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## Principles of Financial Planning:

## Estate Planning

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## Table of Contents

Introduction

Why Studying This Material is Important

The Will

Naming Someone to Settle Your Estate

Intestacy

Probate

Why do People Avoid Probate?

Don’t Confuse the Probate and Taxable Estate

Review Exercise

What is a Trust?

Types of Trusts

Three Key Roles

Trust Q. & A.

General Benefits of Trusts

Review Exercise

What is Estate Planning?

Key Documents

The Resources for Minimizing Estate Taxes

Applicable Credit/Exclusion Amount

Estate Tax Deductions

Gift Tax Deductions

Planning to Minimize Estate Taxes has Gotten Much Simpler for Most Americans

Preserving the Applicable Credit/Exclusion Amount in the First Estate Prior to Portability

Planning for Larger Estates of Couples Before the Advent of Portability

The General Power of Appointment (POA)Marital Trust

Introducing the QTIP Marital Trust

Review Exercise

When NOT to Rely on Portability

Why Should Older Estate Plans be Reviewed to Consider Utilizing Portability?

Tax Minimization for Very Large Estates

Lifetime Gifting

Charitable Remainder Trusts

Using a Charitable Remainder Trust

Charitable Lead Trust

Grantor Retained Trusts

Review Exercise

Gifting Money to Purchase Life Insurance

Gifting Life Insurance

Problems with Other Individuals Owning the Policy

The Irrevocable Life Insurance Trust

How an Irrevocable Life Insurance Trust Works

Why the ILIT is a Better Solution

Review Exercise

Conclusion

## Introduction

Estate planning is very broad in scope and can be dense with details. Often, the intensity of details makes it difficult to grasp the basic concepts that form the core of any estate plan. For that reason, this module will focus only on the fundamentals.

The good news is that estate planning is an area where a little knowledge goes a long way. The basic principles that are covered in this module address the most common estate planning opportunities. Thus, in a relatively short time, one can master the skills necessary to address most situations, while building a solid foundation for continued learning. However, when discussing estate planning concepts with clients, it is important to remember that the client's attorney needs to be consulted in deciding the final course of action to be taken, as well as in the drafting and execution of estate planning documents.

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| Objective  Participants in this course will gain knowledge of various estate planning tools. Specifically, participants will learn about the following:   * Wills * Gifting * Living Trusts * Credit Shelter Trusts * Marital Trusts, particularly the Qualified Terminable Interest Property (QTIP) Marital Trust * Grantor Retained Trusts (GRT) * Qualified Personal Residence Trusts (QPRT) * Irrevocable Life Insurance Trusts (ILIT) |

## Why Studying this Material is Important

Many reasons are often given to stress the importance of helping clients address their estate planning needs. For example:

* Clients tend to procrastinate planning their estates and need someone to motivate them.
* Clients lack the necessary technical expertise to recognize they have a planning need.
* Or, it is an excellent way to identify assets that you are not currently managing.

All of these points are true. However, the primary reason you should address estate planning needs with your clients is because it moves you beyond merely addressing the management of the client’s assets to addressing the ultimate goals, dreams, and fears associated with those assets.

The fact is that no other financial conversation you can have with a client takes place at such a deeply emotional level. It is a conversation that allows you to gain insights into what is of ultimate importance to the client.

This results in the client making a significant emotional commitment to your relationship. Having made that commitment, the client is reluctant to do so elsewhere, particularly when you have done a good job of helping the client address these emotionally charged issues. This moves the client beyond merely being a “satisfied” client to becoming a “loyal client.” Creating loyal clients has two payoffs for you:

* First, it extends the duration of the relationship.
* Second, it increases the assets clients bring to you. In fact, one recent study, which defined loyal clients as those who had made an emotional commitment to the relationship, found that 90% of loyal clients will contribute new assets every year without being asked to do so.

## The Will

Most people do not have wills. They either assume their estates are too small to bother or they procrastinate planning for their own demise. Yet a will is the most basic of estate planning documents.

A will is an instrument by which a person declares instructions for the disposition of his or her property at death. While some property may transfer by virtue of its title (e.g., property held in joint tenancy), by virtue of being held in a trust, or by contract (e.g., life insurance proceeds), the remaining property must be transferred through the will and be administered (probated) through the court. The most common form of will is the Simple Will, also known as an “I Love You Will.” Here, all assets owned by the first spouse pass free of income and estate taxes to the surviving spouse using the unlimited marital deduction (UMD).

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| **person**  testator - male  testatrix - female |

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| Note: Unless otherwise stated, the assumption throughout this course will be that both spouses are U.S. citizens. |

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| **Overview** | Wills also have uses beyond the transfer of property. **To learn more about these uses, click each heading.** |
| **Establishing domicile** | A will helps establish the testator's state of residency, also referred to as the testator's domicile. While moving to another state does not invalidate a will, it is usually desirable for the will to reflect the current domicile. This clarifies where the estate will be administered and what laws will govern. It also helps to establish residence for state income tax purposes. |
| **Naming guardians** | A will is frequently used to nominate guardians for minor children. Unless it is a surviving parent, this will probably require approval of the court after the death of the testator. |
| **Creation of Trusts** | Wills are useful in establishing trusts (testamentary trusts) that continue after the lifetime of the testator. We will discuss trusts in more detail later in this course. |

## Naming Someone to Settle Your Estate

A will also allows you to select the person or institution that will be empowered by the court to settle your estate. Depending upon the state, this person who is designated to settle the estate is referred to as the executor or personal representative, and the court that has jurisdiction over the proceeding is referred to as the probate(adj.) court (in some jurisdictions, it may be referred to as the surrogate court).

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| **executor**  executor - male  executrix - female |

The process of settling an estate through the court is referred to as probate (n.), and to go through that process is to probate (v.) the estate. That this is done as a court-monitored process reflects the fact that the will is viewed as a legally enforceable document, the instructions of which are binding upon the personal representative. Being a legal document, it should be drafted by an attorney.

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| **Why an Institution as the Executor**  While it may be viewed as an honor to be named as someone's executor, it can be a difficult and time-consuming task. There is the further potential that the executor may be placed in the middle of a family squabble over the estate, which is particularly troubling if the executor is a family member.  There is also financial risk for the executor. If the executor fails to act in a prudent manner and is found to have been negligent, then the executor may be personally liable for the damages. In other words, the executor may end up paying for the privilege of settling the estate.  For these reasons, it is wise to consider a corporate executor. With a corporate executor, the testator is further assured of professional expertise and impartiality in the handling of the estate. |

## Intestacy

What happens when a person dies intestate? Essentially, state law will decide how assets are distributed. These statutes vary from state to state, but there is typically some split of assets between the spouse and the children. If there is no surviving spouse or children, then the assets typically go to the parents, then brothers and sisters, then cousins and nephews, etc.

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| **intestate**  Having died without a will. |

Note: In community property states (e.g., Alaska (optional), Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin), community property goes to the surviving spouse, with the remaining separate property owned by the deceased passing by state law in a manner similar to all other states.

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| **community property**  Generally, community property consists of income earned while married and property purchased with such earnings. Upon death, 50% of community property is included in the deceased spouse’s estate. |

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| **separate property**  Generally, separate property is:   * Property that an individual acquired prior to marriage * A gift or inheritance specifically given to an individual spouse * Compensation for personal injuries of an individual spouse * Individually owned property acquired prior to moving to a community property state |

While these statutes are equitable, taking into consideration the interests of both the spouse and children, they rarely accomplish what the decedent would have preferred.

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| DocumentationIcon_32px | **Click the icon to view more information.** |

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| |  |  | | --- | --- | | The diagram on the right illustrates what happens in most states when a person dies without a will and is survived by a spouse and children.  If survived by a spouse and children, most states split the assets between the surviving spouse and the children, with the spouse receiving 1/3 or 1/2 of the assets. This is true regardless of the age of the children.  Note: In community property states, such distributions would only pertain to separately owned property, since all community property would go to the surviving spouse. |  | |

The example above may not be what the client wants to happen. However, the pitfalls of intestacy are quite significant. **Click each pitfall below to learn more.**

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| **Reduced funds for surviving spouse** |
| Under any number of scenarios, the surviving spouse is left with only part of the assets. This conflicts with the desire of most spouses for the surviving spouse to have the full benefit of all the assets for his or her lifetime. |
| **Minor children** |
| Because minor children cannot own property, their inheritance may require the appointment of a guardian to handle the property. While the property is administered in a guardianship, accountings to the court may be required and court approval may be needed for the sale of assets or their use on behalf of the children. Alternative planning that does not involve a court-monitored guardianship is typically preferred. |
| **Early inheritance** |
| Once the children become of age, which in most states is 18 years of age, the guardianship would terminate and the assets would be turned over to them. Even if the legal age was 21, most parents would prefer for children at this age to not receive their full inheritance, particularly if it is sizeable. Often times, the child has not yet learned to handle money responsibly, and might make choices (like deciding not to attend college) that would be counter to the parents' wishes. |
| **Inability to provide unequal distribution** |
| There may be variations in need among the beneficiaries that the decedent would want considered. For example, one child may have special needs (e.g., be physically handicapped, with a higher anticipated need for financial assistance throughout the child's life). But the rules of intestacy are blind to such differences, and each child would be treated the same. |
| **Escheat to the state** |
| While this rarely happens, if the decedent left behind no living relatives, the assets would escheat to the state. It is highly doubtful that anyone would want the government to be the sole heir.   |  | | --- | | **Escheat**  A reversion of property to the state if there is no heir to inherit. | |
| **No distributions outside the family** |
| Most people have friends and charities to whom they would like to leave something behind. Intestacy does not recognize any beneficiaries outside the decedent's family. |

## Probate

Probate is the process whereby the court establishes the validity of a will and monitors the procedure for settling the estate. It begins the moment the will is delivered to the court and a petition for probate of the will is filed. If there is no will, someone must come forward (usually a family member) and ask that someone be appointed to settle the estate.

Once appointed by the probate court (which has jurisdiction for estates, trusts, and guardianships), the executor has numerous obligations.

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| DocumentationIcon_32px | **Click the icon to view the obligations.** |

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| **Executor Obligations**   * Gather and safeguard assets. * Value the assets. These may be valued as of the date of death, or the alternate valuation date of 6 months after death may be used if this results in reduced estate taxes. * Publish notice to creditors to submit claims. * Settle claims filed against the estate, which may include actions that were pending at the time of the decedent's death. * File the decedent's final income tax return and the estate tax return, paying any taxes that are due. * Pay expenses of administration. * Distribute assets to heirs and/or trusts. * Provide final accounting to the court. |

In settling the estate, the executor must function as a fiduciary. As such, a fiduciary must act prudently in handling the property, and is bound by the terms of the document that establishes this responsibility, which in this case is the will.

