Navigating Farm Succession Without a Family Heir

- GIFTING-

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Ideally, what would you like to happen to your farm or ranch?

N EXTENSION

Who is on your team?

- Lawyer
- Tax Professional
- Banker
- Financial Planner
- Others

EXTENSION

Your situation is unique. NOT every tool in the toolbox is right for you.

What *transition* documents do you have?

Estate Planning ⟷ Work Together ⟷ **Business Planning**

Estate Planning

You <u>absolutely</u> need:

1. Will
2. Power of Attorney
3. Power of Attorney for Healthcare
4. Living Will or a Healthcare Directive

You <u>may</u> need/want

5. Trust
6. Funeral Instructions
7. Bequests of Personal Property

Business Planning

You may need/want:

8. Entity
   a. Partnership
   b. LLC
   c. Corporation
9. Lease Agreements
10. Option To Buy Agreements
11. Preemptive Rights
12. Other

EXTENSION

better to
give with
warm
hands
than with
cold

WHAT IS A GIFT?

What is a gift?

- A gift is a voluntary transfer, ***for less than full consideration***, of property from one person (donor or giver) to another person (donee or receiver)
  - Below market value loans may be considered a gift…
  - The giver must have the intent to make a **voluntary** transfer
  - The giver must be **component** to make the gifts
  - The receiver must be **capable** of receiving the gift
  - The giver **must actually part with dominion and control** over the gifted property

Estate Planning, 12th Edition Dalton and Langdon p. 127

Types of gifts

- **Complete Gift – full loss of control**

- Incomplete Gift – ability to change or modify the beneficiary
  - Revocable beneficiaries to an account
  - Beneficiaries to a revocable or “living” trust
  - Joint bank accounts – until the non-contributing party withdrawals funds
  - Gifts with reversionary interest
    - Present interest vs. future interest

TAXES

No tax on gifts to…

- **Spouse**
  - U.S. Citizen
- **Political organizations**
- **Charities**
  - Federal, State, and Local Government for Public Use
  - 501c3
  - 501 c - fraternal or veteran organizations
- **Qualified transfers** – can be for related or unrelated parties
  - Payments made *directly to* educational institution *for qualified expenses* (tuition)
  - Payments made *directly to* a medical care provider *for qualified expenses*
- **529 Plans –** up to 5 years worth of annual exclusions

*See a tax professional for exact details. Amounts change annually.

Federal Estate Taxes & Gifting

- **Federal Gift and Estate Tax Exemption "unified tax credit"**
  - The U.S. taxes the transfer of property at the same tax rates regardless if the gift is made during your life, or at your death

- **2 Exemptions**
  1. Annual Exemption
     - $19,000 (2025)
  2. Estate and Gift Tax Exclusion, taxed at 40% above this amount – usually paid by the donor (giver)
     - $13.99 million (2025) per person
     - $15 million (2026) per person

*See a tax professional for exact details. Amounts change annually.

Annual Exclusion

- Annual Exemption, $19,000 (2025)
  - Annual limit applies to all gifts to a **receiver** combined.
  - Can gift the annual exclusion to as many people was you chose, do NOT have to be related
  - Use it or lose it…
  - No IRS filing requirements

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Annual Exclusion (2025 Example)

