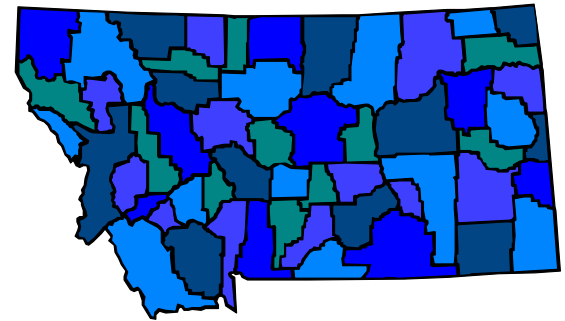


**Think You Know Who
Receives Your Property
When You Pass
Away?????
...Think Again**



***Montana Policy Review Webinar
January 23, 2013***



Marsha A. Goetting

Ph.D., CFP[®], CFCS



- **Professor & Extension
Family Economics Specialist**
- **Department of Agricultural
Economics & Economics**

“What” Determines “Who” Gets Your Property When You Die????



Montana laws:

- **Contracts**
 - **Beneficiary Designations**
- **Wills**
- **Trusts**



If no planning:

- **Intestate Succession Statutes**

- ❖ **Montana Uniform Probate Code that was passed in 1975**

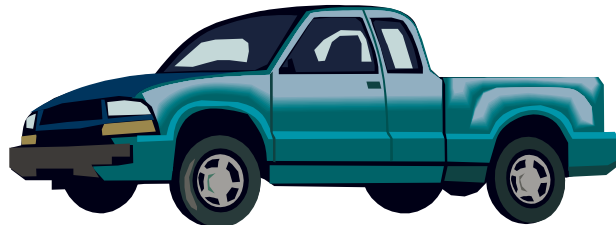


Contract Law & Property



- Real

- Personal

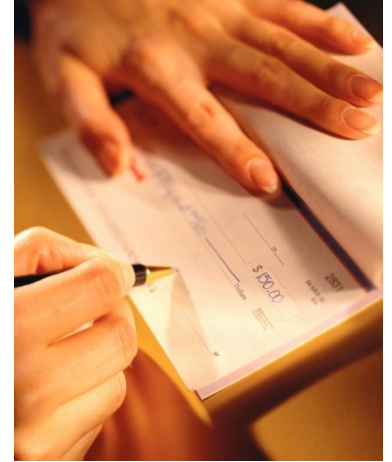


Types of Real Property

- Land
- Home
- Anything affixed to land
 - Garage
 - Fencing



Types of Titled Personal Property



- **Checking & saving Accounts**
- **Certificates of Deposits**
- **Stocks, Bonds, Mutual Funds**



Forms of Property Ownership



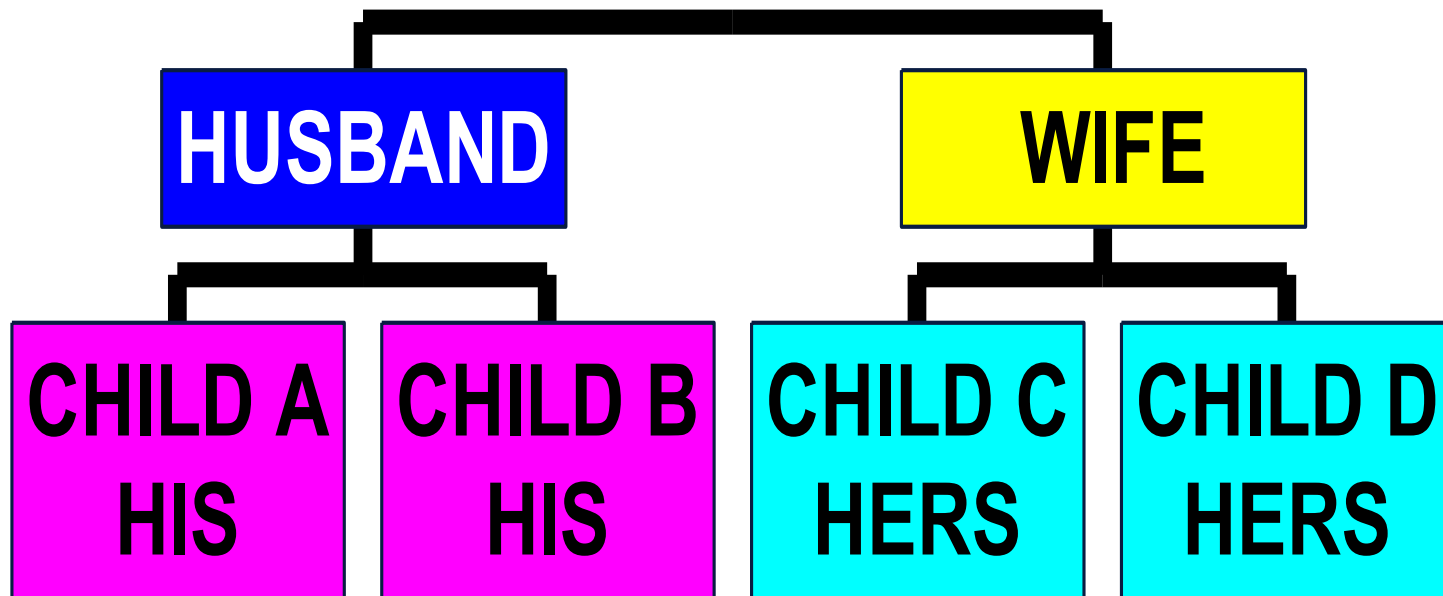
- **Sole ownership**
- **Joint tenancy with right of survivorship**
- **Tenancy in Common**



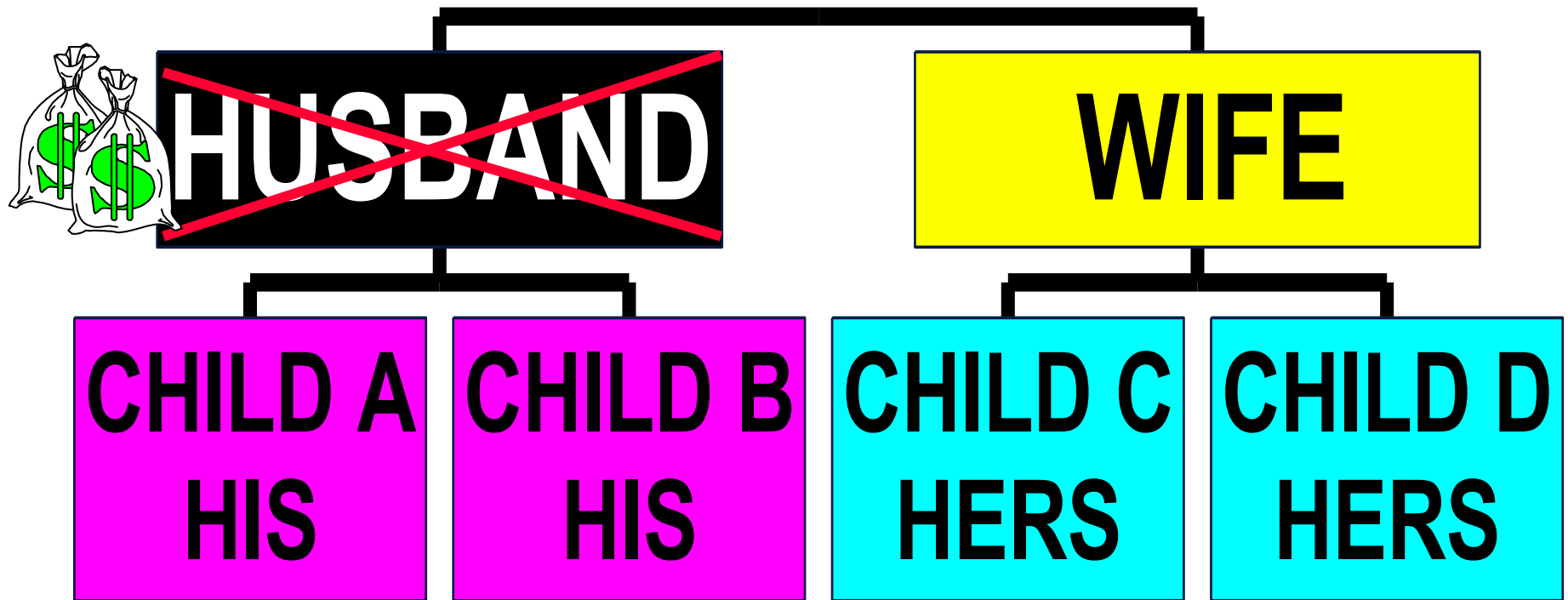
Poll A: How are most of your assets titled?

- Sole ownership**
- Joint tenancy with right of survivorship**
- Tenancy in Common**
- Other**

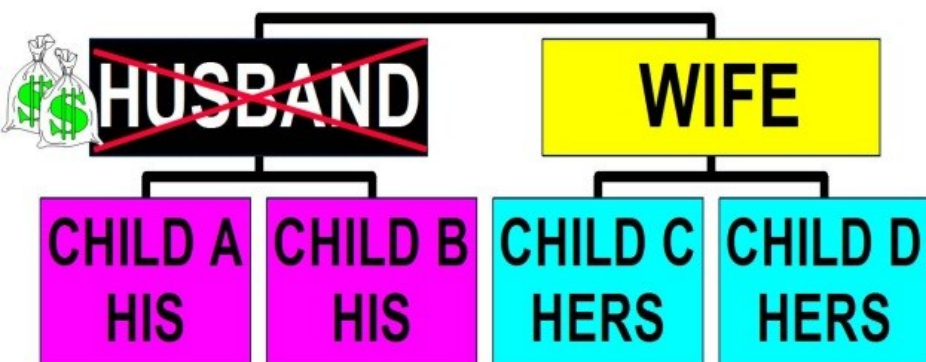
Joint Tenancy between H & W, each has children from prior marriages



JT property. Dad's will leaves all property to his kids (A & B). How is it divided?

