

S1: Spouse 1

S2: Spouse 2

S2 + S1

During spouses lifetime

Revocable Trust

~~S2 + S1~~

Upon death of the first spouse

Revocable Trust

Analysis considerations:

- There are important deadlines at 9 months, 15 months, and 5 years after the date of the first spouse's death.
- The estate tax threshold is going to be reduced in 2026 if the surviving spouse will live past that date.
- Taxes are important, but not the only consideration.

Questions for the Surviving Spouse:

Q: What is the Federal estate tax exemption on death of first spouse?

Q: What is the approximate combined value of the entire estate?

Q: What is the realistic likelihood of significant increases in the value of the estate after the death of the first spouse?

The surviving spouse will need tax and legal counsel to discuss questions.

Option 1

~~S2 + S1~~

After death of the first spouse

Revocable Trust

If answers to the questions:

Result in the conclusion that, given the federal estate tax exemption, the gross value of the combined estate is considerably less than the exemption, there may not be a need to disclaim. Keep all assets in a single trust.

Option 2

~~S2 + S1~~

Revocable Trust

Survivor's Trust

Decedent's Trust

If answers to the questions:

Result in the conclusion that the gross value of the combined estate is close to or exceeds the federal estate tax exemption, surviving spouse should consider disclaiming some assets into the "Decedent's Trust" and keep the rest in "Survivor's trust"

Terminology:

The survivor's trust may sometimes be referred to as the "A Trust" or "Marital Trust"

The decedent's trust is sometimes referred to as the "bypass," "shelter," "B Trust," or "Family Trust"

Option 1

~~S2 + S1~~

Revocable Trust

After death of the first spouse

Any assets not disclaimed by the survivor remain in trust and the survivor can amend the trust.

Option 2

~~S2 + S1~~

Revocable Trust

Survivor's Trust

Decedent's Trust

*Beneficiaries of decedent's trust are determined by terms of the revocable trust before death and cannot be changed.

If assets were disclaimed by survivor, then survivor has rights to determine how the survivor's trust and decedent's trust are each funded (i.e. what needs to go into each trust). The trustee (who might be the survivor) has full control over both survivor's and decedent's trusts and can use assets in both trusts, but the survivor can only amend survivor's trust

Option 1

~~S2 + S1~~

Trust
Irrevocable

After death of the second spouse

If no assets were disclaimed, everything remains in the revocable trust, and the Trustee distributes to the beneficiaries or continues to hold in what is now an irrevocable trust. The trust is now irrevocable and the trustee must follow the terms of the trust to continue.

Option 2

~~S2 + S1~~



Survivor's Trust

Decedent's Trust

If the surviving spouse did disclaim assets into a separate decedent's trust, both the survivor and decedent's trust are now irrevocable and must be distributed according to their terms.