

# 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](mailto:abranan@gmail.com)

Licensed and Registered in North Carolina and Virginia

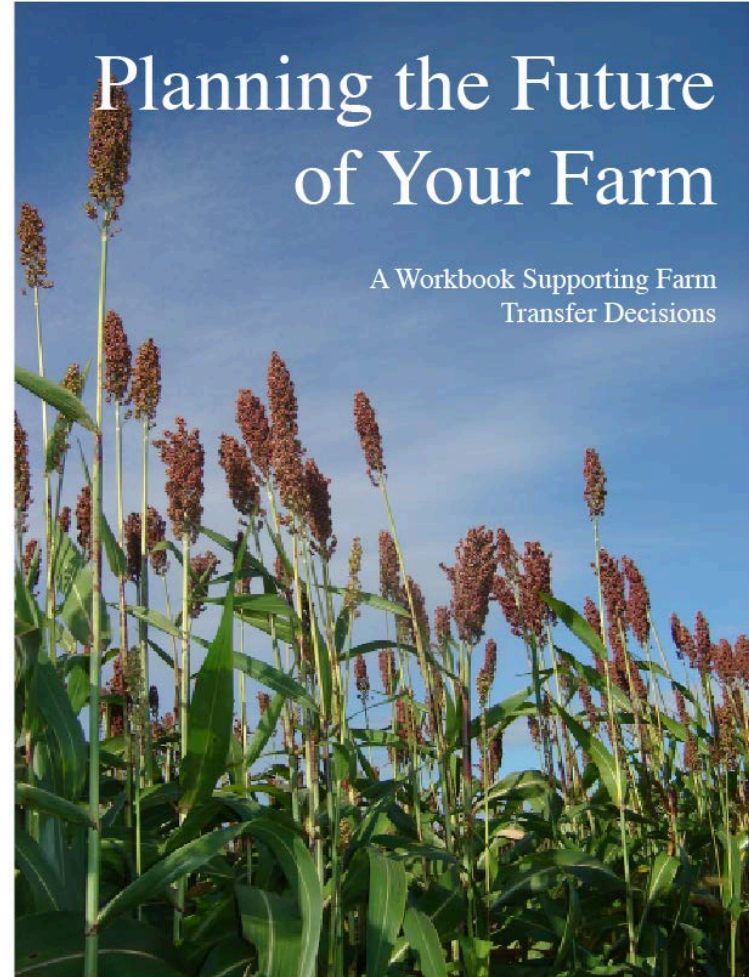


# Main Messages

- 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...”

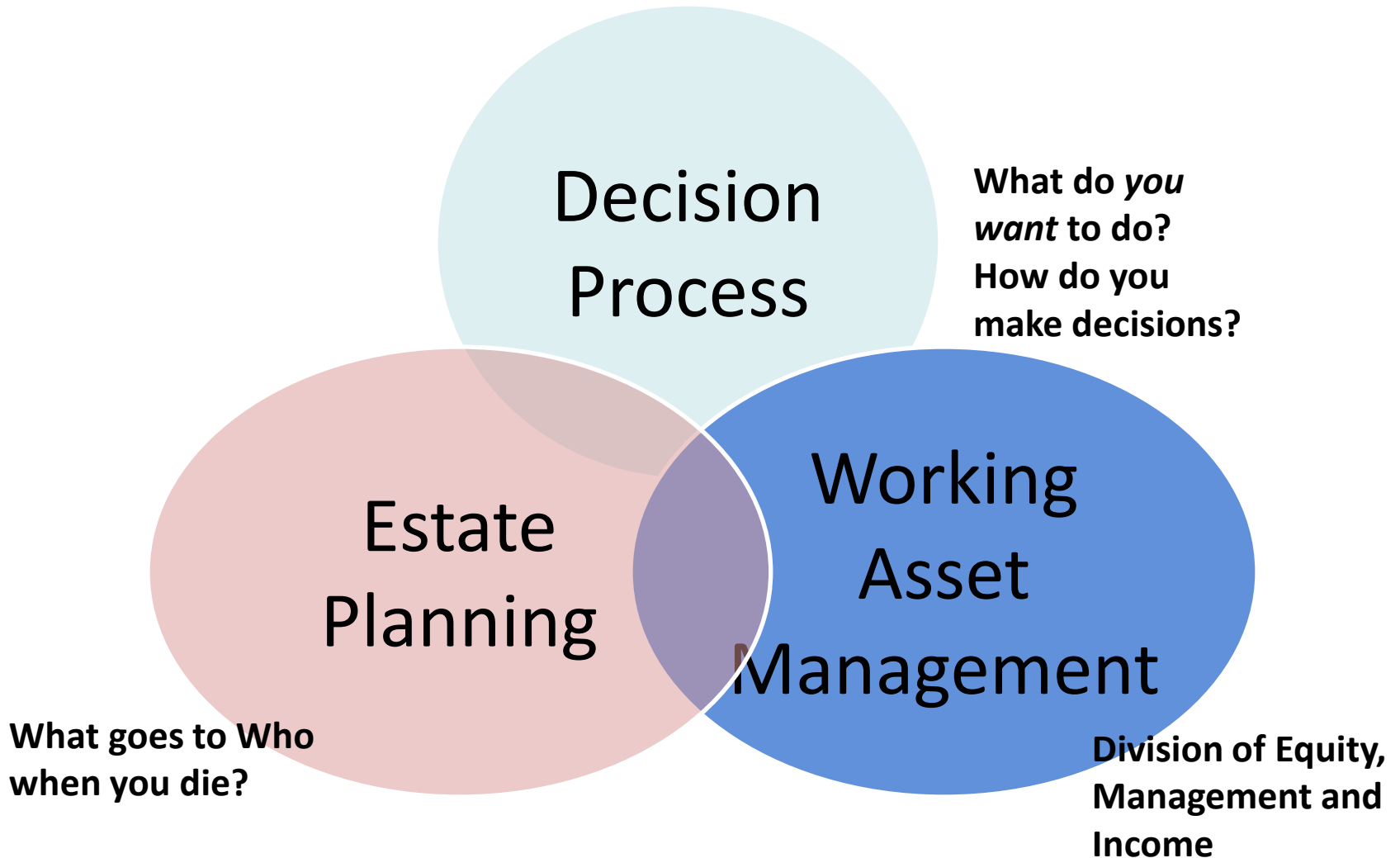
“Forget equal...”

