

ESTATE PLANNING FOR BUSINESS OWNERS

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Planning Considerations

- Who should I transfer my business interests to?
- Who will manage the business?
- How can I take care of my surviving spouse?
- When should I transfer business interests?
- How do I value my business interests?
- How do I take care of non-active beneficiaries?

Case Study: John and Tim

- Equal owners of Goodman Holdings, Inc. (C corporation)
- Business is valued at \$20 million
- John
 - Married to Susan (second marriage)
 - 5 children and 2 are active in the business
- Tim
 - Married to Jane (first marriage)
 - 3 children and all are active in the business

Determining the New Owner(s)



John

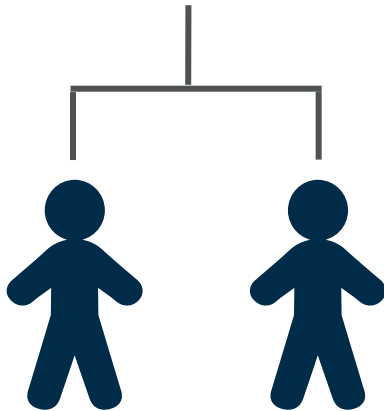


Tim

Determining the New Owner(s)



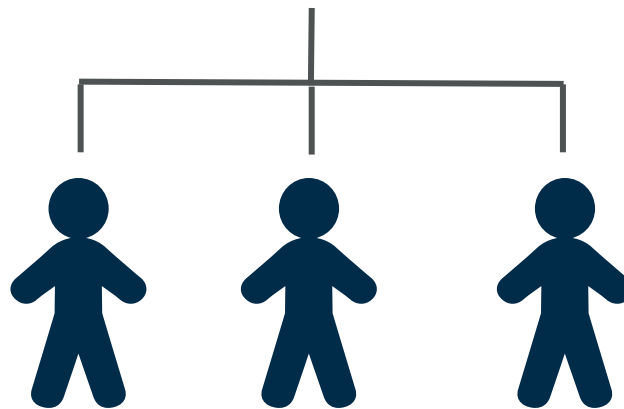
John



Active Children



Tim



Active Children

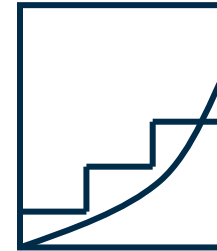
Other Key Questions...

- When?
 - During lifetime?
 - At death?
- How?
 - By gift?
 - By sale?
- What is the effect on the other beneficiaries?
 - Spouse
 - Non-active children

