

Within the recent past, the Florida legislature enacted the Florida Community Property Trust Act, which created a new estate planning tool for our clients – a Florida Community Property Trust.

Although Florida remains a separate property state (i.e., a common law jurisdiction), the Florida Community Property Trust Act allows a married couple to elect community property treatment for assets held in a Florida Community Property Trust.

Under federal tax law, assets (other than IRAs and other pre-tax funded retirement accounts) included in a decedent's estate receive a cost basis adjustment to their fair market value as of their date of death. Generally, this means assets with a low-cost basis are stepped-up to their fair market value at the decedent's death.

In Florida or other common law jurisdictions, only a decedent's 50% share of jointly held assets receives this cost basis adjustment. In contrast, in a community property state, generally, such assets held jointly between husband and wife receive a full 100% cost basis adjustment despite being jointly owned.

The primary advantage offered by the Florida Community Property Trust Act is that a married couple can elect to convert separate property to community property by transferring such assets in Florida Community Property Trust, potentially enabling both halves of such assets to receive a step-up in cost basis at the passing of the first spouse.

The Florida Community Property Trust serves as an additional estate planning tool for targeted planning; that is, a married couple may choose specific highly appreciated, low-cost basis assets (securities, real estate, business interests, etc.) to hold in a Florida Community Property Trust.

Who Should Consider a Florida Community Property Trust?

A Florida Community Property Trust may be beneficial for:

- A married couple who owns highly appreciated, low-cost basis asset(s) (e.g., investment accounts, real estate holdings, closely held business interests).
- A married couple who wishes to sell or liquidate the low-cost basis assets prior to the death of the surviving spouse.
- A married couple who plans to leave low-cost basis assets to their surviving spouse, where the cost basis adjustment will provide the most significant tax advantage.

Considerations

The Internal Revenue Service has not directly addressed whether it would allow community property treatment for assets held in a community property trust in a separate property law state like Florida.

Clients who are interested in a Florida Community Property Trust should contact our firm to schedule an opportunity to discuss further considerations concerning the estate planning tool.