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Financial Briefs

MARCH 2008

Do You Need a Trust?

Trusts are often viewed as estate planning tools used to reduce estate taxes. With the changing estate tax situation, does that mean that trusts are no longer needed for estate planning purposes? The answer is probably not, for a couple of reasons. First, estate taxes are only scheduled to be repealed in 2010. They will be reinstated in 2011 based on 2001 tax laws. Second, trusts are established for many purposes, not just to reduce estate taxes. Some of the more commonly used trusts include:

Revocable living trust — This trust is established for reasons other than the reduction of estate taxes. With a revocable living trust, ownership of assets is transferred to the trust while you are alive. You can keep any or all of the income, act as trustee, change the trust's provisions, or terminate the trust. A successor trustee can be named to take over if you become mentally or physically disabled. Assets in the trust are controlled by the trust agreement and are not subject to probate proceedings, which is considered one of its major advantages.

Bypass or credit shelter trust — Generally, this trust is used to ensure both spouses take advantage of the estate tax exclusion amount, without directly transferring assets to other beneficiaries until both spouses have died. Assets equal to the estate tax exclusion amount are placed in trust after your death.

Your spouse may then use the income, and in certain circumstances, some of the trust's principal, with the remaining assets transferred to your other beneficiaries after your spouse's death. Make sure to review the amounts that will be placed in the trust. With the exclusion amount currently at \$2,000,000 and scheduled to increase to \$3,500,000 in 2009, these amounts may exceed the amount you want in the credit shelter trust.

Qualified terminable interest property (QTIP) trust — This trust is typically used when the spouse

wants to control the use of any remaining assets that are not placed in the bypass or credit shelter trust. Assets that are not placed in the credit shelter trust can be placed in the QTIP trust. Income from the trust is distributed annually to the surviving spouse during his/her lifetime. This trust qualifies for the unlimited marital deduction, so estate taxes will not be paid after the first spouse's death. After the surviving spouse's death, the principal is distributed to beneficiaries previously designated by the first spouse.

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Following Through with Your Estate Plan

Usually, a great deal of thought and effort goes into estate planning documents. You need to consider all your assets, decide who should receive those assets, and find the best strategies to accomplish your goals. However, your work isn't over once you've signed those documents. You need to make sure your assets are properly positioned to go to your intended beneficiaries. Some problems to look out for include:

- **Your assets aren't titled properly to fund trusts.** A common estate planning strategy used to preserve your estate tax exclusion is to set up a credit shelter or bypass trust. Assets up to the estate tax exclusion amount (\$2,000,000

in 2008, scheduled to increase to \$3,500,000 in 2009) are placed in a trust. Your spouse can then use the income and even some of the principal, with the remaining assets distributed to your beneficiaries after your spouse's death. To fund the trust, however, you need sufficient assets titled only in your name. Assets jointly owned with your spouse will typically pass directly to your spouse and cannot be placed in the trust. However, you may want to split assets so each of you individually owns assets designated to go into the trust. Residents of community property

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Do You Need?

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A QTIP trust is often used to protect children from a previous marriage or to ensure that if a surviving spouse remarries, his/her new spouse does not inherit any of the assets.

Irrevocable life insurance trust (ILIT) — This trust is used to ensure that the proceeds from a life insurance policy are not subject to estate taxes. Often, the insurance policy is obtained to help pay estate taxes, with the policy owned by the irrevocable trust. Annually, you can make gifts to the trust so the trustee can pay the policy premium. After your death, the trust receives the insurance proceeds, distributing them in accordance with the trust's terms. With the uncertain future of estate taxes, you may wonder whether ILITs are still a valid estate planning strategy. You probably don't want to undo any ILITs in place, since the estate tax won't be fully repealed until 2010 and will be reinstated in 2011. Even if the proceeds aren't needed for estate tax purposes, you may find other uses for the proceeds, such as leaving larger bequests to beneficiaries or charitable organizations. Deciding whether to set up a new ILIT is a tougher decision. You should first analyze all relevant factors, including your views about the future of the estate tax.

Charitable remainder trust — Typically, this trust is used to provide a large charitable contribution while avoiding a large capital gains tax bill. You transfer an asset to the trust, typically one with a low basis that has appreciated significantly. Since the trust is a tax-exempt organization, it can then sell the asset without paying any capital gains taxes and reinvest the proceeds. You receive an immediate income tax charitable deduction equal to the present value of the property the charity will receive when the trust is terminated. You also receive distributions of income from the trust, with the principal going to the

The Importance of Using a Disclaimer Provision

The estate tax exclusion amount increased to \$2,000,000 in 2006 and will increase again to \$3,500,000 in 2009. The estate tax will be repealed in 2010, only to be reinstated again in 2011 with an estate tax exclusion amount of \$1,000,000. Because the amounts are currently so large and keep changing, this complicates estate planning. Many people want to take advantage of the estate tax exclusion amount, but they don't want to leave too little outright to a spouse or other beneficiaries.