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

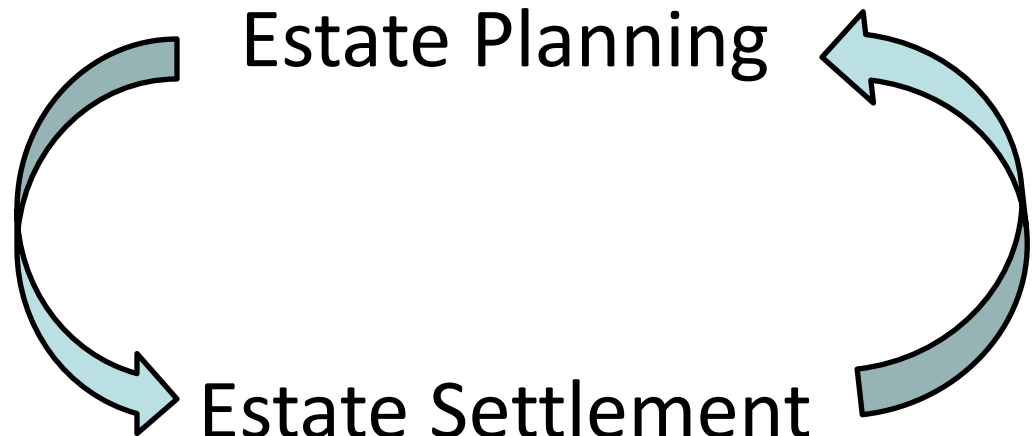
Taxable Estate

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

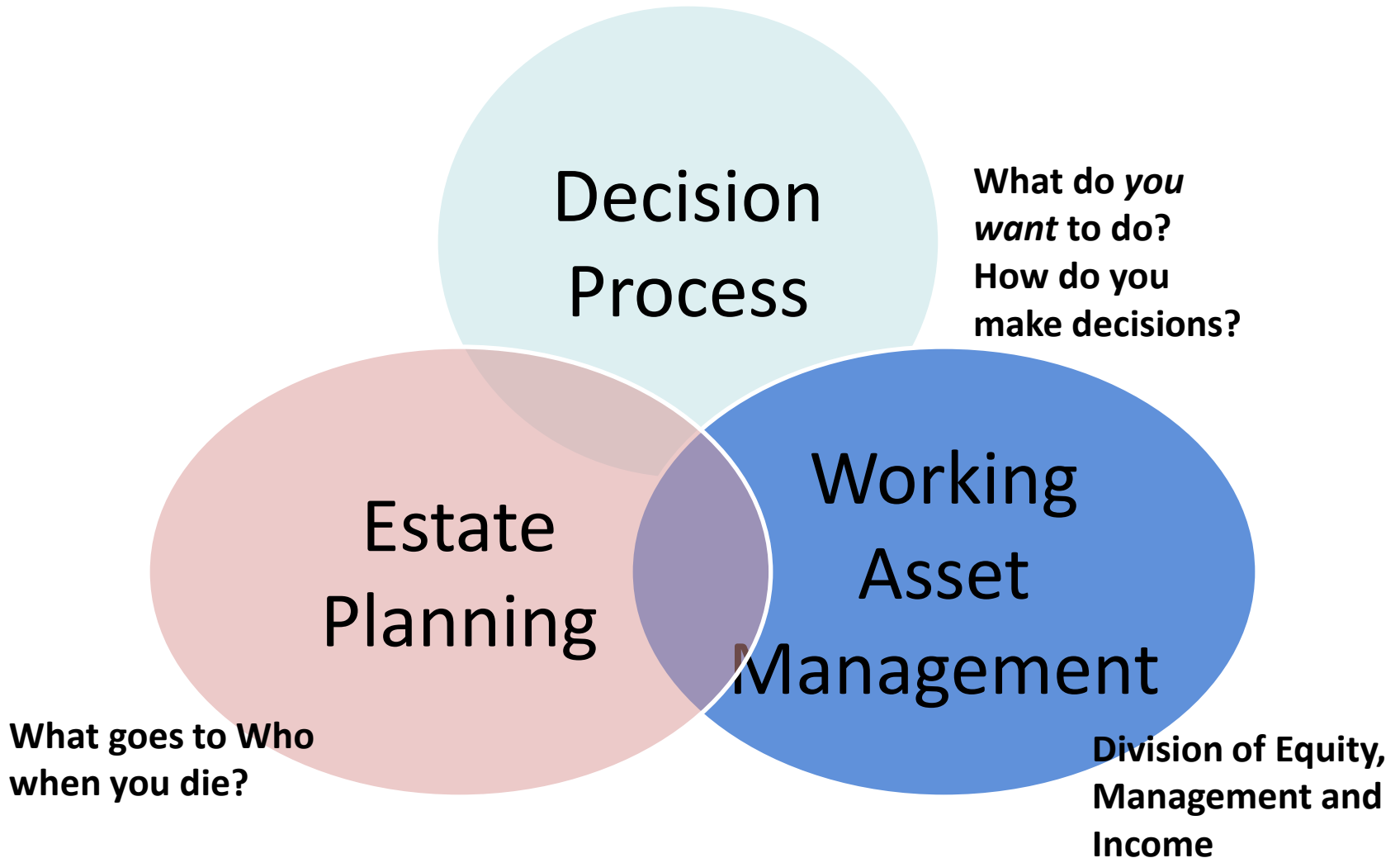
Balance of "executing creator's intent" with "well-being of beneficiaries"

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

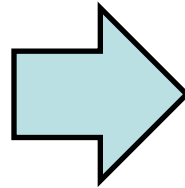
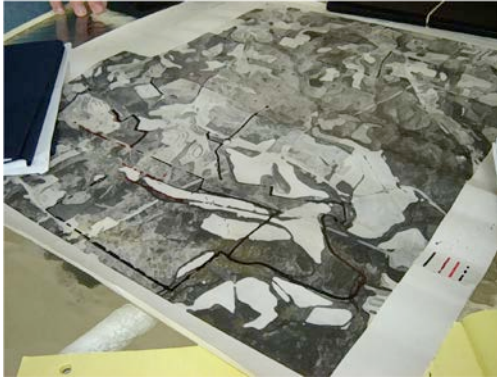


