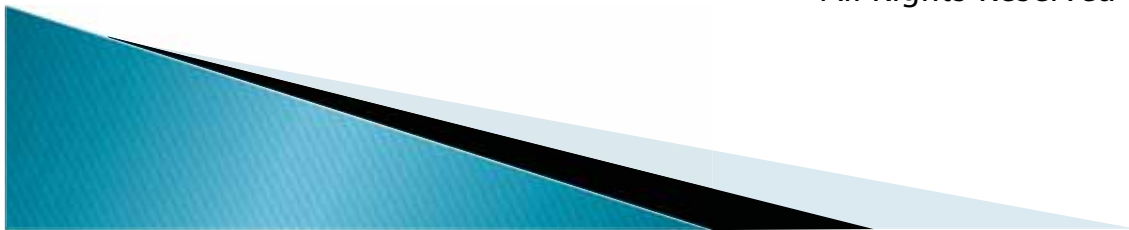


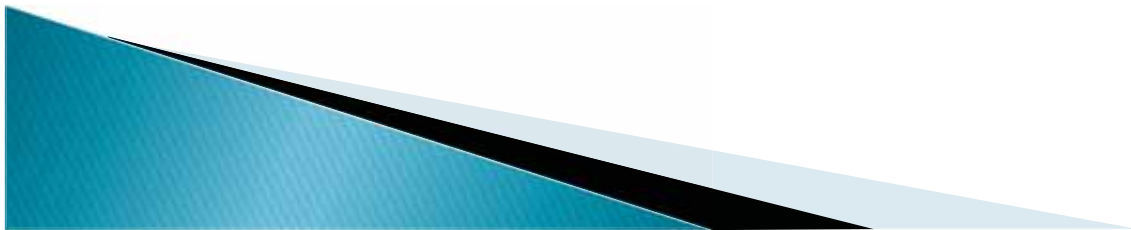
Transferring a Business Through Gifting and Trusts

Thomas M. Gilbride

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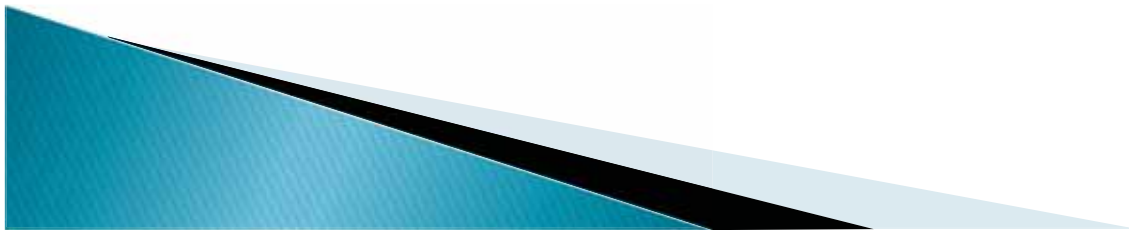


Background



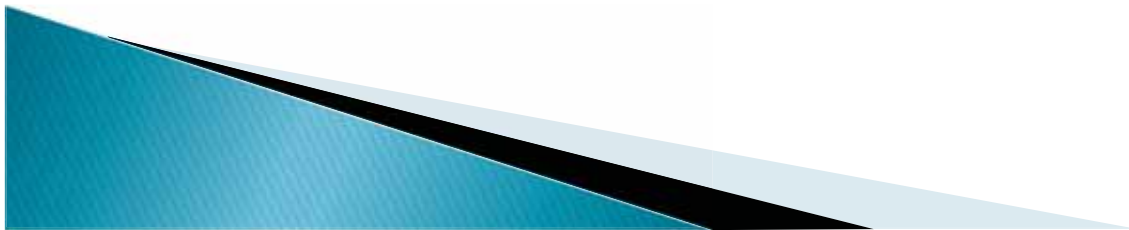
What is gifting?

