

# CHAPTER 3

# TRUST AND ESTATE

# ISSUES

Sandy Enman, CPA  
Molly Bucci, Esq.





# REVOCABLE TRUST



# who's who in a trust



## grantor

Individual who establishes a trust and determines what assets will go into it.



## trustee

Individual(s) or institution who manages the trust assets.



## beneficiary

Person(s) or entities who will benefit from the trust assets.

# Revocable Trust Overview

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- Created by Grantor (trustor or settlor)
- Created under State Law
- Avoids Probate
- Managed by Trustee
- Benefit of Beneficiaries
- I.R.C. §676 – grantor has power to revoke & revest assets

# Figure 3.1: Revocable Trust Language

“During the lifetime of the grantor, the grantor may alter, amend, or revoke any part of this trust by delivering written notice of the intent to revoke to the trustee. Upon the death of grantor, the trust shall become irrevocable. “



# Revocable Trusts

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- **Grantor – all income, deductions, credit & other tax attributes of trust**
- **Treas. Reg. §25.2511-2(c) – transfers to trust are incomplete gifts**
- **I.R.C. §2038 – revocable trust property included in grantor's estate**
- **Avoid Probate – title assets in trust**
- **Other asset transfers – LLC membership interest, S Corp shares**
- **Cross-Reference – 2024 pp 67-70**

# Key Advantages

**Avoids probate**

**Maintains confidentiality**

**Continuity**

**Consolidation**

Tailored Distribution for  
Specific Beneficiaries or  
Family Situations



# Revocable Trust as LLC Member or as Shareholder

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## LLCs:

- A revocable trust can own membership interests in an LLC.
- In community property states, a joint revocable trust is treated as a single member (disregarded entity).

## S Corporations:

- Revocable trusts qualify as S corporation shareholders while the grantor is alive (*I.R.C. § 1361(c)(2)(B)(i)*).
- After death:
  - Trust remains eligible for 2 years; then must elect QSST or ESBT status.



Chapter 134 of Title 9 of the Vermont Statutes concerns Transfer on Death Security Registration and establishes the rules for registering securities in beneficiary form. This allows a security owner to designate a beneficiary who will automatically receive ownership of the security upon the owner's death, bypassing the probate process.

Community property states are those that treat most property acquired during marriage as jointly owned 50/50 by both spouses, regardless of whose name is on the title or who earned the income.

As of 2025, the **nine** traditional community property states are:

Arizona

California

Idaho

Louisiana

Wisconsin

Nevada

New Mexico

Texas

Washington

# Nonresident Noncitizen Estate Tax

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- Estate tax on only assets considered US-situated property
- Estate tax exclusion \$ 60,000
- Tax Treaty modifications
- Unlimited marital deduction – US property left to US citizen surviving spouse
- Qualified Domestic Trust – property transferred from US resident noncitizen to surviving noncitizen spouse

# Tangible Personal Property

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- **Located in US**
- **Works of Art – noncitizen not domiciled in US don't constitute property within US**
  - Imported into US solely for exhibition purposes
  - Loaned to public gallery or museum for exhibition
  - At time of death, exhibit or in transit to or from exhibition in public gallery or museum.



# Issue 4

BASIS IN GIFTED PROPERTY



# Enhanced Life Estate Deed (aka Lady Bird Deed or Medicaid)

## Definition:

An Enhanced Life Estate Deed allows a property owner to retain control over real estate during their lifetime while designating a beneficiary to automatically receive the property upon their death—**without probate.**

## Key Features

**Avoids Probate**: Property passes directly to the beneficiary.

**Owner Retains Control**: Sell, lease, or mortgage the property without beneficiary consent.

**Medicaid Planning Tool**: Vermont

**Revocable**: Can be changed or canceled by the owner.

## Important Notes:

i) Not recognized in every state; ii) Offers Medicaid protection **only for primary residences**; and iii) Subject to changes in Medicaid laws and state-specific regulations.

