

# Dehcho First Nations Trust

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# Introduction

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- Duncan & Craig LLP
  - Founded 1894
- Team approach with specialties in the relevant areas of the law
- Team approach with other professionals
  - Tom Wooding and Wood Gundy
  - CIBC Trust

# Our Team

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- Phil Renaud

- Trust Law

- Suzanne Thomas

- First Nations and Métis Governance
- Environmental Law

- Rob Dunseith

- Tax Law

- John Kosolowski

- Commercial Structures and Governance

# Trust Committee

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- Richard Lafferty
- Verda Tambour
- Eric Menicoche

# SUPER TRUST

**40%**  
**Immediate Opportunities Trust**

(Can encumber Income)

Assume 15% Earnings  
and 7% net after losses and  
payments

50% of Income returned to  
Immediate Opportunities Trust

25% of Income to  
Community Development  
Trust

25% of Income to be split  
amongst The Future Generations Trust

**35%**  
**Mid Term Trust**

**50%**  
**Economic Development Trust**

(Can encumber Income)  
(6% Return 40/60 Mix)

**50%**  
**Community Development Trust**

(Cannot be encumbered)  
(7% Return 50/50 Mix)  
(Income Paid Out less Inflation)

**25%**  
**Future Generations Trust**

(None of the Future Generations  
Trust can be encumbered)

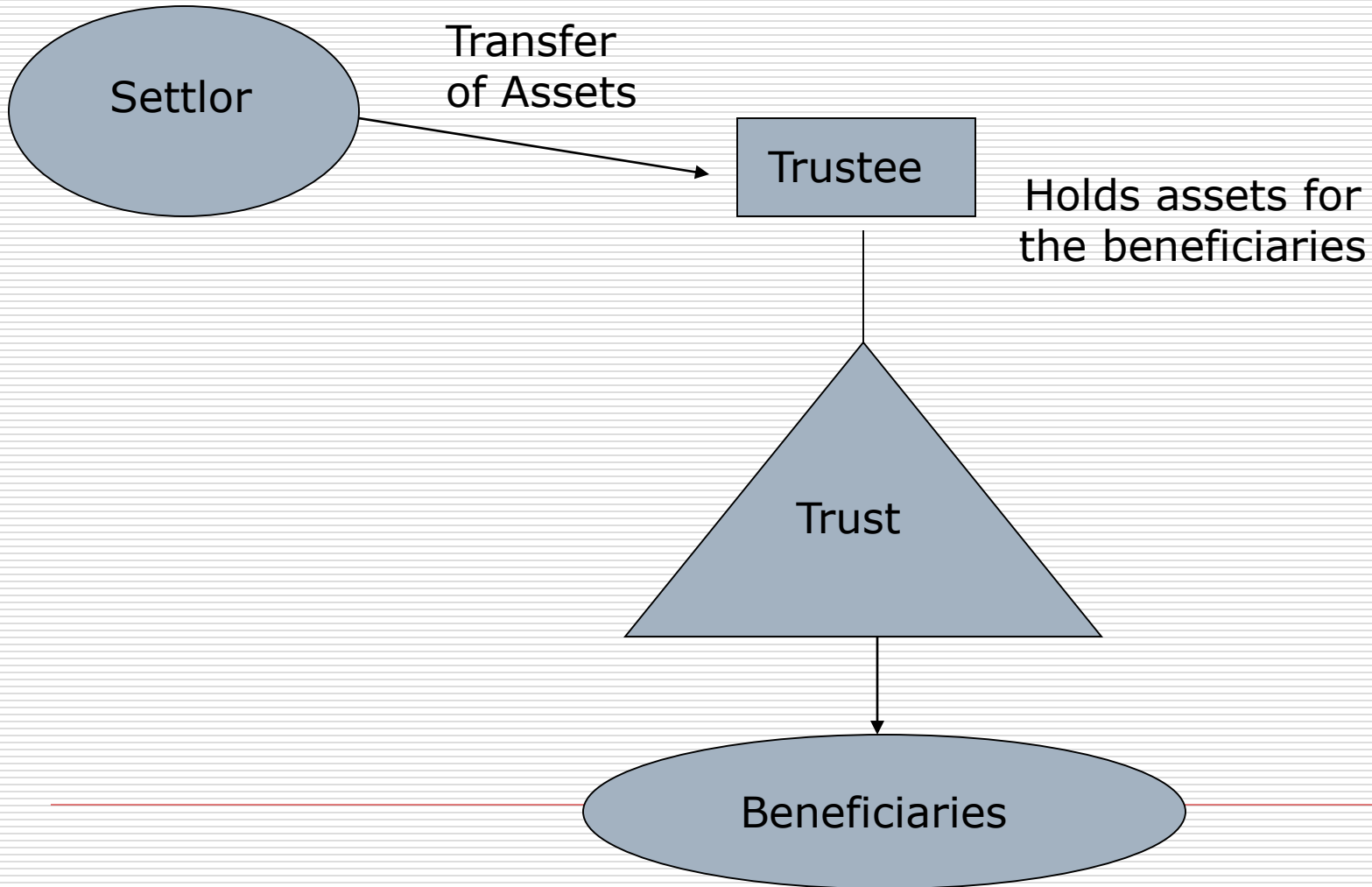
**20% Elders Heritage Trust**  
( $\frac{1}{2}$  Income every year,  
 $\frac{1}{2}$  Gain every 5 years  
8% return)