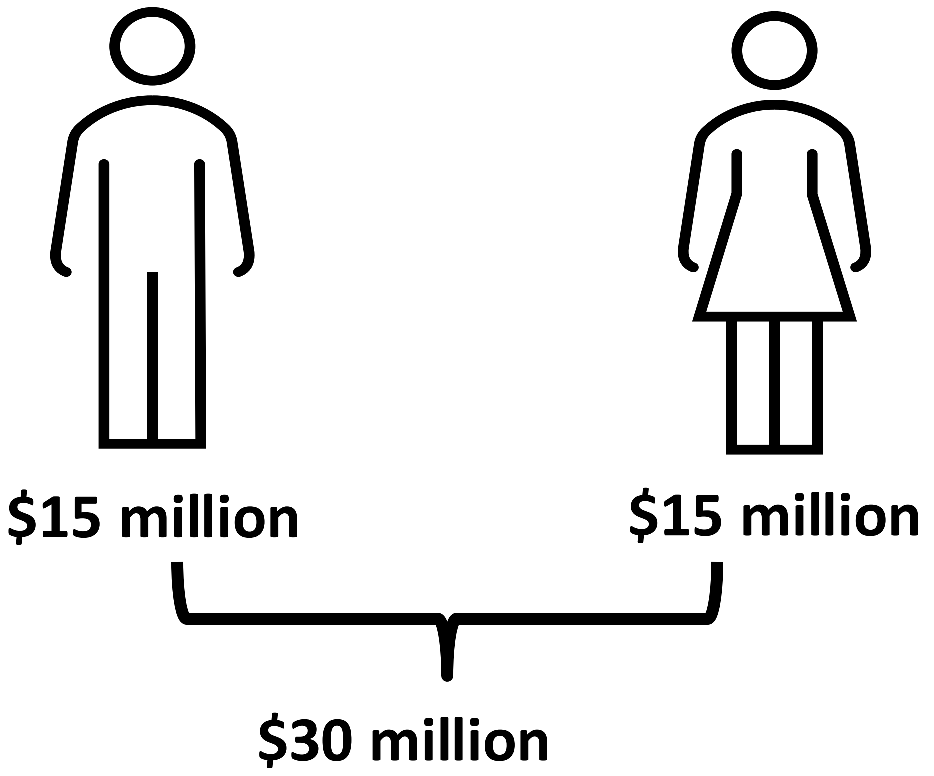
- Husband & Wife with 3 adult children who are all married (3 children +3 spouses= 6 people)

Spouse	Max Amt	X	6	=	Total
Husband	$19,000	X	6	=	$114,000
Wife	$19,000	X	6	=	$114,000
Total					$228,000

- Does not count toward $13.99 million (2025)

Estate and Gift Tax Exemption (2026 Ex.)

- Under current law and if their estates are structured correctly, a married couple could pass $30 million (2026) in assets, without paying <u>federal</u> estate tax
- Elect **portability** for unused exemption
  - Deceased spouse unused exemption (DSUE)
- For any gifts larger than the annual gift tax exclusion, you must file a 709 with the IRS



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Example – **Federal Gift and Estate Tax Exemption**

- I have a farm worth $5 million. I gift it to my tenant in 2025. This is the only **non-exempt** gift I make during my life.
  - Tenant does not pay Nebraska Inheritance tax
  - “Inherits” my basis in the property
  - File a 709

- At my death, my Federal Gift and Estate Tax Exemption will be lowered by the $5 million gift.
  - The Federal Gift and Estate Tax Exemption amount changes every year… we don’t know what it will be at the date of your death.

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Nebraska Inheritance Tax

as of Jan. 1, 2023

Person	Tax % and Exemption
Surviving spouse, Under 22 years old, Qualified Charities	0%, unlimited
Class 1: Immediate Relatives Brothers and sisters, children, grandchildren, great grandchildren, parents, grandparents and great grandparents, and their spouses. Adopted children are treated as natural children.	1%, $100,000
Class 2: Removed Relatives Aunts, uncles, nieces, nephews, their descendants and their spouses.	11%, $40,000
Class 3: All Others	15%, $25,000

OTHER CONSIDERATIONS

What is the value of the gift?

