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CRUMMEY TRUSTS ARE NOT SO CRUMMY

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A quality education may be one of the best gifts to give a minor child or grandchild this holiday season. As the cost of education continues to increase annually, families may be contemplating various gifting strategies to accumulate funds, minimize taxes and ultimately support younger generations with their future security and education goals.

Two popular gifting strategies that this article will focus on include: (1) Section 529 Education Savings Plans (529 Plans) and (2) Crummey Trusts. Both strategies utilize the annual gift tax exclusion, which permits a donor to gift up to a certain amount to a recipient each tax year without incurring any federal gift tax or reducing the donor's lifetime estate, gift and generation-skipping transfer (GST) tax exemptions. Gifting strategies are especially advantageous for individuals or married couples who wish to effectively reduce or eliminate their taxable estate prior to their death.

If you have not heard of Crummey Trusts, you may have already contemplated or funded 529 Plans. However, despite their name, Crummey Trusts are not crummy¹ and offer some benefits over 529 Plans. Both 529 Plans and Crummey Trusts have their advantages and disadvantages, and understanding the tax implications of each is crucial in making an informed decision. Depending on your long-term estate planning goals, Crummey Trusts might just be a better option for you.

529 PLANS

A 529 Plan is a state-sponsored investment plan specifically designed to be used for a beneficiary's educational expenses. Similar to Crummey Trusts, this investment plan is typically funded with up to the annual gift tax exclusion amount for the beneficiary. This article will provide more high-level details about 529 Plans that can be compared to Crummey Trusts. To learn more about 529 Plans, click [here](#) to read an earlier advisory on this topic.

Benefits

- Investments within 529 Plans grow income tax-free.
- Withdrawals from 529 Plans are tax-free *only* if used for "qualified higher education expenses," which cover a wide variety of expenses such as tuition, fees, books, supplies and equipment required for enrollment or attendance.
- Management of 529 Plans is minimal.
- Donors to 529 Plans have the ability to front-load 5 years of annual exclusion gifts.

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¹ Crummey Trusts derive their name from the landmark case *Crummey v. Commissioner*, 397 F.2d 82 (9th Cir. 1968).

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- 529 Plans are non-probate assets and, subject to the 5-year gift tax election, are removed from an account owner's taxable estate upon death.
- A portion of each contribution to 529 Plans may be deductible for state income tax purposes.

Limitations

- 529 Plans can only be funded with cash up to a maximum threshold permitted by state (threshold varies by state).
- Investment strategies within 529 Plans are limited and administered by the state.
- Distributions from 529 Plans that are not "qualified higher education expenses" incur taxes and penalties.
- A 529 Plan can only benefit one beneficiary at a time.
- While there is flexibility to change the beneficiary of 529 Plans, it must be someone in the same generation as the original beneficiary and must be a member of the original beneficiary's family.

CRUMMEY TRUSTS

A Crummey Trust is a type of irrevocable trust typically funded with the grantor's annual gift tax exclusion, which is currently (1) \$18,000 per donee (slated to rise to \$19,000 in 2025) or (2) \$36,000 per donee (\$38,000 in 2025) if the gift is made (i.e., split) by a married couple. The annual gift tax exclusion is adjusted periodically to keep pace with inflation. Similar to other types of irrevocable trusts, Crummey Trusts are established by a grantor (the creator of the trust), trustee(s) are appointed to manage the trust assets, and the trust assets are held for the benefit of a beneficiary or beneficiaries.

When a grantor gifts to an irrevocable trust, any such gift usually does not provide the beneficiaries with a present interest, and therefore no part of the gift qualifies for the annual gift tax exemption. The entire value of such gift reduces the grantor's lifetime estate, gift and/or GST tax exemption. Crummey Trusts, on the other hand, include a special "Crummey Power" that provides the beneficiaries of the trust with a temporary right to withdraw (usually lasts 30-60 days) up to the amount of the annual gift tax exclusion available for that beneficiary. The Crummey Power creates a present interest in the gift to the Crummey Trust, thereby qualifying such gift for the annual gift tax exclusion amount. Such gift, therefore, does not reduce the grantor's lifetime estate, gift and/or GST tax exemption.

