

44,352 Charitable remainder trusts (CRTs): charitable remainder annuity trusts (CRATs) and charitable remainder unitrusts (CRUTs).
Analysis - Estate Planning

Estate Planning Analysis

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The charitable remainder trust (CRT) has two categories: the charitable remainder annuity trust (CRAT) and the charitable remainder unitrust (CRUT). ³⁵

For a complete discussion of:

- ... CRTs, see ¶41,502 et seq.;
- ... CRATs, see ¶41,514 et seq.; and
- ... CRUTs, see ¶41,544 et seq.

A CRAT is a trust that is to pay its income beneficiary or beneficiaries a *specified sum*, which is not less than 5%, nor greater than 50%, of the initial net fair market value of all property placed in trust. ³⁶

A CRUT is a trust that is to pay the income beneficiary or beneficiaries a *fixed percentage*, not less than 5% of the net fair market value of its assets, as valued annually, with the exception noted below (at footnote 37). However, a trust does not qualify as a CRUT if the percentage of assets that are required to be distributed at least annually is greater than 50%. ^{36.1} The CRUT's instrument may provide that the trustee is to pay the income beneficiary for any year the amount of trust income, where this is *less* than the amount required to be distributed by the particular CRUT. ³⁷ The trustee may not be given discretion here. The provision, if any, on payment of other than the fixed return must be mandatory. ³⁸

The fixed percentage requirement is *not* met where the trust agreement provides for a change in percentage upon the death of the donor or an income beneficiary. In one case, a trust provided for the income beneficiary to receive 7% of the fair market value of the trust assets annually until the death of the donor, and 9% thereafter. Another trust provided for a 7% payment to beneficiary A for life, and thereafter a 9% payment annually to beneficiary B for life. In both cases it was possible for the rate to change during the term of the trust. Therefore, the percentage was not fixed and the trust did not qualify as a CRUT. ³⁹

A CRT is considered created, for estate tax purposes, at the date of the decedent's death (even though the trust isn't funded until the end of a reasonable administration or settlement period), *if* the obligation to pay the annuity amount (see ¶41,514) or unitrust amount (see ¶41,544) begins as of the date of the decedent's death. ⁴⁰

The governing instrument of a testamentary CRT must provide (1) that the obligation to pay the unitrust or annuity amount begins on the date of death, and (2) for corrective payments in the case of an underpayment or overpayment of the annuity or unitrust amount determined to be payable. ⁴¹

A trust does not qualify as a CRAT unless the value of the charitable remainder with respect to any transfer to the trust is at least 10% of the initial net fair market value of all property transferred to the trust. ^{41.1} And a trust does not qualify as a CRUT unless the value of the charitable remainder with respect to each transfer to the trust is at least 10% of the net fair market value of the property transferred to the trust. ^{41.2}

The 10% test is measured on each transfer to the CRT, so a CRT that meets the 10% test on the date of transfer will not later fail to meet that test if interest rates have declined between the trust's creation and the death of a measuring life. Similarly, when a CRT is created for the joint lives of two individuals with a remainder to charity, the trust will not cease to qualify as a CRT because the value of the charitable remainder