For instance, assume your estate is currently valued at \$4,000,000, and your estate plan places assets equal to the exclusion amount in a trust for the benefit of your children, with the remainder distributed outright to your spouse. If you die in 2008, your spouse would receive \$2,000,000, but that amount would be reduced to \$500,000 if you die in 2009.

Adding a disclaimer provision to your estate planning documents can give your beneficiaries the ability to determine how to split assets after your death. A disclaimer details what happens if one of your heirs disclaims his/her inheritance. That way, your beneficiaries can decide after your death how much should be placed in various trusts. For instance, a husband can leave all his assets to his wife with the condition that any disclaimed assets go into a trust paying her in-

come for life, then giving the principal to their children after her death. This gives the wife the opportunity to divide assets based on her needs and wishes at the time of her husband's death. The disclaimer provision allows you to determine what will happen to disclaimed assets. Before using a disclaimer, you should make sure that you understand the implications for your estate plan.

For a disclaimer to be legally valid, it must comply with both federal and state guidelines. Federal guidelines include:

- The disclaimer must be a written, irrevocable, unconditional refusal to receive a full or partial interest in the bequest.
- The disclaimer must be received by the estate within nine months of the benefactor's death.
- The person disclaiming the assets cannot receive any benefit from those assets, such as dividends from stocks.
- The person disclaiming the assets cannot designate who will receive the disclaimed property. The recipient will be determined by the terms of a trust, will, or state law when there are no estate planning documents. The disclaimed inheritance cannot go into a trust benefiting the person making the disclaimer, unless that person is the decedent's spouse. ■■■

charity after the trust terminates.

Qualified personal residence trust — With this trust, you place your home or vacation home in an irrevocable trust, retaining the right to live in the home for a specified number of years. When the trust terminates, ownership passes to your beneficiaries. The gift tax value is determined on the date the house is placed in trust by calculating the pre-

sent value discounted over the trust's term. If you die before the trust ends, the home is included in your estate at its fair market value. Since present value calculations are used to determine the gift's value, this trust allows you to leverage the use of your \$1,000,000 lifetime gift tax exclusion.

If you'd like to discuss trusts in more detail, including how they may fit in your estate plan, please call. ■■■

Following Through

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states should review their state laws carefully, since they typically have more flexibility when using assets to fund trusts.

- **Beneficiary designations contradict your estate planning documents.** Assets like life insurance, annuities, 401(k) plans, and individual retirement accounts pass directly to named beneficiaries. Provisions in your will and other estate planning documents cannot change those designations. Thus, review all your beneficiary designations to ensure those designations are compatible with your estate plan. Also review contingent beneficiaries, in case a beneficiary dies before you. After significant changes in your life, such as a divorce, remarriage, spouse's death, or child's or grandchild's birth, review your designations to see if changes are warranted.

- **Owning assets jointly with just one child.** Often, a widow or widower will add one child to bank accounts, brokerage accounts, deeds, and titles so that child can help manage the assets if he/she becomes incapacitated. The widow or widower expects the child to share the assets with his/her siblings. However, the asset is considered a gift to the one child. For that child to split the asset with his/her siblings, he/she will have to make gifts to those siblings, possibly raising gift tax implications. Instead, consider using a power of attorney, so the one child can help with your financial affairs. Or, make a provision in your estate planning documents that adjusts distributions for any assets that pass to one heir through joint ownership.

Please call if you'd like to discuss coordinating your assets with your estate plan. ■■■

Do You Have a Will?

If you don't, you aren't alone. A recent survey found that 55% of Americans do not have a will (Source: LexisNexis, April 3, 2007). Approximately 24% of adults say the main reason they don't have a will is because they don't have sufficient assets. However, this is not a valid reason for not preparing a will. Consider what could happen if you die without a will:

The state decides who receives your assets. Jointly-owned property goes to the co-owner, while assets with named beneficiaries go to the designated beneficiaries. The remainder of your estate will be distributed in accordance with state law. In most states, that means your children will receive one-half to two-thirds of your estate, with your spouse receiving the balance. All of your children will be treated equally, even if you prefer leaving more to a minor child or to a child with special needs. If you don't have children, your assets will normally be divided between your spouse and your parents or siblings. This can result in unintended outcomes. Often, the state's method of distributing your estate will not coincide with your wishes.

The court will name a guardian for your minor children. One of the most important reasons for a couple with minor children to prepare a will is to name a guardian for minor children. You can also specify when children will receive assets or set up a trust to control the distribution of those assets. Without a will, your children will typically inherit assets when they reach age 18, even if they aren't capable of managing those assets.

Your estate may pay more in estate taxes. By deciding who receives which assets, you can ensure that your estate tax exclusion

amount (\$2,000,000 in 2008, increasing to \$3,500,000 in 2009) is properly utilized, typically reducing estate taxes.

The court will appoint your estate's executor. The executor locates and values all assets, manages and invests assets during the probate process, pays the estate's obligations, prepares and files tax returns, and distributes the assets.

Even if you have a living trust or other trust that controls the majority of your assets, you'll probably still need a will with a pour-over clause, requesting that all property not in your trust be placed there after death.

