

MEMORANDUM

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DISCLAIMER TRUST ARRANGEMENT

The Disclaimer Trust arrangement provides a flexible vehicle so that the surviving spouse can determine whether or the extent to which the by-pass or credit shelter trust should be funded. For example, if at the time of the first death the federal estate tax exemption were \$2,000,000.00, which it is scheduled to become on January 1, 2006, and the spouses' combined assets at that time were \$1,800,000.00, there would be little need to have a credit shelter trust because the spouses' combined assets would not exceed the single \$2,000,000.00 exemption available at the time of the survivor's death. If, however, at the time of the first death the spouses' combined assets were \$4,000,000.00, and the assets of the first spouse to die consisted of \$2,000,000.00 of the total assets, the survivor might chose to elect to disclaim \$2,000,000.00 into the credit shelter trust so that at the time of the survivor's subsequent death the survivor's estate would (absent any appreciation) not be greater than his or her single \$2,000,000.00 exemption.

Another benefit of the disclaimer arrangement is that it does not predetermine the size of the by-pass trust as does the more inflexible marital-by-pass trust arrangement in your current estate plans. If the amount of the federal estate tax exemption were more certain, as it was at the time your current estate plans were prepared, predetermining the amount of the by-pass trust to equal the exemption would generally be workable. However, because of the uncertainty created by Congressional

tergiversation, giving the surviving spouse flexibility to determine the amount of the credit shelter becomes important. For example, if Congress were to change the exemption to \$7,000,000.00 and the by-pass trust were predetermined to equal the exemption, an estate of \$7,000,000 would all be allocated to by-pass trust. Such an allocation might not be consistent with the flexibility needed by the surviving spouse in meeting his or her own needs.

The only benefit of the predetermined credit shelter amount is to provide creditor protection to the surviving spouse. That protection might not be as great if at the time of the first death the surviving spouse were subject to claims of his or her individual creditors. A predetermined credit shelter trust amount also provides protection against a second spouse's claims in the event of a second marriage; however, if the disclaimer has been exercised prior to the second marriage, any assets that have been disclaimed into the disclaimer trust would be protected from such a second marriage.

Although the use of the disclaimer trust arrangement creates substantial flexibility and prevents the existence of the more inflexible by-pass trust currently used in your estate plan, great care must be taken to review the total estate at the time of the first death to determine if a disclaimer should be used. Moreover, because a disclaimer must be executed within nine (9) months following the date of the first death, attention must be given to the timing of the disclaimer.