Sale To A Defective Trust: A Life Insurance Technique

With estates growing so rapidly, irrevocable life insurance trusts funded with *Crummey* gifts or funded with income-producing assets are often inadequate for the purchase of large life insurance policies. One technique to leverage the amount of insurance that can be purchased gift, estate and generation-skipping transfer tax-free is the sale to a defective trust technique. The duration of the trust should be extended as long as possible.

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The estate planning attorney often works closely with the life insurance agent in structuring the insurance sale. In fact, many insurance sales are enhanced by the joint efforts of the estate planning attorney and the life insurance agent "team" presented to the client. Much of the attorney's value comes from his ability to draft the irrevocable life insurance trust and from the team's creativity in designing a plan that will minimize estate, gift and generation-skipping transfer taxes.

One problem estate planners often face with large estates is that the client does not have enough legitimate *Crummey* beneficiaries to pay the insurance premiums without making taxable gifts. With estates growing so rapidly, more and more of our clients are faced with this problem since their liquidity needs at death are similarly growing. One solution is to use a funded life insurance trust to purchase the insurance. However, in many cases in which the client has a large insurance need, this solution by itself may prove to be inadequate unless the client is willing and able to pay some gift taxes.

This article examines the installment sale to a defective trust technique and how it may be used in the context of life insurance planning to leverage the amount of insurance that can be purchased. This article also reviews tangentially the Megatrust[sm1] and other dynastic trust concepts. The generation-skipping leverage that can be attained using the sale technique inevitably brings multi-generational planning centerstage as an opportunity not to be missed.

Although this article primarily focuses on the purchase of life insurance, it is often more practical to use the sale technique partially for insurance and partially for the acquisition of other investments. In most cases, planners should attempt to balance its use to provide both liquidity and estate tax reduction. A proper balance of the two depends on the comfort level of the clients in making gifts and the estate planner's ability to control the size of the estate by utilizing the apposite estate planning vehicles.

The Defective Trust Concept

A defective trust[2], as used herein, is a trust in which either the grantor or a beneficiary is treated as the "owner" of the trust for income tax purposes, but not for estate, gift or generation-skipping transfer (GST) tax purposes. The grantor is treated as the owner if one or more of IRC Sections 673-677 or 679 is violated. The beneficiary is treated as the "owner" if IRC Sec. 678 is violated.[3] Such Section or Sections are intentionally violated by the attorney in drafting the trust in order to produce the desired income tax result. The grantor or the beneficiary is taxed on the income and receives the benefit of all deductions and credits attributable to that portion of the trust in which such person is treated as the owner.[4] This article will focus on the intentionally defective trust in which the grantor, rather than the beneficiary, is treated as the owner of the entire trust income and principal for income tax purposes.

Historically, the goal of the estate planner was to attempt to avoid causing an income tax on the grantor because the grantor was usually in a higher tax bracket than the trust or the trust's beneficiaries. Just the same, someone must pay the income tax, whether it is the grantor, the trust or the trust's beneficiaries. It is often beneficial from a planning perspective to intentionally cause the grantor to be responsible for the income tax liability. The payment of the income taxes by the grantor is the equivalent of a tax-free gift to the trust of the income tax liability each year.

In addition, if the grantor, rather than the trust, pays the income tax each year, more cash is available inside the trust to make investments and purchase life insurance. For example, if the trust earns $100,000 this year and both the trust and the grantor are in a 40 percent income tax bracket, the entire $100,000 is available for investments in the defective trust, whereas only $60,000 would be available in a non-defective trust. After a number of years, the compounding effect, needless to say, is significant.

Most importantly, however, is the fact that the primary benefit in creating a defective trust is that the person who is treated as the "owner" of the trust can sell assets to the trust income tax-free.[5] The Service's position is that the trust is disregarded for income tax purposes and that transactions between the "owner" and the trust have no income tax consequences.

The Sale To Defective Trust Concept

The sale to a defective trust is very similar conceptually to the grantor retained annuity trust (GRAT), yet it is superior in most respects.[6] A GRAT is an irrevocable trust in which the grantor retains annuity payments for a specified term. Upon the end of the term, the assets remaining in the trust pass to the beneficiaries or to trusts for their benefit. The annuity payments are qualified interests pursuant to IRC Sec. 2702(b) so that the value of the gift is reduced. The GRAT is usually structured so that the value of the gift is as close to zero as possible. This is accomplished by structuring the retained annuity interest so that its present value is slightly less than the fair market value of the asset gifted to the GRAT.[7] A properly structured GRAT can thereby successfully shift assets to the beneficiaries or trusts for their benefit to the extent the assets produce more income or growth than the IRC Sec. 7520[8] rate in effect at the time that the gift is made to the GRAT.