# Use of Business Entities

- 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



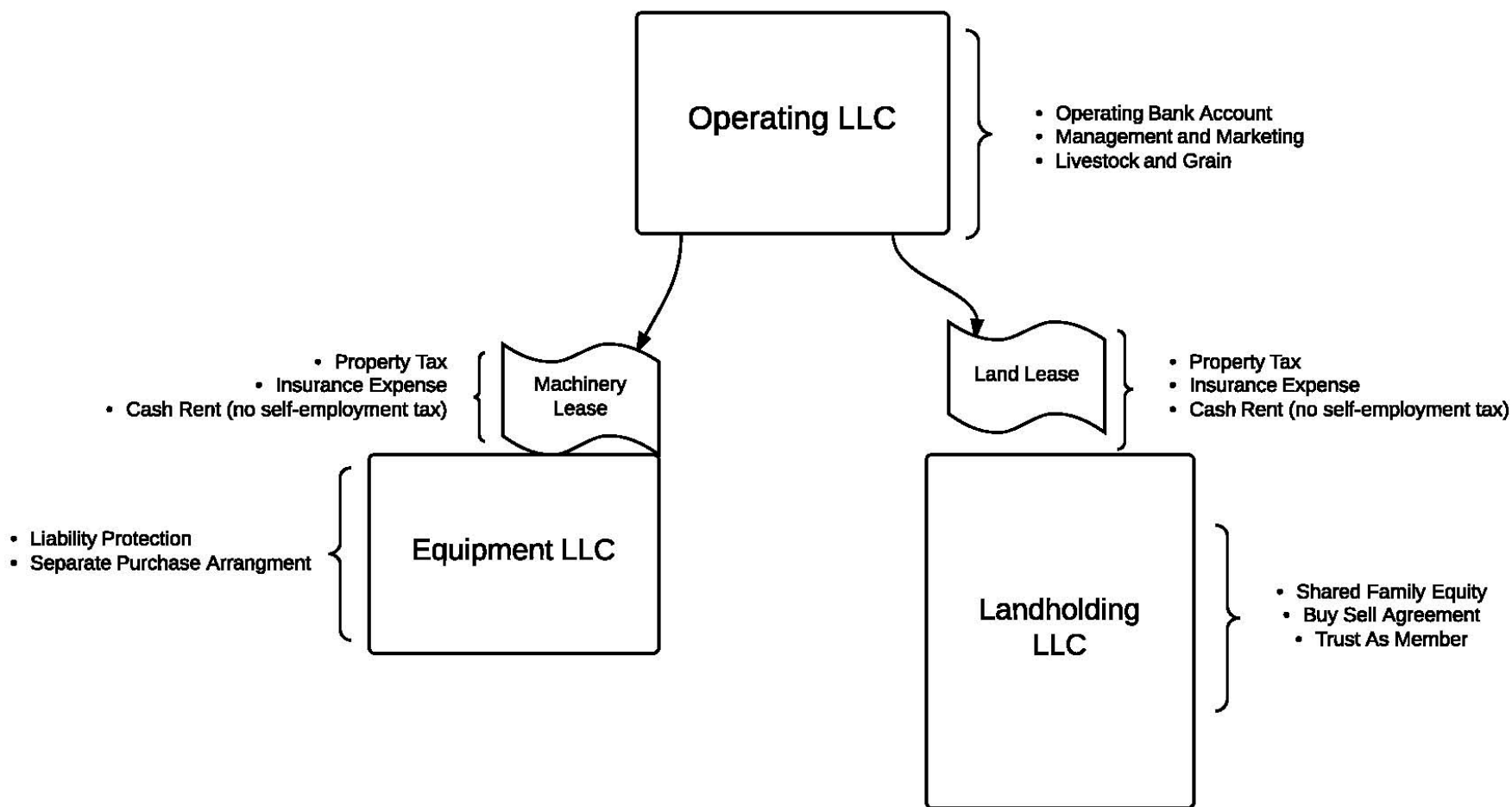
Place land into LLC  
and heirs % ownership in LLC



A contract between the owners regarding what happens when an owner wants or is forced to transfer interest