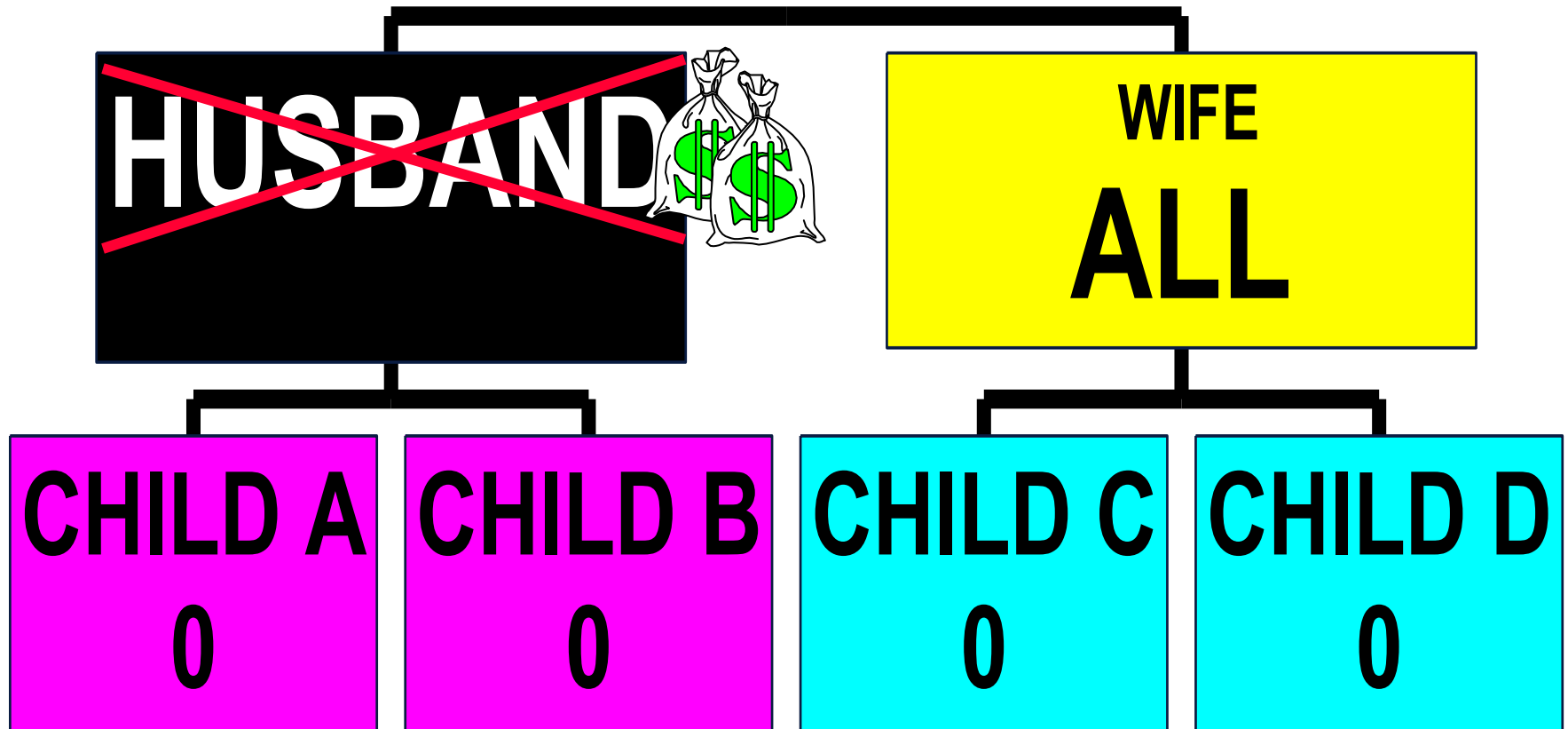


Poll B: Dad's will leaves all his jt property to his kids

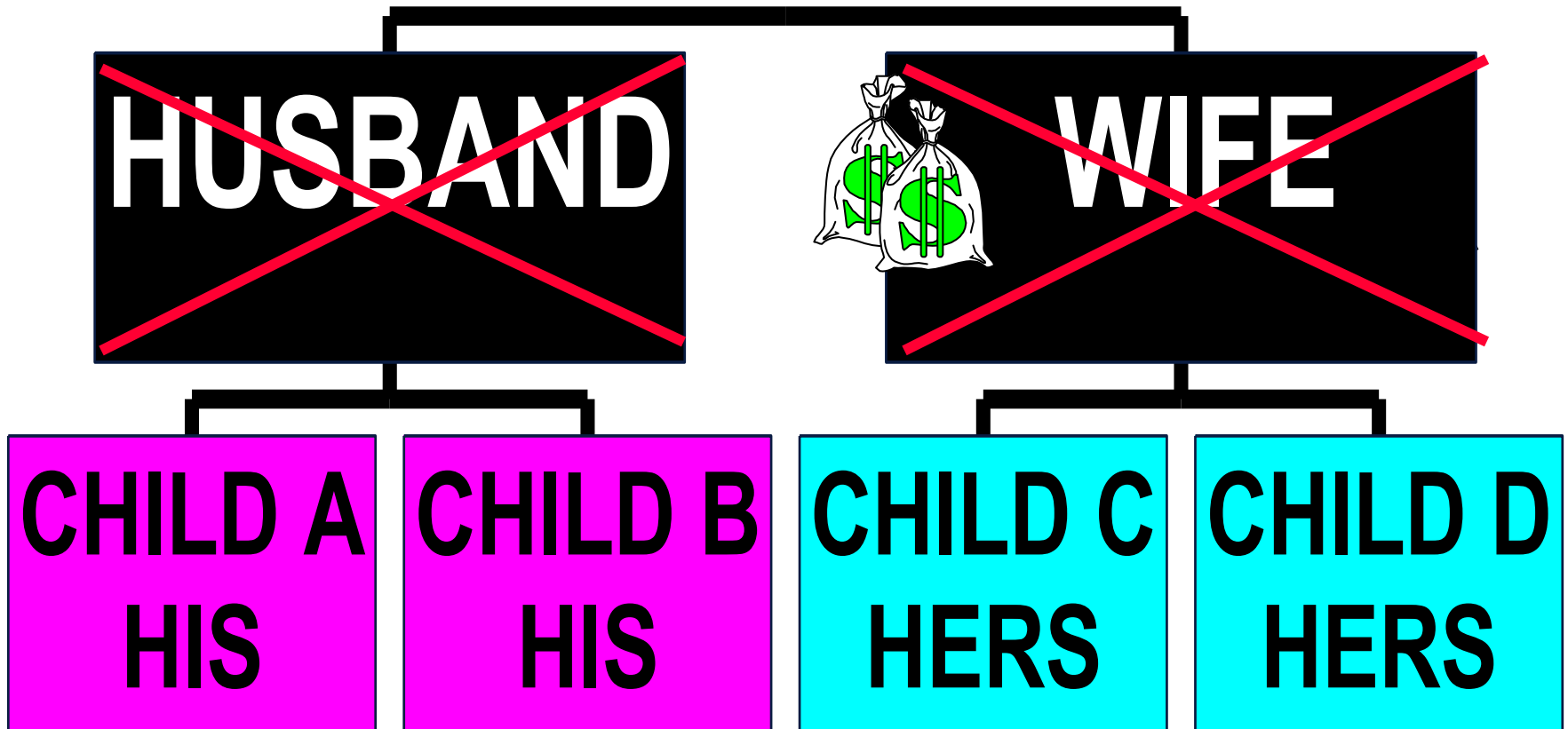


- **1/2 to wife, 1/2 to his kids**
- **All to his kids through will**
- **All to wife**
- **Equally, 1/5 to wife, 1/5 to each kid (his & hers)**

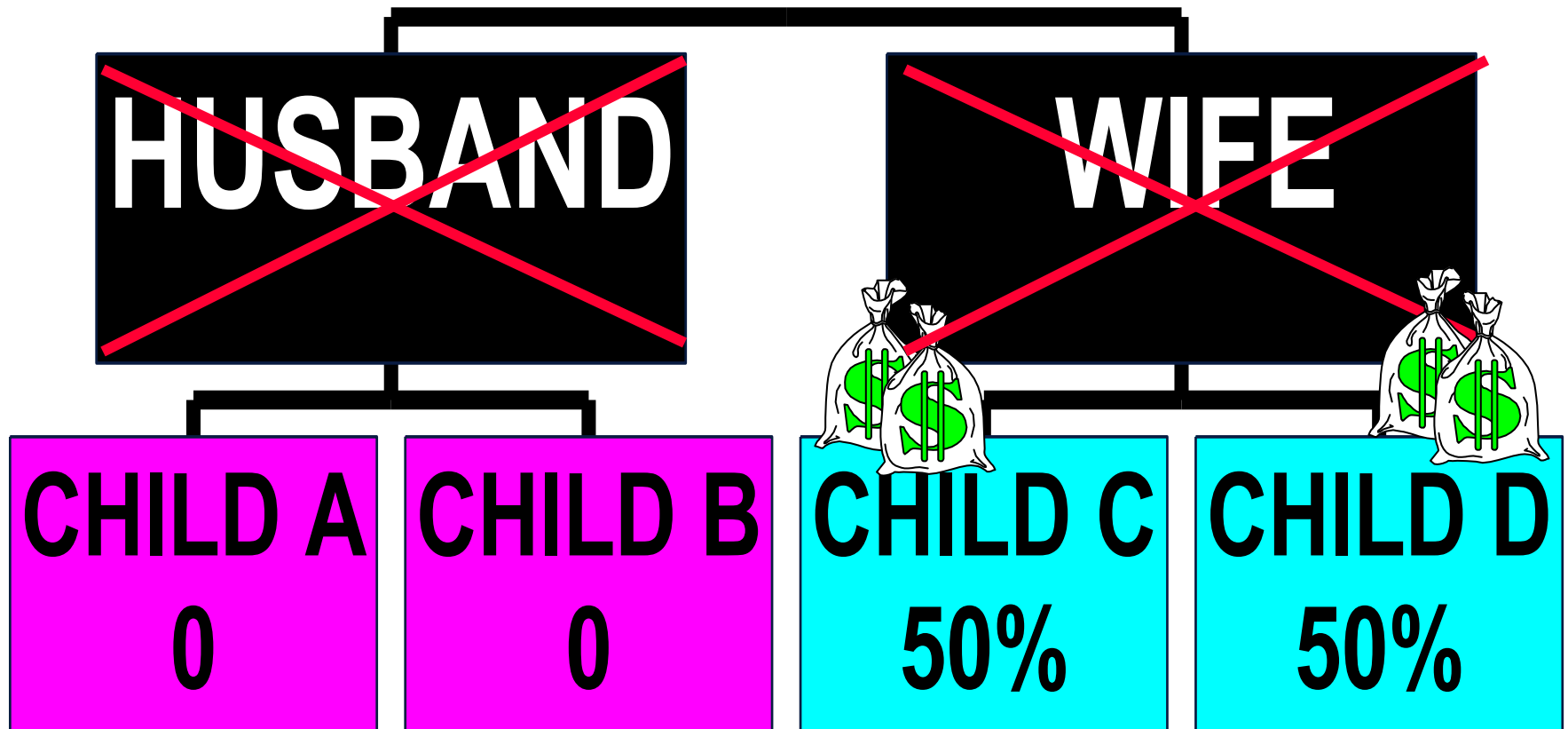
Property JT Husband & Wife: Survivors, wife; his children



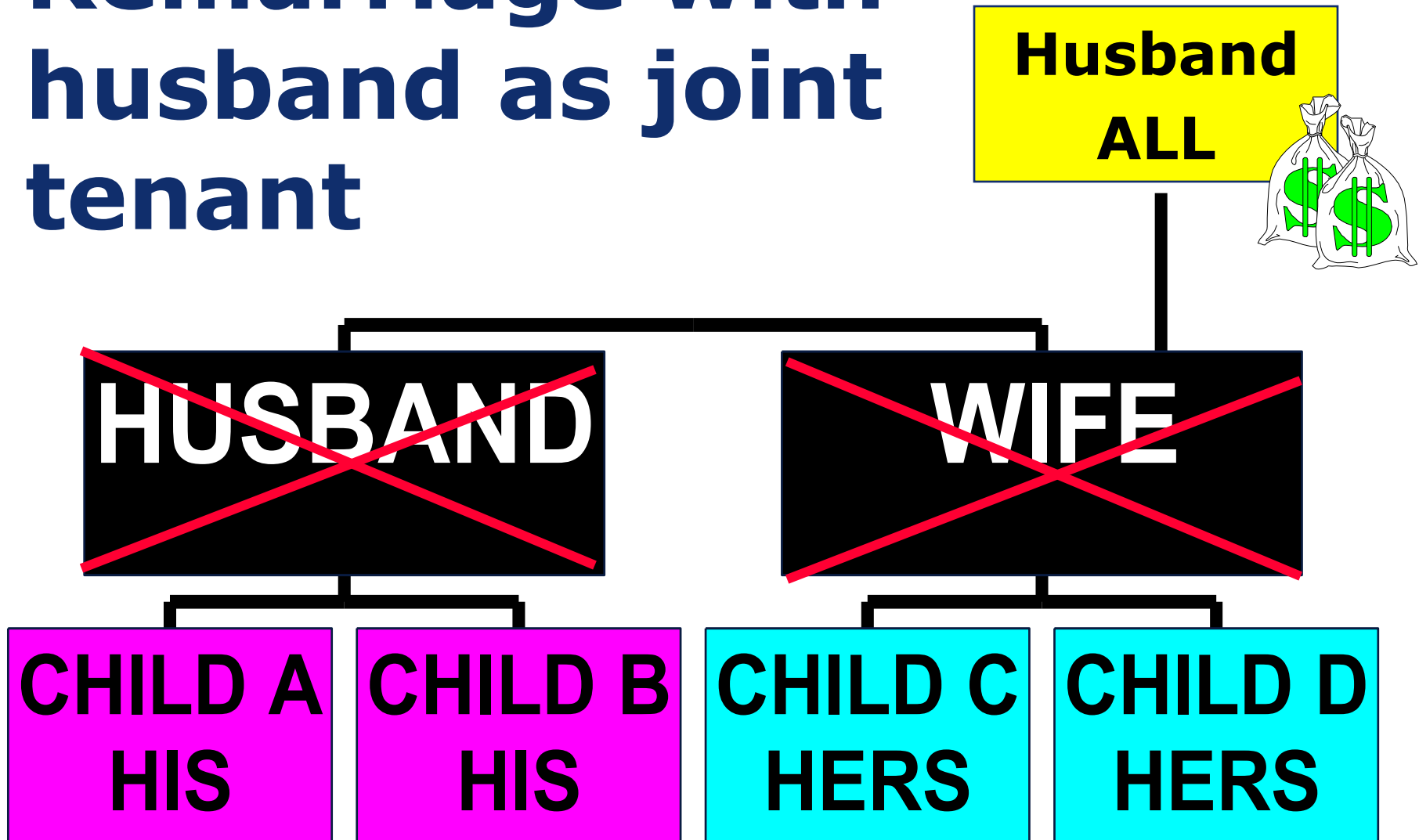
Wife dies with all property



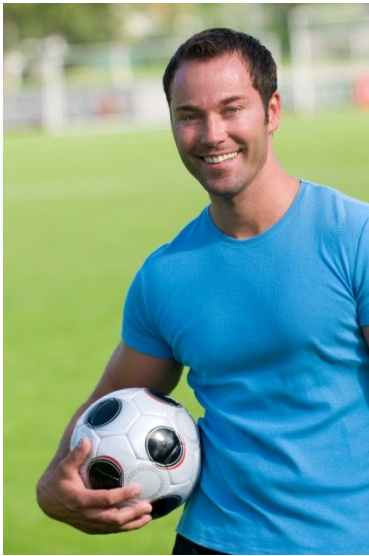
Wife dies with all property



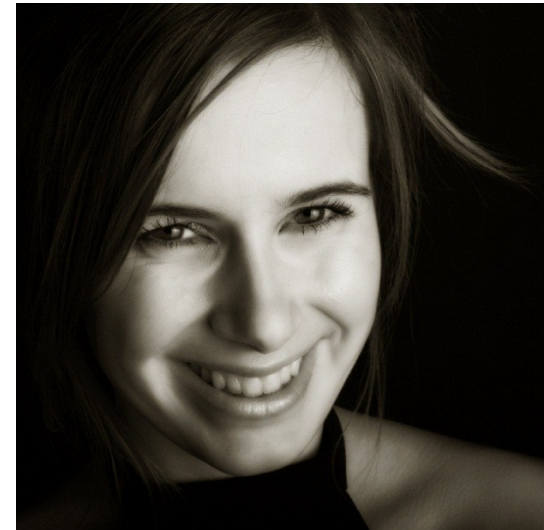
Remarriage with husband as joint tenant



Couple: Property in Joint Tenancy, no children, no will



■ **Tim**



■ **Sharon**

Who receives?

