

A Trust Made for Multiple Marriages

By

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One of the things that made the now iconic TV show *The Brady Bunch* stand out when it first hit the airwaves in the late 1960s was that it depicted what was, at least at the time, a very unusual family dynamic: a second marriage bringing together six children – three from each parent – under one roof.

These days it's hard to imagine a show like *The Brady Bunch* even raising an eyebrow. Indeed, with upwards of half of all marriages ending in divorce, households full of brothers and sisters who don't share the same biological parents are hardly out of the norm.

The increasing prevalence of this sort of mixed-family situation, whether due to divorce or the death of a spouse, poses some estate planning challenges. How, for instance, can you ensure that your children from a first marriage aren't disinherited should you pass away and your second spouse remarry and start a new family?

One of the tools available to estate planning with these increasingly common, and complex, family situations is the Qualified Terminable Interest Property trust, or QTIP. A QTIP can be a powerful way to ensure that assets built-up over a lifetime end up where you want.

When the assets are from a decedent and they're transferred to a trust that is irrevocable on their death, the assets are generally protected from creditors and bankruptcies and second and third marriages. So it's a way to help protect the surviving spouse, number one, and it's also a way to protect the remaining children, so that the surviving spouse could remarry and not redirect the assets away from the decedent's children.

Securing Your Wishes

The way a QTIP accomplishes both of these important goals is fairly straightforward. Sticking with *The Brady Bunch* analogy, here's how the QTIP, which is a type of a marital trust, works: Let's say Carol Brady, the mother, brought several million dollars with her into her marriage to Mike.

Taking the hypothetical case a bit further, assume that Carol wanted to ensure that, should she die first, not only would her widowed husband be taken care of, but also that her three daughters would ultimately inherit the bulk of her estate. One option

would be for Carol to take advantage of the unlimited marital deduction, which allows a husband or wife to pass their entire estate, no matter how large, to their spouse without getting hit by the estate tax – which, in 2016, kicks in when assets total more than \$5.45 million.

It would be understandable if Carol was leery about handing over her estate and its eventual disposition entirely to Mike; he had been married before, after all, and who knows what his future circumstances might hold? A QTIP trust would provide the perfect solution. When Carol died, her assets would go into the QTIP, which she would have established as part of her will, and would generate income for Mike to take care of his living necessities. Upon Mike's death, the remainder of the estate would then go to the three Brady girls, just as Carol wished.

Estate Planning/Asset Protection and Tax Issues

While important, ensuring that children from a prior marriage get an inheritance isn't the only reason to use a QTIP. Indeed, the core purpose of a marital trust like a QTIP is to provide support to the surviving spouse. Let's take the case of a couple in which the surviving spouse – the wife – was a physician.

Understanding that in the reality of today's world of medicine that the doctor, an OB-GYN, would always be threatened by the possibility of litigation, the couple drafted a QTIP trust. It was a move that ultimately eliminated what could have been a lot of anxiety after the doctor's husband died and the husband's assets were left to the wife in a QTIP trust.

Why? The doctor was named in a lawsuit against the hospital where she had worked. But no matter what had come of the litigation, the assets in the marital trust were protected from that kind of claim.

An equally important reason to utilize a QTIP is for the estate tax advantages it can provide. Because it's a tax-deferral technique, it allows for the entire estate from the decedent's spouse to be untaxed until the surviving spouse's death.

Overall, a QTIP is an effective strategy for estate planning/asset protection, as well as deferment or reduction of estate taxes.

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