- ▶ Gratuitous transfer of money or property from one person to another
- ▶ Often used in business succession and estate planning
- ▶ Can be used to create a number of desirable tax, economic and practical benefits



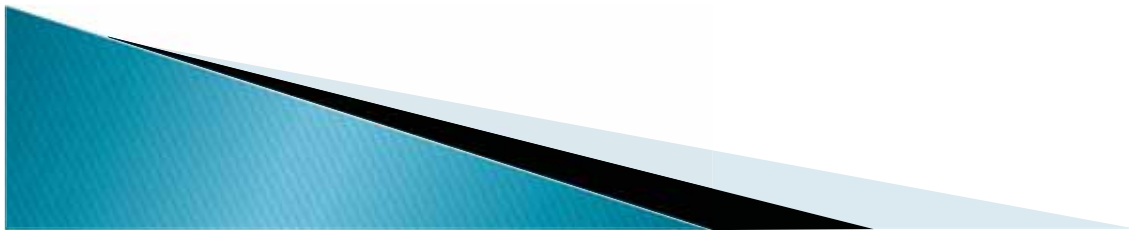
What is a trust?

- ▶ A legal entity, a device, generally created by declaration
- ▶ Often used in business succession and estate planning
- ▶ Can be used to create a number of desirable tax, economic and practical benefits



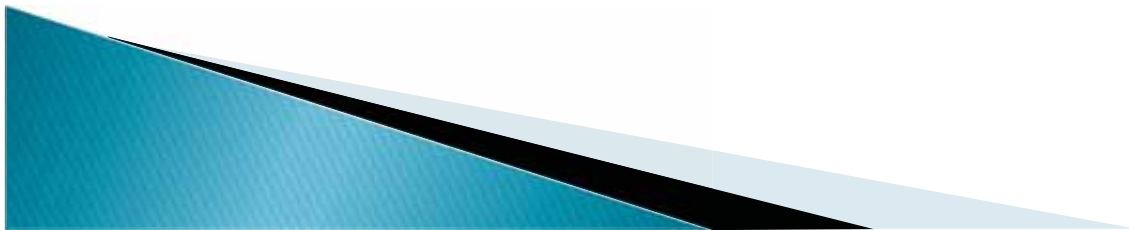
What is Succession Planning?

A plan that provides for the transfer of operating control and ownership (equity) interests in a business. The business in question is usually a privately held or family owned business. Equity and control can be transferred independent of one another, at the same time or at different times.



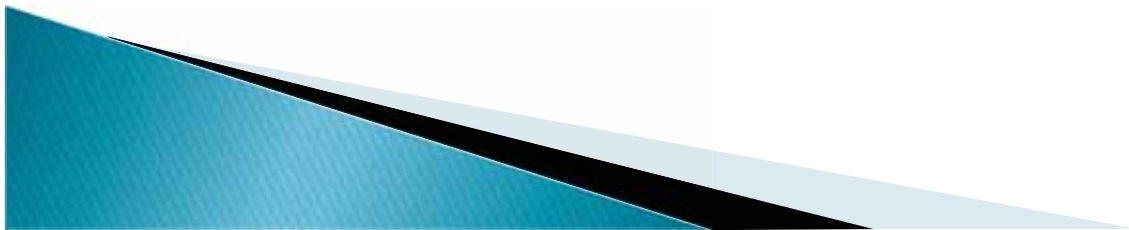
What is Estate Planning

A plan that provides for the outright transfer of one persons assets to other parties during the life time of the property owner or after the property owners demise. Property can be held, usually in a trust, for the benefit of estate beneficiaries as an alternative to an outright transfer. Generally, such a plan also attempts to minimize the cost and taxes associated with the transfer of property.



