

The Periodic Table of Estate Planning Elements™ Users Guide

1. Charitable Remainder Unitrust (CRT)-This trust allows an individual or couple to make a gift, or a series of gifts, normally of appreciated assets, receive a charitable income tax deduction for the present value of the gift and to receive an income stream of a percentage that is based on the value of the trust assets. All types of CRTs have a minimum payout percentage of 5%. The trust is based on the life expectancy of the grantor or a term of years no greater than twenty. When the last income beneficiary dies or at the end of the term, the remainder passes to the charitable beneficiary.

2. TCLAT-A testamentary charitable lead annuity trust is established at the death of the grantor. It pays a fixed annuity percentage to charity for a period of time then the remaining assets are transferred to the grantor's beneficiaries. Most TCLATs are structured to create a "zero" transfer tax and are often used to eliminate any estate tax that would be due from the grantor's estate.

3. Charitable Life Estate-Client makes a gift to a charity of his residence and retains all rights and obligations of property ownership for his life. Client receives an immediate charitable income tax deduction for the present value of the gift to charity. At death, the house passes to the designated charity and is removed from the estate of the donor.

4. Private Foundations-A private foundation is a specific type of charity that is established and operated usually by one family. The entity can be a trust or a corporation and the family

may have 100% control of the board, make all of the investment decisions and all charitable grants. Private foundations must distribute 5% of its assets annually. There are also strict guidelines as to what type of investments may be owned and there are special limitations as to the amount of charitable income tax deductions are available for contributions.

5. Family Charity Plan-Client establishes a family limited partnership that is designed to minimize the typical discounting that is normally associated with partnership planning. Client funds the partnership and then donates the limited partnership interests to designated charities. Client receives a significant income tax deduction and maintains investment control over partnership assets. Often client has a right to borrow from the partnership. Also, client generally makes an annual distribution to the charities from the partnership, normally 1% of assets.

6. Supporting Organizations (SOs)-SOs are similar to private foundations but are actually public charities that can be established by private families. Because they are technically public charities, the higher charitable income tax deduction rules for public charities apply. Unlike private foundations, however, SOs require that a private family may not have absolute control of the board. That is, if the board is to have 5 members, the family can only have a maximum of 2 of those members. SOs are not required to pay excise taxes, nor are they required to distribute 5% of their assets annually. Instead, they must distribute 85% of their income.

7. Bargain Sales-A bargain sale occurs when a donor transfers property to a charity for less than the full fair market value of the property or when the charity pays some portion of the value for property it receives. The donor only receives a tax deduction for the contributed portion of the property.

8. Charitable Remainder Annuity Trust (CRAT)- This trust allows an individual or couple to make a single gift, normally of appreciated assets, receive a charitable income tax deduction for the present value of the gift and to receive an income stream of a fixed percentage of the original value of the contribution of trust assets. The trust is based on the life expectancy of the grantor or a term of years no greater than twenty. When the last income beneficiary dies or at the end of the term, the remainder passes to the charitable beneficiary.

9. Gift Annuity-A gift annuity is a form of a bargain sale. A donor transfers property to a charity in exchange for a fixed income stream that will last for the life expectancy of the donor. A charitable income tax deduction for the present value of the gifted property is allowed. The charity is liable and responsible for the payment of the annuity income stream.

10. Net Income with Makeup Unitrust (NIMCRUT)- This is a special type of charitable remainder unitrust (see above) wherein the trust distributes the “net income” that the trust assets earn within the trust. If the trust does not earn enough income to pay the stated income percentage payout, the trust creates an “IOU” account that it can pay at a later date when the assets earn more income. These trusts are often used when a donor has other income currently but would like income later such as during their retirement. Trust assets can be managed to produce income or not.

11. Flip Charitable Remainder Unitrust (Flip CRT)-This type of CRT operates like a NIMCRUT when it is originally established, paying out only the income it earns at a set percentage. At some triggering event in the future, the FLIP CRT changes character and operates like a standard CRT (SCRUT) whereby it pays out a fixed percentage of its annual valuation. This type of CRT is often used when a gift that produces little current income (such as land) is transferred before it is sold. Upon sale, the proceeds are reinvested and the CRT begins paying its regular percentage.

