

BESPOKE X FALCON RAPPAPORT & BERKMAN

Estate Planning with Bitcoin and Crypto Assets

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The Disclaimer

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Why Bitcoin Matters

- Clients already own it (often top-3 asset by value)
- Sitting outside legally-recognized structures
- Regulated custody exists (U.S. + global)
- Needs same structuring rigor as other assets

Two-Layer Protection

Layer 1

Legal/Jurisdictional

- Trusts, entities, asset protection, tax, succession

Layer 2

Cryptographic

- Bitcoin network, keys, portability, non-jurisdictional control

Key: Both layers required for full protection

Common Primitive Ways to Own Crypto

	ETF / DATCO	EXCHANGE	SELF-CUSTODY
Complete Control of Assets	✗	✗	✓
“Lost password” Option	✓	✓	✗
KYC & AML	✓	✓	✗
Offline Accessibility	✗	✗	✓
Cybersecurity Threats	✓	✓	✓
Technical Know How	Low	Medium	High
Tax Complexity	High	Medium	High

Common Advanced Ways to Own Crypto

	MULTI-SIG	MULTI-INSTITUTIONAL + MULTI-SIG	QUALIFIED CUSTODY
Self-Custody	✓	✓	✗
“Lost password” Option	✗	✗	✓
KYC & AML	✗	✓	✓
Offline Accessibility	✓	✓	✗
Cybersecurity Threats	✓	✓	✓
Single Point of Failure	✗	✗	✓
Technical Know How	High	High	High
Tax Complexity	High	High	High

coinbase EXCHANGE
Exchange Overview

Not the same

coinbase Institutional

Key Management Framework

- Transactional: Client-controlled, high velocity
- Savings: Multi-sig, documented backups
- Generational wealth: Institutional custody, fiduciary control
- Self-custody appropriate when: Small balances, operational sophistication, high transaction frequency
- Problematic when: Wealth-significant, no succession plan, fiduciary liability

Why Institutional Custody

Self-custody risks:

Single point of failure
→ permanent loss,
succession gaps,
fiduciary liability, no
legally-recognized asset
protection or tax
mitigation.

Institutional solution:

Cyber-hardened systems,
segregated & titled
accounts, insurance,
documented succession

Key thesis:

Bitcoin has become
generational wealth;
custody must evolve

TLDR: Bitcoin (& Crypto) are PROPERTY

- ORDINARY INCOME when received
 - As payment for goods / services
 - Through mining activity
 - As staking rewards
 - Even passively via “air drops”
- CAPITAL ASSETS subject to short-/long-term rules
- Subject to GIFT & ESTATE TAX rules
 - (Including qualified appraisal requirements)

Tax Compliance

- IRS Notice 2014-21 (March 2014)
 - “Convertible virtual currency” is *property* for U.S. tax purposes. (Not “currency.”)
 - Capital gain / loss when sold or exchanged.
 - Mining income & receipt of crypto for services is taxed as ordinary income (at FMV) when received.
- Revenue Ruling 2019-24 (October 2019)
 - Clarified tax treatment of hard forks and airdrops:
 - Hard fork without an airdrop (issuance of new tokens): not taxable income.
 - New crypto received via airdrop is taxable as ordinary income (FMV at receipt).

Tax Compliance

- IRS FAQs on Virtual Currency (ongoing)
 - Reinforces prior guidance; new guidance on basis tracking (FIFO or specific ID methods).
- Crypto questions added to Form 1040 (2020)
- Enhanced reporting requirements (Infrastructure Investment and Jobs Act (2021))
 - Centralized Exchanges, brokers must report transactions, sales or exchanges to IRS (Form 1099-DA).
 - Reporting to customers (Form 1099-DA).
 - Expanded taxpayer disclosure requirements on Form 1040.