One of the values of the probate process is that it provides a venue in which claims can be filed against the estate, as well as a forum in which objections may be entered. If the executor denies a creditor's claim, there is a limited time for the creditor to file an objection with the court. Typically, failure to do so will bar the creditor from later trying to seek reimbursement from the heirs. The fact that the court will rule on objections that arise, even objections to the executors conduct or fees, serves to expedite the entire process and make it possible to close the book on all open issues with the closing of the probate process.

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| **Fiduciary**  A fiduciary is someone who manages money or property for the benefit of another. |

## Why do People Avoid Probate?

If probate is simply the process of settling the estate, per the terms of the will, why do so many people seek to avoid probate by placing property in trusts or titling property in joint tenancy? Many people think it will help them avoid taxes. But generally, that is not the case. So why avoid it?

Here are some legitimate reasons why people avoid probate. These reasons can be motivators for utilizing estate-planning tools beyond wills, such as trusts.

|  |  |
| --- | --- |
| **Overview** | To learn more about these reasons, **click each heading.** |
| **Expenses** | Not all estate expenses are generated by probate, such as creditor's claims and funeral expenses. These expenses would exist whether there was probate or not. But the probate process does generate additional expenses. The primary expenses are for court costs and for services rendered by the executor and estate attorney.  While these will vary from state to state, and to some degree from court jurisdiction to jurisdiction (since the court must in the final analysis approve the fees), the personal representative might charge 3% and the attorney providing the legal work might charge another 3%. If there are problem assets in the estate, the services of other professionals might also be needed. |
| **Time Delays** | Probate can be a lengthy, time-consuming process. This is particularly compounded if there is property in multiple states, requiring a probate proceeding (called ancillary administration) in each state. |
| **Privacy** | When a will is probated, it becomes public information. Anyone can read the will and learn the names of heirs and what they are receiving (or not receiving). |

## Don't Confuse the Probate and Taxable Estate

The Probate Estate and Taxable Estate are not the same thing. The Taxable Estate includes everything that is in the Probate Estate, and then some. Whereas the Probate Estate includes only those assets that are transferred through the will, the Taxable Estate also includes those assets that are transferred outside of the will.

The following are some common examples of assets that are included in the Taxable Estate but are not included in the Probate Estate.

**Click each example to view more information.**

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| **Jointly held assets** |
| Where the deed, title, or governing documents direct who receives the interest of the deceased. |
| **Life insurance and annuity contracts owned by the deceased** |
| Only included in the probate estate if insurance proceeds are payable to the estate, which is rare. |
| **Revocable trusts** |
| A trust agreement is a legal document by which assets are transferred to a trustee who is charged with the responsibility of managing the assets for the benefit of designated beneficiaries. A revocable trust is one that is created while the individual was still alive, and over which he/she had the power to revoke (terminate) it.  Since the trust document governs the assets, the assets would only be part of probate if the trust paid them out to the deceased's estate, which is rare. This is not to be confused with testamentary trusts, which are part of probate because testamentary trusts are created by the will and funded with assets that are probated by the will. |

## Review Exercise

While probate assets are always part of the taxable estate, there are non-probate items that are also included in the taxable estate. **For the following items, indicate if the item is part of taxable estate but not in probate or if the item is in both the taxable estate and probate.**

1. Insurance owned by the deceased (son as beneficiary)

|  |  |
| --- | --- |
|  In taxable estate but NOT in probate | **↓** |
| In BOTH the taxable estate AND probate |

|  |  |
| --- | --- |
| Answer Key | |
| 1 | Correct. |
| 2 | Incorrect. |

1. Solely owned real estate

|  |  |
| --- | --- |
|  In taxable estate but NOT in probate | **↓** |
| In BOTH the taxable estate AND probate |

|  |  |
| --- | --- |
| Answer Key | |
| 1 | Incorrect. |
| 2 | Correct. |

1. Real estate owned with son, joint with right of survivorship

|  |  |
| --- | --- |
|  In taxable estate but NOT in probate | **↓** |
| In BOTH the taxable estate AND probate |

|  |  |
| --- | --- |
| Answer Key | |
| 1 | Correct. |
| 2 | Incorrect. |

1. Revocable trust (continues for children)

|  |  |
| --- | --- |
|  In taxable estate but NOT in probate | **↓** |
| In BOTH the taxable estate AND probate |

|  |  |
| --- | --- |
| Answer Key | |
| 1 | Correct. |
| 2 | Incorrect. |

1. Assets that fund a testamentary trust (a trust created by the will)

|  |  |
| --- | --- |
|  In taxable estate but NOT in probate | **↓** |
| In BOTH the taxable estate AND probate |

|  |  |
| --- | --- |
| Answer Key | |
| 1 | Incorrect. |
| 2 | Correct. |

1. Annuity benefits payable to a surviving beneficiary

|  |  |
| --- | --- |
|  In taxable estate but NOT in probate | **↓** |
| In BOTH the taxable estate AND probate |

|  |  |
| --- | --- |
| Answer Key | |
| 1 | Correct. |
| 2 | Incorrect. |

1. Joint checking account with right of survivorship

|  |  |
| --- | --- |
|  In taxable estate but NOT in probate | **↓** |
| In BOTH the taxable estate AND probate |

|  |  |
| --- | --- |
| Answer Key | |
| 1 | Correct. |
| 2 | Incorrect. |

1. Brokerage account in the name of the deceased

|  |  |
| --- | --- |
|  In taxable estate but NOT in probate | **↓** |
| In BOTH the taxable estate AND probate |

|  |  |
| --- | --- |
| Answer Key | |
| 1 | Incorrect. |
| 2 | Correct. |

## What is a Trust?

Having discussed wills, we now turn our attention to trusts. The following is a basic definition of a trust. **To learn more about the definitions of the underlined terms, click each heading.**

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| --- | --- |
| **Overview** | A trust is a fiduciary relationship whereby one party, the trustee, takes title to property for the sole purpose of managing it for the benefit of a designated party, the beneficiary(ies). |
| **Fiduciary** | The term “fiduciary” is derived from Roman law, and applies to a person or entity that has accepted a responsibility that must be performed in the best interests of another person or entity. In other words, action cannot be based on self-interest; the interest of another must come first. |
| **Relationship** | As a “relationship,” it must be freely entered into. Just because someone is named to assume this obligation (as trustee), does not obligate him or her to act in this capacity. It is always possible to “disclaim the appointment.” But once accepted, the responsibility is legally binding. |
| **Party** | The parties to the relationship may be individuals or institutions. |
| **Title** | The party acting in this fiduciary capacity is called a Trustee. Unlike someone who has a power of attorney or someone who is acting as an agent or custodian, the trustee actually takes legal title to all property held in the trust. |
| **Property** | Trusts are created for the purpose of managing property and utilizing it for specific purposes. Without property, there is no effective trust. All too frequently people create trust documents, only to fail to properly fund them. |

While trusts can be created verbally, this course will only deal with trusts that are created by written agreement. Under such agreements, property is transferred only when the receiving party agrees to abide by the terms of the agreement. Generally these agreements are written by attorneys, and they are legally enforceable. If for any reason the trustee fails to properly carry out the duties, any interested party can bring legal action against the trustee.

In drafting trust agreements, care must be taken to make sure there is no conflict with the will. This is important because assets owned by the trust will be administered by the terms of the trust. Unless the trust is required to distribute assets to the estate, the will has no authority over trust assets. For this reason, wills and trust agreements are customarily treated as complementary tools in estate planning.

## Types of Trusts

Trust agreements are typically written agreements, drafted by attorneys. These agreements are extraordinarily flexible, and can be tailored for virtually any purpose.

They may be revocable; meaning the person who created the trust can alter or cancel it at any time. Or they may be irrevocable, meaning they cannot be altered or canceled after their creation.

They may be created during life, which is known as a living trust, or by a person's will, which is known as a testamentary trust. Note that since the grantor is dead when a testamentary trust is funded, it is by its very nature irrevocable.

They may bind the trustee to do only what the trustee is explicitly directed to do by the grantor or the terms of the trust, which is called a non-discretionary trust. Or they may allow the trustee to use his or her own discretion in deciding what investment changes to make and/or how to distribute income or principal to the beneficiaries, which is known as a discretionary trust.

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| **Trust Types:**   * Revocable * Irrevocable * Living * Testamentary * Non-discretionary * Discretionary |

## Three Key Roles

The specific terms and purposes of the agreements are infinite in their variety. But despite these differences, all trusts consist of three parties, as diagramed below: **Click each named party for more information.**

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| **Grantor** |
| This is the person who creates the trust. Alternatively, this person is referred to as the trustor or settlor. Any legally competent adult can create a trust by having a trust agreement drafted and transferring assets into the trust. |
| **Trustee** |
| This is the person or institution that takes title to the property, agrees to be governed by the trust document, and agrees to act on behalf of the beneficiary. In fulfilling the duties, the Trustee may have as much or as little power as the grantor chose to relinquish, as stated in the terms of the agreement. Any legally competent adult can be a Trustee. |
| **Beneficiary** |
| The beneficiary is the person(s) or entity(ies) for whom the benefit of the trust is intended. Some beneficiaries may be current beneficiaries, meaning they receive a current benefit, such as income, from the trust. Others may be future beneficiaries, meaning they will not receive any benefit until some future point in time. Quite often, the future beneficiaries are to receive the assets of the trust upon the death of the current beneficiaries.  Whenever a trust has one or more current beneficiaries who are different from the future beneficiaries, this is known as a split-interest trust because the trustee must serve two different sets of beneficiaries who may have conflicting interests. The current beneficiary will typically desire income while the future beneficiary will typically desire growth of the trust assets; the trustee must serve the interests of both. |

