

**Bypass Trust Wills**

***What is a "Marital Deduction Amount" and a "Tax Free Amount"?***

Estate tax planning for married couples usually involves dividing the estate of the first spouse to die into two shares. One share is the portion of a deceased person's estate that is exempt from estate tax (unless Congress enacts further legislation, \$3,500,000 in 2009, not subject to tax in 2010, and then back to \$1,000,000 in 2011 and thereafter). This amount is sometimes referred to as the "Tax Free Amount." The balance of the estate, i.e., the amount that exceeds the exemption amount in the year of death, passes to the surviving spouse (or to a Marital Trust) to defer estate tax. This excess amount is referred to as the "Marital Deduction Amount."

***What is a Bypass Trust?***

A Bypass Trust is a trust designed to hold the Tax Free Amount. The surviving spouse or any other qualified person or entity may serve as trustee of a suitably drafted Bypass Trust. Under the terms of the typical Bypass Trust, distributions can be made to the surviving spouse to provide for his or her health, support and maintenance in accordance with his or her accustomed standard of living. Distributions can also be made to children and other descendants from the Bypass Trust, as "secondary" beneficiaries. The surviving spouse is sometimes given a testamentary "power of appointment" (described below) over the Bypass Trust. In spite of the fact that the surviving spouse has use of the trust property during his or her lifetime (and may be given control over the disposition of the property at death), the assets in the Bypass Trust will not be taxed in his or her estate at the time of that spouse's death. The Bypass Trust terminates upon the death of the surviving spouse or if later, the date that the children reach a designated age.

***What is a Marital Trust?***

A Marital Trust is a trust designed to hold the Marital Deduction Amount, i.e., the portion of a decedent's estate *in excess* of the amount that is exempt from estate tax. The value of property passing to this trust is deducted from the taxable estate of the first spouse to die, effectively deferring estate tax on this property. The surviving spouse or any other qualified person or entity may serve as trustee of a suitably drafted Marital Trust. Under the terms of the Marital Trust, all income must be distributed to the surviving spouse. Distributions of principal can be made to the surviving spouse to provide for his or her health, support and maintenance in accordance with his or her accustomed standard of living. At the death of the surviving spouse, the assets in the Marital Trust (on which tax was deferred), as well as the surviving spouse's individual assets, will be taxed to the extent the total exceeds that spouse's Tax Free Amount.

***What is a Contingent Trust?***

A Contingent Trust is a trust designed to hold property that might otherwise be distributed to a person who is incapacitated, or who is too young to manage the property prudently. It enables the trustee to make distributions to or for the benefit of the person, without subjecting the property to the control of a court-supervised guardianship.

***What is a Power of Appointment?***

A "power of appointment" enables the beneficiary of a trust to decide to whom the trust's assets will pass. A "testamentary" power of appointment means that the power may be exercised in the beneficiary's Will. Powers of appointment may be "limited" so that the group of people to whom the property may be given is restricted, or

"general" so that the beneficiary may give the trust property to his or her estate, and thereby, to anyone named in his or her Will.

***What is a  
Fiduciary?***

"Fiduciary" is the term applied to anyone acting on behalf of another to manage assets that have been entrusted to the Fiduciary. The term includes an executor (who has been entrusted by the decedent to manage the assets of the estate for the estate's beneficiaries) and a trustee (who has been entrusted with the assets of the trust to manage them for the trust's beneficiaries). The same person can be both a "Fiduciary" and a beneficiary.

***What is a  
Guardian  
Declaration?***

A "Guardian" is the person who is charged with caring for minor children. In Texas, children are treated as minors until they reach the age of 18. Guardians may be named in the Will, or in a separate instrument entitled "Declaration of Guardian for Minor Children." A guardian may be named for the "person" of the minor, for the "estate" of the minor, or both. A guardian of the person is responsible for making parental decisions regarding the minor's upbringing, education and welfare. A guardian of the minor's estate is charged with caring for funds that belong to the minor (but not for funds that are placed into trust for the minor, which are managed by the trustee of the trust). The same person may be named to serve as both the guardian of the minor's person and estate. This person may, but need not be, the same person who serves as the trustee of any trust created for the minor's benefit. Co-Guardians of a minor's person may be named, but only if they are married to each other.