

Positioning the Family Business to Remain in the Family or Ready to Sell to a Third Party

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Part I: Estate Planning Matters

Trust and Gift Planning

I. INTENTIONALLY DEFECTIVE GRANTOR TRUST (“IDGT”)

An irrevocable trust of which:

- The grantor (or in certain cases, beneficiary) is the owner of the trust for income tax purposes
- The grantor is not the owner of the trust for gift, estate or GST tax purposes

II. INTENTIONALLY DEFECTIVE GRANTOR TRUST (“IDGT”) – GIFT/SALE

A part sale/part gift transaction of which:

- The grantor creates the IDGT
- The grantor funds the IDGT with an amount at least equal to 10% of the amount to be purchased through a deferred payment option – “coverage” (S-IDGT) or grantor funds trust with a cash gift of no more than \$5,000 (B-IDGT)
- The grantor (or beneficiary), as applicable, sells assets to the IDGT in exchange for cash or a deferred payment option – promissory note, self canceling installment note (“SCIN”) or private annuity
 - Promissory Note – flexible terms, interest rate must be at least the appropriate applicable federal rate; unpaid balance of note in estate upon death; certain income tax issues upon death
 - Self-canceling installment note – premium paid for self-canceling feature; no estate inclusion but certain income tax issues upon death
 - Private annuity – no estate inclusion or income tax issues upon death
- Migrates wealth to the next generation at a leveraged transfer tax cost

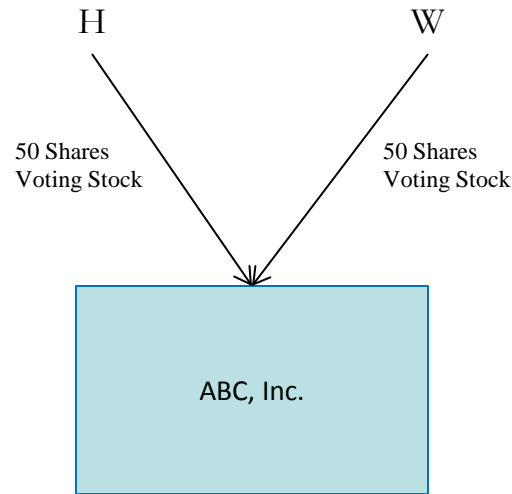
Trust and Gift Planning

III. GRANTOR RETAINED ANNUITY TRUST (“GRAT”)

An irrevocable trust of which:

- The grantor is the owner of the trust for income tax purposes
- The grantor is not the owner of the trust for estate tax purposes unless the grantor dies during the trust term
- The grantor is the owner of the trust for GST tax purposes until the end of the trust term
- Gift to the GRAT migrates wealth to the next generation at a leveraged gift tax cost if grantor retains a qualified interest
- If the grantor survives the end of the GRAT term and the GRAT investment goals are met, the value of the gift to children upon the creation of the GRAT is significantly less than the value of the assets when the GRAT is terminated

STRUCTURE BEFORE B-IDGT SALE



Assumptions:

- H = Husband; W = Wife.
- H and W have 2 children: C1 and C2.
- ABC, Inc. is a state law corporation taxed as an S-corporation for federal income tax purposes.
- ABC, Inc. has a current overall fair-market value of \$15 million.
- H and W own the following additional assets:
 - Home: \$500,000
 - Cash: \$1,200,000
 - Marketable Securities: \$1,300,000

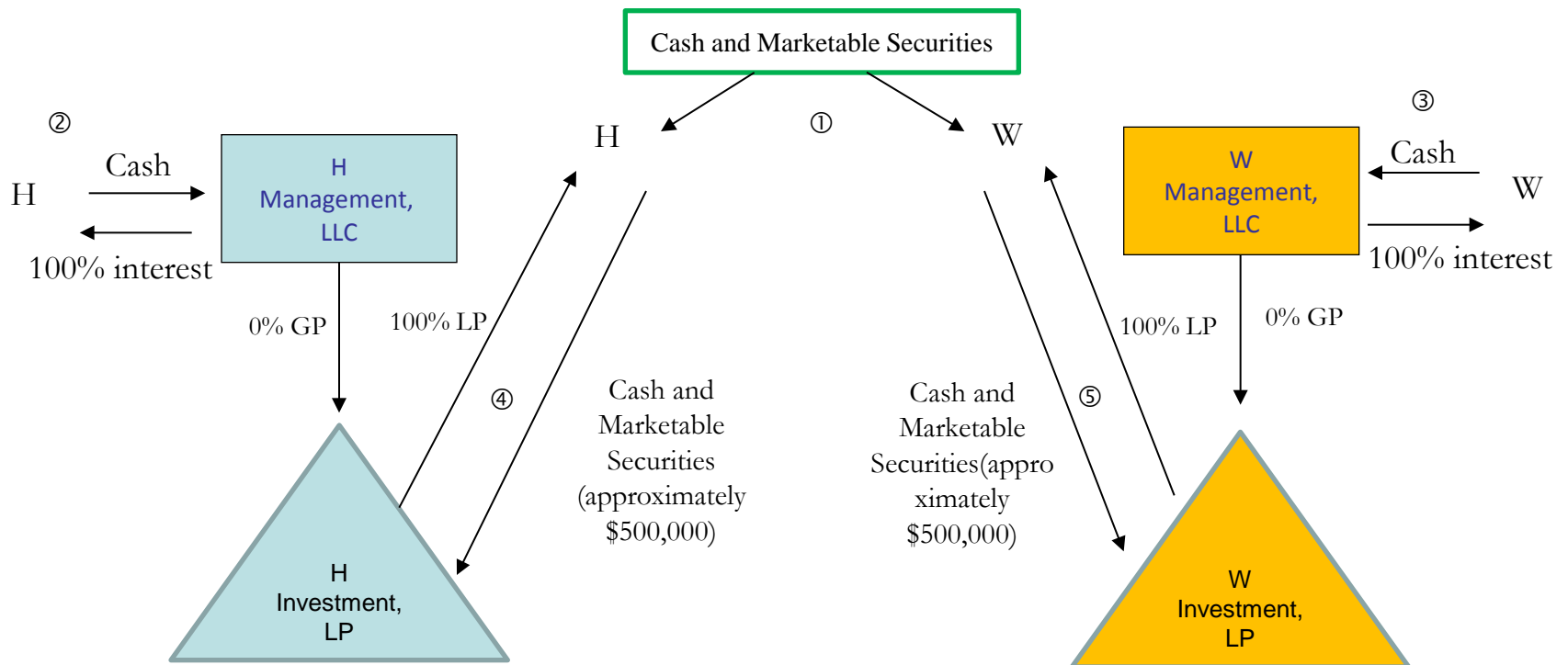
STEP 1 – RECAPITALIZATION OF ABC, INC.

