

## **LAW REVIEW**

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### **LAST OF THE ESTATE PLANNING COLUMNS--FINALLY**

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Well the good news is that this is the last of our estate planning columns. As boring as they may be, I received a surprisingly positive response from readers who know they and their parents need to plan their estates, even small asset estates.

Today's column is about revocable living trusts and charitable trusts.

#### **Revocable Living Trusts**

Revocable living trusts are a big part of our estate planning department's practice. I will keep this simple, and believe me that is easy to do because I am way over my head when talking about trusts. Here is how Kelley Carroll, our certified estate planning specialist, explained it to me.

Husband and Wife put their assets in the name of the Family Trust. Nothing really changes but the title to real estate is deeded into the name of the Family Trust. Checking, savings, investment accounts, etc. are held in the name of the Family Trust.

Husband dies (why is it always the husband first?). At that point half of the assets are put into the Husband's side of the Family Trust and the trust becomes irrevocable, meaning it's locked in. This provides some protection from creditors and from the surviving spouse later giving Husband's half of the Family

Trust to a new husband. As long as Husband's share is worth less than his federal estate tax credit (\$3,500,000 in 2009) there is no tax payable. Wife receives any income from Husband's half of the Family Trust and manages all of the family assets including the Husband's half which is held in trust for the kids.

Here's the advantage. Without a trust, if Husband had left his entire half share to Wife as is typical without a trust, at her death all of the assets are exposed to tax, and only her exemption can protect the kids from the IRS. If there is a trust, only half of the family assets are taxed at Wife's death, making it more likely that her exemption will protect the entire amount from tax. Husband's share, as mentioned above, is protected from tax at his earlier death, and the kids don't pay anything to the IRS. That is the point. Got that?

Another advantage to a revocable living trust is you will almost always be able to avoid the dreaded probate process. Since California law requires a probate for any estate worth more than \$100,000, even modest estates can benefit from being held in a revocable trust. Administering the trust after death is generally much less expensive, and much quicker, than probating a will.

From personal experience I can tell you it works. A few months before my Dad died in 1979, my law school buddy set up the Porter Family Trust. That saved my Dad's half of the modest Porter Family Estate from being taxed twice, first when it went to my Mom, then again when it goes from my Mom to the cute Porter kids.

## Charitable Trusts

Charitable trusts are designed to help you preserve and transfer wealth to your family and at the same time make a non-profit contribution.

When we die the government can get a chunk of our hard earned money. The trick is to convert the part of your estate that Uncle Sam normally gets -- some call it "social capital" -- into contributions that improve your community, and save taxes while doing it. And it's not necessarily an either/or situation, either the family gets the money or it goes to charity.

Charitable contributions aren't just for the rich. The tax breaks are significant--deductions of up to fifty percent of adjusted gross income, which looks pretty decent when compared to estate taxes as high as forty-five percent.

Here's how a charitable trust works. You have appreciated stock (you used to), that if you sell will create a huge capital gains tax. So you give stock to a charity through a trust; when the trust sells the same asset, it won't pay tax, so there's more to invest after the sale. If you need cash flow, keep the income from the stock for yourself during your lifetime, also through the trust. You get a tax deduction at the market value of the stock less the value of the income you keep, if any. You can take out a life insurance policy on yourself for your kid's benefit, perhaps funded by some of the income you get from the trust, to replace the value of the stock at your death. If this is also set up correctly, the insurance proceeds are also exempt from estate tax when you die. What a deal.

You avoid paying capital gains tax, create an income for your life and dramatically reduce estate taxes, while making a sizeable donation to your

favorite charity rather than the IRS. It beats two other options: leaving the stock or (real estate) to your kids and paying merciless taxes, and when they sell, paying taxes again, or selling the stock and leaving the money to your kids and paying taxes twice.

Like everything else, the hardest step is the first. You should confer with an expert, which I am not, or talk to a non-profit like the Truckee Tahoe Community Foundation. I encourage you to do so. When you do, I will stop writing these estate planning columns.

HERE'S TO A PEACEFUL, PROSPEROUS AND HEALTHY NEW YEAR.

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