Maximizing Wealth Preservation with a South Dakota Special Spousal Trust

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If you are married, regardless of where you live, you should consider adding a valuable tool to your estate plan: a South Dakota Special Spousal Trust, also known as a Community Property Trust (CPT). A CPT can help couples maximize tax benefits and plan for the future. Moreover, these trusts offer excellent flexibility: they can be irrevocable or revocable and neither you nor your property need to be located in South Dakota!

The Big Advantage: Step-Up in Basis

One of the most compelling reasons couples use a CPT is the step-up in basis. When assets—such as stocks, real estate, or business interests—are held in this type of trust, the surviving spouse typically receives a 100% step-up in basis at the first spouse's death. In non-community property states, the surviving spouse often receives only a 50% step-up in basis, resulting in a higher capital gains tax burden if the asset is sold during the surviving spouse's lifetime.

In most common law states, like Pennsylvania and New Jersey, property acquired during marriage is either separate or jointly owned, depending on title. If an asset is jointly owned, spouses typically receive only a partial step-up in basis at death. By contrast, under the South Dakota regime, property transferred to a CPT is treated as community property for purposes of basis step-up—leading to a 100% step-up at the first spouse's death.

Couples from common law states can opt into a community property-type system for particular assets and access the step-up benefit. Ownership and rights are defined by the trust agreement and South Dakota law rather than the law of the state in which the couple resides or where the property is located.

Who Benefits Most from a South Dakota CPT?

While any married couple can take advantage of a South Dakota CPT, this trust is particularly suited for couples who:

- Are in a long-term, stable relationship so that the trust assets will truly get the step-up at death
  - Because CPTs can significantly affect how assets are handled during a divorce — and the 100% basis step-up only applies if you remain married — avoiding divorce is essential.
- Own property that could benefit from a 100% step-up in basis. Such property includes:
  - Substantially appreciated assets—owned either by one or both spouses.
  - Assets that the surviving spouse does not want to manage and may immediately want to sell.
  - Property that is highly depreciated, has a negative basis, or is collectible.

The Role of a South Dakota Trustee

One or both spouses may serve as trustees of the South Dakota CPT, but the trust agreement must designate at least one qualified South Dakota trustee — either a resident individual or a trust company/bank.

Bottom Line

A South Dakota Special Spousal/Community Property Trust gives married couples a powerful way to reduce taxes and strengthen their estate plan. By leveraging the full step-up in basis, this trust can help minimize capital gains and create long-term certainty for your family. Working with an experienced attorney and a South Dakota trustee ensures you maximize these benefits while safeguarding your legacy.