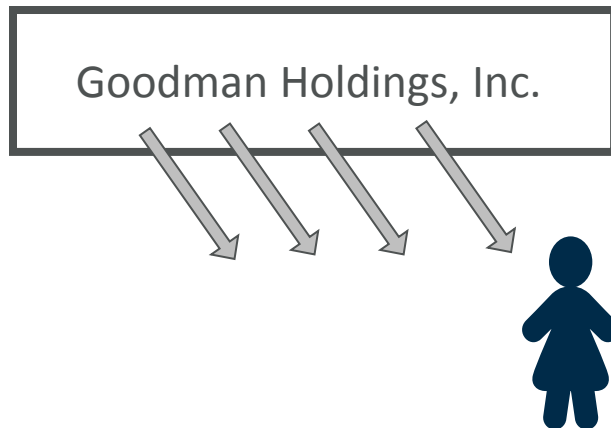
Other Income Sources for Spouse



Non-business assets



Life insurance

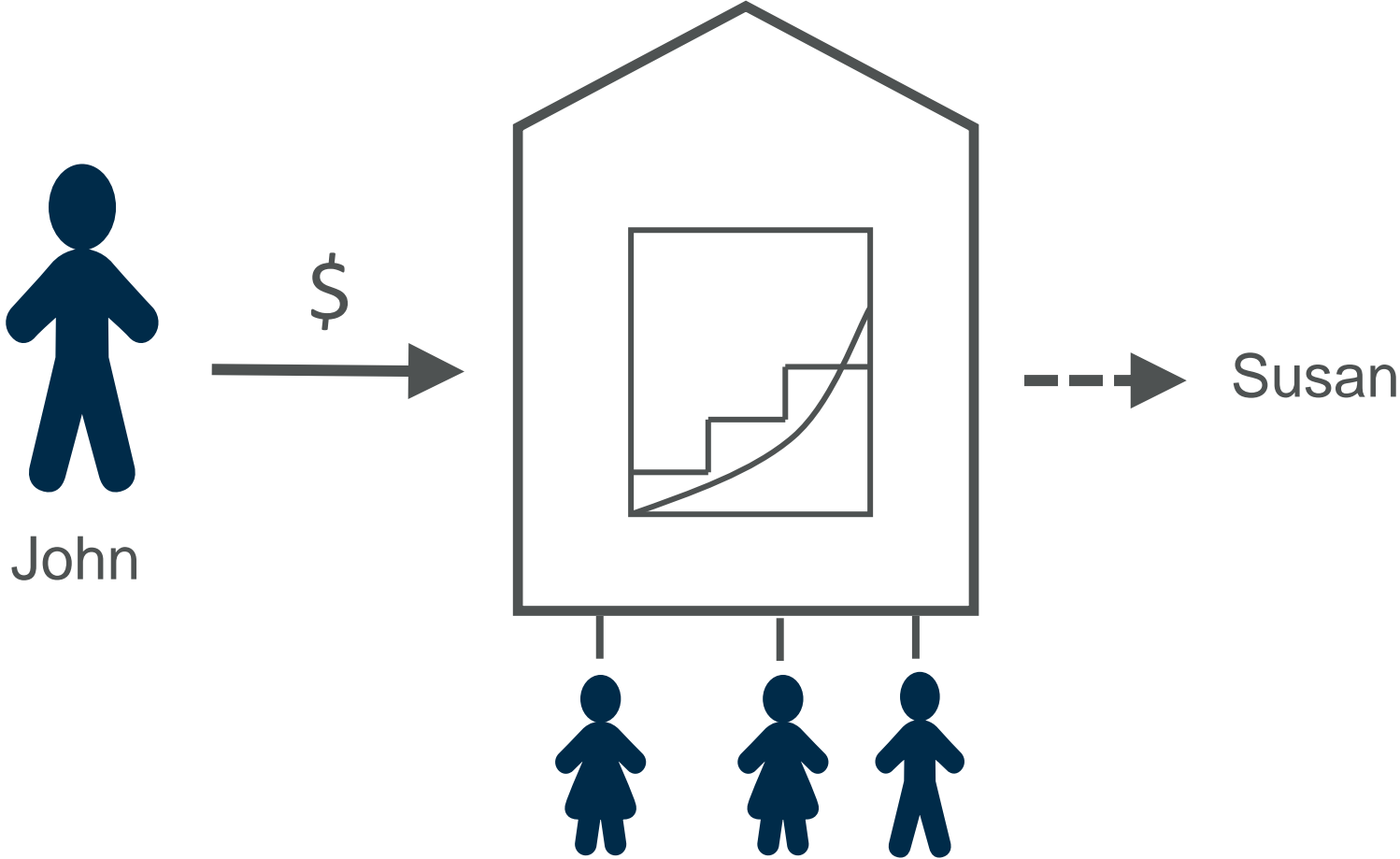


Deferred compensation

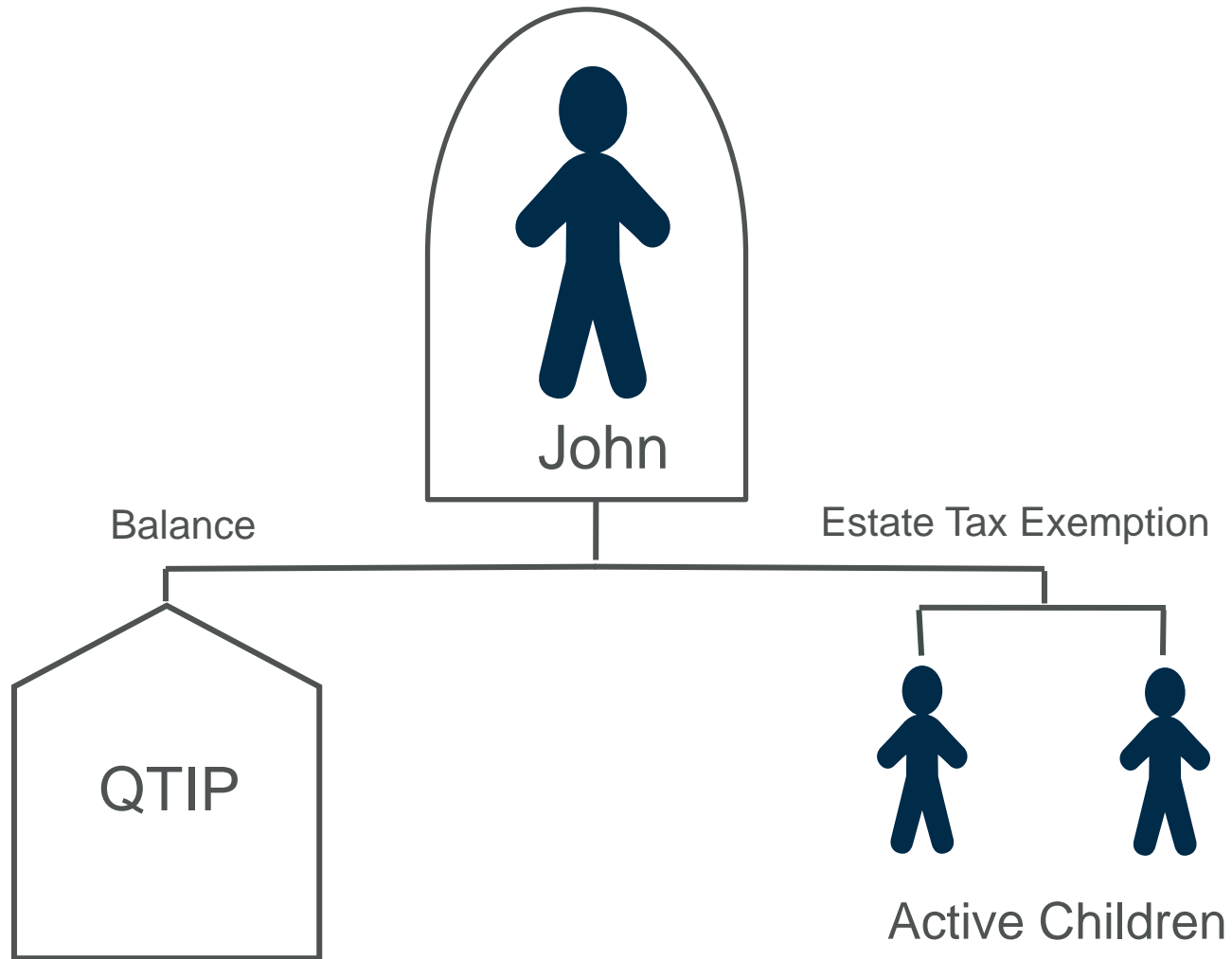


Rental income

Non-Active Children



Estate Tax Planning

