JEFFREY·BURR
ESTATE PLANNING & PROBATE ATTORNEYS

CLIENT FOCUS

TAKE YOUR TRUST TO THE NEXT LEVEL—PROTECT YOUR HEIRS WITH A BENEFICIARY DIRECTED TRUST

It has been said, that it's better to be the beneficiary of a $1 Million Trust, than to have $1 Million. This is because a beneficiary enjoys the benefits of trust assets without the liabilities of direct ownership. This begs the question, why should your trust ever make an outright distribution to your heirs outside of your trust? Common answers include, that you "feel your heirs are trustworthy" or because you don't want to "rule from the grave". By leaving your assets to a Beneficiary Directed Trust instead of directly to an individual, your heirs can have full access to their inheritance and also take advantage of the benefits of holding inherited assets in a trust.

A Beneficiary Directed Trust may be completely controlled by the beneficiary, but because of the Trust's "spendthrift" provisions, its assets are not accessible to the beneficiary's creditors. This powerful technique allows your heirs to have complete freedom and use of the trust assets, without subjecting your hard-earned wealth to attack by your beneficiary's existing creditors, mistakes or lack of judgment, as well as frivolous lawsuits. In addition, in many cases your heirs will be able to make gifts of these trust assets without incurring a gift tax liability and/or leave the trust assets to their heirs entirely free of estate taxes.

By setting up and funding your revocable family trust, you've already protected your heirs against probate and helped them to minimize the estate tax burden. Now, take your trust to the next level and ensure long-lasting asset protection that will conserve your financial legacy for generations to come while entrusting your heirs with maximum flexibility. JB

PREMIUM FINANCED LIFE INSURANCE: UTILIZING YOUR UNRECOGNIZED ASSET

Non-recourse Premium Financing is an innovative insurance financing technique that allows you to realize benefits from one of your unrecognized assets—your insurability. Insurability is determined based on two factors: health and wealth. The better your health and the higher your wealth, the more insurable you are. Because each day we grow older, insurability is a "wasting asset". This means that when death occurs, this asset is gone. Through the use of Non-recourse Premium Financing you can tap into the benefits from this asset now.

Here's how it works. An insurance policy on your life is purchased by a life insurance trust. For the first 2 to 4 years, premium payments are advanced by a lender whose sole collateral is the policy. During this period, you can name anyone you want as the beneficiary of the policy. If death should occur, the named beneficiary will get all of the death benefits after repaying the lender the premiums advanced plus interest. You pay nothing for these benefits; not even interest, which accrues with the loan. The lender has no recourse to any of your other assets—hence the name "Non-recourse Premium Financing".

In sum, you can receive 2 to 4 years of free life insurance protection, which provides coverage for a temporary need or for interim estate tax payment until questions regarding the estate tax repeal are resolved. Coverage is available in amounts of up to 80% of your net worth. The most likely candidates are individuals who are generally between the ages of 67 and 88 and who have a net worth exceeding $5 Million. To find out if you may qualify for this innovative program, please call our office today.

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2600 Paseo Verde Parkway
Henderson, NV 89074

LIFETIME TRANSFERS

One of the benefits of making lifetime transfers of assets to one's heirs (as opposed to waiting until death to make the transfers) is that such lifetime transfers can sometimes be made at a discount from the value at what the transferred asset would be included in the estate if held until death. The effect of such transfers, therefore, has at least two powerful estate tax benefits, namely (1) the growth and income of the transferred asset occurs for the benefit of your heirs, thereby avoiding additional estate tax if held until death; and (2) the gifting dollar is leveraged where the discounts apply. For example, let's say you are making the maximum annual non-taxable gift of $12,000 to your son. If you give your son $12,000 in cash, the law allows that gift to be tax free, thereby reducing your estate by $12,000 plus all the income that will be earned on that $12,000 over the years. However, if the gift is made utilizing a partnership or LLC, if a discount of 40% applies, then you could remove over $20,000 from your estate if a 40% discount were to apply to the gift. This would occur because if the $20,000 is retained in your estate, it will be valued at $20,000 for estate tax purposes, but if the $20,000 partnership interest is gifted, it will be discounted to $12,000 and will pass to your son tax-free. The result is, instead of removing just $12,000 from the estate with the cash gift, $20,000 is removed with the discounted partnership gift.

These discounts have applied and have been upheld by the courts for many years. However, about a year ago the Senate began the process of examining the use of this planning technique and was considering legislation that might put an end to this important tool. However, in the weeks before the matter was to be voted upon, Hurricane Katrina hit the Gulf Coast and the matter was tabled indefinitely.

It is possible that the Senate will get back to this matter in 2006 or 2007, and there is the clear possibility that this additional benefit of lifetime gifting will be curtailed. If you are concerned about estate taxes and would like to do some planning, we recommend you consider action sooner rather than later so that in addition to all the other estate planning benefits arising out of lifetime transfers, you will also have your plan further enhanced through the application of this discount planning before it is legislated out of existence.

contact us

Main: 2600 Paseo Verde Parkway • Henderson, NV 89074
West: 7881 W. Charleston Blvd., #240 • Las Vegas, NV 89117
***Main:* 433.4455 • *West:* 254.4455 • jeffreyburr.com**