On the other hand, the initial step taken to utilize the sale to a defective trust technique is to make certain the trust is initially funded with assets that give the trust a measure of independence from the grantor. If this is not done prior to the sale, the Service could argue that the transaction is a sham since it would not be reasonable to sell an asset to someone who has no money or other assets with which to pay for the asset. In addition, it is important for the trust to have other assets so that the Service cannot successfully argue that IRC Sec. 2036(a)(1) should apply to bring the asset back into the seller's taxable estate. If it appears as though the income from the "sold" assets is earmarked to be returned to the seller as interest on the promissory note, then arguably IRC Sec. 2036(a)(1) applies to the transaction since the transaction appears too much like a transfer with a retained interest. For these reasons, it is advisable to have the grantor make a gift to the trust of at least 10 percent of the value of the asset being sold prior to entering into the sales agreement. It is also desirable to avoid selling an asset with a cash flow which is approximately equal to the interest on the promissory note.

After the initial gift has been made, the trust enters into a sales agreement with the seller/grantor, structured as an interest-only sale with a balloon payment at the end of the term. The interest rate used for the sale, i.e., the Applicable Federal Rate (AFR), is found in IRC Sec. 1274(d). Similar to the GRAT technique, the transaction is successful if the assets sold grow or produce income at a rate in excess of the AFR. However, the sale technique is advantaged in that the AFR is generally lower than the rate required under IRC Sec. 7520 (the rate required in the GRAT transaction).

If the assets to be sold are first placed in a family limited partnership (FLP), the limited partnership interests can be sold at a substantial discount, increasing the likelihood that the desired results will be achieved. In fact, the seller need not even survive the entire term of the promissory note to achieve significant estate tax savings (cf. GRAT). The instant the sales agreement is consummated, the seller's taxable estate has been reduced by the difference between the pro rata value of the assets being sold and the discounted value of the promissory note. In addition to reducing the seller's estate, having the note in the seller's estate, rather than the assets, puts a "freeze" on future appreciation.

Funded Vs. Unfunded Life Insurance Trusts

Typically, life insurance trusts are designed as unfunded *Crummey*[9] trusts. The trusts are considered unfunded because the *Crummey* gifts are made near the date the premiums are due and in amounts only slightly greater than the amount of the premiums. A *Crummey* gift is named after the case that held that a gift to a trust is a "present interest" gift and thus qualifies for the $10,000 annual exclusion so long as the beneficiary is given an immediate right to withdraw the gift. The *Crummey* trust works as long as the donors have enough legitimate *Crummey* beneficiaries to pay the insurance premiums. A hypothetical married couple with one child and one grandchild would have two *Crummey* beneficiaries and two donors, thus limiting the *Crummey* trust technique to annual premiums of up to $40,000 each year without using any gift tax exemption or causing a gift tax. Assuming that the annual premium for each $1 million in death benefit is $20,000, our hypothetical family would only be able to purchase a $2 million policy using a *Crummey* trust.

If the *Crummey* technique does not allow for sufficient gifts to pay the premium, another option is to use a life insurance trust funded with income producing assets.[10] The trust is funded with taxable gifts which are usually, but not always, covered by the gift tax exemption. Gift taxes will be due if the donors exceed their exemptions. The property gifted to the trust should generate significant cash flow relative to its value. If our clients gift assets with a fair market value of $1,200,000 to the trust using their entire exemptions[11] so that there is no gift tax due and the assets earn 10 percent[12] cash flow annually, an insurance policy with a $120,000 annual premium can be supported without depleting any of the trust principal. Again, assuming the insurance costs $20,000 for each $1 million in death benefit, the clients can purchase a $6 million policy using the funded trust.

The funded life insurance trust is enhanced significantly by combining it with an FLP. Rather than gifting the assets themselves, the assets would first be contributed to an FLP in exchange for partnership interests. The donors would then gift discounted limited partnership interests to the trust. Assuming the limited partnership interests are entitled to a valuation discount[13] of 50 percent, our hypothetical donors would be able to gift $2,400,000 in "pro rata" value to the trust under their $1,200,000 combined gift tax exemptions.[14] The limited partnership interests owned by the trust would now be throwing off $240,000 (i.e., 10 percent of $2,400,000) cash flow each year. This is the equivalent of a 20 percent annual return relative to the $1,200,000 fair market value. Our hypothetical donors would now be able to purchase a $12 million policy using the FLP enhancement!