Owners and ownership • Management • Transfer restrictions

# Entity Arrangement

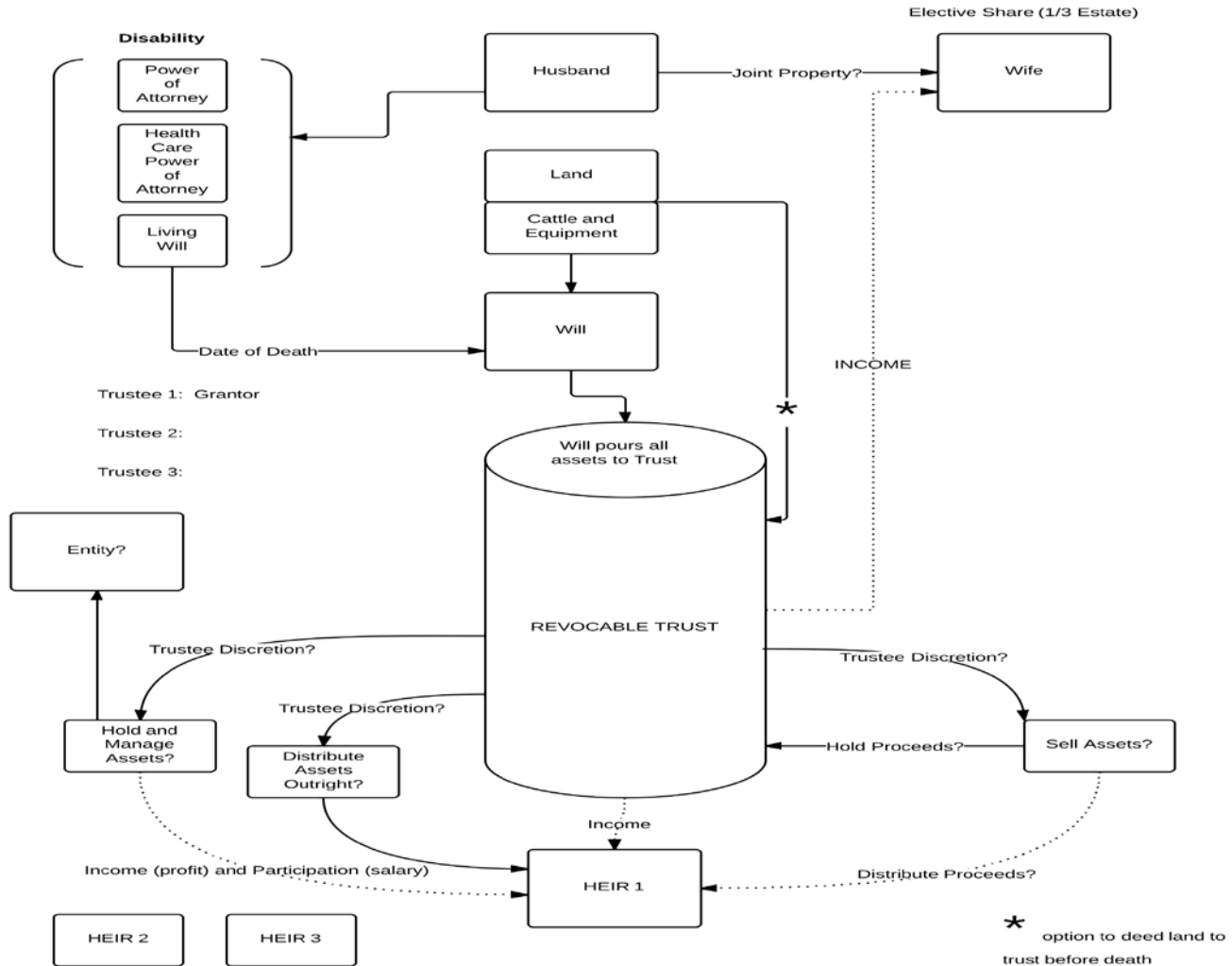


