
Why Having a Bypass Trust in Your Revocable Trust Might Still be Relevant

As of January 1, 2013, the federal estate tax exemption is now \$5,250,000 per person. This means that each person can pass during his or her life time (or at death) up to this amount without imposition of federal estate or gift tax. However, back in the 1990s, the federal exemption was only \$600,000. Therefore, it was very common to see A/B trust provisions in revocable trusts for married couples to take advantage of both spouses' estate tax exemption.

The reason for doing this type of planning was so that at the death of the first spouse, the trust would split into an "A" Survivor's Trust and "B" Bypass Trust. This way the couple could take advantage of both spouses' federal applicable exemption amount and the entire estate would not be credited to the survivor's estate at the death of the surviving spouse.

Back in the 1990s, this planning would ensure taking advantage of two times the \$600,000 federal exemption amount at the death of the surviving spouse. However, in today's new legislative environment, there is really no need to have A/B provisions in most married couple revocable trusts, at least not for federal estate tax purposes if the couple has a net worth less than \$5,250,000.

Asset Protection for the Surviving Spouse

But there is another reason for having A/B provisions or to have A/B disclaimer provisions in your revocable trust. You can get some excellent asset protection for the surviving spouse by creating an A/B structure in your living trust or by having an optional disclaimer to create the bypass trust at the death of the first spouse within 9 months of their date of death.



How this works is that at the death of the first spouse, the trust splits 50% into a Survivor's Trust and 50% into a Bypass Trust (assuming that all the assets in the trust are community property). The surviving spouse can be the trustee of the Survivor's Trust and of

the Bypass Trust.

However, if the surviving spouse were to ever go through a bankruptcy, a subsequent divorce, get sued, or have some other creditor problem, the surviving spouse can resign as trustee over the Bypass Trust and appoint an independent third-party trustee to protect the assets in the Bypass Trust from the creditor. Then, that independent third-party trustee can turn off distributions from that trust so that a creditor cannot crack it.

If you would like to learn more about A/B trust planning, please contact me at info@geigerlawoffice.net or call my office 760-448-2220. Or visit us on the web at

www.GeigerLawOffice.net. To request a free copy of my book *Safeguarding the Nest, a California Estate Planning Guide*, visit www.geigerlawoffice.net/safeguardingthenest.

About the Author – Brenda Geiger, J.D.

Mrs. Geiger's practice is located in Carlsbad, California. Her firm focuses on Business Planning, Asset Protection, Estate Planning, Trust Administration, and Elder Law. She obtained her law degree from the University of San Diego School of Law where she served as an Editor on the board of the San Diego International Law Journal.

She is also involved in a variety of professional and community organizations. She serves as an editor for the North County San Diego Bar Association Magazine (The North County Lawyer). She is also an active member of the North County Estate Planning Council, WealthCounsel, LLC and ElderCounsel, LLC. Mrs. Geiger is a frequent speaker for many local organizations as well as the North County San Diego Bar Association.

Additionally, she is the author of an estate planning book and an elder law planning book. The book on estate planning is *Safeguarding the Nest, Third Edition* (2013). Her book on elder law planning is *How to Avoid the Catastrophic Costs and Effects of Long Term Care: A California Elder Law Guide* (2013). She also authored the law journal article "Authorization to Kill Terrorist Leaders and Those Who Harbor Them: An International Analysis of Defensive Assassination," *San Diego International Law Journal*, 4 *San Diego Int'l L.J.* 491, Spring 2003, and has published several articles.



Brenda Geiger, J.D.,
Managing Attorney
Geiger Law Office P.C.

Mrs. Geiger is admitted to practice before the United States Federal Court for the Ninth District and California State Courts and is an accredited V.A. Planning Attorney. On a more personal note, Brenda is married to Len, the CEO of a San Diego based company and has two young children. She loves running, travel and spending time with her family.

She can be reached for news interview inquires, speaking event requests and private client meetings at (760) 448-2220.

Geiger Law Office, P.C.,
2888 Loker Avenue East, Suite 311
Carlsbad, CA 92011 (760) 448-2220
www.geigerlawoffice.net
info@geigerlawoffice.net