

Trust-Owned Life Insurance

QUESTIONS TO ASK YOUR ATTORNEY AND TAX ADVISOR

When a life insurance policy is owned by an irrevocable trust, the trust grantor(s) and trustee(s) may be required to follow certain procedures when gifting the premiums to the trust, paying the premiums in a timely manner and in some cases, filing appropriate income and gift tax returns. The grantor(s) and trustee(s) should discuss these procedures and responsibilities with their tax advisor, determine who is accountable for each, and establish a timeline for completion.

Some insurance carriers may send premium notices to multiple parties (such as the grantor, trustee, financial advisor, etc.) using 'interested party' designations to ensure all involved are aware of upcoming premium payments. Alternatively, it may be helpful for all parties to set up recurring calendar reminders.

1. Can I or should I transfer other existing life insurance policies to this trust? If so, should they be gifted to the trust or should the trust buy them from the current policyowner?
2. If this Trust owns multiple policies, should the gift to pay premiums be made at one time or should separate gifts be made throughout the year?
3. Is this trust a "grantor" or "a non-grantor trust"? What is the difference and how does this impact me?
4. Will the gifts to this trust be considered lifetime exclusion and/or GST exclusion gifts? If so,
 - a. What does this mean?
 - b. Should the gifts to my trust be made from my personal individual checking account or from our joint checking account?
5. Will the gifts to this trust be considered annual gift tax exclusion gifts? If so, please explain the gifting, beneficiary notification, and premium paying process. Also, please provide a sample Right of Withdrawal (Crummey) Notice.
 - a. Who should send the Crummey Notices? Can they be emailed?
 - b. Who should receive a Crummey Notice?
 - a. Who should receive the Notice for beneficiaries who are minors?
 - b. When does a minor become an adult (and notices can be sent to them directly)?
 - c. How far in advance of the premium due date should the gift be made?
 - d. Will Crummey "hanging" powers apply? What does this mean?
 - e. Should the gifts to my trust be made from my personal individual checking account or from our joint checking account?
6. If annual gift tax exclusion gifts and lifetime exclusion gifts will be made in any given year, which gifts will be made first? Does it matter?
7. What type of federal and state income tax returns must be filed?
8. Will the gifts we make throughout a calendar year be considered "split gifts" and if so, what does that mean?
9. Are gift tax returns required? If so, who must file them, who will prepare them and what information do they need?
10. Will a trustee's state of residence subject the trust to additional income tax?
11. Will a beneficiary's state of residence subject the trust to additional income tax?

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12. How will the following events impact the trust beneficiaries, income and gift tax returns and the process for paying trust-owned life insurance premiums?

- a. Birth of a new family member.
- b. Death of a spouse, beneficiary, trustee.
- c. When sizeable gifts to a trust beneficiary in a calendar year (using annual gift tax exclusions) are made prior to making gifts to pay premiums.
- d. The Trustee is no longer willing or able to serve as trustee.
- e. A trust beneficiary is planning to get married.
- f. A beneficiary gets separated or divorced.
- g. You increase or decrease gifts or make changes to trust-owned life insurance.
- h. A beneficiary is in financial trouble or bankruptcy.
- i. A trust beneficiary or a trustee changes their state of residency.

Notes:

- *A gift tax return is required when gifts are split (even if the gift isn't taxable).*
- *A couple cannot elect to apply the gift-splitting privilege to some gifts that they both make but not others in a calendar year.*
- *Gift splitting is only available if spouses file a joint income tax return.*
- *Many practitioners recommend filing a gift tax return when making a lifetime exemption gift (even when no taxes are due) just so that these gifts can be tracked over time.*
- *A gift tax return must be filed for the calendar year when taxable gifts are made.*

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