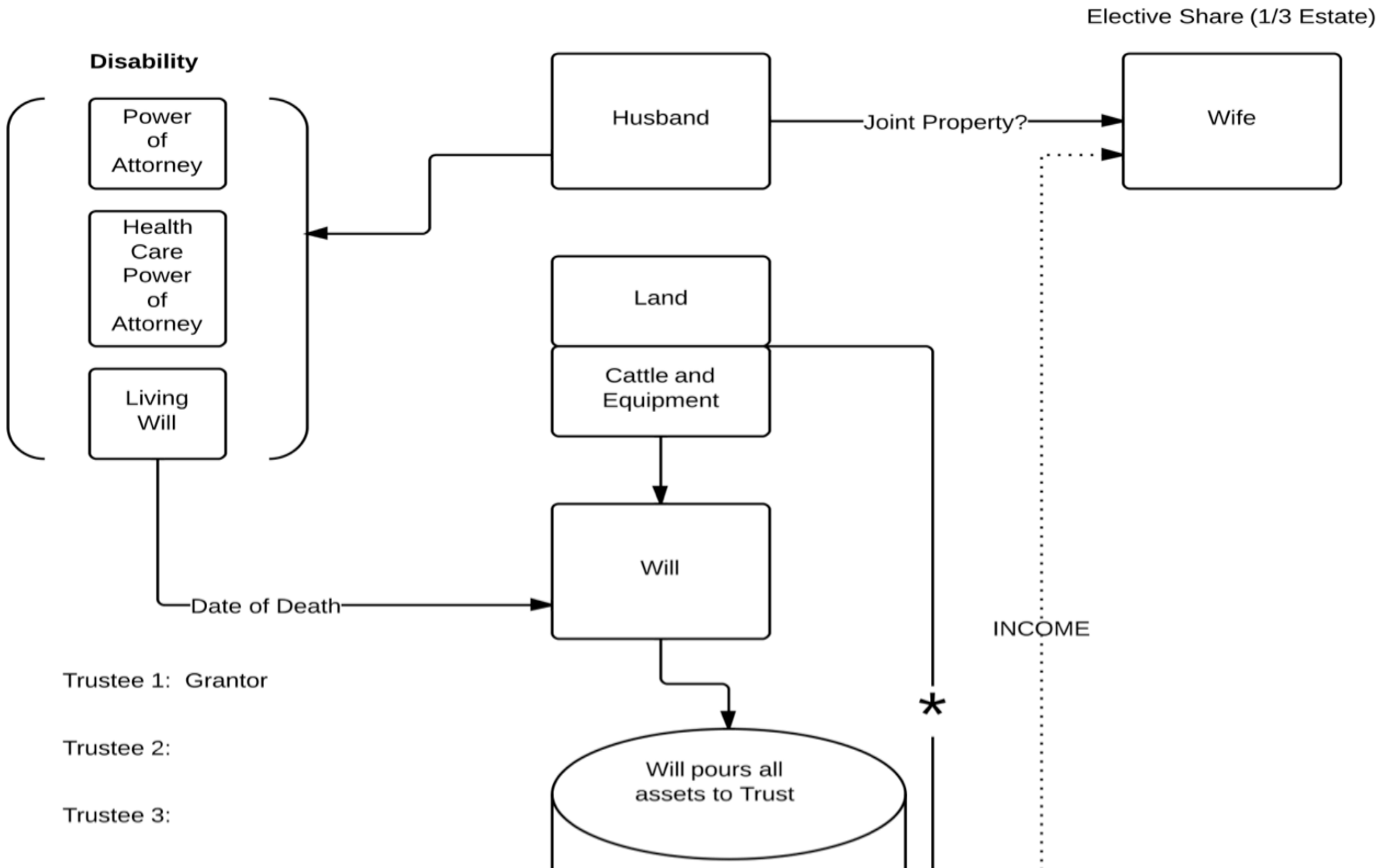
# The Organization Book: Demonstration of Business Purpose