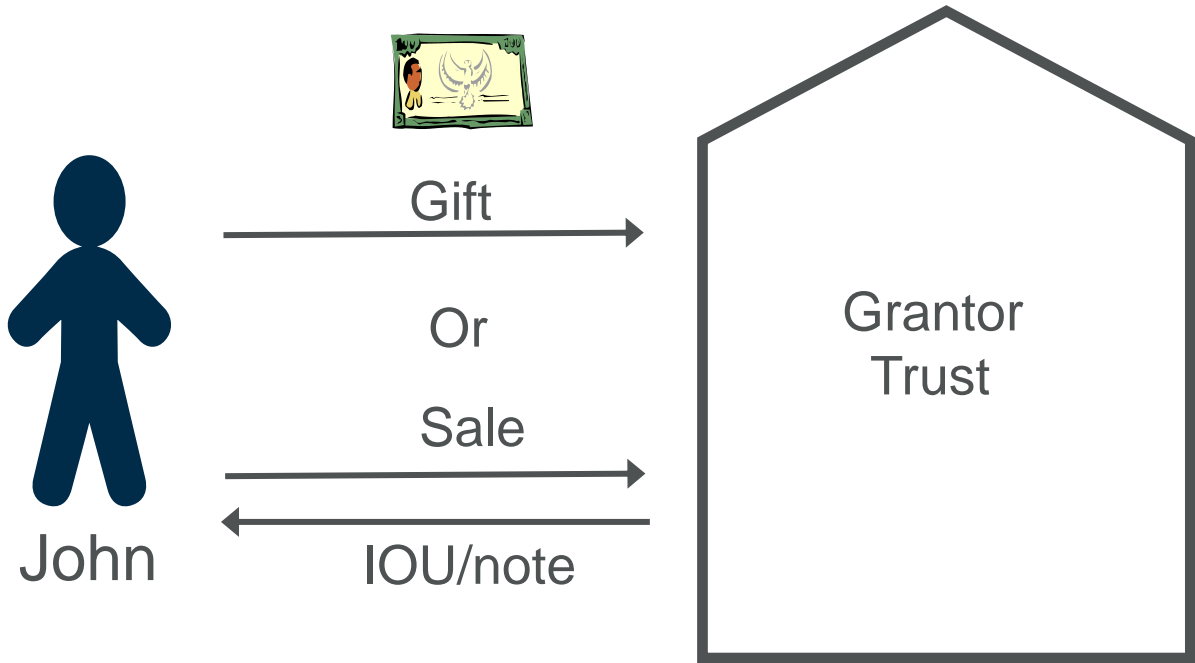


“Assistance” for Business Owners

- Internal Revenue Code Sections:
 - §303: Stock Redemption
 - §2032A: Special Use Valuation
 - §6166: Extension of Time for Paying Estate Tax*
- None of these is a substitute for a plan.

