

Gift Trusts

A Gift Trust is an estate planning tool to guarantee that the trust assets are passed outside of probate and are not factored into the overall taxable estate. Often used as an education trust.

A Gift Trust is irrevocable and offers many tax advantages over giving a gift directly, most notably on the growth of the assets. It also acts as a great asset protection trust as it protects the beneficiary from a divorcing spouse or creditor. Proper structuring of the trust is important.

If these same assets were gifted directly to the beneficiaries, they would retain the same basis as the Trustor had, and, in most cases, could owe considerably more in capital gains taxes.

Gifts that are in excess of the annual exclusions and lifetime applicable exclusion are subject to gift tax. The federal gift tax law says that every person can give a gift of up to \$15,000 each year to any individual without any gift taxes due. For instance, each parent can each give each of their children and grandchildren \$15,000 (two parents can give a total gift per recipient of \$30,000). These gifts are called *annual exclusion gifts* and they are completely excluded from the gift tax system. However, gifted assets will retain their original cost basis.

The number of gifts will be determined by the Trustor. There is no requirement that there be any gifts given at a specific time. A Trustor can make gifts to one beneficiary and not to any others. They may also add beneficiaries to the Trust at a later date.

The Trustor may elect to make gifts one year, and then not make gifts the following year. It is a very flexible plan.

Deciding to create a Gift Trust requires a careful assessment of the Trustor's objectives, family dynamics, assets, long term care and living needs.

Advantages of a Gift Trust

- ◆ Client may transfer assets of cash, stocks and bonds, or real estate
- ◆ Provides for the needs of the beneficiary while still controlling distribution and spending
- ◆ It's an Irrevocable trust – once the assets are in the trust, cannot be taken back - so not included in the taxable estate
- ◆ Gifted assets do NOT get step-up in basis
- ◆ Crummey trust – may gift up to \$15,000 per year per beneficiary per Trustor without gift taxes
- ◆ The Designation of Beneficiary form with this trust allows a lot of flexibility in gifting
- ◆ Income tax rate on growth is taxed at the beneficiary's rate which is lower than Trustor's
- ◆ This Trust can be used for education funding for children, grandchildren or other beneficiaries

DISCLAIMER

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