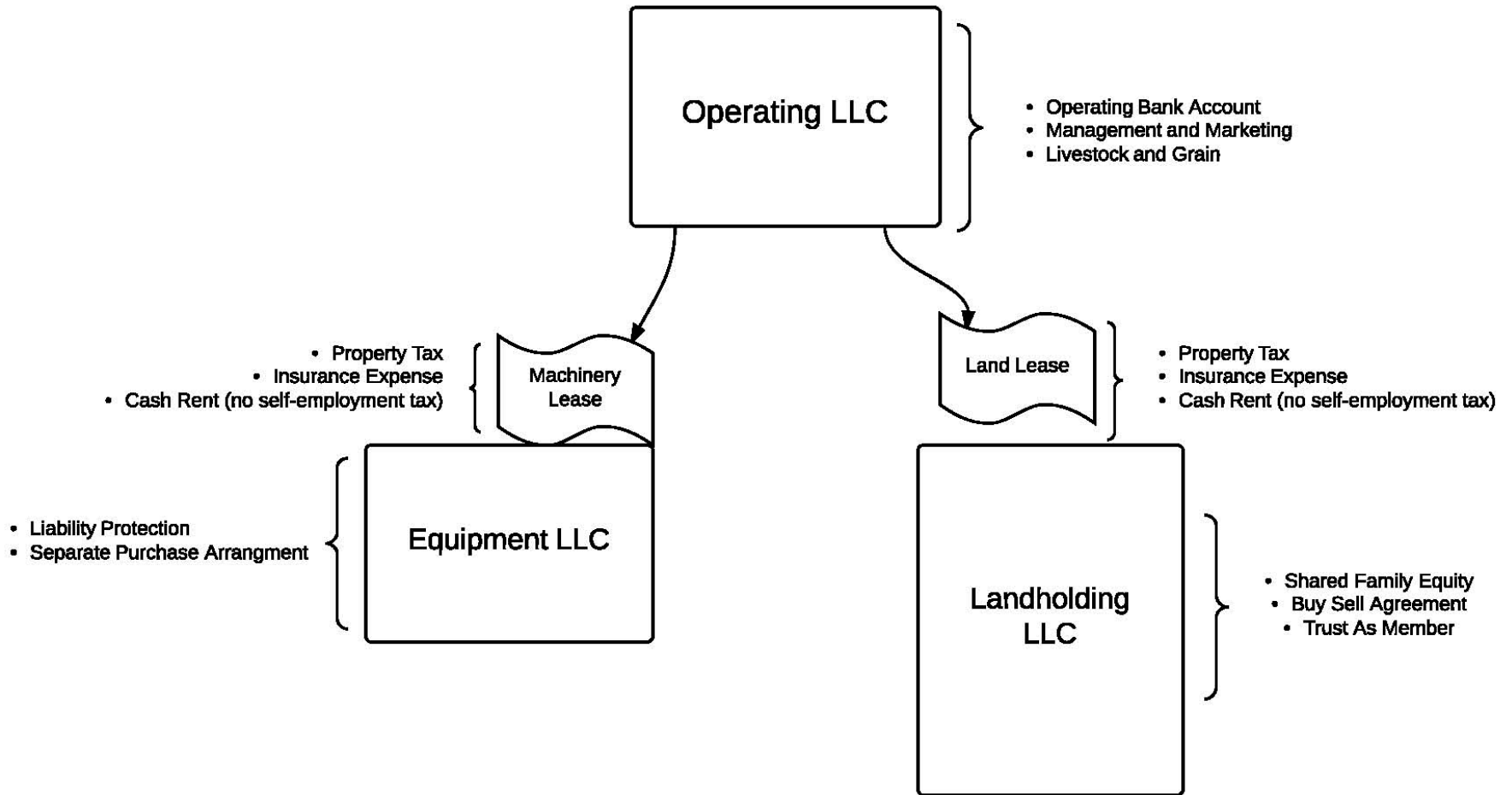
Transfer Planning and Execution



Use of Business Entities

- Liability protection
- Business Purpose (must follow the *rules*)
- Contract between owners
 - Income
 - Management
 - Equity
- Buy-Sell (Control)
- Vehicle for reducing parents' estate value
 - Valuation discounts