Tax Compliance

- Tax Treatment of Staking Rewards
(Rev. Rul. 2023-14)
 - Staking rewards taxable as ordinary income when received and controlled, not when they are later sold.
- Basis tracking, default rules
(Rev. Proc. 2024-28)
 - Taxpayers must track basis on a per-wallet / per-account basis, rather than using a universal accounting method across multiple wallets or accounts. Each wallet / account must have its own basis calculations.
 - Absent specific tracking, FIFO applies.

Tax Compliance (opportunity)

NOTE: Crypto is not subject to wash-sale rule –may be sold at a loss (harvest capital loss) and immediately repurchased.*

*Still subject to economic substance rules.

The Basics: Private Key Management

Crypto is a "bearer asset."

- Key material: the most important passwords in the world.
 - Control of the key material = control of the asset.
- Don't accept (controlling) key material from a client.
- Don't let client include key material in a will, trust, or other document.
- Do have client ensure raw key material is secure & updated:
 - Sharded keys, on resilient material, distributed to trustworthy individuals, kept in fire / tamper / theft-resistant storage.
 - Geographic distribution

Collaborative / Custodial Key Management

- Exchange accounts ("hot wallets")
- Multisignature ("multi-sig") key controls
- Institutional collaborative multi-sig
- Custodial MPC (multi-party computation) accounts
- "Qualified" and non-qualified custody

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Intended Use Determines Key Control

- Spending: low value, high velocity
→ single-signature (unilateral control)
- Savings: moderate value, lower velocity
→ multi-signature (shared control)
- Legacy: high value, low velocity
→ fiduciary + qualified custody (structured control)

“Key” takeaway

Takeaway:

→ There is no single “correct” custody model. The correct model depends on purpose and desired outcomes.

Custody Rule (SEC Rule 206(4)-2)

- Financial institution authorized to hold client funds and securities on behalf of RIA:
 - Banks and Savings Associations – U.S. banks or savings associations under federal or state regulation.
 - Broker-Dealers registered with SEC.
 - Futures Commission Merchants registered with CFTC.
- Foreign Financial Institutions meeting SEC requirements and hold assets in a jurisdiction with comparable regulations.
- Must maintain segregated accounts, provide periodic account statements directly to clients, & meet regulatory standards to safeguard assets.

- Assignment of property.

Include specific reference to tangible & intangible property regarding digital assets:

Tangible:

“My tangible personal property includes all of my jewelry, clothing, household furniture, furnishings and fixtures, chinaware, silver, photographs, works of art, books, boats, automobiles, sporting goods, electronic equipment, computer hard drives and peripheral accessories, cryptoasset wallets and cryptographic signature devices, blockchain nodes or similar devices, musical instruments, artifacts relating to my hobbies, and all other tangible articles of personal property that I now own or later acquire, regardless of how they are acquired or the record title in which they are held.”

■ Assignment of property

Include specific reference to tangible & intangible property regarding digital assets:

Intangible:

“My intangible personal property includes all of my sent and received emails, email accounts, digital music, digital photographs, digital videos, gaming accounts, cryptographic assets (specifically including both fungible and nonfungible cryptographic tokens), vested staking rewards, cryptoasset wallets and vaults, software licenses, social- network accounts, file-sharing accounts, financial accounts, domain registrations, Domain Name System (DNS) service accounts, blogs, listservs, web-hosting accounts, tax-preparation service accounts, online stores and auction sites, online accounts, any similar digital asset that currently exists or may be developed as technology advances, and all other intangible personal property that I now own or later acquire, regardless of how they are acquired or the record title in which they are held.”

Fiduciary Standards

NY Est Pow & Trusts L § 11-2.3

Address Prudent
Investor Rule:

“A trustee has a duty to invest and manage property held in a fiduciary capacity in accordance with the prudent investor standard defined by this section, except as otherwise provided by the express terms and provisions of a governing instrument within the limitations set forth by section 11-1.7 of this chapter.”

Fiduciary Standards—PIR considerations

- Waive duty to diversify if settlor intends to hold a substantial portion of its assets in bitcoin or crypto.
- Explicitly authorize trustee to retain a concentrated position in digital assets (similar to how some trusts are drafted for family businesses or unique investments).
- Appoint a special purpose trustee / investment advisor with expertise in crypto to guide or direct investment decisions.

