

## Tips By E-Mail: QUALIFIED DOMESTIC TRUST ("QDOT")

October 16, 2002

We have recently added a QDOT clause to the married couples' trust in order to prevent an estate tax when a surviving spouse is not a United States citizen. There seems to be much confusion about when a QDOT provision is needed. Even when a surviving spouse is not a United States citizen, the QDOT provision is not needed unless the deceased spouse's estate (i.e., his or her half of the community assets plus his or her separate property) exceeds the tax exemption (\$1.0 million in 2002 and 2003; \$1.5 million in 2004).

For all U.S. residents (including non-citizens) the first \$1.0 million dollars in estate assets is tax-free. When an estate exceeds that amount, there could be federal and/or state death taxes. When the surviving spouse is a United States citizen, the tax can easily be avoided by using the marital deduction. However, if the surviving spouse is not a U.S. citizen, the marital deduction is not available without a QDOT.

Our new trust clause (paragraph 10.4.24) permits the trustee (whether that's the surviving spouse or a third party) to amend the trust, if necessary, in order to qualify it as a QDOT. The trustee will need to understand the QDOT issue and will need to take timely action after the death of one spouse, to utilize the QDOT clause.

An attorney should be consulted whenever either or both spouses are not U.S. citizens; an attorney should also be consulted upon the death of a spouse whose widow or widower is not a U.S. citizen.