- For gift tax purposes, the value is equal to the fair market value of the gifted property on the date of the gift.
  - May need an appraisal
  - Discounts are given for lack of marketability, liquidity, and control
    - Closely held businesses

Estate Planning, 12th Edition Dalton and Langdon p. 133

Strategies for Large Estates Related to Gifting

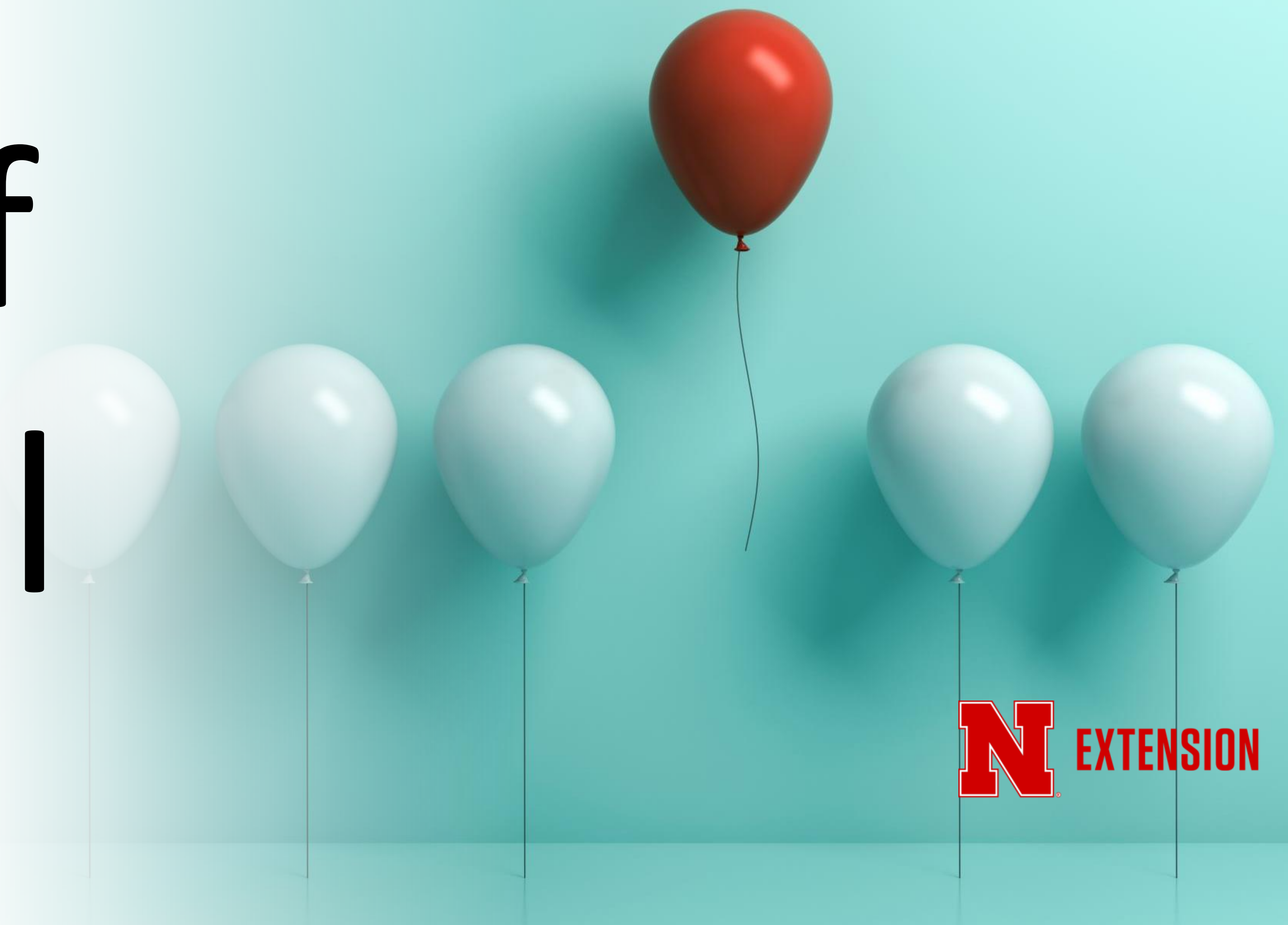
≥$15 million Single OR $30 million Couple (2026)

- Make complete gifts
- Maximize exemptions
  - – political organizations, charities, qualified expenses, and 529 Plans
- Use the annual exclusion… every year, to as many people as you want
- Gift appreciating assets

Estate Planning, 12th Edition Dalton and Langdon p. 161-165

What are the drawbacks of giving?

