ANNUAL CHECKLIST FOR ADVANCED ESTATE PLANNING VEHICLES

It is important that the proper procedures and documentation are adhered to when implementing and maintaining advanced estate planning techniques in order to ensure that the desired estate and gift tax benefits are achieved. The following is a checklist of such procedures and documentation for various estate planning vehicles.

A. Life Insurance Trusts

1. Contributions to the Trust

   If an irrevocable trust has been created to hold life insurance on the life of one spouse and if the other spouse is a trustee or beneficiary, it is imperative that the contributions to the trust be made from a separate property account in the name of the insured. If such an account does not exist, one should be established and a transmutation agreement should be created stating that funds taken from a joint account to fund the separate property account is the separate property of the insured.

2. Payment of Insurance Premiums

   The procedures used to pay insurance premiums should be reviewed to ensure that premiums are being by the trustee out of an account in the name of the trust.

3. Execution of “Crummy Notices”

   In order to ensure that contributions to the trust qualify for the annual gift tax exclusion, every time a contribution is made to the insurance trust the beneficiaries of the trust (or the representative of “minor” beneficiaries) should execute the “Acknowledgment by Beneficiary of Right of Withdrawal” (i.e. “Crummy Notice”). The executed forms should be retained with trust documents.

4. Filing of Gift Tax Return

   A gift tax return must be filed for each year that a contribution is made to the insurance trust. Normally, no gift tax will be due with the return but it should be filed to (i) report any gifts not qualifying for the annual gift tax exclusion (which for some trusts is limited to $5,000 per donee, not $10,000 per donor) and; (ii) allocate a portion of the Grantor’s $1,000,000 generation-skipping exemption to the trust.

B. Qualified Personal Residence Trusts

1. During the Term of the Trust

All Grantors of a Qualified Personal Residence Trust must file a gift tax return for the year in which the residence is transferred to the trust. In addition, if the house has a mortgage, a gift tax return must be filed for each year that payments are made on the mortgage. Generally, no gift tax will be due; however, a portion of the Grantor's unified estate and gift tax credit must be applied against the increase in the value of the remainder interest of the trust attributable to the increase in equity of the residence.

2. After the Grantor's Interest Terminates

If the Grantor chooses to continue to live in the residence after the Grantor's interest in the trust terminates, the Grantor must pay the trust a fair market rate of rent.

C. Family Limited Partnerships

1. Cash Receipts and Disbursements

All cash receipts and disbursements must be made to or from a checking account in the name of the partnership.

2. Distributions to Partners

All distributions from a partnership must be made to all partners (both general and limited) on a pro rata basis based upon ownership percentages.

3. Income Tax Return Filings

The partnership is required to file federal and California income tax returns each year.

4. Management Fee

The general partners should be paid a management fee each year if appropriate.

D. Irrevocable Trusts for Children and/or Grandchildren

As with insurance trusts discussed above, most irrevocable trusts created for the benefit of family members are designed so that contributions made to the trust qualify for a portion or all of the Grantor's annual gift tax exclusion. In order for such trust to qualify for the exclusion, each time a contribution is made to the trust the trust beneficiaries (or representative of "minor trust" beneficiaries) must sign a notice of "Acknowledgment by Beneficiary of Right of Withdrawal" (i.e. "Crummy Notices"). The executed notices should be retained with the trust documents.

E. Grantor Retained Annuity Trusts

1. During the Term of the Trust

    a. The annuity amount must be paid out to the Grantor in monthly, quarterly or annual installments, depending on the terms of the trust.

    b. Annual income tax returns must be filed for the trust (certain GRATs are treated as “grantor trusts” for income tax purposes and are not required to file returns).

2. After the Grantor’s Interest Terminates

    At the end of the GRAT term, the asset is typically required to be distributed to the remainder beneficiary or to a trust for the benefit of the remainder beneficiary.