

CRISTOFANI TRUST

A Cristofani Trust is a trust that is designed to take advantage of an individual's \$13,000 annual gift tax exclusion. The gift tax exclusion allows each individual to give \$13,000 per year to any other individual without such amount being to federal gift tax. A married individual can give \$26,000 to each designated beneficiary gift-tax free so long as his or her spouse agrees to allow gift-splitting on the gift tax returns. In order for gifts to qualify for the annual exclusion, the donee must receive a present interest. Gifts made to trusts do not qualify as present interests unless special provisions are included in the trust agreement. The primary method that is used to qualify a gift in trust as a present interest is to provide the donee with the right to withdraw the gift for a limited period of time (typically 30 days). Cristofani Trusts provide these withdrawal rights to the beneficiaries that the grantor wants to qualify for annual exclusion gifts. These beneficiaries may include the grantor's spouse, the grantor's descendants, and spouses of the grantor's descendants.

Each time that a gift is made to the trust, the trustee will notify the beneficiaries that they have the right to withdraw a portion of the gift for 30 days. Whatever is not withdrawn will remain in the trust and be administered according to the provisions of the trust. When the grantor is married, we often recommend that the spouse be designated as the primary beneficiary of the trust for the spouse's remaining lifetime. During the spouse's lifetime, the trustee, who may be the spouse, but cannot be the grantor, is usually given discretion to make distributions to the trust beneficiaries for their health, education, maintenance and support. Following the death of the last to die of the grantor and the grantor's spouse, the trust is typically divided into equal shares for the grantor's children. Shares do not have to be established for each withdrawal beneficiary. This is a unique provision of Cristofani Trusts that was expressly sanctioned by a case involving the Cristofani family. Even though beneficiaries who are given withdrawal rights may be unevenly divided among the different branches of the family, due to only some children being married or the children having different numbers of children, the grantor's property can be evenly divided among the grantor's children. Of course, if the grantor prefers an alternate division of the property, he or she can so provide. The shares that are established for each beneficiary may be distributed outright to the beneficiary or held in further trust.