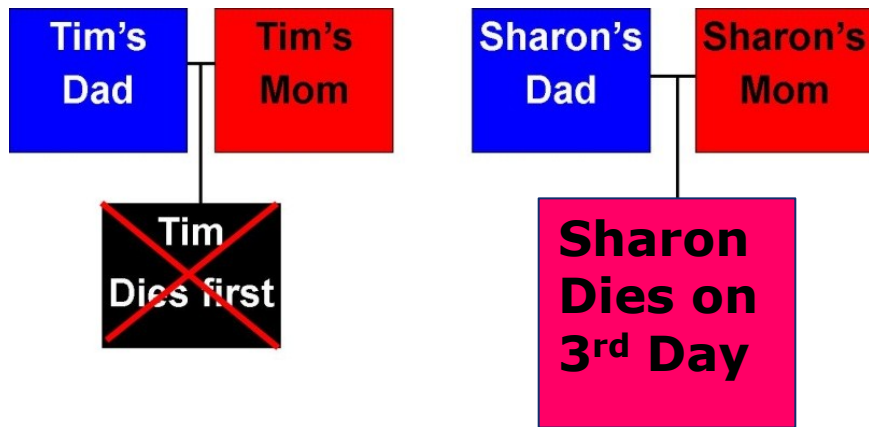


- **Tim dies first**

No will

- **Sharon dies 3rd day**

Poll C: Who receives property?



- **Tim's parents**
- **Sharon's parents**
- **1/2 to each set of parents**
- **State of Montana**

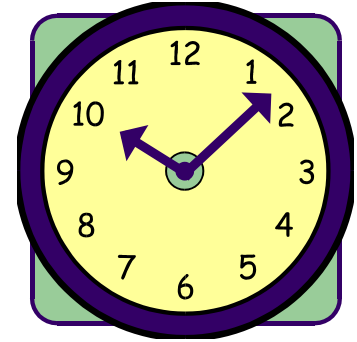
If no children



■ **1/2** Tim's
parents

■ **1/2** Sharon's
parents

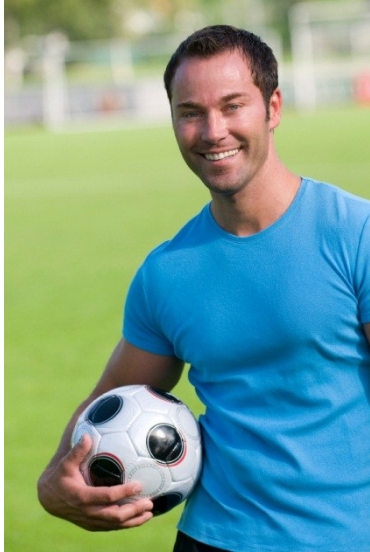
Survival Requirement Joint Tenancy



- **If neither joint tenant survives the other by 120 hours, property is split equally among their heirs**



Survivor lives beyond 120 hrs—What happens?



- **Tim dies first**



- **Sharon dies 6th day**

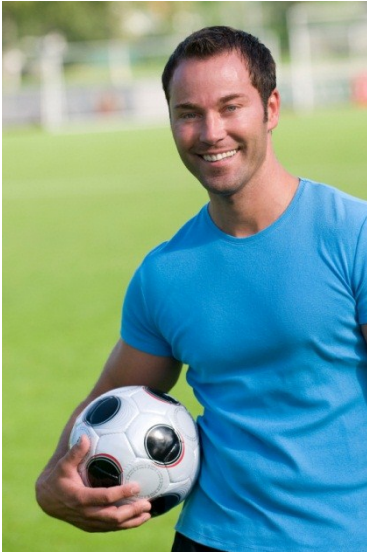


Property Distribution-- Sharon dies on 6th day

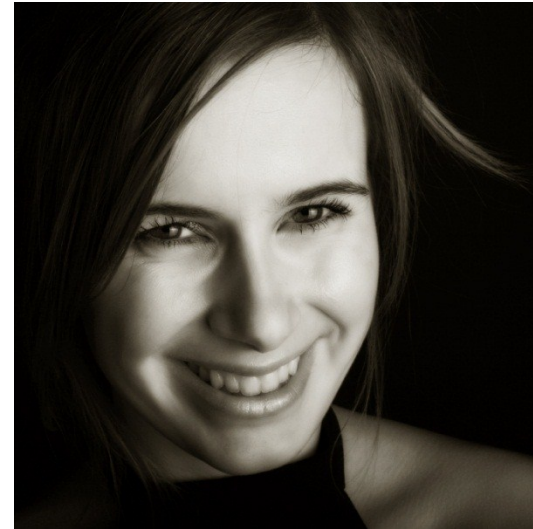


- **All to Sharon's
parents**

Survivor lives beyond 120 hrs



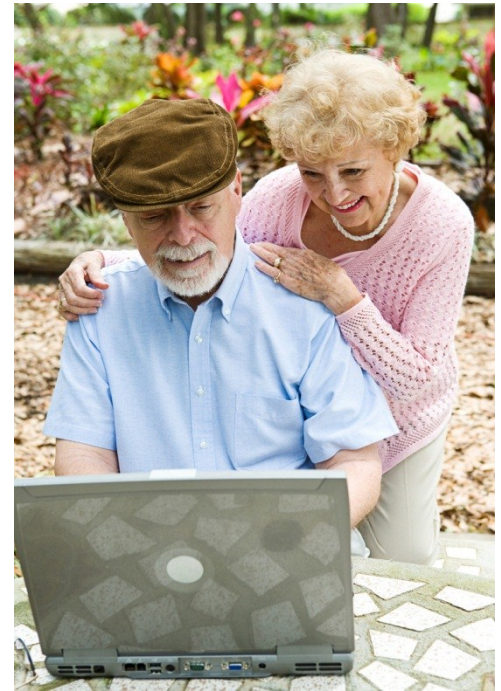
- **Tim dies**
6th day



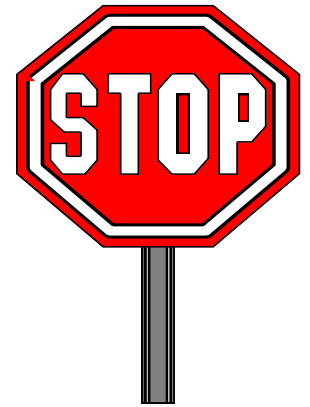
- **Sharon**
dies first

Property Distribution: Tim survives Sharon beyond 120 hours

- **All to Tim's
parents**



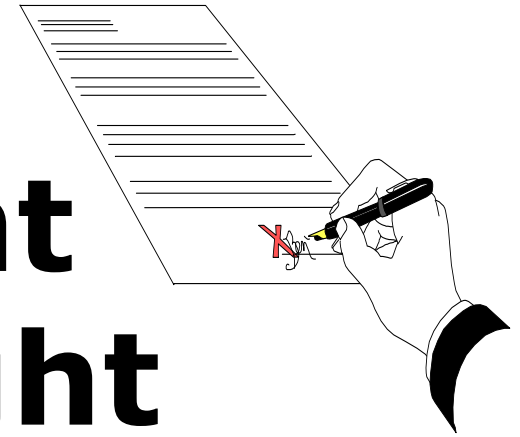
Consequences of joint tenancy



- **All to Tim's parents**
- **All to Sharon's parents**
- **1/2 to Tim's parents & 1/2 to Sharon's parents**

JT Title Reads

- **John Doe and Mary Doe as Joint Tenants with Right of Survivorship and not as Tenants in Common**



Joint tenancy with right of survivorship

**Questions????? Type in
chat room or Q & A box**



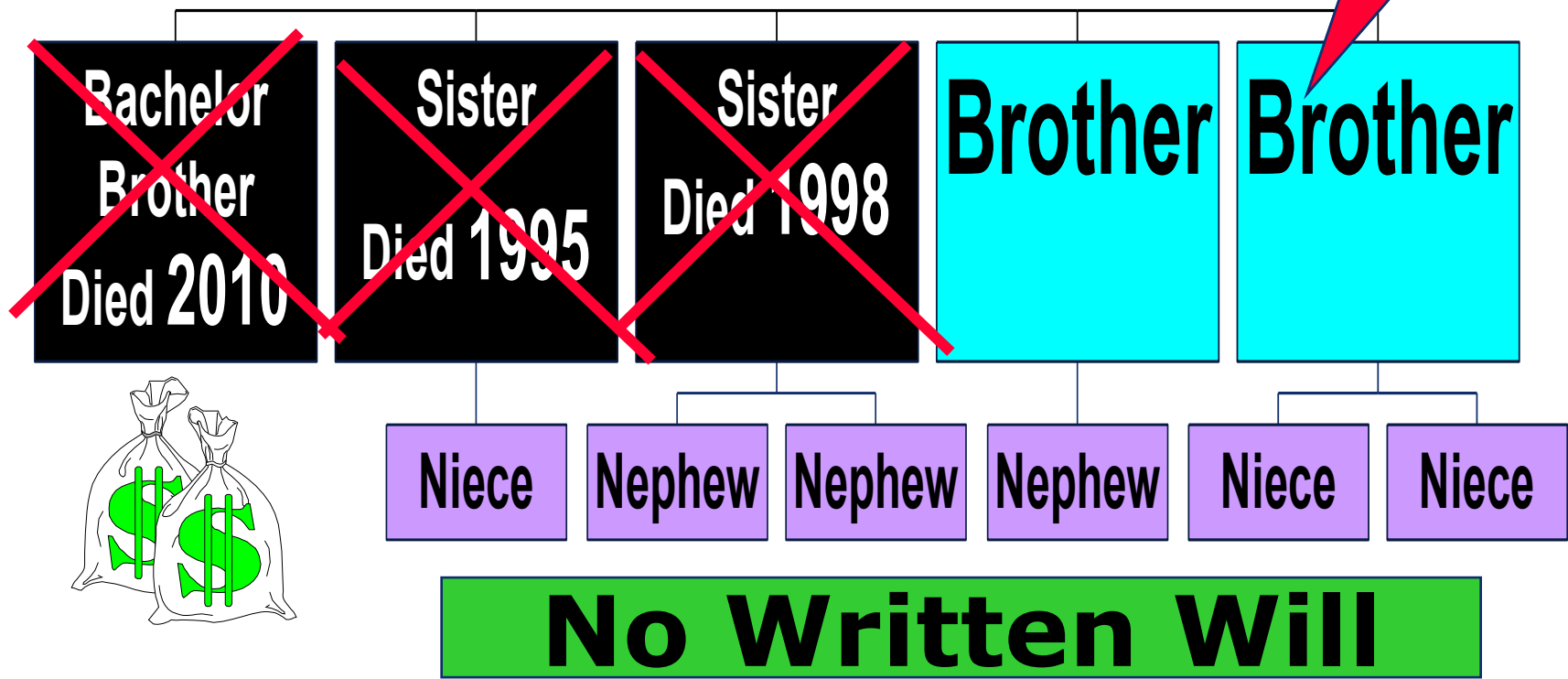
Sole Ownership

- **Property in one person's name only**

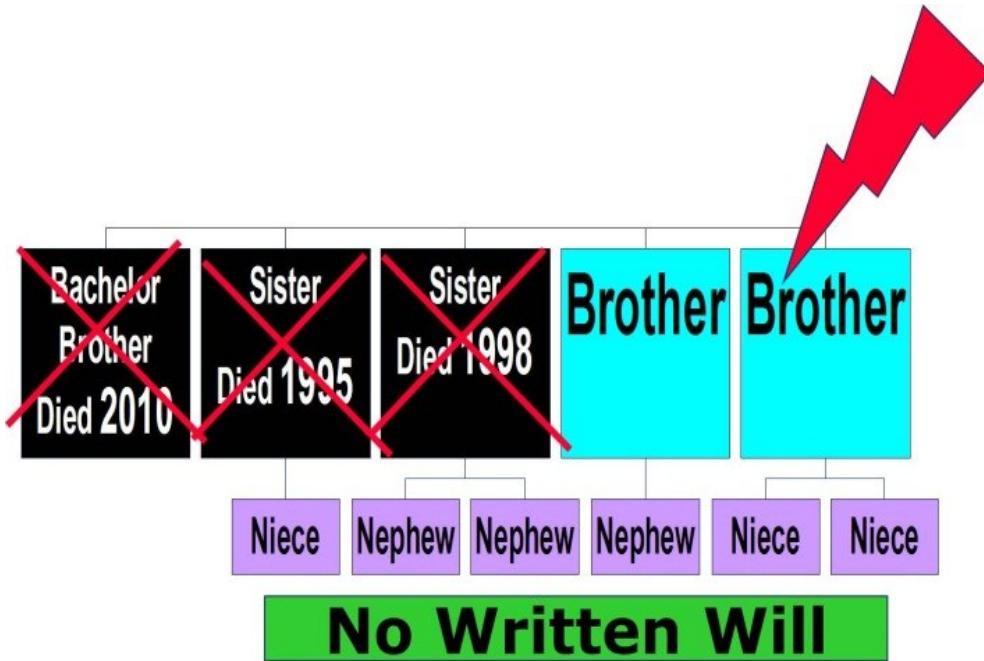


What fraction (if any) does brother receive?

