

QTIP Trust - Will My Spouse Have What They Need?

By Gary Altman

What is a QTIP trust? A qualified terminable interest property (QTIP) trust is an estate planning tool that married couples can use to minimize uncertainty about the future and maximize certain tax advantages. Since no one can predict how much they will own during their death, which spouse will die first, whether the surviving spouse will remarry, or what the estate tax rate will be when they die, a QTIP trust can help deal with and minimize these uncertainties. One of the main purposes of a QTIP trust is to ensure that the first deceased spouse's children or other heirs will receive the assets of the QTIP trust when the surviving spouse dies.

The most common form of QTIP trust is a testamentary QTIP, which is created when the first spouse dies. Basically, this QTIP is a marital trust established as part of a married couple's estate plan to hold money and property for the surviving spouse's benefit. This trust may be the only one created at the first spouse's death, or it may be part of a multiple trust arrangement where, after the first spouse's death, the family trust (or credit shelter trust) receives an amount equal to the federal or state estate tax exemption or equal to the generation-skipping transfer tax exemption and the marital trust receives the rest. A QTIP trust may be more restrictive than a typical marital trust or family trust in that the QTIP trust may limit the surviving spouse's ability to use or control the QTIP trust's assets, such as money and property. Finally, the assets of the QTIP trust are included in the surviving spouse's taxable estate (which defers paying any estate tax until the surviving spouse's death), and these assets get a new basis (called a stepped up basis) when the surviving spouse dies.

QTIP trusts can also be created and funded while both spouses are living. These QTIP trusts are called inter vivo (during lifetime) QTIP trusts. The grantor spouse (usually the wealthier spouse) puts property into the QTIP trust to

benefit the other spouse (the "beneficiary") during the beneficiary spouse's lifetime. At the beneficiary spouse's death, the trust's remainder will go to the grantor spouse's children or wherever the grantor has decided. If the grantor spouse is still living at the beneficiary spouse's death, the grantor spouse can even become the income and principal beneficiary and the QTIP trust property will be excluded from their estate.

Whether they are created after death or during life, QTIP trusts must meet certain requirements:

- The QTIP trust must grant the beneficiary spouse a "qualifying income interest for life." Either all the trust's net income must be paid at least annually to the beneficiary spouse, or the beneficiary spouse must have the right to annually withdraw all the trust's net income. This right to income cannot be subject to any contingencies. For example, the right to income cannot terminate upon the surviving spouse's remarriage.
- Only the beneficiary spouse can be a beneficiary of the QTIP trust and no one can reduce or eliminate the beneficiary spouse's rights during his or her life..
- The beneficiary spouse must demand that the trustee convert non-income producing assets into income-producing assets.
- The QTIP must be irrevocable.
- The beneficiary spouse must be a US citizen. If the beneficiary spouse is not a US citizen, then a different marital trust, called a Qualified Domestic Trust, would be created for the non-US beneficiary spouse.

It is permissible, though not required, to also give a beneficiary spouse the right to receive distributions of principal (either discretionary or according to certain standards). However, no person other than the spouse can be a beneficiary of the QTIP trust during the beneficiary spouse's lifetime.

Who can be the trustee of a QTIP trust?

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Washington, D.C.
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1050 Connecticut Ave NW,
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Northern VA
8000 Towers Crescent Drive.
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Vienna, VA 222182

The trustee of a QTIP trust manages the trust's accounts and property, filing the trust's tax returns, and other administrative tasks required in following the trust. Because being a trustee can be a heavy responsibility, some people choose a third party, such as a financial institution or an attorney, to fill the role.

A grantor can, however, name a trusted family member, including the beneficiary spouse, as trustee of a QTIP trust. A grantor considering this option should remember that such an arrangement may introduce distrust or even discord into relationships. For example, the surviving spouse of a second marriage, acting as trustee, may invest in accounts or property that will provide a larger amount of trust income, but the children of the grantor's first marriage (who are the ultimate QTIP trust beneficiaries) may prefer that the surviving spouse trustee invest in accounts or property that will preserve or grow trust principal. Such competing interests may cause conflict between the parties.

Why would someone use a QTIP trust?

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Qualified terminable interest property trusts serve two main purposes: (1) they can allow the maximization of estate tax benefits by using the unlimited marital deduction, and (2) they allow a grantor spouse to put restrictions on their property rather than leave the property outright to their spouse. These restrictions are useful in second marriages when there are children from the first marriage or when there are concerns about a spouse remarrying and giving away all the couple's money and property to a new spouse.

Example 1:

For married couples, providing for the surviving spouse is usually a top priority. However, couples may also have additional priorities they want to honor with their estate plan. A QTIP trust can offer an effective solution by allowing you to provide for your surviving spouse, maintain control over the ultimate transfer of assets, and take advantage of the unlimited marital deduction. To learn more about how a QTIP trust works, call the attorneys at Altman & Associates at 301 468 3220 to make an appointment.

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