



Baystate Financial Planning

HDaroff@BaystateFinancialPlanning.com

www.BaystateFinancialPlanning.com

***I don't want my daughter's (son's)
next husband (wife) getting a
dime of what I've built!***

FAMILY BANK[©]

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Herbert K. Daroff, J.D., CFP[®]**

Should your Family Trust be a **FAMILY BANK[©]** instead?

- **Family Trust**
 - Trustee obligated to pay all expenses for the health, education, maintenance, and support (HEMS) of the beneficiaries.
 - Would you pay for your son's or daughter's third FRESHMAN year in college?
- **FAMILY BANK[©]**
 - **Loans** are made to your son or daughter for college, PROVIDED they keep their grade point average (GPA) over 3.0 (higher or lower).
 - No discretionary distributions are made until the loans are paid back.
 - health, education, and support are still provided, as needed

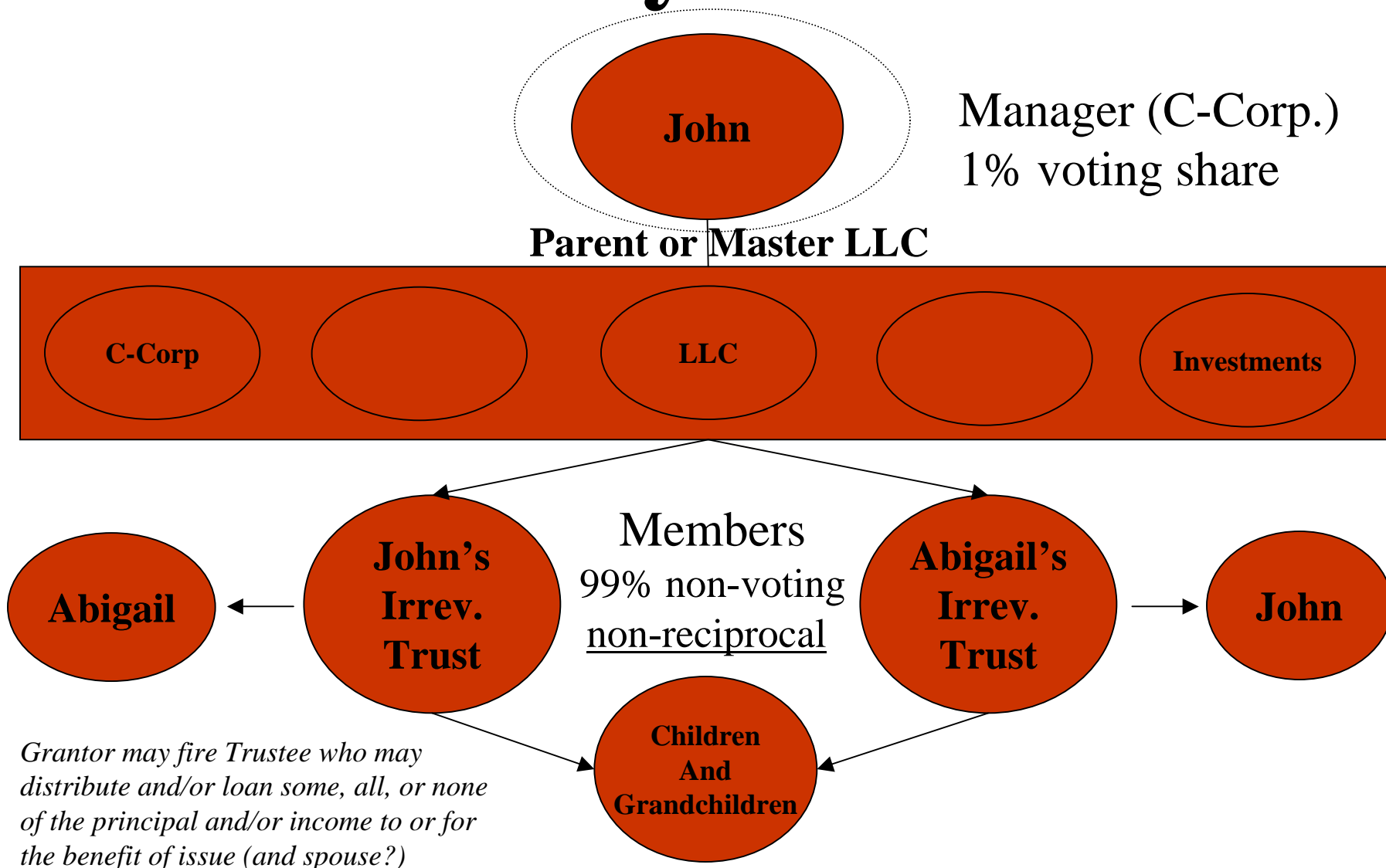
Should your Family Trust be a **FAMILY BANK[©]** instead?