All? 1/2? 1/4? None

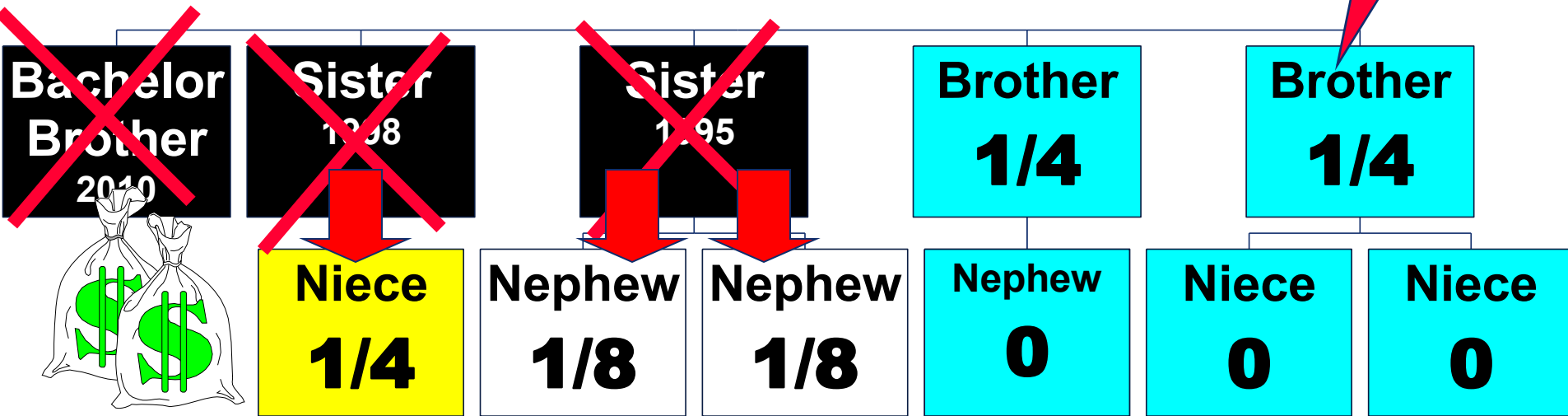


Poll D: What fraction, if any, will brother receive?



- All
- 1/2
- 1/4
- None, all goes to Montana

Division of property



Right of Representation

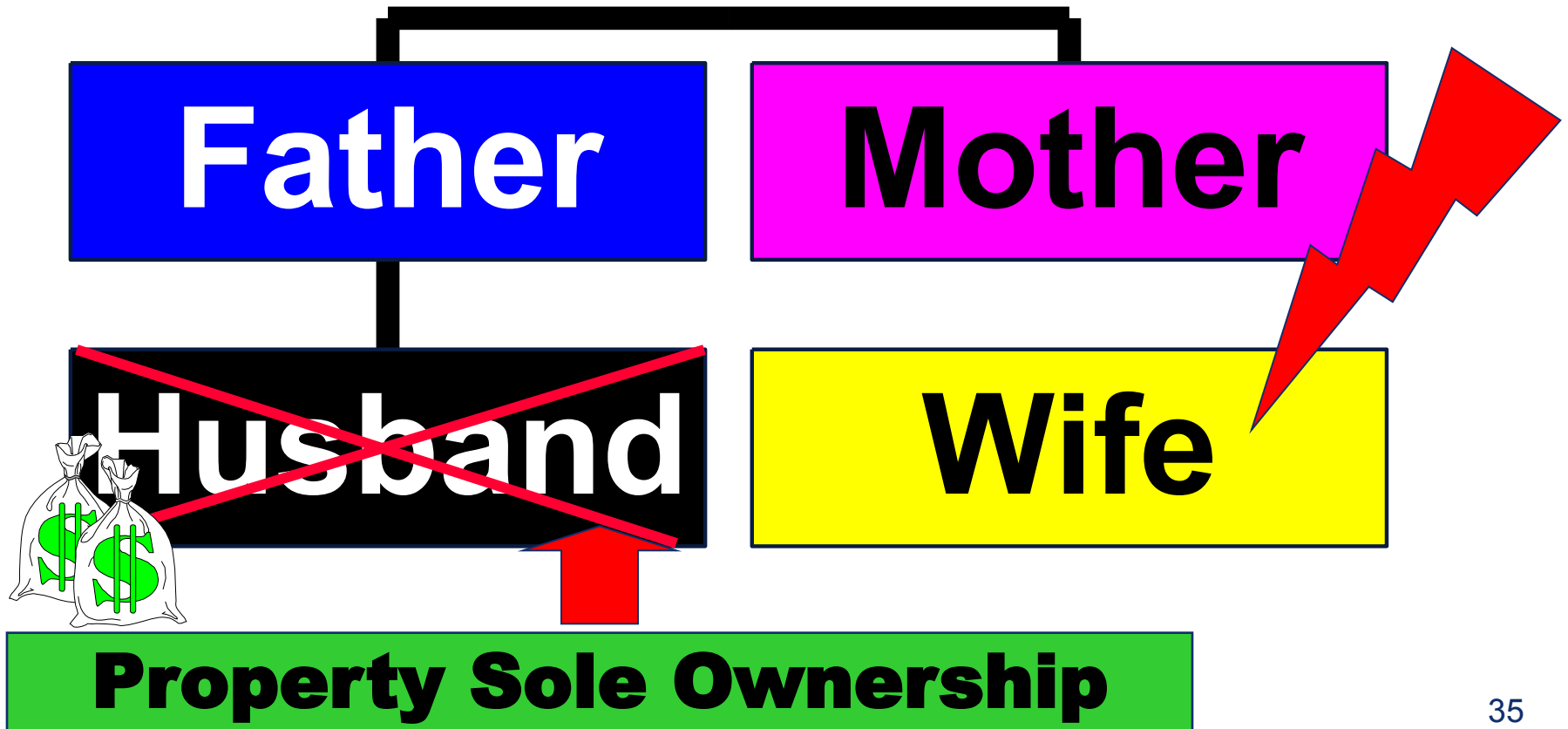


Will or Trust

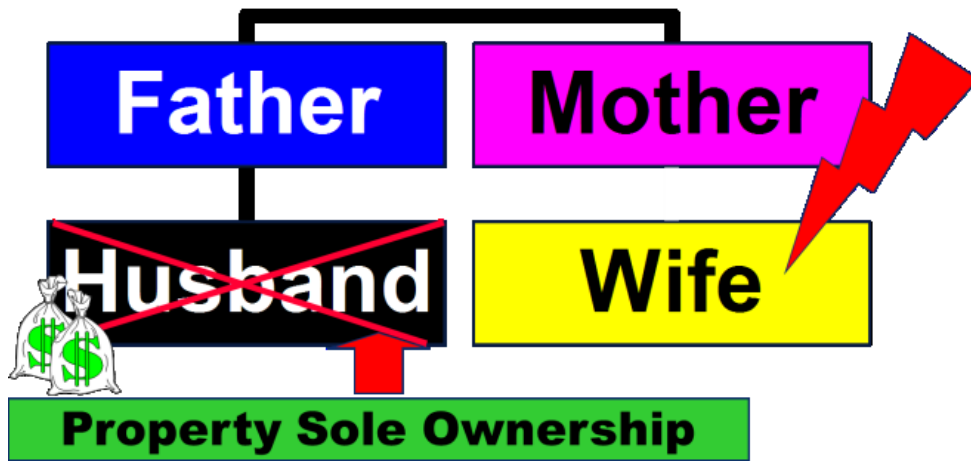
- **Direct that property passes to favorite charity**



\$800,000 estate: What amount passes to wife?



Poll E: \$800,000 estate...what \$\$ amount does wife receive?



- \$800,000
- \$700,000
- \$650,000
- \$400,000

Montana Division:

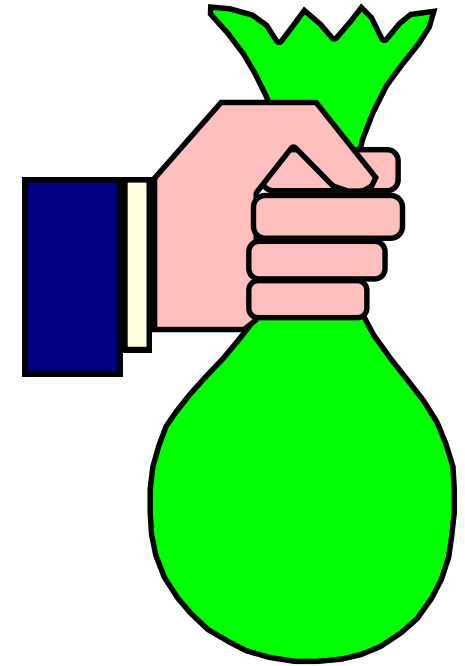
Spouse

\$ First \$200,000

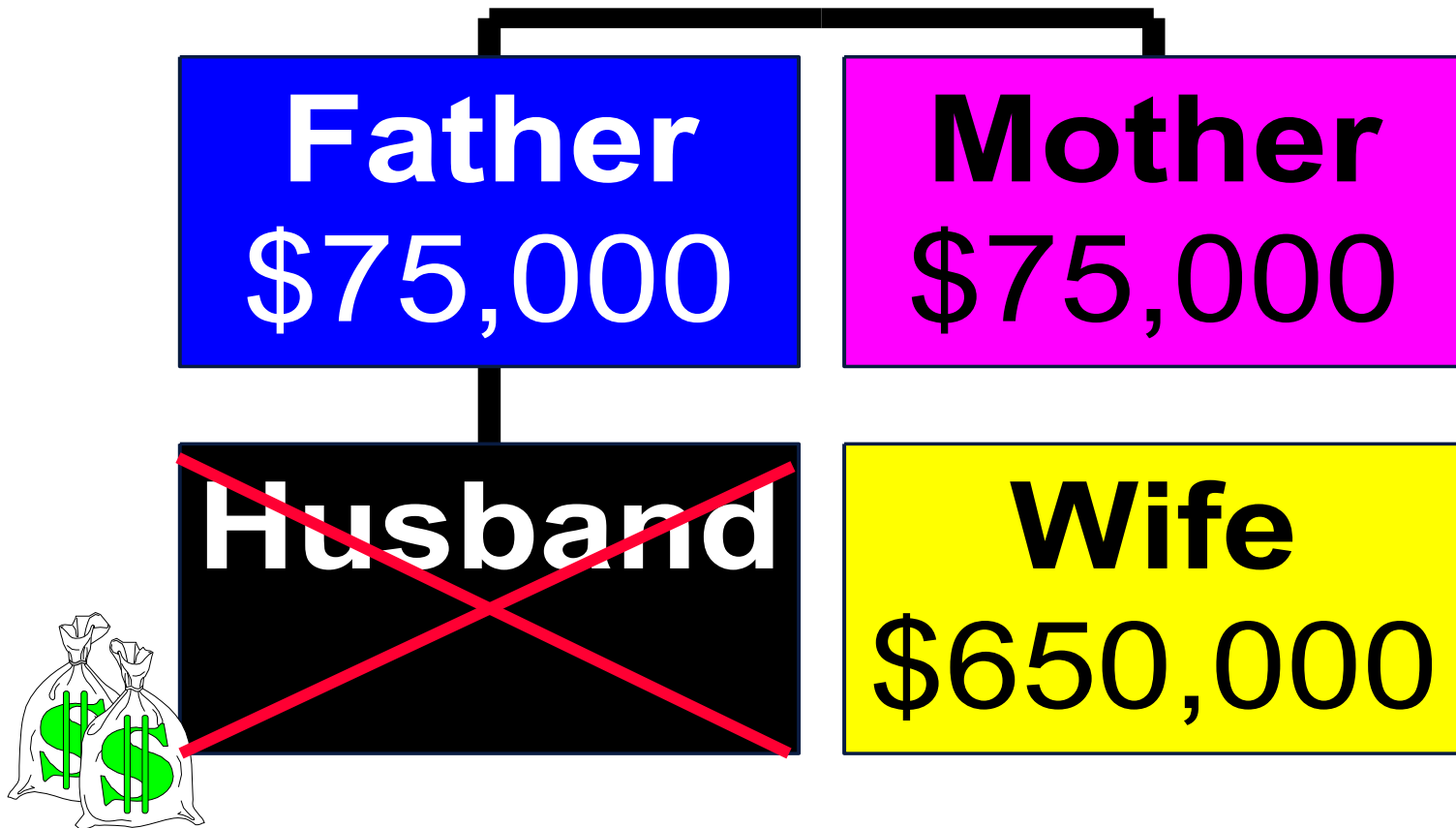
\$ 3/4 of balance

Parents

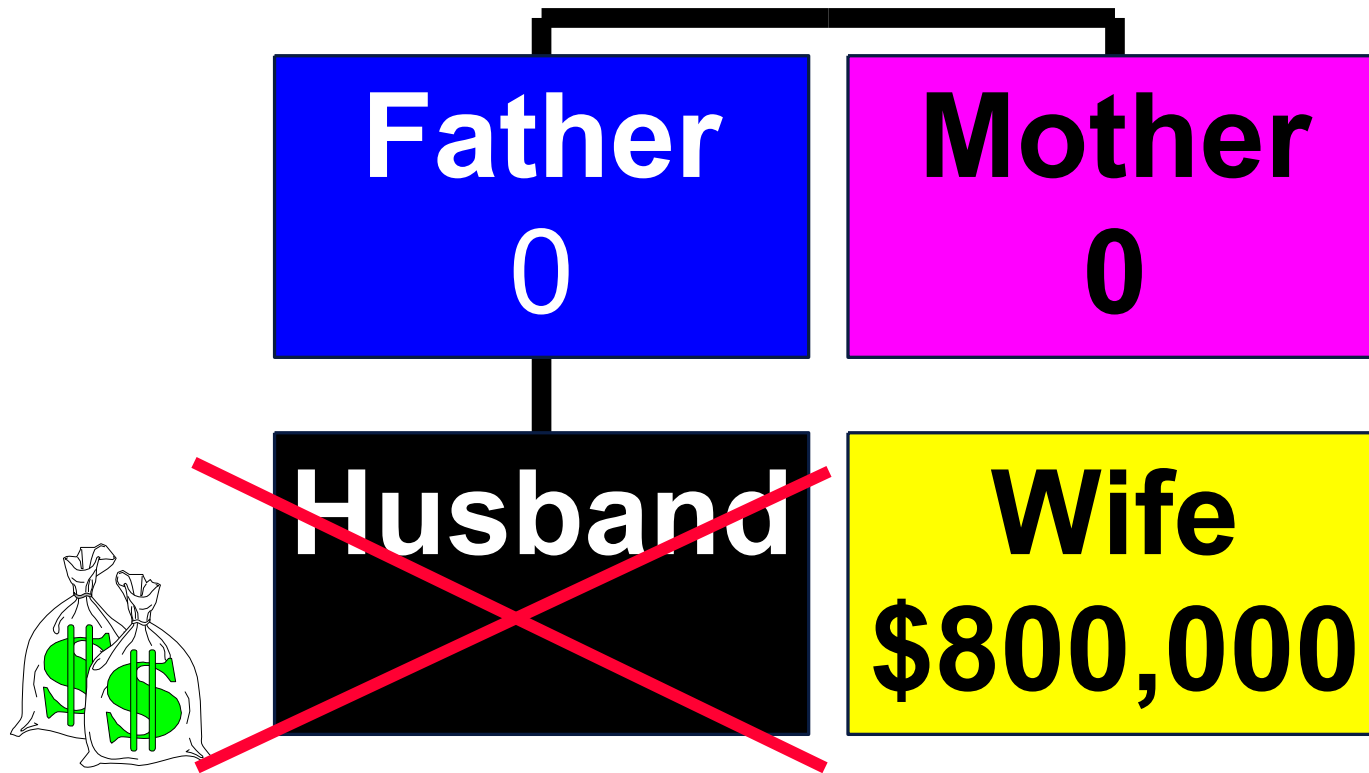
\$ 1/4 of balance



\$800,000 Solely Owned by Husband



\$800,000 Joint Tenancy between H & W



Property Title affects Wife's share

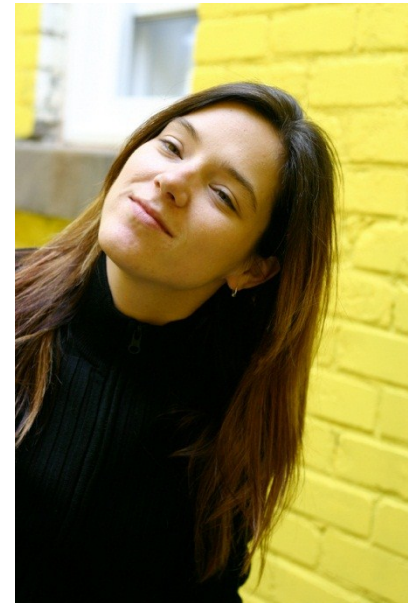


- **Sole ownership**
\$650,000
- **Joint Tenancy**
\$800,000

Contract: Life Insurance



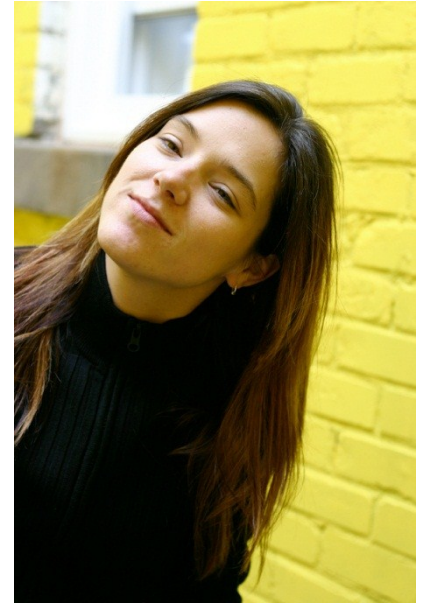
■ **Bill**



■ **Robin**

Beneficiary

- **Bill has \$100,000 life insurance policy**
- **Designates his wife Robin as his primary beneficiary**



Bill Writes Will

- ***“I bequest all life insurance proceeds to the Montana Community Foundation”***

THE MONTANA COMMUNITY FOUNDATION
all about Montana's future

Poll F: Who gets \$100,000?

- **Robin**

**Designated
Beneficiary**

- **Montana Community
Foundation**

**Devisee in will that was
written more recently**

\$100,000 Life Insurance Proceeds

- ***Robin***

- **Why?**

- **Contract**

- **Robin is designated beneficiary on form**



Payable on Death Designation (POD)

- **Accounts at financial institutions**
 - **Savings Accounts**
 - **Certificates of Deposit**
 - **Checking Accounts**



Payable on Death Designation (POD)

- **At death ownership passes to POD beneficiaries**
- **No Probate**



Payable on Death Designation (POD)

- **Sole Ownership of account**
 - **Marsha A. Goetting**
- **POD Debbie Buczinski and Donna Chamberlain, equally**



Joint Tenancy & POD



- **Wording on account**
 - **Barb Miller & Jack Miller joint tenants with right of survivorship**
- **POD Montana 4-H Foundation**

Transfers on Death (TOD) Registration

- **No probate**
 - **Stocks, publicly traded**
 - **Bonds**
 - **Mutual Funds**

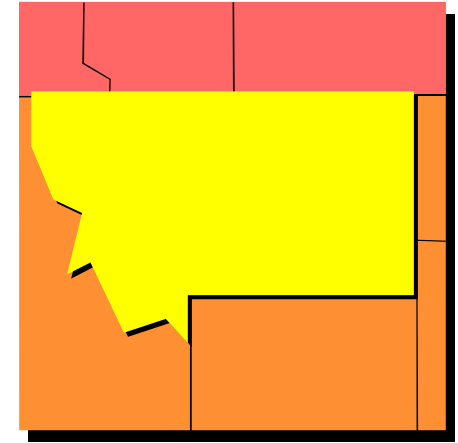


Beneficiary Designations

- **Annuity policies**
- **Deferred compensation plans**
 - **401 (k), 403 (b), 457**
- **IRAs (Traditional & Roth)**
- **Employee benefit plans**



PODs, TODs Beneficiary Designations



**Questions? Write in Chat Box
or Q&A box**



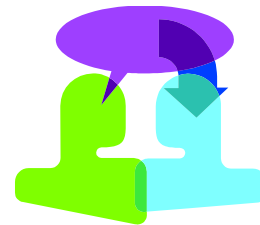
Poll G: Now that you know about PODs & TODs will you utilize these estate planning tools?

Yes

No

What is a Beneficiary Deed?

- **A way to convey real property to one or more *grantee beneficiaries* upon death without the cost of probate**



What is a Grantee Beneficiary?



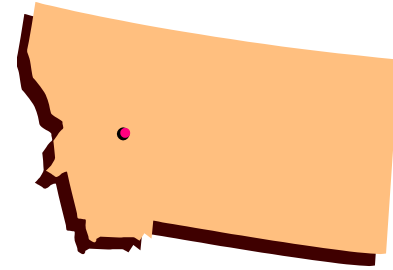
- **Party to whom an owner grants interest in Montana real property**

Grantee Beneficiary Rights?



- **NONE**
- **Effective only upon death of owner**
 - **Can't use for collateral**
 - **Can't sell**
 - **Is not owner**

Beneficiary Deed Recorded

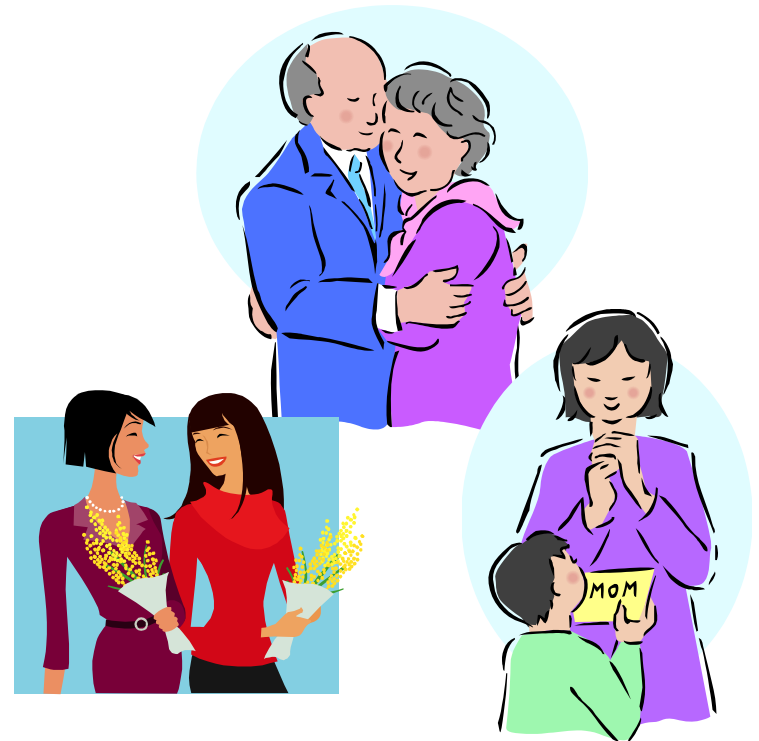


- **Before death of owner**
 - **Clerk and Recorder**
 - **Montana county where property is located**

Who can be a grantee beneficiary?

- **Spouse**
- **Children**
- **Relatives**
- **Friends**
- **Corporation**

❖ **Con'd.....**



Who can be a grantee beneficiary?

- **Charitable Organizations**

- **THRIVE in Bozeman**
- **Montana 4-H Foundation**
- **MSU Extension**
- **Montana Community Foundation**



What happens if grantee beneficiary dies before owner?

