



Genworth®
Financial

Business Planning

The Pension Protection Act of 2006

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Life Insurance “101”

- **General rule - IRC §101**
 - **Benefits paid by reason of death are generally received by the beneficiary federal income tax free**

Employer-Owned Life Insurance

- Pension Protection Act of 2006 added Section 101(j) to the Internal Revenue Code
 - If employer owns life insurance policy issued on or after August 17, 2006 on the life of a current or former employee,
 - Then death benefit in excess of premiums paid taxed as ordinary income, unless:
 - Written notice provided, AND
 - Written consent received, AND
 - At least one of four safe harbors applies

The Notice Requirement

- **Written notice from employer (before policy issue)**
 - **Intent to insure employee, and**
 - **Maximum amount of insurance, and**
 - **Intent to be named a beneficiary of policy**

The Consent Requirement

- Written consent from employee (before policy issue)
 - Employer may apply for life insurance on employee, and
 - Policy may continue after employment terminated
- Employer must also meet reporting requirements

The “Safe Harbors”

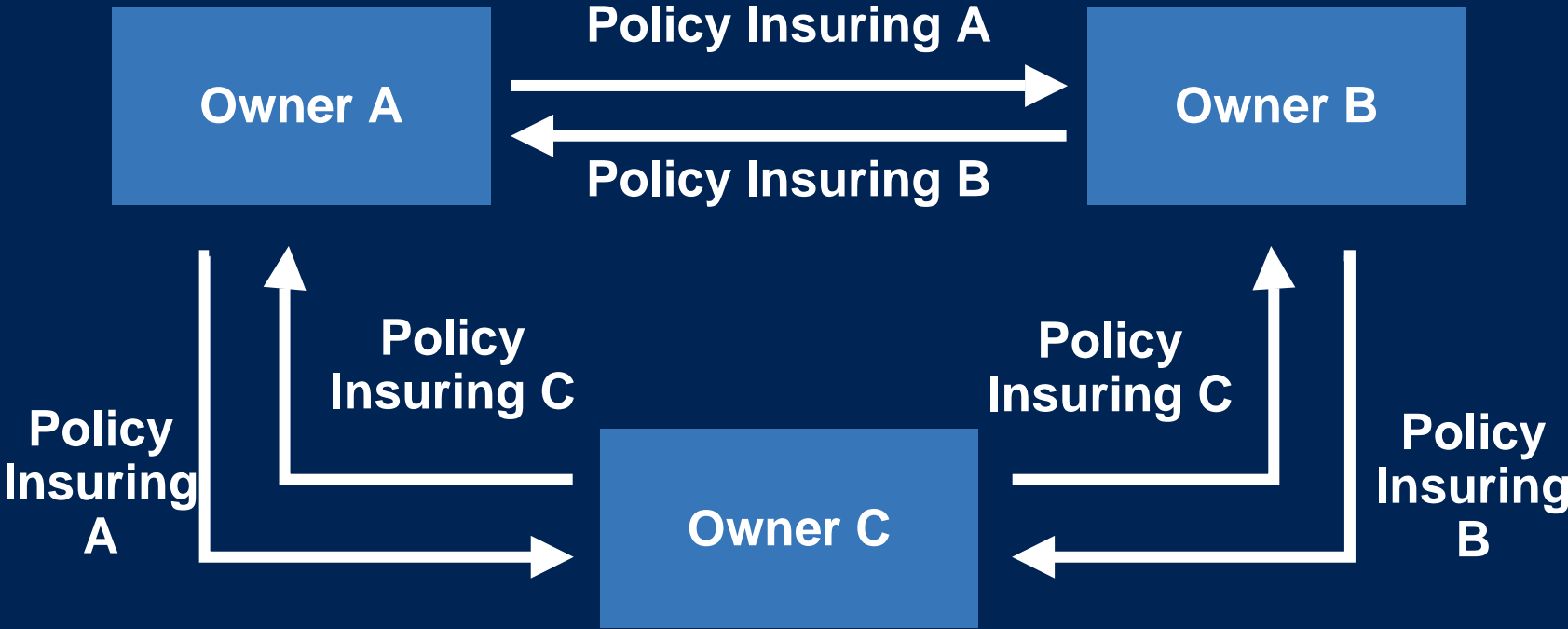
- Insured = employee within year before death
- Insured = key person
 - 5% or greater owner, or
 - One of the 5 highest-paid officers, or
 - Among highest-paid 35% of employees, or
 - Compensation > \$95,000 (adjusted for inflation)
- Death benefit paid to insured’s heirs
- Buy-sell arrangement