The funded life insurance trust will enable the trust to generate sufficient cash flow to support most insurance premiums, especially when combined with the FLP. However, there are at least two scenarios in which the estate planner should consider taking the funded life insurance trust one step further by selling limited partnership interests or other discounted assets to the trust. First, this technique should be considered when the insurance need is so large that other techniques are inadequate. Second, even with a more moderate estate, this technique should be considered when the *Crummey* technique is insufficient and the clients have little or no gift tax exemption remaining. Consideration should be given to funding the trust initially with cash or marketable securities rather than an interest in an FLP to avoid having to "check the box" on the gift tax return, a new requirement whenever a discount is taken.

The Life Insurance Sale

A large life insurance policy can be purchased by the clients with no gift, estate or GST tax. For example, husband and wife (the clients) first make a taxable gift of $1,200,000[15] in cash or other assets to a trust which is defective for income tax purposes, but not for estate tax purposes. There is no gift tax due because the $1,200,000 gift is covered by their combined gift tax exemptions. The clients then form an FLP and contribute income producing assets to the partnership in exchange for partnership interests. The clients sell $24 million in "pro rata" value worth of limited partnership interests to the trust in exchange for a promissory note. Assume that the limited partnership interests are appraised at a 50 percent[16] discount since they are minority interests and unmarketable. After taking a 50 percent discount, the limited partnership interests that are being sold have a fair market value of $12 million (i.e., $24 million discounted by 50 percent). The sale is for 30[17] years to be paid interest-only with a balloon payment at the end of the thirtieth year. The interest rate is 6.68 percent (the IRC Sec. 1274(d) federal long-term rate for October, 1997). The example assumes that it costs $20,000 annually to pay the premium for each $1 million of life insurance death benefit.

A year by year analysis shows the real value (i.e., the non-discounted value) that is removed from the clients' estates. At the beginning of the first year, the trust holds assets with a value to the clients of $25,200,000[18] which is computed by adding the initial gift of $1,200,000 to the non-discounted $24 million in real value that is removed from the clients' estates. The example assumes that the assets produce a 10 percent annual cash flow. Since the discount does not affect the cash flow, the 10 percent is multiplied by the entire $25,200,000 to compute the income earned by the trust in the first year. The income earned is $2,520,000. At the end of the year, the trust must pay the seller 6.68 percent of the initial fair market value of the property, or $801,600. This is computed by multiplying 6.68 percent by $12 million. The difference between the $2,520,000 cash flow and the $801,600 interest payment inures to the benefit of the trust gift and GST tax-free. This difference can be used to pay a life insurance premium without using any of the trust principal. After entering these variables into the Sale to "Defective" Trust Megaanalyzer℠, the software program shows that an insurance policy with a death benefit of $85,920,000 can be purchased without any gift, estate or GST tax!

The Dynasty Trust Concept

A dynasty trust[19] is a trust which leverages the estate, gift and GST tax exemptions for as many generations as state law permits. Perhaps the dynasty trust technique can best be explained using the Megatrust℠[20] concepts. Whereas most trusts provide for mandatory distributions to children at staggered ages (e.g., one-half at age 25 and the rest at age 30), the Megatrust℠ encourages the property to be kept in trust for the benefit of the beneficiaries and the beneficiaries to be given the "use" of the trust property. The beneficiaries usually become trustees upon reaching the age at which most other trusts would distribute the trust assets to such beneficiaries. An independent trustee is used to make discretionary distributions and other tax sensitive decisions. The primary beneficiary, or family trustee, can remove and replace the independent trustee with or without cause.[21] Thus, the primary beneficiary has the control over and use of the trust property as if he owned it free of trust. However, by having the Megatrust^{sm} as the owner, the assets are protected from estate taxes and from the beneficiary's creditors, including spouses in the context of a divorce.

In most traditional trusts, if the beneficiary wants to purchase a house, he asks the trustee to make a distribution to him so he can use the funds to purchase the house. This needlessly increases the beneficiary's taxable estate and subjects the house to the beneficiary's creditors, including spouses. Rather than making an outright distribution to the beneficiary, the Megatrust^{sm} encourages the trustee (usually the primary beneficiary) to purchase the house as an asset of the Megatrust^{sm}. The beneficiary can then live in the house rent-free.

