
Estate Planning Series

HOW YOU HOLD TITLE TO YOUR ASSETS CAN AFFECT YOUR ESTATE PLAN

As of January 1, 2009, the federal estate tax exemption increased to \$3,500,000 (from \$2,000,000) and the annual exclusion from gift tax is now \$13,000 per donee. However, the federal lifetime gift tax exemption remains at \$1,000,000. Based on these changes, the following points are important to consider in updating your estate plan:

- **Beneficiaries** - Your beneficiaries (i.e. children) stand to inherit more because of the increased estate tax exemption. You should consider the term of the trust established in your Wills so that your assets do not pass to the spouses of your children if they divorce or die. If you do not have a child's inheritance held in trust for your children (and eventually grandchildren), you should consider establishing a trust in your Will.
- **Life Insurance Policies** - You should consider designating an irrevocable trust as the owner and beneficiary of life insurance policies in order to ensure that the proceeds are free from estate tax. If you have already established an irrevocable trust, you should confirm it is being operated properly in order to achieve its desired goals.
- **Credit Shelter Trust - Federal Estate Tax** - Married couples whose assets exceed the \$3,500,000 Federal estate tax exemption amount may need to revise their Wills in order to take advantage of both spouses' exemptions by creating a "credit shelter trust" under the Will of the first spouse to die for the benefit of the survivor. This trust is funded up to the amount of the first spouse's estate tax exemption amount, free of any Federal estate tax. The balance of the first spouse's assets passes federal and state tax free to the surviving spouse. In this way, a married couple can effectively eliminate the federal estate tax on the first \$7,000,000 of their combined assets. If you already have a credit shelter trust in your Will, you should confirm that it takes into account the increased exemption and that each spouse has enough funds in their names to fund the credit shelter trust.
- **Credit Shelter Trust – New Jersey Estate Tax** - Since New Jersey's estate tax exemption is fixed at \$675,000, even if your assets do not exceed \$3,500,000, a credit shelter trust can offer a married couple living in New Jersey estate tax savings.

- **Credit Shelter Trust Funding** - Whether it is used to save Federal or New Jersey estate tax, for a credit shelter trust to work, it is essential that each spouse has enough assets in their individual names to fund the trust. Even though you have a properly structured Will with a credit shelter trust, you may lose the benefits of this valuable technique if the trust cannot be funded. Appropriate advance planning can avoid this unfortunate result.

For example, if Jane has \$7,000,000 of assets in her name, and her husband, John has no assets in his sole name, and John dies first, at his death, nothing is available to fund the credit shelter trust under his Will. At Jane's subsequent death, her \$7,000,000 estate will generate federal estate tax of \$1,575,000 to be paid by the children under current tax rates. If instead, Jane transferred \$3,500,000 of her assets to John during her lifetime, which is excluded from gift tax, his trust could be fully funded at his death, and the entire \$7,000,000 will pass to the children without Federal estate tax.

Another example: titling assets in **joint tenancy** with the right of survivorship means that on the first spouse's death, all property titled in that manner will pass automatically to the surviving spouse, by operation of law and not under the terms of your Will. As a result, the property is not available to fund the credit shelter trust. Titling assets as **tenants in common**, however, does not provide for automatic transfer on death. Therefore, the assets held as tenants in common would be available to fund a credit shelter trust.



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