

# What Happens to the Trust on the Death of the First Spouse & Surviving Spouse's Options After Death of First Spouse

On the death of the first spouse the surviving spouse must consult with an estate planning attorney immediately after the death of the first spouse so the attorney can explain the survivor's four options and prepare the documents necessary to document the option the surviving spouse chooses. The surviving spouse's options after the death of the first spouse are: (1) continue with only the Survivor's Trust, (2) create the QTIP Trust and continue with the Survivor's Trust and the QTIP Trust, (3) create the Family Trust and continue with the Survivor's Trust and the Family Trust, and (4) create the QTIP Trust and the Family Trust and continue with all three trusts.

## Trust Options After Death of the First Spouse

### Survivor's Trust

Funded with surviving spouse's separate property & ½ of SS's community property. Surviving spouse has complete control over all assets. If the surviving spouse does not create a QTIP Trust or a Family Trust, then the Survivor's Trust will also include all of the assets of the first spouse to die. Included in surviving spouse's estate after his/her death. Revocable. **No asset protection.** Survivor can change future beneficiaries.

### QTIP Trust (optional & recommended)

On the death of the first spouse the surviving spouse has an option to create the QTIP trust and **fund it with the first spouse to die's assets**, which are that spouse's separate property and ½ of his/her community property. Surviving spouse is usually the trustee and must be paid all income annually. Principal can be paid in the trustee's discretion. The surviving spouse usually creates and funds this irrevocable trust because **all assets in the QTIP trust are asset protected.** Survivor cannot change future beneficiaries.

### Family Trust (optional & used when deceased has a taxable estate)

Funded with separate property and community property of 1<sup>st</sup> spouse to die up to exclusion amount when the net worth of the first spouse to die exceeds the federal estate tax exemption amount, which is \$11,580,000 in 2020 - 2025. Surviving spouse is usually the trustee. All income & principal can be paid to the surviving spouse at trustee's discretion. Value of assets in this trust is excluded from SS's estate. **All assets in this irrevocable trust are asset protected.** Survivor cannot change future beneficiaries.