Fiduciary Standards—Key Material

- Specify how trustee should hold private keys:
 - Single-signature cold storage (trustee = single point of failure / risk)
 - Multi-signature wallets (must trustee control quorum?)
 - Institutional custodians (see Custody Rule, above)
- Allow trustee to delegate custody to a specialized crypto custodian / asset manager under Custody Rule.
- Add threshold dollar value at which trustee must increase custodial / key security
(+ index to inflation)

Fiduciary Powers

- Grant authority to buy, sell, stake, lend, & manage digital assets.
- Allow trustee to hire crypto investment advisors or delegate certain responsibilities to qualified managers.
- Authorize staking or participation in blockchain governance activities.
- Provide guidance to check for periodic airdrops and / or forked rewards.

Managing Beneficial Interests

- Allow trustee to pool crypto for beneficiaries & report ratably (simplify custody, reduce errors).
- Guidance to allow trustee to distribute in cash or in-kind.
- Beneficiaries to complete crypto security training before receiving in-kind distributions?

Future-proofing

- Expressly permit decanting & trust protector's powers to amend to address changing circumstances, evolving technology, etc.
- Keep resitusing on the table (Domestic or international).

- Layered structures preserve sovereignty at a generational scale.
- Properly designed entities allow decision-making influence without direct custody,
- Centralize family economic activity (e.g., crypto assets) within LLC; shift LLC interests to trust(s):
 - Revocable trust (includable in estate)
 - Lifetime QTIP ("poorer spouse" estate balancing, satisfying marital agreements)

(next slide) →

- SLAT (completed gifting; lifetime "family / bypass / credit shelter trust")
- SLANT (completed gift NON-GRANTOR lifetime family trust)
- GRATs
- Charitable trusts (CLATs, CRTs, & multi-layer strategies)
- Upstream formula gifts...

Bifurcated Management LLCs

- Establish management by managers (instead of members).
 - Client = Investment Manager (investment powers only)
 - Independent Party = General Manager (control over asset movement, distributions to members, etc.)
- + If necessary: Administrative Manager (holds situs)

- Shifts crypto-related responsibilities away from trustee; holds them in the LLC.
- Trustee only manages & reports on LLC interests (& distributions up from LLC to trusts).
- Client as Investment Trust Advisor directs trustee as to trust's LLC investment.
 - Acquisitions, sales, etc.
 - Power to remove / replace LLC managers

Avoiding §§2036, 2038, 2041

Key issues:

- Sever "dominion and control" over LLC assets (IRC §§ 2036, 2038).
- Prevent a general power of appointment (IRC §§ 2041).
- Drafting tips:
 - Limit Investment Manager's to "investment decisions" only, not asset movement or distributions.
 - Ensure control over distributions and asset movement is in the hands of an independent party (General Manager or a third-party trustee).
 - Prohibit unilateral decisions that could allow the investment manager to personally benefit from LLC assets.

