

**Wealth Transfer Opportunities in the Current Economic Environment**  
**New Orleans Estate Planning Council**  
**March 15, 2010**

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 Jones Walker  
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**Wealth Transfer Opportunities**

- n Today's Investment Environment
- n Background on Estate Tax
- n Introduction to Grantor Trusts
- n Loans
- n GRATs
- n Sale to a Grantor Trust
- n Benefits of Gifting during a Market Downturn
- n Qualified Personal Residence Trust
- n Lawyerly Disclosures

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**Today's Investment Environment**

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## Today's Investment Environment

- Historically, significant market declines have been followed by substantial recoveries
  - 1987 Financial Panic
  - 1998 Long Term Capital Management Crisis
  - 2002 Tech Bubble Bust
  - 2007 Economic Collapse

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## Today's Investment Environment cont...

### Nasty Downturn

The current recession is unusually severe, catching market prognosticators off guard.

This could be the longest recession since 1933

Recession Period	Duration (Months)
Dec 2007 - present	13 months and counting
March 2000 - Nov 00	8
July 1990 - March '91	8
July 1980 - Nov '82	16
Nov 1980 - July '82	8
Nov 1979 - March '79	16
Dec 1949 - Nov '50	12
April 1940 - Feb '42	26
Aug 1927 - April '30	8
July 1918 - May '24	30
Nov 1908 - Oct '48	11
Feb 1908 - Oct '09	8
May 1917 - June '20	13
Aug 1907 - March '09	42

Sources: WSJ Market Data Group (DOW); MetLife Bureau of Economic Research (recessions)

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## S&P REIT Index



Action	Date	Price	Gain
Buy	10/18/1993	\$ 71.71	
Sell	10/9/1997	\$ 113.09	116.70%
Buy	2/18/2000	\$ 71.81	38.87%
Sell			
Buy	3/12/2003	\$ 86.84	
Sell	2/13/2007	\$ 220.56	153.98%
Buy	12/21/2008	\$ 69.20	-24.92%

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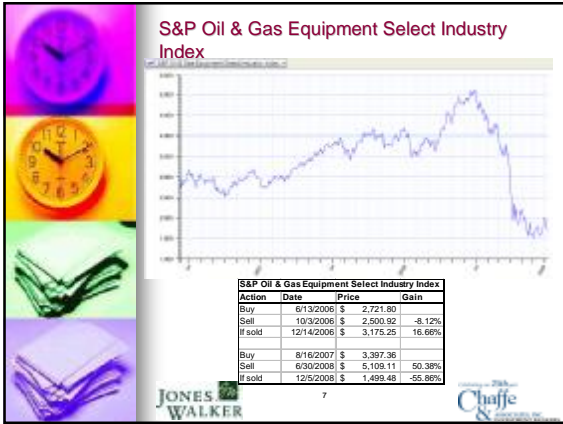
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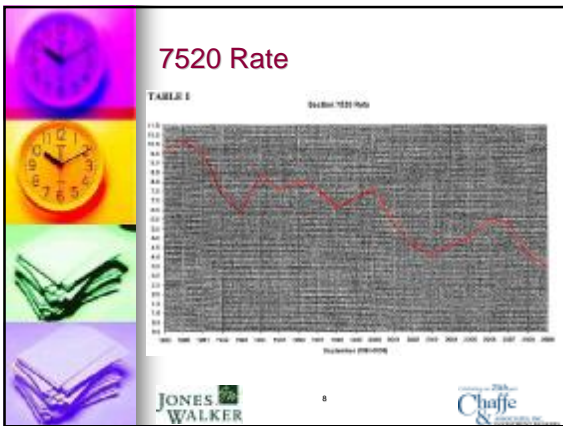
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## Background on Estate Tax

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**The U.S. Estate Tax**  
(as we knew it and may know it again)

- n The estate tax exemption was:
  - n \$3.5 million for 2009
- n The rate was 45%
- n The estate tax exemption amount is reduced by taxable gifts made during life
- n You can use \$1 million of your exemption with lifetime gifts

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**What is Subject to U.S. Estate Tax?**

- n All property owned at death.
- n Includes "non-probate" assets like 401(k), IRA, assets held in a revocable trust (e.g. a "living trust").
- n Assets donated during life if decedent retains control.
- n Life insurance owned by the decedent.
- n QTIP assets from a predeceased spouse's estate

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**What Deductions are Available?**

- n Debts & administrative expenses.
- n Charitable gifts at death.
- n Outright transfers to spouse and other qualified transfers to spouse - e.g. "QTIP" trust or usufruct for life to spouse.
- n Deductions must be qualified.

