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CORE ESTATE PLANNING DOCUMENTS **FOR MARRIED COUPLES**

Basic estate planning for married couples in most instances is in some respects driven by the size of the family's assets in relation to the Applicable Exemption Amount then in effect.

- In 2009, the Applicable Exemption Amount was \$3,500,000. There is no estate tax in 2010. In 2011, the Applicable Exemption Amount is scheduled to be \$1,000,000.
- If a couple is confident that their total assets will not exceed the Application Exclusion Amount, as a general rule, no tax planning is necessary and a simple Will leaving all to the surviving spouse will be sufficient from an estate tax standpoint.
- If a couple's assets exceed the Applicable Exclusion Amount, estate tax planning is necessary. For example, if the family's assets exceed \$1,000,000 in value and death occurs in 2011, a simple Will leaving everything to the surviving spouse is not tax-efficient.
- While all property can be left to the surviving spouse at the first death without causing any estate tax because of the unlimited Marital Deduction, if the surviving spouse dies at a later date owning assets in excess of the Applicable Exemption Amount, there will be an unnecessary federal estate tax due on the estate of the second spouse to die.

In order to avoid or minimize the federal estate taxes in a situation where the family's wealth exceeds the amount of one Applicable Exemption Amount, an approach referred to as "A-B Planning" has been the traditional approach:

- At the first death, the estate is divided into Share A and Share B, with Share A (sometimes called a Family Share, a Bypass Share or an Exemption Equivalent Share) being equal to the amount that can pass free of estate tax under the Applicable Exemption (\$1,000,000 in 2011). Share B (the Marital Share) would be the balance of the estate.
- Since Share A is equal to the amount that can pass free of tax, it is left in a trust that is not intended to qualify for the Marital Deduction and will not be taxed as part of the surviving spouse's estate at his/her later death, but the trust for Share A can be used for the benefit of the surviving spouse and/or children as long as the surviving spouse is living.
- The surviving spouse would benefit from Share A and Share B but only Share B (the Marital Share) would be taxable at the surviving spouse's later death.
- By using such marital deduction planning, the amount protected by the Applicable Exemption Amount is not taxed at the first death and it is not taxed at the death of the surviving spouse because he or she has limited rights in the trust holding Share A. These assets can pass to the children's generation with no estate tax.

- The family's assets that exceed one Applicable Exemption Amount are not taxed at the first death and are only taxed at the second death if the surviving spouse's taxable estate exceeds the Applicable Exemption Amount that is in effect at his/her death.

A Disclaimer Plan is simpler than an "A-B Plan".

- Because of the frequent changes that have taken place in recent years in the amount of the Applicable Exemption Amount, many couples with solid marriages have chosen to use a "Disclaimer Plan" rather than an "A-B Plan".
- With a Disclaimer Plan, the first spouse to die leaves all assets to the surviving spouse, with the proviso that if the surviving spouse chooses to "disclaim" (refuse to accept) any of the property that is left to him or her, the disclaimed property passes to a Family Trust (Bypass Trust or Exemption Equivalent Trust) just like the trust for Share A in the "A-B Plan".
- Under a Disclaimer Plan, a decision does not have to be made at the planning stage as to how much of the inheritance from the first spouse he or she will accept and how much he/she will allow to pass to the Bypass Trust.
- The surviving spouse can survey the situation at the time of the first death and determine whether it makes good tax and practical sense to let any property pass to the Bypass Trust.

Other Planning for Married Couples.

- In both the "A-B Plan" and the "Disclaimer Plan", the amount set aside for the surviving spouse (the "Marital Share") can pass outright to the surviving spouse or can be held in trust for the surviving spouse.
- Under both plans, trusts can be created for children and grandchildren containing specific ages at which they would receive control of their inheritances.
- These plans for married couples are usually contained in a Living Trust.
- In addition to a Living Trust, the core documents would include a relatively simple Pour-Over Will, together with a Durable Power of Attorney and Health Care Power of Attorney and Advance Directive.