*Where estate consists largely of interest in closely held business

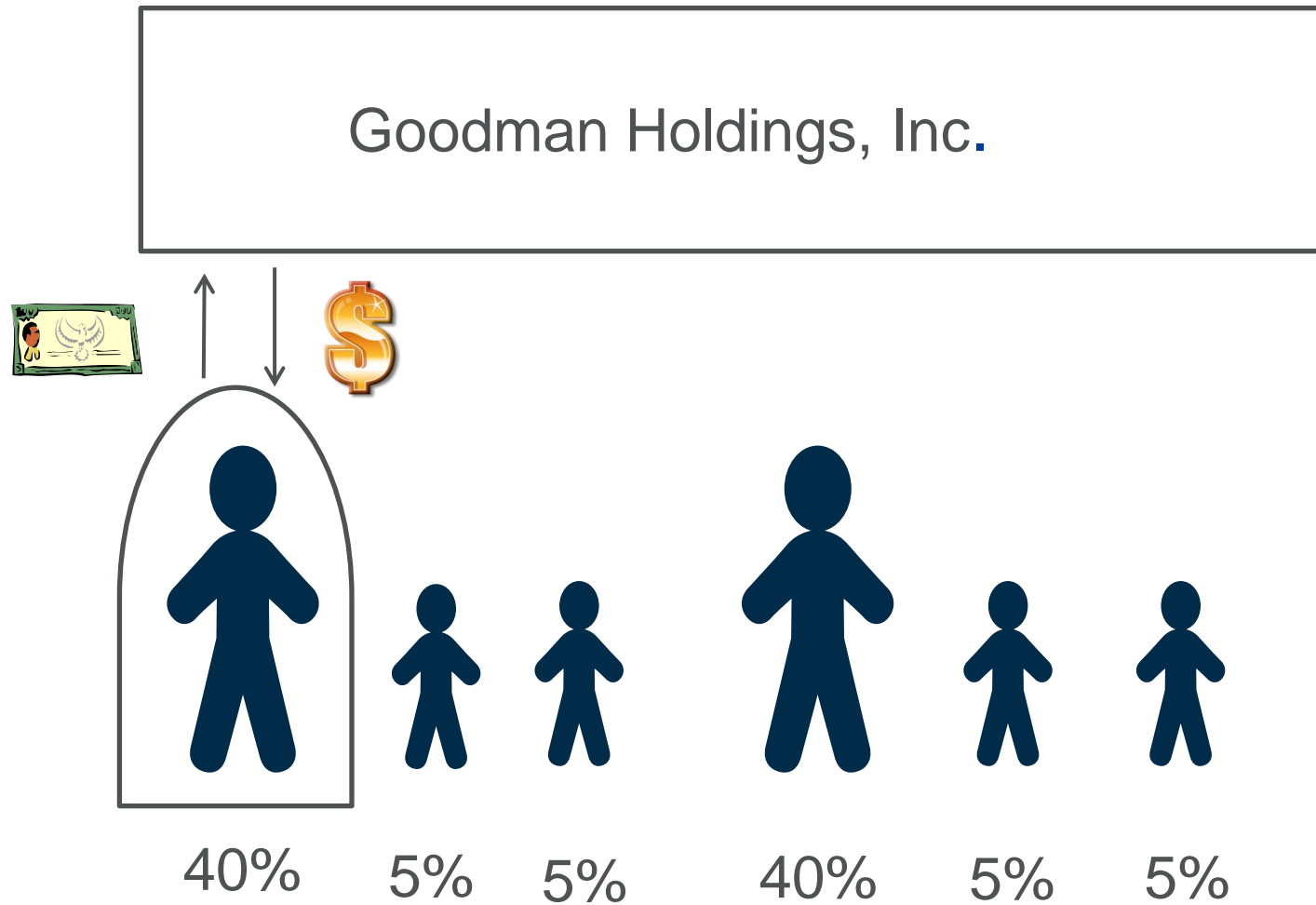
Lifetime Transfers



Buy-Sell Planning

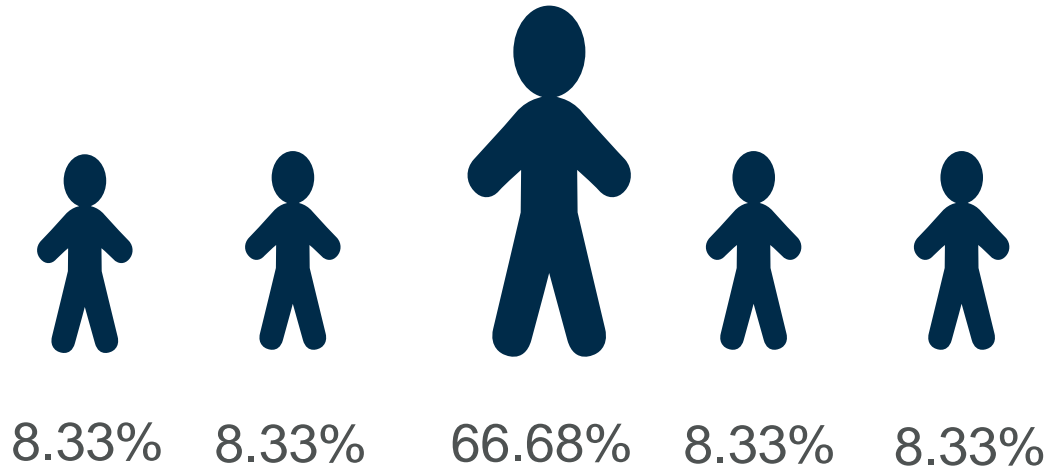
- When will I (or my family) get paid?
- How much will I (or my family) get paid?
- How can I be sure that I (or my family) will get paid?