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### State Inheritance/Estate Tax

- n Louisiana has none.
- n But, if you own property in other states, find out if they have a state death tax and plan to avoid it (titling asset in an entity or trust may do it).

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### U.S. Gift Tax

- n A tax on lifetime gifts.
- n You can use up to \$1 million of your exemption during life.
- n Rate over \$1.0 million is 35% or 45%?
- n You can make annual exclusion gifts of \$13,000 per year per donee -- without using exemption.
- n Tuition payments are excluded and do not "use up" exemption - but donor must pay the school directly.
- n Medical expenses are the same and, again, donor must pay the health care provider directly.
- n Louisiana has no gift tax.

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### U.S. Generation-Skipping Transfer Tax

- n An additional tax on top of gift or estate tax on transfers that "skip" a generation.
- n Each donor has a GST tax exemption equal to the estate tax exemption amount - but these are separate exemptions.
- n The GST tax rates is 45%
- n The rates apply in addition to gift/estate taxes.
- n Louisiana does not have a GST tax.
- n Generally, if a lifetime gift is exempt from gift tax, it is exempt from GST tax.
- n Applicable in 2010?

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## Income Tax

- n If you give low basis assets away during your life, the donee typically takes your basis and must pay capital gain upon sale.
- n Legatees/heir take basis established at death - often a stepped up basis.
- n IRD - Income in Respect of Decedent - if you leave property that includes taxable (but not yet taxed) income, the legatee will pay income tax on the income (e.g. IRA/401(k)).
- n Think about the income tax impact when making gift decisions -- income tax can reduce the value of the gift substantially.
- n Consider using IRD items to fund charitable gifts at death -- the charity doesn't pay income tax.


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## Introduction to Grantor Trusts

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## GRANTOR TRUSTS

- n HISTORY
  - l Deterring an Income Tax Play
    - n Spreading income producing assets between multiple trusts to take advantage of lower graduated income tax rates, but retaining strings inconsistent with trust's independence
    - n Income tax fix
  - l Result - Estate and Gift Tax Play
    - n A grantor trust can be structured so it is respected for gift and estate tax purposes, but not for income tax purposes


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## GRANTOR TRUSTS

**n EFFECTS OF GRANTOR TRUST STATUS**

- l Income Tax**
  - n** Trust's income, deductions and credits reported by grantor on his individual income tax return
  - n** Assets of trust treated as if owned by grantor
  - n** Sale between trust and grantor ignored
- l Gift Tax**
  - n** Grantor's payment of income tax not an additional taxable gift by grantor to trust.

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## GRANTOR TRUSTS

**n EFFECTS OF GRANTOR TRUST STATUS**

- l Gift Tax (Cont.)**
  - n Non-Grantor Trust Example:**
    - l** Non-grantor trust holds \$100 (ignoring how it received \$100), earns net income of \$10 per year, and trust pays income tax at 41%
    - l** At end of year one, non-grantor trust earned \$10, paid \$4.10 to government and now holds \$105.90
    - l** Net benefit to trust = \$5.90; Net benefit to grantor = \$0
    - l** Total benefit = \$5.90

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## GRANTOR TRUSTS

**n EFFECTS OF GRANTOR TRUST STATUS**

- l Gift Tax (Cont.)**
  - n Grantor Trust Example:**
    - l** Grantor trust holds \$100 (ignoring how it received \$100), earns net income of \$10 per year, and **grantor** pays income tax at 41%
    - l** At end of year one, grantor trust earned \$10, grantor (not trust) paid \$4.10 to government and trust now holds \$110
    - l** Net benefit to trust = \$10
    - l** Net benefit to grantor \$4.10
      - n** Additional transfer free of gift tax and \$4.10 no longer in grantor's estate
    - l** Total benefit = \$14.10 (\$10 to trust and \$4.10 to grantor)

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## GRANTOR TRUSTS

- n EFFECTS OF GRANTOR TRUST STATUS
  - l Gift Tax (Cont.)
    - n Question – If you are in a taxable estate situation and your goal is to reduce your gross estate, would you rather make a transfer to a lower generation and have them pay the income tax out of their estate or would you rather pay the income tax on the asset's earnings, which maintains their estate while reducing yours, without incurring an additional gift tax on the payment?
    - n Answer – If you look only at the math, it should be a resounding yes, but this might not be for everyone.