## Trust Q. & A.

Having reviewed some of the terminology of trusts, the following Q. & A. will provide some points of clarification. **Click the icon to view the answer.**

|  |  |
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| DocumentationIcon_32px | Do the grantor, trustee, and beneficiary have to be different people or entities? |
| **Answer:** No. In fact, in many grantor trusts the grantor assumes all three roles. | |
| DocumentationIcon_32px | Can there be more than one trustee? |
| **Answer:** Yes. They are called co-trustees, and there is no limit as to number. | |
| DocumentationIcon_32px | What is a split-interest trust? |
| **Answer:** A split-interest trust is one where there are vested current and future beneficiaries. Trustees must exercise great care in administering these trusts to avoid liability. Although the future beneficiaries are not currently receiving benefits from the trust, the trustee must give equal consideration to them when making investment decisions, unless the trust instrument specifically states otherwise. In other words, the trustee must balance the portfolio between the need for income for the current beneficiaries and the need for principal appreciation for the future beneficiaries. | |

## General Benefits of Trusts

Trusts can be tailored to meet a variety of situations and offer many benefits. **Click each benefit below to learn more.**

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| **Protection against Incapacity** |
| Unlike brokerage accounts and investment management accounts, which may terminate upon being notified of the incapacity of the account owner, trusts continue. This enables the trustee to continue managing the assets for the benefit of a grantor, following the grantor's dictates, while avoiding the need to involve the court in a guardianship.   |  | | --- | | **Sarah’s Story**  Sarah Henderson is an 80-year-old widow who lives in South Florida, which is almost a thousand miles away from her children. She is currently in good health and is fiercely independent. She is adamant that she never wants to be placed in a nursing home, preferring to be cared for at home so long as her assets make this possible. She is equally insistent that she never wants to be a burden to her children. Therefore, Sarah appointed a corporate bank to act as the trustee of a revocable living trust. As a revocable trust, Sarah retains full control over the assets while she is alive and competent, directing the trustee to make distributions to her as she needs them. In case she becomes unable to handle her own affairs, the trust document instructs the trustee to apply the funds toward maintaining her in her home, so long as there are sufficient assets to make this possible. Upon her death, the trust terminates and the remaining assets are distributed to her children. | |
| **Protection for Adult Beneficiaries** |
| For those who cannot properly handle money, a trust provides the ability to give beneficiaries the benefit of money without turning control over to them. This is advisable protection for those who lack investment expertise, who might be subject to outside influence, or who are spendthrifts.   |  | | --- | | **The Stephens**  Tom and Elizabeth Stephens are both in their seventies. Tom has always handled the investments and Elizabeth feels uncomfortable handling any financial matters beyond her checking account and credit cards. Knowing that men typically have shorter life spans than women, Tom decided to put a plan in place to provide security and peace of mind for his wife in the event that he predeceases her. Tom accomplished this by transferring his assets into a living trust and appointing a corporate trustee. This gives Tom an opportunity to evaluate the skills of the trustee while he is alive and thereby to reassure his wife that she will be in good hands if he should die before her. | |
| **Protection for Minor Beneficiaries** |
| The use of a trust should be considered whenever a minor child is involved. Without a trust, a child will receive access to an inheritance upon reaching the age of majority, which is age eighteen in most states. Since no one can predict the child's level of maturity at that age, there is inherent risk in having a plan that leaves everything to a child at such a young age. Will the newfound funds be squandered on a spending spree? Will the child feel empowered by the funds to skip college? Will the child be involved in experimentation with drugs and use the funds for that purpose?  By using a trust, it becomes possible to defer some or all of the funds until the child is older. Typically, this is done in installments, thereby giving the child a chance to grow in responsibility. If the child fails to properly manage the money after the first distribution from trust, then at least there is a chance that the child will learn from that mistake and do better with the next one.   |  | | --- | | **Joseph and Ruth**  Joseph and Ruth Abrams are in their late twenties, with twin sons who are five years old. Their estate is approximately $800,000. They went to an attorney to have wills drawn so that they could name guardians in case they were to die in a common accident. The attorney suggested that their estate plan should include the funding of a trust for their minor children.  The attorney explained that the trust, which would be created by their will, would direct the trustee to provide funds for the care and education of the children. Upon reaching age 18, the children would begin to receive the income from the trust. At age 21, they would receive 1/3 of the assets, at age 25 they would receive ½ of the balance, and at age 30 the trusts would terminate and the children would receive the remaining balance. | |
| **Protection for Persons with Special Needs** |
| People with "special needs," such as a physical or mental disability, are often eligible for government assistance, e.g., through Social Security and/or Medicaid. Leaving an inheritance to someone who has such a need can jeopardize the person's government assistance. Therefore, instead of transferring the funds directly to the person, a "special needs" trust can be established that names the special needs person as the beneficiary. This trust can provide assistance that goes beyond the government assistance, providing for supplemental living expenses and paying for medical assistance that might be beyond that provided by government programs.   |  | | --- | | **Jane’s Situation**  Jane has an adult daughter who, because of a fall, suffers partial paralysis. The daughter currently receives government assistance. Jane would like to leave her home to her daughter so that she will always have a place to live, but fears that giving it to her daughter will jeopardize her daughter's government assistance. Instead, upon Jane's death the home will be placed in trust and the daughter will be allowed to live in the home free of rent. Additional funds will be placed in the trust to provide for its maintenance and to pay utilities. Upon the daughter's death, the home will be sold and the assets will be distributed to Jane's two other children. | |
| **Privacy** |
| When property is transferred via the will, the disposition of the property becomes a matter of public record. Anyone who desires to see a copy of the will can go to the courthouse and obtain one. This is often undesirable, particularly when someone is a public figure or where there is concern that there can be family strife if certain relatives learn the particulars of one's estate. One virtue of a living trust is that it is not generally covered by the will. Only those persons who are named as beneficiaries will be entitled to any specific information regarding the terms of the trust.   |  | | --- | | **Mr. Williamson**  Phillip Williamson has been mayor of a small country town for over twenty years. He has three grown children and over twenty close relatives who all live in the same community. He is concerned that upon his death the local newspaper might reveal information regarding his estate, particularly how he decides to divide his assets among his children and relatives.  To prevent this, his attorney created a revocable trust, which Phillip funded with one dollar. His attorney also created a "pour-over will," which "pours" Mr. Williamson's entire estate over into the trust upon his death. The trust will contain all the information as to how assets are to be used for or distributed to his three children. All anyone will be able to learn by going to the courthouse is that his will distributed everything to his trust, the terms of which remain private. | |
| **Avoidance of Probate** |
| Because assets in a trust are not governed by the will, the trust is not part of the probate process. As such, it is not subject to the delays and expenses of probate. |

## Review Exercise

Before proceeding, check your familiarity with trust terminology by answering the following True-False questions. **For each question, select the appropriate answer.**

1. A custodial account is an example of a trust relationship.

* True

**Incorrect.**  Custodians act as agent for the owner; they do not actually own the property on behalf of another, as would a trustee.

* False

**Correct.** Custodians act as agent for the owner; they do not actually own the property on behalf of another, as would a trustee.

1. To fund a trust with real estate, a grantor must re-title the property.

* True

**Correct.** To fund the trust, it is necessary to re-title real estate into the trust.

* False

**Incorrect.** To fund the trust, it is necessary to re-title real estate into the trust.

1. An irrevocable trust where there is an income beneficiary and a separate remainder beneficiary is an example of a split-interest trust.

* True

**Correct.** This is the definition of a split-interest trust.

* False

**Incorrect.** This is the definition of a split-interest trust.

1. Testamentary trusts are typically revocable.

* True

**Incorrect.** Since the creator of the trust is deceased, they are irrevocable.

* False

**Correct.** Since the creator of the trust is deceased, they are irrevocable.

## What is Estate Planning?

Having discussed wills and trusts, we now turn our attention to the practice of putting together an estate plan. When people think of estate planning, most people think of writing a will. Others might include creating a trust. And still others might think in terms of minimizing estate taxes. But all these considerations miss the point that estate planning is really about fulfilling one’s personal goals regarding one’s financial resources and assets.

|  |
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| **The Purpose of Estate Planning**   * To give what you want, to whom you want, when you want * To minimize taxes and administrative costs * To minimize probate expenses * To provide protection for one's self and beneficiaries * To provide control from the grave |

Defining Personal Goals

The process should always begin with the very personal task of identification of goals. Some of these goals may be lifetime goals, such as protection against incapacity by establishing a living trust; others might involve extending control beyond the grave, such as providing for the continued care of a child or dependent with special needs. Along the way, the estate planner (i.e., the attorney) can facilitate the process by informing the client of options and costs associated with the goals identified; but always, the person’s personal goals should reign supreme. Only when the goals are identified can the planner begin identifying the most tax efficient means of achieving those goals.

Implementation

Once personal goals are identified, implementation of an estate plan to accomplish those goals requires the drafting of legal documents that take into consideration, where necessary, strategies to minimize estate taxes. Therefore, in its strictest sense, it involves the practice of law, with the attorney ultimately responsible for the plan. But an effective financial adviser works in concert with the attorney, facilitating the development of a viable plan, while avoiding the unauthorized practice of law.

In the remainder of this course, we will examine those legal documents and some of the fundamental strategies that are employed to minimize estate taxes.

## Key Documents

Generally speaking, every adult needs to consider having certain estate planning documents in place. Failure to do so can significantly jeapordize personal goals, expose survivors to unnecessary risk, and, for large estates, may result in higher transfer taxes. Key documents that everyone should consider are listed below. While other documents may be employed in the estate plan to accomplish specific goals, such as trusts that are established while a person is alive, the following list should be considered by everyone: **Click each document to learn more.**

|  |
| --- |
| **Will** |
| Unless they are prepared to have their assets distribute in accordance with state statutes, everyone needs a will to direct distribution of assets upon death. Wills are also useful when desiring to set up testamernary trusts to provide benefits for survivors. We have already discussed some of the uses and benefits of trusts, but will have more to say on the use of trusts in estate planning in the pages that follow.  Generally, for married couples, it is very important to coordinate the couples wills (in fact, to coordinate their entire estate plans) to assure that they work together to achieve established goals, particularly since it is impossible to predict which spouse might die first. |
| **Durable Power of Attorney** |
| A Durable Power of Attorney is a document that allows you to appoint another person or persons to manage your affairs and make financial decisions on your behalf if you become incapacitated. It is important to include a durability provision to have these powers continue if you become incapacitated or mentally incompetent, otherwise, its powers will cease.  The powers given may be either “general” or “special” (aka, “limited”). If “general,” your chosen attorney has extensive powers over your affaits; a “special” power of attorney is limited to specifically defined tasks. |
| **Living Will** |
| A Living Will allows you to state your wishes about certain types of medical care and life prolonging procedures. The document only takes effect if you cannot communicate your own health care decisions. The benefit of a Living Will is that you do not put your family in the position of having to make difficult decisions and you also ensure your health care wishes are carried out. |
| **Durable Power of Attorney for Health Care/Health Care Proxy** |
| A Durable Power of Attorney for Health Care (health care proxy) is a document that lets you appoint another person to make medical decisions on your behalf if you become unable to make those decisions yourself. This document may resolve any potential conflicts over your medical treatment, and helps ensure your wishes are respected. Unlike a Living Will, this document covers a broad range of health care decisions. |

## The Resources for Minimizing Estate Taxes

Having discussed the fundamental documents that are involved in developing an estate plan, we now turn our attention to the strategies that are utilized to minimize estate taxes.

