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COUNSELLORS AT LAW

A Crummey Trust is a Good Thing

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Usually "crummy" and "tax law" make you think of people in orange jumpsuits in white collar penitentiaries. But not so with the so-called "Crummey" trust, a work-horse in the estate planning stable.

The Wall Street Journal just ran a piece on Crummey Trusts, saying "There's nothing crummy about a Crummey trust—even in a period of higher exemptions for estate and gift taxes." If you have an insurance trust or even a trust for your kids, you probably have a "Crummey Trust" and its working just fine.

"Here is how a family can use a Crummey trust: Have your estate planner set up one to buy a life-insurance policy, and fund the premiums with annual gifts. (Each year, a person can give unlimited separate gifts of up to $13,000—the current annual ceiling for gifts to individuals.) That gets money out of the estate while skirting the gift tax. Since the trust owns the policy, the death benefit ultimately goes to the trust, shielding it from federal estate taxes.

Crummey trusts are used in many circumstances, but are best suited for making gifts to minors—especially when a parent is giving money to a young child who isn't ready to handle a large sum. Grandparents, on the other hand, often are giving money to grown children, or have already helped fund a college-savings 529 plan."

Why "Crummey" by the way? It was the name of the taxpayer who won the case allowing gifts to trusts to qualify for the $13,000 (currently) so long as notice of withdrawal was given to the beneficiaries.

But like all good things, there is a catch. To get the benefits, there is an annual paperwork requirement.

"The trustee must send out "Crummey letters" each year, informing beneficiaries that they can withdraw the gifted amount during a window of time, say 30 days. Usually, the beneficiary leaves the money in the trust. But the IRS considers it a tax-free gift only if the person has the right to take it in the short term, and the Crummey letter proves that he has that right."

This leads to many issues, including:

- What if the Trustee forgets to send the notices? Then you have made taxable gifts each year.
- What if a beneficiary is a spendthrift and you don't want to give them a right of withdrawal?

The key - explain your family situation clearly to your estate planning attorney so he or she can see if "Crummey" is a good fit for you.

Thanks to @raniacombs for tweeting this to @VeteranAid who brought this to my attention!