

Protecting the Surviving Spouse

(Part 2 of 2)

In Part 1 of this article, we noted that leaving money and property to a surviving spouse within a marital trust can avoid probate, conservatorship, and a measure of creditor protection. We also noted that it provides help for the surviving spouse who may not have experience with financial matters.

Giving a Surviving Spouse the Ability to Say “No”

In addition to these benefits, the presence of a trustee often provides, indirectly, another important benefit – the ability for the surviving spouse to say “no.”

By leaving property outright to a spouse, they can find themselves in a difficult position when it comes time to face relatives or friends who feel they should share in the survivor’s “new-found wealth.”

With the property in a marital trust, a surviving spouse can truthfully say that because the property is in a trust, the trustee must give approval to all transactions. We typically recommend that the surviving spouse not be a sole trustee – to maximize creditor protection. However, this is another example of why co-trustees are often beneficial. The hard decisions, such as saying “no” can be delegated to the non-spouse trustee.

Traditionally, spouses have been wary of having property “tied up” in a trust. This fear is unwarranted. A marital trust can be as liberal as the client desires. A marital trust can give the surviving spouse a broad selection of rights such as: to receive all the income from the trust property; to remove trust property at any time; to receive trust property if disabled, etc.

The marital trust will contain instructions based on the clients’ motives. Clients can be liberal and allow the surviving spouse full control over the property, or they may choose to restrict each other’s use of the property to income only after the first death.

The only restraint is individual state law, which may stipulate that certain amounts are guaranteed to a surviving spouse on the first spouse’s death.

Useful in tax planning

Marital trusts can also be used to accomplish maximum federal estate tax planning. Sometimes one, two, or even more marital trusts are created to ensure that the lowest federal and state death taxes are paid at both the first and second spouse’s death. Leaving assets to a spouse in a marital trust qualifies for the estate tax Unlimited Marital Deduction.

In summary, leaving property to a surviving spouse outright is a planning tactic that should always be avoided. By leaving money and property to a spouse in a marital trust, the first spouse to die can help the surviving spouse cope with or even avoid many problems. By using proven planning techniques, professional advisors can help the client design a marital trust that will care for a surviving spouse on the basis of individual planning needs and desires.

In our next issue, we’ll discuss ways to provide similar protections to children of all ages.



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