The primary resources available for minimizing estate taxes are to be found within the transfer tax system itself. Buried within the volumes of obtuse tax codes and regulations is a staggering array of possibilities. Fortunately, most tax-saving resources can be grouped into the three categories that appear to the right. There are other categories, to be sure, and the list of possible tools or techniques within some categories can be extensive. But for the majority of estate planning opportunities, these three suffice.

These resources are available to everyone; but their benefits are not necessarily automatic. Careful planning is often necessary, and specific tools or techniques have been developed to obtain their optimum benefit for various situations. We will discuss those, but first, let’s do a quick review of the resources themselves.

## Applicable Credit/Exclusion Amount

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| **Applicable Credit/Exclusion Amount Summary** |
| * The Applicable Exclusion Amount is the estate value that is offset by the Applicable Credit Amount, which is a credit against the gift and estate tax. * The Applicable Exclusion Amount, which is adjusted annually for inflation, is $5,450,000 in 2016, and assets beyond that amount will be taxed at 40%. * While in prior years, the portion of the Applicable Exclusion Amount that could be applied to lifetime gifts was capped at $1,000,000, beginning in 2011 this “cap” was removed. Today, the entire 2016 Applicable Exclusion Amount of $5,450,000 can be used for lifetime gifts. * Beginning in 2011, portability of the Applicable Exclusion Amount between spouses is allowed, making it possible for a surviving spouse to inherit any unused portion of the deceased spouse’s Applicable Exclusion Amount. Previously, such inheritance was not possible and any portion that remained unused by a deceased spouse’s estate was forfeited. Thus, a surviving spouse can now add to his/her Basic Exclusion Amount the Deceased Spousal Unused Exclusion (DSUE) Amount. |

This is the beginning point; it is as close to automatic as one can get. The only planning required to benefit from this resource is to be born. Each person is given a credit against transfer taxes, known as the Applicable Credit Amount, which offsets the tax that would otherwise be due on taxable transfers. The amount of transferred assets protected by the credit is known as the Applicable Exclusion Amount. In other words, the Applicable Exclusion Amount tells how much a person can transfer, which would otherwise be subject to transfer tax, without having to pay a tax.

## Estate Tax Deductions

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| **Estate Tax Deductions** |
| * The amount that can be transferred to a U.S. citizen spouses without tax is unlimited. * Transfers to charities are deductible. |

A quick examination of the estate tax return reveals that there are two unlimited deductions available:

* The unlimited marital deduction
* The charitable deduction

No transfer tax is assessed against these transfers and none of the Applicable Credit/Exclusion needs to be applied on a gift tax return or estate tax return to protect these transfers from taxation.

## Gift Tax Deductions

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| **Gift Tax Deductions** |
| * No gift tax on lifetime transfers to U.S. citizen spouses (known as the unlimited marital deduction) * No gift tax on lifetime transfers to charities * 2016 annual gift tax exclusion of $14,000 (annually indexed for inflation in $1,000 increments)   + Must be a completed, irrevocable gift   + Married couples can "split gifts", for a combined gift of $28,000 without regard to source of funds   + Unlimited number of individuals can receive gifts   + Since there is no unlimited marital deduction for transfers to a non-citizen spouse, there is an enhanced annual gift tax exclusion for that purpose, which is $148,000 in 2016 (adjusted annually for inflation) * Gift tax exclusion for tuition   + Independent of the annual gift tax exclusion   + Must be paid directly to the school and only for tuition   + No limit on amount or number of individuals * Gift tax exclusion for medical care   + Independent of the annual gift tax exclusion   + Must be paid directly to the care provider   + No limit on amount or number of individuals   + Not allowed for amounts reimbursed by insurance |

For taxable estates, one of the best ways to manage transfer tax exposure is through lifetime gifts. Making non-taxable gifts like those listed on this page can be a means of achieving long-term goals while also reducing the size of the estate that is potentially subject to taxation. Even lifetime gifts that are “taxable” and use up part of one’s Applicable Exclusion Amount to avoid paying a tax can be a means of transferring future appreciation out of one’s estate.

For 2016, there are no gift taxes due on lifetime gifts to any individual up to $14,000 ($28,000 if gifted by a married couple), no gift tax on gifts between spouses, and no gift tax on gifts to charities. Furthermore, gifts made in direct payment of tuition and medical care are also excluded from gift taxes when paid directly to the school or medical service provider. None of these gifts require use of the Applicable Exclusion Amount to avoid transfer taxes and none of them will be added back at death as post-1976 taxable gifts to be included on the estate tax return.

## Planning to Minimize Estate Taxes has Gotten Much Simpler for Most Americans

Legislation in recent years has made the estate planning process much simpler for most people. This is due to two key changes: **Click each change to learn more.**

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| **Growth of the Applicable Credit/Exclusion Amount** |
| In 2000, each individual received a credit against the gift and estate tax that protected the first $675,000 from the transfer tax. At the time, that was the largest credit in history, and it had taken 15 years for it to go from protecting $400,000 to protecting $675,000.  But since 2000, the Applicable Credit/Exclusion amount has risen rapidly to protect the first $5,450,000 from taxation. This has virtually eliminated the federal transfer tax from being a planning issue for the vast majority of Americans. |
| **The Introduction of Portability** |
| In 2016, a married couple’s combined Applical Exclusion Amounts can protect $10,900,000 of assets from transfer taxation. Even if everything is left to the surviving spouse, the executor merely files an estate tax return “porting” over the Deceased Spousal Unused Exclusion Amount; no further planning is required. This combined amount is more than sufficient to protect the vast majority of married couples from having to worry about paying a federal estate tax.  Prior to 2011, it was not possible for a deceased spouse to pass on his or her Unused Exclusion Amount to a surviving spouse. This meant that any Unused Exclusion Amount in the first estate would be forever lost as an opportunity for protecting assets from the transfer tax. This resulted in the need for significant planning to optimize the use of both spouses’ Applicable Exclusion Amounts whenever their combined estates exceeded a single Applicable Exclusion Amount, as illustrated in the following example:   |  | | --- | | **Example:**  In 2009, Joe and Martha Average, a married couple who were both U.S. citizens, had a combined estate of $3.7 million. They had very simple wills whereby they left everything to the survivior.\*  The Applicable Exclusion Amount in 2009 was $3.5 million. Together, they had a combined Applicable Exclusion Amount of $7 million – more than enough to protect their combined estate. However, this is what would have happened if both spouses died in 2009 when portability was not available:  Unlimited Marital Deduction Flowchart  Because the assets passed by way of the unlimited marital deduction, the first spouse’s Applicable Exclusion amount goes unused and the surviving spouse’s estate is left with all the assets and only a single Applicable Exclusion Amount to protect them from taxation. The result is that $200,000 of assets go unprotected, resulting in a tax bill of $90,000.  Clearly, in the days before portability, which allows the surviving spouse to inherit the Deceased Spousal Unused Exclusion (DSUE) amount, this simple plan could be quite costly.  *\* The characters and scenarios in this case study are fictitious and purely for purposes of illustration.* | |

## Preserving the Applicable Exclusion Amount in the First Estate Prior to Portability

On the previous page, we provided the example of Joe and Martha Average, who needed additional planning to optimally utilize both spouses’ Applicable Exclusion Amounts in the days before the advent of portability. On this page and the next few that follow, we introduce you to planning techniques that were developed in the pre-portability years to accomplish this.

It is important that you become familiar with these planning techniques since they continue to have application in today’s environment, as we shall later explain. It is also important that you be familiar with these concepts because many clients you will encounter established their estate plans pror to 2011 (and some since) when portability went into effect, and these plans will likely reflect these techniques.

### The Credit Shelter Trust

Continuing with the the example of Joe and Martha Average from the previous page, they had a combined estate of $3.7 million in 2009 and each spouse had an Applicable Exclusion Amount of $3.5 million. How could they make use of both Exclusion Amounts to fully protect their combined estates?

This was typically accomplished by NOT leaving everything to the surviving spouse! One option was to leave the assets that are covered by the Applicable Credit/Exclusion Amount to other heirs, but then the assets would not be available to provide for the needs of the suriving spouse. Instead, most people preffered to utilize a Credit Shelter Trust.

The ***Credit Shelter Trust*** (sometimes referred to as the “Applicable Exclusion Trust,” "By-Pass Trust," or "Family Trust”) became very popular as a means of utilizing the Applicable Credit/Exclusion Amount when the first spouse died. Here is how it works:

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| * When the first spouse dies, the Applicable Credit Amount is generally applied against as much of the deceased spouse’s estate as possible. * These "sheltered" assets are transferred into a "Credit Shelter Trust." Since the surviving spouse cannot control these assets, his will keeps them out of the surviving spouse’s estate and protects them from being taxed when the second spouse dies. * Any remaining assets, which are not covered by the deceased spouse’s Applicable Credit Amount, are transferred to the surviving spouse (or, as we shall explore on the following page, into a trust for the surviving spouse that will be included in the surviving spouse’s estate). These remaining assets will be protected from taxation upon transfer due to the unlimited marital deduction. * The surviving spouse generally receives income from the Credit Shelter Trust and, if the document allows, can receive principal at the trustee's discretion. * The Credit Shelter Trust can also be used for the children. For this reason, it is often referred to as a "family trust." In fact, after the death of the surviving spouse, the trust can continue for the benefit of the children. * The end result is that both Applicable Credit Amounts are utilized and the surviving spouse does not have to forego benefit of all the assets. |

**Important Note** – For this strategy to work, both spouses need to have assets in their individual names. This is because it is impossible to know which spouse will die first. For example, if the first spouse dies not owning assets, then there is nothing with which to fund the trust. For this reason, most couples adopting this strategy will split assets to the degree necessary for the strategy to be optimized for either death.