Defining the General Manager

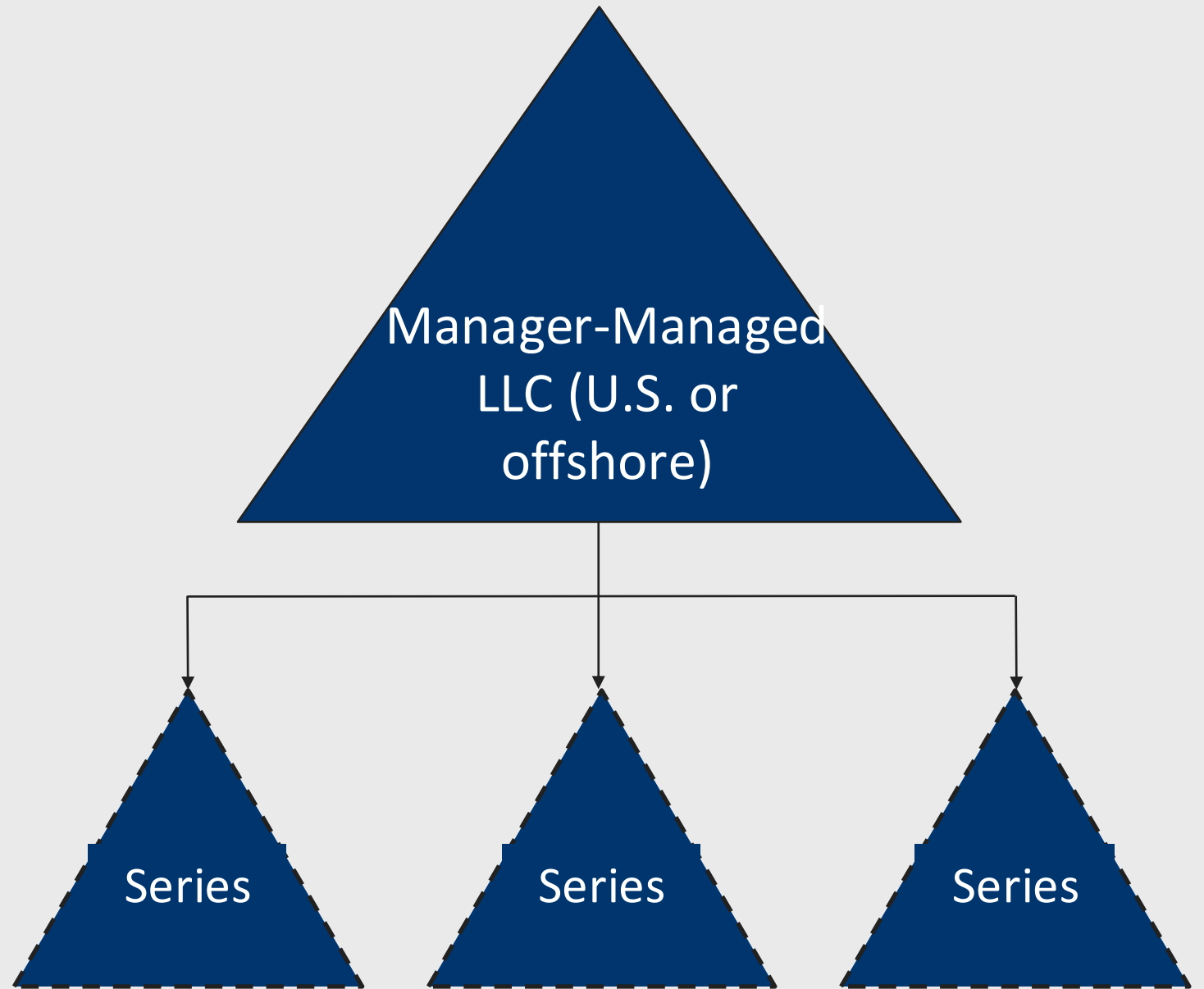
Sample language:

"The General Manager shall be an Independent Party.* The General Manager shall have exclusive control over all administrative, operational, and distribution decisions of the LLC, including but not limited to the withdrawal, transfer, and allocation of LLC assets. The Investment Manager shall not have any authority over such matters."

* Term is defined in definitions section as not related or subordinate to the Investment Manager as defined in Treasury Regulation § 1.672-2.

