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## SYNOPSIS OF DISCLAIMER WILL

Disclaimer Wills are flexible estate planning tools that permit the client to postpone decisions on property transfers until all the facts about the family situation are known and the tax impact of the various choices can be accurately computed. A disclaimer is a refusal by a person to accept a gift or bequest of property. The disclaimant (person refusing the gift) is treated as having died immediately prior to the event that caused his interest to be vested, resulting in the property's transfer to an alternative donee or beneficiary. The transfer is viewed as having been made by the original transferor, so double transfer taxes may be avoided.

If a disclaimant complies with the requirements of Section 2518 of the Internal Revenue Code of 1986, as amended, a transfer that would otherwise be subject to gift taxes passes tax-free. To make a "qualified disclaimer" under the statute, the disclaimant must make *an irrevocable and unqualified refusal to accept an interest in property*. Further, the refusal must meet these requirements:

1. The refusal must be in writing, signed by the disclaimant;
2. The writing must be received by the transferor not later than the date which is nine months after the later of:
  - (a) the date on which the transfer was made, or
  - (b) the day on which the disclaimant attains the age of 21.
3. The disclaimant must not have accepted any of the benefits of the disclaimed property; and
4. As a result of the refusal, the interest must pass without any direction on the part of the disclaimant to:
  - (a) the spouse of the decedent, or
  - (b) to a person other than the disclaimant.

*Estate and Personal Financial Planning*, Vol. 4, Edward F. Koren.

Under a Disclaimer Will, all of your property would be distributed to your spouse. If your spouse should die, then your property will be distributed to your successor beneficiaries. However, if your spouse wishes to disclaim any or all of the property under the Will and if the disclaimer is a “qualified disclaimer” within the meaning of section 2518 of the Internal Revenue Code of 1986, as amended, the part disclaimed by your spouse shall be held in the Disclaimer Trust for the benefit of your spouse.

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## Synopsis of Disclaimer Will

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If your spouse makes a qualified disclaimer, property and assets totaling the amount of the then-current estate tax exemption will be placed in the Disclaimer Trust. For example, the current tax exemption is Two Million Dollars (\$2,000,000). Thus, if your spouse makes a qualified disclaimer, estate property having a value up to \$2,000,000 could be transferred into the Disclaimer Trust. The Disclaimer Trust would be operated by the trustees for the benefit of your surviving spouse during your spouse's lifetime. Upon the death of your spouse, the remaining trust assets will be distributed to your successor beneficiaries according to the terms of your Will.

By making a qualified disclaimer and placing such amount in the Disclaimer Trust, your surviving spouse will preserve your estate tax exemption and allow you to pass assets to your successor beneficiaries under the exemption. According to current law, the remaining Disclaimer Trust assets will pass to your successor beneficiaries free of estate tax, even if such assets far exceed the value placed into the Disclaimer Trust at your death. Thus, at the death of your surviving spouse, both spouses' exemption amounts will be utilized to reduce the estate taxes incurred by the successor beneficiaries.