

VIDEO TRANSCRIPT: AB Grantor Trusts**RECORDING DATE: June 28, 2023*****Bruce van Vreede:***

Hello everyone this is Bruce van Vreede I'm director of marketing for Brady Ware CPAs and Advisors. I'm here with Mark Cassens who leads our estates, trusts, and gifts division at Brady Ware. We're doing several of these videos, and this one is going to cover Grantor and A-B Trusts. Mark, before we get into that why don't you start us off with why does somebody want to consider a trust to begin with.

Mark Kassens:

Sure. Number one: it's control. Whether it's during their lifetime or from the grave, it's control over their assets, what happens to their assets after their death, and who gets those assets, whether it's to be held in trust, and whether it's distributed outright to the beneficiaries. It's really about control.

Second, it avoids probate. Probate can be an expensive, cumbersome process. Courts are involved, so the court is supervising the administration of an estate without a trust. If you have a trust, then the estate can be administered free of that, and it's up to the trust document: the trustee is to follow the instructions left to them by the settler of the trust (the person who sets up the trust).

So it can be used for a wide variety of reasons, whether it's protecting the beneficiaries (sometimes from themselves) to kind of protect those assets but yet provide an income stream for beneficiaries that might not be ready to inherit a large chunk of wealth at any given time. And sometimes those are made to hold life insurance, so we have life insurance trusts, irrevocable life insurance trusts (ILITs), we have charitable remainder trust or charitable lead trusts that involve setting assets aside for an income source, or the income either goes to a charity during your lifetime or in a remainder trust the income comes to the settlor of the trust, and then at the end the end of the term (or when the settlor passes away).

We also have spousal lifetime access trusts, beneficiary deemed owned trusts...there's all kinds of different vehicles that can accomplish the estate planning goals of the settlor.

Bruce van Vreede:

We're going to cover Grantor and A-B Trusts. So start us off with the grantor trust so what are we talking about here.

Mark Kassens:

First of all, grantor trusts predominantly are revocable trusts. They're living trusts. When people say, "Oh, I have a trust," that's usually what they're talking about. They have the ability to change it during their lifetime. It's revocable so it can be revoked (or not), so you can go in and change it you can have amendments to the trust. But in the last decade or so, we've had grantor trusts come about and evolve. From tax law, people have found ways

to kind of create those things to accomplish other goals. So if we have a business succession issue where there's a lot of value in a small closely held business—or not small closely held business for that matter—we can set up a grantor trust that's referred to as an intentionally defective grantor trust. And it's not really defective; it really is planned out and administered the way it's supposed to. It's not defective at all. It's just the term for it. But it's treated as a grantor trust, so it's taxed as if the individual the settlor (the grantor) loans those assets individually, and the income just flows directly to their 1040. So you don't really have a separate tax entity. Grantor trusts are disregarded for tax purposes.

We also have spousal lifetime access trusts, and again, those are treated just like grantor trusts. So assets are in that in a separate entity, but the income—the trust—is disregarded for tax purposes and the income is reported directly on 1040s.

So the revocable grantor trusts, like I already said, are really where the settlor lays out their plans for their estate. If you have a spouse, they'll set up the various trusts to care for their spouse for the lifetime. They might have special needs and a child or beneficiaries that they want to plan for. That's all done in the trust while they're alive. And again those can be changed or revoked.

Bruce van Vreede:

So that takes us to the A-B Trust. Walk us through that, please.

Mark Kassens:

That's usually part of that living trust of the revocable trust. You only have an A-B Trust when they're married. So the surviving spouse you want to care for...nothing really changes as far as income goes for them. So in an A-B trust, upon your death, a section of your trust is set aside into a credit shelter trust. So right now your credit shelter, we spoke of this in the last video (Understanding SLATs), your credit is your lifetime exemption. Basically, it's a tax credit equal to the tax on that lifetime exemption. So it this is an amount (right now) \$12.92 million dollars that can be set aside in that first trust—in that credit shelter trust—and then it's basically taxed right then. Which means it uses all of your credits so your tax is zero. So that first to die, you have a \$12.92 million dollar estate, and then the excess over that \$12.92 million dollars is a marital deduction, which is unlimited. You can give your spouse as much as you want during your lifetime or after death, and it's not taxed at that time.

Let's say you have a \$20 million dollar estate. \$12.92 million dollars is set aside in the credit shelter trust and the excess up to that \$20 million dollars is put into a marital trust or the B Trust. So the marital trust is basically controlled by the surviving spouse. They have rights to withdrawal principal, to deplete it if they want to, but they're also getting that income from the credit shelter trust. They can't really touch the assets. They have a limited ability to withdrawal some assets, and in cases of health, education, maintenance, or support, or a five and five power (less than five percent of the assets).