Entity Arrangement

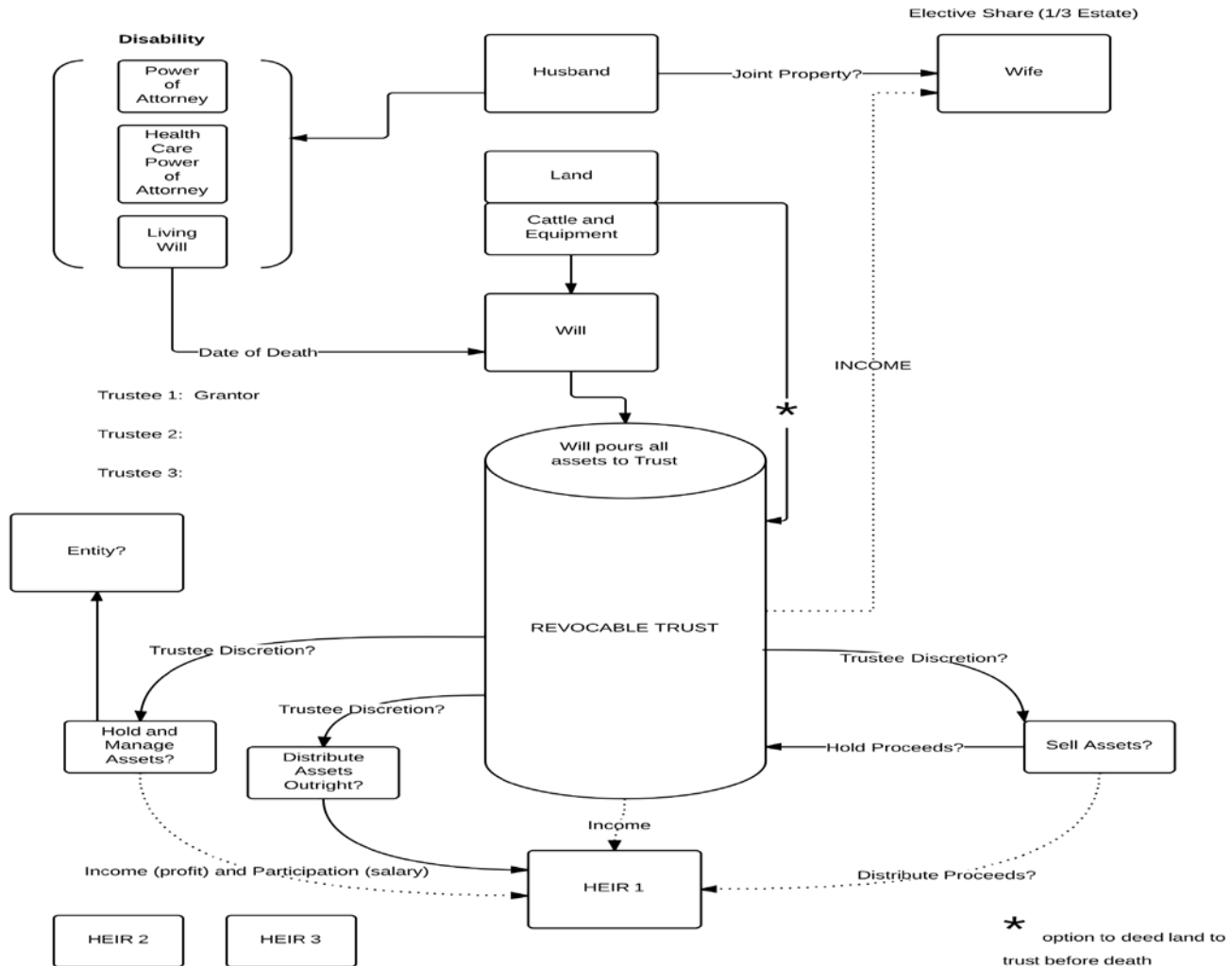


