

# Family Trust

## How It Works

A Family Trust (also referred to as a By-Pass Trust, Credit Shelter Trust, or Trust B in an A-B plan) allows a married couple to take full advantage of the Applicable Credit Amount available to each individual, thereby reducing their estate taxes and probate costs, and passing more of the estate to the heirs. The major characteristics of a Family Trust are:

- At the first death, the will or revocable living trust provides for the establishment of a trust equal to the amount that could be passed tax-free through the Applicable Credit Amount.
- The balance of the estate typically passes to the surviving spouse outright or in a trust which qualifies for the unlimited marital deduction.
- The surviving spouse and/or family members may receive income and principal from the Family Trust under certain standards.
- Care must be taken that no right be granted that causes the trust assets to be included in the surviving spouse's estate.
- If properly set up at the death of the surviving spouse, the assets remaining in the Family Trust should not be taxed in the estate of the surviving spouse.

## Benefits of a Family Trust

- The assets remaining in the Family Trust at the death of the surviving spouse can pass outright to the heirs or in trust for their benefit avoiding both estate taxation and probate expenses at the surviving spouse's death.
- Through proper planning, a married couple may use Credit Shelter Trusts to transfer assets to their children or other beneficiaries free of federal estate taxes. The Applicable Exclusion Amount will gradually start increasing from \$1,500,000 in 2005 to \$3,500,000 in 2009.
- In 2010 the federal estate tax will be fully repealed for one year. However, due to a "*sunset provision*" in TRA 2001, the new law is voided in 2011 and the law effective in 2001 is restored.
- The surviving spouse may be an income beneficiary of the Family Trust.
- Provides peace of mind because the decedent may specify who will receive the remaining assets at the death of the surviving spouse.
- If a person selects a corporate fiduciary to serve as trustee, the beneficiaries receive professional asset management.
- The amount of the estate passing to the surviving spouse (in excess of what is put in the Family Trust) may qualify for the unlimited marital deduction and therefore passes federal estate tax-free at the death of the first spouse.