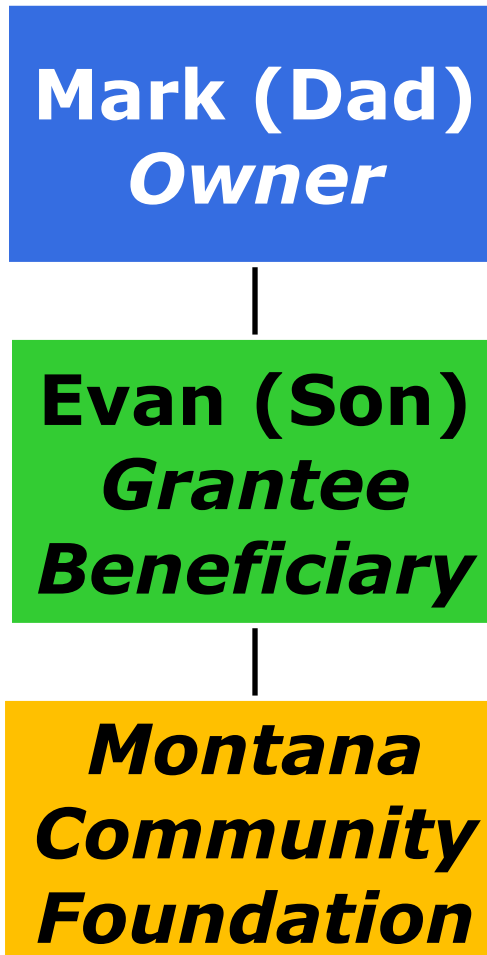


Owner options

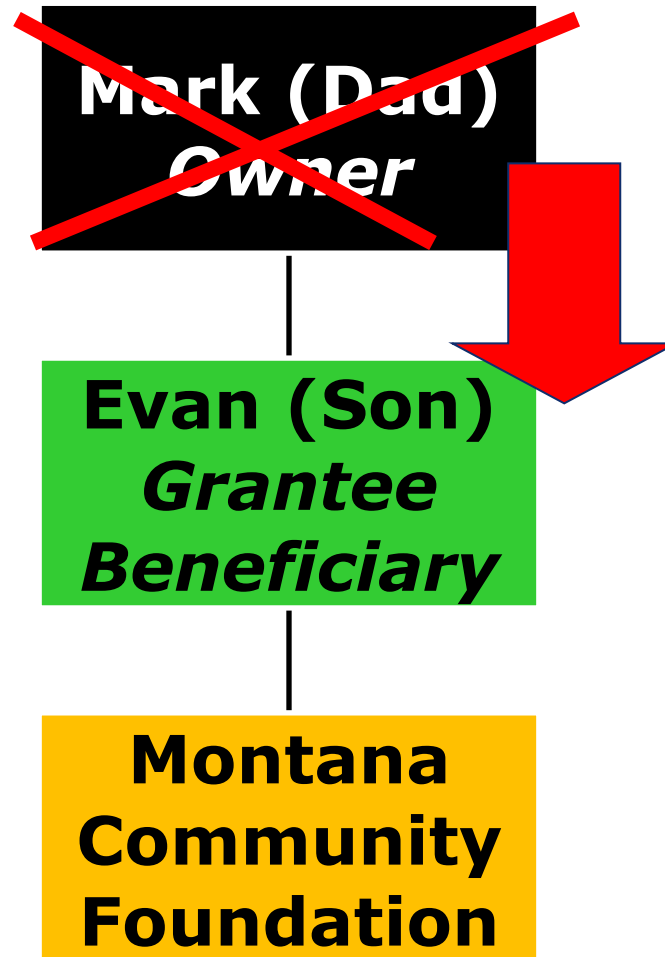
- **Specify a
*successor
beneficiary***



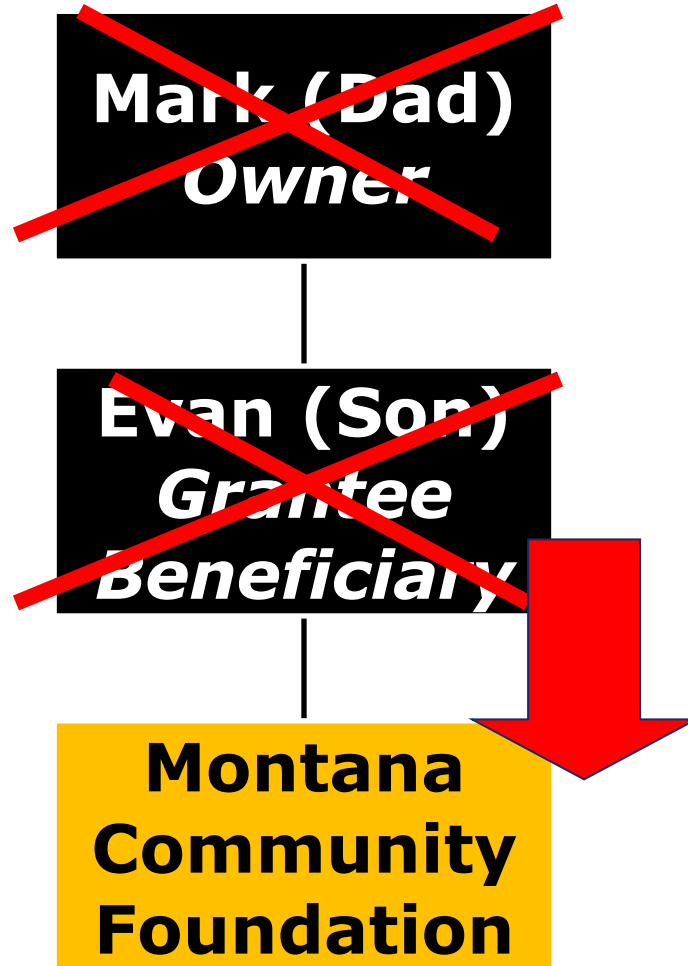
Mark files & records



Evan Successor



Charity as Successor



What about a Beneficiary Deed & a Will?



65



MONTANA
STATE UNIVERSITY

EXTENSION

Example: Father files deed naming daughter as grantee beneficiary

Gary (Father)
Owner

Linda
(Daughter)
Grantee Beneficiary

Gary later wrote a will leaving property to Matt

~~Gary (Father)
Owner~~

Matt (Son)
Named in will

Linda
(Daughter)
*Grantee
Beneficiary*



Poll H: Who gets the property when Gary dies?

~~Gary (Father)
Owner~~

Matt (Son)
Named in will

Linda
(Daughter)
*Grantee
Beneficiary*

- **Linda** (Grantee Beneficiary)
- **Matt** (named in the will that was written later)

Grantee Beneficiary receives property (Contractual)

~~Gary (Father)
Owner~~

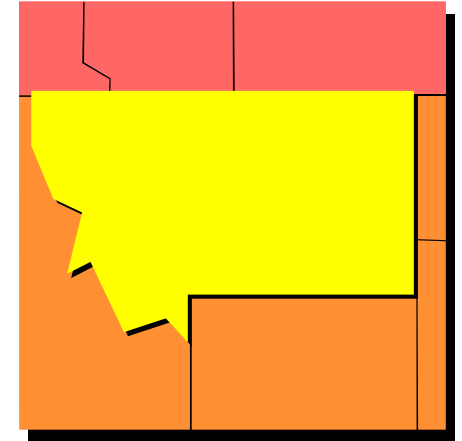


Linda
(Daughter)
Grantee Beneficiary
ALL

Matt (son)
0



Montana Beneficiary Deed



**Questions???? Write in
chat or Q&A box**

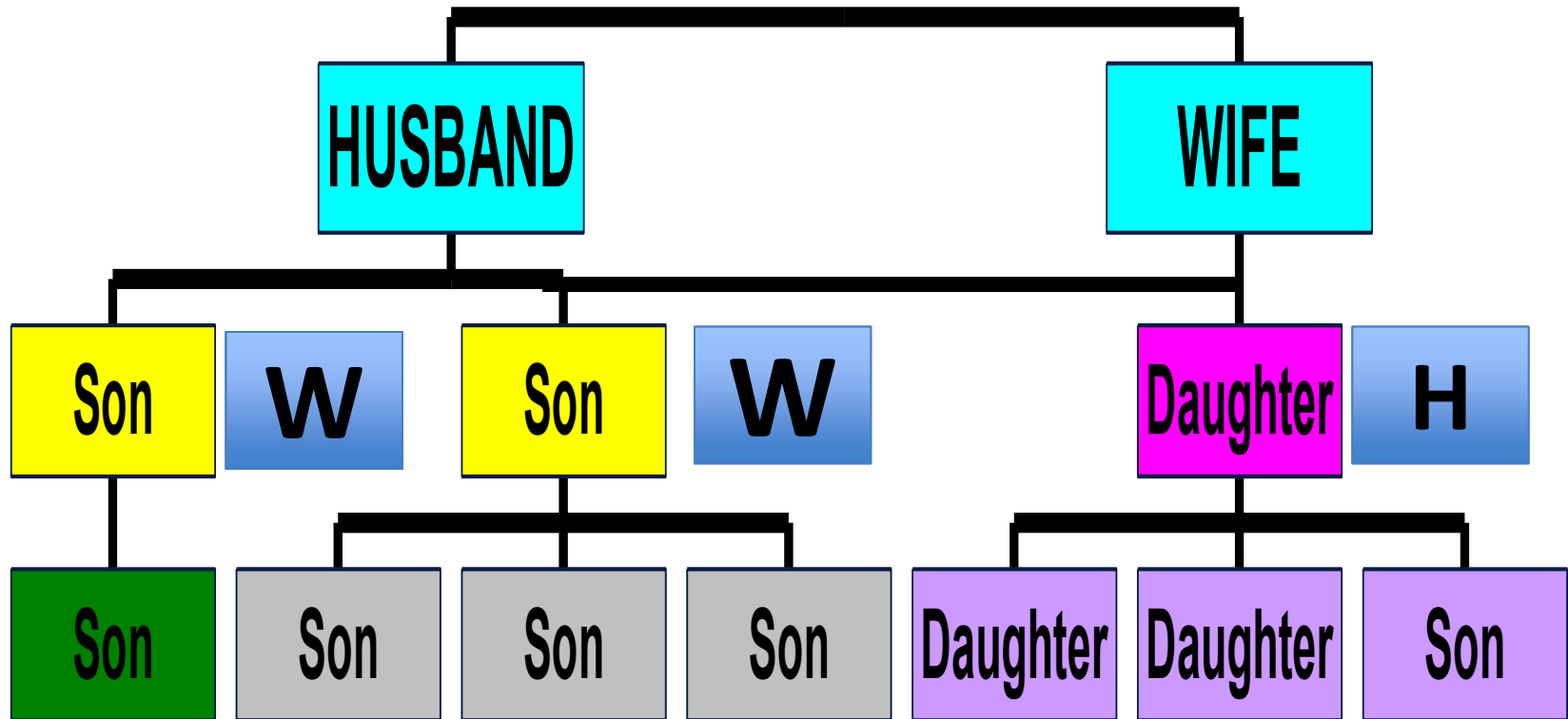


NO Will

- **John & Mary have ranch property titled in John's name only**
- **3 children**

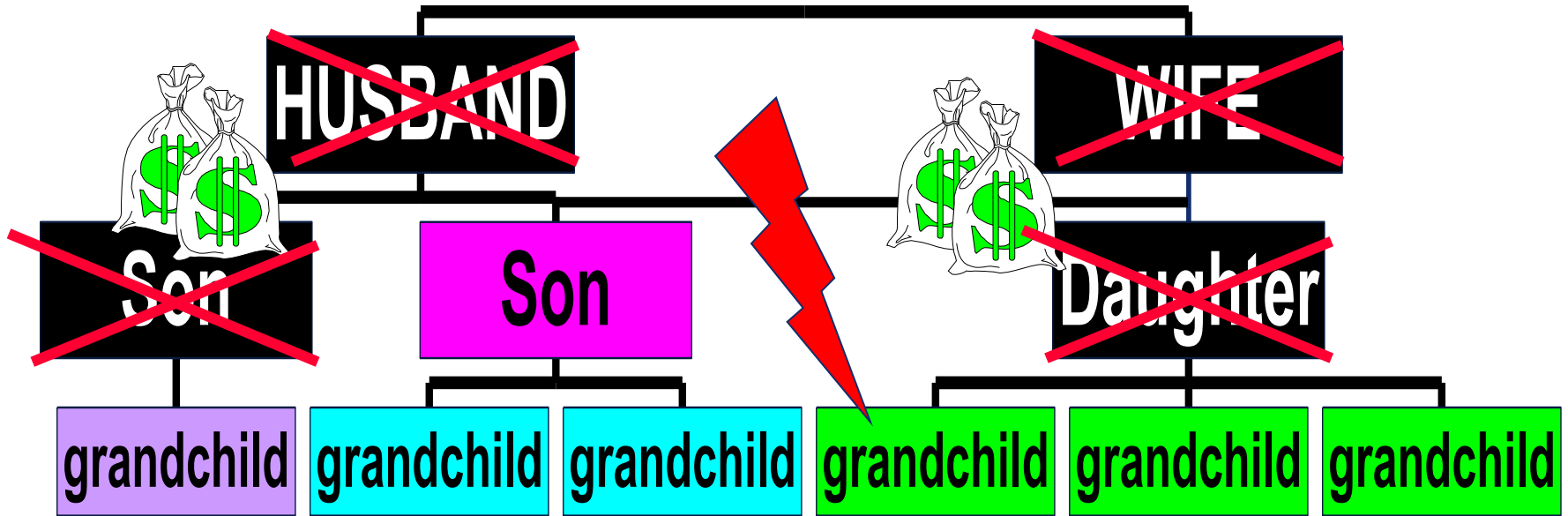


Three Generations

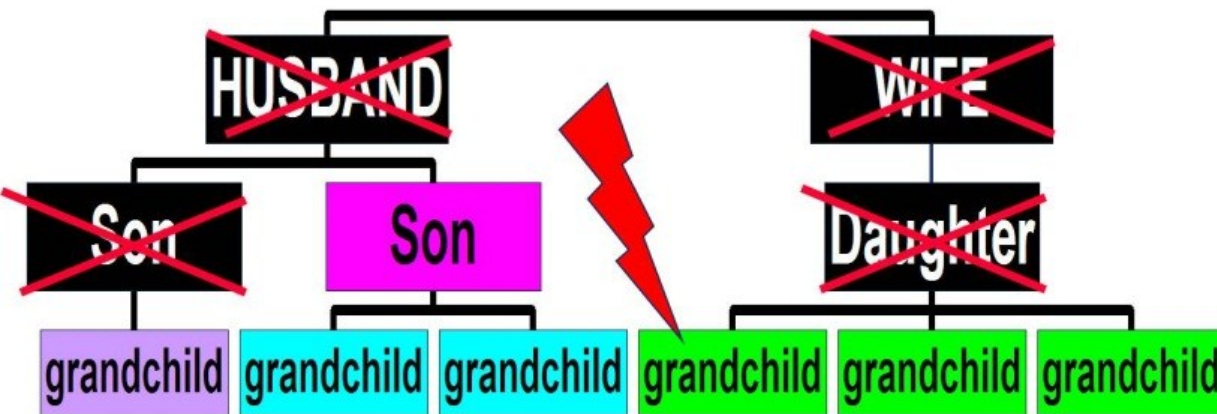


What fraction, if any, does grandchild receive?

1/3, 1/6, 1/7, 1/9 ??????