Entity Purchase



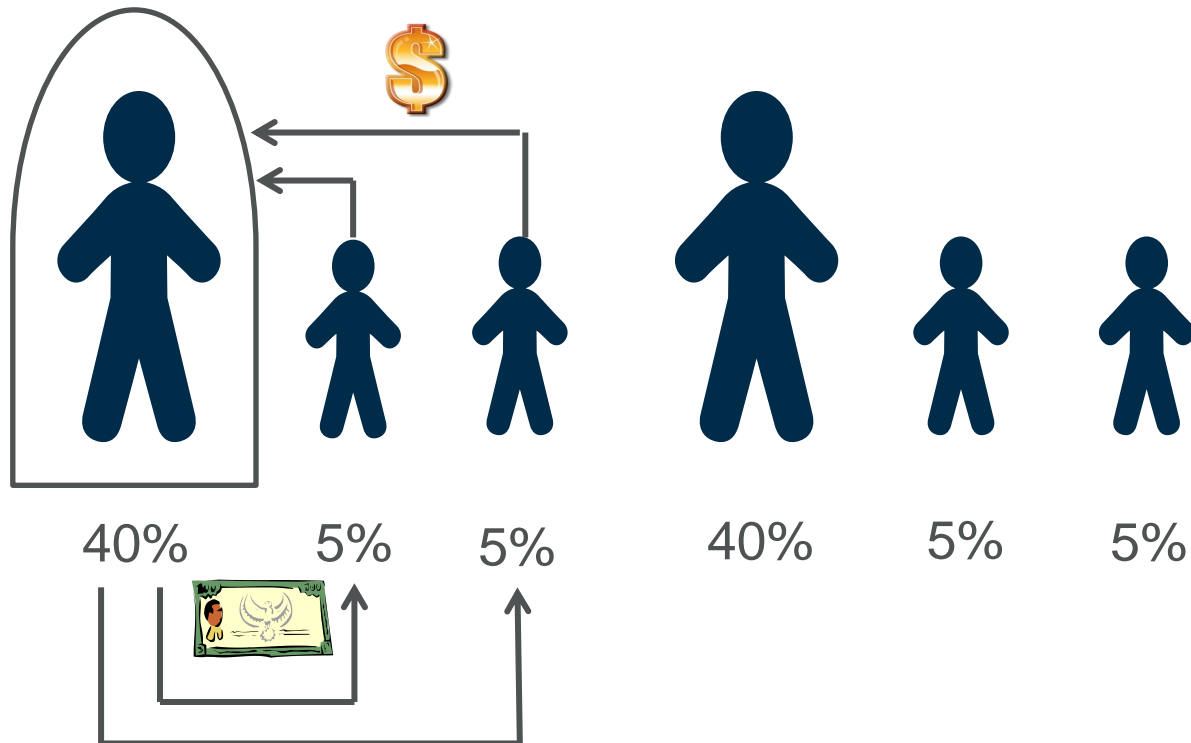
Entity Purchase

Goodman Holdings, Inc.



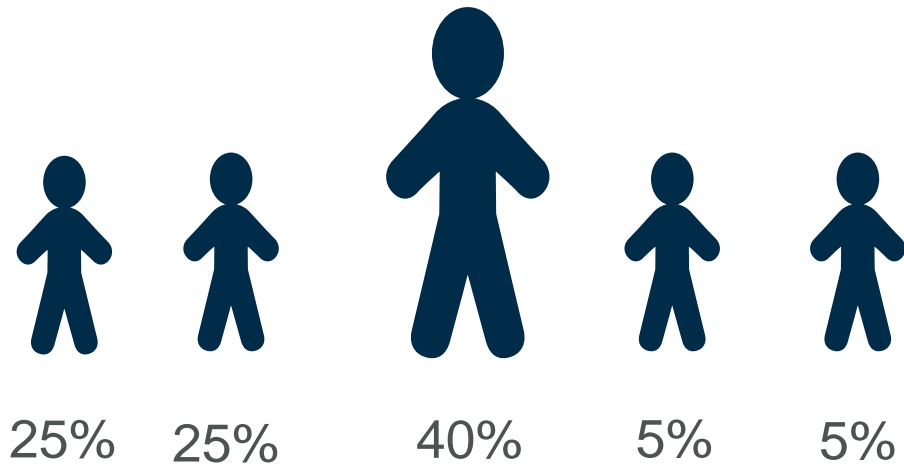
Cross Purchase

Goodman Holdings, Inc.



Cross Purchase

Goodman Holdings, Inc.