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## GRANTOR TRUSTS

- n EFFECTS OF GRANTOR TRUST STATUS
  - l Summary
    - n Grantor trust is disregarded for income tax purposes
    - n It is regarded for gift and estate tax purposes (plan carefully to avoid estate tax strings)
    - n Grantor's payment of income taxes not taxable gift to grantor trust
    - n Net benefit of \$14.10 to grantor trust vs. \$5.90 to non-grantor trust

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## GRANTOR TRUSTS

- n MAKING A TRUST A GRANTOR TRUST
  - l Power to Lend:
    - n Grantor or nonadverse party, or both, has power,
    - n Which enables grantor to borrow corpus or income,
    - n Without adequate interest or adequate security, and
    - n Trustee (other than grantor) does not have the power to lend to anyone other than the grantor under trust's general lending power

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## GRANTOR TRUSTS

**n MAKING A TRUST A GRANTOR TRUST**

**l Power to Lend (Cont.):**

- n Points of interest (Cont.):**
  - l Grant power to lend without any security, but with adequate interest**
    - n Reduces IRS' argument that the grantor retained a discretionary beneficial interest that might cause estate tax inclusion**
    - n Reduces uncertainty as to "adequacy"**
  - l Prohibit trustee from lending without adequate security and adequate interest to anyone other than grantor or grantor's spouse, as the case may be**

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## GRANTOR TRUSTS

**n MAKING A TRUST A GRANTOR TRUST**

**l Power to Reacquire Assets:**

- n Power granted to grantor**
- n To substitute assets of an equal value**
- n Exercisable in nonfiduciary capacity, without approval or consent of any person in a fiduciary capacity**
- n Estate Tax - Seemingly most preferred power because IRS ruled in Rev. Rul. 2008-22 that this power does not result in adverse estate tax consequences in most cases.**

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## GRANTOR TRUSTS

**n MAKING A TRUST A GRANTOR TRUST**

**l Power to Reacquire Assets (Cont.):**

- n Points of interest:**
  - l Acquire or reacquire?**
    - n Code says reacquire, but IRS has said grantor trust created if nonadverse party has power to acquire**
    - n Grant power to grantor to be safe, but consider options if concern for estate tax inclusion (but Rev. Rul.)**
  - l Nonfiduciary capacity – What does that mean?**
    - n Might avoid granting the power to grantor or nonadverse party serving as trustee**
    - n Clearly state that power is held in nonfiduciary capacity and power holder may act without regard for beneficiary's best interests**
  - l Equivalent value**

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## GRANTOR TRUSTS

- n MAKING A TRUST A GRANTOR TRUST
  - l **Crummey Powers**
    - n Crummey power holder generally treated as owner of trust's assets (i.e. grantor) to which the power to withdraw relates
    - n Continues to apply to trust corpus following lapse
    - n Effect on typical grantor trust triggers
      - l IRS has continuously ruled in PLRs that traditional grantor trust triggers that ordinarily will wholly-grantor a trust to the settlor are not trumped by crummey powers
      - l However, some commentators would disagree and suggest both settlor and crummey holder should share grantor status

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## GRANTOR TRUSTS

- n GRANTOR TRUSTS IN ESTATE PLANNING
  - l **Refresher - Benefits of Wholly-Owned Grantor Trust:**
    - n Grantor trust is disregarded for income tax purposes
    - n Assets treated as owned by grantor for income tax purposes
    - n Grantor trust is regarded for gift and estate tax purposes
    - n Grantor's payment of income taxes not taxable gift to grantor trust

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## GRANTOR TRUSTS

- n Terminating Grantor Trust Status
  - l **Why?**
    - n Income tax burden too great
    - n Income tax rates change such that trust is better off as separate taxpayer
    - n Tax law changes so that grantor's payment of income tax is taxable gift
  - l **How?**
    - n Grant power to Advisory Board to terminate or in the case of:
      - l Power to lend, allow trustee power to relinquish, or
      - l Power to reacquire assets, give power to grantor (or if concerned about estate tax inclusion, to trustee)
        - n Fiduciary liability concerns

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**GRANTOR TRUSTS**

- n Terminating Grantor Trust Status
  - l Tax Consequences
    - n During Life –
      - l Trust becomes separate taxpayer
      - l Deemed transfer from grantor to trust at that time
      - l Income tax risk only if debt assumed by trust exceeds basis in trust's assets
    - n At Death –
      - l Income tax consequences not as clear – some argue debt in excess of basis triggers, but others argue death is not an income taxable event