Loss of Control



Tax Basis

- When the giver makes a gift of property to a receiver the **receiver's basis in the property equals the givers adjusted basis**.
  - Incentive to not sell gifted property

- Example
  - You (the giver) has an adjusted basis in land of $400 per acre
  - On the day you gift the land to the receiver, the land is worth $3,744 per acre
  - If the receiver sells the land for <u>**more than $400 per acre**</u>, they may be **subject to capital gains**…

Estate Planning, 12th Edition Dalton and Langdon p. 159

Gifts do NOT get the step up in basis

Article

go.unl.edu/amcu

- **Stepped-up basis** is a tax provision that allows the value of an inherited asset to be adjusted to its fair market value at the time of the original owner's death.
  - Grain, livestock, machinery, land, and prepaid assets on hand.
  - Incentive to pass low basis assets at death.

- Capital gains taxes are owed on profits made from the sale of assets.
  - The tax rate depends on how long the asset was owned, taxable income, and filing status.
  - Long-term capital gains rates (0%, 15%, 20%) are more favorable, than income tax rates.
  - Can also claim a loss.
  - **Not all gifted assets are taxed at capital gains**, some are taxed at ordinary income levels. (i.e. equipment subject to depreciation recapture).

*See a tax professional for exact details. Rates and Brackets may change annually.

Look Back Periods

1. Medicaid (Long-Term Care)
   – 5-year look back period
   – Limits assets that can be owned (total value and types of assets varies by state)
   – Limited facility choices

2. Federal Estate Tax
   – 3-year lookback period
     - Any gift tax paid
     - The value of any property
     - Death proceeds of any life insurance policy

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Estate Planning, 12th Edition Dalton and Langdon p. 159

Gifts to Charities

N EXTENSION

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Gifting to charities…Income Tax Deduction

- In order to reduce income taxes, you must itemize deductions
  - Standard Deduction, Married Filing Jointly $30,000 in 2025

- Adjusted Gross Income Limitations 20%, 30%, or 60% depending on the classification of the charitable organization and the type of property contributed
  - When donating tangible property
    - Related use, donation value = Fair Market Value
    - Non-related use, donation value = Donor's adjusted basis

Estate Planning, 12th Edition Dalton and Langdon p. 341 & 364

Gifting to charities

- Work with their donation offices…

- Outright gifts
  - One-time
  - Reoccurring

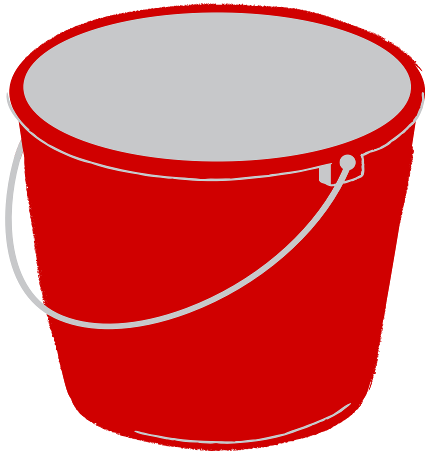
- Charitable trusts

Trusts

- A trust is separate entity, think of a **bucket**… it holds assets.
  - "Funding the trust" is retitling property to the trust

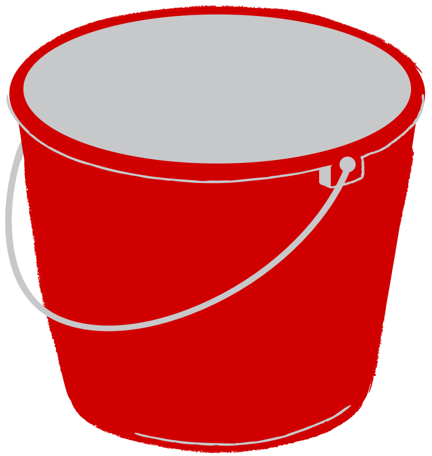
- You can define the "rules" of how assets are used, and when they come out of the trust.
  - Annual payments are made to beneficiaries of the trust