- 1) The corporate documents will be amended to provide for the issuance of both voting and non-voting stock.**
- 2) ABC, Inc. will issue a dividend of 19 shares of non-voting stock for each share of voting stock currently owned by H and W.**
- 3) As a result of the recapitalization, 95% of the equity of ABC, Inc. (i.e. \$14,250,000) is represented by the non-voting stock. H and W will each own 50 shares of voting stock and 950 shares of non-voting stock in ABC, Inc.**
- 4) This will allow H and W to transfer 95% of the equity of ABC, Inc. out of their estates while retaining voting control of the company.**

STEP 2 – FORMATION AND FUNDING OF INVESTMENT LIMITED PARTNERSHIP

- 1) H and W will enter into a Partition Agreement to partition the stock (both voting and non-voting stock) of ABC, Inc. and the cash and marketable securities valued at approximately an aggregate of \$1,000,000.**
- 2) H will make a cash contribution of minimal cash to a limited liability company (“H Management, LLC”) in exchange for a 100% membership interest. H Management, LLC will serve as the general partner of his limited partnership in #3 below.**
- 3) W will make a cash contribution of minimal cash to a limited liability company (“W Management, LLC”) in exchange for a 100% membership interest. W Management, LLC will serve as the general partner of her limited partnership in #4 below.**
- 4) H will contribute his separate property of cash and marketable securities (in #1 above) to a new investment limited partnership (“H Investment, LP”), in exchange for 100% of the LP Interests. The cash and marketable securities will equal approximately \$500,000 in value.**
- 5) W will contribute her separate property of cash and marketable securities (in #1 above) to a new investment limited partnership (“W Investment, LP”), in exchange for 100% of the LP Interests. The cash and marketable securities will equal approximately \$500,000 in value.**

STEP 2 CONTINUED – FORMATION AND FUNDING OF INVESTMENT LIMITED PARTNERSHIP



STEP 3 – VALUATION OF ASSETS TO BE SOLD

An appraisal of the non-voting stock of ABC, Inc. (the assets to be transferred) will be needed for the gift/sale transactions.

A fair opinion review of the appraisal of the non-voting stock of ABC, Inc. will be needed for the gift/sale transactions.

An appraisal of the Limited Partner Interest in H Investment, LP will be needed for the S-IDGT gift transactions from H.

An appraisal of the Limited Partner Interest in W Investment, LP will be needed for the S-IDGT gift transactions from W.

STEP 3 CONTINUED – VALUATION OF ASSETS TO BE SOLD

ABC, Inc. (\$15,000,000)

- 100 shares of voting stock will be retained by H and W, individually.
- 1,900 shares of non-voting stock, representing 95% of the value (\$14,250,000).
- Assume a 35% discount for lack of control and lack of marketability.
- Each share of non-voting stock has a value of \$4,875 ($\$14,250,000 \times 0.65 / 1,900$).

H Investment, LP (\$500,000)

- Cash and investments contributed equal in value to \$500,000. This amount will be necessary to guaranty 10% of H's B-IDGT's purchase of H's non-voting stock for a purchase price of \$4,446,000 (note: only 98% of the value in H Investment, LP should be considered for this guaranty because H will retain a 2% LP Interest).
- A 1% LP Interest in H Investment, LP is valued at \$3,250 ($\$500,000 \times 0.65 / 100$).

W Investment, LP (\$500,000)

- Cash and investments contributed equal in value to \$500,000. This amount will be necessary to guaranty 10% of W's B-IDGT's purchase of W's non-voting stock for a purchase price of \$4,446,000 (note: only 98% of the value in W Investment, LP should be considered for this guaranty because W will retain a 2% LP Interest).
- A 1% LP Interest in W Investment, LP is valued at \$3,250 ($\$500,000 \times 0.65 / 100$).

