

Marital Trust Summary

A marital trust forms from the joint revocable trust at the first spouse's death by dividing the assets into separate trusts, typically a Survivor's trust (for the surviving spouse's share one-half of the community property and separate property) and a marital trust (deceased spouse's one-half of the community property and separate property). Both trusts governed by the original trust document to provide for the survivor while controlling ultimate distribution to heirs and optimizing tax benefits, requiring careful drafting by an attorney.

Creation (During Joint Lives):

1. Joint Trust: The couple creates one joint revocable trust.
2. Funding: The couple transfers their community and separate property into this single trust.
3. Terms: The trust document specifies how assets will be divided and managed upon the first death, often naming the surviving spouse as initial trustee.

First Spouse's Death (The Springing Event):

1. Division: The joint trust divides into sub-trusts as specified in the document.
2. Survivor's trust: assets belonging to the surviving spouse (their half of community property plus their separate property) are funded here and remains revocable by them until their death or incapacity. The surviving spouse has the authority to handle this trust as they would if the assets were not held in a trust, meaning they can change the beneficiaries of this trust.
3. marital trust: The deceased spouse's share of community property, or a portion thereof, moves into a marital trust. This trust is irrevocable and cannot be modified after the first spouse's death. The income and principal of the marital trust are for the benefit of the surviving spouse, but the beneficiaries cannot be changed. The goal of a marital trust is not to impoverish the surviving spouse but to ensure that the ultimate beneficiaries cannot be changed after the first spouse's death.

Tax benefits

1. The assets in a marital trust are not taxed when the first spouse dies, and they are not counted towards the estate tax exemption of the first spouse.
2. Properly structured trusts aim to get a full income tax basis step-up for all community property assets at the first death, not just 50%.
3. Leverages the marital deduction and unified credit to minimize estate taxes.

Protecting the surviving spouse

A marital trust can help protect the surviving spouse from financial imprudence or external influences. It can also shield the surviving spouse's estate before passing on assets to their beneficiaries.

Preserving assets

The marital trust allows the deceased spouse to direct assets to their heirs (e.g., children from a prior marriage) even after the surviving spouse dies, preventing remarriage issues.

Combining estate and gift tax exemptions

A marital trust can help couples pass on a greater share of their wealth by combining their estate and gift tax exemptions.

Some situations where a marital trust may be beneficial include:

1. When a couple has children from a previous marriage
2. When a couple wants to protect themselves from a remarriage scenario.
3. When a spouse has an incapacity or illness
4. When a couple has a complex family situation, such as a blended family.
5. When the couple has assets over their combined estate tax exemption.