**40% Education Trust**  
(income less inflation  
7% return)

**40% Land Acquisition Trust**  
(8% Return, 25% of Growth  
out every 25 Years)

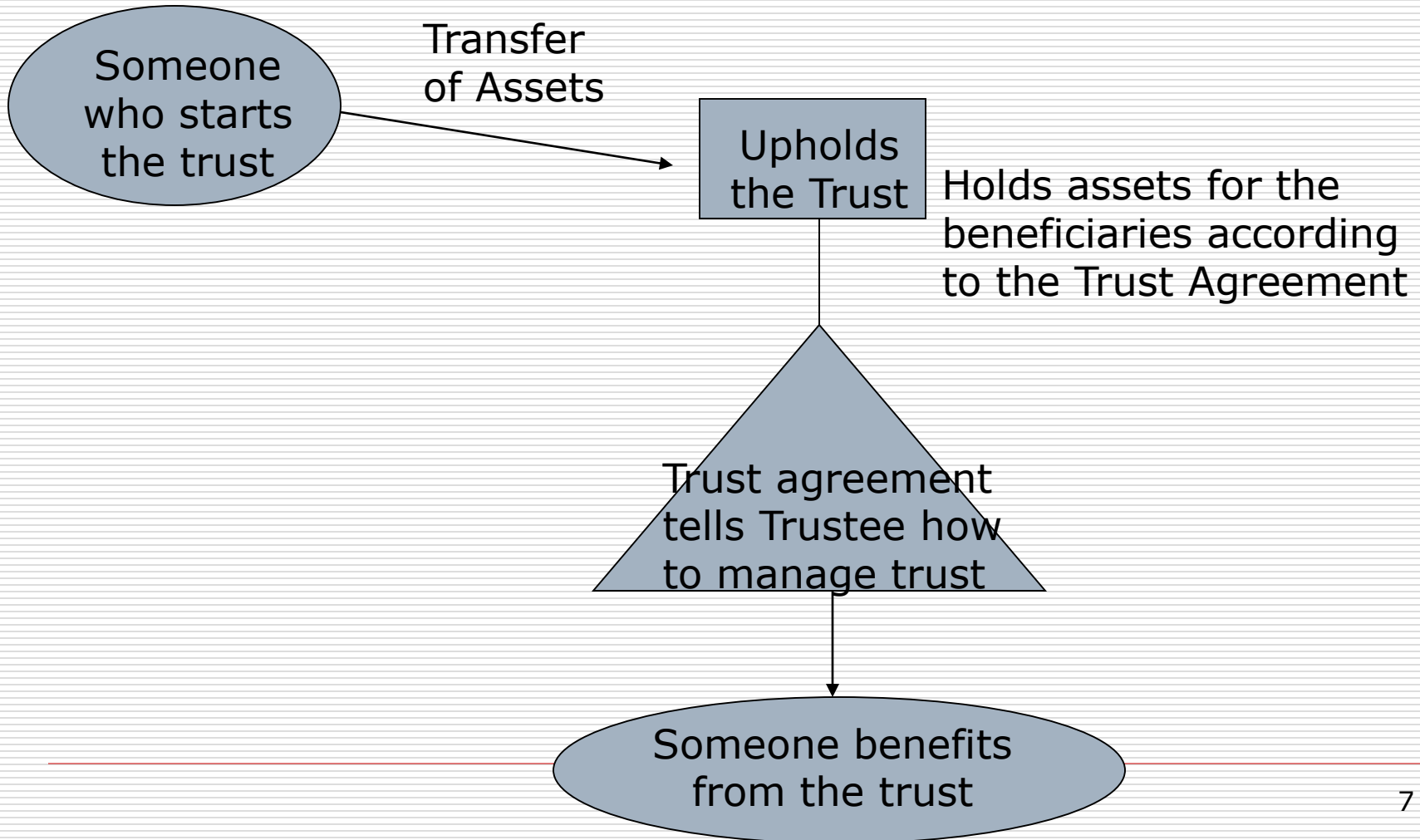
# Basic Trust Structure

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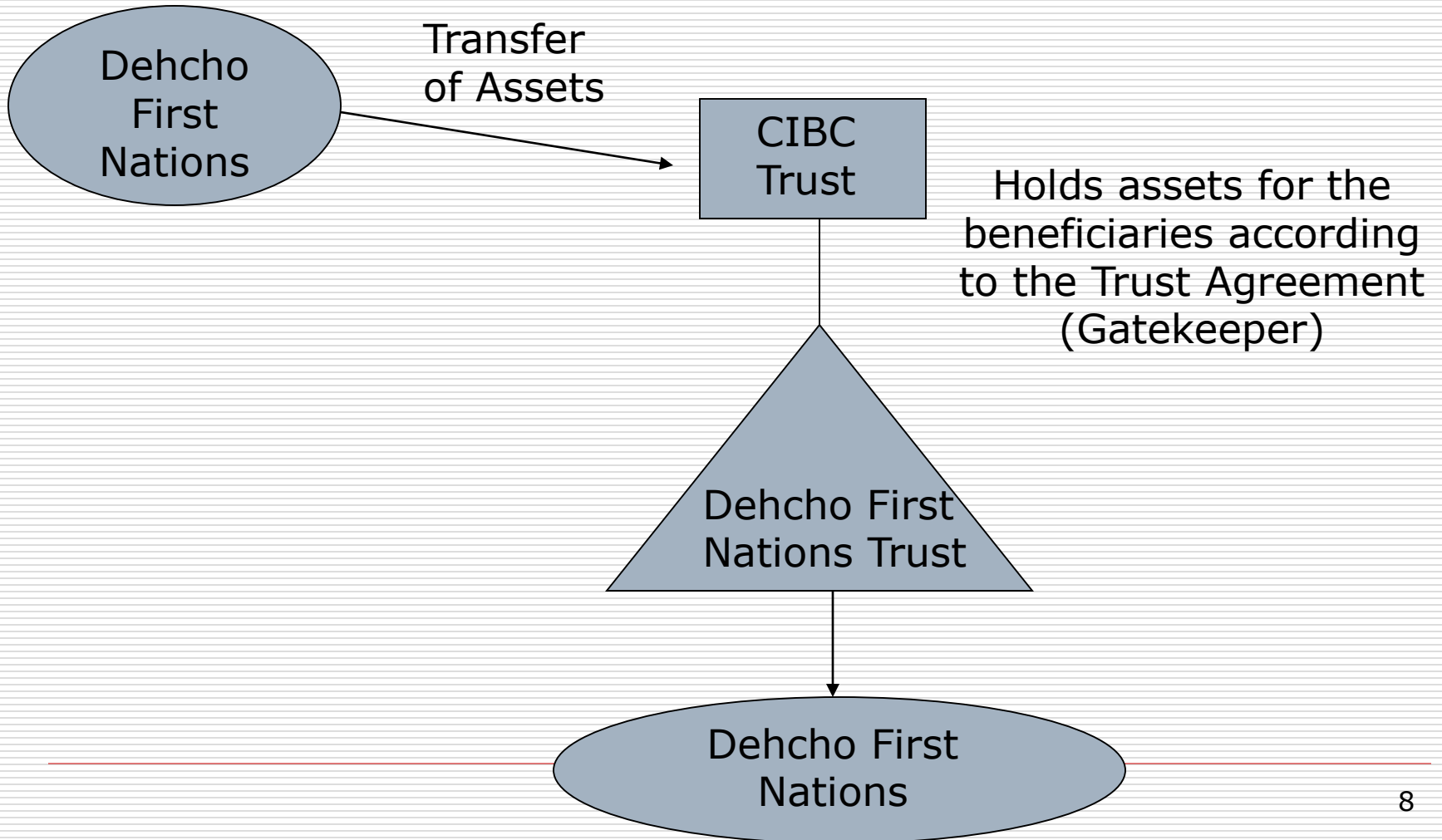
# Basic Trust Structure

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# Basic Trust Structure

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# Role of the Trustee

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- The “Gatekeeper”
  - Keeps clear and accurate records
  - Monitors the Investment Advisor
  - Distributes funds according to the trust
  - Keeps community members informed

# Process

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## Stage one

- Complete the Master Trust before the end of March 2006
  - payment of the "Settlement Funds"
    - \$5 million

## Stage two

- Advance Tax Ruling
- Finalize Replacement Trust with Sub-Trust Funds
  - payment of the "Economic Development Funding"
    - \$5 million 2006
    - \$5 million 2007
  - Future funding

# Advance Tax Ruling

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- Mr. Pat Kirby, Q.C., Felesky Flynn
- Trust income is not subject to income tax, if the settlor of the trust is a “**public body performing the function of a government in Canada**”
  - s. 75(2) attribution of income
- Advance Tax Ruling from Canada Revenue Agency
  - Prospective rulings only

# Declaration of Rights of the Dehcho First Nations

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- We the Dene of the Dehcho have lived on our homeland according to our own laws and systems of government since time immemorial.
- Our homeland is comprised of the ancestral territories and waters of the Dehcho Dene.
- We were put here by the Creator as keepers of our waters and lands.

# Declaration of Rights of the Dehcho First Nations

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- The Peace Treaties of 1899 and 1921 with the non-Dene recognize the inherent political rights and powers of the Dehcho First Nation. Only sovereign peoples can make treaties with each other. Therefore our aboriginal rights and titles and oral treaties cannot be extinguished by any Euro-Canadian government.
- Our laws from the Creator do not allow us to cede, release, surrender or extinguish our inherent rights. The leadership of the Dehcho upholds the teaching of the Elders as the guiding principles of the Dene government now and in the future.

# Declaration of Rights of the Dehcho First Nations

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- Today we reaffirm, assert and exercise our inherent rights and powers to govern ourselves as a nation.
- We the Dene of the Dehcho stand firm behind our First Nation government.