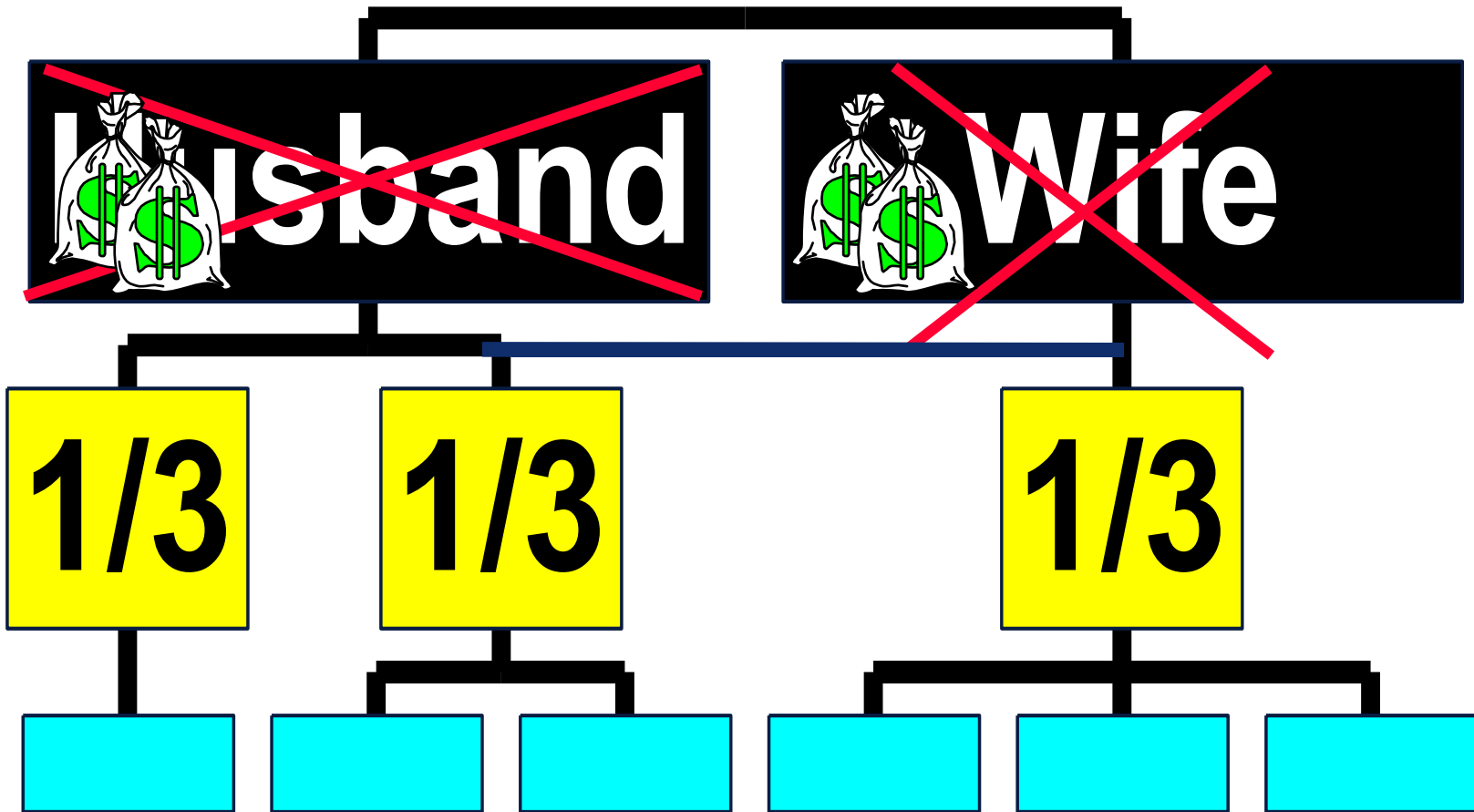


Poll I: What fraction, if any, does grandchild receive?