12. Charitable Lead Unitrust (CLUT)-This trust operates very much like the CLAT. However, while the percentage payout remains fixed, the trust’s distribution amount varies depending on the value of the trusts assets which are computed annually. Because of this, the CLUT cannot have a “zero” gift amount as there will always be some calculated remainder that passes to the heirs. CLUTs are often used for gifts to grandchildren or other “skip generations” because the generation skipping tax amount can be calculated when the trust is first established.

13. Charitable Lead Annuity Trust (CLAT)-This trust distributes income to charity over the life of the donor or for a period of years. At the end of the trust term, the trust assets are either distributed back to the grantor or to heirs. These trusts are used to either transfer assets to heirs with little or no gift tax or to create a different way to make gifts if the grantor has already used significant charitable income tax deductions. CLATs have no minimum payout percentage.

14. Donor Advised Funds (DAF)-A DAF is a special account established at a Community Foundation. It allows a

donor to make a gift of property without specifying the final charitable purpose for the gift. Donors often are allowed to maintain money management responsibility for the DAF and can also direct the Community Foundation as to where the charitable funds are ultimately distributed. The Community Foundation is not technically bound to direct the funds to the donor's selection but as a practical matter most follow the donor's wishes. DAFs have no annual minimum requirement for distribution and are usually inexpensive to establish.

15. Limited Liability Company/Charitable Remainder Trust (LLC/CRT)-In this strategy a gift of appreciated property is made to an LLC. The LLC then gifts the property to a CRT in exchange for the income interest. The LLC is then sold to a Grantor Deemed Owned Trust (GDOT) in exchange for a note. Because of the fact that the LLC only owns the income stream due from the CRT, and the LLC has restrictions on marketability and liquidity, the "discount" available for the sale to the GDOT should be substantial.

16. Family Limited Partnership (FLP)-FLPs are a form of business entity that can be utilized to facilitate the transfer of assets. Ownership interests are divided into General Partner (GP) and Limited Partner (LP) shares. GPs maintain control of the entity even though they may own a small percentage of the total FLP. LP interests have ownership but no control. Because the LPs have no control over their interests FLPs often receive significant valuation adjustments when valued by appraisers. This allows the LP units to be transferred or sold at less than their full monetary value. FLPs also enjoy strong creditor protection and are therefore effective for family asset protection purposes.

17. Long Term Care Insurance (LTC)-This type of insurance is meant to protect families from the catastrophic costs of care due to a prolonged illness. Coverage is usually provided as a "per day" cost and many policies feature various riders that protect against inflation. Coverage applies not only for nursing home and rehabilitation facilities but for home health care costs as well. Policies can be structured so that they are paid for over a lifetime or for a period of years. Some policies refund the premiums that have been paid at the death of the insured. LTC is income tax deductible to C Corporations and owners of those corporations may "discriminate" as to which employees are covered.

18. Walton Grantor Retained Annuity Trust (Walton GRAT)-In a typical GRAT assets are transferred to a trust and the grantor of the trust receives an income stream for a period of years. What is left in the trust at the end of its term is transferred to beneficiaries, normally the grantor's heirs. The normal structure of a GRAT is meant to use "leverage" to reduce or eliminate the taxable gift to the heirs from the GRAT. This type of normal GRAT causes all of the GRAT assets to be included in the grantor's estate if the grantor dies during the GRAT period. The Walton GRAT provides an exception to this rule, thereby allowing GRAT payments to continue after death and the GRAT assets not reverting to the grantor.

19. Revocable Living Trust (RLT)-A foundational document of most estate plans, the RLT is a trust that is established by an individual for the purpose of holding and managing the assets of the individual. The trust is a non-entity for income tax purposes. That is, the grantor of the trust is still responsible to report and pay the income tax due on any trust

assets. RLTs are also effective in the event of a disability or incompetence of the grantor, in that they name a successor trustee who can step in to the shoes of the grantor without a court proceeding. RLTs are often established in order for the grantor's estate to avoid probate. Further, a properly drafted RLT can be utilized to take advantage of the estate exemption in order to minimize estate taxes.