- Because of the state inheritance tax, in Nebraska, trusts do not provide "privacy" from probate



Trusts

- 3 Parties Named in the trust
  - **Grantor** – person putting things in the trust
  - **Beneficiary** – people benefitting from the trust
    - Income beneficiary
    - Remainder beneficiary
  - **Trustee** – person managing the trust
- Remainder – assets left in the trust at the end of the trust term.



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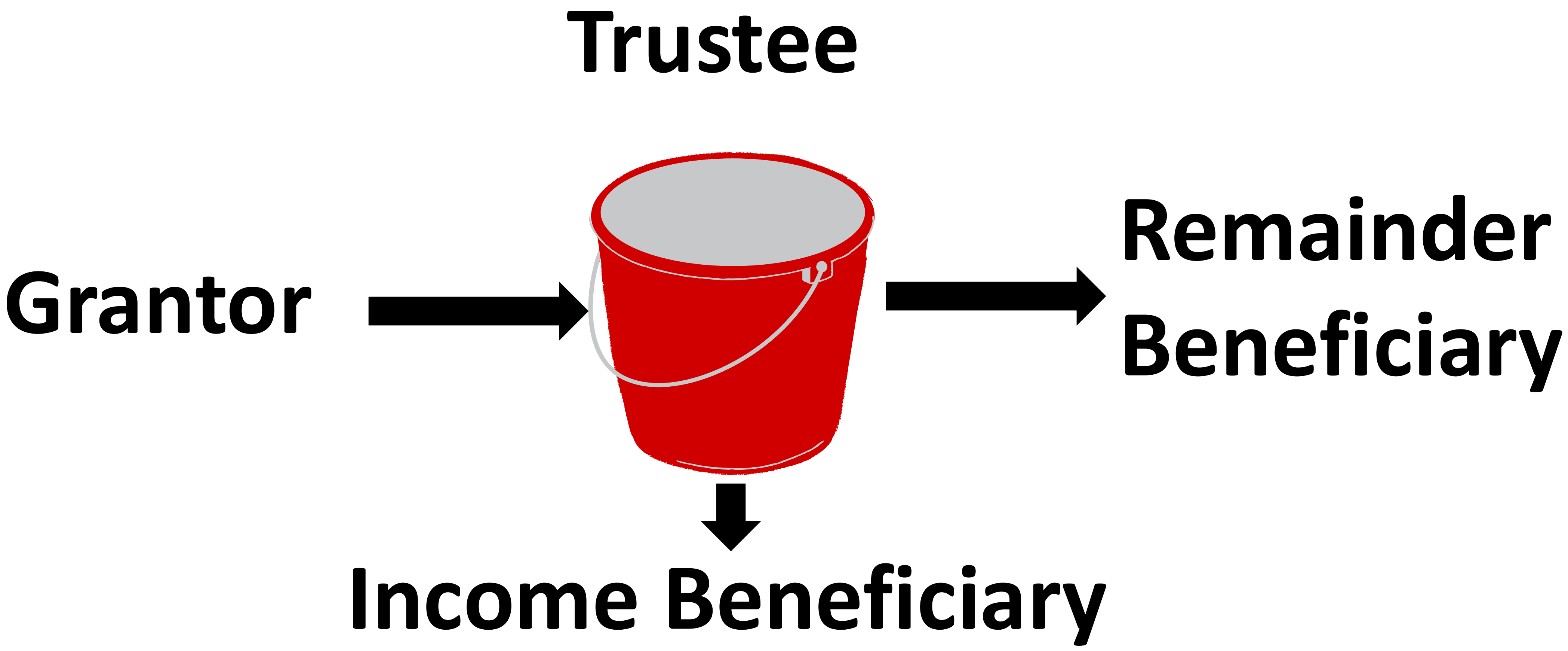
Trust


Trustee
Grantor
Remainder Beneficiary
Income Beneficiary

Charitable Trusts:

- **Pooled Income Fund** – All donor contributions are pooled into a trust for a single charity. Each donor receives an allocable share of the trust's income for life.