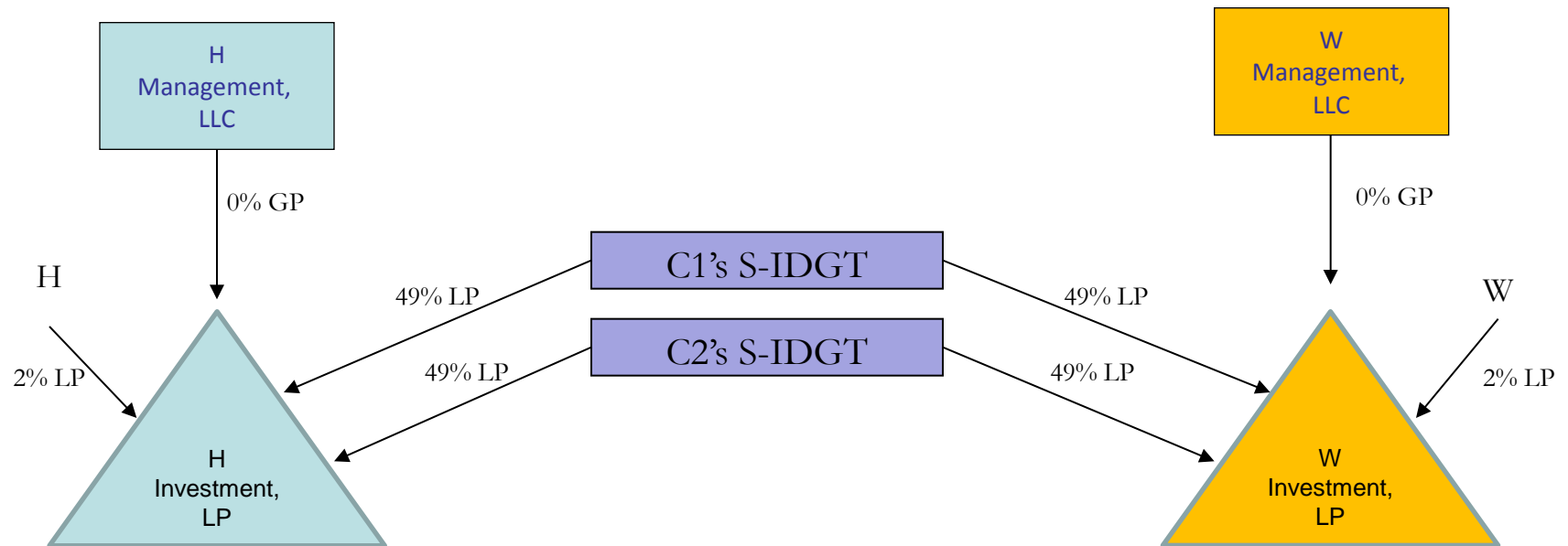
STEP 4 – CREATION AND FUNDING OF S-IDGT FOR C1

- 1) A Settlor-Intentionally Defective Grantor Trust (“S-IDGT”) is created for C1.**
- 2) H and/or W is the Settlor of the S-IDGT.**
- 3) H and/or W will be the Trustee or Co-Trustees of the S-IDGT.**
- 4) C1 is the primary Beneficiary of his S-IDGT, with C1’s lineal descendants as secondary Beneficiaries.**
- 5) H will make a gift of a 49% Limited Partner Interest in H Investment, LP to C1’s S-IDGT.**
- 6) W will make a gift of a 49% Limited Partner Interest in W Investment, LP to C1’s S-IDGT.**
- 7) The S-IDGT is structured to be a “grantor trust” as to H and/or W, as applicable, for federal income tax purposes, which means that the assets/income of the S-IDGT are deemed to be owned by H and W for federal income tax purposes (i.e. H and W pay income tax on the taxable income of the S-IDGT).**
- 8) By transferring limited partnership interests instead of the underlying assets, H and W will be able to take advantage of applicable discounts, thus allowing them to migrate wealth to the next generation at a leveraged transfer cost. Additionally, by paying the tax owed by the S-IDGT will further reduce the estates of H and W.**

STEP 4 CONTINUED – CREATION AND FUNDING OF S-IDGT FOR C2

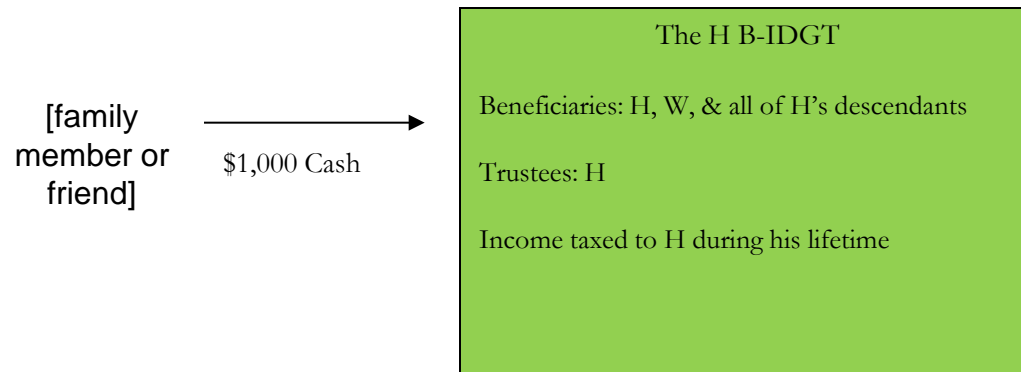
- 1) A Settlor-Intentionally Defective Grantor Trust (“S-IDGT”) is created for C2.**
- 2) H and/or W is the Settlor of the S-IDGT.**
- 3) H and/or W will be the Trustee or Co-Trustees of the S-IDGT.**
- 4) C2 is the primary Beneficiary of her S-IDGT, with C2’s lineal descendants as secondary Beneficiaries.**
- 5) H will make a gift of a 49% Limited Partner Interest in H Investment, LP to C2’s S-IDGT.**
- 6) W will make a gift of a 49% Limited Partner Interest in W Investment, LP to C2’s S-IDGT.**
- 7) The S-IDGT is structured to be a “grantor trust” as to H and/or W, as applicable, for federal income tax purposes, which means that the assets/income of the S-IDGT are deemed to be owned by H and W for federal income tax purposes (i.e. H and W pay income tax on the taxable income of the S-IDGT).**
- 8) By transferring limited partnership interests instead of the underlying assets, H and W will be able to take advantage of applicable discounts, thus allowing them to migrate wealth to the next generation at a leveraged transfer cost. Additionally, by paying the tax owed by the S-IDGT will further reduce the estates of H and W.**

