

ISSUE #22  
Nov/Dec 2008

## MATSUMURA LAW FIRM

Wills, Trusts, Probate  
And Estate Planning

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### What is a Crummey Trust?

#### Gifts to Children While Maintaining Managerial Control

Many parents and grandparents wish to make monetary gifts to young children. Besides being benevolent, gifts to children can also reduce the donor's estate, thereby reducing estate tax liability.

However, one concern with gifting to children is ensuring the gifted funds are maintained and applied toward productive purposes. Another concern is avoiding any adverse gift tax consequences as a result of the gift. For 2008, the IRS

**UTMAs are Not Ideal for Large Gifts.** While UTMA accounts are good for small sums, a problem arises when gifted funds accumulate. For example, if two parents each contribute \$12,000 annually to a UTMA account for the benefit of Child, the account will grow to at least \$240,000 after 10 years. Under the UTMA arrangement, Child *must* receive the \$240,000 *outright* upon reaching 18 or 21 (as specified by the parent). Age 18 or 21 may still be too young to handle \$240,000 wisely. A UTMA account forces funds outright too soon and allows the child to waste the gifted assets.

#### A Crummey Trust Provides A Management Structure For Significant Gifts To Children

limits the amount of gifts that one person can make *outright and free of gift tax impact* to another to \$12,000. This \$12,000 limit (for 2008) is called the annual gift tax exclusion. Aggregate calendar year gifts over the annual gift tax exclusion will require the filing of a gift tax return. Since \$12,000 is a low threshold, making substantial gifts to children without negative tax impact will involve a pattern of repeated gifts, rather than one big gift. In other words, *large gifts will require planning*.

**Managing Gifts to Children.** As mentioned above, one issue with outright gifts to children is that children have neither the legal capacity nor the financial maturity to handle money wisely. To solve this problem, parents often make gifts via Uniform Transfers to Minors Act (UTMA) accounts, which allows the parent to maintain control of the funds.

**A Crummey Trust is the Solution to Large Gifts.** To maintain control over a substantial sum beyond age 21, parents can establish a "Crummey" Trust for the benefit of a child (or children). Parents then can make gifts to the child *in trust*, rather than outright. The trustee of the *Crummey* Trust will manage the funds for the child's benefit. The *Crummey* Trust can distribute funds for purposes the parents choose, i.e., for education, for a down payment on a first home, for "seed" money to start a new business. The trust can be fully distributed when the child reaches the parents' selected age for the child, say age 30, 35 or 50.

The *Crummey* Trust solves the problem of managerial control over substantial gifts. Funds can be maintained in trust for any length of time parents wish. Furthermore, distributions can be structured in any manner and for any purposes that a parent prefers, and are not limited to education. No tax penalties exist for "early withdrawal".

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### How to Gift to Children and Retain Control of the Gift (continued)

**How the Crummey Trust Allows Gifts In Trust.** By way of background, the \$12,000 annual gift tax exclusion applies only to present interest gifts, i.e., outright gifts. Gifts in trust are not present interests, but instead are future interests. As a result, a deterrent to giving in trust is the unavailability of the \$12,000 annual gift tax exclusion. A *Crummey* Trust solves this present interest problem. A *Crummey* Trust uses a special Crummey withdrawal power to qualify the gift in trust as a present interest, thereby permitting the \$12,000 annual gift

*Crummey* Trust, with Child as beneficiary.

- The trustee of the trust immediately sends a notice letter to Child.
- The notice advises Child of the right to withdraw the \$12,000 within 30 days from the date of the gift.
- Child does not exercise the right of withdrawal.
- The withdrawal right expires and the \$12,000 remains in trust for the benefit of Child.

The steps above classify the gift to trust as a present interest gift for qualification of the gift tax exclusion.

### Crummey Trusts Can Achieve Educational Goals and More



tax exclusion. (The *Crummey* withdrawal power derives its name from the 1968 case creating this power.)

**The Crummey Trust's Immediate Withdrawal Power.** A *Crummey* withdrawal power gives a beneficiary a right to withdraw contributions made to a trust immediately after the contributions are made. This power provides the beneficiary with an immediate right of enjoyment, which qualifies the gift as a present interest gift for the annual gift tax exclusion. Of course, the beneficiary should not exercise the withdrawal right, so that the gifted funds can be kept in trust and managed for the beneficiary.

**How the Crummey Power Works.** A gift to a *Crummey* Trust that qualifies for the annual gift tax exclusion would be made as follows:

- Parent gifts \$12,000 to a

**Importance of Written Notices of Withdrawal Right.** As mentioned above, after each gift is made to the trust, the trustee must immediately send the child (or the child's guardian) a written notice of the right to withdraw the gift. Records of the written notice must be kept to withstand any IRS challenge to the gift exclusion. The trustee should retain a signed receipt of each notice as part of the trust records.

**The Child Does Not Exercise the Power.** Of course, to work properly, the child must not exercise the right to withdraw the gift from the trust. As a practical matter, it is not a problem to gain cooperation from the child. The child realizes that if he/she exercise the right, the parent will not make contributions in subsequent years.

**Conclusion.** A *Crummey* Trust is as advantageous tool to customize large gifts for children and grandchildren.

**About Me & My Practice.** I graduated cum laude from the University of the Pacific in Stockton, CA. I received my law degree from UC Davis and graduated from Golden Gate School of Law with a Masters in Taxation. For the last 10 years, I have practiced exclusively in the area of estate planning, probate and trust administration. In my off hours, I support Pacific and Cal athletics, the SF Giants, the Sacramento Kings, and play (and watch ) tennis! ☺