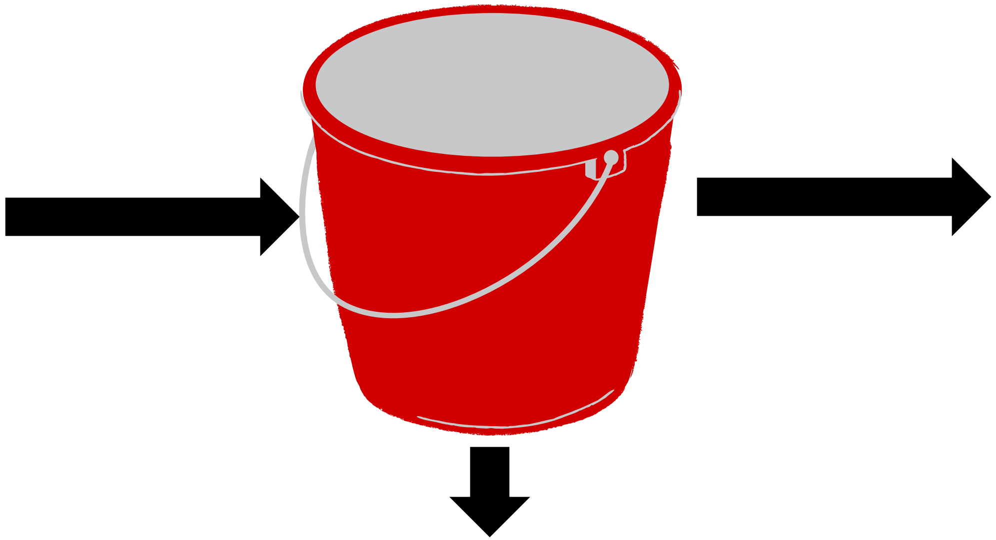
- **Charitability Remainder Trusts "CRAT"s or "CRUT"s** – Irrevocable trusts that allows a donor to contribute assets to charity while retaining the right to receive income from those assets for a set period of time or for the donor's lifetime.
  - Present interest – Donor, Future interest – Charity
  - Advantages: income tax deduction at time of transfer, retains some rights to enjoy the property, reduces taxes estate

- **Charitability Lead Trusts** – The charitable organization receive the income interest during the term of the trust and a non-charitable beneficiary (usually a family member) receives the remaining interest.
  - Present interest – Charity, Future interest – Beneficiary

Trusts: Pooled Income, Charitable Remainder

Trustee

Grantor
Giver



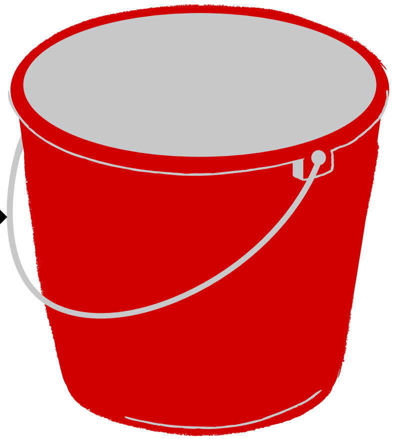
Remainder Beneficiary
Charity

Income Beneficiary
Giver

Trusts: Charitable Lead

Trustee

Grantor
Giver



Remainder Beneficiary
Non-Charity

Income Beneficiary
Charity

WRAPPING UP

Questions to ask yourself…

- Why are you gifting?

- Are you gifting the right asset, to the right person/organization, for the right reasons?

- Are you confident you (or your spouse/heirs) don't need this asset?

EXTENSION

You need a plan.

Who is on your team?

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- Tax Professional
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- Others

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