

QUALIFIED DISCLAIMER

(Permits a Beneficiary to disclaim property received from Decedent's estate so that the property will pass as if the Beneficiary/Disclaimant predeceased the Decedent.)

HIGHLIGHTS OF THE PLAN

OVERVIEW

A qualified disclaimer permits a beneficiary of an estate to refuse to accept property so that the property will pass as if the one refusing the property (the Disclaimant) had predeceased the person transferring the property. If all requirements for a qualified disclaimer are met, the property passes according to law or contract without any transfer tax consequences.

A qualified disclaimer may also be used by a donee during the transferor's lifetime to disclaim a gift. However, the most effective use of a qualified disclaimer occurs at the transferor's death when used as a post-mortem estate planning tool. For example, suppose the wife dies first, leaving everything to her husband by will. In the years after the will was executed, the couple's estate grew to a size well beyond that which would be sheltered under the unified estate and gift tax credit. If the husband were to accept all the property left to him by his wife, the wife would waste her unified credit, thus subjecting a larger portion of their combined estate to estate taxes at the husband's death. If the husband were to execute a qualified disclaimer in an amount equal to the unified credit exemption equivalent, the disclaimed property would pass to the couple's children or to a trust for their benefit, thus preserving the wife's unified credit.

REQUIREMENTS FOR A QUALIFIED DISCLAIMER

In order for a disclaimer to be a qualified disclaimer for transfer tax purposes, the following requirements must be met:

1. The disclaimer must be unqualified and irrevocable;
2. The disclaimer must be received in writing by the transferor or the transferor's legal representative;
3. The disclaimer must be executed within nine months of the transfer (either by gift or at the transferring person's death) or, if later, when the donee or beneficiary turns 21;
4. The person disclaiming the property must not have accepted any part of the property, nor exercised control over or received any interest in or benefit from the disclaimed property;
5. The disclaimed interest must pass to any person other than the disclaimant without any direction on the part of the disclaimant;

6. The disclaimed interest may be an undivided fraction or percentage of the proposed gift or bequest.

ADVANTAGES OF A QUALIFIED DISCLAIMER

1. Permits post-mortem planning to make full use of the decedent's unified credit.
2. Allows a person who does not need a bequest at death to "transfer" the bequest as if the disclaimant predeceased the decedent, thus permitting passage of the asset to the next generation without transfer tax consequences.
3. Can be used in conjunction with a family trust set up by the decedent/transferor to provide income to the disclaimant without causing estate inclusion on the part of the disclaimant.

DISADVANTAGES OF A QUALIFIED DISCLAIMER

1. The person who receives the asset may not want to disclaim, thus thwarting the decedent/transferor's estate plan.
2. The disclaimant may fail to make a timely disclaimer or follow proper procedures.