

2 postmortem estate planning strategies for married couples

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It's crucial to review and update your estate plan in light of significant life changes or new tax laws. It's equally important to be aware of strategies that can be implemented after your death to achieve your estate planning goals. The flexibility postmortem strategies provide is especially important during times of estate tax law uncertainty, like now. If you're married, here are two postmortem estate planning strategies you should know about.

1. Spousal right of election

The spousal right of election provides a way to alter the planned distribution of your wealth after you're gone. In most states, a surviving spouse has the right to circumvent his or her spouse's will and take an elective share (one-half or one-third, for instance) of certain property.

So, for example, let's say you leave all of your assets to your children or other beneficiaries. Your spouse might exercise his or her right of election if it would produce a more favorable tax outcome. Even if the federal estate tax is repealed, which is on the agenda of President Trump and the Republican majority in Congress, there may be state estate tax or income tax consequences to consider.

1. QTIP trust

Qualified terminable interest property ("QTIP") trusts are often used to take advantage of the marital deduction while ensuring that assets are preserved for the children (particularly children from a previous marriage). They also receive some creditor protection.

Ordinarily, to qualify for the marital deduction (which allows assets to transfer from one spouse to the other free of federal gift and estate tax), you must transfer assets to your spouse with no strings attached. The QTIP trust is an exception to this rule.

So long as your spouse receives all of the QTIP trust income for life and certain other requirements are met, your estate can enjoy the benefits of the marital deduction while still preserving assets for your children or other beneficiaries.

When your spouse dies, any remaining trust assets pass to your beneficiaries but are included in your spouse's taxable estate.

Here's where the postmortem planning comes in: To claim the marital deduction for amounts transferred to a QTIP trust, your executor (called a "personal representative" in some states) must make an election on your estate tax return. A properly designed QTIP trust gives your executor the flexibility to make the election, not make the election or make a partial election, depending on which strategy would produce the optimal results. Because a QTIP trust creates opportunities for postmortem estate planning, it may be a good strategy even if you don't need it to protect your children or assets.

Please contact us to learn more about postmortem estate planning strategies.

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The Law Office of Eugene Gorrin, LLC
17 Watchung Avenue, Suite 204
Chatham, NJ 07928
973.701.9300
egorrin@gorrinlaw.com
www.gorrinlaw.com