Tools of Business Continuation

Trusteed Cross Purchase Buy-Sell

Cross Purchase Buy-Sell

PRIOR TO DEATH OR RETIREMENT: $N \times (N - 1) = 3 \times (3 - 1) = 6$

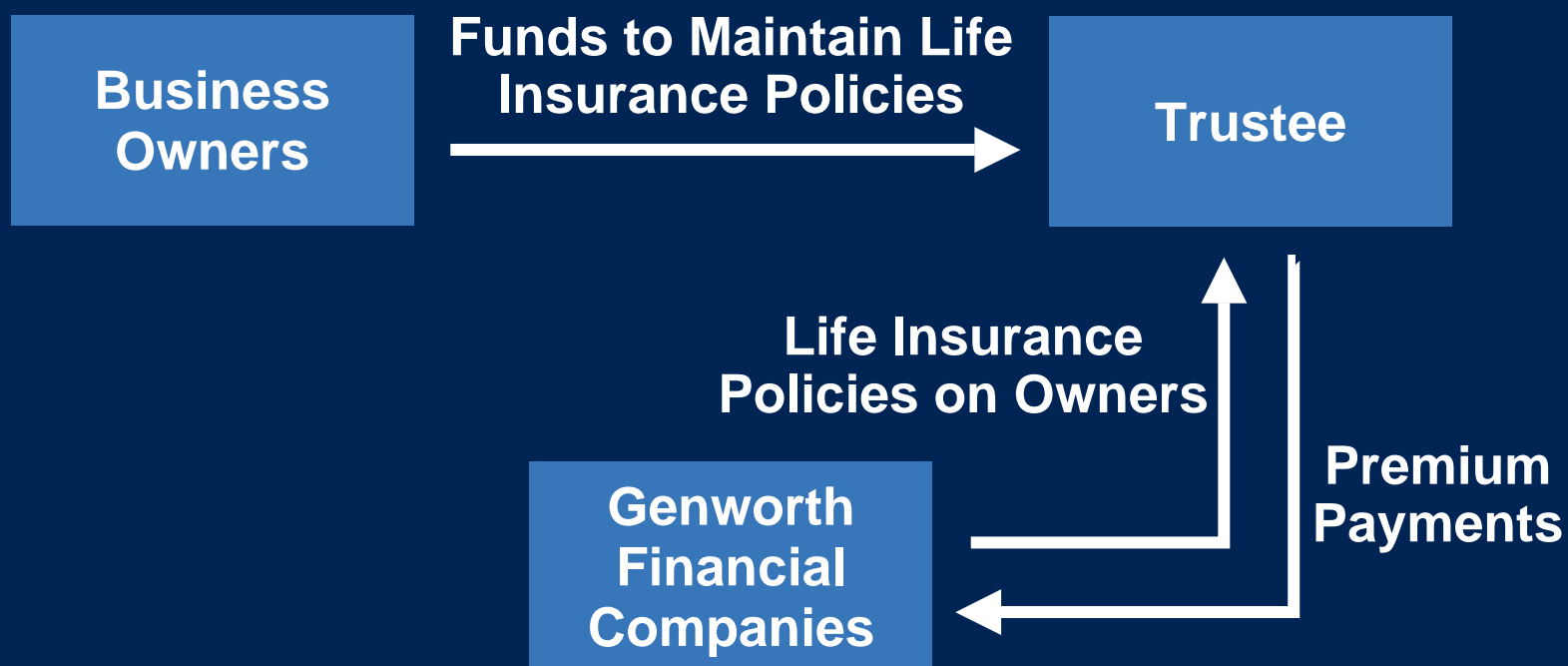


Trusteed Cross Purchase Buy-Sell

- Simplify life insurance policy administration in situations with 3 or more owners
- Help ensure completion of the terms of the buy-sell arrangement – security device

