

# THE LIFE CYCLE OF A TRUST

LA Estate Planning Cte  
(For Beginners and Advanced Plans) G2100718

**July 11, 2018**

Presented by:

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## Donita M. Joseph, CPA, MBT

A partner with Windes, Inc., Ms. Joseph has more than 30 years of experience in taxation issues involving estate and trust tax planning and is responsible for the firm's Estate and Trust practice. Her expertise includes preparation of estate tax; gift tax and fiduciary income tax returns; estate planning; post mortem planning; charitable trust planning and compliance, trust and estate administration; trust and estate accounting; and income tax planning for individuals.

Ms. Joseph is the former chair of the CalCPA Estate Planning Committee and a past member of the AICPA Trust, Estate and Gift Technical Resource Panel. She frequently presents on taxation issues surrounding estate and trust tax planning for CalCPA and other professional groups and has authored numerous technical articles for California CPA and Spidell.

## Kira S. Masteller, Esq.

Ms. Masteller is a Shareholder at Lewitt Hackman Law Corporation in Encino. She has 20 years' experience in trusts, trust administration and estate planning – with a particular focus on charitable giving, specialized trusts for alternative beneficiaries and tailored planning for unique family business needs.

Ms. Masteller has served as the President of the San Fernando Valley Bar Association, as well as Secretary, Treasurer and President Elect. She is a member of the State Bar of California Trust & Estates and Taxation sections. Named a *Best Lawyer in Southern California* by *Best Lawyers Magazine*, Ms. Masteller has also been designated a *Super Lawyer*, and one of the *Top Women Lawyers in Southern California* by *Super Lawyers Magazine*.

# LIFE CYCLE OF A TRUST

## 1. What is a Revocable Living Trust?

- A. Revocable Trust
- B. Irrevocable Trust
- C. Attorney Role
- D. CPA Role throughout planning process

## 2. Why Use a Revocable Living Trust

- A. No Estate Plan
  - i. Probate
  - ii. Spousal Property Petitions
  - iii. Community property vs. separate property
  - iv. Guardianship proceeding
  - v. Joint Tenancy
  - vi. Designated Beneficiary Assets
- B. Estate Plan Utilizing a Will
  - i. Probate
  - ii. Guardianship proceeding
  - iii. Joint Tenancy
  - iv. Designated Beneficiary Assets

## 3. Estate Plan Utilizing a Revocable Living Trust

- A. Trust Administration during lifetime
- B. Trust Administration at first death\*
- C. Trust Administration at second death\*
- D. Legal Costs and Valuation costs\*
- E. Double Stepped up basis – Capital Gains Tax Savings
- F. The use of both Estate tax exemptions (Bypass Trust/Portability)\*
- G. Creditor protection
- H. Trusts for children and other beneficiaries
- I. Trustee's powers
- J. Guardianship proceeding

**4. Why Fund a Revocable Living Trust During Lifetime?**

- A. Incapacity and issues with Powers of Attorney
- B. Avoid Conservatorship proceedings
- C. Ease of post death proceedings
- D. No Tax Implications of Funding Trust during lifetime

**5. How do you Fund a Revocable Trust with Real Estate?**

- A. Issues Involving Mortgages
- B. Title Insurance
- C. Deeds
- D. Property Taxes
- E. Other assets

**6. Planning for Optimal Use of Estate Tax Exemptions with Revocable Trusts**

- A. Current Estate and Gift Tax Exemptions
- B. Federal Portability Rules \*
- C. Use of Joint Continuation Trusts, Credit Shelter and QTIP Trusts
- D. Protective Trusts for Children and Grandchildren

**7. What are the roles of the -**

- A. Attorney
- B. CPA
- C. Trustee and or executor
- D. Beneficiaries
- E. Financial advisors
- F. Business valuation specialists
- G. Appraisers
  - i. Real Estate
  - ii. Art
  - iii. Other

**8. Initial meeting with client – preparation for the meeting**

- A. Who should attend?
- B. What documents should the client bring?

- i. Listing of assets with estimated fair market values held as of the date of death
    - 1) Are there assets in other states?
  - ii. Death certificate
  - iii. Will
  - iv. Trust agreements and all amendments
  - v. At least prior year federal and state income tax returns and all related entities, last three years will be needed for attachment to the estate tax return
  - vi. Copies of all gift tax returns filed
  - vii. A copy of the Form 706 filed for a predeceased spouse
- C. Should you give the client a Form 706 organizer?