For estate tax purposes, it is not sufficient to plan for only one generation at a time. The potential estate taxes that the clients' children's estates may face as a result of such planning are often not given enough consideration by the attorney in drafting the trust. For example, assuming the trust purchases a $2 million life insurance policy, if the trust were drafted to terminate when the clients' children reach specified ages, assuming no appreciation in the assets, the children's estates would pay an unnecessary estate tax of approximately $1 million when the children die. If the children outlive the parents by 30 years (i.e., one generation), the $2 million might have grown to $16 million. [Applying the "rule of 72," if the trust grows at 7.2 percent each year, it would double three times in 30 years.] A $16 million estate would create an estate tax of over $8 million when the clients' children die!

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The tax code allows each person to transfer up to $1 million without any GST tax. Interestingly, the estate and gift tax exemption is utilized in almost every trust, yet all too often the GST tax exemption is not used as a part of the estate plan. Failure to utilize an individual's GST tax exemption is a horrific waste over the course of time.

Even clients who do not have large estates should use a generation-skipping trust. For example, even an inheritance as small as $500,000 over one generation of 30 years growing at a rate of 7.2 percent would double three times to $4 million. The difference between using a single generation trust and a multiple generation trust in this example is approximately $2 million in estate taxes! Perhaps even more important, the trust assets are not reduced by divorces and other creditor problems.

As described above, the $1 million GST exemption can be leveraged by transferring discounted interests such as limited partnership interests to the generation-skipping trust. The exemption is leveraged even further by selling discounted interests to a defective generation-skipping trust, particularly where an interest-only installment note is used.

A significant advantage in using the sale to a defective trust technique is the ability to pass the assets in trust for more than one generation. Using a generation-skipping trust, the GST tax exemption can be allocated to the trust in an amount equal to the initial seed money so that the trust is wholly exempt from GST taxes. Since the subsequent sale is for a promissory note having a fair market value equal to that of the asset being sold, the leverage obtained by the trust through discounts inures to the benefit of the trust gift, estate and GST tax-free! Thus, there is no need to apply any additional gift or GST tax exemption to the trust. This allows us to pack the trust with virtually as much as the clients are comfortable removing from their estates.

Leveraging The Trust Forever

When generation-skipping planning is utilized, the majority of transfers are made in trust for the lives of the children with the remainder passing to the grandchildren outright. Serious consideration should be given to go beyond the grandchildren's generational level by drafting the trust to last for as long as state law will allow. Most states limit the duration of a trust to three or four generations. A trust that goes on for this period of time jumps outside of the Federal transfer tax system for those generations, only to be ultimately included in the estates of the beneficiaries who have received the trust assets when the trust terminates by operation of state law. A few states have been entrepreneurial by doing away with the limitation on the duration of a trust.[22] In doing so, a properly structured trust can jump outside the tax system altogether! So long as the trust continues, the trust's assets will be exempt from Federal transfer taxation no matter how much the trust appreciates due to the exemptions that were allocated up front.

States that have done away with the limitation on the duration of a trust are Alaska, Delaware, Idaho, Illinois[23], South Dakota and Wisconsin. Care must be taken in choosing the apposite situs for the dynasty trust because certain jurisdictions are more favorable than others. Idaho and Wisconsin both have a state income tax and are therefore less desirable as a trust situs than the other states. Delaware and Illinois both have a state income tax, but such tax does not apply to a trust set up by a non-resident grantor. Alaska and South Dakota do not have a state income tax. Delaware has a limitation on the duration of a trust holding real property. Alaska, Idaho, Illinois, South Dakota and Wisconsin do not have any limitations on the duration of trusts holding real property. Therefore, of the six states permitting trusts to last forever outside of the Federal transfer tax system, only Alaska, Illinois and South Dakota have no state income tax (or no state income tax for a trust set up by a non-resident grantor in the case of Illinois) and no limitations on the duration of a trust holding real property.