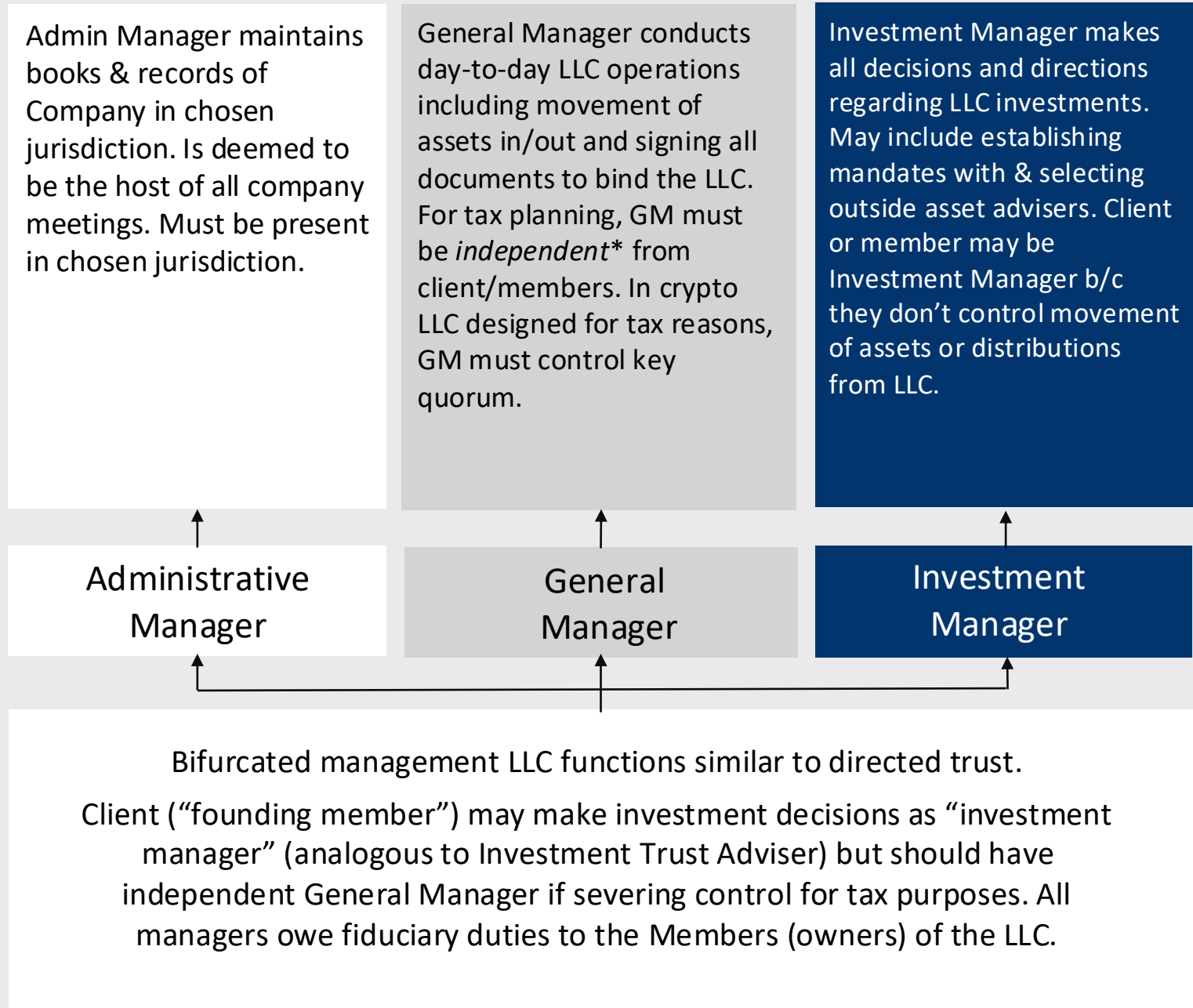
LLC–General Structure

May be established as "series" LLC with each series functioning as a subsidiary under the LLC. Each series may have its own assets, liabilities, and members (owners).