20. Preferred Limited Partnership (LP)-This type of LP creates two different classes of limited partner. LP units are allocated between "common" and "preferred" classes. The common interests are generally entitled to receive any of the growth associated with the underlying assets of the LP. The preferred receive a stated percentage income return, e.g. 5%. Because of the possible disparity of return between the two types of units often have different values when appraised. This allows the General Partner of the LP to make different decisions as to the ultimate disposition of the two types of interests. This type of LP can provide substantial planning leverage for the appropriate estate.

21. Life Insurance-While life insurance has been available for a very long time it is often dismissed. However, properly structured life insurance can add an element of safety and certainty to most estate plans. Life insurance death benefits are generally income tax free and policies that are properly owned outside of the estate can also be estate tax free. Many policies have guarantees that will keep the policy in force as long as premiums are paid in a timely fashion, regardless of interest rate or company mortality fluctuations.

22. Rent to Own- This strategy couples a short term Qualified Personal Residence Trust (QPRT) with an

Irrevocable Life Insurance Trust (ILIT). The ILIT is a beneficiary of the QPRT and at the termination of the QPRT term receives premium payments in the form of rental income. This allows the client to pay large insurance premiums without annual gifting, Crummey notices or income tax consequences.

23. Life Settlements- This strategy involves the sale of a life insurance policy to an independent third party. There are many reasons to consider this type of transaction. The client may no longer need the insurance; the policy may be in danger of lapsing while the client is unwilling or unable to make the necessary premium payments; or there may be newer, more appropriate and cost effective insurance needed for the clients' current circumstances.

24. 529 Plans-529 Plans represent a special section of the tax code which has been enacted to encourage the funding of post high school education. Each state has its own plan but individuals may choose the plan of any state they wish to use. 529 plans allow an individual to establish an investment account for themselves or for another person (normally children or grandchildren). Investment returns grow on a tax free basis and, if utilized for post high school educational purposes, remain tax free. While the funds are generally out of the estate of the grantor of the plan, the grantor may take them back at any time. While they will have to pay income tax as well as a 10% penalty on the earnings, it is often reassuring to have the knowledge that the funds are retrievable in the event of an economic emergency. The law further allows the grantor to make five years of gifts to the 529 plan in one year. That is, \$60,000 can be deposited currently in a plan for the benefit of another, and then the grantor must wait until the sixth year to make any additional deposits.

25. Family Limited Liability Company (FLLC)-Much like the FLP, a FLLC is a type of business entity that provides for the centralized pooling and management of family assets. Owners of FLLC units are considered “members” and there is usually a single “managing member”. FLLCs are a relatively new form of entity and there is less case law regarding their uses and nuances when compared to FLPs. However, many jurisdictions have passed favorable FLLC statutes and therefore the FLLC should be carefully considered in the proper jurisdiction.

26. Crummey Powers-Most traditional life insurance trusts contain what are known as “Crummey Powers” which grant the beneficiaries of the trust the right to withdraw money that has been contributed to the trust (normally to pay insurance premiums), for a period of time. This allows the contribution to be a gift of a “present interest” and therefore qualify for the application of the annual exclusion. The name “Crummey” power derives from the court case that originally challenged and won on this principle.

27. Jurisdictional Trusts-These trusts are normally established because of the favorable laws of a specific jurisdiction. These could be any type of trust, revocable or irrevocable, grantor or non-grantor. What’s important is that the specific legal foundation of the jurisdiction is favorable for the application sought. These could be state specific, i. e. Delaware for asset protection or Dynasty provision, or could even be international such as Cook Islands or Nevis for asset protection.

28. Succession Planning-This is the process by which the owner of a closely held business determines who will take over the business and how and when the transition will take place. While not necessarily a codified estate planning “technique” a business without an organized succession plan will be more likely to fail and have to be sold or liquidated. The economic result to the family may be different than planned for or anticipated.

29. Grantor Retained Annuity Trust (GRAT)-The GRAT transaction entails the transfer of assets to a trust whereby the grantor retains an income from the trust for a period of years and the remainder transfers to beneficiaries at the end of the trust term. The “remainder” is calculated using IRS tables and is considered a gift to the remainder beneficiaries. Therefore, many GRATs are structured to produce a “zero” gift and hope to take advantage of the possible arbitrage of the return of the assets in the GRAT compared to the IRS rates utilized to calculate the trust remainder. The disadvantage of the regular GRAT transaction is that if the grantor dies during the trust period, all of the assets in the GRAT are included back in the grantors estate.