STEP 4 CONTINUED – CREATION AND FUNDING OF S-IDGT FOR EACH C1 AND C2



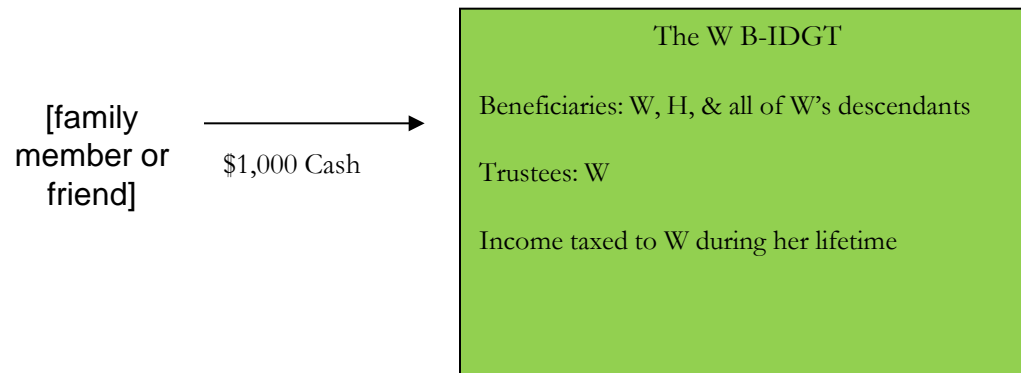
STEP 5 – CREATION AND FUNDING OF A B-IDGT FOR H

- 1) A Beneficiary IDGT (B-IDGT) is created by a family member or friend of H, (who is not a B-IDGT beneficiary) for the benefit of H, W, and all of H's descendants. H will be Trustee of this trust. H will be the primary beneficiary and the tax "grantor" for purposes of federal income tax (i.e. the trust's income will be taxable to him).
- 2) The family member or friend/trust creator funds the B-IDGT with a nominal (\$1,000) cash gift.



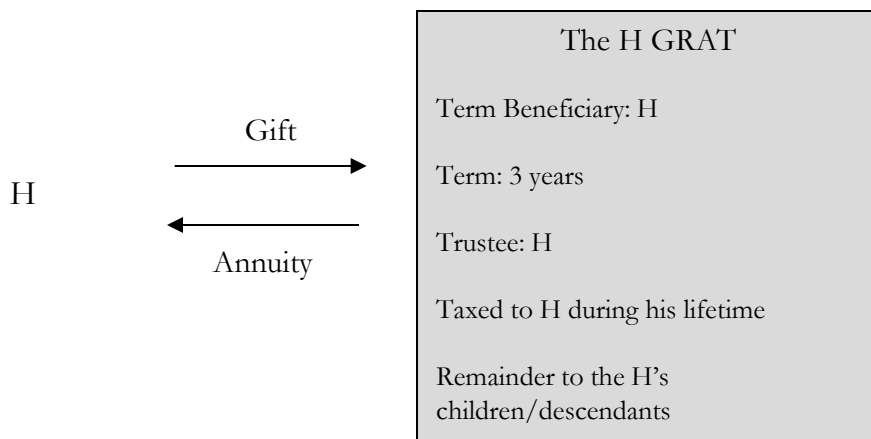
STEP 5 CONTINUED– CREATION AND FUNDING OF A B-IDGT FOR W

- 1) A Beneficiary IDGT (B-IDGT) is created by a family member or friend of W, (who is not a B-IDGT beneficiary) for the benefit of W, H, and all of W's descendants. W will be Trustee of this trust. W will be the primary beneficiary and the tax "grantor" for purposes of federal income tax (i.e. the trust's income will be taxable to her).
- 2) The family member or friend/trust creator funds the B-IDGT with a nominal (\$1,000) cash gift.



STEP 6 – CREATION OF A GRAT BY H

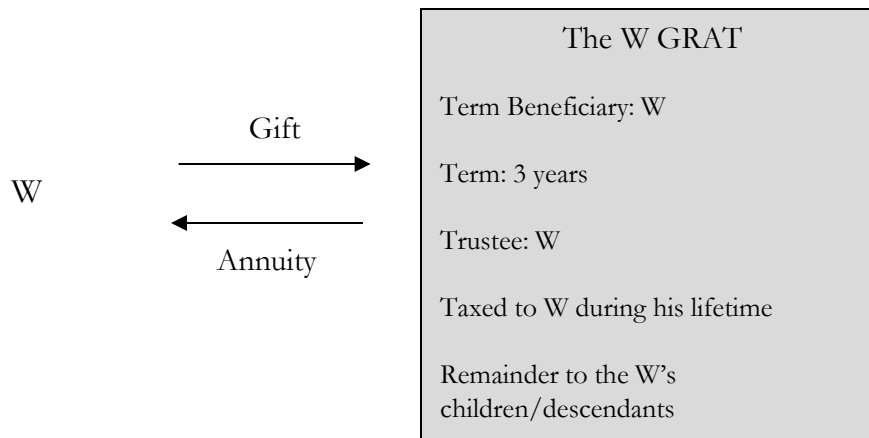
H creates a Grantor Retained Annuity Trust (GRAT). H is the Settlor, Trustee and GRAT Term Beneficiary. The GRAT will pay H an annuity for each year the GRAT exists based on the initial fair market value of the gift made to the GRAT. The GRAT will terminate three years from the date of creation. The remainder of the GRAT will be distributed to H's children/descendants.*



*For alternatives to using a GRAT, see Estate Planning Reference Outline.