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**GRANTOR TRUSTS**

- n Toggling Grantor Trust Status
  - l Turning grantor trust status on and off and on again
  - l Many commentators shy away from toggling
  - l Transactions of interest
  - l Consider separating the parties with power to turn grantor power on from those that can turn power off

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Loans

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## Loans

- n The IRS permits relatives to lend money to one another at the Applicable Federal Rate, which the government sets monthly.
- n With these, relatives can charge far less than a bank or other 3<sup>rd</sup> party lenders.
- n Note is "frozen" asset in lender's estate and appreciation of purchased assets benefit borrower.

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## Example

- n Loan
  - l \$1 million
  - l 30 yr mortgage
  - l Interest 6.5% 3<sup>rd</sup> party lender or 4.35% AFR
- n Interest paid over term of loan
  - l \$1.3 million with 6.5% interest
  - l \$809,000 with 4.35% interest
- n Parents are saving children \$500,000 tax free over 30 years
- n All appreciation passes to children

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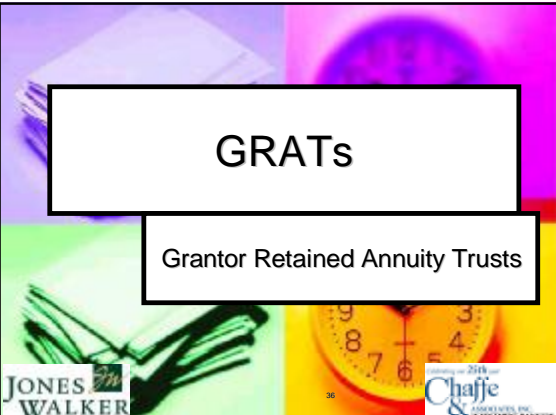
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# GRATs

Grantor Retained Annuity Trusts

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## GRATs

- n How Does a GRAT Work?
- n When Would a GRAT be a Good Strategy?
- n What Does a GRAT Accomplish?
- n GRAT Examples

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## How Does a GRAT Work?

- n Grantor transfers assets to trust
- n Grantor receives an annuity stream for a set term
  - l Term is chosen by the grantor
  - l Annuity stream is typically either cash or in kind
- n Grantor pays little or no gift tax, or uses gift tax exemption, on present value of trust remainder
  - l Gift tax exemption as of 2009 \$1,000,000 per grantor

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## How Does a GRAT Work? cont...

- n When trust term ends, remaining trust assets pass to beneficiaries free of gift tax
  - l If grantor does not survive the term, trust assets are included in the estate and subject to estate tax

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## How Does a GRAT Work? cont...



1 Grantor transfers assets

2 Annual annuity is calculated for grantor

3 Grantor receives annuity

4 Remaining assets pass to beneficiaries

Grantor

GRAT

Beneficiaries

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## When Would a GRAT be a Good Strategy?

- n The assets in a portfolio are appreciating rapidly and/or producing high income.
- n The assets transferred can be discounted pursuant to general valuation principles.
- n Grantor wants to retain income stream from those assets.
- n Grantor wishes to minimize estate or gift taxes on the transfer of wealth to beneficiaries.

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## What Does a GRAT Accomplish?

- n A GRAT accomplishes the following:
  - l "Freezes" the value of gifted assets so that their future appreciation will not be subject to transfer tax
  - l Retains the use of the assets for a period of time.
  - l Discounts the value of the gift for gift tax purposes.
- n In a low interest rate environment, a GRAT provides a great opportunity to shift future appreciation to beneficiaries.

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## Income Tax Issues

- n The income received by the GRAT, even amounts in excess of the required annuity payments to the grantor, will all be taxed to the grantor.
- n That is, the grantor will have to use a portion of the annuity payments, or other funds, to make the necessary income tax payments.
- n Being required to pay the income tax on the entire income of a GRAT can be another estate planning advantage.
  - l These tax payments are essentially tax-free gifts from the grantor to the beneficiaries of the GRAT.


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## Planning

- n Short-term GRATs
  - l A short-term GRAT minimizes the change that a year or two of poor performance will adversely affect the overall effectiveness of the GRAT
- n Long-term GRATs
  - l Allows the annuity payments to be less each year when designing a zeroed-out GRAT
- n Using Increasing Annuity Amounts
  - l Allows for lower payments in earlier years and larger payments later.