30. Sale for Installment Note-This transaction is normally coupled with other techniques to improve the results. Often a family will use an FLP or FLLP and sell interests that have been appraised at a reduced value because of lack of liquidity and marketability. The buyer is often a trust for the beneficiaries, which purchases the discounted assets for the installment note. While the note is in the estate of the seller, it is usually of less value than the assets that have been sold. The note can be structured to be paid as “interest only” or it may be amortized.

31. Gifting-A simple way to transfer assets to beneficiaries. An individual may currently gift \$11,000 of property to any other individual, annually (\$12,000 beginning in 2006). Further, every individual can currently give away up to \$1 million of assets during their lifetime without incurring gift taxes. Making gifts of property that is discounted in some way can be advantageous in transferring more than the statutory amount.

32. Annuity Withdrawal-Often families ignore the funds that clients have in commercial annuities. Since funds are accumulating on a tax-deferred basis, this is often a logical approach. However, since annuities remain in the estate of the owner and are therefore subject to estate tax and income in respect of a decedent tax, it is often advisable to begin a systematic program of annuity withdrawal. Frequently the after-tax proceeds of the withdrawal can be utilized to subsidize lifestyle or to purchase life insurance to replace the dollars that would be lost to the double taxation of the annuity.

33. Dynasty Trust-This type of trust allows assets that are contributed to the trust to remain in the trust for multiple generations. Because of this provision, the trust assets will pass outside of the estate tax system and will also be protected from the claims of a trust beneficiary's creditors. This type of irrevocable trust must be established in a jurisdiction that allows multi-generational trusts.

34. Premium Finance-When purchasing life insurance, many families face the possibility of making taxable gifts because the amount of the premium exceeds the amount of annual gifting available to the insured. Using the option of premium financing may alleviate this problem. Funds are

provided by a third party lender who pays the premium. The insured usually pays only the interest on the borrowed funds while the principal of the loan accumulates and is often repaid from the insurance proceeds at the insured's death. While complicated, premium financing can be an interesting solution for funding large policies.

35. Buy-Sell Agreements-This type of contract is normally associated with the owners of a closely business to allow for the disability, abandonment of the business, or untimely death of any of the owners. The agreements describe the provisions by which an owner's share of the business will be redeemed. Buy-sells can be funded with disability and life insurance or they may be unfunded and, therefore, rely on the cash flow of the business to fund the buy out. Providing liquidity for the estate of the business owner is often the reason for the formation and execution of a buy-sell.

36. Irrevocable Life Insurance Trust (ILIT)-In many estate plans, it is best to own life insurance outside of the taxable estate. The ILIT is the most common and flexible form of trust to accomplish this function. The ILIT will be the owner and beneficiary of one or more life insurance policies and will be obligated to pay the premiums, collect the proceeds at death and distribute the funds to beneficiaries per the provisions of the trust. This is a good way to engage professional management in the management and oversight of the trust funds. ILITs may be established as Dynasty Trusts, if so desired.

37. Asset Protection-This is a broad category of planning which may involve one or more different strategies. Each of the techniques seeks to provide insulate assets from the attack

of creditors. Various trusts, FLPs, LLCs and other entities may be considered for asset protection. Further, there are choices of jurisdiction both domestic and foreign that may provide favorable environments for asset protection. Those in high risk profession or those with high risk assets generally fit the profile for implementing asset protection strategies.

38. Intra Family Loans-A simple solution that allows family members to make loans at the current Applicable Federal Rate (AFR), this strategy allows for possible arbitrage gains when the AFR is low relative to long term investment results. Furthermore, it is often possible for discounts to apply to the value of the notes in the event of the death of the lender.