STEP 6 CONTINUED – CREATION OF A GRAT BY W

W creates a Grantor Retained Annuity Trust (GRAT). W is the Settlor, Trustee and GRAT Term Beneficiary. The GRAT will pay W an annuity for each year the GRAT exists based on the initial fair market value of the gift made to the GRAT. The GRAT will terminate three years from the date of creation. The remainder of the GRAT will be distributed to W's children/descendants.*

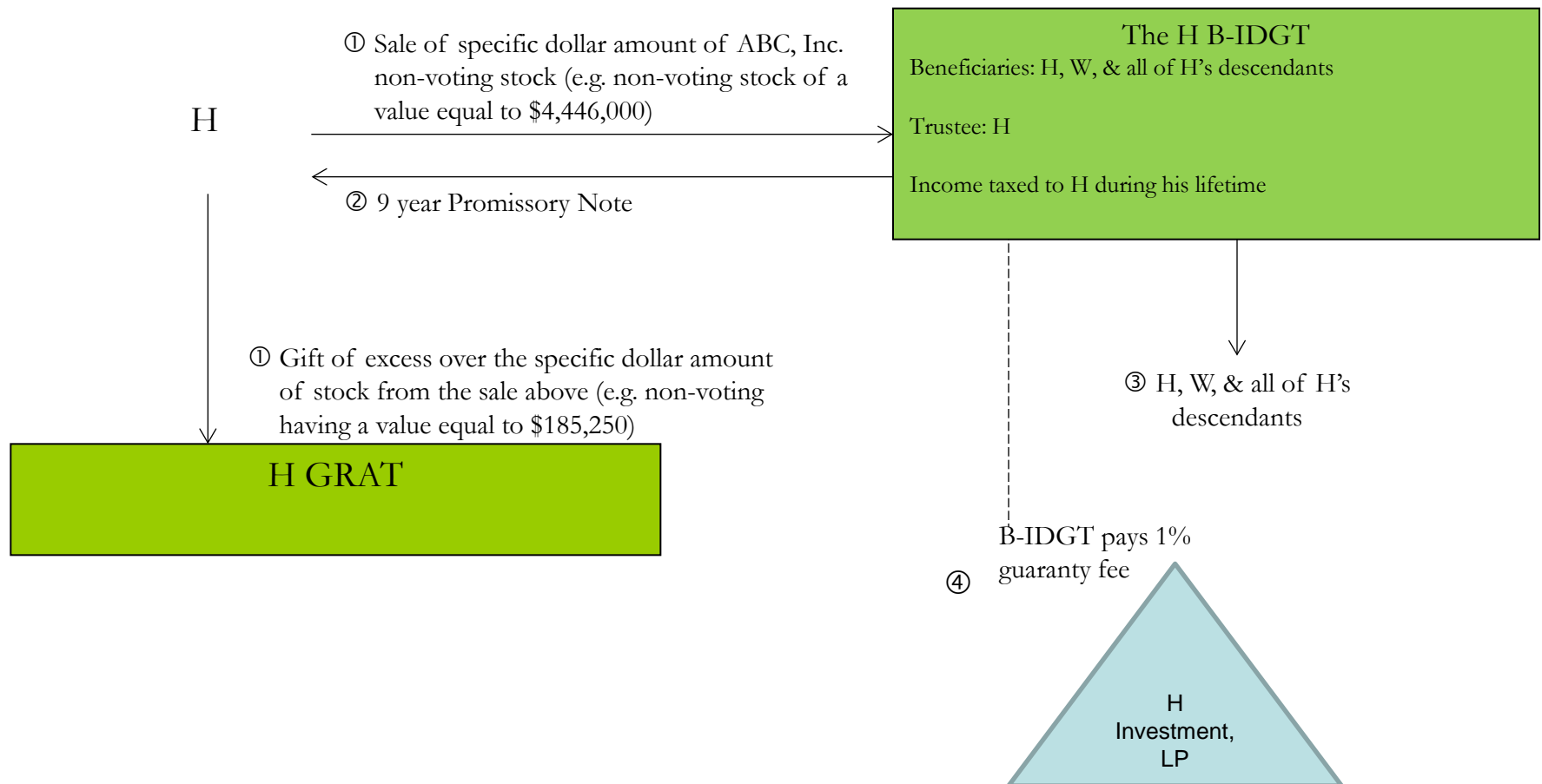


*For alternatives to using a GRAT, see Estate Planning Reference Outline.

STEP 7 – SALE OF ABC, INC. NON-VOTING STOCK TO H'S B-IDGT

- 1) From a fixed interest in his ABC, Inc. non-voting stock, H will sell a specific dollar amount of his non-voting stock in ABC, Inc. to his B-IDGT (e.g. non-voting stock having a value equal to \$4,446,000, taking into account applicable discounts). The remainder of the stock over the specific dollar amount will be gifted to his GRAT (e.g. non-voting stock of a value equal to \$185,250, taking into account applicable discounts). H Investment, LP will guaranty the sale, and be entitled to a guaranty fee until the note is reduced to 90% of its initial value.**
- 2) The stock will be sold in exchange for a promissory note payable to H:**
 - 9 year term**
 - Mid-term AFR interest rate**
 - Years 1 through 8, interest payments only are made to H**
 - Year 9, interest plus principal balance payment to H**
 - Prepayment of principal can be made at any time**
- 3) Any distributions made by ABC, Inc. will go into the B-IDGT and can be utilized as a payment on the notes in order for H to pay the taxes on his personal tax return and thus reduce his gross estate for federal estate tax purposes.**
- 4) If the B-IDGT contains sufficient assets after note payments are made, the B-IDGT can make distributions to the beneficiaries for health, support, maintenance and education.**

