

## LIFE ADVANCED MARKETS

# Flexible estate planning strategies

## Disclaimer Trust

Change is inevitable – that’s something to keep in mind as you advise clients on strategies for transferring wealth to the next generation, or passing on the family business.

Your client’s family dynamics may change, personal financial needs may change, and tax laws may (and probably will) change. In addition, their estate plan will be triggered by an event that will occur at some unknown point in the future – their death.

These factors can create a moving target when it comes to developing an estate plan strategy, making it important to build in as much flexibility as possible.



### One strategy for adding a level of flexibility is the disclaimer trust.

#### Basic design:

Each spouse states in their will, or through a beneficiary designation in their revocable trust, that all, or a portion, of their estate shall pass to their spouse at their death. Upon the death of one of the spouses, the surviving spouse may disclaim all or a part of the assets they are to receive as a result of the death of his/her spouse.

Based on the terms of their will, or trust, the assets disclaimed are then placed in a trust (the disclaimer trust) which may provide income to the surviving spouse for the remainder of their life with the

remaining balance passing on to their children, grandchildren, or other family members at the surviving spouses’ death. The surviving spouse may take full ownership of assets not disclaimed.

Life insurance may be a vital part of a family’s overall estate plan – providing funds to help pay estate taxes, funds for family members to acquire the family business, or simply providing a flexible asset that is easily allocated among heirs.

Life insurance death benefits may be disclaimed into a disclaimer trust – but it is important that the beneficiary does not take receipt of the death benefits before disclaiming them. It is also important that the beneficiary designation on the life insurance policy specifically state that the contingent beneficiary is the disclaimer trust.

With estate tax exemptions fluctuating between \$675,000 and \$12,060,000 between 2001 and 2022, traditional rigid planning may not be appropriate. The disclaimer trust provides a tremendous amount of flexibility to deal with estate taxes regardless of what the laws are when a transfer of wealth occurs.

## Hypothetical example:



**A married couple, Spouse A and Spouse B, have a need for \$10 million of life insurance on spouse A's life.**

Instead of having an irrevocable life insurance trust purchase the policy, Spouse A purchases and owns the policy themselves. The policy names Spouse B as the primary beneficiary and a disclaimer trust that benefits Spouse B and their children as contingent beneficiary.



**Spouse A passes away.** Spouse B consults with their tax advisor or attorney and determines that they have \$3 million of unused estate tax exemption remaining after using a portion of their exemption for lifetime gifting strategies. Spouse B may inform the insurance company that they wish to formally disclaim \$3 million of the death benefit.



**The insurance company will pay \$7 million of the death benefit** to Spouse B and \$3 million to the disclaimer trust, applying their remaining estate tax exemption to avoid estate taxes.

### Advantages:

- Allows the insured(s) to retain access to cash surrender values during their lifetimes.
- Does not require utilizing annual gift tax exclusions or lifetime gift tax exemptions when premiums are paid.
- Simple plan to implement.
- Allows decisions to be delayed, taking into consideration potential changes to tax laws, family dynamics, or personal financial needs.

### Considerations:

- The disclaimer trust itself is flexible, allowing a family to decide who will be named beneficiary, the amount and timing of distributions, who will be named the trustee, etc.
- To be valid, a disclaimer must meet certain legal and filing requirements. IRC §2518 requires the following, in order, to be considered a qualified disclaimer:
  1. Refusal must be in writing,
  2. The writing must be received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is 9 months after the later of:
    - a. The day on which the transfer creating the interest in such person is made, or
    - b. The day on which such person attains age 21,
  3. Neither the interest, nor any of its benefits, may be accepted, and
  4. As a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer to either:
    - a. The spouse of the decedent, or
    - b. A person other than the person making the disclaimer.



**TO LEARN MORE** about disclaimer trusts, flexible estate planning strategies, or FIUL solutions, call the Advanced Strategies and Planning Platforms Team at 800.800.3220.

The death benefit is generally income-tax-free when passed on to beneficiaries.

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