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| Illustration  If Joe and Martha Andrews had divided their assets equally (since they couldn’t predict which of them would die first) and utilized the Credit Shelter Trust technique in their estate planning documents, the end result would have been no estate taxes if they both died in 2009, at a savings of $90,000. This is because half of the assets would have been “sheltered from taxation upon the first death and excluded from the estate of the surviving spouse, as illustrated in the diagram below.  Credit Shelter Trust Flowchart  For many years, this was one of the most powerful estate planning techniques available for couples, and its features became second nature to planners. |

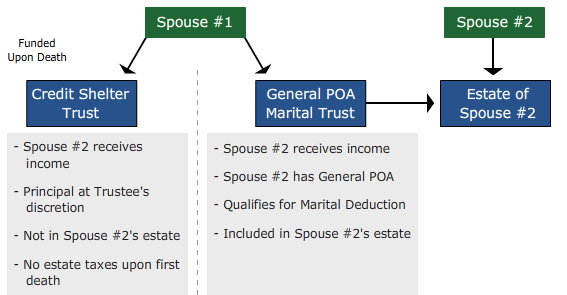
## Planning for Larger Estates of Married Couples Before the Advent of Portability

Let’s now examine a pre-portability example of a larger estate to learn some additional techniques that were widely utilized in conjunction with the Credit Shelter Trust prior to the advent of portability, but which have continued utility for today.

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| **Example of** **Mr. and Mrs. Dollar (2009)**  In 2009, John and Susan Dollar, both U.S. citizens, were both in their 70's. John was in poor health and was concerned that he might predecease Susan, who has never handled any of the financial affairs, and he feared she would be overwhelmed by having to handle things herself. They had four grown children, all of whom were married with children of their own. Their youngest son had recently been diagnosed with Amyotrophic Lateral Sclerosis (Lou Gehrig's Disease), and John and Susan Dollar were providing financial assistance to him and his family.  John and Susan's combined estate was currently valued at $9.5 million. Each had an Applicable Exclusion Amount in 2009 of $3.5 million. How might they plan to minimize their estate tax exposure?\* The following is how this was typically done:  **1. Split Assets**  Since they could not predict which would die first, they would typically divide up assets, making sure that each spouse could use as much of their Applicable Exclusion Amount as possible upon the first death. In our example, let’s assume that John and Susan divide assets equally, with each spouse owning $4.75 million each.  **2. Create a Credit Shelter Trust Upon the First Death**  Assuming the first spouse died in 2009 when the Applicable Exclusion Amount was $3.5 million, then $3.5 million would go into the Credit Shelter Trust upon the first death.  **3. Transfer Remaining Assets to the Surviving Spouse**  After funding the Credit Shelter Trust, the first estate has a taxable balance of $1.25 million. Rather than pay taxes in the first estate, the taxes could be deferred by passing them on to the surviving spouse through use of the unlimited marital deduction. This would provide the surviving spouse time to do additional tax planning to reduce the size of the taxable estate, which we shall discuss, prior to the assets being taxed upon the second spouse’s death.  While transferring the remaining assets to the surviving spouse would defer taxation, many clients preferred not to transfer assets outright in the hands of a surviving spouse. This could be because the surviving spouse was not familiar with handling assets and the client did not want to burden the surviving spouse. Alternatively, this might be a second marriage and, while the client wished to adequately support the surviving spouse, there was also the desire to assure that the assets went to the deceased’s own children from a prior marriage. So, how does one defer taxation of assets that exceed what can placed in the Credit Shelter Trust by utilizing the unlimited marital deduction, yet not make an outright transfer to the surviving spouse?  **3. (Alternative) – Transfer Assets to a Marital Trust**  The answer that was commonly deployed was to utilize a ***Marital Trust***. This was typically referred to as A-B Trust planning, whereby a Credit Shelter Trust was set up for the Family (the A trust) and a Marital Trust (the B Trust) would be set up for the benefit of the surviving spouse.  The terms of the marital trust would be such that the assets would be included in the surviving spouse’s estate, thereby qualifying the trust for the unlimited marital deduction. In this manner, taxation of the marital trust would be deferred until the second death, just as occurred with an outright transfer to the surviving spouse.  Two types of marital trusts were commonly used: the **General Power of Appointment (POA) Marital Trust** and the **Qualified Terminal Interest Property (QTIP) Marital Trust**. Both continue to have utility today for those situations where the preference is NOT to leave assets outright to the surviving spouse. We will discuss each type on the following pages.  *\* The characters and scenarios in this case study are fictitious and purely for purposes of illustration.* |

## The General Power of Appointment (POA) Marital Trust

The oldest type of marital trust is the ***General Power of Appointment (POA) Marital Trust***.

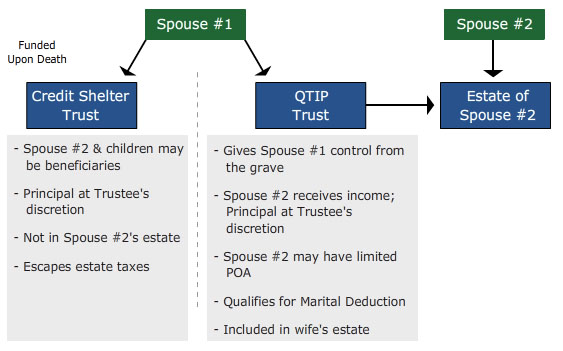


In this arrangement, the surviving spouse has a “General Power of Appointment” over the assets in the marital trust. What that mean is that the surviving spouse can appoint those assets to whomever he/she chooses, even to himself/herself. This arrangement would certainly address Mr. Dollar's concern that his wife be protected from the burden of handling the finances, since the assets can be handled by a competent trustee. The terms of the trust could also read that upon the death of the surviving spouse, provided the general power of appointment is not exercised, the trust is to continue for benefit of the son who has Lou Gehrig's disease until his death, then terminating and being distributed to the children or their surviving families.

## Introducing the QTIP Marital Trust

One problem with the General Power of Appointment Marital Trust is that it may leave too much power with the surviving spouse. For example, Mr. Dollar's desire for the assets to remain in trust for the benefit of the ill son could be defeated if Mr. Dollar died first and his surviving spouse exercised her power of appointment otherwise. While this may seem unlikely, it is conceivable that another family member might influence her to do exactly that. The fact is that there are many situations where a surviving spouse might alter the intent of a deceased spouse. For example, a surviving spouse might remarry, and there might be children involved from both marriages. The ultimate result might be that children unrelated to the deceased spouse would ultimately receive some or all of the assets left by the deceased spouse.

For reasons such as those mentioned, the ***QTIP (Qualified Terminable Interest Property) Marital Trust***became increasingly popular.



A terminable interest in property is one that will terminate upon death. For example, if a person receives income from a trust during life, but at death the assets are distributed to other beneficiaries according to the terms of the trust, then that person has an interest that terminates upon their death. Such "terminable interests" are not ordinarily included in a person's estate. But as long as certain technicalities are met, a marital trust can be constructed with a terminable interest, yet be included in the surviving spouse's estate and thereby qualify for the marital deduction.

In other words, it is possible for John Dollar to plan for a marital trust that will direct the ultimate disposition of the assets to his children, prevent the surviving spouse from changing the distribution, and still qualify the trust for the marital deduction. That is truly control from the grave and accounts for the fact that such trusts continue to be popular today! That is why this continues to be a very popular planning technique today, especially in cases of second marriages.

Among the technicalities is the requirement that ***the surviving spouse must receive income from the trust***. But unless the donor desires to give the surviving spouse a limited power of appointment (for example, limiting the ultimate distribution to the children, but allowing the surviving spouse to decide how it is to be prorated among them), ***it is the donor who will decide how the assets ultimately transfer, not the surviving spouse***.

## Review Exercise

Before proceeding, check your familiarity with some of the most frequently used planning techniques, some of which have been utilized for decades. **For each question, select the appropriate answer.**

1. For Credit Shelter Trusts to be an effective strategy in estate planning for couples, it is generally important that:

* Assets should be held in joint name with right of survivorship.

**Incorrect.** Try again.

* Each spouse needs to own assets in their own name (typically equalized up to the amount that can be protected by each spouse’s Applicable Credit Amount)

**Correct!** The trust cannot be funded if the decedant does not own assets in their own name.

* All assets be left to the surviving spouse when the first spouse dies.

**Incorrect.** A Credit Shelter Trust will be established upon the first death with assets that do not pass to the surviving spouse. Try again.

1. A Credit Shelter Trust can provide benefits for:

* The spouse only

**Incorrect.** Try again.

* The children only

**Incorrect.** Try again.

* The entire family (spouse and children)

**Correct!** The Credit Shelter Trust is unrestricted regarding the beneficiaries who can be named in it.

1. A General Power of Appointment Trust will be included in the surviving spouse’s estate, thereby qualifying for the unlimited marital deduction, because:

* The trust document declares that assets are to be included.

**Incorrect.** Try again.

* The surviving spouse can appoint (i.e., distribute) the assets to whomever desired, even to himself/herself

**Correct!** This is essentially unrestrained control over the assets by the beneficiary. Such control causes the assets to be included in the beneficary’s estate.

* Because the trust assets are titled in the name of the surviving spouse

**Incorrect.** Trust assets are never titled in the beneficiary’s name. Try again.

* Because the surving spouse receives benefits from the trust.

**Incorrect.** Receipt of benefits from a trust is insufficient reason for the trust assets to be included in the beneficiary’s estate. Try again.

1. The primary distinguishing characteristic of the QTIP Marital Trust vs. a non-QTIP Marital Trust is:

* It gives the first spouse to die the ability to name ultimate beneficiaries, while utilizing the marital deduction.

**Correct!** The distinguishing feature is that the trust can defer taxes by use of the marital deduction even though the deceased spouse retains "power from the grave" to direct the ultimate distribution of the assets.

* It provides additional estate tax savings.

**Incorrect.** It provides no more tax savings than a General Power of Appointment Marital Trust; both allow for deferral of estate taxes. Try again

* It provides income for the surviving spouse.

**Incorrect.** While it does provide income for the surviving spouse, so does a General Power of Appointment Marital Trust. Try again.

* It provides income for the children.

**Incorrect.** A QTIP Marital trust cannot provide income for the children. Try again.

* It provides discretionary principal distributions for the entire family.