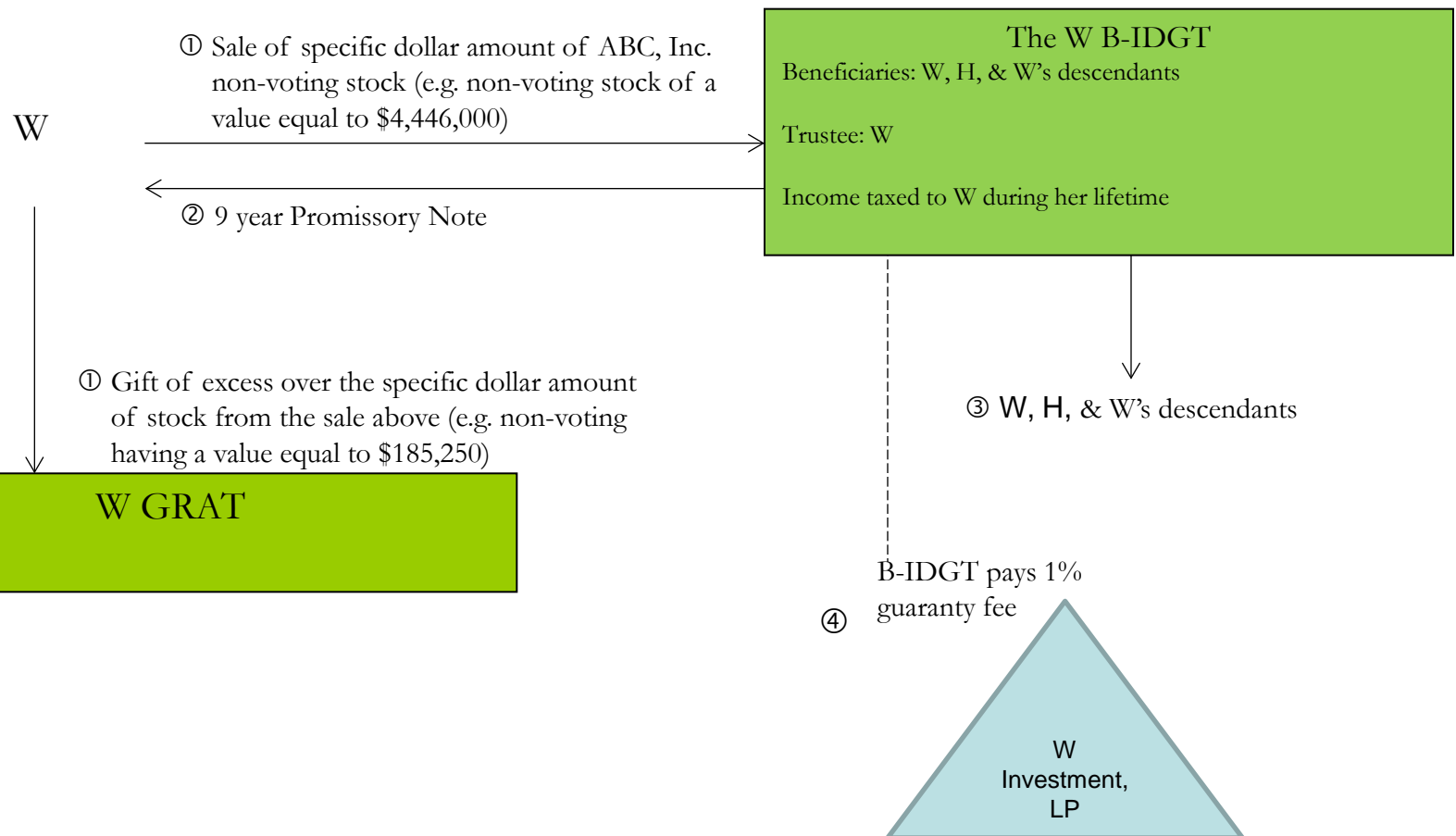
STEP 7 CONTINUED – SALE OF ABC, INC. NON-VOTING STOCK TO H'S B-IDGT



STEP 7 CONTINUED – SALE OF ABC, INC. NON-VOTING STOCK TO W'S B-IDGT

- 1) From a fixed interest in his ABC, Inc. non-voting stock, W will sell a specific dollar amount of her non-voting stock in ABC, Inc. to her B-IDGT (e.g. non-voting stock having a value equal to \$4,446,000 taking into account applicable discounts). The remainder of the stock over the specific dollar amount will be gifted to her GRAT (e.g. non-voting stock of a value equal to \$185,250, taking into account applicable discounts). W Investment, LP will guaranty the sale, and be entitled to a guaranty fee until the note is reduced to 90% of its initial value.**
- 2) The stock will be sold in exchange for a promissory note payable to W:**
 - 9 year term**
 - Mid-term AFR interest rate**
 - Years 1 through 8, interest payments only are made to W**
 - Year 9, interest plus principal balance payment to W**
 - Prepayment of principal can be made at any time**
- 3) Any distributions made by ABC, Inc. will go into the B-IDGT and can be utilized as a payment on the notes in order for W to pay the taxes on her personal tax return and thus reduce her gross estate for federal estate tax purposes.**
- 4) If the B-IDGT contains sufficient assets after note payments are made, the B-IDGT can make distributions to the beneficiaries for health, support, maintenance and education.**

STEP 7 CONTINUED – SALE OF ABC, INC. NON-VOTING STOCK TO W'S B-IDGT



RESULTS OF GIFT/SALE TO B-IDGTS

The result of the Gift/Sale:

- **H's and W's B-IDGTs will each own 912 shares of non-voting stock in ABC, Inc., assuming the fair opinion review sustains the appraisal.**
- **Each B-IDGTs will owe H or W, as applicable, on the 9-year promissory note.**
- **H's and W's GRAT will each own a small portion of the transferred stock, from the gift-over in the sale transaction (38 shares of non-voting stock will be held by each GRAT, assuming the fair opinion review sustains the appraisal).**
- **The B-IDGTs will owe a guaranty fee to H Investment, LP and W Investment, LP, as applicable, until their respective notes have been reduced to 90% of the original principal amount.**
- **Following payment of the promissory notes to each H and W, the B-IDGTs exist for the benefit of H and W, as applicable.**