Estate Tax Valuation

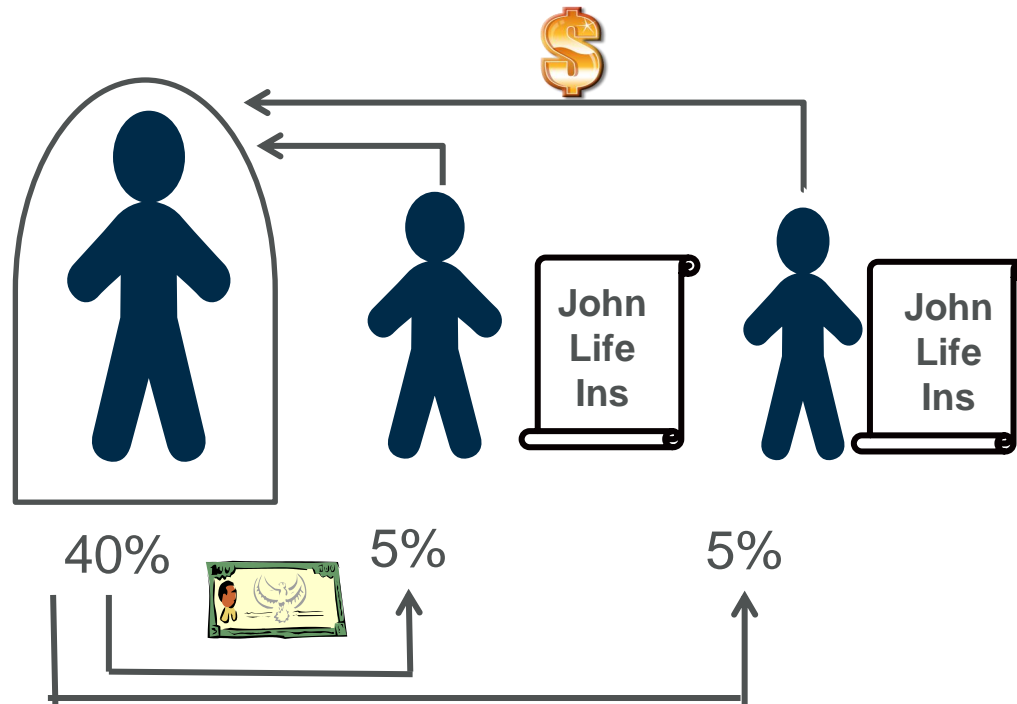
- Buy-sell agreement disregarded unless:
 - It is a bona fide business arrangement
 - It is not a device to transfer interest to family members for less than full and adequate consideration
 - Terms are comparable to arm's length transaction

Funding Options

- Existing funds
- Bank loans
- Sinking fund
- Cash flow of business
- Insurance

Cardinal Rule

Goodman Holdings, Inc.