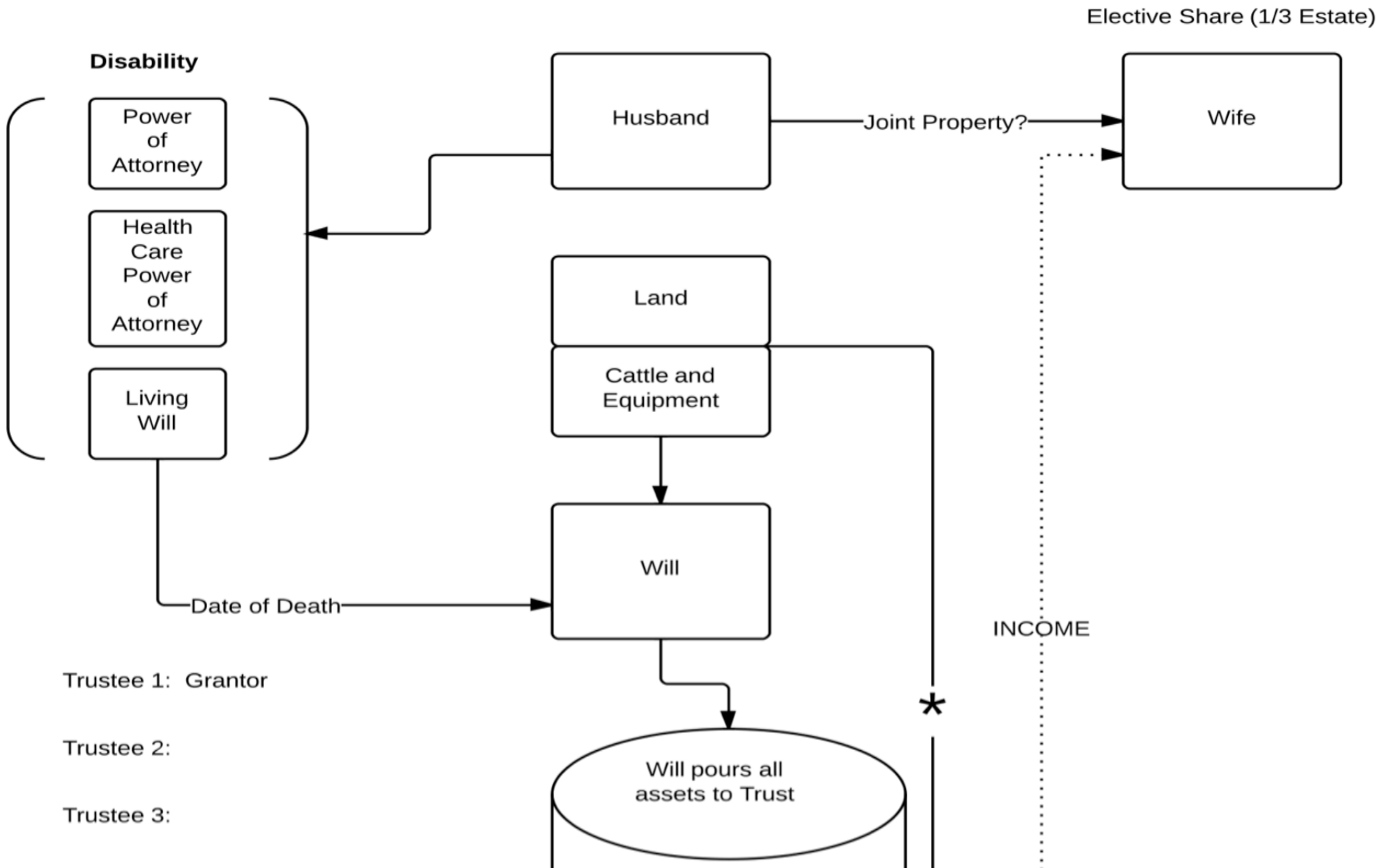
The Organization Book: Demonstration of Business Purpose