# Declaration of Rights of the Dehcho First Nations

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- It is intended that the Trustee be guided by the Declaration of Rights of the Dehcho First Nations passed at Kakisa Lake, August 19, 1993

# Settlement of Additional Property

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- The philosophy of the people of the Dehcho First Nations is that the land is sacred and that any payments received by the Dehcho First Nations for use of their lands or for the sale of any resource from the lands should be retained as capital because it is really in substitution for something that has been taken from the land.
- Therefore, the Dehcho First Nations intend to settle any such payment upon this Trust so that such payments will be a symbolic recognition of the importance of preserving the land.
- Elders: "One House"



# Capital

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- Do not encumber the capital
  - Invest in Authorized Investments only
- Invest for the capital to grow
  - Invest for the future generations
- Income used for immediate opportunities
- Capital grows for future generations
  - In perpetuity

# MASTER TRUST

**40%**  
**Immediate Opportunities Trust**

(Can encumber Income)

Assume 15% Earnings  
and 7% net after losses and  
payments

50% of Income returned to  
Immediate Opportunities Trust

25% of Income to  
Community Development  
Trust

25% of Income to be split  
amongst The Future Generations Trusts

**35%**  
**Mid Term Trusts**

**50%**  
**Economic Development Trust**

(Can encumber Income)  
(6% Return 40/60 Mix)

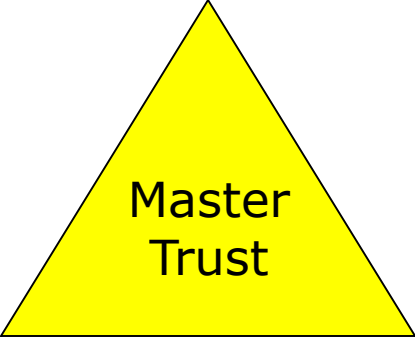
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**Community Development Trust**

(Cannot be encumbered)  
(7% Return 50/50 Mix)  
(Income Paid Out less Inflation)

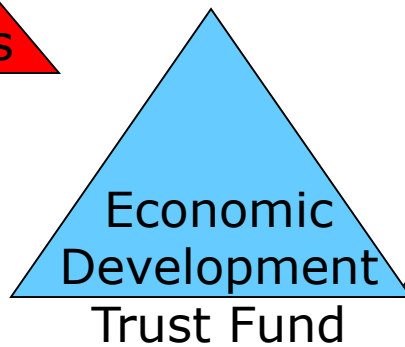
**25%**  
**Future Generations Trusts**

(None of the Future Generations  
Trust can be encumbered)

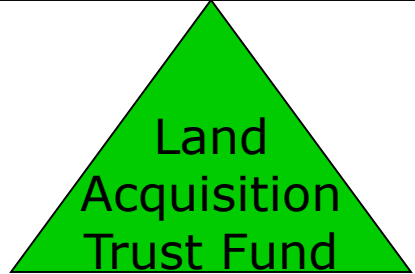
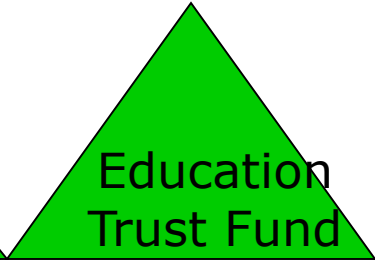
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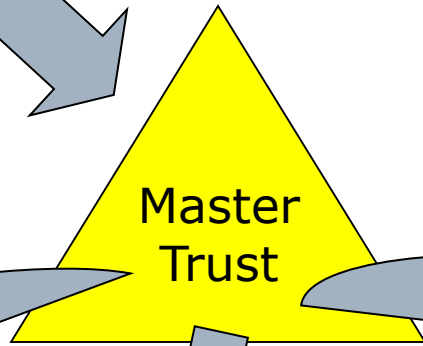
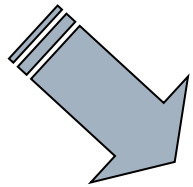
Mid Term Trust Funds



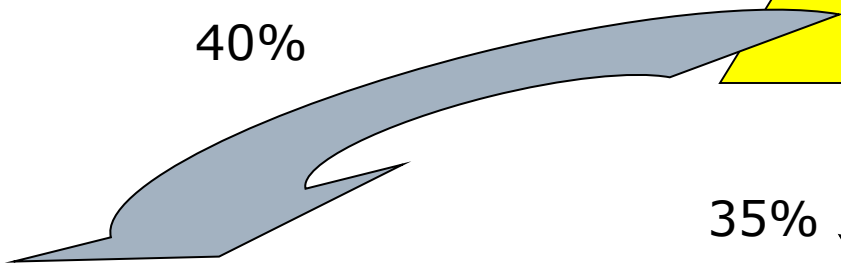
Future Generations Trust Funds



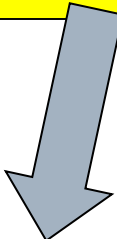
Dehcho First Nations  
Contribution  
to the Trust



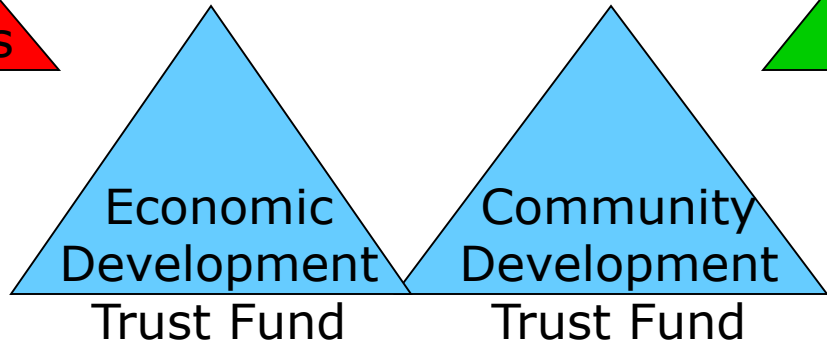
40%



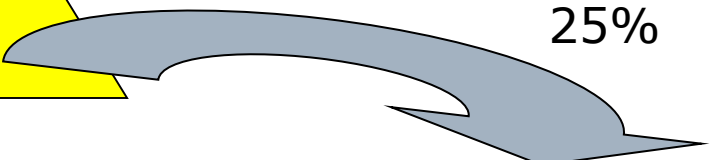
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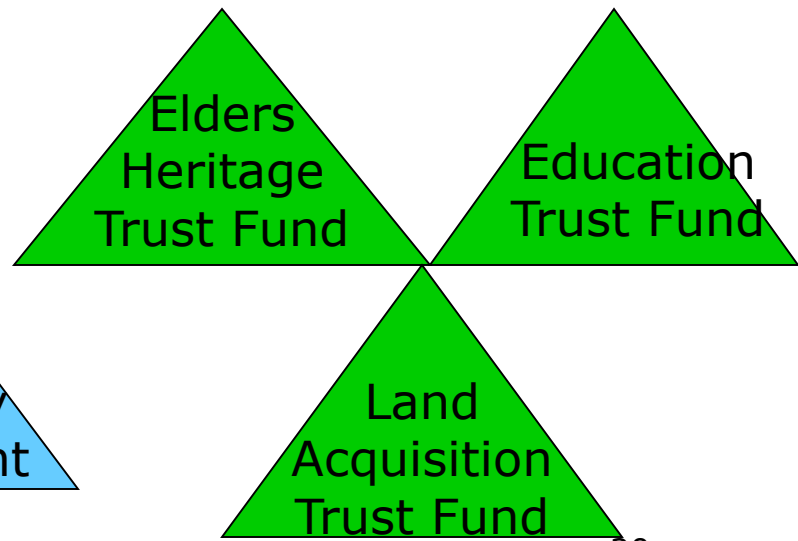
Mid Term  
Trust Funds