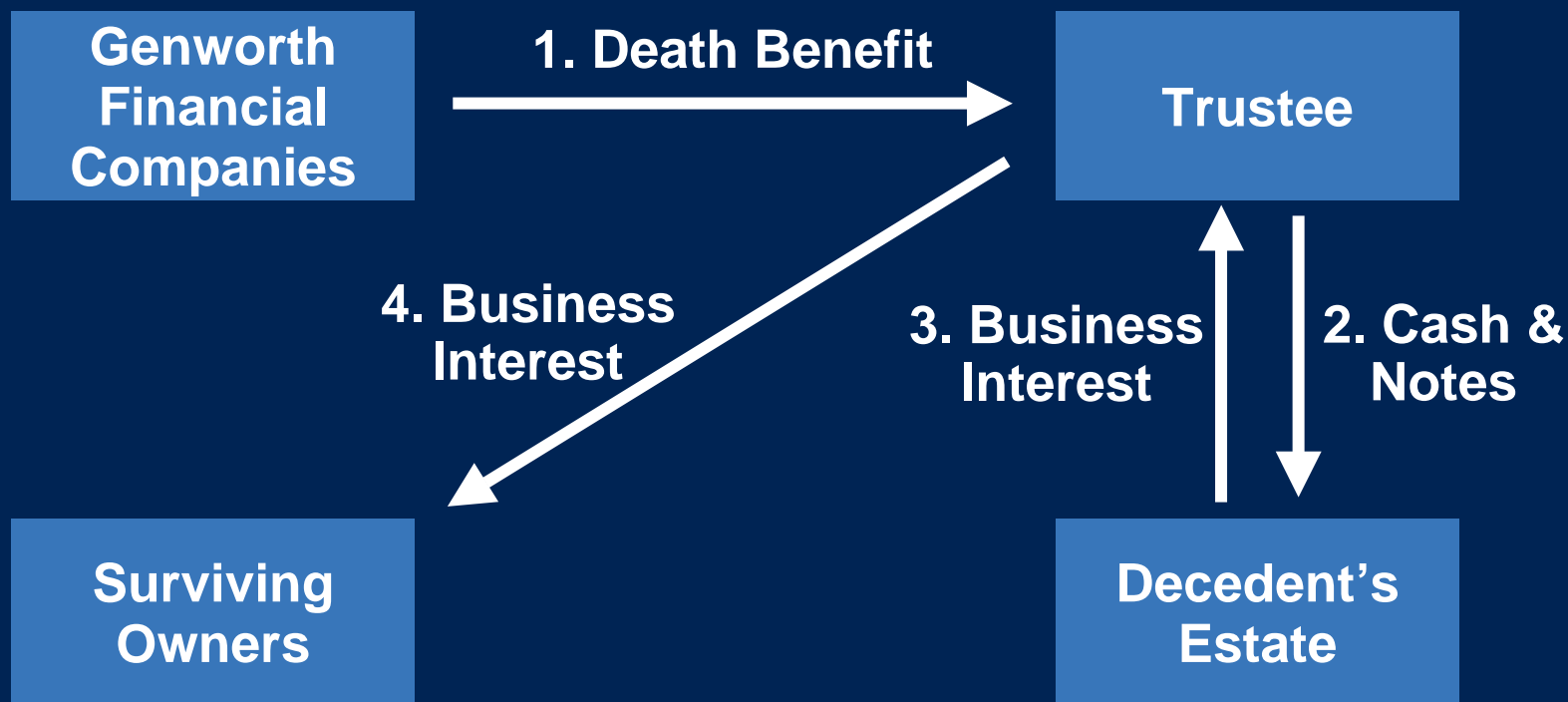
Trusted Cross Purchase Buy-Sell

PRIOR TO DEATH OR RETIREMENT



Trusted Cross Purchase Buy-Sell

AFTER DEATH OF AN OWNER



Exceptions to Exception

- **Death benefit income tax free (general rule)**
 - **Unless there has been a transfer for value (exception)**
- **Exceptions to exception**
 - **Even if there has been a transfer for value, death benefit is still tax free if...**

Allowable Transfers

- Transfer is to the insured
- Transfer is to a partner of the insured
- Transfer is to a partnership in which the insured is a partner (includes LLC taxed as partnership)
- Transfer is to a corporation in which the insured is an officer or shareholder

Trusteed Cross Purchase Buy-Sell

- **Caution:** It is not recommended that you use a trusteed buy-sell for a corporation
- **Potential transfer for value trap at the second death**
 - **After first death, decedent's deemed ownership in policies on remaining owners transfers to the survivors**
 - **Transfer to a co-shareholder is not an exception to the transfer for value rule.**

Trusted Cross Purchase Buy-Sell

Advantages

- Can ease concerns about owners following through on their promises
- Features of either cross purchase or entity purchase

Disadvantages

- Requires 3rd party trustee
- Transfer of business interests to be held in escrow
- Transfer for value issues possible