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# GRAT Examples

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### Example 1

- n The gift element is entirely eliminated if the gift is “zeroed out” (i.e. there is no gift if the actuarial value of the grantor’s interest equals the full value of the property transferred to the trust)

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### Example 1 cont...

- n Grantor (“G”) transfers property worth \$1 million to a GRAT that will pay G \$118,430 per year for a term of 10 yrs at the end of which the GRAT will terminate and the property will be distributed to G’s children.
- n If the assumed AFR was 3.2% at the time the GRAT is created, the value of the annuity that G retained interest will be roughly equal to the full value of the property that G transferred to the GRAT. (i.e. the GRAT is zeroed out)
- n For gift tax purposes, the creation of the GRAT does not involve a gift.

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### Example 1 cont...

A Example of Zeroed Out GRAT					
	Beginning Balance	Growth	Annuity Pmt	Difference	Remainder
1	1,000,000	32,000	118,430	(86,430)	913,570
2	913,570	29,234	118,430	(89,196)	824,374
3	824,374	26,380	118,430	(92,050)	732,324
4	732,324	23,434	118,430	(94,996)	637,328
5	637,328	20,394	118,430	(98,036)	539,292
6	539,292	17,257	118,430	(101,173)	438,119
7	438,119	14,020	118,430	(104,410)	333,709
8	333,709	10,679	118,430	(107,751)	225,957
9	225,957	7,231	118,430	(111,200)	114,758
10	114,758	3,672	118,430	(114,758)	(0)

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### Example 1 cont...

- n Note that if the grantor survives the term of the zeroed-out GRAT, the GRAT will have property available for distribution only to the extent the property in the GRAT appreciates at a rate greater than the rate (3.2%) that was assumed when the GRAT was created.
- n If G survives the retained term, his children will receive the property (if any) then held in the GRAT.
- n If the property generates an annual return of at least 15%, G's children will receive the entire principal of the trust, which itself may have increased dramatically in value over the term of the GRAT.
- n At an 8% growth rate, children receive \$443,281

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### Example 1 cont...

B	Initial transfer	1,000,000			
	AFR	3.2%			
	growth	<b>15.0%</b>			
	Beginning Balance	Growth	Annuity Prmt	Difference	Remainder
1	1,000,000	150,000	118,430	31,570	1,031,570
2	1,031,570	154,735	118,430	36,305	1,067,875
3	1,067,875	160,181	118,430	41,751	1,109,626
4	1,109,626	166,444	118,430	48,014	1,157,640
5	1,157,640	173,646	118,430	55,216	1,212,856
6	1,212,856	181,928	118,430	63,498	1,276,354
7	1,276,354	191,453	118,430	73,023	1,349,377
8	1,349,377	202,407	118,430	83,976	1,433,353
9	1,433,353	215,003	118,430	96,573	1,529,926
10	1,529,926	229,489	118,430	111,059	1,640,985
	1,000,000	1,825,287		<b>1,184,302</b>	<b>1,640,985</b>
			Grantor retains		Remainder gets

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### Example 1 cont...

C	Initial transfer	1,000,000			
	AFR	3.2%			
	growth	<b>8.0%</b>			
	Beginning Balance	Growth	Annuity Prmt	Difference	Remainder
1	1,000,000	80,000	118,430	(38,430)	961,570
2	961,570	76,926	118,430	(41,505)	920,065
3	920,065	73,605	118,430	(44,825)	875,240
4	875,240	70,019	118,430	(48,411)	826,829
5	826,829	66,146	118,430	(52,284)	774,545
6	774,545	61,964	118,430	(56,467)	718,079
7	718,079	57,446	118,430	(60,984)	657,095
8	657,095	52,568	118,430	(65,863)	591,232
9	591,232	47,299	118,430	(71,132)	520,101
10	520,101	41,608	118,430	(76,822)	443,279
	1,000,000	627,581		<b>1,184,302</b>	<b>443,279</b>
			Grantor retains		Remainder gets

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### Example 2

- n Interest rate: 3.2%
- n Term: 10 years
- n Transfer to Trust: \$5 million
- n Beg. Annuity: \$238,722
- n Annuity Growth Rate: 20%
- n Assumed Asset Growth Rate: **8%**
- n Value of Annuity: \$5 million
- n Taxable Gift: \$15.45
- n Value of Assets at End of GRAT Term: **\$2,771,951**

