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ESTATE OF THE UNION

A Newsletter from the team at Stanziola Estate Law

March 2023

THE BENEFITS OF A MARITAL TRUST



A marital trust is a document that spouses can implement for the benefit of the surviving spouse and their descendants. This document takes effect upon the death of the first spouse, at which time the married couples' assets are moved into the trust for the benefit of the surviving spouse. At the death of the surviving spouse, assets move into a descendants trust for the benefit of the married couple's children. For as long as the trust is funded, assets will pass lineally (unless otherwise designed) for the benefit of the descendants of the married couple from children to grandchildren and so on.

There are a few key benefits of implementing marital trusts as opposed to allowing assets to pass outright:

1. Avoid Probate

Probate is the formal judicial process in which the court oversees the personal representative of the will administer the estate and distribute assets to the intended beneficiaries. Probate court is not the best way for loved ones to administer the estate of the deceased as it is a tedious, public, and expensive process. A marital trust allows for the assets of the decedent to be distributed just as intended according to the decedent's will without the probate process. If assets are titled correctly to go through the trust at the death of the surviving spouse, no asset will be required to go through probate court.

2. Certainty of Distribution

Another benefit to implementing a marital trust is the certainty of distribution at the second death. If the surviving spouse remarries, assets in a marital trust will not get mixed up with another family but rather will be distributed to the children who were initially intended to be the beneficiaries of those assets.

4. QTIP Protection

A QTIP (qualified terminable interest property) marital trust allows an individual to leave assets for the benefit of the surviving spouse and qualify for the unlimited marital deduction thereby avoiding the payment of estate taxes even for sizable estates at the first death. It also provides flexibility for the surviving spouse to determine if funds should not flow into the marital trust if this would create an estate tax liability at the second death. Instead, a QTIP election could be made to distribute some or all of the assets to a family trust that will not be included in the estate of the second spouse. The spouse does not really give up anything since the family trust provides income and principal to the surviving spouse if needed for support. The main benefit is avoiding estate tax on the appreciation on the assets at the second death.

3. Asset Protection

A marital trust provides asset protection for the surviving spouse. Creditors cannot get at the assets within the marital trust, thereby shielding those assets from outside influences for the benefit of the children.

5. Management Vehicle For Surviving Spouse

At the first death, the marital trust not only provides asset protection but can also provide a management vehicle for the surviving spouse. In other words, if the spouse is not adept at dealing with financial matters, an independent trustee could be appointed for providing the necessary expertise with these types of matters.

In summary, not only does a marital trust provide each spouse peace of mind that any assets they leave behind will be there to support those intended, but it also alleviates the burden on families as they mourn the loss of their loved one by making the estate administration private, straightforward, and inexpensive. The QTIP election provides flexibility to avoid estate taxes, establishes a management vehicle for the spouse, and brings certainty to the distribution of assets to heirs at the second death.



Don't have an estate plan in place? Are you wondering if your current estate plan is subjecting any of your assets to probate? Are you unsure of the next steps? Please contact us at Stanziola Estate Law for a complimentary estate evaluation so we can help determine what options are right for you!

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Note: The contents of this newsletter are intended to be informational; under no circumstances should this be interpreted as legal advice.