

Five Fast Facts About Qualified Spousal Trusts



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The Qualified Spousal Trust Act (the “Act”) was passed by the Arkansas Legislature during the Spring 2019 Legislative Session. The Act applies to joint revocable trusts created by married individuals prior to or after the July 16, 2019 effective date of the Act, assuming that certain requirements are met. Below are five fast facts about qualified spousal trusts that highlight their importance from an estate planning and asset protection standpoint.

Fast Fact #1. All assets owned by a qualified spousal trust are deemed to be owned as tenants-by-the-entirety (“TBTE”). TBTE is one of the strongest forms of ownership from a creditor protection standpoint, and prior to the Act, only assets held by married individuals in their joint names were afforded such protection. As a result of the Act, all assets owned by a qualified spousal trust, regardless of how such assets were owned prior to their transfer to the qualified spousal trust, will be deemed TBTE assets.

Fast Fact #2. Many married couples classify their assets as follows: your assets, my assets and our assets. With a qualified spousal trust, such classifications can remain intact. Separate shares can be created within the qualified spousal trust, and each spouse can maintain sole control over and the benefit of the assets in such spouse’s separate share without sacrificing TBTE treatment.

Fast Fact #3. A trust will cease to be a qualified spousal trust upon divorce or upon the death of a spouse. Note, however, that popular estate planning/asset techniques, such as marital deduction and credit shelter trusts, can be used in conjunction with a qualified spousal trusts to achieve asset protection following the death of the first spouse.

Fast Fact #4. Assets held by qualified spousal trusts receive the same protection as assets held as TBTE in the event of bankruptcy. However, the provisions of the Uniform Voidable Transactions Act still apply. In other words, you cannot transfer assets to a qualified spousal trust immediately prior to filing for bankruptcy and expect the assets to be protected from creditors.

Fast Fact #5. In the event of divorce, the assets in a qualified spousal trust will revert to their pre-contribution treatment (unless different treatment was specified in the funding instrument). By way of example, if an asset was considered a spouse’s separate property prior to such spouse contributing the asset to the qualified spousal trust, the asset will be considered the contributing spouse’s separate property in the event of divorce.

Even before the Act, joint spousal trusts were powerful planning tools for couples. With the adoption of the Act, the benefits that come from a joint spousal trust have only been enhanced. Not every state recognizes TBTE property, making the combined benefits from it, the Act, and joint spousal trusts in general an excellent opportunity for Arkansans.