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### Example 2

Initial transfer	5,000,000			
AFR	3.2%			
growth	<b>8.0%</b>			
Annuity growth	20.0%			
Beginning Balance	Growth	Annuity Pmt	Difference	Remainder
1 5,000,000	400,000	238,722	161,278	5,161,278
2 5,161,278	412,902	286,466	126,436	5,287,714
3 5,287,714	423,017	343,760	79,257	5,366,971
4 5,366,971	429,358	412,512	16,846	5,383,817
5 5,383,817	430,705	495,014	(64,309)	5,319,509
6 5,319,509	425,561	594,017	(168,456)	5,151,053
7 5,151,053	412,084	712,820	(300,736)	4,850,317
8 4,850,317	388,025	855,384	(467,359)	4,382,958
9 4,382,958	350,637	1,026,461	(675,824)	3,707,134
10 3,707,134	296,571	1,231,753	(935,182)	2,771,952
5,000,000	3,968,860	<b>6,196,909</b>		<b>2,771,952</b>
		Grantor retains		Remainder gets

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### Example 3

- n Interest rate: 3.2%
- n Term: 10 years
- n Transfer to Trust: \$5 million
- n Beg. Annuity: \$238,722
- n Annuity Growth Rate: 20%
- n Assumed Asset Growth Rate: **5%**
- n Value of Annuity: \$5 million
- n Taxable Gift: \$15.45
- n Value of Assets at End of GRAT Term: **\$882,801**

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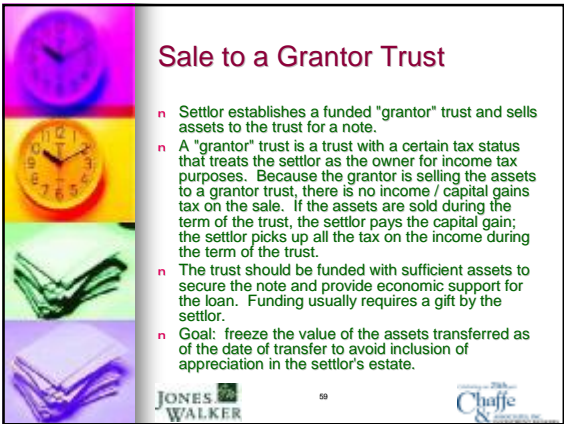
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**Sale to a Grantor Trust**

- n Settlor establishes a funded "grantor" trust and sells assets to the trust for a note.
- n A "grantor" trust is a trust with a certain tax status that treats the settlor as the owner for income tax purposes. Because the grantor is selling the assets to a grantor trust, there is no income / capital gains tax on the sale. If the assets are sold during the term of the trust, the settlor pays the capital gain; the settlor picks up all the tax on the income during the term of the trust.
- n The trust should be funded with sufficient assets to secure the note and provide economic support for the loan. Funding usually requires a gift by the settlor.
- n Goal: freeze the value of the assets transferred as of the date of transfer to avoid inclusion of appreciation in the settlor's estate.

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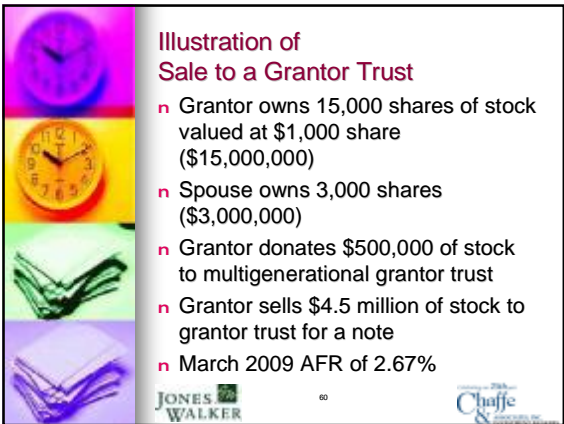
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**Illustration of Sale to a Grantor Trust**

- n Grantor owns 15,000 shares of stock valued at \$1,000 share (\$15,000,000)
- n Spouse owns 3,000 shares (\$3,000,000)
- n Grantor donates \$500,000 of stock to multigenerational grantor trust
- n Grantor sells \$4.5 million of stock to grantor trust for a note
- n March 2009 AFR of 2.67%

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**Illustration of Sale to a Grantor Trust**

- n Company projects FMV and Dividends to increase at 15% per year for 2010, 2011 and 2012
- n Thereafter, 10% growth is projected