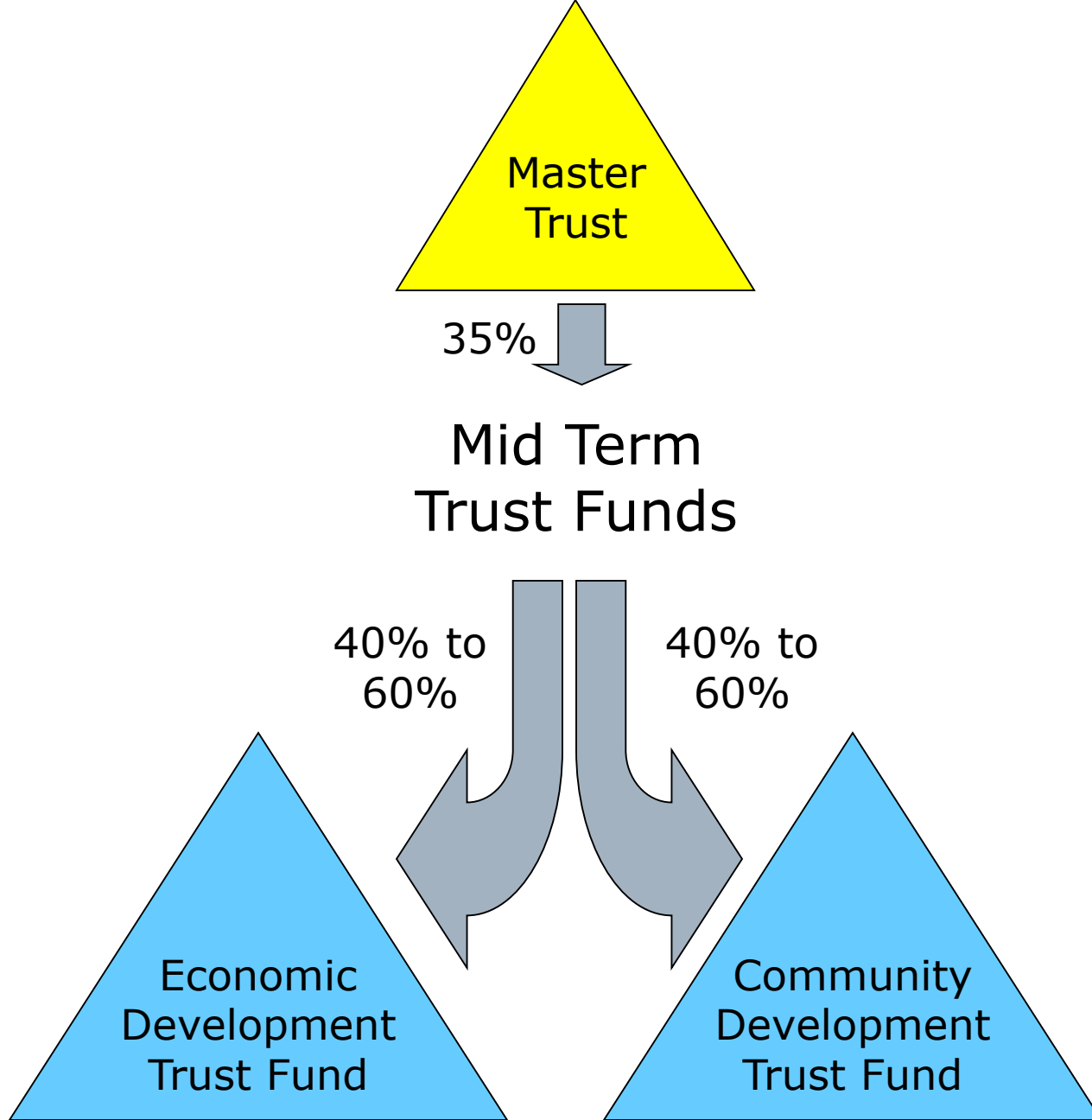


25%



Future Generations  
Trust Funds

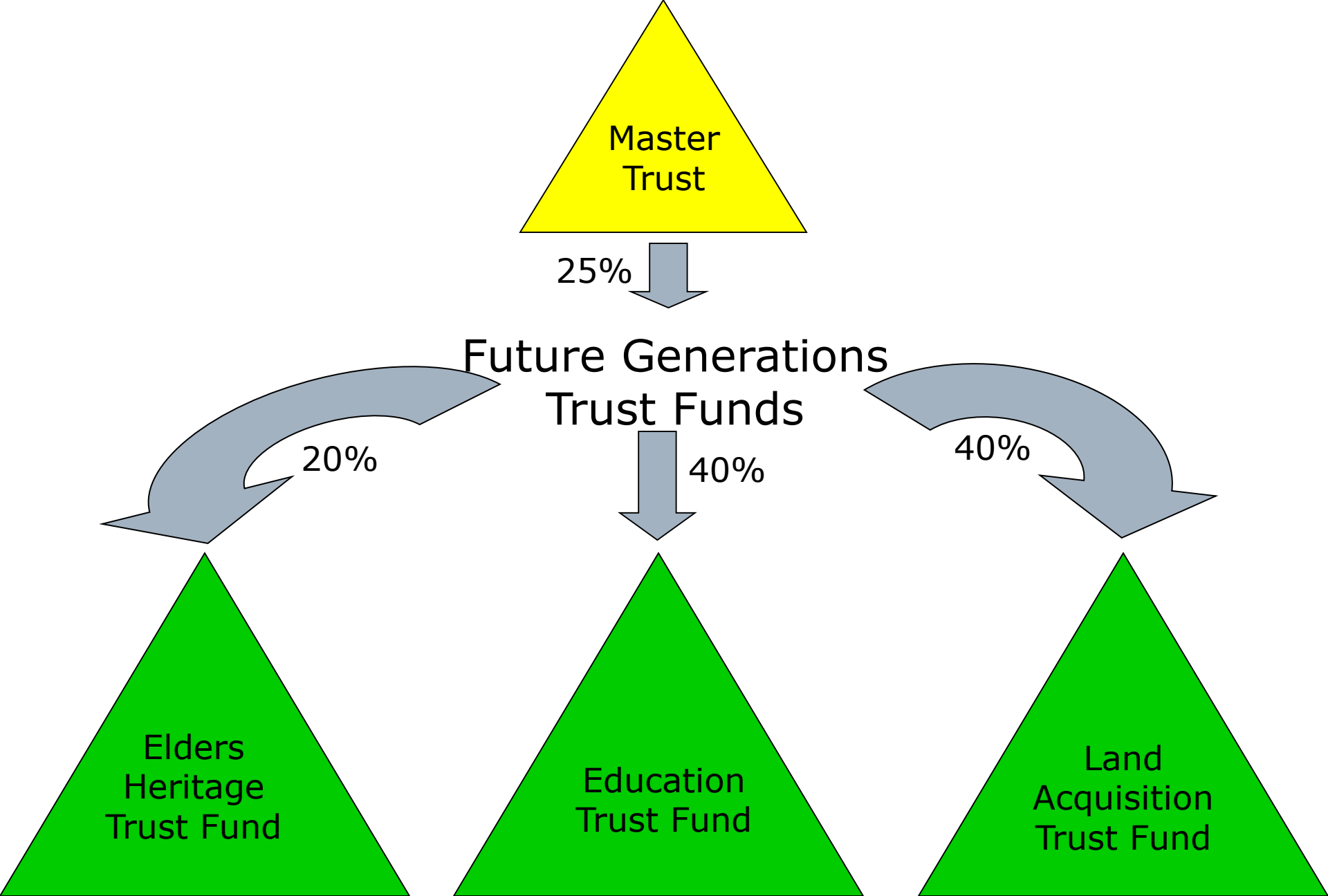


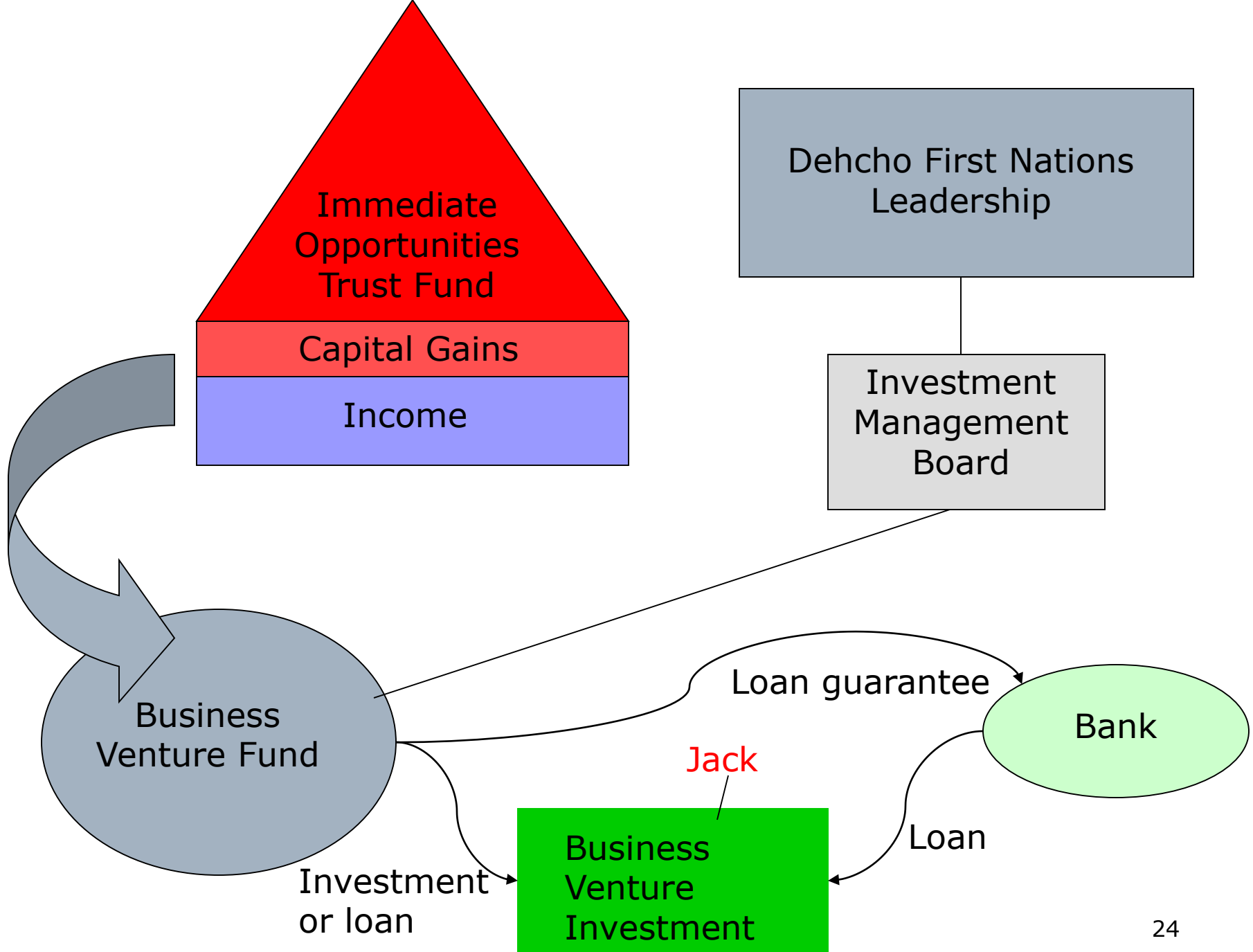


# Mid-Term Trusts Allocation

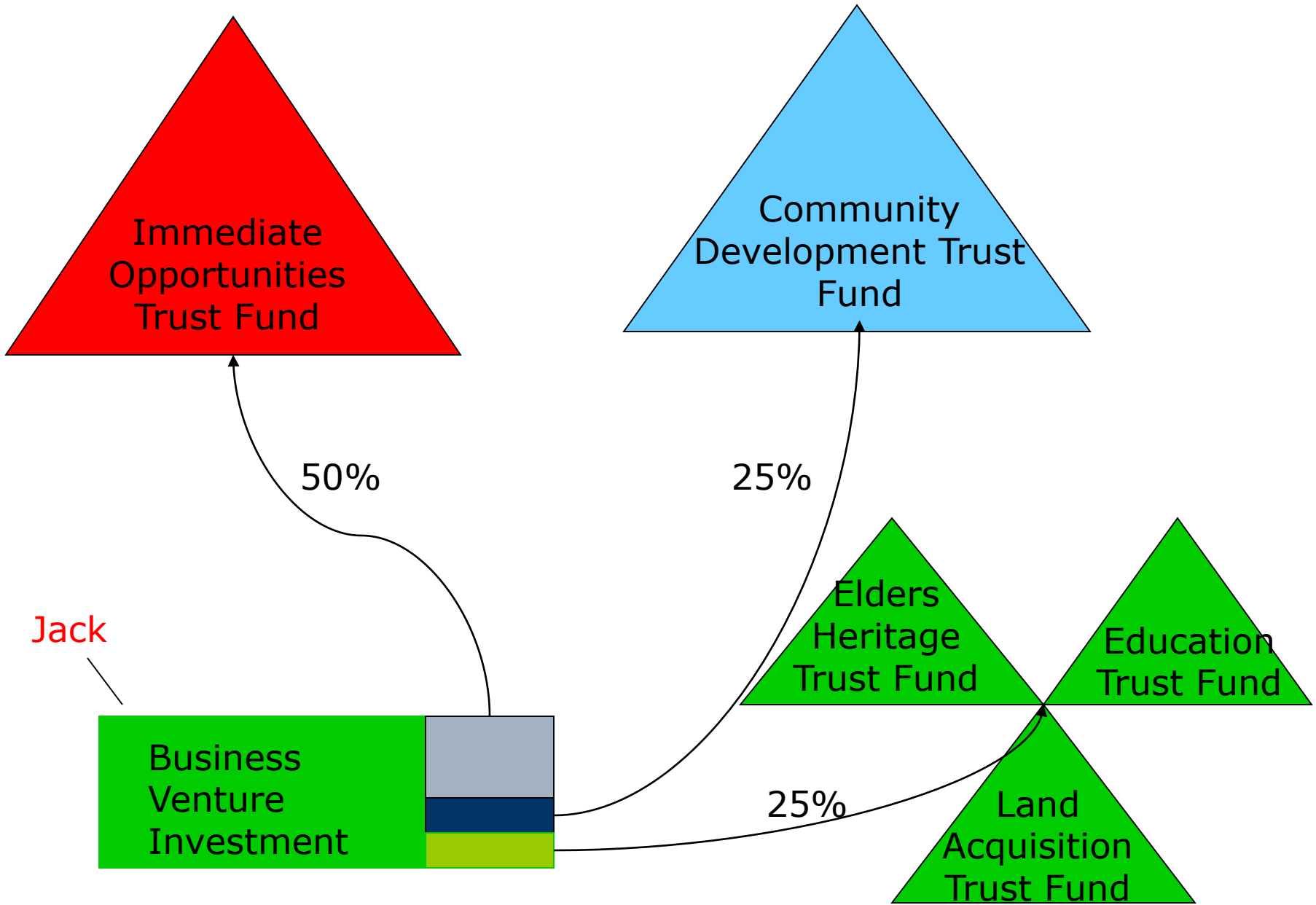
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- 40% to 60%
  - Economic Development Trust
  - Community Development Trust
- Determined by the **Leadership** on an annual basis
  - upon advice from the Investment Management Board and the Investment Advisor









Income from Business Venture Investments

# Investment Management Board

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- board appointed by the Leadership
- at least three but not greater than nine persons
  - First few years: 3 members?
  - Later years: add outside expertise?

