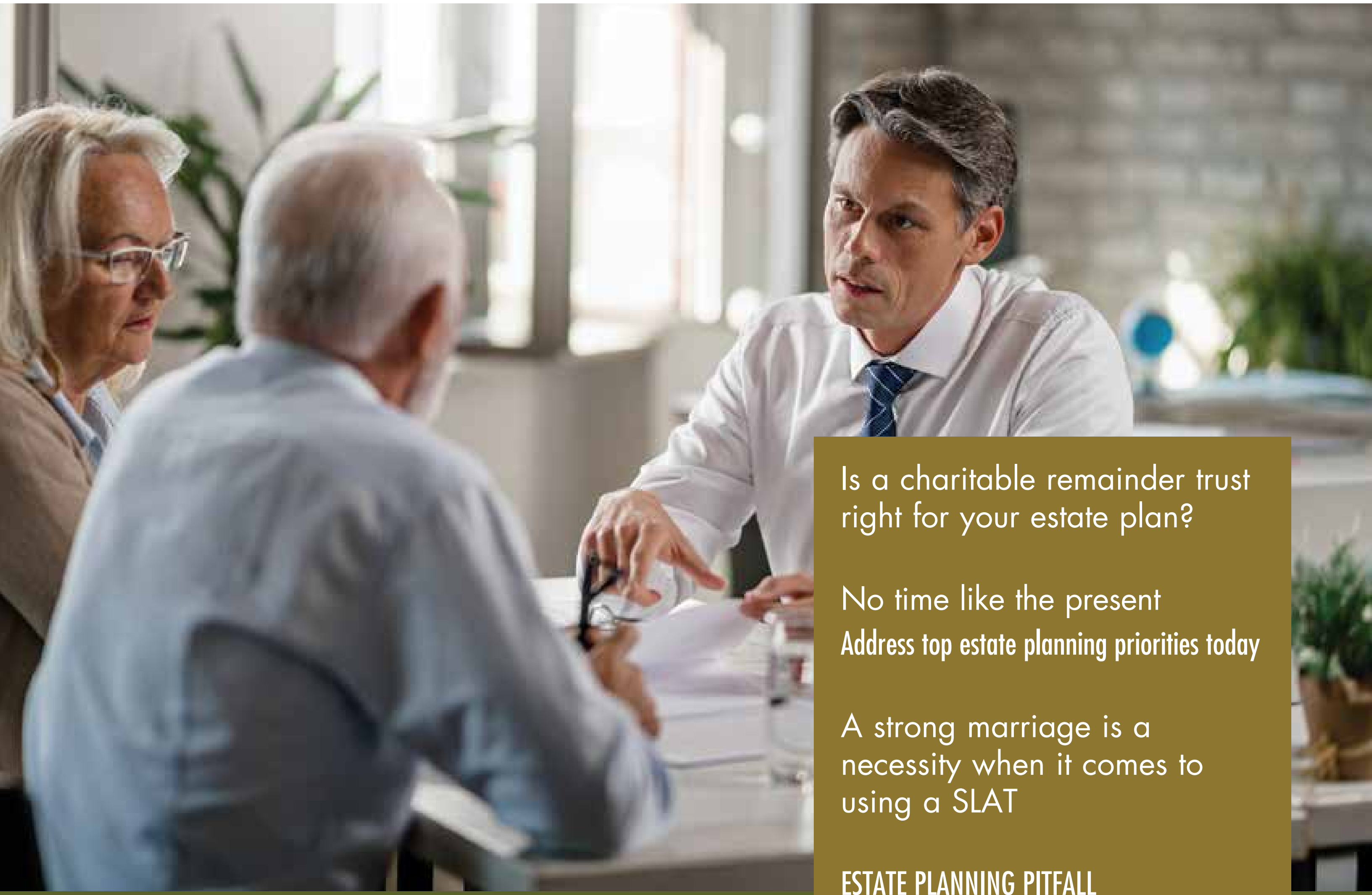
INSIGHT ON ESTATE PLANNING



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No time like the present
Address top estate planning priorities today

A strong marriage is a necessity when it comes to using a SLAT

ESTATE PLANNING PITFALL
You didn't retitle assets to be included in a trust

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Is a charitable remainder trust right for your estate plan?

