SPOUSAL OPTION TRUST vs. TRADITIONAL ESTATE PLAN

Option 1: Traditional Estate Plan

First Death:

Credit Shelter (Family Trust) Up to $5,000,000
Income & Principal for Benefit of Surviving Spouse.
New tax ID # required
Separate annual tax returns required

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Survivor's Separate Trust

Second Death:

Beneficiaries receive assets from the Credit Shelter Trust.
Estate Tax: NO
Capital Gains Tax: YES, on the capital appreciation from the date of the first decedent's death

Beneficiaries receive assets from the Survivor's Separate Trust.
Estate Tax: NONE up to exemption amount ($5,00,000 as of 1/1/11)
Capital Gains Tax: NO

Option 2: Spousal Option Trust

Retain same living trust during your lifetime – no need to retitle. Depending on tax consequences, Survivor may choose Traditional Estate Plan (above) OR Option 2, below:

First Death:

Survivor's Trust:
Decedent's assets go the surviving spouse.
NO new Tax ID#
NO separate Tax Return

Second Death:

Beneficiaries receive assets from the Survivor's Trust.
Estate Tax: NONE up to exemption amount ($5,000,000 as of 1/1/11)
Capital Gains Tax: NO

ADVANTAGES OF THE SPOUSAL OPTION TRUST:

Upon death of first spouse, allows survivor to choose the best estate planning method for that point in time. Unlike the traditional estate plan, the Spousal Option Trust does not lock the survivor into setting up a second trust if at that time a second trust is unnecessary from a tax standpoint.

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