

# Revisit Your Estate Plan to Protect Your Spouse

I offer my clients counsel, congratulations and caution. The counsel part is obvious. Congratulations are in order because many people have to deal with difficult issues to create their estate plan. Lastly, I caution that they will need to revisit their estate plan if their lives or laws change.

Well, the law just changed. Due to congressional inaction, the federal estate tax has lapsed. It is scheduled to reappear in 2011, but may be reinstated retroactively for 2010. This legislative limbo should be a wake-up call for married couples with older estate plans and substantial assets. If this describes you, you should review your estate plan to make sure each spouse is economically protected. Here's why:

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Anita Finley on Saturday,  
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Years ago, couples with potentially taxable estates often set up a bypass, or credit shelter trust. The husband and wife each had their own trusts. Standard language in each trust said that "the maximum amount that can be passed tax free" would go into a credit shelter trust when the trustor died, with the remainder going outright to the surviving spouse. In some cases, the survivor would get income, but not principal,



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from the credit shelter. Then, when the survivor died, the entire credit shelter would pass to the children.

Those may have been appropriate provisions in the past, but not today when there is no estate tax and no cap on what can be passed tax free. If the first spouse were to die now, ALL the funds in his/her trust would flow into the credit shelter trust, leaving the principal beyond the reach of the survivor.

The surviving spouse would get nothing, except perhaps some income from the credit shelter. **The survivor would end up effectively disinherited.**

If you have an older estate plan that includes a bypass trust, have it reviewed by a certified elder law/estate planning attorney, who can examine it to ensure the surviving spouse is economically protected.

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