

BERWITZ & DiTATA LLP

Attorneys and Counselors at Law

310 Old Country Road Suite 101
Garden City, New York 11530
Telephone (516) 747-3200 • Facsimile (516) 747-3727

Lawrence N. Berwitz

Maureen R. DiTata

Planning With A QPRT

The Qualified Personal Residence (“QPRT”) is an excellent estate planning device which permits the transfer of qualified real property, at a discounted rate, to designated beneficiaries. Created by Congress in 1990, it is one of the few statutory estate planning tools available to taxpayers. Provided that the QPRT conforms with the statutory requirements, it will reduce the taxable estate of the taxpayer.

The QPRT is so advantageous because it permits the donor of the gift to delay its ultimate transfer to the beneficiary for a term of years while utilizing a fraction of the current property value to calculate the tax consequences of the gift. For example, if you were to gift your home to your children today the value of that gift would equal the current value of the house. What is the gift’s value if you *promise* to give the house to your children *in 10 years* instead of today? Because your children do not derive any benefit from the gift for 10 years, the value of the gift is considerably less than the actual fair market value of the house. Thus, a qualified home worth \$1,000,000 transferred to a QPRT with a 10 year term in November 2005 will have a gift tax *value* of only \$486,790.

Even better, while the house will continue to appreciate during all of the 10 year period, the increase in value is out of your estate as well. Assuming a 5% annual growth rate, the house worth \$1,000,000 today will be worth \$1,700,000 at the end of 10 years. Considering that the maximal federal estate tax rate in 10 years will be 55%, this would result in a net federal estate tax savings of at least \$667,000.

There are additional benefits as well. After the 10 year term expires, when the beneficiaries own the property, the taxpayer can further reduce his or her taxable estate by paying the fair market rent to the new owners. Such payments are not considered gifts and do not reduce the annual exclusion available to the taxpayer (currently \$11,000 and increasing to \$12,000 on January 1, 2006). Also, the interest in the real estate that is transferred to the QPRT, the remainder, is not subject to the

claims of creditors of the taxpayer (provided the transfer was not a fraudulent conveyance).

Notwithstanding the estate planning benefits of creating a QPRT, there are some consequences that might be considered disadvantages. Chief among them are that the full value of the property is includible in the taxpayer's estate if the taxpayer dies before the completion of the selected term of years. For this reason the term should be a period the taxpayer is likely to survive. Other considerations are that the taxpayer will lose control over the asset at the end of the term, the step-up in basis that would occur if the property had remained in the taxpayer's estate for capital gains tax purposes will no longer be available, and the rental payments made by the taxpayer after the expiration of the term, less expenses relating to the property, will be included in the beneficiary's "taxable income" for annual income tax purposes.

A QPRT is a reliable estate tax planning device that can result in significant savings for your family. Do not hesitate to ask us whether this effective wealth preservation strategy fits in with your overall estate planning goals.