



# Family Legacy Protection Planner

## THE LIFETIME QTIP TRUST OR HOW TO MAINTAIN CONTROL OF YOUR ESTATE AND KEEP SPOUSE NO. 2 HAPPY

Estate planning for couples in a second or later marriage can be tricky, particularly when one spouse is significantly wealthier than the other. One solution for allowing the well-to-do spouse to maintain control of his or her assets but keep the other spouse happy is the Lifetime QTIP Trust. In this issue, you will learn what a Lifetime QTIP is and the multiple benefits this special type of trust can provide to you and your spouse if you have lopsided estates.

### The Basics of Creating a Lifetime QTIP Trust

In the estate planning world a “QTIP Trust” has nothing to do with those handy cotton swabs used for cleaning ears, applying cosmetics, or making children’s crafts. Instead it refers to “Qualified Terminable Interest Property Trust,” which is a fancy term for a type of trust that allows a wealthier spouse to transfer an unrestricted amount of assets into trust for the benefit of a less wealthy spouse free from estate and gift taxes.

Many married couples have estate plans that make use of a QTIP Trust after the death of one spouse using the so-called “AB Trust” strategy. After the first spouse dies, the “B Trust” holds an amount equal to the federal estate tax exemption (\$5.43 million in 2015) and the “A Trust” holds the excess. Under this strategy the “A Trust” is in fact a “QTIP Trust” which qualifies for the unlimited marital deduction, meaning that property passing into the trust will not be subject to estate taxes until the surviving spouse dies.

Here is an example: Fred and Susan have both had previous marriages. Fred has two children from his prior marriage and Susan has three, and their estates are disproportionate – Fred is worth \$2 million and Sue is worth \$10 million. With the AB Trust strategy, if Susan dies first the B Trust is funded with \$5.43 million and the A Trust is funded with \$4.57 million. No estate tax will be due at Susan’s death since the B Trust uses up her federal estate tax exemption and the A Trust qualifies for the unlimited marital deduction. In addition, when Fred later dies, the A and B Trusts can be drafted so that what is left passes exclusively to Susan’s three children (or whomever else she

chooses, much to the chagrin of Fred's children).

What if instead of creating and funding the QTIP Trust *after* Susan dies, she creates and funds the QTIP Trust for Fred's benefit with tax free gifts *while she is still alive*? This is the "Lifetime QTIP Trust."

**Planning Tip:** QTIP Trusts created during life or after death must meet certain requirements to qualify for the unlimited marital deduction.

- The trust must be irrevocable.
- The Lifetime QTIP Trust must be created for the benefit of a spouse who is a U.S. citizen – there is no such thing as a "Lifetime QDOT."
- The spouse must be entitled to receive all of the net income from the trust at least annually.
- The spouse must have the right to demand that non-income producing property be converted into income-producing property.
- The spouse must be the only one who has the power to appoint trust property.
- For Lifetime QTIP Trusts, a federal gift tax return (Form 709) must be timely filed. Form 709 is due on or before April 15 of the year following the year a gift is made to the trust.
- The spouse does not need to have a right to distributions of principal from the trust although they are permitted.
- A Lifetime QTIP Trust can provide that if the beneficiary spouse dies first, the grantor spouse can become the income and principal beneficiary and the trust assets will be excluded from the grantor spouse's estate. (Yes, you read that correctly.)

While at first glance QTIP Trusts may appear to be restrictive due to their multiple technical requirements, in reality they are quite flexible and will work well in a variety of situations.

### **Planning With a Lifetime QTIP Trust Offers a Multitude of Benefits**

Outright gifts to your spouse during life or after death lead to total loss of control. If you and your spouse have lopsided estates and families from prior marriages, the problem is exacerbated by the difference in your wealth – while the well-to-do spouse will be just fine if the less wealthy spouse dies first, the opposite is not true. If you and your spouse are in this situation, a Lifetime QTIP Trust offers the following benefits:

- The wealthy spouse can create and fund a Lifetime QTIP Trust without using any gift tax exemption.
- Unlike the estate tax exemption, the generation-skipping transfer tax exemption is not portable. A Lifetime QTIP Trust can provide an opportunity to make use of the less well-to-do spouse's generation-skipping tax exemption.
- During the less wealthy spouse's lifetime, he or she will receive all of the trust income and may be entitled to receive trust principal for limited purposes.
- When the less wealthy spouse dies, the assets remaining in the trust will be included in his or her estate, thereby making use of the less wealthy spouse's otherwise unused federal estate tax exemption.
- If the less wealthy spouse dies first, the remaining trust property can continue in an asset-protected, lifetime trust for the wealthy spouse's benefit (subject to applicable state law) and the remainder will be excluded from the wealthy spouse's estate when he or she dies.
- After both spouses die, the balance of the trust will pass to the wealthy spouse's children and grandchildren or other beneficiaries chosen by the wealthy spouse.

**Planning Tip:** As with other types of estate planning, Lifetime QTIP Trusts are not "one size fits all" and must be specifically tailored to each couple's unique family dynamics and financial situation. In addition, only an attorney experienced in implementing advanced estate planning

techniques should draft your Lifetime QTIP Trust.

### **Do You and Your Spouse Need a Lifetime QTIP Trust?**

While a Lifetime QTIP Trust is a good alternative to outright gifts, not all married couples will benefit from this type of planning. Please call our firm if you and your spouse are in a second or later marriage or have uneven assets. We will help you determine what will work best for your family.

## **ENSURE YOUR FAMILY IS PROTECTED**

If you want to ensure that your family is protected, please schedule your complimentary Estate Planning Strategy Call with San Francisco's premier estate planning attorney, Matthew J. Tuller.

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