

Understanding A/B Provisions

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A/B provisions only apply to married individuals. The A/B provisions are dormant, until the death of one of the grantors there is only one trust - the couples revocable living trust.

It is at death that the living trust splits into two trusts - trust "A" and trust "B".

There is an easy way to remember which trust is for which spouse. Trust "A" is for the spouse who is still Alive or Above Ground. Trust "B" is for the spouse who is Buried or Below ground.

Trust "A" is revocable and under the total control of the surviving spouse. Trust "B" is irrevocable and cannot be modified by the surviving spouse.

The large personal exemption means that most couples do not need A/B provisions within their trust for estate tax purposes. However, A/B provisions may still be useful if:

- You're not legally married.** Ability to use high exemptions is available only to couples whose marriages are recognized by the federal government. So if you and your partner are unmarried, you will not be able to use your partner's unused personal exemption.
- You want to make sure your children receive your property.** Especially if you're in a second marriage, you might want to arrange things so that your surviving spouse can use your property after your death, but that it goes to your children after the second spouse's death.
- You may owe state estate tax.** Some states impose their own taxes on property transferred at death; these taxes are in addition to the federal estate tax. Exemptions in these states are generally lower than the federal exemption. So if you live in one of these states, your estate may owe state estate or death tax, even if it does not owe federal estate tax.

A/B provisions trusts offer significant benefits, but they have drawbacks:

- Restrictions on the surviving spouse's use of the property.** The surviving spouse has only limited rights to use trust property in the irrevocable "B" trust.
- Cost.** When one spouse dies, the survivor will need to hire a lawyer or accountant to determine how to best divide the couple's assets between the irrevocable "B" trust and the surviving spouse's revocable living "A" trust. How the property is divided can have important income tax consequences.
- Trust tax returns.** The surviving spouse must get a taxpayer ID number for the irrevocable "B" trust and file an annual trust income tax return.
- Record keeping.** The surviving spouse must keep separate records for the irrevocable "B" trust property.