Other Leveraging Concepts

The previous example uses an initial gift of $1,200,000 by the clients in order to avoid the payment of gift taxes.[24] If the clients had instead funded the trust with an initial gift of $2 million using their entire GST tax exemptions, they would have to pay some gift tax.[25]

As a general rule of thumb, the trust should have assets worth at least 10 percent of the assets being sold to the trust prior to the sale. Using this rule of thumb, the clients can sell limited partnership interests with a fair market value of $20 million after the 50 percent discount (or $40 million before the discount). Therefore, by paying some gift tax, the trust would now be able to purchase a life insurance policy with a much larger death benefit.

Transfer Tax Rules. Although the estate and gift tax rates were unified in 1976, it is often beneficial to make lifetime gifts rather than paying an estate tax at death since the gift tax is tax exclusive and the estate tax is tax inclusive. The gift tax is tax exclusive because the tax is imposed solely on the property being transferred. The estate tax is tax inclusive because the tax is paid on the assets in the estate (i.e., there is a tax on the tax that is paid). For example, if the estate and gift tax rate is 55 percent, in order to get $1 million to your child, it "costs" $1,550,000 to make the gift ($1 million to the child plus $550,000 gift tax); however, it "costs" $2,222,222 to bequeath the property by Will ($1 million to the child plus $1,222,222 estate tax). Consequently, if gifts are taxed at a rate of 55 percent, then bequests are proportionately taxed at 122 percent of the value of the property being transferred. A gift of limited partnership interests appraised at a 50 percent discount is proportionately taxed at a rate of 27.5 percent. Even a more modest discount of 40 percent would still result in an effective tax rate of only 33 percent.

A sale of limited partnership interests to a defective trust creates so much gift tax leverage that the proportionate gift tax rate is relatively negligible. Assume a taxable gift of $1 million in cash is made to a defective trust.At a 55 percent gift tax rate and assuming the donor has no gift tax exemption remaining, gift tax in the amount of $550,000 must be paid. Assume further that property is contributed to the FLP and the limited partnership interests are appraised at a 50 percent discount. Using the general rule of thumb that the grantor can sell assets having a fair market value of ten times the value of the initial gift, the grantor can sell limited partnership interests with a fair market value of $10 million (or a pro rata value of $20 million) to the trust in exchange for an interest-only promissory note with a face value of $10 million. Thus, even if the grantor dies the next day, his estate would be reduced by $11 million (i.e., the $1 million gift plus the $10 million difference between the value of the estate reduction and the value of the promissory note). Consequently, the value of his estate for estate tax purposes would be reduced by $10 million with a gift tax of only $550,000. The proportionate gift tax using the sale technique would now be only five percent!

This actually understates the potential leverage that can be obtained. Additional leverage can be obtained by the trust each year since the trust should earn significantly more than the interest it must pay for the promissory note.[26] Also consider the leverage that can be obtained where the grantor sells additional limited partnership interests to the trust each year that there are additional earnings from which to base the ten-to-one sale-to-gift ratio.

Summary

The sale to a defective trust technique can be used both for life insurance and for other investments. Its use as a life insurance vehicle is invaluable to the life insurance agent who is often limited by the amount of life insurance that can be purchased gift and GST tax-free using a *Crummey* trust. The sale of discounted assets to a defective trust is an income tax-free method of leveraging the gift and GST tax exemptions to move significant wealth down multiple generations. The trust should be drafted to last for more than one generation so that the beneficiaries save estate taxes and the assets are protected from the beneficiaries' personal creditors, including spouses. For even more leverage, the trust may be administered in a state with no limitation on the duration of the trust and no state income tax. The Megatrust[sm] principles should be considered in drafting the trust. In some cases, the estate might be so large that it may make sense for the clients to pay some gift taxes in order to further leverage the trust.

The majority of the time, the sale technique will be used partially to fund the purchase of life insurance and partially to reduce the client's taxable estate. The proper balance of these two objectives depends on the size of the client's estate, as well as the client's comfort in making large gifts. The size of the estate should be closely monitored to control the proper balance of life insurance with other assets in the defective trust. Because of the substantial leverage that can be attained through the use of this technique, the estate planner can use the sale technique to plan even the largest estates. ◆

