John Hancock
LIFE INSURANCE

SUCCESS STRATEGY

ESTATE PLANNING | Advanced Markets

Spousal Access Trusts

A "Flexible" Approach to Estate Planning

Married couples often create Irrevocable Life Insurance Trusts (ILITs) to replace income in the event of an untimely death, and to pay estate taxes and other expenses of estate administration.[1] ILITs have traditionally been an important vehicle for leveraging lifetime gifts with life insurance, and the trust will usually receive the life insurance death benefit free of income and estate taxes. However, a common complaint about ILITs is that both husband and wife lose the ability to access the life insurance policy's cash value during the insured's life. A Spousal Access Trust is a variation on a traditional ILIT that can provide flexibility and access for married clients who are buying a life insurance policy.

What is a Spousal Access Trust?

A Spousal Access Trust is a type of ILIT that enables the spouse of the trust grantor (the individual who establishes the trust) to receive distributions from the trust during his/her lifetime. A Spousal Access Trust names the spouse of the grantor, in addition to the children of the grantor, as trust beneficiaries. A Spousal Access Trust can be used with either a single life or a survivorship life insurance policy, and as long as the trust is drafted and administered correctly, it will also have the tax benefits of a traditional ILIT.

How It Works

You are allowed to make annual exclusion gifts up to $14,000 per person each year without having to pay gift taxes. You can use the annual exclusion gifts to fund an ILIT for the benefit of your spouse and children. The trust will own a life insurance policy and receive the death benefit free of estate and income taxes. The policy cash value will grow inside the trust on a tax-favored basis. The trust document will provide that distributions can be made from the trust to your spouse and children during your lifetime, usually for health, education, maintenance and support.[2]

In addition to the annual exclusion, the "American Taxpayer Relief Act of 2012" enacted a permanent set of estate, gift and generation-skipping transfer (GST) tax provisions with the exemption for gift, estate and GST purposes set at $5 million, indexed for inflation.

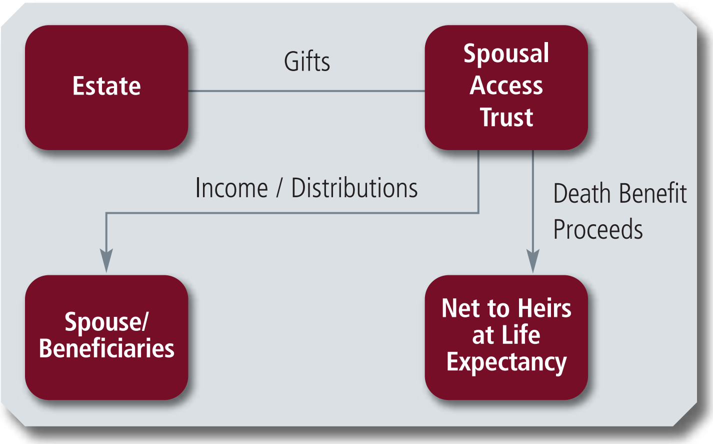
Benefits

- The trust will receive the death benefit free from income and estate taxes.
- An irrevocable trust can protect assets from creditors and protect your family's privacy.[3]
- When gifts are used to purchase life insurance, lifetime giving can increase the amount of money left for your heirs.
- A Spousal Access Trust allows distributions to the grantor's spouse and children during his/her lifetime, allowing access to the policy cash value.
- The trustee can make distributions to provide supplemental retirement income for the grantor's spouse via policy loans and withdrawals.

Considerations

- Transfers of assets to an ILIT are irrevocable, and may only be used for the benefit of the trust beneficiaries.
- Taking policy loans and withdrawals from a life insurance policy during the insured's lifetime can reduce the available death benefit, cash surrender value and may cause the policy to lapse.[4]
- Withdrawals and loans from life insurance policies classified as modified endowment contracts may be subject to income tax, and may also be subject to a federal tax penalty if the withdrawal or loan is taken prior to age 59½.

The chart below shows how the Spousal Access Trust works:



SUMMARY

A Spousal Access Trust can help provide flexibility for your estate plan by allowing your spouse access to policy cash values while potentially keeping the death benefit out of your estate.

1 Trusts should be drafted by an attorney familiar with such matters in order to take into account income and estate tax laws (including the generation skipping transfer tax). Failure to do so could result in adverse tax treatment of trust proceeds.

2 See IRC Section 2041. To avoid giving the beneficiary spouse any incidents of ownership with a Survivorship Spousal Access Trust, the authority to make distributions to the surviving spouse may need to be limited to an independent trustee with absolute discretion. See PLR 200617008. Consult your tax advisors.

3 Assuming the proposed initial gift was not a fraudulent conveyance meant to inhibit creditors.

4 Lapse or surrender of a policy with a loan may cause the recognition of taxable income. Cash value available for loans and withdrawals may be more or less than originally invested.

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