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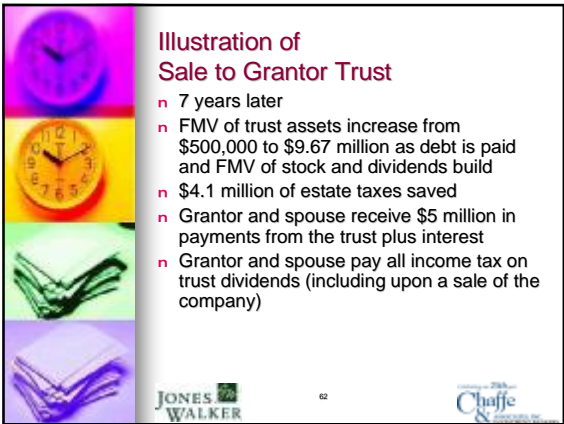
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**Illustration of Sale to a Grantor Trust**

- n 7 years later
- n FMV of trust assets increase from \$500,000 to \$9.67 million as debt is paid and FMV of stock and dividends build
- n \$4.1 million of estate taxes saved
- n Grantor and spouse receive \$5 million in payments from the trust plus interest
- n Grantor and spouse pay all income tax on trust dividends (including upon a sale of the company)

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**Benefits of Gifting**

During a Market Downturn

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### Discounted Assets

- n The contribution of discounted assets to a GRAT may make the GRAT more effective.
- n For example, the grantor may decide to contribute a minority interest in the grantor's family LLC or LP.
- n Often appraisers value such interests on a discounted basis.

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### Discounted Assets cont...

- n The valuation of the interest is significantly less than such interest's pro rata share of the total assets of such company.
- n Nevertheless, such a contributed interest is entitled to a pro rata share of the earnings and growth of the company.
- n This may result in the percentage "growth" experienced by the GRAT being significantly greater than that experienced by the entire company.

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### LLC Example 1

- n Assume G owns a building with a FMV of \$10 million.
  - l The building generates \$1MM/yr in rent and is expected to appreciate at 5%/yr
  - l G transfers the building to an LLC

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**LLC Example 1 cont...**

- n Grantor obtains an appraisal of a 33% interest in the LLC.
  - l After a 40% discount for lack of control and marketability, the value was \$2MM ( $\$10\text{MM} \times 33.33\% \times 40\%$ )

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**LLC Example 1 cont...**

- n Interest Rate: 3.2%
- n Term: **10 years**
- n Transferred to Trust: \$2 million
- n Beginning Annuity: \$95,489
- n Annuity Growth Rate: 20%
- n Assumed Asset Growth Rate: **15%**
- n Value of Annuity: \$2 million
- n Taxable Gift: \$1.99
- n Value of Assets at End of GRAT Term: **\$3,992,386**

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**LLC Example 2**

- n Interest Rate: 3.2%
- n Term: **5 years**
- n Transferred to Trust: \$2 million
- n Beginning Annuity: \$298,471
- n Annuity Growth Rate: 20%
- n Assumed Asset Growth Rate: **15%**
- n Value of Annuity: \$1,999,995
- n Taxable Gift: \$5.52
- n Value of Assets at End of GRAT Term: **\$1,175,523**

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### Operating Company Example

- n The following is an illustration of benefits of discounting partial interests and gifting equity interests in a private company during a market downturn

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### Operating Company Example

- n Dad owns 80% of the business
- n Junior and Sissy each own 10%
- n In 2007, business was worth \$10 million on a control basis.
- n Now it is worth \$8 million.
- n Dad donates 20% of the equity to each child.
- n No taxes are due because Dad uses his lifetime exclusion.

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### Operating Company Example

- n Now, each child owns 30% and Dad owns 40%, putting all three in a minority position.
- 1) 20% interest in the business at control level in 2007 was \$1MM. Gift to each child in 2009 has a fair market value of \$420K. If value recovers to 2007 level, in 2011 \$580K will have been transferred to each child tax free. At a marginal tax rate of 45%, savings are 2 donees x \$580K x 45%=\$261,000

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## Operating Company Example

2) Dad's ownership interest goes from a control level to a nonmarketable, minority level. At a marginal tax rate of 45%, savings are ...


