

CRISTIN C. LAMBROS
DIRECT NUMBER
(410) 825-8550
cristin@ccl-law.com

CRISTIN C. LAMBROS, LLC
ATTORNEY AT LAW
8415 BELLONA LANE, SUITE 114
TOWSON, MARYLAND 21204
FAX: (410) 825-8554

LEGAL ASSISTANT
LINDA L. SMIT
(410) 825-8551
linda@ccl-law.com

HOW TO FULLY FUND YOUR CREDIT SHELTER TRUSTS

In addition to executing your estate planning documents containing the reduced to zero credit shelter trust/marital deduction gift plan, in order to achieve the federal estate tax savings afforded by this plan, you will need to change the title to some of your assets and the beneficiary designations on your life insurance and retirement accounts. Since the order of death cannot be predetermined, the goal is to be able to fund, as fully as possible, each spouse's credit shelter trust.

Jointly owned property generally passes automatically by operation of law upon the death of the first spouse to the survivor. Because we have created a testamentary credit shelter trust (under your will), these assets would not be available to fund your credit shelter trust. Likewise, life insurance and retirement accounts where your spouse is designated beneficiary are non-probate assets.

Your residence is most likely held as tenants by the entireties. While not ideal from an estate planning standpoint, it is protected from the other spouse's creditors. The surviving spouse can disclaim her ½ survivorship interest in the house after the first spouse's death. That ½ will then be available to fund the credit shelter trust.

The problem with retirement plans is that, in addition to being subject to estate taxes, they have also never been subject to income taxes. So that, following death, there will also be an income tax liability when the beneficiary receives payouts. Sometimes these assets are the only assets available to fund the credit shelter trust. In that case, a wait and see approach is often prudent. Since the surviving spouse can rollover the assets into her own IRA, she gets the benefit of continued income tax deferral. A typical approach would be for the spouse to decide after the first spouse's death whether to disclaim the retirement account assets so that she can fund the credit shelter.

One planning technique would be for the wealthier spouse to transfer title to certain assets to his spouse's name alone. Certain individuals may not feel entirely comfortable with this technique. A less painful approach would be to title certain assets as tenants in common. That way, ½ would pass under the first spouse to die's probate estate, and the other ½ would remain owned by the surviving spouse. Accordingly, you will probably want to take the following steps:

1. Change beneficiary designations for life insurance as follows:

Primary: "The Trustee of the Trust(s) under my Last Will and Testament"

2. Change beneficiary designations for retirement accounts as follows:

Primary: Spouse's name

Secondary: "The Trustee of the Trust(s) under my Last Will and Testament"

3. Change title to marketable securities brokerage accounts as follows:

"Husband's name and wife's name, as tenants in common."

You will need to determine after you accomplish this whether you each have approximately \$5,000,000 of assets to fund your credit shelter trusts. You may also decide to take title to future assets in your joint names, as tenants in common.