KEY POINTS FOR SALE OF STOCK TO THE B-IDGT

- H is the owner of his B-IDGT for income tax purposes. This means H is responsible for paying the income tax liability of his B-IDGT; however, H is also the beneficiary of his B-IDGT, so the resources of the B-IDGT are available to pay the tax.
 - H can sell assets to his B-IDGT and there are no income tax consequences from the sale because H and his B-IDGT are considered to be the same person for income tax purposes.
 - Likewise, W is the owner of her B-IDGT for income tax purposes, and the same applies to her, as to her trust.
 - Cash flow generated by the assets of the B-IDGT would be utilized to make the note payments.
- While a benefit of this plan is that each of H and W can maintain control of the assets sold to his/her B-IDGT, as well as the beneficial enjoyment of those assets, it is an income tax requirement that each must sell his/her separate property assets to his/her B-IDGT. (Thus the need for separate B-IDGTs, one for H and one for W).
 - This is why H and W must enter into a Partition Agreement as to the community property portion of ABC, Inc., to divide the stock (50/50) into each of H's separate property and W's separate property.
 - Following such partition, H may sell his separate property non-voting stock into his B-IDGT, as shown, and W may sell her separate property non-voting stock to her B-IDGT, as shown.
 - They each maintain beneficial enjoyment of these assets, while at the same time, they have removed a large portion of assets from their estates.

KEY POINTS FOR SALE OF STOCK TO THE B-IDGT

- **Estate Tax Inclusion:** If the stock is sold for fair market value (see valuation risk) estate tax inclusion is not really a risk. This is a squeeze and freeze device. The value of the assets sold (plus interest earned on the notes) are in the estate (i.e. value of promissory note), but the appreciation potential is limited to the interest on the note. Additionally, since the B-IDGT is a grantor trust for income tax purposes, the grantor is responsible for the income tax liability of the B-IDGT but the grantor's estate is reduced by the income taxes paid on trust income.
- **Valuation Risk:** A proper valuation of the asset is extremely important. In order for H and W to get outside of IRC section 2036 (estate inclusion) and section 2702 (taxable gift) arguments, they must sell the assets for fair market value as that term is defined. If an asset is not sold for fair market value, then H and/or W has made a gift (gift tax consequences and creditor protection consequences) and potentially made a transfer with a retained interest (creating estate inclusion and estate tax consequences). The purpose of the GRAT is to minimize the result of the IRS argument that the assets were not sold for fair market value. Any increase in the value of the assets sold passes to the GRAT.

Part II: Business Matters to Discuss Prior to Selling the Business

Checklist of Business Matters to Discuss Prior to Selling the Business

Discussions with clients regarding succession plans, exit strategies and possibly selling their business should not begin a few months prior to a decision. Some of the items listed below should be considered and addressed five to ten years prior to selling the business. While not an exhaustive list, this list highlights key issues that should be reviewed and addressed.

1. Consider S-Corporation Election (if entity is a C-corporation for federal income tax purposes)

- Most business sales are structured as asset sales. If the Company is a C-corporation for federal income tax purposes, then an asset sale will result in two levels of federal income tax to the sellers (first, the Company will pay tax on any gain on the sale of its business assets; next, the Company shareholders will pay tax on the sale proceeds distributed to them by the Company)
- S-corporation generally involves one level of tax (Company itself generally does not pay tax (but see “Note:” below); Company income and loss flows through to the owners and is reported on the owners’ personal income tax return)
- **Note:** Conversion of a C-corporation to an S-corporation may trigger corporate level built-in-gains tax to the S-corporation (under § 1374 of the IRC) on the built-in-gain on any assets disposed of by the Company within the first 10 years following the conversion (coordinate tax impact with the accountant)

Checklist of Business Matters to Discuss Prior to Selling the Business

2. Review Ability to Transfer Wealth Represented by the Company through Estate Planning Gifts and Sales

- Determine if there are any estate planning/wealth migration strategies that can be implemented prior to a sale of the Company in order to move wealth out of the client's taxable estate
- Such strategies should be implemented well in advance of signing any letter of intent or purchase agreement with a buyer

3. Develop a Strong Management Team

- A strong management team for the Company is attractive to a buyer, especially if the Company's owner(s) do not want to continue to manage the business following the sale
- Consider a Stock/Equity Appreciation Rights Plan ("SARs Plan") to attract and retain key management through time of sale
- A SARs Plan provides key management a specified percentage share of the appreciation in value of the Company over a specified base-line value. The key manager's share of such appreciation is paid (either in a lump sum or in installments) upon the occurrence of certain events (normally sale of the Company, death, or retirement).

Checklist of Business Matters to Discuss Prior to Selling the Business

4. Update Company Minute Book

- Confirm that minutes reflecting actions/meetings of the Company's owners, board of directors, managers, etc. are current
- Confirm that complete copies of the Company's charter, bylaws, partnership agreement, operating agreement, as applicable, etc. and all amendments are included
- Confirm that the Company's stock/ownership ledger and transfer records are correct and that any certificates representing stock/ownership interests are up-to-date

5. Contract/Permit Review

- Confirm all material contracts are in the name of the Company, have been signed by applicable parties, and have not expired
- Confirm that all governmental permits and licenses are issued in the name of the Company and have not expired
- Begin identifying which contracts, permits, and licenses will need the approval of the other party/governmental entity to transfer to the buyer (or need to be re-applied for and issued in the name of the buyer)