LLC – Management Structure

- Bifurcated (or further divided) management:
 - Investment Manager
 - General Manager
 - Administrative Manager



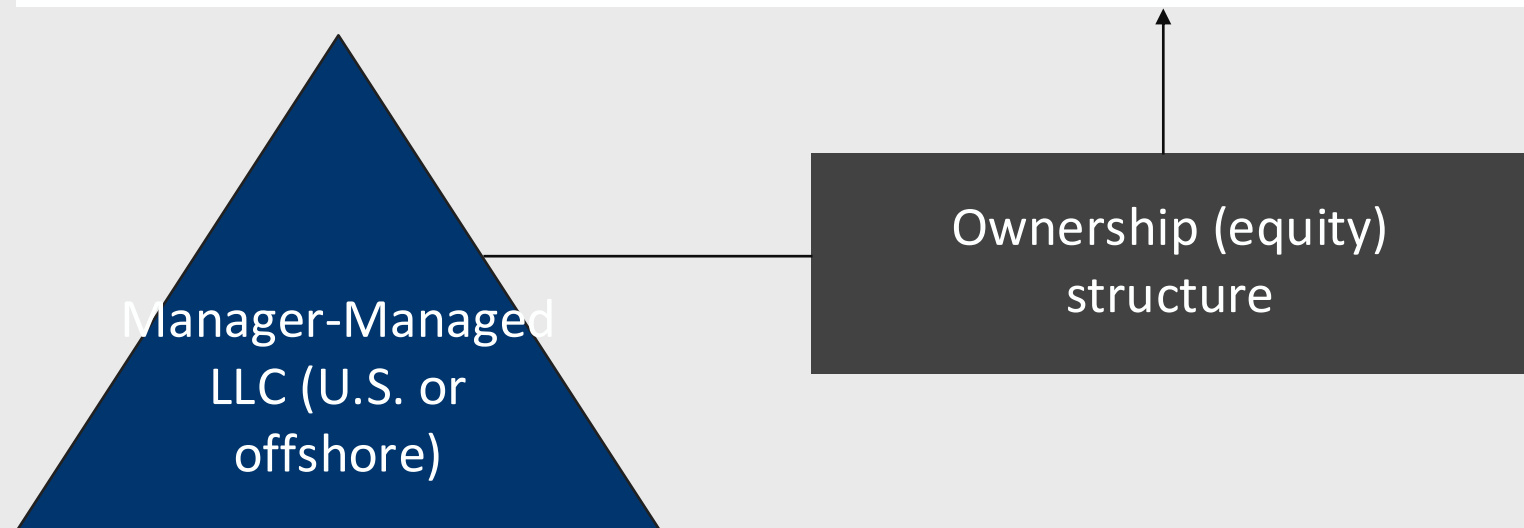
Shifting LLC Interests to Trusts

LLC (or series) interests transferred to one or more trusts:

- RLT
- HEET
- QTIP
- GRAT
- SLAT / SLANT
- CRT
- Dynasty
- + Upstream shifting...

The LLC membership interests (equity) may be owned by individuals, trusts, or other entities. In most situations the LLC will be formed by an individual (client) and funded with various assets. LLC interests will be transferred to other entities or trusts as part of planning process.

“Members” (owners) have no day-to-day management rights in a manager-managed LLC, but may remove & replace managers. Members sign the LLC Operating Agreement and perform other functions reserved by Members. Members may be divided into voting and non-voting.



Three Trust Structures

- Model 1: Trust → Custodian (simplest)
- Model 2: Trust → LLC → Custodian (adds governance layer)
- Model 3: Trust + Multisig (distributed keys; trustee must control quorum)

All models: Trustee directs, custodian secures

Four-Question Audit

1. Control: Who has keys?
2. Succession: Can family access?
3. Structure: Personal or trust/LLC?
4. Custody: Appropriate for size?

Output: Risk assessment → Restructuring
roadmap

Wealth Operating System

Problem: Structures behave as **disconnected patchwork**

WOS Functions



Maps the Whole

Entities

Assets

Jurisdictions



Designs Ownership
Logic

Intention, not inertia



Orchestrates
Execution

All advisors work from
one brief



Maintains
Coherence

Realigns as things
change

How We Work Together



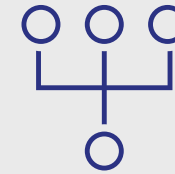
You

Primary advisor
and client
relationship



Bespoke

Wealth Operating
System and Bitcoin
structuring



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What Questions Remain?