# Investment Management Board

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- allowed to make decisions that are removed from political pressure
- board of directors for a major corporation:
  - **Independent**
  - **Expert**
  - **Accountable**
- no member of the board may be an elected member of the Leadership or the governing body of any of the Dehcho First Nations

# Investment Management Board

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## □ Key Principles:

### ■ Transparency

- the process which the Investment Management Board will follow in making Business Venture Investment decisions

### ■ Accountability

- process for reporting to Members
- ensure Members will have confidence in the integrity of the decision making process and responsible use of Trust Income

# Investment Management Board

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## □ Key Principles:

### ■ Advisory

- requirements to provide feedback to applicants seeking financial assistance
  - assist Members in learning and understanding modern financing criteria

# Investment Management Board

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- Two major functions:
  - To work with and supervise the Trustee and Investment Advisor
    - developing and approving investment strategies of the Trust Fund
    - to ensure compliance with the trusts
    - liaison between the Leadership and the Investment Advisor and Trustee.
  - To approve projects for the investment of the income from the trusts, in accordance with established criteria

# Investment Management Board

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- Conflict of Interest Guidelines
  - Duty to Disclose
  - Timing of Disclosure
  - Exclusion of Discussion

# Authorized Investments

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## □ Prudent Investor Rule

- Adopt rule in *Trustee Act* of Alberta
  - NWT: no prudent investor rule
- Adopts modern portfolio theory
  - the method used by the best investment advisors
- Tom Wooding

## □ Diversification

- Don't put all your eggs in one basket



# Investment Advisor

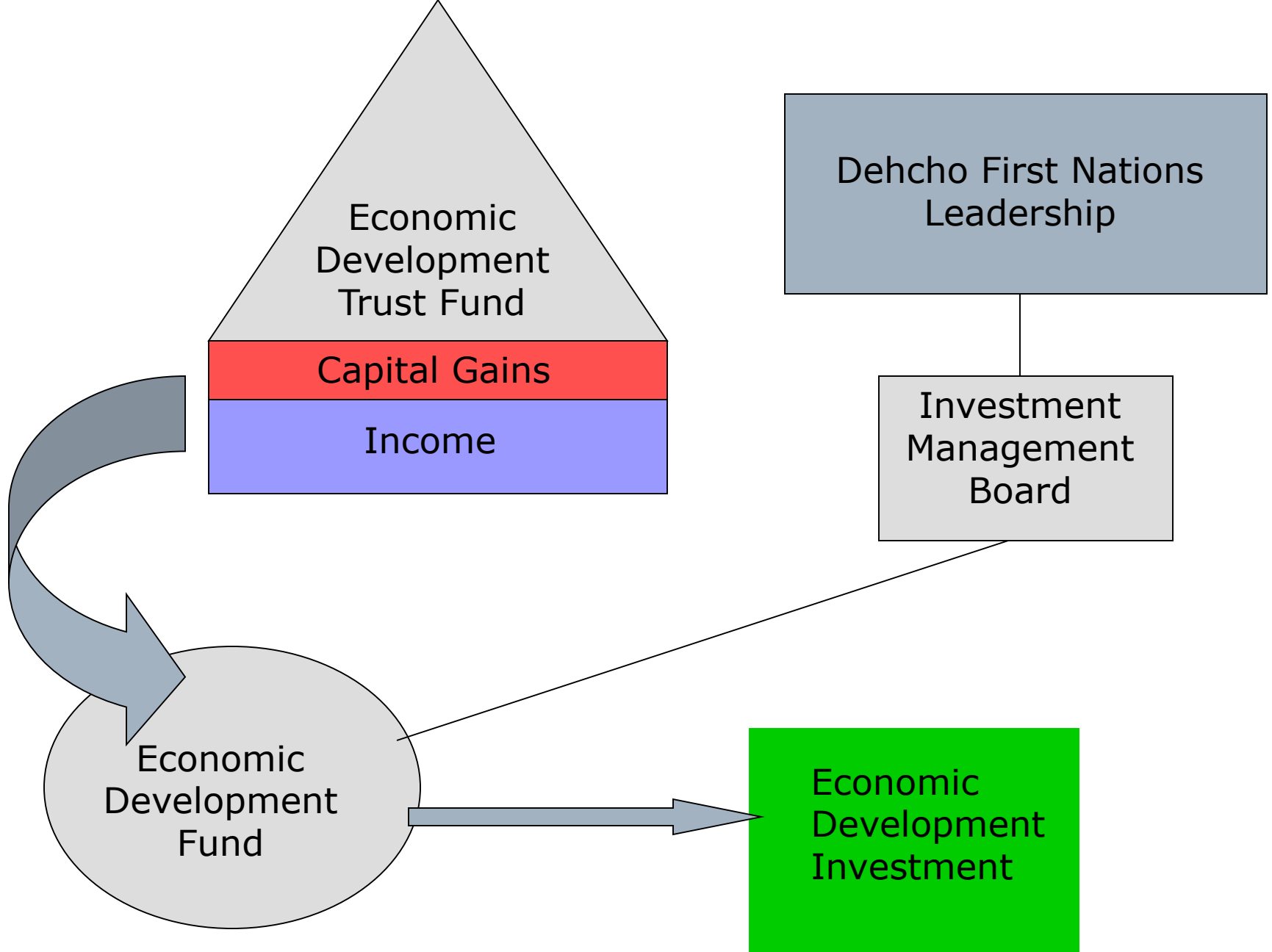
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## □ Qualifications

- Certified Investment Management Analyst (CIMA)

or

- Chartered Financial Analyst (CFA)



# Economic Development Trust

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- Foster development of economic capabilities for the community
  - community owned enterprises
  - **profit** as its primary goal
    - employment, training, and business experience to Members
    - develop permanent facilities for the benefit of the community
    - create an income for the Dehcho First Nations on a medium to long-term basis