**9. What to discuss at the initial meeting -**

- A. Will a Form 706 be required or filed for other reasons
  - i. Portability
- B. Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent (Basis reporting)
- C. Has the trust been funded?
  - i. Will there be a probate estate?
  - ii. Discuss probate process if applicable
- D. Who are the beneficiaries?
  - i. Subtrusts
  - ii. Individuals
  - iii. Charities
- E. Prepare an estate plan diagram
- F. Discuss notice requirement if there is a trust
- G. Income tax return issues – detail later in outline
- H. Other returns
  - i. Forms 990-PF for new private foundations
  - ii. Forms 5227 and 1041 for new charitable trusts
- I. Will fiduciary accountings need to be prepared?

**10. What to discuss if a 706 is going to be prepared –**

- A. Due dates and timing
  - i. 9 months after date of death for filing and payment
  - ii. Extensions and when they are advisable

- iii. Form 8971, Information Regarding Beneficiaries Acquiring Property from a Decedent, due 30 days after filing Form 706
- B. Estate tax payment options -
  - i. §6161, Discretionary Extension of Time to Pay a Deficiency for Reasonable Cause
  - ii. §6166, Election to Pay Estate Tax Related to Closely Held Business Interest in Installments election
  - iii. Graegin loans
- C. IRS audit procedures
  - i. Timing of audit
  - ii. Closing letters
  - iii. Early release of fiduciary
- D. Valuation issues
  - i. Potential for discounts
  - ii. Alternate valuation date
- E. Deductions
  - i. Debts, claims
    - a. Property taxes
    - b. Taxes payable
      - 1) Income
      - 2) Gift tax
  - ii. Expenses
    - i. Funeral
    - ii. Administrative
    - iii. Trustee-executor fees
      - a. Determining the amount of the fee
- F. Generation-Skipping Tax issues
- G. Qualified disclaimers and effect on estate tax\*
  - i. Nine-month Rule
  - ii. Prohibition on acceptance of the interest or any of its benefits
- H. Discuss basis step ups\*
- I. Reviewing estate tax returns when draft is ready\*
  - i. Timing
  - ii. If prepared by CPA, will attorney review
  - iii. Review by executor/trustee

## **11. What to discuss about income tax returns and related issues**

### **A. Final Form 1040 for decedent**

- i. Income allocation may be needed between 1040 and 1041
- ii. Need for ID numbers
- iii. Form 2848, Power of Attorney
- iv. IRS transcripts for missing information
- v. Filing status
- vi. Form 4810, Request for Prompt Assessment
- vii. Form 1310, Statement of Person Claiming Refund Due a Deceased Taxpayer

### **B. Form 1041**

- i. Will an administrative trust be used?
- ii. Need for ID numbers, who will get them\*
- iii. §645 election, Form 8855, Election to Treat a Qualified Revocable Trust as Part of an Estate
- iv. §642(c)(1) Election to Accelerate Charitable Deduction
- v. §663(b) Election to Treat Trust or Estate Distributions as made in Preceding Tax Year (65-Day Rule)
- vi. Basis step ups
- vii. Multistate issues
- viii. Trustee fees
- ix. Executor/Trustee should notify beneficiaries not to file their income tax returns until they receive their Form 1041 K-1s
- x. Form 4810, Request for Prompt Assessment

### **C. Form 1065**

- i. §754 elections
  - a. Notifying the management of the LLC/partnership of the death
  - b. Making the elections correctly on the returns

## **12. Asset Allocation/Distribution Planning**

- A. Who is responsible for preparing the asset allocation schedules?\*
- B. Are there subtrusts to be funded?\*
- C. How are taxes, expenses and debts to be allocated among beneficiaries?
- D. When should distributions be made?

- i. Will there be a gain on pecuniary funding?
    - a. Check the funding provisions
      - 1) Fairly representative
      - 2) Fractional share
      - 3) Pecuniary/residual
- E. IRD assets and triggering income tax on funding

### **13. Other Administrative Issues**

- A. Fees
  - i. Form 706
  - ii. Form 8971
  - iii. Final 1040
  - iv. Forms 1041
- B. Checklists