

ALI-ABA Course of Study  
**Sophisticated Estate Planning Techniques**

Cosponsored by Massachusetts Continuing Legal Education, Inc.

September 10 - 11, 2009  
Boston, Massachusetts

**Fixing a Broken Plan:  
Dealing with Unanticipated Consequences of  
Techniques Entered Into When the World Was Different**

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## **Fixing a Broken Plan: Dealing with Unanticipated Consequences of Techniques Entered Into When the World Was Different**

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### **Issues involving prior QPRT Planning**

Given the state of the current real estate market, there are certain situations in which a client has transferred real estate into a QPRT and the property has not appreciated as anticipated or has even depreciated. In these circumstances, retaining the QPRT might be the best-case-scenario, even if the property has declined in value. However, in the case of a donor who wants to unwind the QPRT or retain the use of the residence following the QPRT term, there are some potential avenues to follow.

#### **A. Living with the QPRT: It Might Not Be So Bad After All**

It is hard to imagine a situation in which it would be beneficial from a transfer tax perspective to unwind a QPRT because, in most situations, the donor is unlikely to "get back" the gift tax exemption (or payment of gift taxes if the donor has already used up his or her lifetime exemption from the gift tax) that was allocated to the original transfer of the property to the QPRT.

Even in situations in which there has been no after-tax appreciation, there are some tax savings to allowing the QPRT to continue for its term. Consider, for example, the situation in which a donor, aged 40, transfers real estate worth \$500,000 to a QPRT with a 20-year term when the section 7520 rate is 4.0%. The donor will be deemed to have made a taxable gift of approximately \$205,000. Assuming that there is no growth and that property is still worth \$500,000 at the end of the 20-year term, the donor's overall transfer tax savings (assuming he survives the term) is just under \$150,000. Similarly, under the same assumptions but with a donor aged 70 and a 5-year term, no growth would still result in just over \$75,000 in savings. Either situation is preferable than wasting the \$205,000 or, in the case of the older donor, close to \$350,000 of exemption used to establish the QPRT.

#### **B. Unwinding the QPRT: Desperate Situations Call For Desperate Solutions**

What happens when the client, throwing all tax planning to the wind, wants to unwind the QPRT? The simplest option is for the client to simply stop using the residence as a primary residence.<sup>1</sup> Under the regulations, the QPRT instrument

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<sup>1</sup> Unfortunately, unless the client is willing to sell the residence, this is easier said than done. In the case of the client's primary residence, perhaps the client can turn the residence into a bed a