Events that Trigger a Purchase

Most Likely



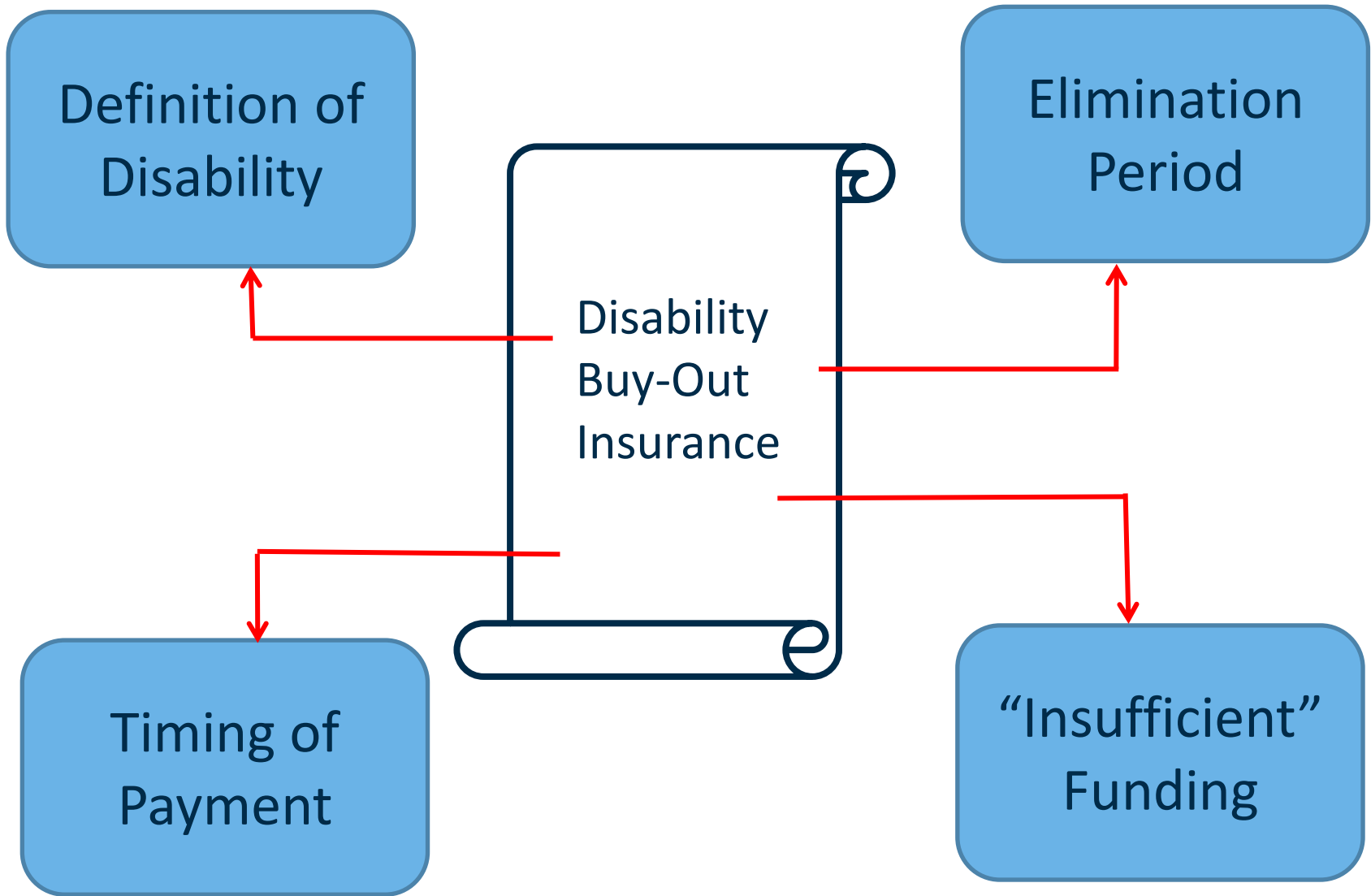
Retirement/termination of employment

Liquidation of business

Disability

Death

Least Likely



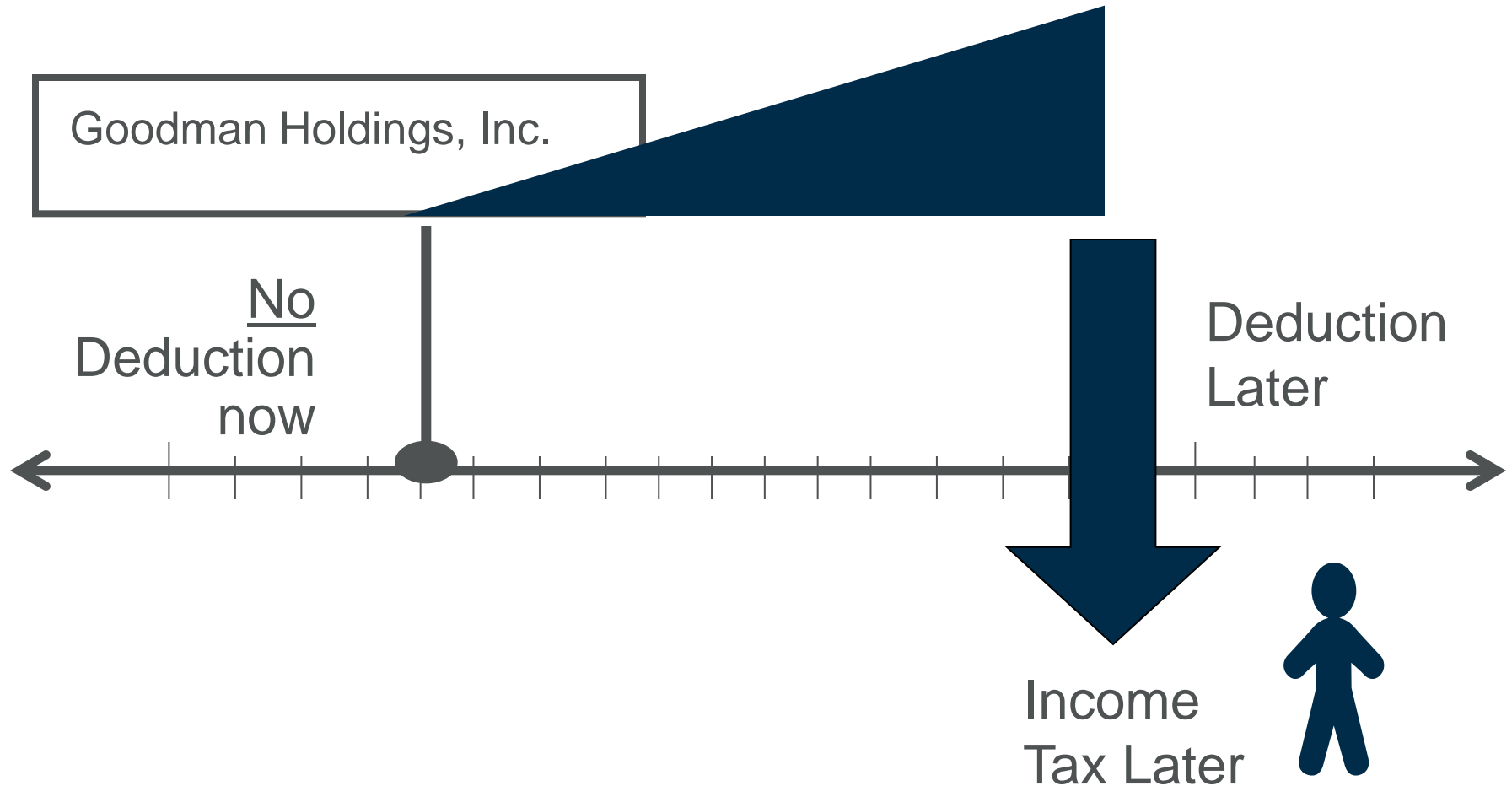
Disability Buy-Out *Drafting Tips*

- For purposes of determining the triggering event, the term “disability” must be defined
 - It is common (and strongly advised) for the agreement to use the definition which is found in the disability buy-out contract
 - Suggested language: “‘Totally disabled’ or ‘disabled’ means totally disabled as defined in the Insurer’s Disability Buy-Out Expense Reimbursement Policy.”