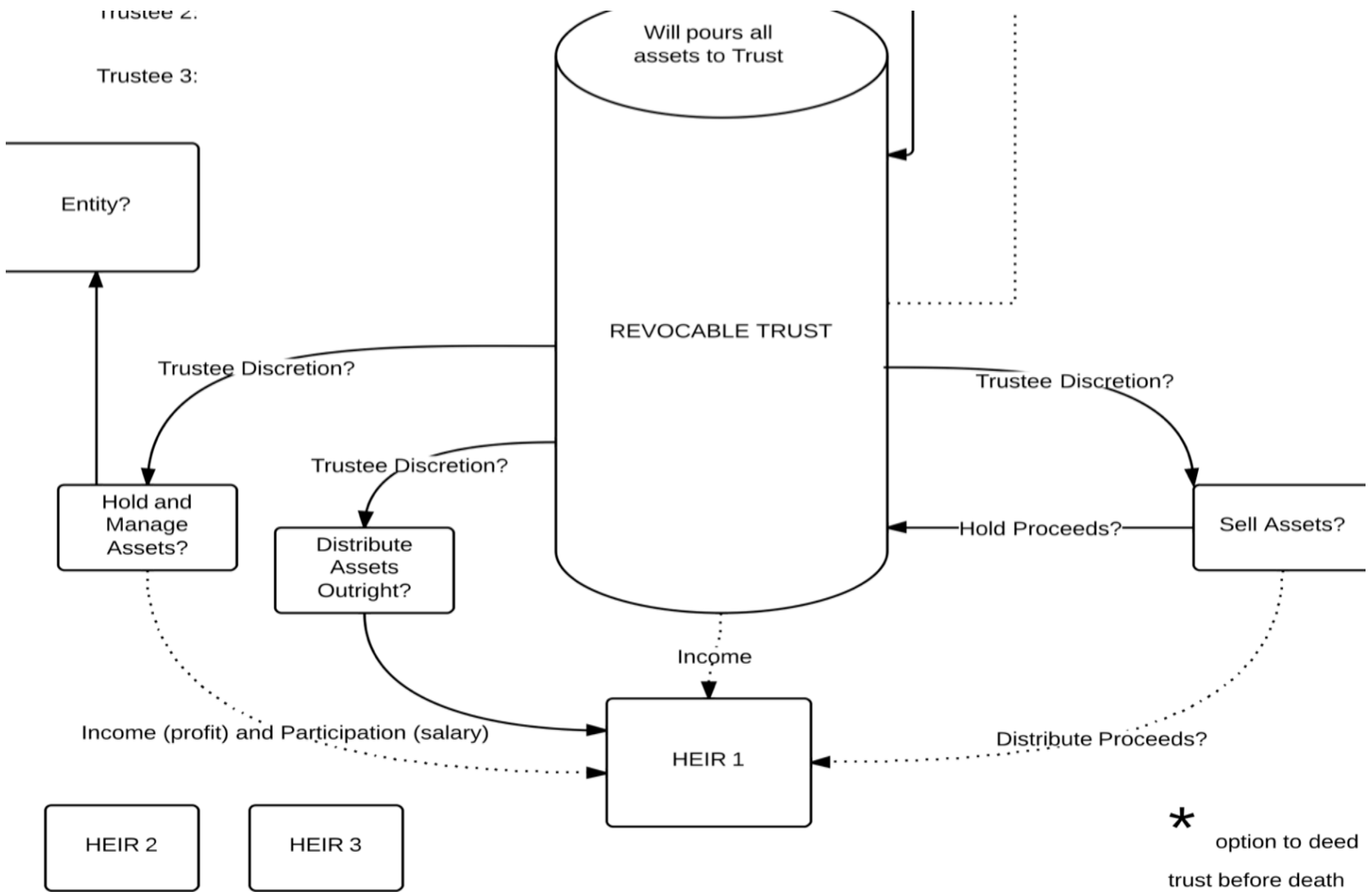
- Articles
- Operating Agreement
- Resolutions/Gifts
- Ownership ledger
- Ownership Certificates (not registered as securities)
- EIN, Deeds, Leases