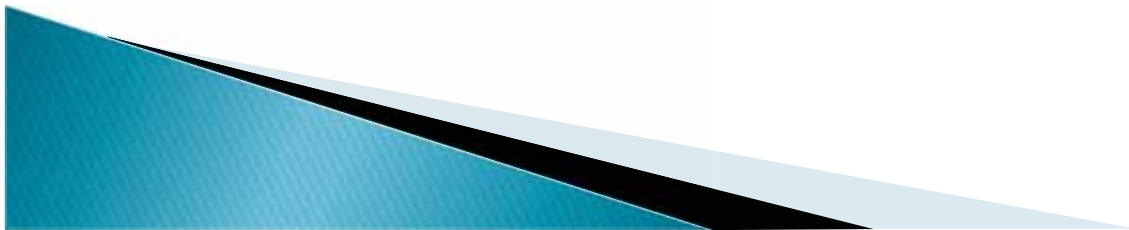
A Partnership of Sorts

Used in combination, gifting and trusts create a number of desirable tax, economic and practical benefits that lend themselves to business succession and estate planning.



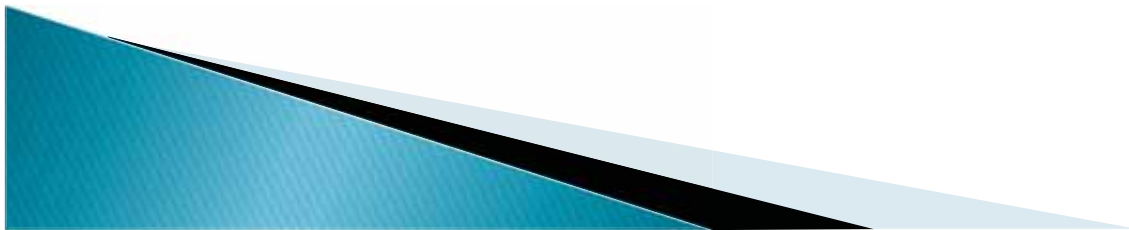
In Concert

Although succession and estate planning can be done independent of one another, they are often done at the same time.



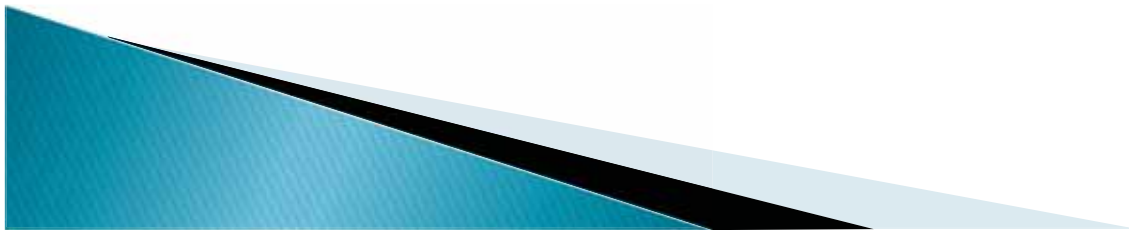
Tax Considerations

- ▶ Federal gift tax
- ▶ Federal estate tax
- ▶ Generation skipping tax
- ▶ State death tax
- ▶ Capital gains tax
- ▶ Cost basis issues
- ▶ Federal income tax
- ▶ State income tax