Whenever a gift is made to a Crummey Trust, all adult beneficiaries (or the guardians/parents of the minor beneficiaries) receive a formal notice of such gift and their withdrawal right (the "Crummey Letter"). If the beneficiaries do not withdraw the money from the Crummey Trust within the specified timeframe, such amount gifted remains in trust to be administered by the Trustee according to its terms.

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Benefits

■ More Flexibility Compared to 529 Plans:

- Crummey Trusts may benefit multiple beneficiaries and beneficiaries in different generations.
- While there is no 5-year front-loading option like with 529 Plans, Crummey Trusts with multiple beneficiaries may be funded with the annual gift tax amount multiplied by the number of beneficiaries. By way of example, if a Crummey Trust has 3 beneficiaries in 2024, such Crummey Trust may be funded with \$54,000 (or \$108,000 if married couple) (assuming such beneficiaries have not received other gifts in 2024 from the grantor and/or the grantor's spouse).
- The Trustees are not limited to state investment plans and have far more discretion in their investment strategies. This provides the Trustees with more control over investments in the Crummey Trusts.
- Not only can Crummey Trusts be funded with cash, but may also be funded with different types of assets, such as securities, bonds, life insurance policies, real property, etc.

■ Creditor Protection:

- Crummey Trusts provide the grantor and the beneficiaries with creditor protection.
- As discussed in more detail below, the distribution standard in Crummey Trusts can also provide additional protections for the beneficiaries in the event of divorce.

■ More Tailored to Grantor's Goals Compared to 529 Plans:

- Distributions from Crummey Trusts do not need to be limited to qualified education expenses. Crummey Trusts may provide the Trustees with the ability to distribute for the beneficiaries' health, education, maintenance and support. Crummey Trusts may also provide custom standards, such as only beneficiaries who have a 3.0 GPA each year qualify for distributions from the trust. If the grantor divorce, the Crummey Trust may only provide the Trustees with absolute discretion to distribute to the beneficiaries.
- The Trustees will not be penalized with fees if distributions are made to beneficiaries for non-qualified education expenses (assuming the Crummey Trust so permits).
- Crummey Trusts may also specify that the trust terminates when the beneficiary or a group of beneficiaries attain a certain age. Other Crummey Trusts may last for a beneficiary's lifetime, and further provide such beneficiaries with the ability to appoint the remaining trust property to certain individuals (e.g., keeping the money in the family for multiple generations).

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This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

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■ Tax Savings:

- Similar to 529 Plans, Crummey Trusts are non-probate assets and, subject to the one-year gifting exception, are removed from the Grantor's taxable estate.
- Similar to 529 Plans, assets in a Crummey Trust can grow income-tax free, but unlike a 529 Plan, income tax is still due and is instead paid for by the grantor (rather than from trust assets).

Limitations

- Complexity: Crummey Trusts require careful management, record-keeping and adherence to specific procedures, especially sending timely Crummey Letters to the beneficiaries of the trust.
- Risks:
 - Each year a gift is made to the Crummey Trust, Crummey Letters must be provided to all beneficiaries. Failure to send timely Crummey Letters may jeopardize the Crummey Trust's intended tax benefits.
 - Beneficiaries are aware of the existence of the Crummey Trust and, even though it is not intended goal of the Crummey Trust, beneficiaries could exercise their right of withdrawal.
- Costs (set up, administration, etc.):
 - Retaining an attorney to prepare an effective Crummey Trust is recommended, thereby increasing the costs of establishing Crummey Trusts.
 - In comparison to 529 Plans, administration costs are higher for Crummey Trusts. Depending on the terms of the Crummey Trust, the Trustees may receive annual commissions from the Crummey Trust, which adds additional expenses. This requirement can be tailored (and even eliminated) depending on the Trustees' relationship with the grantor.

WHAT IS THE BEST OPTION FOR YOU?

A 529 Plan is a good option to save money for education expenses for younger generations. However, Crummey Trusts may be a better option if you are looking to have more flexibility over your investments and distributions to beneficiaries, and ultimately provide financial security and education to multiple generations.

If you have any questions or need guidance on gift planning with 529 Plans or Crummey Trusts, please do not hesitate to contact a Wiggin and Dana attorney.