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

Know the plan, withstand outsider  
scrutiny

# Trust Plan





**Disability**

Power of Attorney

Health Care Power of Attorney

Living Will

Husband

Joint Property?

Wife

Land

Cattle and Equipment

Will

Will pours all assets to Trust

INCOME

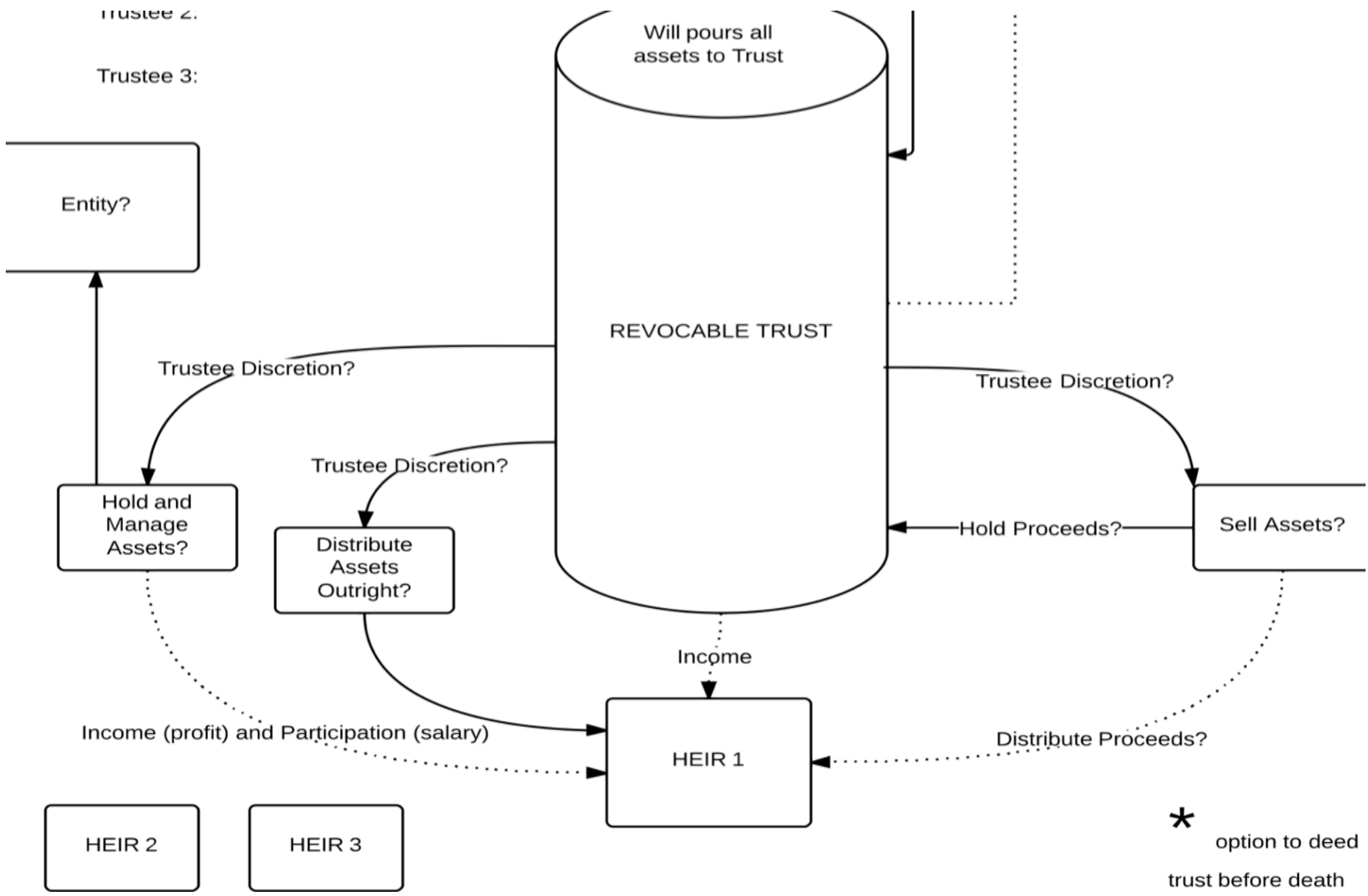
Elective Share (1/3 Estate)