Some tips to consider before preparing a will include:

- Distributions should be specified in terms of percentages of your estate rather than fixed dollar amounts, since your estate may grow or shrink over the years.
- Jointly owned property and assets with named beneficiaries cannot be disposed of through a will.
- List contingent beneficiaries in case your primary beneficiaries die. You may want to name a charity as your contingent beneficiary to ensure all your assets can be disposed.
- Most states allow spouses to opt for a minimum percentage of your estate, typically one-third to one-half, despite what your will indicates. Usually, the only way to change that percentage is to have a prenuptial or nuptial agreement.
- Review your will periodically to ensure you are satisfied with the provisions and that changes aren't needed. ■■■

Business Data



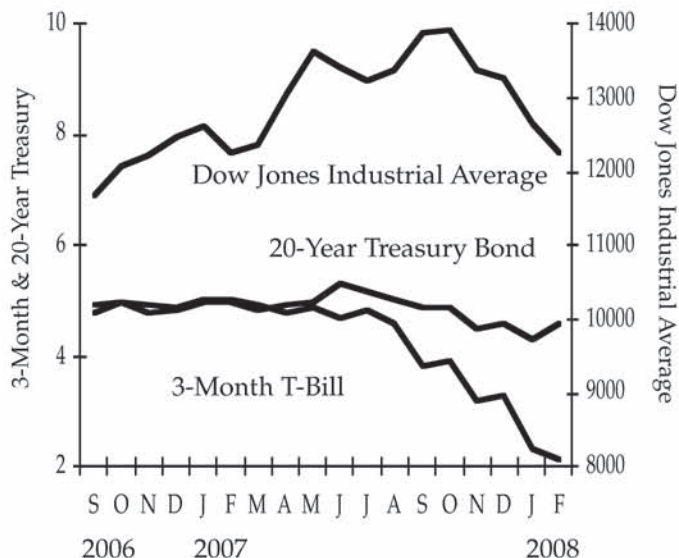
Indicator	Month-end				
	Dec-07	Jan-08	Feb-08	Dec-06	Feb-07
Prime rate	7.25	6.00	6.00	8.25	8.25
3-month T-bill yield	3.28	2.34	2.16	4.88	5.04
10-year T-note yield	4.12	3.72	3.85	4.60	4.75
20-year T-bond yield	4.58	4.32	4.58	4.82	4.95
Dow Jones Corp.	5.89	5.44	5.40	5.71	5.67
GDP (adj. annual rate)#	+3.80	+4.90	+0.60	+2.60	+2.50

Indicator	Month-end			% Change	
	Dec-07	Jan-08	Feb-08	YTD 12-Mon.	
Dow Jones Industrials	13264.82	12650.36	12266.39	-7.5%	—%
Standard & Poor's 500	1468.36	1378.55	1330.63	-9.4%	-5.4%
Nasdaq Composite	2652.28	2389.86	2271.48	-14.4%	-6.0%
Gold	833.75	923.25	971.50	16.5%	46.3%
Unemployment rate@	4.70	5.00	4.90	-2.0%	8.9%
Consumer price index@	210.20	210.00	211.10	0.5%	3.7%
Index of leading ind.@	136.80	136.00	135.80	-0.5%	-1.0%

— 2nd, 3rd, 4th quarter @ — Nov, Dec, Jan

Sources: *Barron's*, *Wall Street Journal*

18-Month Summary of Dow Jones Industrial Average, 3-Month T-Bill & 20-Year Treasury Bond Yield September 2006 to February 2008



News and Announcements

The Basics of Intentionally Defective Trusts

For those with large estates, a primary goal of estate planning is to move assets outside the estate to minimize potential estate taxes. Moving sizable assets, however, often results in paying significant gift taxes. One strategy that accomplishes that goal without paying gift taxes is the use of an intentionally defective grantor trust.

An intentionally defective grantor trust is an irrevocable trust designed to trigger the grantor trust rules, thus allowing the grantor, rather than the trust, to pay income taxes on trust income. Assets can be moved to the trust through gifts or sales, thus removing the assets and any future appreciation from the grantor's estate. Larger gifts may trigger use of your lifetime gift tax exclusion or the payment of gift taxes. Selling the assets to the trust and paying interest income on an installment sale are not taxable events. Since the defective trust is considered an extension of the grantor, these are

considered transactions with the grantor.

Any outside income generated by the trust is taxable to the grantor. Since the grantor is required to pay the tax on this income, it is considered a legal obligation and not a gift. Thus, all trust earnings can accumulate inside the trust for the beneficiaries' benefit.

There is no step-up in basis when the assets are transferred or sold to the trust. Thus, while the grantor uses this trust to reduce estate taxes, heirs may find themselves faced with high capital gains taxes. However, the capital gains taxes aren't owed until the asset is actually sold. Also, if the asset is real estate, beneficiaries may be able to perform a Section 1031 like-kind exchange to defer gains.

To use this type of trust, the trust document must be drafted to invoke the grantor trust rules. Several conditions can accomplish this.

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