Checklist of Business Matters to Discuss Prior to Selling the Business

6. Intellectual Property Review

- Confirm all patents and trademarks that are intended to be owned by Company are actually registered in the name of the Company rather than an individual owner, employee, or other person

7. Lien/Security Interest Review

- If the Company has fully paid a credit facility, equipment loan, or other lender, confirm that such lender has filed with the appropriate governmental recording office all necessary documents reflecting the termination of the lender's interest in any Company collateral that secured the loan

Checklist of Business Matters to Discuss Prior to Selling the Business

8. Personal Guarantees

- Identify any personal guarantees provided by the owners of the Company (or affiliated entities) that will need to be terminated as part of the sale of the business so that such Company owners/affiliated entities do not inadvertently remain guarantors of the Company obligations (i.e. loans, real estate leases, vendor agreements, etc.) following the sale

9. Document Affiliated Transactions

- Document material transactions between the Company and its owners, directors, and employees (i.e. loans, leases, licenses, etc.)

Checklist of Business Matters to Discuss Prior to Selling the Business

10. Non-Disclosure Agreements

- Make sure employees of the Company who have access to confidential and proprietary information of the Company are subject to a strong confidentiality/non-disclosure agreement to protect the Company's trade secrets

11. Distribute Excess Cash or Assets Unrelated to Company Business

- Especially if the Company is going to be sold through a sale of equity/ownership interest, it is important to distribute excess cash or assets unrelated to the Company's business prior to the sale—otherwise the buyer will acquire those assets without paying for them
- Coordinate with accountant the tax effects of all such property distributions

Checklist of Business Matters to Discuss Prior to Selling the Business

12. Engagement of Business Broker / M&A Advisor / Investment Banker To Assist in Sale Process

- Evaluate the desirability of using a professional advisor (business broker/M&A advisor/investment banker) to help the client market and sell the Company business
- A professional advisor may be able to help the client: (a) identify and reach a strong pool of candidates to purchase the business, (b) evaluate what a reasonable purchase price for the business would be based upon their experience with other business sales in the industry, (c) negotiate deal terms, and (d) oversee the transaction process so that the seller can continue to operate the business
- Obtain recommendations for a professional advisor, research credentials, and interview possible candidates to assist the client in the sale process

13. Develop a List of Possible Candidates to Acquire the Company

- Research and identify possible purchasers for the Company
- List could include competitors, companies with complementary line of business, private equity group, key management of the Company, or family

Part III: Selling the Business

Checklist for Selling the Business

1. Coordination of Professional Advisors

- Make sure lawyer, accountant, business broker/investment banker (if any), and other applicable professional advisors are working together to address transaction matters (i.e. structure of sale transaction, tax effects, legal effects, document review, etc.)

2. Confidentiality Agreement

- Make sure each prospective buyer to whom Company information will be provided signs a strong confidentiality agreement before providing such information

Checklist for Selling the Business

3. Letter of Intent

- Letter of Intent is a short document setting forth the understanding of the buyer and seller on key transaction terms
- Letter of Intent is typically non-binding
- Key Provisions often include:
 - Transaction Structure (asset purchase or equity purchase)
 - Purchase Price
 - Method of Payment
 - Amount and Time Period of Escrows and Holdbacks
 - Whether real estate owned by the Company owners will be purchased or leased by the buyer and the basic terms thereof
 - Whether there is an expectation that Company owners will become employees or consultants for the buyer after the sale
 - No-shop (takes Company off the sale market for a period of time to enable the buyer to conduct due diligence and close transaction)
 - Other special terms that are considered fundamental to the seller or buyer

Checklist for Selling the Business

4. Due Diligence

- After the Confidentiality agreement and Letter of intent are signed the prospective buyer intensifies its due diligence investigation of the Company (and legal counsel for the buyer and the seller are preparing and negotiating the acquisition documents)
- As part of the due diligence process, the buyer will ask for a huge volume of information concerning the Company, including ownership information, tax returns, financial statements (if not previously provided), copies of material contracts, litigation information, liens and security interests on Company assets, customer and supplier information, real estate information, environmental information, insurance information, etc.
- Due diligence is a time consuming process for the sellers, but is a necessary part of the transaction.

Checklist for Selling the Business

5. Acquisition Agreement

- The Acquisition Agreement is the centerpiece agreement in the sale transaction;
- The Acquisition Agreement is a binding agreement on the buyer and seller and sets forth the terms and conditions of the sale transaction;
- Key Provisions to be addressed in the Acquisition Agreement include:
 - Purchase Price;
 - How the Purchase Price is paid;
 - Escrows/Holdbacks (including amount and time period)
 - Representations and Warranties of the Sellers concerning the Company and the ownership of the Company
 - Generally extensive in nature covering the business and affairs of the Company and the ownership of the Company
 - Breach allows buyer to make a claim against the Company and its owners for damages
 - Sellers will want to try to include appropriate “knowledge” and “materiality” qualifications
 - Representations and Warranties of the Buyer
 - Generally not extensive, especially if sale is all-cash paid at closing
 - Indemnification by Seller
 - The Company and its owners will be required to indemnify (i.e. reimburse) the buyer for breach of representations and warranties as well as matters relating to the operation of the Company pre-closing
 - The sellers should try to place limits on its indemnification exposure through time limits, caps, and baskets (a threshold amount of loss that the buyer must absorb before it can make a claims against the sellers)
 - Non-Competition by Sellers (usually 3-5 years)

Checklist for Selling the Business

6. Ancillary Agreements

- In addition to the Acquisition Agreement, there will likely be important ancillary agreements depending on the specific sale transaction
- Ancillary Agreements often include:
 - Employment agreements
 - Consulting agreements
 - Real Estate Purchase or Lease Agreements
 - Promissory Notes
 - Non-Compete Agreements (if not included in the Acquisition Agreement)

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