# Economic Development Trust

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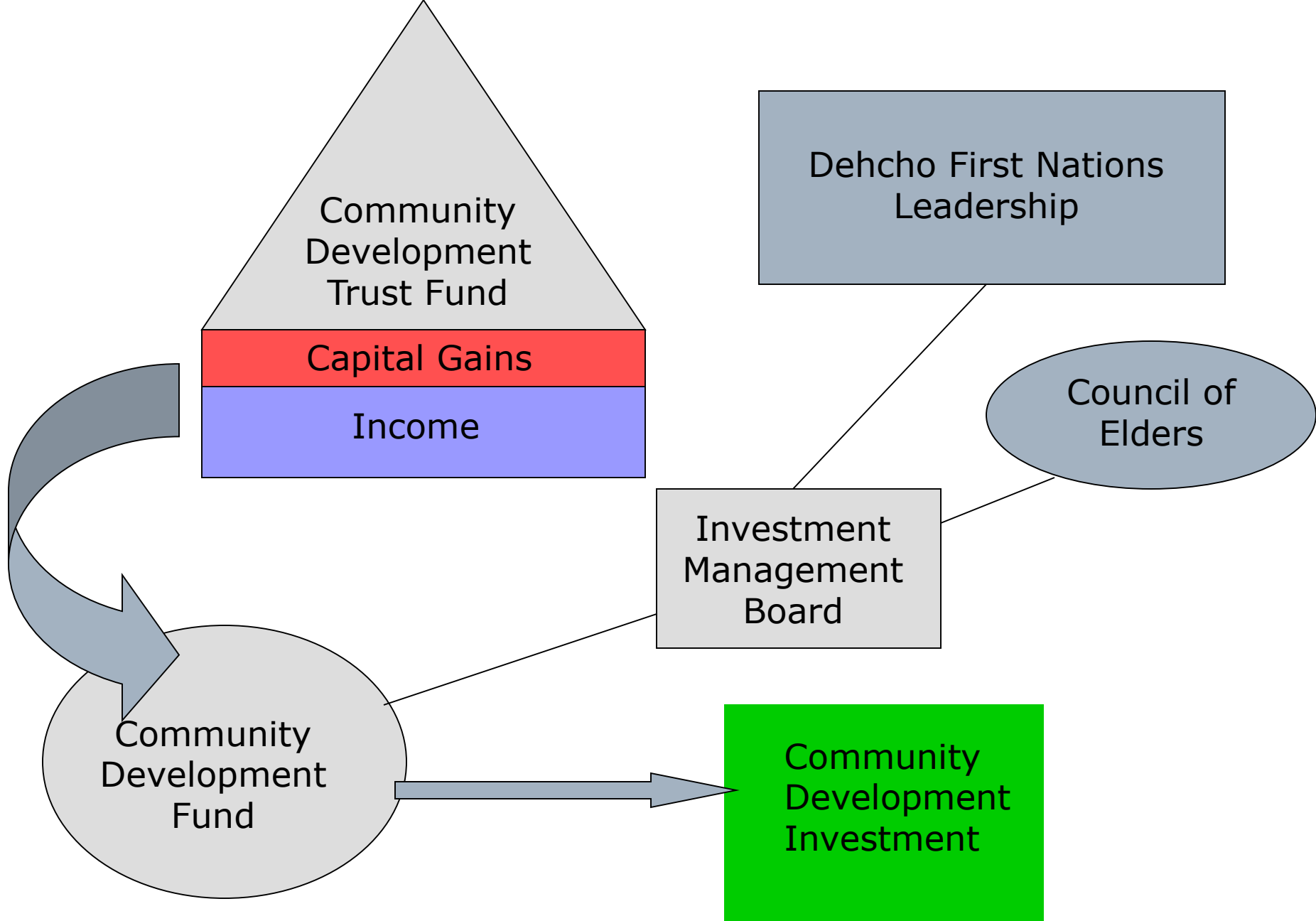
- Economic Development Fund funded from:
  - The annual Net Income from the Economic Development Trust; and
  - Net annual capital gains that are instructed to be transferred to the Economic Development Fund by the Investment Management Board.

# Economic Development Trust

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## **Examples**

- Utility companies
- Transportation facilities such as airports
- Airlines
- Tourism facilities
- Toll roads
- Toll bridges
- Commercial real estate



# Community Development Trust

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- Foster development of economic capabilities for the community
  - community owned enterprises
  - employment, training, and business experience to Members
  - develop permanent facilities for the benefit of the community

# Community Development Trust

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- Community Development Fund funded from:
  - The annual Net Income from the Community Development Trust; and
  - Net annual capital gains that are instructed to be transferred to the Community Development Fund by the Investment Management Board;
  - Adjusted annually to account for the Inflation Factor.