- **Family Trust**
 - Trustee obligated to distribute funds for son's or daughter's first house.
 - What happens to that asset if they get divorced?
- **FAMILY BANK[©]**
 - **Loans** are made to your son or daughter for their first house, INTEREST ONLY FOR LIFE.
 - If they ever get divorced (e.g., 25 years later), Family Bank[©] can still call the note.

What are the biggest **RISKS** facing you, your family, and/or your family business?

- **Protecting Assets from Creditors**, including:
 - former spouses and former in-laws
 - taxes and liability lawsuits
- **Retirement Accounts**
 - qualified plans have federal and state protection
 - IRAs have state protection, and limited protection in the event of federal bankruptcy (\$1M)
- **Costs of Health Care and Health Insurance**
- **Out-Living Financial Assets**
- **Terrorism**
- **Mold** (the new asbestos)

Family Bank[©]



NEW ACQUISITIONS

1. create two irrevocable trusts (one for him and one for her, **not reciprocal**) with each other as beneficiaries along with their issue
2. form an LLC with him as Manager and the trusts as 50/50 members
3. personally loan the down payment to the LLC, and have the LLC acquire further financing
4. as the building grows in value (and pays off the debt), the equity value belongs to the LLCs, which are owned by the trusts

TRANSFER EXISTING ASSETS

1. value the asset to be transferred (valuation #1)
2. transfer title of the asset to an LLC as a capital contribution
3. receive member interests equal to the value of the asset in exchange for the capital contributed (like I.R.C. Section 351 for corporate stock)
4. value the member interests (valuation #2) based on discounts for lack of marketability and lack of voting control
5. gift the discounted member interests utilizing each spouse's \$1,000,000 lifetime gift exemption and their annual gift exclusions (\$13,000 in 2009 for gifts of present interests)

TRUSTS


ADVANTAGES	DISADVANTAGES
income and/or principal can be “ <i>sprayed</i> ” to beneficiaries (does <u>not</u> require equal payments)	Grantor (settlor) cannot be the trustee if the goal is asset protection (loses direct control)

LLCs

ADVANTAGES	DISADVANTAGES
donor retains control <i>(manager)</i>	income and/or principal must be paid <u>pro rata</u> to the <i>members</i> unless multi-tiered

LLCs owned by TRUSTS

ADVANTAGES	DISADVANTAGES
income and/or principal can be “ <i>sprayed</i> ” to beneficiaries	
donor retains control	



The contents of this presentation are intended for education purposes only.

The presentation provides a brief summary based on our understanding and interpretation of current law.

All tax references are to federal tax law only, unless otherwise stated.

This presentation includes changes made by the 2001 Tax Act.

All these changes are to expire at the end of 2010.

Pursuant to IRS Circular 230:

The information contained in this material is not intended to, and cannot be used to, avoid IRS penalties.

This material supports the marketing and promotion of life insurance.

Seek advice based on your particular circumstances from independent tax, legal, accounting, insurance, investment, and financial advisors.

Individuals, including business owners, should not apply any of these concepts without coordinating with attorneys, accountants, life insurance agents, investment advisors, financial planners, etc.

Consult with your professional tax advisor about your personal situation before making any decisions.

This is not intended to provide tax or legal advice.

Advisors should not apply any of these concepts to their clients without:

- (1) establishing a mutually agreed upon scope of their engagement;
- (2) gathering necessary and sufficient objective and subjective data given the client's goals, needs, and priorities; and
- (3) evaluating that data and determining alternative strategies consistent with the mutually agreed upon scope of the engagement and the data collected.

**Herbert K. Daroff, J.D., CFP® is a Registered Investment Advisor in Massachusetts
doing business as BAYSTATE FINANCIAL PLANNING.**

Herbert K. Daroff, J.D., CFP®

He is an attorney by education and a CERTIFIED FINANCIAL PLANNER™ practitioner by profession.

Mutual Funds magazine (8/2001) recognized Herb as One of the Top Advisers in the Northeast, Worth magazine (7-8/2002) included him in The 250 Best Financial Advisers; and Medical Economics magazine (11/2004) listed him in The 150 Best Financial Advisers for Doctors.

Herb's creativity, experience, and resourcefulness enable him to work well with clients and their personal advisors.

HDaroff@baystatefinancialplanning.com