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## ESTATE PLANNING LIBRARY

Number Sixteen

### Estate Administration Costs At The Death Of The First Spouse

#### 1. What happens when the first spouse dies and the Family Trust is created?

Actually, depending upon the asset makeup of your estate, many things must be done. In the typical estate, there will likely be all or most of the following tasks to be accomplished:

**a) Creation of the Administrative Trust:** When a Trustmaker of a living trust dies, the Internal Revenue Service requires the trustee of the trust to treat the formerly revocable trust as a new taxpayer.<sup>1</sup> The Administrative Trust is easiest to understand if you consider it to be an accounting mechanism to provide information for tax returns and other reports to the IRS and others. The Administrative Trust is the entity where all of the financial and tax activity occurs prior to the actual transfer of property to the Family Trust, the Marital Trust or the surviving spouse or charity and others, as the decedent's estate plan provided. It is necessary for the Administrative Trust to request a taxpayer ID number and file federal, and in some states, state income tax returns. The passing of a person is a very important event and government entities want a clear trail of the financial activity that occurs because of that death.

#### 2. What do you mean by "financial activity?"

Good question. Prior to the decedent's death, the funds of the spouses were likely held in tenant in common, community property (in community property states) or separate property in a living trust. Because one of the Trustmakers has died, all of those accounts must be retitled into:

##### a) Decedent's Funds:

<sup>1</sup> Rev. Rul. 75-267

- i. To the Surviving Trustmaker, as Trustee of the Family Trust using the date of either the date of death or the original date the living trust was signed (for example Jane Doe, Trustee of the John Doe Family Trust dated 1/2/1995);
- ii. to the Surviving Trustmaker as Trustee of the Marital Trust;
- iii. To the name of the Surviving Trustmaker if that was the estate plan designed;
- iv. To a named beneficiary if that is called for: or
- v. To a combination of the above as provided in the Trustmaker's Trust.

**b) Survivor's Funds:**

- i. The Surviving Trustmaker, as Trustee of the Survivor's Marital Trust, if a joint trust was used; or
- ii. To the name of the Surviving Trustmaker if that was what the estate plan design calls for.

**c) Real Property:**

**i. Decedent's Share:**

1. The Surviving Trustmaker, as Trustee of the Family Trust using the date of, either the date of death or the original date the living trust was signed;
2. The Surviving Trustmaker, as Trustee of the Marital Trust, or
3. To the name of the Surviving Trustmaker if that was the estate plan design.

**ii. Survivor's Share:**

1. The Surviving Trustmaker, as Trustee of the Survivor's Marital Trust, if a joint trust was used.
2. To the name of the Surviving Trustmaker if that was the estate plan design.

As I am sure you can understand, the cost of this financial activity will depend upon a number of factors. Those factors include the size and complexity of the estate, the willingness and ability of the decedent's family to assist, and the amount of complexity involved in re-titling the assets (funding).

**3. So, once all of the accounting is done, the Family and/or the Marital Trust have been funded, is the**

### **administration at an end?**

In general, yes. However, the above activities only relate to property titled, or otherwise held, in the living trust. If there was property not properly titled in the living trust, a probate may be needed. Also, if there are insurance policies or retirement accounts, the beneficiary designations must be reviewed and the companies notified of who the beneficiary of the accounts is to be. In addition, a Federal Estate Income Tax Return (Form 1041) may need to be filed. The decedent's final Individual Income Tax Return (Form 1040) and a Trust Income Tax Return (Form 1041) filed for the Administrative Trust and an annual 1041 for the Family Trust and any Marital Trust . The Estate and Trust income tax returns may be consolidated onto one return if the trust qualifies and makes an IRC 645 election.

#### **4. Is it possible for you to give me an estimate of what the cost will be? Also, I thought a living trust was less expensive and burdensome than probate, are you sure?**

There is no way to know what your estate will look like when the first spouse dies. However, depending upon which program you choose to do your planning, we may agree in writing to cap the costs to settle your estate. This is part of our LifeBridge Program. If you do not choose this option we can provide you a range of fees that we have charged for estates that were similar to what yours is like when you signed your trust. What we can do is provide you a range of fees that we have charged for estates that were similar to what yours was like when you established your estate plan.