You might have several goals you'd like your estate plan to achieve. They may include giving to your favorite charity and leaving a significant amount to your loved ones under favorable tax terms. One estate planning technique that may allow you to accomplish both goals is the use of a charitable remainder trust (CRT).

A CRT in action

Typically, you set up one of two types of CRTs and fund it with assets such as cash and securities. The trust then pays out income to the designated beneficiary or beneficiaries — perhaps yourself or your spouse — for life or a term of 20 years or less. If it suits your needs, you may postpone taking income distributions until a later date. In the meantime, the assets in the CRT continue to grow.

When using a CRT you may be eligible for a current tax deduction based on several factors, including the value of the assets at the time of the transfer, the ages of the income beneficiaries and the government's Section 7520 rate. This may result in a deduction of tens or even hundreds of thousands of tax dollars. As a general rule, the greater the payout to you (and consequently the lower the calculated amount that ultimately goes to charity), the lower the deduction.

Because the Tax Cuts and Jobs Act limits certain itemized deductions and increases the standard deduction through 2025, consider transferring assets in a year in which you expect to itemize. Further, the deduction for appreciated assets is generally limited to 30% of your adjusted gross income (AGI). However, if the 30%-of-AGI limit applies, you can carry forward any excess for up to five years.

Types of CRTs

There are two types of CRTs, each with its own pros and cons:

- A charitable remainder annuity trust (CRAT) pays out a fixed percentage (ranging from 5% to 50%) of the trust's initial value and doesn't allow additional contributions once it's funded.

- A charitable remainder unitrust (CRUT) pays out a fixed percentage (ranging from 5% to 50%) of the trust's value, recalculated annually, and allows additional contributions.

CRATs offer the advantage of uniform payouts, regardless of fluctuations in the trust's value. CRUTs, on the other hand, allow payouts to keep pace with inflation because they increase as the trust's value increases. And, as noted, CRUTs allow you to make additional contributions. One potential disadvantage of a CRUT is that payouts shrink if the trust's value declines.

Appointing trustees

When you set up a CRT, you must appoint the trustee who'll manage its assets. This should be someone with the requisite financial knowledge and a familiarity with your personal situation. Thus, it could be a professional or an entity, a family member, or a close friend.

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Because of the potentially significant dollars at stake, many trust creators opt for a professional who specializes in managing trust assets. If you're leaning in this direction, interview several candidates and choose the best one for your situation, considering factors such as experience, investment performance and the level of services provided.

Know that a trustee is obligated to adhere to the terms of the trust and follow your instructions. Thus, you still maintain some measure of control if someone else is handling these duties. For instance, you may retain the right to change the trustee if you become dissatisfied or designate a different charity to receive the remainder assets.

There's a new CRT option on the table

Individuals older than age 70½ may opt to transfer up to $100,000 of funds directly from their IRAs to qualified charities. These qualified charitable distributions (QCDs) aren't taxable or tax-deductible but count as required minimum distributions.

Beginning in 2023, qualified individuals may take advantage of a one-time opportunity to use a QCD to fund a charitable remainder annuity trust, a charitable remainder unitrust or a charitable gift annuity. The limit on such split-interest gifts is $50,000.

Be aware that there are many moving parts with the new QCD option. Simply put, it's not for everyone.

Look before you leap

Finally, be aware that a CRT is irrevocable. In other words, once it's executed, you can't undo it. So, you must be fully committed to this approach before taking the plunge.

