

Qualified Personal Residence Trust - QPRT **Questions and Answers**

Question 1: What is a Qualified Personal Residence Trust (QPRT)?

Answer: The United States government permits you to leverage your gift-tax exclusions by transferring a personal residence into an irrevocable trust, retaining the right to use the property for a term of years, and passing the property to another person, or a trust for the benefit of another person, at the end of the term of years. The transfer-tax cost is based on the fair market value of the property at the time you transfer it to the trust minus the value of your right to use the property for the term of years. At the end of the term of years, the beneficiary might receive property valued at \$600,000.00 for a transfer tax cost less than \$100,000.00.

Question 2: What is a personal residence?

Answer: A residence is your personal residence only if its primary use is as your residence. If you have a home office, the residence is still your personal residence as long as the business use is secondary to the use of the residence as a residence. A hotel or a bed and breakfast is not considered a personal residence. A second residence that is rented for residential purposes for part of the year may be a personal residence.

Question 3: I own a condominium that I rent six months out of the year. I use it as my residence for at least 18 days per year; will this qualify as a personal residence that I may transfer to a QPRT?

Answer: Yes. As long as you provide no substantial services in connection with the rental of the condominium and the trust otherwise meets the requirements of a QPRT, the trust is will be a qualified personal residence trust.

Question 4: I live on my boat, which has all the comforts of home (and then some), for most of the year; may I put the boat into a QPRT?

Answer: Yes. As long as you use the use the vessel as a residence for greater than 14 days a year or greater than 10% of the time that you rent it out, it will qualify as a personal residence that you may transfer to a QPRT. The same applies to recreational vehicles.

Question 5: May I transfer household furnishings, artwork and personal items to the trust?

Answer: No. A personal residence may include appurtenant structures used for residential purposes and adjacent land not in excess of that which is reasonably appropriate for

residential purposes. The term personal residence does not include any personal property (e.g., household furnishings).

Question 6: My spouse and I own our residence as tenants by the entirety, may we use one QPRT?

Answer: Yes. You may transfer your interests in the residence to the same qualified personal residence trust; however the governing instrument must prohibit any person other than your spouse from holding a term interest in the trust concurrently with you. That is, no person other than you or your spouse may hold a term interest in the trust.

Question 7: We rent out our vacation home for part of the year, and the rent exceeds our expenses. As a result, every year we have income from the rent of the property. Who gets the income if the property is in a QPRT?

Answer: You must receive the income at least annually. No other person may receive income or principal during the term of the trust.

Question 8: May my QPRT hold any cash assets other than one residence?

Answer: The trust may hold cash sufficient to pay expenses and pay for improvements incurred prior to the contribution of cash or reasonably expected to be paid within six months after the contribution of cash.

Question 9: I don't own a vacation home, but I am thinking about buying one in a newly popular spot. Should I buy the residence and then transfer it to the trust, or should I transfer the cash to the trust and have the trust buy the residence?

Answer: You may execute the trust and appoint a trustee. The trustee may then identify and sign a contract for the purchase of the residence. You may transfer cash to the trust as long as the closing occurs within three months after you contribute the cash.

Question 10: What happens if I want to move during the term of the trust?

Answer: The trustee may have the authority to sell the residence and purchase a replacement residence. You may make an additional contribution of cash to the trust within three months of the closing date.

Question 11: Who insures the residence?

Answer: The trustee may hold one or more policies of insurance on the residence and may hold proceeds payable as a result of damage to or destruction of the residence.

Question 12: What happens if I stop using the property as my residence?

Answer: The trust ceases to be a qualified personal residence trust if you no longer use the property as your residence. In this case, the trustee must, within 30 days after the date on which the trust has ceased to be a qualified personal residence trust, either distribute the assets to you or sell the residence and pay a qualified annuity interest to you for the balance of the trust term.

Question 13: What happens if I want to continue living in the residence after the trust term?

Answer: The QPRT is an irrevocable trust. This means that when the trust term ends, your beneficiary owns the property. Your trust must prohibit you from reacquiring ownership at the end of the trust. You may name an individual or another trust as the beneficiary. The new owner or trustee may lease the property to you for fair market rent. This could be a good result for asset-protection and estate-planning purposes; these payments will be considered reasonable living expenses not gifts or fraudulent transfers.

Question 14: I own a 200-acre farm that includes a house, barns, equipment buildings, a silo, and enclosures for confinement of farm animals. May I put the farm into a QPRT?

Answer: No. The farm includes assets not meeting the requirements of a personal residence.

Question 15: What happens if I am forced for health reasons into a nursing home?

Answer: If the residence is available at all times for your use as a residence during the term of the trust without regard to your ability to actually use the residence, the trust continues to be a qualified personal residence trust. This situation would arise if your spouse continued to reside in the residence. If the trustee rents the residence to an unrelated party, thereby making it unavailable to you, the trust would cease to be a QPRT.

Question 16: Does the QPRT offer any asset protection?

Answer: Yes. You have transferred the property out of your name. The trust owns the property; you retain only the right to live there for a term of years. Your beneficiary has an interest in the property, and a creditor could not force liquidation against the beneficiary.

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