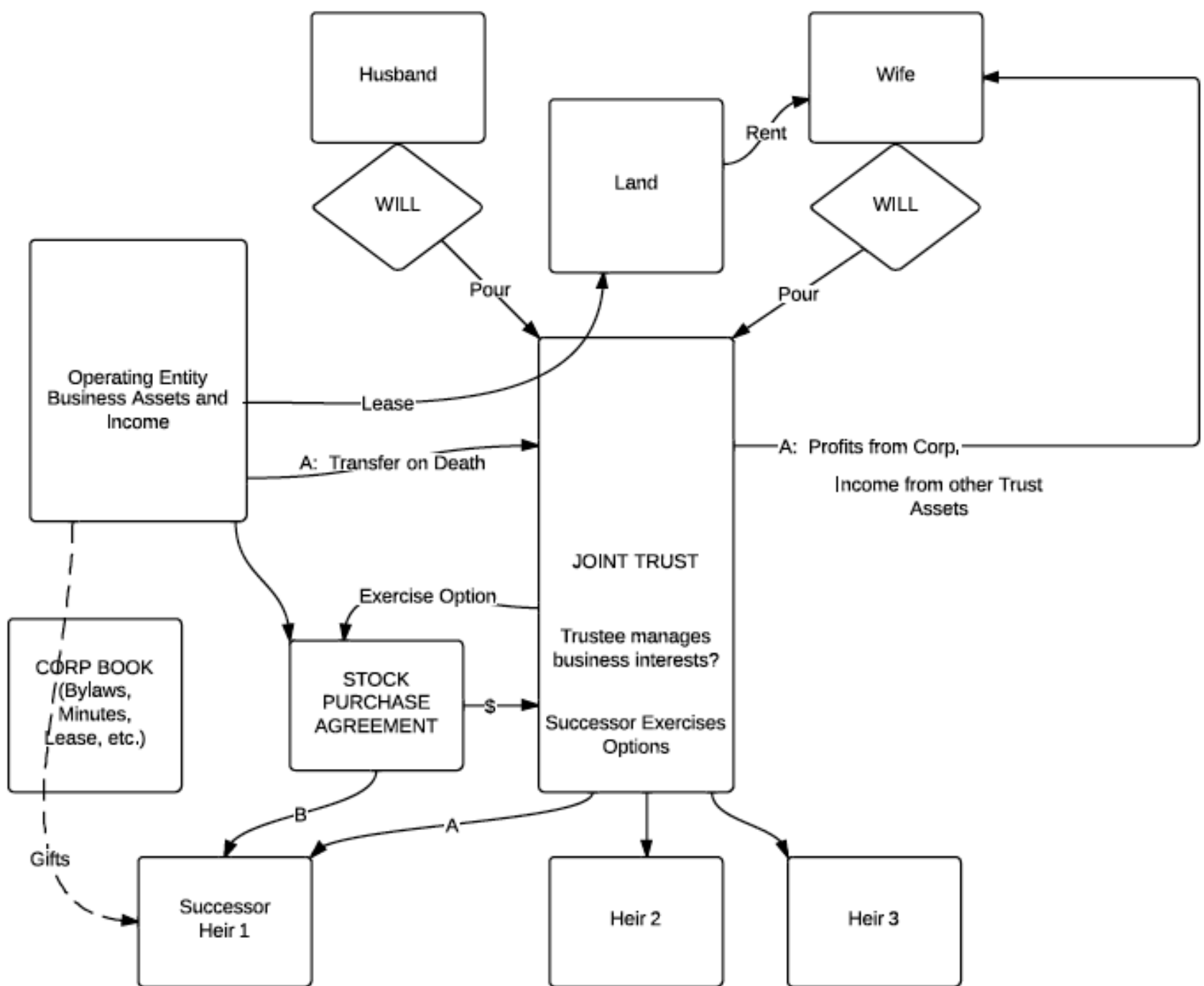
Trustee 1: Grantor

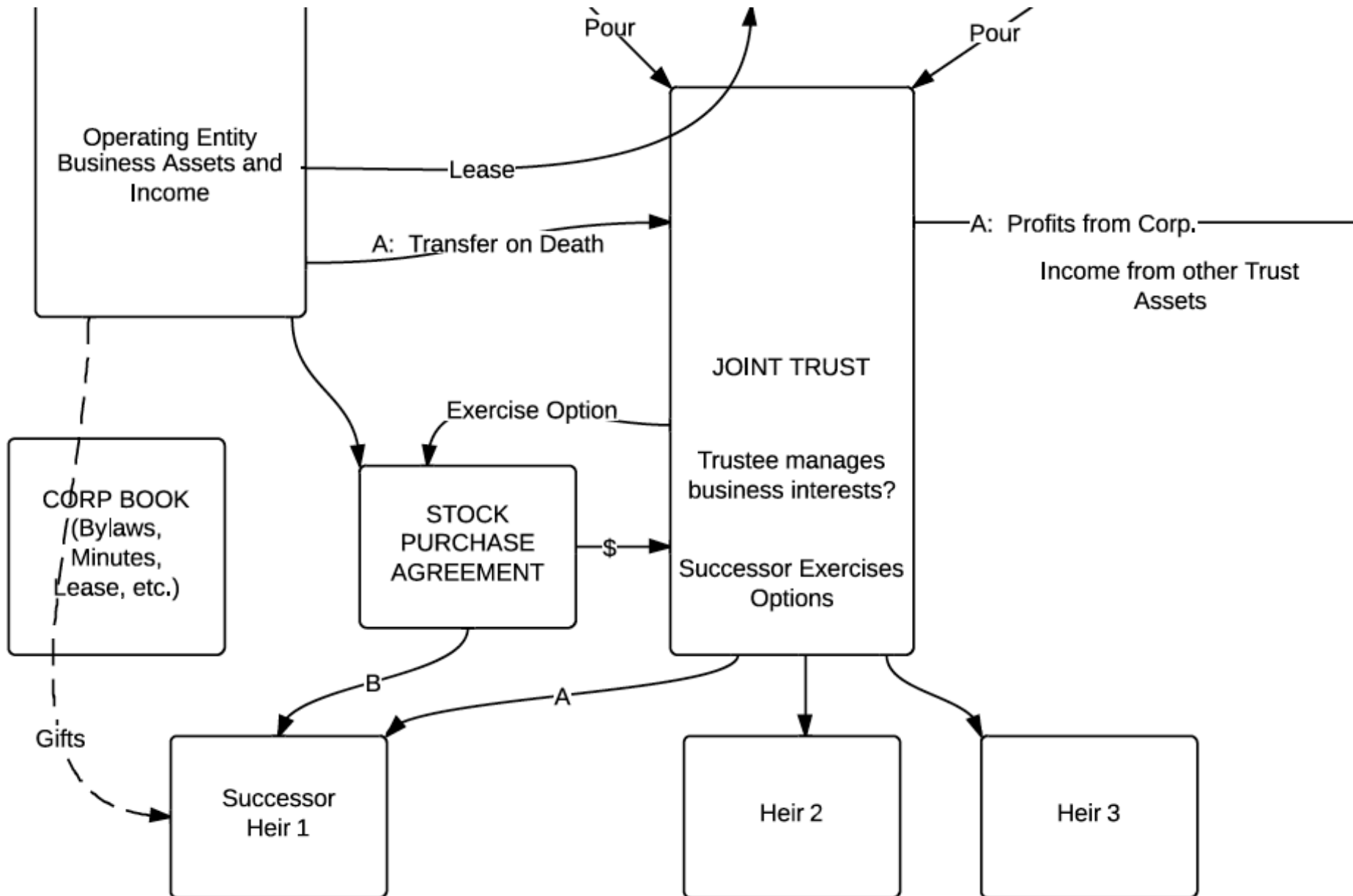
Trustee 2:

Trustee 3:

Date of Death









# 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](mailto: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