A CRT may be coordinated with other estate planning techniques. For example, it's often supplemented by another trust or a life insurance policy to even things out for family members when the remainder goes to charity. Contact your estate planning advisor to learn whether a CRT might be a good fit to achieve your estate planning goals. •

No time like the present

Address top estate planning priorities today

When it comes to estate planning, consider taking a page out of the Boy Scouts Handbook: Be prepared. The last thing you want is for your family to be scrambling to pick up the pieces after your death. Of course, you'll need a will as a starting point, but there are several other "top priority" items to put on your to-do list.

Name your executor

Don't leave the burden of handling your estate to one or more family members without providing adequate direction. In fact, you can assemble an expert "team" that can help your family navigate the tricky waters.

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The executor is the captain of the team. He or she should be knowledgeable, competent and willing to carry out the duties. An executor may be a family member, such as your spouse, adult child or a sibling. Other choices include a close friend or an experienced professional advisor. The executor you name will have to coordinate activities with attorneys, bankers and appraisers.

Draft a financial power of attorney

After you've named an executor, you can move on to other priorities. A financial power of attorney authorizes an "attorney-in-fact" to act on your behalf for financial matters. The most common power of attorney, a "durable" one, remains viable if you're incapacitated. With another variation, a "springing" power of attorney, control doesn't take effect until incapacitation.

Frequently, the person designated as the attorney-in-fact is the same person as your executor. His or her power may be broad, encompassing such matters as buying or selling personal property or limited to certain tasks.

Assemble health care directives

Difficult decisions typically arise near the end of a person's life. You can simplify matters by assembling a comprehensive list of health care directives. They may include a:

Health care power of attorney. Comparable to a financial power of attorney, this document authorizes another person to make health care decisions on your behalf if you're unable. Typically, the attorney-in-fact is a spouse, child or sibling. It may be broad or limited and expires on death.

Living will. As opposed to a health care power of attorney, a living will is reserved for end-of-life situations. Depending on state law, it may allow you to express whether life-sustaining treatment should be administered in the event you're terminally ill or injured.

A health care power of attorney and a living will may be combined into one document, depending on state law. In other states, a living will may supplement a health care power of attorney. Both documents may be coordinated with other medical directives or proxies.

Medical orders for life-sustaining treatment. This includes medical orders signed by a physician to assist patients who've been diagnosed with a life-threatening or terminal illness or disease. These orders may also be created if you're not currently ill and will take effect only in end-of-life situations.

Gift and estate tax techniques

One of your top priorities likely is to ensure that your assets are passed to loved ones without adverse gift or estate tax consequences. Although sophisticated techniques can be used, two basic tax law provisions often provide a foundation:

Gift and estate tax exemption. For 2023, you can shelter up to $12.92 million from gift and estate tax, in addition to amounts covered by the annual gift tax exclusion (see below). Any unused portion of your exemption is available to the estate of your surviving spouse with a portability election on a timely filed estate tax return.

Gift tax exclusion. Under the annual gift tax exclusion, you can give each recipient up to

$17,000 in 2023 without any gift tax liability, thereby removing assets from your taxable estate.

These two provisions may be coordinated with other strategies, such as using a trust, that maximize the tax benefits while offering other advantages.

What to do now

If you haven't addressed these priorities, there's no time like the present to get going. Rely on your estate planning advisor to provide guidance. •

A strong marriage is a necessity when it comes to using a SLAT

When creating your estate plan, there's a certain amount of prognosticating involved. What will your financial picture look like in years to come? How will estate tax laws change? No doubt one of the biggest challenges involved with estate planning is all the uncertainty. One option to hedge your bets is using a spousal lifetime access trust (SLAT). But consider using a SLAT only if your marriage is strong.

How does a SLAT allow for plan flexibility?

To take advantage of a SLAT, you transfer assets to an irrevocable trust that benefits your spouse during his or her lifetime, with any remaining assets passing to your children or other heirs. Because the trust is irrevocable, the assets you transfer to it are completed gifts for estate tax purposes. That means their value, together with any future appreciation or earnings, are removed from your taxable estate. Most important, your gifts are shielded from gift tax up to your current unused exemption, protecting you from possible future reductions in the exemption amount.