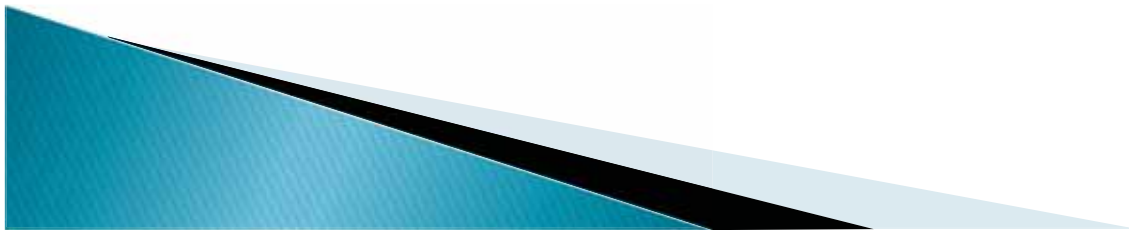
Economic Considerations

- ▶ Save money



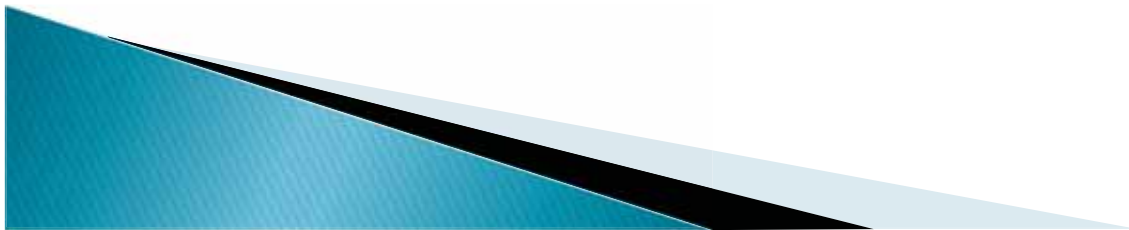
Practical Considerations

- ▶ Provide a benefit to heirs
- ▶ Demonstrate good faith
- ▶ Exercise control
- ▶ Provide expertise
- ▶ Avoid burden for heirs
- ▶ Maintain assets in current form



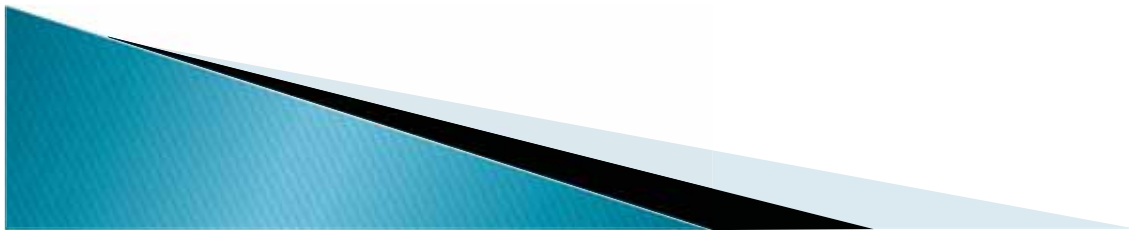
Kinds of Gifts

- ▶ Outright = Donee has control and discretion
- ▶ Limited = Donee has limited to no control and/or discretion
- ▶ Present interest = Immediate use and enjoyment of gift by donee
- ▶ Future interest = Future use and enjoyment of gift by donee
- ▶ Annual exclusion gifts = \$13,000 per year (2009)
- ▶ Lifetime exclusion gifts \$1mm in a lifetime



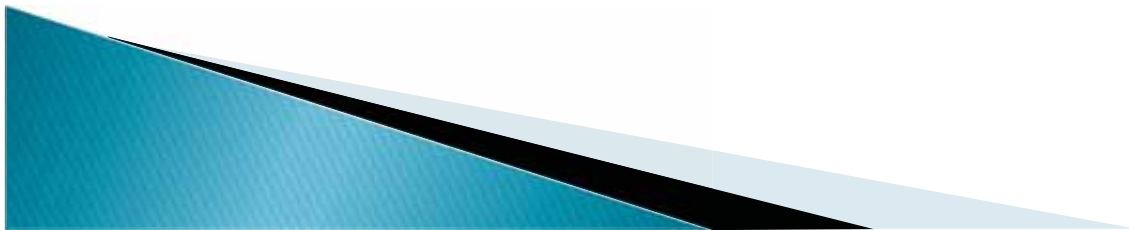
Why Gift?