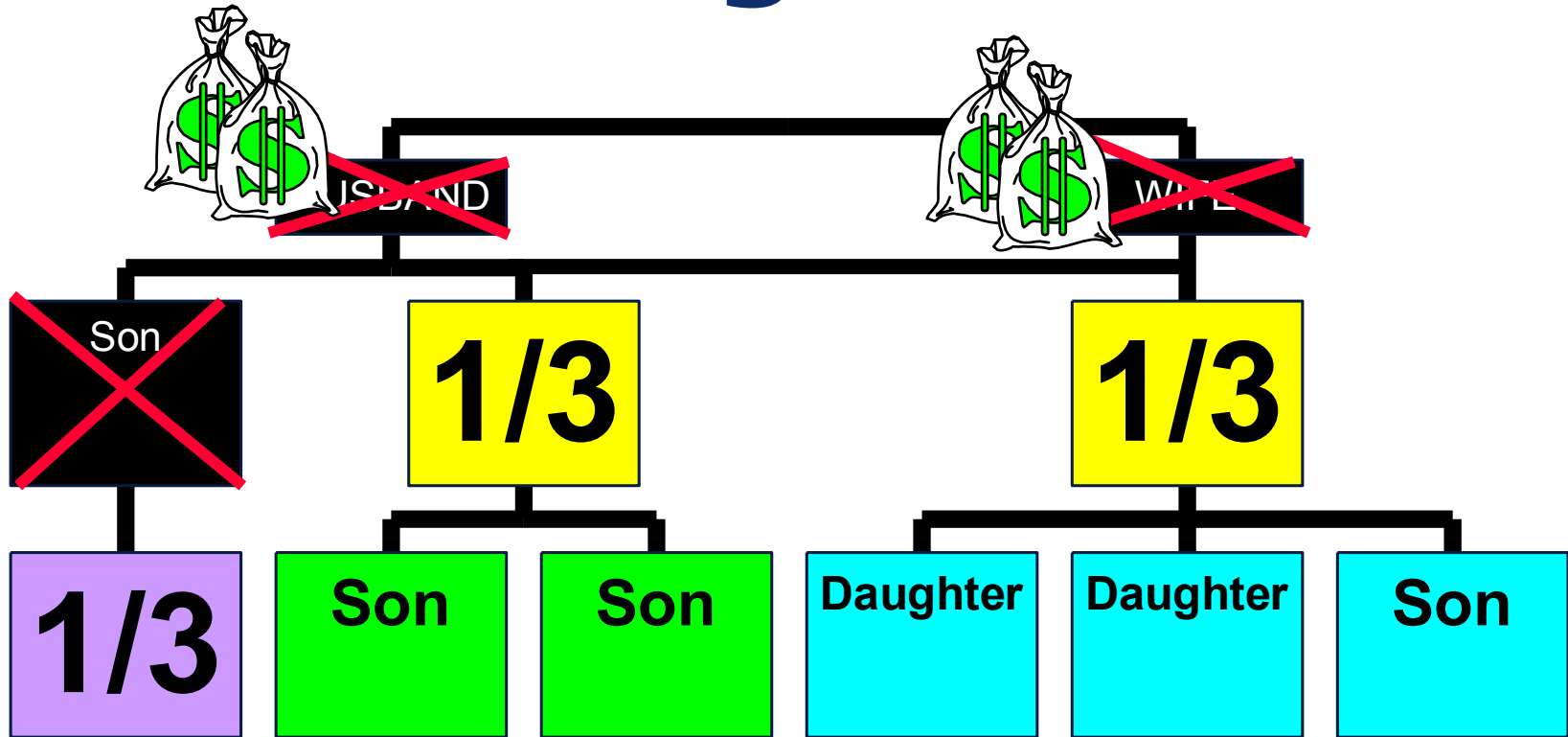


- None**
- 1/3**
- 1/6**
- 1/7**
- 1/9**

Montana DNA Division

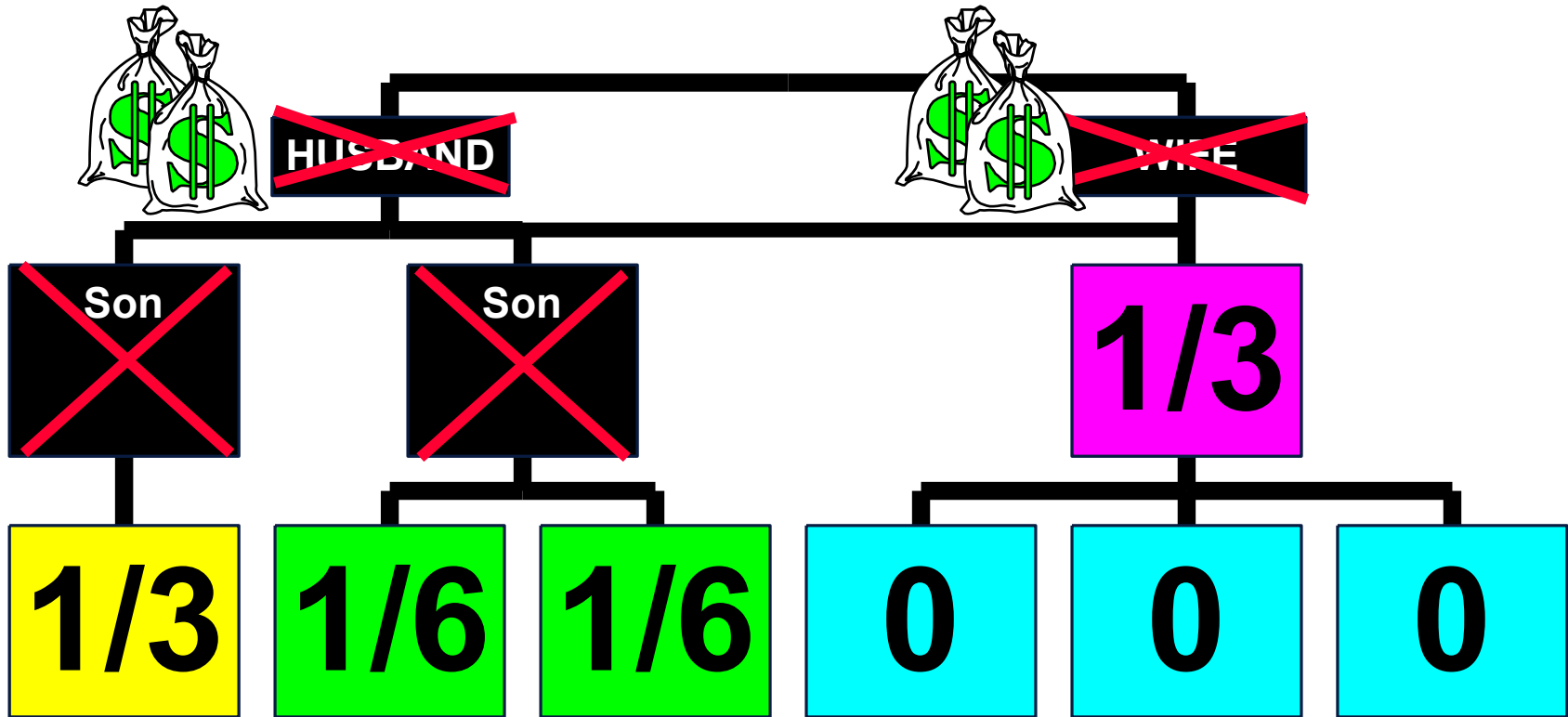


Survivors : two children & grandchild



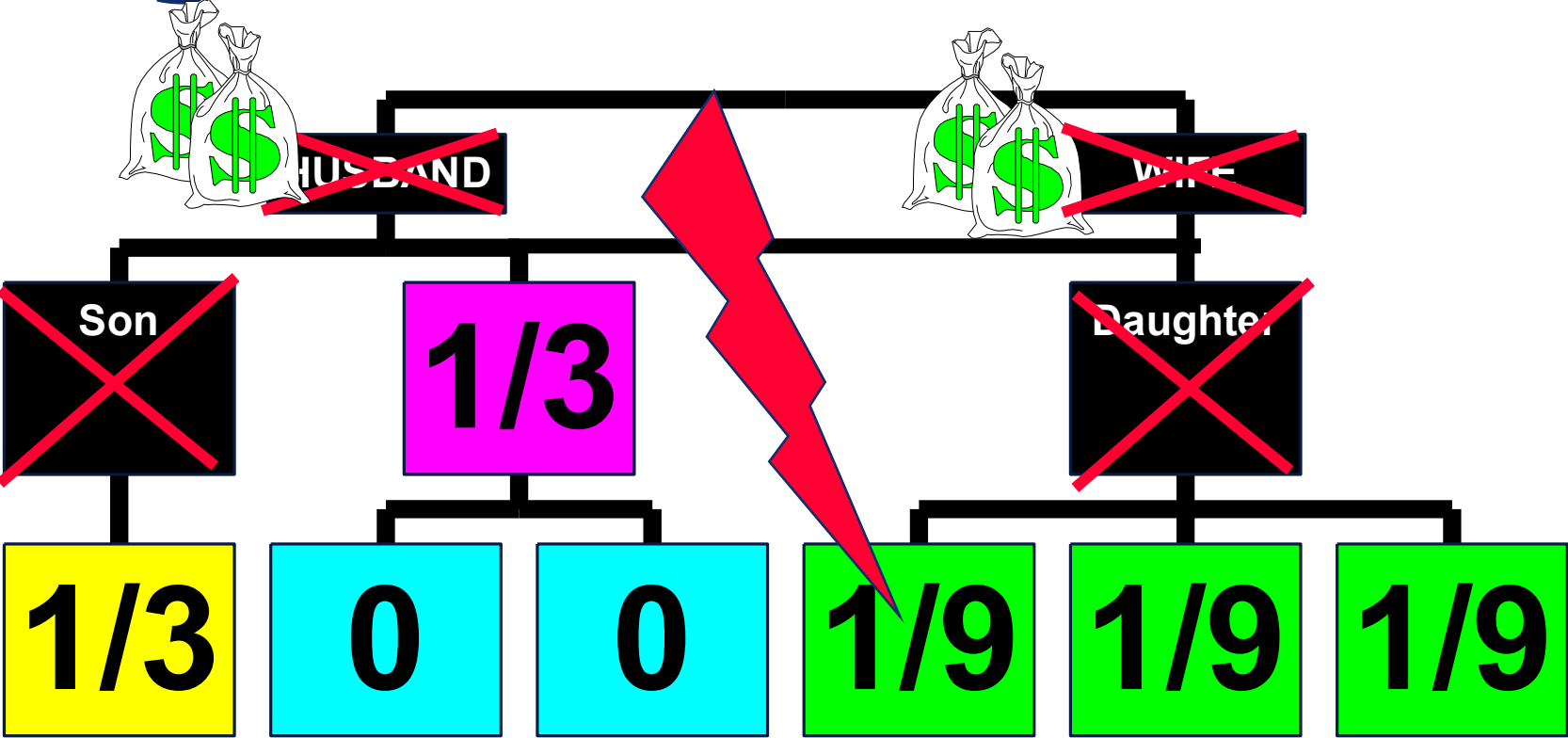
Right of Representation

Survivors : one child & grandchildren



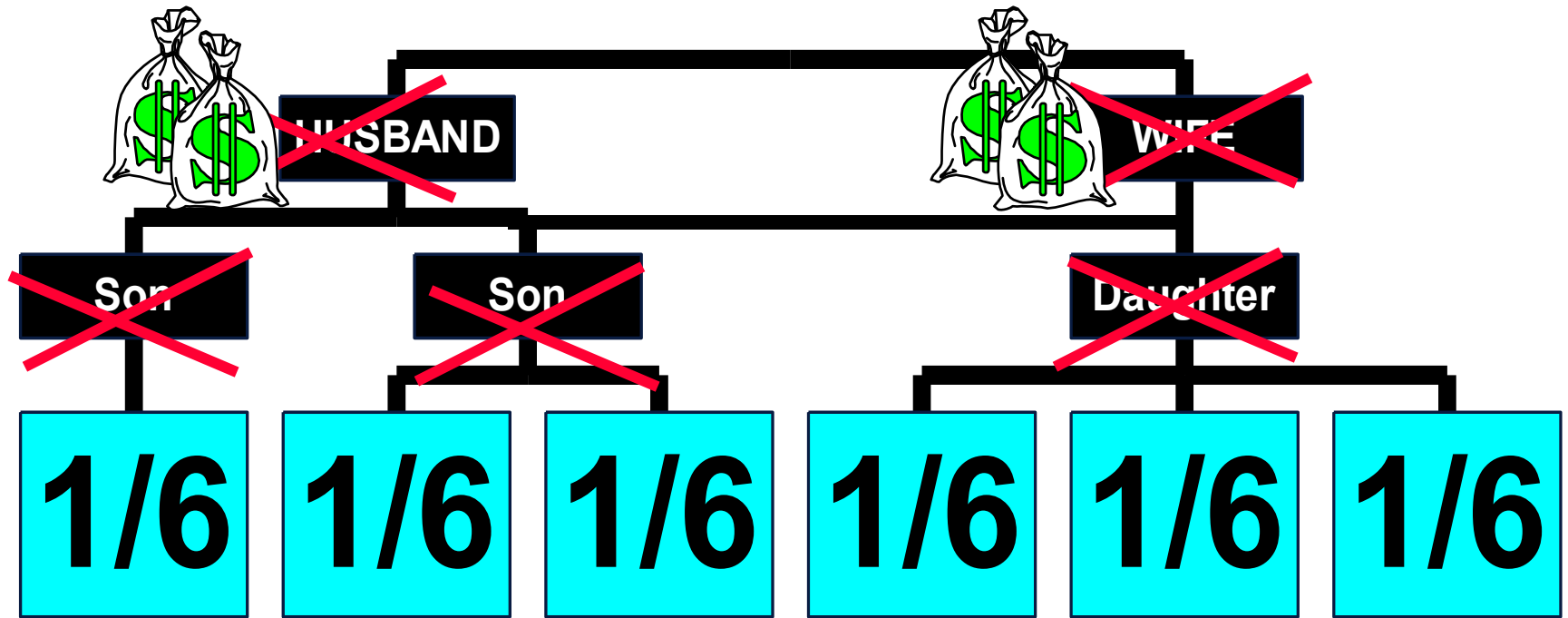
Right of Representation

Survivors : One child & grandchildren



Right of Representation

Per Capita Division



7 out of 10 do not have a will



Dying Without a Will in Montana

- **Web site**
- **CD for computer**
 - **Interactive**
 - **Answer questions with yes/no**



Dying Without a Will in Montana

- You have indicated that you are single (divorced, widowed, or never married.)

If you are separated or have legal separation, under Montana law you are considered married (go back and click [married](#))



Do you have one or more living children*?

Yes

No



* Your living children include **any** biological or legally adopted children.

Dying Without a Will in Montana

- You have indicated that you are single (divorced, widowed, or never been married).
- You have one or more living children...

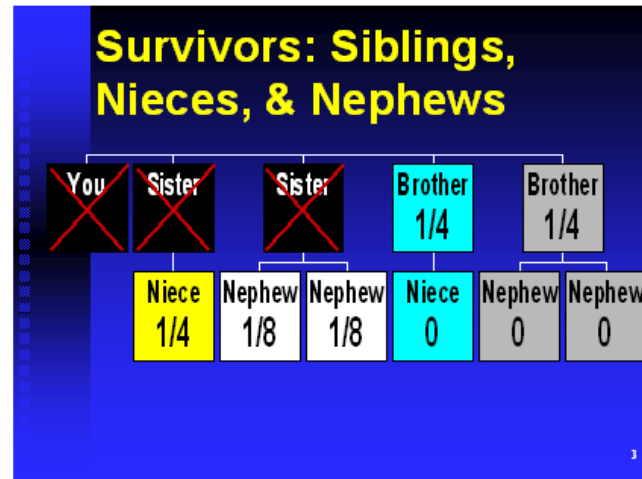
Do you have one or more living grandchildren from living children?

Yes

No



Example: Second generation



Example 1: Siblings, Nieces, and Nephews survive you

Assume you pass away without a written will. You have two sisters who passed away before you. You have two brothers who survived you.

Your two living brothers receive 1/4 each of your assets.

Your niece (of your deceased sister) receives 1/4 because that is the share your sister would have received had she survived you. This is called a division by *right of representation*.

Your two nephews (of your other deceased sister) each receive 1/8 of your assets because they split the 1/4 share your sister would have received if she had survived you. This is called a division by *right of representation*.

If this is not the division you desire, then you need to write a will.

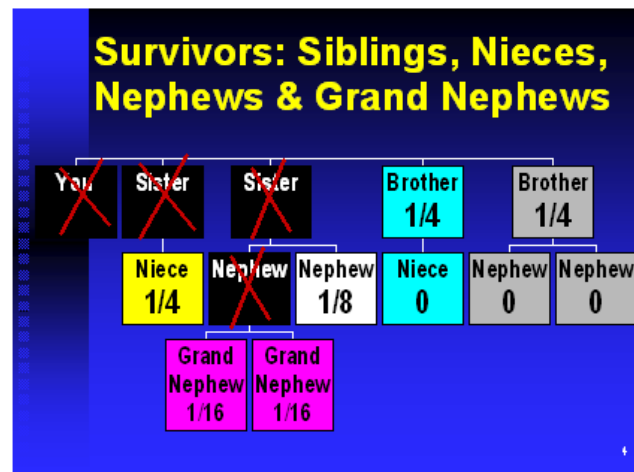
Montana State University Extension has additional information about estate planning. You may download and print out all MontGuides free at this site:

www.montana.edu/extensionecon/estateplanningpublications.html

To explore another family situation, [click here...](#)

[Evaluate this website](#)

Example third generation



Example 2: Siblings, Nieces, and Grand Nephews survive you

Assume you pass away without a written will. You have two sisters who passed away before you. You have two brothers who survived you.

Your two living brothers receive 1/4 each of your assets.

Your niece (of your deceased sister) receives 1/4 because that is the share your sister would have received if she had survived you. This is called a division by *right of representation*.

Your two grand nephews (children of your deceased nephew) each receive 1/16 of your assets because they split the 1/8 share your nephew would have received if he had survived you. This is a division by *right of representation*.

If this is not the division you desire, then you need to write a will.

Montana State University Extension has additional information about estate planning. You may download and print out all MontGuides free at this site:

www.montana.edu/extensionecon/estateplanningpublications.html

To explore another family situation, [click here...](#)

[Evaluate this website](#)

Family Situations

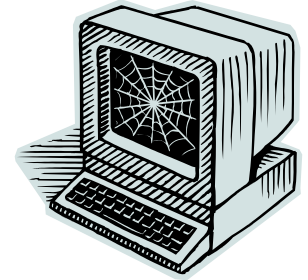


- **13 Single**



- **24 married**

Dying Without a Will in Montana



- **Web site:**
 - **www.montana.edu/dyingwithoutawill**

Dying Without a Will in Montana

■ Contact for CD:

- Marsha Goetting



- e-mail:

- ❖ goetting@montana.edu

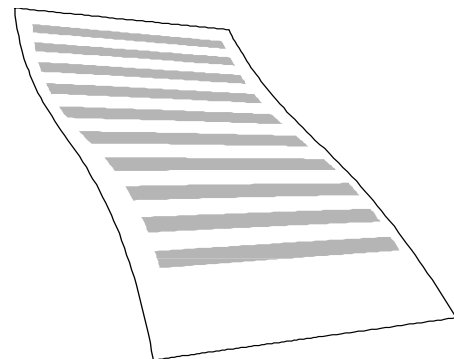


What is a will?

- **A written document describing how its maker wants property distributed after his or her death**



Holographic Wills



- **Signature & material provisions in handwriting of the testator**
- ***No witnesses are necessary***
- **Legal in Montana**



Testamentary Trust

- **Established
by a written
will**



Why Testamentary Trust?

- **Financially incapacitated / incompetent heir:**
 - **Can't manage money**
 - **Addiction problems**



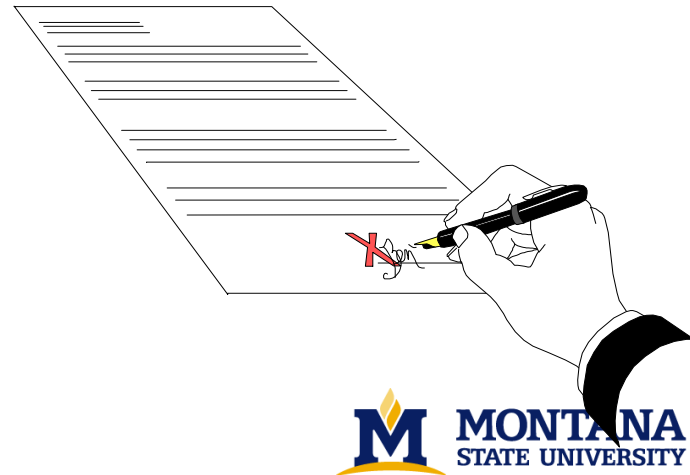
Why Testamentary Trust?

- **Leave remainder assets to charity after children & grandchildren have been educated**



Trust Agreement

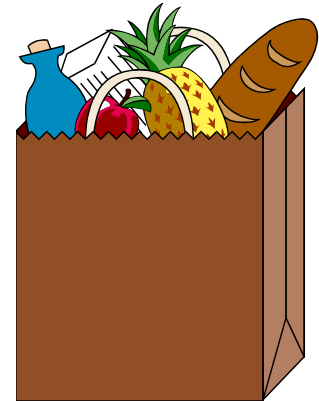
- **Written document containing instructions to trustee**



Discretionary Standard:

Trustee judgment

- Health
- Education
- Maintenance
- Support



Trustee Decision

- Chris wants to take a trip during the summer to Europe
 - *"It would be a very educational experience,"* says Chris



Poll J: You are the trustee...will you provide funds for Chris from the Trust?

Yes

No

Mandatory Standard- - dictated by trust instrument

- **Distribute at
predetermined
date or occurrence**



Occurrence

- **Upon reaching certain age**
 - **25 or 30 or ??**
- **At intervals**
 - **Ages 25, 30, 35**



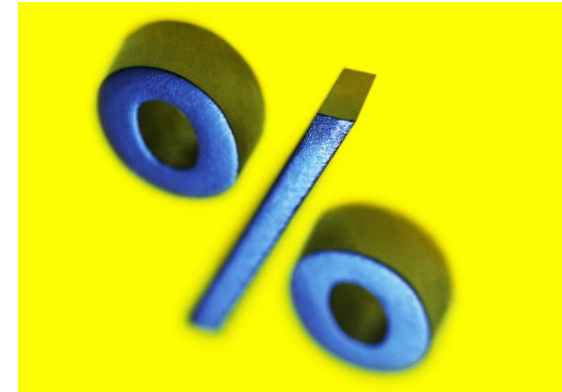
Distribution of Trust Income or Principal

- **Use percentages instead of dollar amount in case values of assets change**



Percentages

- **75% to my son,
John Jones**
- **15% to Montana
State University
Extension**
- **15% University of
Montana Law School**



How to Make Charitable Designation

Montana Community Foundation
1 N. Last Chance Gulch, Suite 1
Helena, MT 59601
Federal Taxpayer Identification
Number 81-0450150

THE MONTANA COMMUNITY FOUNDATION

all about Montana's future

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MONTANA
STATE UNIVERSITY

EXTENSION

Further Information

**39 MSU Extension
publications about
estate planning**

www.montana.edu/estateplanning



Questions

- **Write in chat
or Q & A box**



***Best wishes as
you proceed
with your
estate
planning.***

***Marsha
goetting@montana.edu***