Here's how a SLAT allows you to hedge your bets: Although you must give up your assets to gain the tax benefits described above, you continue to have *indirect* access to your wealth through your spouse, who's a beneficiary of the trust. Usually, the best way to accomplish this is by appointing an independent trustee with full discretion to make distributions to your spouse or, alternatively, with the power to make distributions to your spouse under specified conditions.

Why is asset control so important?

To ensure that a SLAT achieves your objectives, it must be carefully drafted. For example, you must avoid retaining too much control over the trust assets. Otherwise, they may be pulled back into your taxable estate. That means you shouldn't act as trustee or otherwise wield power over the trust, and the trust should prohibit distributions that would satisfy your legal support obligations to your spouse.

Care must be taken to keep the trust assets out of your spouse's estate as well. So, it's best not to name your spouse as trustee or, if that's unavoidable, consider limiting distributions to those necessary for his or her health, education, maintenance or support.

Also, gifts to the trust must be made with your separate property. Gifts of jointly owned or community property may be included in your spouse's taxable estate. After the trust has been funded, be sure that its assets aren't commingled with marital assets.

Are two SLATs better than one?

The advantage of a SLAT is that even though it's irrevocable, it provides you with indirect access to the trust assets through your spouse. Thus, to preserve this advantage, your marriage must remain strong.

If you get divorced, you risk losing the safety net provided by a SLAT. You also risk losing a SLAT's benefits if your spouse dies before you do. One strategy for mitigating this risk is for each spouse to set up a SLAT. For this to work, each spouse must fund his or her SLAT with separate property. Thus, you may need to retitle or transfer assets to ensure that each spouse has sufficient separate property to fund each SLAT.

If you use two SLATs, be sure the trusts aren't "mirror images" of each other. If they're too similar, the IRS may invoke the reciprocal trust doctrine. Under that doctrine, the IRS may conclude that the two trusts place you and your spouse in roughly the same economic position as if you each created a trust for your own benefit. In that situation, the IRS can undo the arrangement and bring the assets back into your respective taxable estates.

To avoid this result, be sure that the two SLATs are sufficiently different that they can't be viewed as a quid pro quo for each other. For example, you might establish the trusts at different times or include terms in one trust (a special power of appointment, for instance) that aren't included in the other.

Turn to your advisor with questions

There are many upsides to using a SLAT, but careful planning (and a strong marriage) are required to realize its benefits. Your estate planning advisor can be a valuable resource when determining if a SLAT is right for your estate plan. •

ESTATE PLANNING PITFALL

You didn't retitle assets to be included in a trust

There are numerous benefits of using trusts in your estate plan. For example, trusts can maximize the tax code provisions shielding assets from gift and estate taxes, protect assets from the clutches of creditors or ex-spouses, and maintain control over potential spendthrift heirs, just to mention a few common benefits.

Accordingly, revocable living trusts may be viewed as an integral part of your overall estate plan. But trusts aren't a "draft-it-and-forget-it" proposition.

Notably, a trust won't do you any good if it isn't properly funded, including additions that are warranted. For example, you may neglect to move certain assets — including cash, securities, real estate, artwork and other types of property — into the trust before your death. This may defeat your estate planning intentions.

Assuming you have a need for a trust, and you've already made the necessary arrangements, make sure to retitle assets in the name of the trust. This is often easier said than done and will require you to meet specific requirements depending on the asset type. It's not enough to simply transfer assets to the trust. For example, a transfer of ownership of real estate generally requires you to jump through some extra hoops.

If you fail to retitle assets, they'll fall outside the scope of the trust. This means they'll have to go through probate like other assets in your name. The probate process can be costly and time consuming, depending on which state you live in, and opens up the assets to public inspection. Even worse, you don't derive the benefits of using a trust for those assets unless those assets are eventually transferred into the trust according to the provisions of your will.

Be aware that despite a common misconception, a revocable living trust doesn't save tax. In effect, it's tax-neutral.

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