39. Corporate Recapitalization-Many closely held companies only have one class of stock, known as common voting stock. When considering options for estate planning, the closely held company stock often represents a major portion of the estate. In order to facilitate transfer while retaining control of the company, it is possible to “recapitalize” the company by redeeming the outstanding shares and issuing new shares which are divided between “voting” and “non-voting” shares. The non-voting shares are then transferred by sale or gift and because of their non-voting status appraisals often reflect a greatly reduced value for these shares. Recapitalizations are available to S corporations as well as C corporations.

40. Self Canceling Installment Note (SCIN)-Like other installment notes, the SCIN originates when assets are sold. As the name implies the SCIN obligation is cancelled when the obligation is fully paid or at the death of the seller. Because of the self-canceling feature of the SCIN, the seller receives a “premium” amount that is higher than a normal installment

obligation. The premium is reflected in one of two ways; either more principal is added to the balance or a higher (than current federal tables) interest rate is applied to the obligation. SCINs may be effective in circumstances where the seller is not expected to live to their IRS computed life expectancy.

41. Grantor Deemed Owned Trust (GDOT)-This type of trust has several unique properties that make it a very powerful estate planning tool. First, when assets are transferred to the trust either by gift or by sale, they are removed from the estate of the grantor. Second, the assets in the GDOT remain income taxable to the grantor of the trust. While this may not seem like a positive attribute, the grantor’s recognition and payment of the income taxes essentially allows the assets in the GDOT to grow free of income taxes outside of the estate. This can greatly increase the ultimate value of the assets transferred to the trust.

42. Offshore Captive Planning- Business owners often have risks that are either under-insured or are too expensive to insure. Those who have excess taxable income may choose to establish their own insurance entity, known as a “Captive.” These are most done in international jurisdictions since the tax laws favor this type of arrangement. These structures are very complex and require specialized planning but can also provide very favorable income and estate tax benefits.

43. Qualified Personal Residence Trust (QPRT)-This technique involves transferring a residence by gift to a trust for a period of years. Normally, a gift tax return is filed for the year that the QPRT is funded. At the end of the trust period, the residence becomes the property of the beneficiaries of the trust. Because the gift is made currently and vests in the beneficiary

at a later date, there is a discount on the value of the transfer which is calculated utilizing IRS tables. One risk of the QPRT is if the transferor dies during the QPRT term, the house reverts to the estate of the transferor. After the QPRT terminates, the transferor should pay rent to the transferees as in any other commercial transaction.

44. Leveraged Roth Conversions - Under certain circumstances it is possible to convert a traditional IRA account to a Roth IRA. This may be an effective strategy, though it requires the payment of income taxes on the converted amount. Use of borrowed funds to pay taxes can make this a very strong strategy.

45. Employee Stock Ownership Plans (ESOP)-Closely held businesses often have no clear exit strategy. An ESOP can provide a ready market since the ESOP effectively sells a portion of the company stock to a qualified plan which must include the employees of the company. The owner may receive property which will allow a diversification of his assets that have been concentrated in their own company. ESOPs take many forms and are often complex transactions.

46. 412(i)-This type of defined benefit pension plan is structured to allow the investments in the plan to be either life insurance and/or commercial annuities. Normally these products are designed to produce a low guaranteed rate of return which causes the annual contribution and, therefore, the income tax deduction to the participants in the plan, to be relatively high. 412(i) may be appropriate for an older business owner who has few employees.

47. IRA Maximizer-This strategy is for those individuals who have significant balance in their IRA (or other qualified plan) and who do not need the funds to live on. Normally, the IRA invests all or some of its assets in a newly formed family limited partnership (flp) and the flp invests all or some of its assets in a restricted management account (rma). The result of the transaction is that there will be a reduction in appraised value of the account because of the illiquid nature of the rma and the flp. By structuring the transaction properly, the IRA owner may reduce income taxes on required minimum distributions and estate taxes because of the reduction in appraised value.

48. Limited Partnership Owned Life Insurance-An alternative to owning life insurance in an irrevocable life insurance trust (ILIT), families often use a Limited Partnership. This is normally done as one step in a transaction whereby the limited partnership units will be sold or otherwise transferred out of the estate of the insured. Further, there are usually other assets contributed to the partnership that will fund the insurance premiums. Done properly, the life insurance death benefit can remain outside of the estate of the insured while some degree of control through the control granted by retaining the General Partner interest.