**Incorrect.** Only the surviving spouse can receive principal distributions from a QTIP Marital Trust. Try again.

1. QTIP stands for:

* Qualified Transitional Interest Property

**Incorrect.** Try again.

* Qualified Terminal Interest Property

**Correct!**

* Qualified Trust Income Property

**Incorrect.** Try again.

* Qualified Taxable Income Property

**Incorrect.** Try again.

## When NOT to Rely on Portability

Certainly, things have become simpler since 2011 when portability of the DSUE was introduced. This in no way negates the use of the Credit Shelter Trust or Marital Trust in today’s environment. In fact, there are situations when they are still preferred to relying solely on portability of the DSUE. The following is a list of some common situations where one should not overly rely upon portability. **Click each situation to learn more.**

|  |
| --- |
| **Second Marriages Involving Children of a Prior Marriage** |
| When this is the case, it will typically be desirable to create a Credit Shelter Trust or an A-B Trust arrangement where a Credit Shelter Trust is coupled with a QTIP Marital Trust. In this manner, all the assets can be available to support the surviving spouse, but each spouse will be able to ultimately preserve their own assets for children of a prior marriage. |
| **States with an Estate Tax and No Portability** |
| Many states have an estate or inheritance tax. They generally provide a credit against the tax, similar to the Federal Applicable Credit Amount, but the size of the credit is typically much smaller (e.g., protecting $1 million) and states have been slow to adopt the concept of portability of the credit between spouses.  For situations where there is a state tax but no portability of the state tax credit, a Credit Shelter Trust should be considered. This trust would be funded up to the limit that can be protected by the state credit. Part of the Federal Applicable Credit/Exclusion Amount would also be applied to the Credit Shelter Trust, thereby protecting the Trust from both state and federal taxes. The balance of the DSUE can then be “ported” over to the surviving spouse or placed in a marital trust for the surviving spouse’s benefit. |
| **Accomplishing Personal Goals** |
| There may be times when it is desirable to fund trusts at death to support personal goals, such as the care of a handicapped child or the establishment of a trust for grandchildren. In such situations, it may be preferred to use the Applicable Credit/Exclusion Amount (either in total or in part) to protect these trusts from transfer taxation, allowing the balance to be deferred through the unlimited marital deduction. |
| **A Non-Citizen Spouse** |
| While it is beyond the scope of this course, portability is not available when the surviving spouse is not a U.S. citizen. In this situation, special planning is needed. |

## Why Should Older Estate Plans be Reviewed to Consider Utilizing Portability?

On the previous page, we discussed the fact that there is still a role to be played by Credit Shelter Trusts and Marital Trusts. That is not to say, however, that all pre-2011 plans that made use of these techniques are still optimal now that we have the option of utilizing portability of the DSUE. These older plans should be reviewed for a number of reasons to make sure they are still optimally meeting client goals. **Click each reason to learn more.**

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| **Freedom in Planning** |
| In past years, planning to minimize taxes often led to estate plans that were a compromise between what the client might prefer and what a client felt he/she needed to do to save on taxes. With the elevated Applicable Exclusion Amount, clients should re-examine their estate plans to see if they might want to do things differently in a world where estate taxes are not as much of a concern.  For example, a client who previously established an Irrevocable Life Insurance Trust to provide liquidity for estate taxes may no longer have a taxable estate. In that case, the Life Insurance Trust should be reviewed to see what options are available under the terms of the trust. |
| **Potentially Adverse Effect of Credit Shelter Trusts** |
| Many clients have pre-existing estate plans that will fund a Credit Shelter Trust upon death. Many of these were set up primarily for tax reasons and should be reviewed to make sure the plan continues to meet the goals of the client AND to make sure there are no unanticipated or adverse consequences of leaving them in place.  One potential problem is the funding formulas that were commonly used to fund the Credit Shelter Trust. These formulas typically instructed the executor to fund the Credit Shelter Trust with the maximum amount that could be protected by the Federal Estate Tax Credit. If, for example, the estate plan had been put together in 1997, Credit Shelter Trust funding for deaths in that year would have been $600,000. In 2016, it could be as much as $5,450,000. A client adopting an estate plan in 1997 would never have anticipated that the Credit Shelter Trust could be funded with so large an amount. This could result in an unanticipated and undesirable shift in allocation of funds going to various beneficiaries.  For example, the client may have felt comfortable at the time with a portion of the estate going into the Credit Shelter Trust to minimize taxes, knowing that the largest share would go to the surviving spouse. However, in 2016, if the estate is under $5,450,000, the entire estate will go to the Credit Shelter Trust and none to the surviving spouse. This may no longer represent the client’s preferences.  Another potential problem with leaving a Credit Shelter Trust in place in an older estate plan is that the assets of a Credit Shelter Trust will not get a step-up in tax basis upon the second spouse’s death. With portability of the Applicable Exclusion Amount, some clients may prefer to not utilize a Credit Shelter Trust and instead have everything included in the surviving spouse’s estate to receive the step-up in tax basis on the combined estate upon the second death.  For reasons such as these, clients would do well to review their existing estate plans with an estate planning attorney to see if changes need to be made in light of the new rules. |
| **Enhanced Gifting Opportunities** |
| For clients who have taxable estates, lifetime gifting continues to be an excellent means for reducing the size of the taxable estate and for keeping future appreciation out of the estate.  Given that the Generation-Skipping Transfer (GST) Tax Exemption has also risen to $5,450,000 in 2016, it may be especially attractive to set up trusts for grandchildren. In this regard, it is important to note that there is no portability of the Generation-Skipping Transfer Tax Exemption. If the desire is to use both spouse’s exemption for this purpose, it will be important to make plans for utilization of the exemption in each spouse’s estate, since the surviving spouse cannot inherit the GST exemption from the deceased spouse. |
| **Disparity Between Federal and State Taxes** |
| While we now have a federal estate tax exclusion of $5,450,000 in 2016, many states have a much smaller exclusion amount, e.g. $1,000,000. Thus, state transfer taxes have received renewed attention and clients may need to pursue planning strategies with their estate planning attorneys to minimize those taxes. These plans might still make use of the Credit Shelter Trust, which might have to be balanced against the potential cost of not receiving a step-up in basis on the trust assets upon the second spouse’s death. |
| **Asset Protection Trusts** |
| While testamentary trusts may no longer be needed for minimization of estate taxes, they might nonetheless continue to be useful vehicles for asset protection, e.g., to protect the assets from the creditors of a surviving spouse. This might be a good reason, for example, for leaving a previous estate plan that funds a Credit Shelter Trust in place. |

Given the amount of change that has taken place in recent years, clients should be encouraged to review their estate plans with their estate planning attorney. The good news in all of this is that they will have more freedom to make plans that best suit their personal goals than they have ever had before.

## Tax Minimization for Very Large Estates

Thus far, we have only discussed estate tax planning for assets that are covered by the Applicable Credit/Exclusion Amount (combined amounts for spouses). What about very large estates that exceed these amounts? These are estates that are large enough to actually owe an estate tax, even after full use of the Applicable Credit/Exclusion Amount(s). Is there any planning that can be done to reduce that tax exposure?

Actually, there is a great deal that can be done because the tax code provides numerous other resources we can leverage, such as the annual gift tax exclusion and the ability to make non-taxable transfers to charities.

On the following pages, we will discuss some of these strategies, all of which aim at reducing the amount of assets that will be included in in the estate upon death. In particular, we shall discuss:

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| 1. Lifetime Gifting 2. Charitable Trusts 3. Grantor Retained Trusts 4. Irrevocable Life Insurance Trusts |

This list is certainly not exhaustive, but should give you a general understanding of the types of techniques that are available for reducing the tax exposure of very large estates.

## Lifetime Gifting

One of the simplest and most personally rewarding strategies for reducing estate tax exposure is to make lifetime gifts. **Click each type of gift to learn more.**

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| **Annual Exclusion Gifts** |
| For 2016, the annual gift tax exclusion amount is $14,000. Thus, the first $14,000 gifted to any person is covered by this exclusion amount. Spouses can do “split” gifts, doubling the amount to $28,000. What is more, there is an equivalent exclusion available for the Generation-Skipping Transfer (GST) Tax, making it possible to make annual exclusion gifts to grandchildren (or other skip persons).  For example, a couple with three children and 7 grandchildren could gift $280,000, free of transfer taxes. Do that for a number of years, and a client can significantly cut into a large estate’s tax liability. |
| **Medical and Tuition Expenses** |
| Further reductions in the size of the taxable estate can be made by paying medical and tuition expenses on behalf of others. These payments must be made directly to the provider.  These gifts are totally independent of annual exclusion gifts. Both an annual exclusion gift AND a tuition payment AND/OR medical payment can be made for the same person, and none of them are taxable gifts. |
| **529 Plans** |
| 529 Savings Plans are excellent vehicles for saving for a child’s education. Not only does a 529 Plan qualify for annual exclusion gifts on behalf of the child or grandchild, but it also allows for accelerated gifting. Up to 5 years worth of annual exclusion gifts can be contributed at one time as a lump sum without triggering a Gift or GST Tax. One caveat to making this election is if total contributions to each beneficiary exceeds five times the annual gift tax exclusion, the excess amount is treated as a taxable gift in the year of contribution. |

## Charitable Remainder Trusts

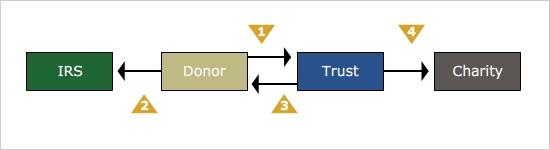
If a person has charitable intent, then that person can also make charitable gifts. These gifts are not subject to gift taxes and, obviously, they reduce the size of the donor’s estate.

While gifts can be made directly to the charity, it is also possible to establish and fund a Charitable Trust, with a charity as the beneficiary. This can be created in either of two primary forms: a Charitable Remainder Trust (CRT) or a Charitable Lead Trusts (CLT). These can provide significant benefits beyond making direct gifts to charities, and we will discuss each in turn.