There are withdrawal rights but not like there are with the marital trust. The marital trust gets the marital deduction when they pass away. All that is in their estate is taxed, but the credit shelter trust has already

escaped that. It's been sheltered from that second-to-die. So really, you can transfer almost \$25 million dollars in assets at the second death because you've sheltered that first one. And then the second-to-die is really where the tax part of that comes into play. Sometimes you have to equalize values of the estates if they die close together, but in general, that first to die is going to be a tax-free estate, and everything else goes to the spouse. And then we have to plan for that second to die.

Bruce van Vreede:

With trusts, I heard you mention the other word: trustees. So that seems to be a pretty important decision. What do you encounter there?

Mark Kassens:

So it really is something to not be taken on lightly or to be considered lightly. First of all, you are trustee of your living trust—unless you don't trust yourself and then you put somebody else in charge of your life—but you're the trustee of your living trust. And normally you make your spouse the successor trustee, or a child that you trust to take care of their mom or dad (the second to die).

You know, in some cases people don't really have anybody that they really think is capable of having that responsibility, or they don't want to put them in the position of making some difficult choices that could cause family strife. So they might have an independent trustee, and their corporate trustees everywhere. You know a lot of banks have trust departments, and they are well versed in their responsibilities. One: their fiduciary responsibility, so they really have a professional obligation to serve as the trustee and follow that trust document. and they're also not tied to any side of the family, for the most part. They'll be objective if there are family dynamics where there are personality differences that they have to kind of work around. They can do that in an objective manner. So choosing a trustee is really important for that next step for after the death of that first spouse.

Like I said, it's you and then it's usually your surviving spouse. And if they need help, then it's either a child or a trusted family member. But then and also a corporate trustee would be beneficial.

Bruce van Vreede:

I also heard you talk about irrevocable and revocable. Could you explain the differences?

Mark Kassens:

On the living trusts, those are revocable. Those can be changed at any time during the during the settlors life. When that settlor passes away, their trust cannot be changed anymore. Those instructions and that trust and everything laid out in that trust are irrevocable when they pass away. So the surviving spouse might have their own trust, and that's fine. That one would remain revocable for their lifetime, but the moment that person passes away, they are the only ones that have the power to change it. Then it becomes irrevocable. Now the other trust that I mentioned before—the SLAT, the spousal lifetime access trust, and charitable trust, and beneficiary

deemed owned trust, and things like that—those are irrevocable when you set them up. So those really have to be thought through clearly because once you sign the documents and fund those trusts, they're done. And then the trust rules the day—whether you have a change of heart or not. If those trusts have already been set up and funded, that's it. They're done. They cannot be changed.

The important thing about those irrevocable trust and why would you do that, why would you ever want to give up that control over those assets—and the irrevocable trusts like a spousal lifetime access trust, or an intentionally defective grantor trust, or a beneficiary deemed owned trust—you're really stopping the appreciation from being included in your estate. If you're already over that lifetime exemption, or close to it—let's just say you're close to it—and let's say you have \$10 million dollars worth of assets, and you put them into a spousal lifetime access trust, all of them, for your lifetime that's gone. I mean that \$10 million dollars is there that you just funded, but that appreciation that takes place over the next several years, hopefully, before you pass away, that appreciation escapes estate tax. You could be talking about saving an incredible amount of money just by setting up an irrevocable trust. So that's why people do it. It's to kind of cap that exposure of your estate, the taxable estate, by the current value. All that appreciation skips over that and escapes the estate tax.

Bruce van Vreede:

So covering these two trusts and covering more in our upcoming sessions, I think you mentioned the spousal lifetime access trust, I think that's going to be our next video, but there's just a ton of content here. There's a ton of information to know. It sounds like starting with someone like yourself is probably a good idea to create that plan and to start working through all the variables that someone is going to have to face.

Mark Kassens:

That's right, yeah, we can we can make a lot of impact, a lot of tax savings just by planning and being aware of the different rules, being aware of the different options, and taking advantage of what's out there already. We're not skirting the law. We're not creating sham trusts or anything like that. These are well-established trusts that everybody's doing. They're really an incredible vehicle, and a really neat way to save tax and to keep that legacy intimate and to let it go through kind of the settlors wishes...and to not fund the U.S. treasury but to create a dynasty for a generation or two to come.

Bruce van Vreede:

All right, well thank you Mark. Thanks for covering these first two, and we look forward to talking to you again as we as we work through the number of trusts that are available.

Mark Kassens, CPA [\[view bio\]](#)

765.966.0531

mkassens@bradyware.com

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