- The parties should also consider the timing of payments

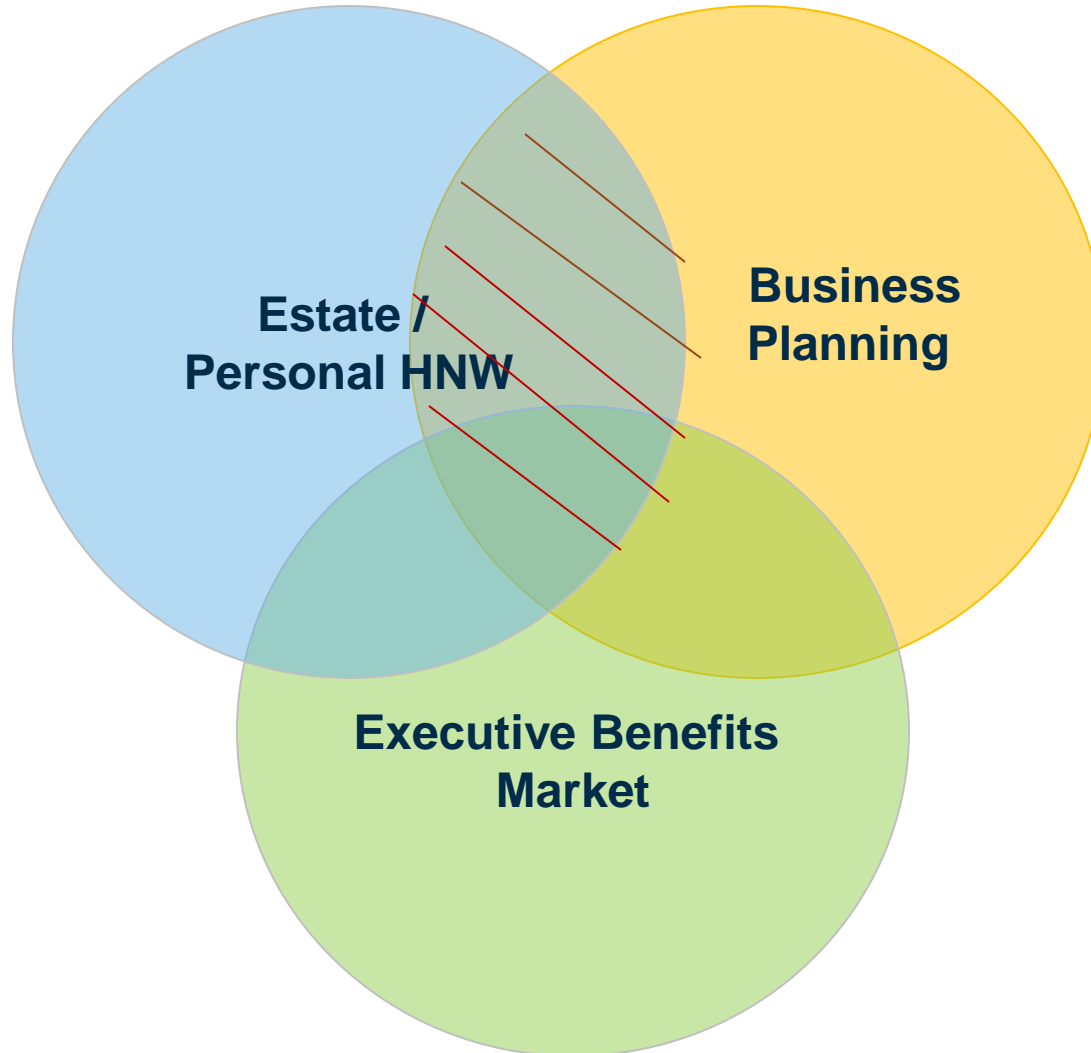
Role of Key Employees

- Motivate key employees to propel company forward
- Key management that stays after company transitions to next generation
- How to give key employees incentive to stick around?

Nonqualified Deferred Compensation



Estate Planning for Business Owners



Circular 230 Statement

These teaching materials:

- do not constitute legal or tax advice;
- are not intended to (and cannot) be used to avoid tax penalties; and
- are not written to promote or market or recommend a transaction or arrangement.