The ***Charitable Remainder Trust*** ***(CRT)*** provides current income to the creator of the trust, the grantor, and future benefit to the charitable beneficiary. Here is how a charitable remainder trust works, based on sample trusts that have been issued by the IRS to guide attorneys in drafting charitable remainder trusts that will qualify for the income tax charitable deduction. These trusts are characterized by the following:

1. The trust can provide income for one or more beneficiaries. Generally, only the grantor or the grantor and his/her spouse are named as the income beneficiaries, so as to avoid transfer tax issues associated with naming anyone else.
2. The trust can be written to terminate upon the death of the income beneficiary or upon their combined deaths if more than one. Alternatively, the trust can be written to terminate at the end of a specific number of years, not to exceed 20 years.
3. Income distributions to the beneficiary(ies) can begin immediately or may be deferred to begin at a future date.
4. The trust may be drafted so that the charitable beneficiary designation can be changed without losing the tax advantages of the trust, as long as the change is to another qualified charity.
5. The annual payout to the income beneficiary(ies) cannot be less than 5% or more than 50% of the value of the trust.

**Click each numbered icon to learn more.**



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| **1 -** The donor can fund the trust with any type of asset, but it is generally advisable to not use property that has declined in value from its purchase price, as such assets will be valued at their current market value and the possibility of using the loss to offset income taxes will be lost. Generally speaking, appreciated property should be given first priority. This is because no capital gain taxes are payable when the property is donated. If the trust later sells the asset, again there are no capital gain taxes. Only if the capital gain gets paid out to the income beneficiary would the beneficiary be subject to the tax. As long as there is sufficient ordinary income to cover the payout requirements, the capital gains generated in the trust will remain in the trust until final distribution to the charity. This will provide the advantage of making the contribution at FMV without having to pay taxes on the gain.  Note that the deductible value of the contributed property must be at least 10% of its value; anything less will prevent the trust from qualifying as a charitable remainder trust. |

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| **2 -** The donor gets an immediate Federal income tax deduction. The tables that are used to calculate the amount that may be deducted will take into account the number of years before termination and distributions to the donor. If the trust is for the lifetime of the income beneficiary(ies), the tables will also take into consideration life expectancy. |

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| **3 -** Income distributions are generally taxed in the year they are paid out. The income calculation can be structured as an annuity, based on the initial valuation of the trust (a Charitable Remainder Annuity Trust or CRAT) or the calculation can be computed annually based on the market value in each successive year (a Charitable Remainder Unitrust or CRUT). |

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| **4 -** Upon termination, the charity receives the corpus of the trust. This amount may be more or less than was originally contributed, depending upon investment performance and the degree to which income was allowed to accumulate and principal was not encroached to make required payments to the income beneficiary. |

## Using a Charitable Remainder Trust

Obviously there must be charitable intent for charitable remainder trusts to be considered. But where that is the case, they take some of the risk out of making lifetime gifts for persons who are concerned about loss of income. In fact, they can be particularly advantageous in certain circumstances.

Highly Appreciated or Low Income Producing Property

The greatest benefit to utilizing a charitable remainder trust is when you are dealing with highly appreciated long-term capital gain property and/or property that provides a very low income. Both of these factors are illustrated in the following scenario.

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| **Mrs. Thurmond’s Story**  Mrs. Thurmond was given 100 shares of ABC Company on her 18th birthday. That was 60 years ago! Affected by the Great Depression, this is the only stock she has ever owned. It has split eight times since she received it, now giving her 25,600 shares with a market value of approximately $1,000,000. Her basis is only pennies per share.  Her estate is worth $8 million, some of which is land that she plans to pass on to her children. And her current income is $200,000 per year, of which ABC stock provides $20,000. Her arthritis is requiring her to have some live-in assistance, and she needs to generate an additional $50,000 of income to cover all expenses. She would not be opposed to selling the ABC stock, but does not want to pay the tax bill that will be generated by the realized capital gain on the sale.  Her will states her intent to give a substantial portion of her estate to charity, but she has been rather hesitant to give much during her lifetime out of fear of not having enough to meet her needs.\* |

DocumentationIcon_32px**Click the icon to view the solution.**

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| **Solution**  Mrs. Thurmond creates a charitable remainder annuity trust with a 7% payout. The trust can then sell the security, diversify the portfolio, and distribute $70,000 per year to her. Mrs. Thurmond now has the income she needs. No capital gains tax will be generated by the transfer, although over time the gains may be distributed back to her as they are needed to supplement the accumulated investment income in order to meet the required payout, but at least they will be deferred. She may expect to also pay far less income taxes in the current year due to the charitable deduction. More important, she has met both her income need and fulfilled her charitable intent.  *\*This scenario is fictitious and purely for purposes of illustration.* |

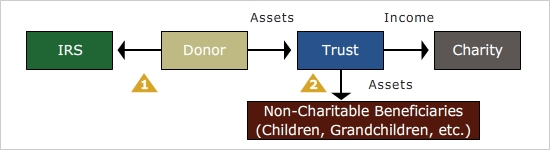
## Charitable Lead Trust

The ***Charitable Lead Trust*** ***(CLT)*** operates somewhat like a charitable remainder trust, only in reverse. With a charitable lead trust, the charity enjoys the income from the property for a period of time, and the trust distributes the property to the beneficiary(ies) when the trust terminates.

The following features are found in the trust document of a charitable lead trust:

1. Similar to a charitable remainder trust, a charitable lead trust may be structured to pay income either as a ***Charitable Lead Annuity Trust (CLAT)*** or ***Charitable Lead Unitrust (CLUT).*** However, they are typically structured as annuity trusts to keep the valuation simple.
2. The trust may last for the lifetime of the donor or another individual named by the donor, or for a specific number of years. Unlike a CRT, there is no limit to 20 years if a specific number of years is chosen.
3. For the donor to receive an immediate income tax deduction for making the gift, the charity's interest must be guaranteed by the document and the donor must be taxed on the income generated by the trust. If these conditions are met, the donor receives an immediate income tax deduction for the present value of the future income stream that will go to the charity; then, each year, the donor will be taxed on the trust income with no offsetting charitable deduction.
4. Unlike a CRT, no minimum payout is required.

**Click each numbered bullet to learn more.**



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| **1 -** A taxable gift may be involved in assigning the remainder interest of the trust assets. For gift tax purposes, the value of the remainder interest will be determined by subtracting the present value of the income stream to the charity from the market value of the assets when placed in the trust. Thus, by giving the charity years of income, the value of the transfer to the remainder beneficiaries can be greatly reduced. |

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| **2 -** Upon the termination of the trust, the remainder beneficiaries receive assets from the trust. Since any transfer taxes were taken into consideration when the trust was funded, this final transfer takes place with no additional gift or estate taxes. This is quite significant, indicating that any appreciation in the market value of the assets within the trust will transfer to the beneficiary(ies) free of gift or estate taxes. The same is true of any accumulated income that was not needed to make the required payments to the charity. |

The charitable lead trust is an excellent way to support charities while making discounted, deferred transfers to heirs. For example, with federal tax table rates at 5.4%, a 10-year CLAT, paying 7% annually (as valued when the trust was funded) to a charity, offers a 54% discount from market value on the assets that will go to the remainder beneficiaries. If the trust lasts for 15 years, the discount increases to 72%. Increase the trust to 20 years, and the discount rises to 86%. These discounts can result in substantial estate and gift tax savings for high net worth clients whose estate values are significantly above the amount that can be covered by their Applicable Credit/Exclusion Amount and where leverage is needed to maximize reductions in the size of their taxable estates with minimum use of their Applicable Credit Amount on lifetime transfers.

## Grantor Retained Trusts

Like the Charitable Lead Trust strategy, a ***Grantor Retained Trust (GRT)*** is essentially a technique for transferring a future interest to the remainder beneficiary(ies). The asset is placed in an irrevocable trust for a period of time, during which time the grantor enjoys income from the trust or enjoys the use of the asset. When the trust terminates, the asset is transferred to the remainder beneficiaries, such as the grantor's children.

Because the gift to the trust is irrevocable, it is a considered a completed transfer and potentially subject to gift taxes. However, because the remainder beneficiaries do not receive the gift until a passage of time, the gift to them is discounted to a present value. It is this vastly reduced present value that is used for computing the gift tax.

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| **Overview** | To learn more about these strategies, **click each heading on the left.**  Note: Numerous rules are associated with the structure of these instruments. It is advisable that the client's estate planning attorney be involved in helping make a determination as to their appropriateness. |
| **Grantor Retained Income Trust (GRIT)** | The grantor continues to receive the income from the contributed assets for the duration of the trust. |
| **Grantor Retained Annuity Trust (GRAT)** | The grantor receives a fixed annuity from the trust until its termination. |
| **Grantor Retained Unitrust (GRUT)** | The grantor receives a fixed percentage that is annually applied to the market value of the trust until its termination. |
| **Qualified Personal Residence Trust (QPRT)** | The grantor transfers a residence, which the grantor continues to use until the termination of the trust. This is essentially a GRIT, but the income is replaced with use of the property. |

## Review Exercise

Answer the following questions by choosing the correct answer.

1. The deductible value of property contributed to a CRT must be at least \_\_\_\_% for the trust to qualify:

* 5%

**Incorrect.**

* 10%

**Correct.**

* 20%

**Incorrect.**

* 30%

**Incorrect.**

* 60%

**Incorrect.**

1. A CRT can terminate upon the death of one or more people, or it can be setup to exist for a specific number of years up to:

* 5 years

**Incorrect.**

* 10 years

**Incorrect.**

* 15 years

**Incorrect.**

* 20 years

**Correct.**

* 30 years

**Incorrect.**

1. The annual payout of a charitable remainder trust to the income beneficiaries cannot be less than 5% or more than \_\_\_\_\_.

* 10%

**Incorrect.**

* 15%

**Incorrect.**

* 20%

**Incorrect.**

* 25%

**Incorrect.**

* 50%

**Correct.**

1. The duration of a Charitable Lead Trust is either the lifetime of the donor or another individual named by the donor, or for a specific number of years up to:

* 10 years

**Incorrect.**

* 15 years

**Incorrect.**

* 20 years

**Incorrect.**

* Any number of years

**Correct.**

1. The minimum payout requirement of a Charitable Lead Trust is:

* 3%

**Incorrect.**

* 5%

**Incorrect.**

* 10%

**Incorrect.**

* 15%

**Incorrect.**

* Nonexistent (there is no minimum)

**Correct.**

## Gifting Money to Purchase Life Insurance

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| The insured person must not have any incidents of ownership in the policy for it to be outside the insured’s estate |

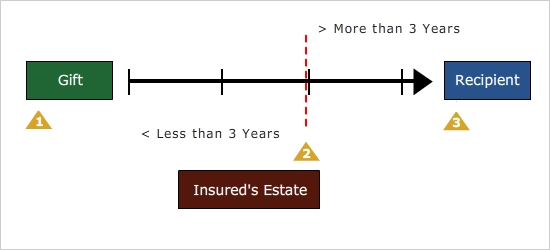
The final technique we shall discuss for reducing the size of the taxable estate is in regards to life insurance. No asset appreciates more dramatically upon death than does insurance. Since insurance is included in the owner's estate at its full face value, not the cash value that existed just before death, it is no wonder then that it is one of the first assets planners seek to exclude from estate taxation.