Endnotes

1. Megatrust[sm] is a servicemark of Richard A. Oshins and Jonathan G. Blattmachr.
2. A "defective trust" is another name for a "grantor trust."
3. This generally occurs where gifts are made subject to a *Crummey* power of withdrawal. See PLR 9625031.
4. IRC Sec. 671.
5. See Rev. Rul. 85-13.
6. For an excellent analysis of the comparison between the sale to a defective trust and the GRAT, see Michael D. Mulligan, "Sale to a Defective Grantor Trust: An Alternative to a GRAT," *Estate Planning*, January 1996, Vol. 23, No. 1.
7. To some extent, the ability to almost zero out a GRAT has been curtailed by Treas. Reg. 25.2702-3(e), Example 5.
8. The IRC Sec. 7520 rate is 120 percent of the federal midterm rate, published monthly.
9. *Crummey v. Comm'r.*, 397 F.2d 82 (9th Cir. 1968).
10. A defective trust funded with growth assets will also work. Each time a premium is due, the grantor can purchase assets from the trust for cash. The cash can be used to pay the premium. The purchase of the growth assets from the trust will not create a capital gains tax. Rev. Rul. 85-13.
11. As of 1997 when this article was written, each person has a $600,000 exemption. In future years, this exemption will gradually increase for each person to $1,000,000 in the year 2006.
12. A 10 percent cash flow is used in this example because it is an easy figure with which to work. Often, business interests creating a cash flow much greater than 10 percent are sold to the trust. Assets generating a cash flow lower than 10 percent can be used, but are not as effective.
13. The limited partnership interests are discounted because they are minority interests (i.e., they lack voting power) and because they are unmarketable (i.e., there is no ready market for an interest in a closely-held entity). A complete discussion of discounting through valuation planning is beyond the scope of this article.
14. See Endnote 12.
15. See Endnote 12.
16. A 50 percent discount is used in this example because it is an easy figure with which to work. In our experience, most discounts range between 35 percent and 65 percent, although they are sometimes higher or lower depending on the type of assets owned by the partnership and the partnership provisions.
17. We usually choose a shorter term to take advantage of lower interest rates and to try to get the note paid off prior to death. However, we have chosen a 30-year term for this example in order to illustrate the technique over a longer period of time.
18. This is the amount that is removed from the clients' estates, not the value for transfer tax purposes.
19. In addition to the two articles on Megatrusts[sm] cited in Endnote 21, see also Al W. King, III, Pierce H. McDowell, III and Dr. Daniel G. Worthington, "Dynasty Trusts: What the Future Holds for Today's Technique," *Trusts and Estates* (April 1996); see also Pierce H. McDowell, III, "The Dynasty Trust: Protective Armor for Generations to Come," *Trusts and Estates* (October 1993); see also Daniel G. Worthington and Peter M. Williams, "Retirement Planning with South Dakota Trusts," *Trusts and Estates* (September 1997); see also Al W. King, III and Ralph M. Engel, "The Dynasty Trust: The Ultimate Estate Planning Vehicle," *CPA Journal* (September 1996); see also Steven J. Oshins, "Sale to a Defective South Dakota Dynasty Trust: Leveraging your Trust into Perpetuity," *The Communique* (April 1998 - expected).
20. For a more detailed description of the Megatrust[sm], see Richard A. Oshins, "Family Wealth Protection and Preservation," *Trusts and Estates* (February 1993); see also Richard A. Oshins and Jonathan Blattmachr, "The Megatrust[sm]: An Ideal Family Wealth Preservation Tool," *Trusts and Estates* (November 1991).
21. See Rev. Rul. 95-58.
22. See Al W. King, III, Pierce H. McDowell, III and Dr. Daniel G. Worthington, "Dynasty Trusts: What the Future Holds for Today's Technique," *Trusts and Estates* (April 1996); see also Pierce H. McDowell, III, "The Dynasty Trust: Protective Armor for Generations to Come," *Trusts and Estates* (October 1993); see also Daniel G. Worthington and Peter M. Williams, "Retirement Planning with South Dakota Trusts," *Trusts and Estates* (September 1997); see also Al W. King, III and Ralph M. Engel, "The Dynasty Trust: The Ultimate Estate Planning Vehicle," *CPA Journal* (September 1996); see also Steven J. Oshins, "Sale to a Defective South Dakota Dynasty Trust: Leveraging your Trust into Perpetuity," *The Communique* (April 1998 - expected).
23. As of 1997 when this article was written, Illinois has not yet abolished its rule against perpetuities. However, it will be abolished effective January 1, 1998.
24. See Endnote 12.
25. This is a highly recommended but often not elected course of action.
26. This would not be true if the trust were used to purchase insurance since all the appreciation in the trust would be used each year to pay the premium. It would be true, however, if the trust were used partially for insurance and partially for other investments.