

Trusts Are Still an Integral Part of Most Estate Plans

By Dennis F. Gorman, Esq., CPA

The importance of estate planning to reduce federal estate taxes has been significantly diminished due to recent tax law changes. However, trusts remain an integral part of most families' estate plans. Here are some of the more important reasons why you should consider employing one or more trusts in your estate plan.

REVOCABLE CREDIT SHELTER TRUSTS

Revocable Credit Shelter Trusts are principally used to minimize federal and Massachusetts estate taxes. While the federal exemption has increased to \$5,430,000 (2015) per person, the Massachusetts threshold remains at \$1,000,000. Thus, where a family's assets, including investments, real estate holdings, life insurance proceeds, and retirement accounts, exceed \$1,000,000, these trusts should be considered to minimize Massachusetts estate taxes. For families with more significant assets, they minimize federal estate taxes as well.

FAMILY "SAFETY NET" TRUSTS

For couples with combined taxable assets of less than \$1,000,000 and with children, reciprocal wills are often employed together with a Revocable Family Trust. The latter trust receives assets upon the death of the surviving spouse (or a single parent) and holds the assets for the benefit of the children until they reach certain ages, at which point remainder distributions are made. This is not a tax savings trust but rather a trust to hold assets for the benefit of younger children. By leaving children's inheritances in trust, you often avoid unnecessary complications, for example, guardianships or dissipation of assets by immature beneficiaries or divorce, etc.

IRREVOCABLE LIFE INSURANCE TRUSTS

Irrevocable Life Insurance Trusts ("ILITs") are employed to own life insurance policies with significant face values. ILITs, if properly structured, will remove the life insurance from both spouses' taxable estates. In considering whether to employ an ILIT, one has to consider the overall taxable estates of the family, federal exemptions, and the anticipated Massachusetts tax bite. These trusts do require immediate, ongoing annual maintenance to deal with the payment of annual life insurance premiums.

QUALIFIED PERSONAL RESIDENCE TRUSTS

Qualified Personal Residence Trusts ("QPRTs") are used to transfer a residence of significant value to the children where the asset would otherwise be subject to significant estate tax. With a QPRT, the parents retain the right to control the property for a stated number of years, after which the remainder interest vests in the children. The transferring parents use some of their federal gift

tax exemption when funding the QPRT, and the asset is ultimately removed from their taxable estate at a discounted value. QPRTs were more prevalent when the federal estate tax exemptions were lower; however, for some families, they may still be viable.

MEDICAID TRUSTS

Medicaid Trusts are often employed when senior individuals wish to protect their home from a potential nursing home lien. The individuals transfer their residence to the Medicaid Trust while reserving a life estate in the deed. This means that the individuals retain the exclusive right to use the property, rent it, etc. They also have the obligation to continue paying the real estate taxes, insurance, and other maintenance costs of the property. Five years after the deed transfer to the trust, the property is not subject to a nursing home lien by Medicaid. Since the remainder interest in the residence is held by a trust, rather than by the children in their own individual names, the home is not subject to the claims of their creditors, divorcing spouses, etc.

Furthermore, should the residence be sold during either parent's lifetime, any gain would be eligible for the "principal residence exclusion" for income tax purposes. Finally, should there be a need to sell the home during either parent's lifetime, the proceeds are split between the life tenants (the parents) and the remainderman (the trust), and both parties can reinvest the proceeds in a replacement residence without triggering a new five-year lookback period.

These trusts are widely popular today.

SPECIAL NEEDS TRUST

Where a child is receiving governmental benefits, Special Needs Trusts ("SNTs") are frequently employed. The disabled child's own assets may be placed in an SNT to safeguard his or her eligibility. Alternatively, the parents may wish to leave the disabled child's inheritance in an SNT so as to safeguard his or her eligibility after the parents have passed. SNTs augment rather than supplant governmental benefits. They are often used in connection with tort-based settlements where the child receives a recovery from a lawsuit.

OVERALL COMMENT ON TRUSTS

An increasingly important consideration today regarding all trusts is the issue of having your children's inheritances held in trust for some period of time to protect the inheritance from the claims of their creditors, divorcing spouses, etc. The longer the assets are held in trust, the longer they are protected. Immediate

distributions upon the death of the parents cause the assets to be subject to the claims of third parties. Either professional trustees may be employed, or the children themselves, if they are capable. Furthermore, some beneficiaries need lifetime oversight of their trust funds due to diminished capacity, a lack of financial acumen, or a tendency to overspend. Trusts are often used to address these concerns.

Should you care to discuss any questions or any of the points raised in this article, feel free to contact any of the attorneys in the Fletcher Tilton Estate and Trust Administration Departments.

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