But what must be done to exclude life insurance from one's estate?

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| The answer is simple: Don't own it!  The only requirement to exclude insurance from the estate of the insured is that someone other than the insured must own the policy.  This can be accomplished with a new policy by gifting money to another person, such as an adult child, who then makes the purchase. Each year thereafter, additional gifts could be made to pay the annual premiums. As long as the annual gifts to that individual do not exceed the annual gift tax exclusion amount (double that amount for joint gifts by husband and wife), there is no tax consequence to the gifts. And as long as the insured has none of the rights associated with ownership of the policy, it will never be a part of the insured's estate. These rights are typically referred to as incidents of ownership, and include the right to name the beneficiaries, the right to borrow against the policy, and the right to cash in the policy.  If a life insurance policy is already owned, gifting it to another person is a bit more complicated, as shown in the following page. |

## Gifting Life Insurance

The procedure for gifting life insurance is depicted below. **Click each numbered bullet to learn more.**



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| **1 -** The insured must absolutely assign the policy to another person. By making such an assignment, the insured will forever surrender all the rights of ownership regarding the policy, and retain no incidents of ownership.  In making the transfer, the insured is gifting the current value of the policy, and the annual gift tax exclusion can be applied against the gift. Fortunately, the current value is typically small in comparison to the face amount of the policy, but it may be larger than can be covered by the annual gift tax exclusion. In that case, a gift tax return must be filed and it would be necessary to use part of the insured's applicable credit amount in the return to avoid paying a transfer tax. But that might be a small price to pay to get the appreciation out of the estate. |

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| **2 -** But there is another issue to consider. If the IRS were to freely allow such transfers, it would quickly become common practice for people to make deathbed assignments of insurance in anticipation of their deaths. Therefore IRS imposes a three-year rule on the transfer of insurance policies, directing that any insurance policy that is transferred by the insured within three years of death will be brought back into the insured's estate. |

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| **3 -** Therefore, gifting the insurance policy is only successful in removing it from the insured's estate if the insured lives for three years after the transfer. |

## Problems with Other Individuals Owning the Policy

There are numerous problems with naming another individual to own the policy. **Click each problem below to learn more.**

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| For reasons such as these, most wealthy individuals prefer to exclude insurance from their estate by having ownership placed in an irrevocable trust. |

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| **Loss of Control** |
| The owner of the policy is free to make all decisions regarding the policy, without input or approval of the insured. The owner can cash the policy in, borrow against it, or change beneficiaries. Any of these actions could defeat the original plans of the insured. Thus the insured must place absolute trust in the intentions, integrity, and maturity of the owner. |
| **Vulnerability of Trust Assets** |
| The policy is vulnerable to claims against the assets of the owner. This makes the policy potentially vulnerable to lawsuits, bankruptcy proceeding or a divorce settlement. |
| **Adverse Tax Implications for the Owner** |
| If the owner of the policy predeceases the insured, then the current value of the policy will be included in the owner's estate. This can sometimes pose a problem. |
| **Difficulty Finding a Suitable Owner** |
| Quite simply, there may not be an individual known to the insured who is mature enough or trustworthy enough to fulfill this role. |

## The Irrevocable Life Insurance Trust

Similar to an individual, ownership of insurance by a trust is achieved either by having the trust purchase the policy or absolutely assigning the policy to the trust. If a pre-existing policy is assigned to the trust, then the same three-year rule applies.

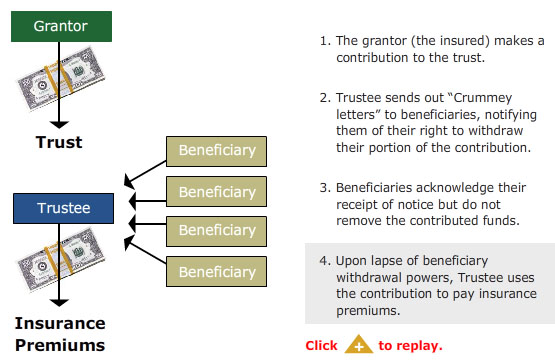
The trust MUST be irrevocable. An irrevocable trust cannot be altered once it is established. This is necessary so that the owner will never have any control over decisions that are made regarding the policy. If this were not the case, the policy might be includable in the insured's estate because he or she retained an incident of ownership. For similar reasons, the insured must not be the trustee. It is also advisable for the insured's spouse to not be trustee.

This type of trust arrangement, where an irrevocable trust is named as both the owner and beneficiary of an insurance policy, is known as an Irrevocable Life Insurance Trust (ILIT). Alternatively, such trusts are often referred to as Wealth Replacement Trusts or Asset Replacement Trusts because they are used to replace some of the wealth or assets that are eroded by estate taxes. They can be an excellent means of providing liquidity for an estate, which may be needed to pay estate taxes, while keeping the insurance itself out of the estate.

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| One potential problem exists with an ILIT. If money must be contributed to the trust each year to fund premium payments, such contributions to an irrevocable trust do not typically qualify for the annual gift tax exclusion, and a gift tax return would have to be filed. However, there is common resolution to this issue. Without getting overly technical, the answer is to give a number of beneficiaries a temporary power to remove the contributed funds each year. Of course they need to not remove the funds if they are to be there to pay the premiums, but because these individuals have the power to take receipt of the money, even though their right is temporary, the gift to the trust will qualify for the annual gift tax exclusion. A landmark case by a family with the last name of Crummey established that this power is sufficient to qualify for the annual gift tax exclusion, hence these temporary powers of removal are referred to as Crummey powers and the trust itself is referred to as a Crummey Trust. |

## How an Irrevocable Life Insurance Trust Works

Here is how an irrevocable trust with Crummey powers works each year as contributions are made to make the premiums.



## Why the ILIT is a Better Solution

The irrevocable life insurance trust is a better solution because it specifically addresses each of the problems that were identified in having another individual be the owner of the policy. **Click each benefit below to learn more.**

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| **Control** |
| Trusts are extremely flexible documents, and can be drawn to accomplish virtually any goal. The desire might be to provide income for the surviving spouse, with the remainder to the children upon the surviving spouse's death. It might be to provide liquidity with which to pay estate taxes. Or it might be to prevent the beneficiaries from receiving the insurance proceeds prior to a specific age. Thus the grantor, who forever surrenders the ability to make future changes to the trust, yet maintains control regarding the ultimate purpose and use of the funds, forever binds the trustee to comply with the terms of the trust. |
| **Protection of Trust Assets** |
| The assets of the trust are separate and distinct from the trustee's other assets. Thus, they are protected from creditor's claims against the trustee's own assets. |
| **No Adverse Tax Implications for Trustee** |
| The trust is a unique tax entity, distinct from both the insured and the trustee. If the trustee dies, the policy is not part of the trustee’s estate and therefore has no adverse impact upon the trustee’s estate. |
| **Abundance of Suitable Trustees** |
| Because the trust document is a legal document, binding the trustee to follow the directions of the trust, the insured has many choices regarding selection of a trustee. The insured may select any responsible individual or group of individuals to act as trustee, or may select an institutional trustee. In short, the insured is placing his or her trust in the law, not in an individual. Furthermore, the insured does not have to worry about being predeceased by the trustee. Since trusts never die, a successor trustee would simply be appointed to continue administering the trust. |

## Review Exercise

Select the correct answer for each of the following questions. If more than one answer is correct, then select the BEST or most complete answer.

1. The simplest way to keep life insurance out of your estate is to:

* Not own it

**Correct!**

* Not be named as a beneficiary

**Incorrect.**

* Not be able to name a beneficiary

**Incorrect.**

* Not be able to borrow against the policy

**Incorrect.**

1. Which of the following is an incident of ownership:

* Ability to change beneficiaries

**Incorrect.**

* Ability to cash in the policy

**Incorrect.**

* Ability to borrow against the policy

**Incorrect.**

* All the above

**Correct!**

1. The three-year rule states that insurance must be transferred within three years of purchase if it is to be excluded from the owner's estate.

* True

**Incorrect.** The three-year rule has nothing to do with when a policy was purchased. Rather, it is relative to when the policy was transferred to another owner.

* False

**Correct.** The three-year rule has nothing to do with when a policy was purchased. Rather, it is relative to when the policy was transferred to another owner.

1. For contributions to an ILIT to qualify for the annual gift tax exclusion, the trust must be a:

* Pour Over Trust

**Incorrect.**

* Power of Attorney Trust

**Incorrect.**

* Crummey Trust

**Correct!**

## Conclusion

This concludes the material for this subject. At this time, you may return to any sections in which you feel the need for further study. As you do so, keep in mind that your role as a financial advisor is not to give estate planning advice. Rather, your role is to gather information from clients regarding their financial assets, personal concerns, and personal goals. From this information, you can draw upon your knowledge, or work with other professionals on your team, to identify potential client needs. You can then assist your client in addressing those needs with estate planning professionals.

In other words, your primary role in the area of estate planning is to ask questions and to listen. What questions? As you go back through this material, you will recognize many areas where clients might have potential needs or where there may strategies to help them achieve their goals. As you encounter these areas, ask yourself, "What questions will I ask to surface whether or not this need exists?" Over time, you will develop your own list, but to help you get started, here are some initial areas to explore:

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| **Key Areas of Inquiry**   * Family information – Who are the family members? What are their ages? What concerns are associated with them? * Legacy goals – What do clients want to have happen with their wealth after they have died? * Current estate plan - What estate planning have they already done? How does it help accomplish their goals? * Health status - Are there concerns about maintaining independence or control in case of incapacity? Are there concerns about an untimely death or a child/grandchild with special needs? * Assets - What are the assets of both spouses and how are they titled? Are there any beneficiary designations? * Life insurance - What life insurance does the client or spouse own? Is the client currently insurable? * Lifetime gifts - Has the client been making lifetime gifts? Is the client open to making lifetime gifts if there is need to reduce estate tax exposure? * Philanthropic interests - Does the client have a desire to give to charity? Have any plans to do so? |