- ▶ To give donee use and enjoyment of asset
- ▶ To demonstrate good faith
- ▶ To remove asset from taxable estate of donor
- ▶ To remove appreciation for taxable estate of donor
- ▶ To freeze value of asset at today's value
- ▶ To lower overall transfer tax burden
- ▶ To move taxable income to a family member in a lower income tax bracket



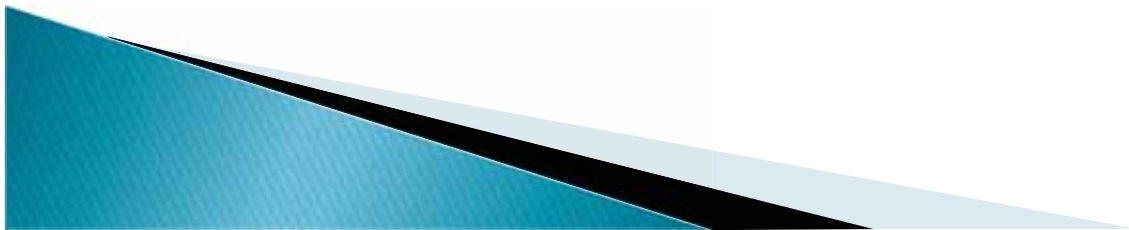
Why Use a Trust

In general, trusts can provide control over the beneficiaries use of assets in trust. Further, a trust can provide management of the trust asset by someone other than the beneficiary. A trust can also provide for the maintenance of the assets in trust. Finally, using a trust can reduce transfer costs and/or eliminate taxes. Trusts also facilitate the rapid transfer of assets to beneficiaries at the death of the estate owner.



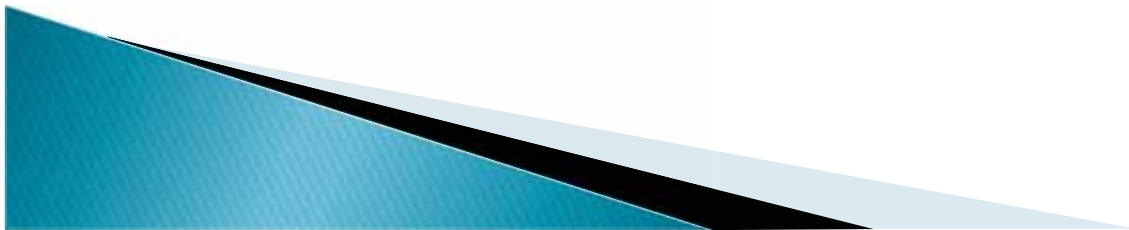
Lifetime Transfers

- ▶ Life time transfers take place where there is an interest, during the lifetime of a business owner, to take advantage of a benefit that can be realized from transferring an interest in a business either in part or in its entirety. This can be done by:
 - Sale
 - Gift

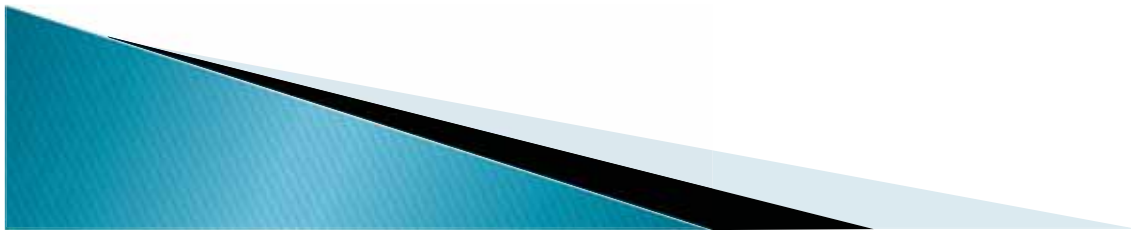


Post Mortem Transfers

- ▶ Here, either none of the business has been transfer or the transfer is not complete and has to transfer after the death of the owner as a condition of his estate plan. This too can be done by:
 - Sale
 - Bequest (gift)