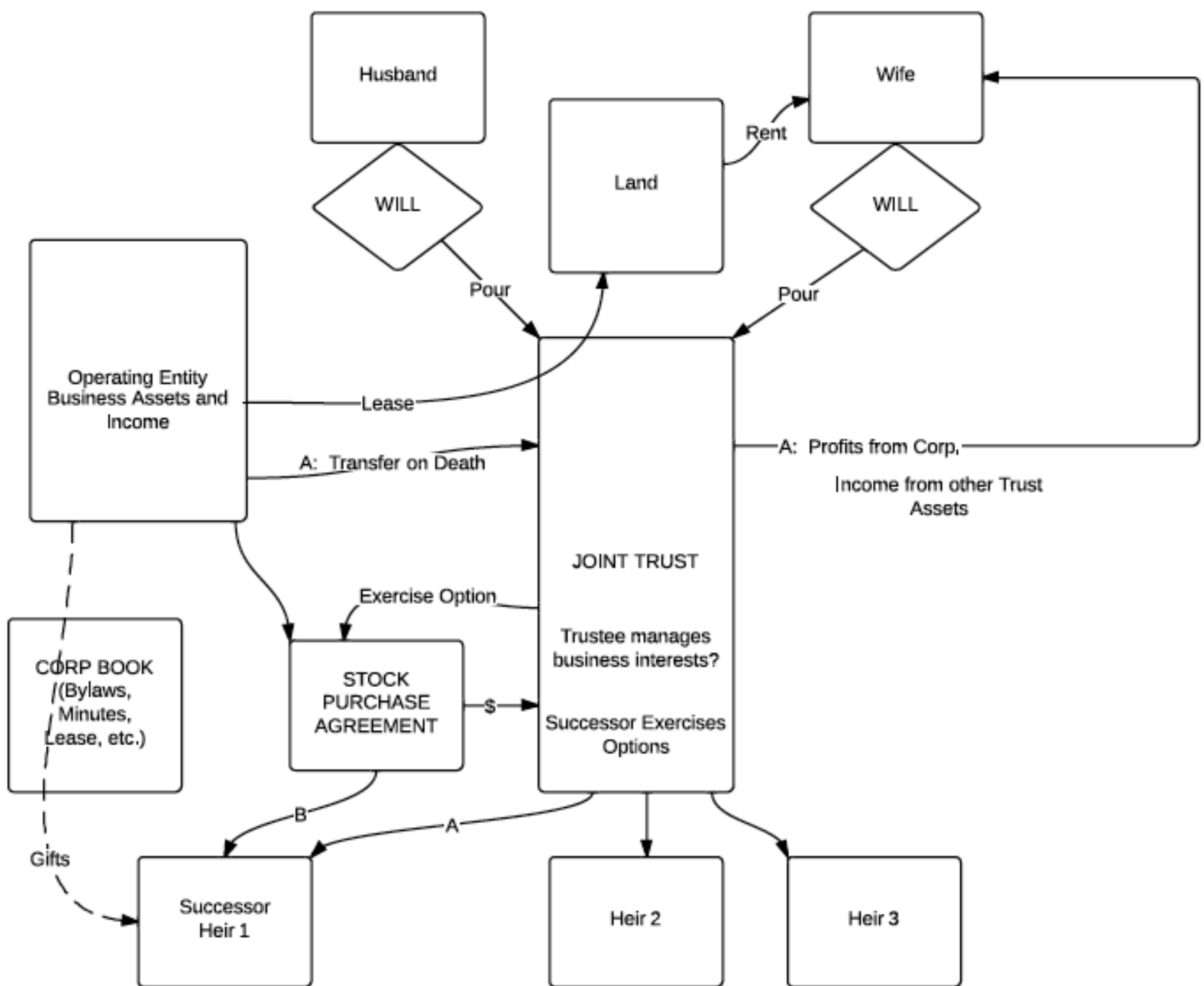
Know the plan, withstand outsider
scrutiny