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## Operating Company Example

	2007		2008		2009	
Control stake	500,000	45%	500,000	45%	500,000	45%
Control for minority interest (nonmarketable, 40% discount)	500,000		500,000	2,100,000	500,000	500,000
% ownership	80%	80%	80%	80%	80%	80%
Fair market value	4,000,000	2,400,000	2,000,000	1,500,000	4,000,000	2,400,000
% ownership	40%	40%	40%	40%	40%	40%
Fair market value	2,000,000	1,200,000	1,400,000	600,000	2,000,000	1,200,000
Gift						
% transferred	20%	20%	20%	20%	20%	20%
Fair market value	1,000,000	600,000	700,000	420,000	1,000,000	600,000
% ownership	60%	60%	60%	60%	60%	60%
Fair market value	300,000	180,000	300,000	210,000	300,000	180,000
Per client						
Benefits due to operation	600,000	-	450,000	-	1,000,000	600,000
Benefits due to discounting	1,000,000	-	600,000	-	600,000	600,000
					600,000	260,000
Dad's estate						
Transfered from him	0%	400,000	4%	1,000,000		
Transfered to his gift	45%	1,200,000	4%	340,000		
no savings				1,000,000		


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## Qualified Personal Residence Trust

(QPRT)


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### Qualified Personal Residence Trust (QPRT)

- n Donor transfers personal residence (often a vacation home) to qualified trust for a term; at the end of the term the principal beneficiaries receive the property.
- n Donor makes a gift of the value of the remainder interest only -- the actuarial value of the donor's retained right to use the property for ten years reduces the value of the gift.
- n Goal: transfer asset for a lower transfer-tax cost; move appreciation out of donor's estate.

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### QPRT Example

- n A \$1 million vacation home is transferred
  - l 3.2% §7520 rate applies
  - l The trust has a 10-year term and the donor is 65
  - l The value of the gift is approximately \$573,020
  - l At the end of the 10-year term, the property is worth \$3 million, and at the donor's death 10 years later it is worth \$5 million

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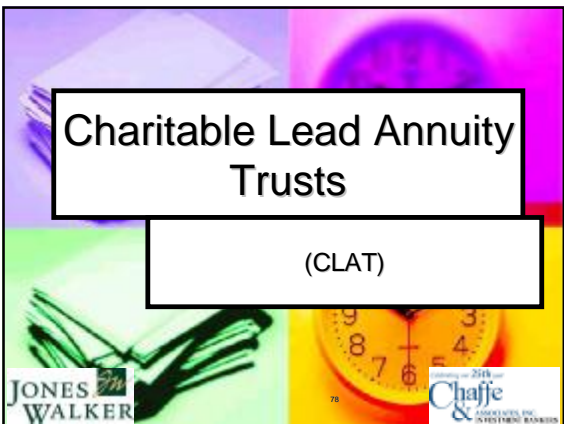
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## Charitable Lead Annuity Trusts

(CLAT)

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### Charitable Lead Annuity Trusts (CLAT)

- n Charity receives an income stream (based on fixed percentage of the value of assets) paid annually for life or a term.
- n At the termination of the income interest, family beneficiary receives the remaining principal.
- n CLTs may be established during life or at death.
- n The remainder interest is valued actuarially, as with a GRAT or QPRT.

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### CLAT Example

- n \$2 million is transferred into a CLAT with PETA (People for the Ethical Treatment of Attorneys) as the donee
  - l \$7520 rate: 3.2%
  - l Annual Annuity: \$140,000 (7%)
  - l Term is 15 yrs. Total annual return 8%
  - l PETA receives: \$2.1 MM
  - l Donor uses \$352,620 of gift tax exemption
  - l Family Beneficiaries receive \$2.4 MM at end of term
  - l **Income and capital gain tax advantages**

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### Lawyerly Disclaimers

- n Don't try this at home.
- n We've covered the bare basics only.
- n Every family has a different situation and needs its own plan.
- n The numbers I've used for examples are rounded, and will be different when applied to your family.
- n Tax laws are always changing.

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n IRS Circular 230 Disclaimer:  
n Pursuant to Treasury guidelines, any tax advice contained in this communication (or any attachment) does not constitute a formal opinion. Accordingly, any tax advice contained in this communication (or any attachment) is not intended or written to be used, and cannot be used by any taxpayer, for the purpose of avoiding penalties that may be asserted by the Internal Revenue Service.

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Finally ...

n Yes, estate planning is expensive.  
n But, good planning should bring great value to your family – in terms of tax dollars saved and family goals met.  
n Sooner is better.  
n Extremely low market values and interest rates make this an opportune time to transfer.

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Questions?

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