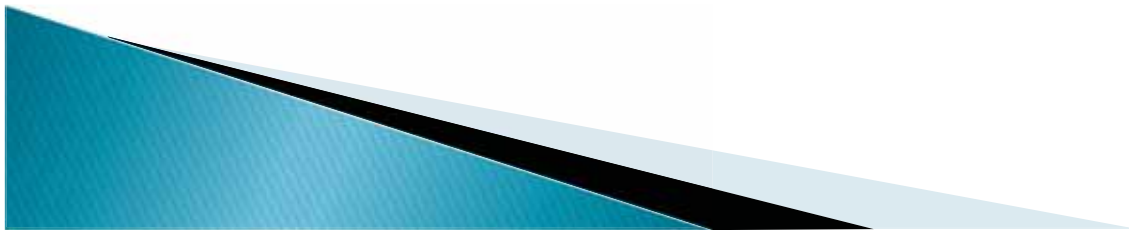


Gift and Trusts in Action



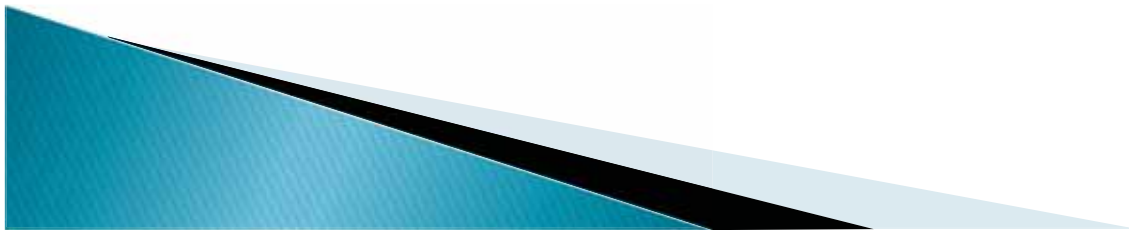
Testamentary Trusts

- ▶ A trust set up in a will that is subject to the jurisdiction and supervision of the probate court.
- ▶ Provides accountability and oversight.
- ▶ Use and enjoyment of trust assets may be delayed until probate is concluded.
- ▶ Gifts can not be made to such a trust.



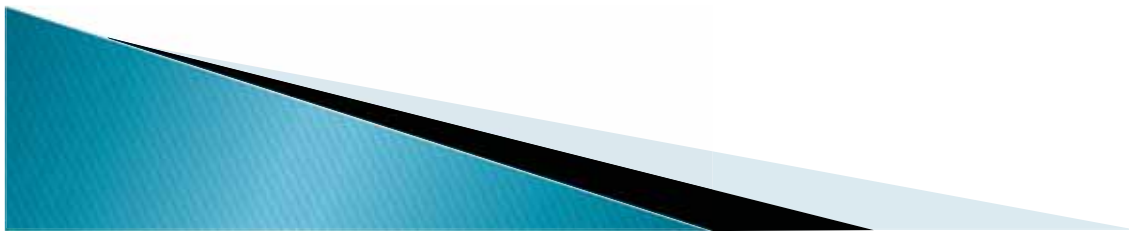
Revocable Living Trusts

- ▶ A trust set up during one's lifetime that can be funded during life or at death.
- ▶ It is not subject to probate and there is limited accountability and no oversight.
- ▶ However, benefits under the trust are immediately available to beneficiaries.
- ▶ Gifts can not be made to such a trust.



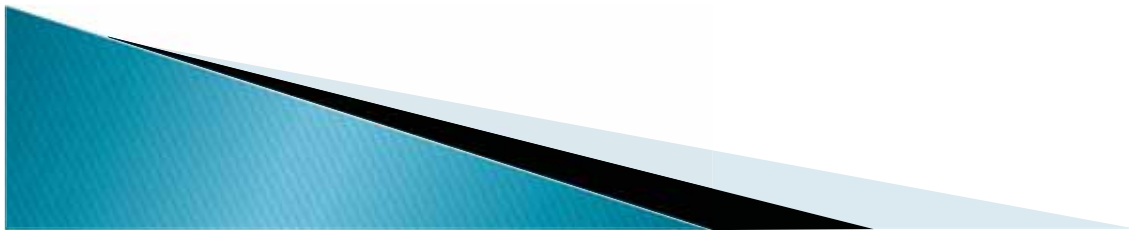
Irrevocable trusts

- ▶ A trust set up by a grantor, during his lifetime, that can not be revoked or amended.
- ▶ Generally, the grantor does not benefit from such a trust.
- ▶ Assets are gifted to such a trust and the gift tax rules apply.
- ▶ There is often a tax benefit associated with the gift.



