Establishing an estate plan that promotes flexibility in the allocation of your estate property is critically important with today’s changing family dynamics. It’s impossible to determine which spouse will outlive the other, if he or she will remarry, and other major life issues. One of the more attractive options that many married couples incorporate into their estate plans is the use of a QTIP trust.

The QTIP trust serves like a “crystal ball” for the uncertainty of the future. Not only does it provide for your surviving spouse after your death, but it also offers flexibility to your Executor in maximizing your federal estate tax savings. After the surviving spouse's death, the assets can pass to your family, such as children from a prior marriage, either outright or in trust.

How Does A QTIP Trust Work?
In its most basic form, a QTIP trust is essentially an A/B trust arrangement that is more restrictive than a typical marital trust. In many A/B trust arrangements, the marital, or A portion of the trust, may be accessible by the surviving spouse. Conversely, a QTIP trust provides limited access to the trust assets for a surviving spouse. Although your spouse must receive income from the trust, he or she cannot decide on the ultimate disposition of the trust assets and cannot withdraw principal from the trust. However, the QTIP trust can be written to provide the greater of $5,000 or 5% of the trust assets to your surviving spouse annually if you wish. It may also allow the trustee, in his or her discretion, to disperse trust principal for the surviving spouse’s needs during his or her lifetime.

Upon the death of your surviving spouse, the trust is distributed according to your original specifications.

A QTIP trust does not qualify for the estate tax marital deduction under traditional tax rules due to its restrictive nature. However, the tax code permits your Executor to claim the marital deduction for amounts transferred to a QTIP trust by making an election on your estate tax return.
Why Establish a QTIP Trust?

There are several reasons why a married individual would choose to establish a QTIP trust:

• You want to limit the power or ownership rights your spouse has over the trust assets. The restrictive ownership provisions of a QTIP trust are particularly useful for second marriages since you may want to ensure that the amounts held in the trust will ultimately pass to your children or family and not the children or family of your second spouse.

• It may be unclear what your estate tax situation will be at the time the trust is put into effect. Your Executor can choose the estate tax treatment of the QTIP trust to reflect changes in the applicable tax laws or changes in the value of your assets since you last made your will.

• Your surviving spouse already has significant personal assets. Your Executor can take advantage of the graduated tax brackets in the estate tax law for both of you, in turn reducing the overall tax paid between both spouses.

Although complex in nature, a QTIP trust may be an important component of any estate plan where flexibility regarding the assurance that assets will ultimately pass to your family and the timing of estate tax payments are your primary objectives.