# Meet our clients, the Kardashians

**Kim receives a house from Kris via an enhanced life estate deed upon Kris' death.**

**Khloé inherits stock upon Kris's death.**

**Kourtney receives rental property and stock as lifetime gifts from Kris before her death.**

Recipient	Transfer Type	Asset	Original Basis	Value at Transfer	Basis After Transfer	Capital Gain if Sold
<b>Kim</b>	Inheritance (Lady Bird Deed)	House	\$250,000	\$950,000	<b>\$950,000</b>	\$0
<b>Khloé</b>	Inheritance	Stock	\$40,000	\$200,000	<b>\$200,000</b>	\$0
<b>Kourtney</b>	Lifetime Gift	Rental Property	\$300,000	\$700,000	<b>\$300,000</b>	\$400,000
<b>Kourtney</b>	Lifetime Gift	Stock	\$50,000	\$180,000	<b>\$50,000</b>	\$130,000

# Federal Estate Tax Exclusion

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- 2025 Estate Tax Exclusion \$13,990,000
  - No sunset provision to revert back to 5M adjusted by inflation as of 1/1/2026 to about 7M. July 4, 2025 tax bill made permanent adjusted by inflation each year
  - 2026 Estate Tax Exclusion \$15,000,000
  - Can Elect portability
- 
- Annual Exclusion Gift \$19,000
  - Gift Splitting \$38,000 per recipient

# Vermont Estate Tax

VERMONT EXEMPTION is 5M for residents and non residents, no portability and not indexed for inflation

$8M - 5M = 3M$  times 16% is \$480,000

Vermont has no gift tax

Non Vermont Residents with Vermont situs real property

Tax Clearance for probate

# Determining Basis

P 106

- Inherited Basis = FMV on date of death
- I.R.C. § 1014
  - FMV on date of death
  - Alternative Valuation Date – I.R.C. § 2032 election
  - Special Use Valuation Date – I.R.C. § 2032A election
  - Qualified Conservation Easement – basis in the hands of the decedent
- Practitioner Note – Depreciation Basis

# Impact of A-B Trust Planning P 107-108

- Predate portability – A-B or A-B-B Trust Estate Plans
- B Trust Assets – NO step-up or step-down in basis
- A Trust QTIP election Assets – included in gross estate of surviving spouse
  - Step-up basis
- Example 3.14 – Trust Planning – Impact on Basis

# Gifts within 1 Year of Death

P 108

- Decedent acquires appreciated property
- Passes to donor
- Donor's basis = adjusted basis immediately before death
- Example 3.15 – Disallowed Step-Up

# Basis of a Life Estate

P 110

- More than 1 person inherits a time-related interest
- Treas. Reg. § 1.1014-4 – basis is uniform for everyone
- Treas. Reg. § 1.1015-1(b) – interest acquired by gift = uniform basis
- Life Tenant – person who has only lifetime use of the asset
- Remainderperson – person to whom it passes upon death of life tenant

# Basis Adjustment

P 113

- Remainder interest adjustment
- Capital improvements
- Depreciation
- Basis adjustment required
- Example 3.21 – Basis Adjustments
- Observation – Depreciation Deduction

# Basis Reporting

P 117

- I.R.C. § 6035(a)(1) & (2) – requires IRS reporting and beneficiary reporting
- Form 8971, Information Regarding Beneficiaries Acquiring Property From a Decedent
  - Not required if: gross estate plus adjusted taxable gifts < basic estate exclusion
  - Not required if: generation-skipping transfer tax exemption
  - Not required if: allocation or electing portability of DSUE
- Form 8971 Information Regarding Beneficiaries Acquiring property from Decedent

# Qualified Revocable Trust & Related Estate P 94

- I.R.C. § 676 – on date of death QRT treated as owned by decedent
- Decedent had power to revoke trust
- Treas. Reg. § 1.645-1(b)(1) – not QRT if power held by non-adverse party or decedents spouse
- 645 Election is Irrevocable – one return filed, can use fiscal year and estimated tax not required

# Trust & Estate Charitable Deduction P 99

- Income Tax Deduction – not available for Simple Trust
- Charitable contribution
  - Made under terms of governing instrument
  - Made to a qualifying organization
  - Made from gross income
  - Actually Paid
  - Permanently set aside
  - Governing instrument must provide for charitable payments
- Treas. Reg. § 1.642(c)-1(b) – election to treat contribution as paid in a prior year