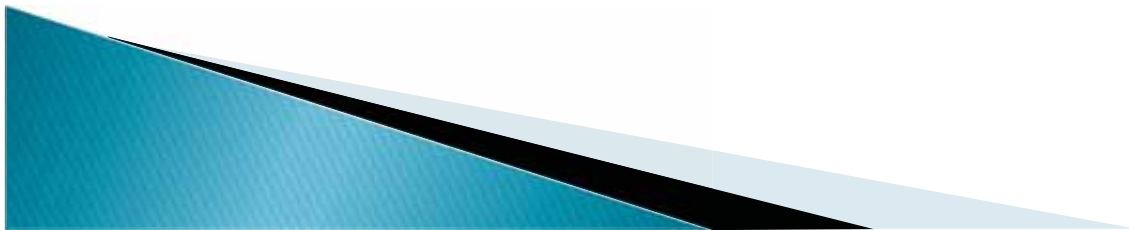
Irrevocable Life Insurance Trust (ILIT)

- ▶ The purpose of this trust is to ensure that life insurance policy proceeds are not included in the insured's taxable estate.
- ▶ One time or annual gifts are made to the trust to pay premiums.
- ▶ Insurance proceeds are typically used to pay taxes, expenses, debts or to equalize an estate among heirs.



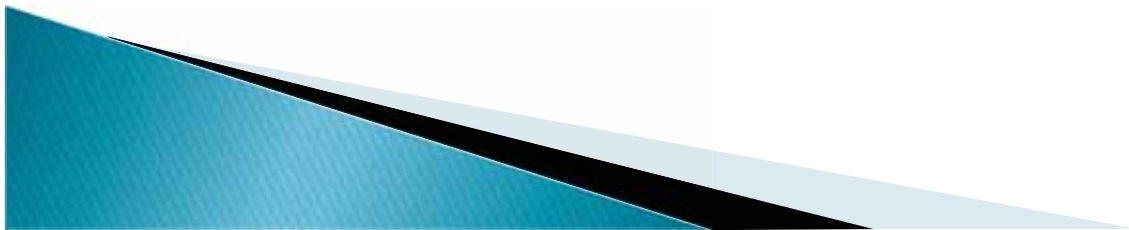
Grantor Trusts

- ▶ Generally, any trust that passes the tax consequences of trust activities out to the person who established the trust is classified in the IRC as a grantor trust.
- ▶ The person who establishes the trust is referred to as the grantor.
- ▶ The grantor typically funds the trust as well
- ▶ Many of the trusts used in gift and estate planning are grantor trusts.



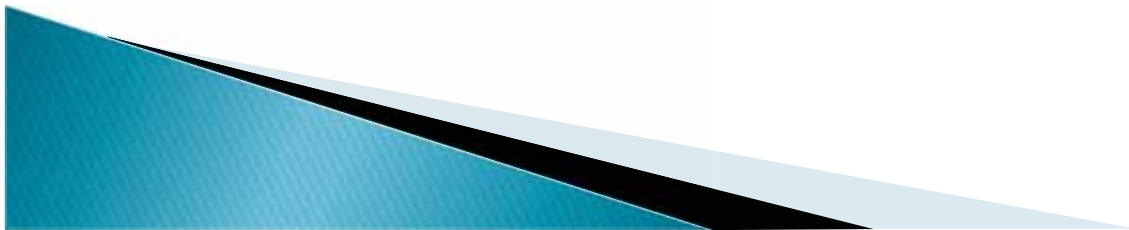
GRAT

- ▶ Grantor Retained Annuity Trust (GRAT)
- ▶ Used to facilitate split interest gifts.
- ▶ The grantor makes a gift but retains an interest, or benefit, in the trust for a period of time.
- ▶ The beneficiary acquires the trust assets after the grantor's benefits period expires.
- ▶ Get appreciation out of the taxable estate of the grantor at a reduced gift tax value.