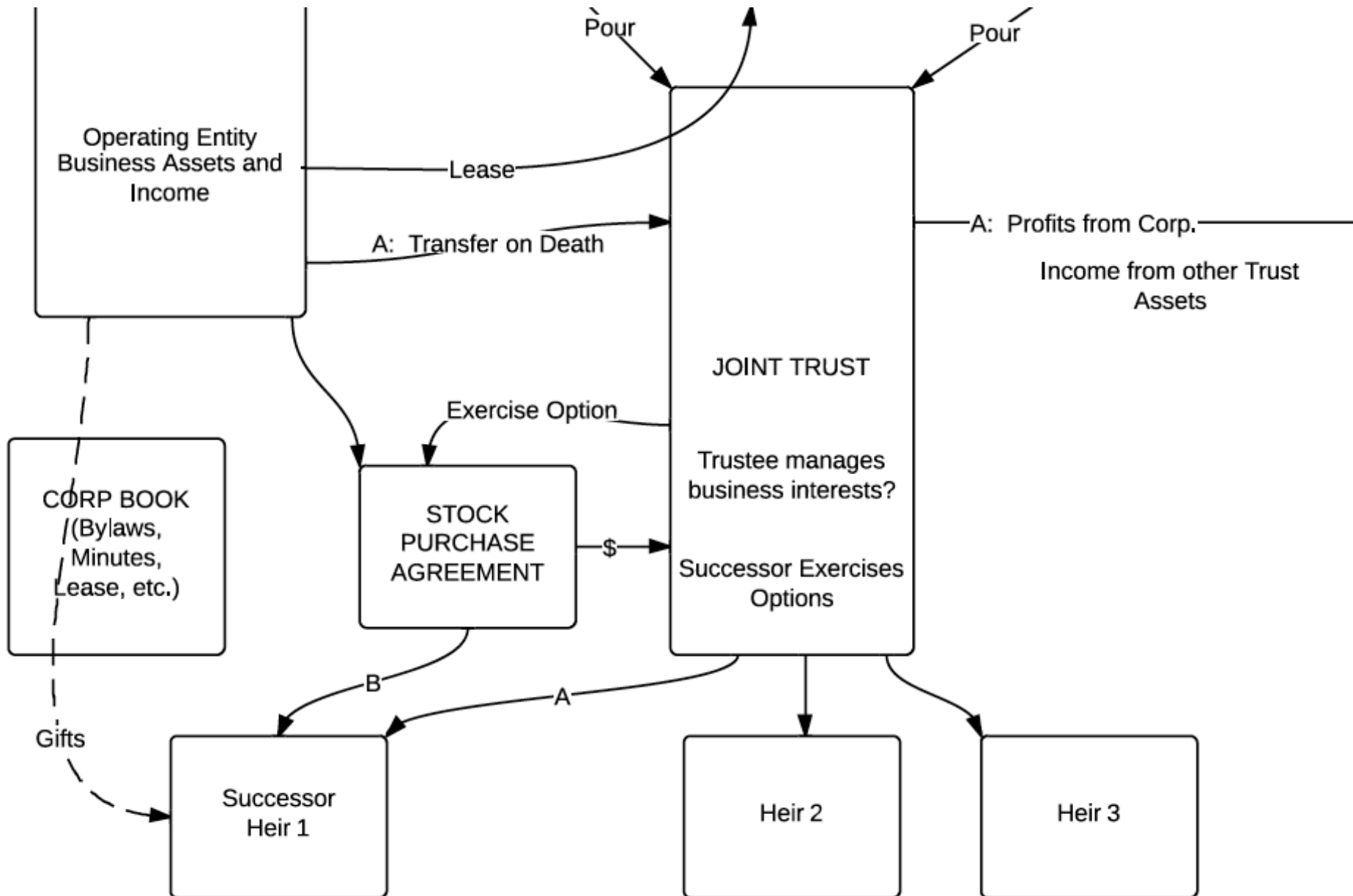
Trust Plan











Your Advisors

- Attorney
- Accountant
- Insurance Agent
- Financial Planner
- Surveyors
- Appraisers
- Trusted Non-professional

Who leads the project?

Andrew Branan

LAWYER

Hillsborough, NC | 919-619-8479 | abranan@gmail.com

SERVING NORTH CAROLINA AND VIRGINIA

Farm Law | Business Planning and Succession

Estate Planning and Administration



Branan Law Firm, PLLC
[www.brananfarmlaw.co](http://www.brananfarmlaw.com)

m