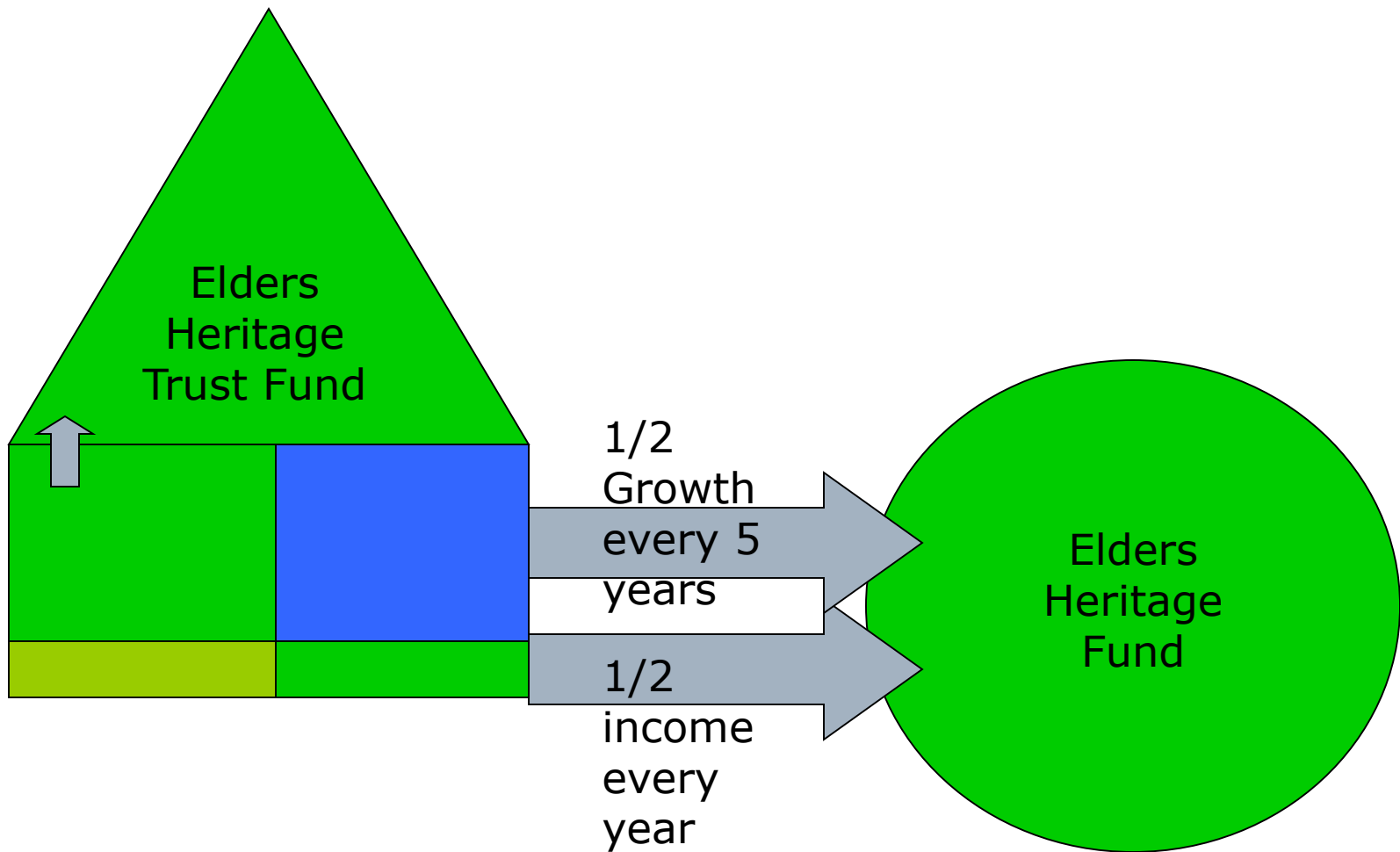


# Community Development Trust

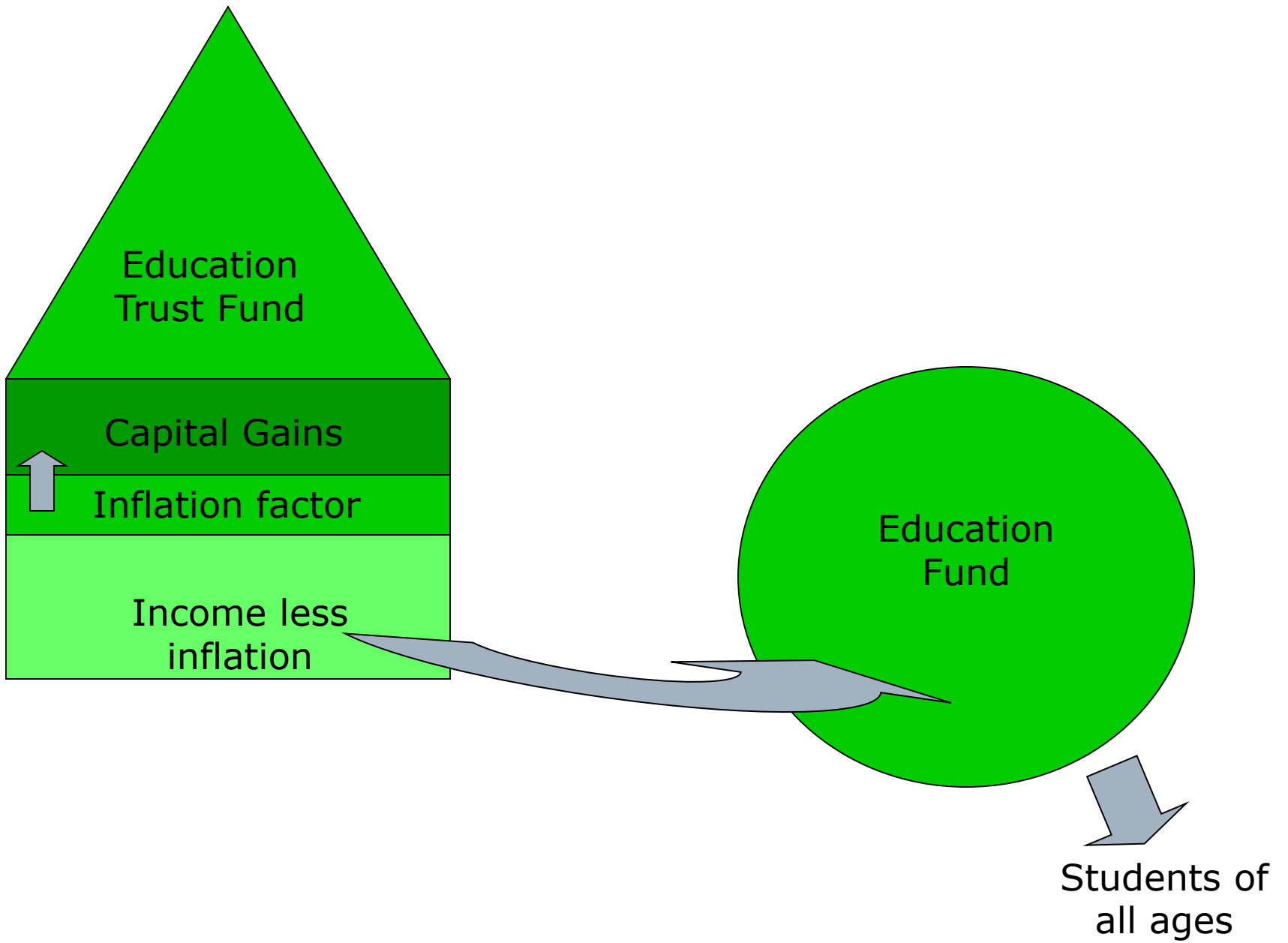
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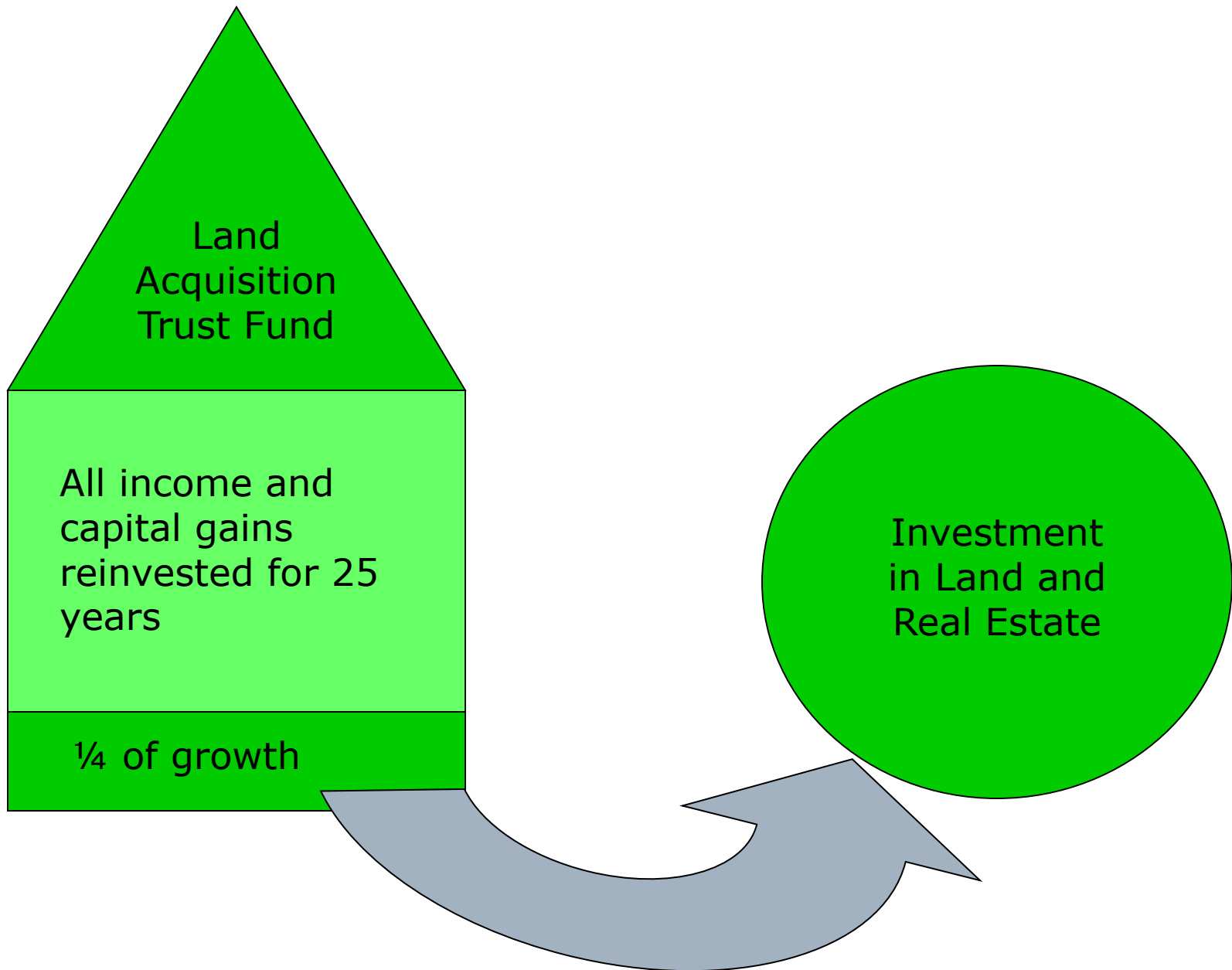
## **Examples**

- Homes for senior citizens
- Schools
- Dehcho First Nations office buildings
- Women's shelters
- Hospitals
- Recreational facilities
- Health clinics
- Healing centres
- Day care facilities



An investment in the Dehcho First Nations cultural future.





# Rule Against Perpetuities

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## □ Rule against perpetuities

- Life in being plus 21 years
- Limits the length of a trust

## □ Royal Lives

- the expiration of twenty years from the date of the death of the last survivor of all the lineal descendants of Her Majesty Queen Elizabeth II who are alive at the effective date of this Trust.

# Rule Against Perpetuities

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- Archaic
- Goal: Perpetual Trust
- Propose amendment to Perpetuities Act
  - NWT
  - Submission to Legislature
  - Cooperation of other First Nations

# Termination of the Trust

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- Trust like a constitution
  - Hard to collapse
- Not less than 75% of the Members 18 years of age or older who vote in a referendum held for such purpose
- No less than 60% of the eligible voters of the Dehcho First Nations must vote in the referendum for it to be valid

# Conclusions

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Questions?

Resolution



# Dehcho First Nations Trust

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