

Disclaimers: An Effective Asset Transfer Tool

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The Journal of Financial Planning (www.icfp.org) states that using a qualified disclaimer may be a valuable planning option when a spouse has died and "A/B" trusts or similar arrangements were not established prior to death. Rather than use the unlimited marital deduction for all estate assets and waste the opportunity to transfer \$625,000 free of federal estate taxes, the surviving spouse can disclaim a portion of the inherited property which then passes to heirs or beneficiaries as if the surviving spouse had predeceased. The estate can then take advantage of the unified credit with respect to the disclaimed property. If the surviving spouse wants lifetime income from the disclaimed property, a provision in the decedent's will could accomplish this by establishing a disclaimer trust. With this alternative, the surviving spouse would be given the opportunity to establish what is essentially an "A/B" trust, after the death of the first spouse, or to use the unlimited marital deduction as circumstances warrant. In order to be effective for federal tax purposes, a qualified disclaimer must meet four requirements:

- 1.) The disclaimer must be in writing and must be irrevocable.
- 2.) The disclaimed interest must pass without direction by the person disclaiming the property. Thus, it is usually advisable to know who, under applicable state law (or the will), will receive the property. A will can typically direct the disposition of any disclaimed property.
- 3.) The written refusal must be received by the grantor of the interest (or the grantor's estate) within nine months of the taxable transfer creating the interest (or, if the disclaimant is a minor, within nine months of the disclaimant's 21st birthday).
- 4.) With the exception of a spouse, the person disclaiming the property cannot receive any benefit from the disclaimed property, such as trust income. Hence, a spouse could disclaim up to \$625,000 of marital deduction property which could then go into a trust to provide lifetime income to the surviving spouse with the property ultimately passing to children (if so provided by the will) free of federal estate taxes.