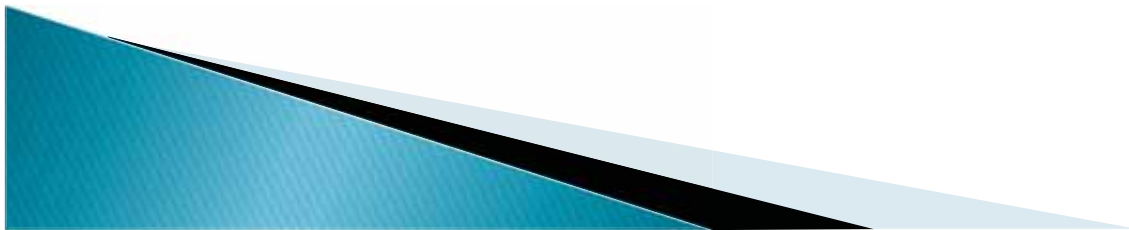
Intentionally Defective Income Trust

- ▶ Similar to a GRAT in operation, not law.
- ▶ Here a sale is made to the trust that gives the seller an installment income
- ▶ Beneficiaries receive the asset when the installments are completed.
- ▶ The note freezes the value of the assets and get appreciation out of the sellers estate.



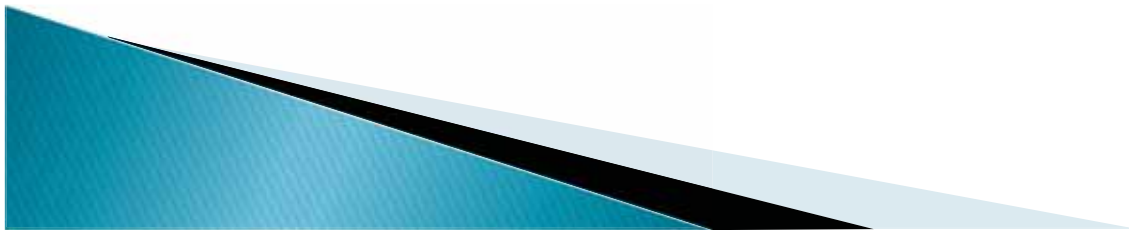
Users

- ▶ Clients have little knowledge of these items and their use and application.
- ▶ The use, application, benefits and implications of such trusts are provided by advisors.
- ▶ Such arrangements are complicated and can be costly to set up and maintain.
- ▶ Used properly and in the right situation, these devices are powerful



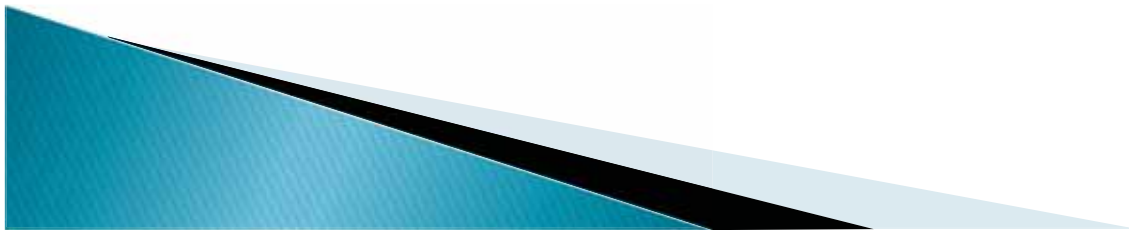
Providers

- ▶ Advisors
- ▶ Lawyers
- ▶ Accountants
- ▶ Valuation expertise



Tax Law

- ▶ Current law governing gift and estate taxes is temporary.
- ▶ Estate tax repealed for one year in 2010.
- ▶ Gift tax is retained
- ▶ Estate tax reinstated in 2011.
- ▶ Congress and administration likely to take some action.



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