

REVOCABLE TRUST FUNDING INSTRUCTIONS

This memorandum discusses how to transfer many of the types of assets that you now own or may expect to own in the future to your revocable trust.

Name of Your Revocable Trust

The legal name in which assets should be held in your revocable trust is listed in your Certificate of Trust. You may find that a particular insurance company, bank or other financial institution may require slightly different wording, but as long as your trust is clearly identified, such slight variations should cause no concern.

Copies of Agreement

Do not be surprised if a bank, brokerage firm or other financial institution requests a copy of your trust agreement. This occurs routinely. Legally, it is not necessary for them to see the instrument, but often they feel a responsibility to be sure that the trust has been properly drawn and executed and that the Trustee has the represented powers. You can usually satisfy these institutions by giving them a photocopy of your trust, or even just a copy of the pages with the Trustee information, Trustee powers, dates and signatures.

Tax Identification Number

Your revocable trust is completely disregarded for tax purposes while you are alive. Whenever you are asked to supply a Federal tax identification number for your trust, you should typically furnish your Social Security Number. You may obtain a separate tax identification number (TIN) for the trust, but please be aware that using a separate TIN for the trust may complicate reporting. Funding your revocable trust will not change the income tax reporting of interest, dividends, gains and losses or other income on your annual Form 1040 (U.S. Individual Income Tax Return). It is as if your revocable trust did not exist for income tax purposes. Therefore, no separate trust income tax return need be filed. However, as indicated, you must report any income earned by the trust on your personal income tax returns.

Retirement Plans

It may be possible to name your trust as the beneficiary of your retirement plan death benefits and to allow the Trustee to administer these benefits as part of the trust funds. This requires the completion of a proper beneficiary designation form that is available from your retirement benefit plan administrator. Tax issues need to be considered if the plan is not a ROTH.

A surviving spouse can "roll-over" a deceased spouse's retirement plan to an IRA owned by the surviving spouse, thereby deferring the distribution of benefits and the income tax thereon until the surviving spouse withdraws or is required to withdraw the benefits. If the beneficiary of the retirement plan is someone other than the surviving spouse, then the benefits generally must be distributed within ten years of the participant's date of death, except in certain circumstances where the designated beneficiary is a minor child, disabled or chronically ill. In such cases the retirement benefits may be distributed over the designated beneficiary's life expectancy until such individual is no longer a minor, disabled or chronically ill.

Your revocable trust contains provisions that maintain such tax treatment for designated beneficiaries if you name one or more of the irrevocable trusts created under your revocable trust at your death as beneficiary of your retirement plan. Without such provisions, the benefits could be payable over a shorter five-year term.

You must, by your "required beginning date" (usually, but not always, retirement or, if earlier, April 1st after reaching the applicable age where required minimum distributions are required), you must either provide the plan administrator with a copy of the trust (and all amendments) or a list of all trust beneficiaries (including contingent beneficiaries), together with a description of the portion to which each beneficiary is entitled and any conditions imposed on the beneficial interest.

Life Insurance

You will usually want to name your trust as the beneficiary of any life insurance policies you own, unless you have been advised to transfer your life insurance policies to an irrevocable trust, a family member or some other entity or person. When the policy owner is someone other than the insured, the owner often should be the beneficiary.

Savings Accounts, CDs, Money Market Accounts, Checking Accounts, Etc.

You should consider transferring significant accounts held at a bank, savings and loan, credit union, etc. to your trust. Title to a bank account is normally indicated by a signature card that records the name of your trust.

If you are accustomed to using a joint checking account for routine household expenditures, and you have automatic deposits and withdrawals going in and out of such account, it may be easier to not transfer this account to your revocable trust. Some banks change the account number when you transfer an account to your revocable trust. If the account number changes, you would need to redirect all those automatic deposits and withdrawals to the new account number, which is usually more trouble than it is worth. You can name the revocable trust as a beneficiary of such account, so that probate will not be necessary to transfer such account at your death.

Stocks, Bonds and Other Securities

You may also consider transferring your stocks, bonds or other securities or brokerage accounts to your revocable trust. If your broker holds the certificates on your investments, you need only change the name on your brokerage account to change the ownership of these assets to your trust. If you hold the certificates yourself, you or your broker can change the ownership by contacting the appropriate transfer agent.

Real Property

Real property should be titled in the name of your revocable trust. We will prepare a deed transferring your real property to your revocable trust. I recommend contacting your title insurance company, home owner's insurance company and any lender on a mortgage secured by the real property before completing the transfer of the real property to your revocable trust. I do not anticipate any problems, but the insurance companies may want to add your revocable trust as an insured on the policy. Since only real estate, and not the debt it secures, is transferred to your trust, it is not necessary to change any mortgage note or deed of trust secured by your real property.

If you acquire real property later on, you will likely want to title such real property in the name of your revocable trust. If you are not married, you can purchase the real property directly in the name of your revocable trust. If you are married, however, please first obtain the real property in your individual names before transferring the real property to your revocable trust(s). Real property owned by a married couple is owned as “tenants by the entirety” (TBE). TBE ownership treats the real property as owned by the marital unit. A creditor of one spouse (other than the IRS) cannot reach real property owned as TBE; only a creditor of both spouses can reach such real property. If you own real property as a married couple (TBE) and then transfer it to your joint revocable trust or to both of your separate revocable trusts, that added TBE creditor protection is maintained. I would ask the attorney preparing the deed for the purchase of the real property to prepare two deeds – (1) the deed purchasing the real property in your individual names as a married couple; and (2) the deed transferring the real property from your individual names as a married couple to your joint revocable trust or your separate revocable trusts. You can sign both deeds on the same day and the attorney can record both deeds on the same day. The attorney would just need to record the 1st deed 1st and the 2nd deed 2nd.

Personal Effects

We will assign all of your furnishings, jewelry, artwork and other tangible personal property (“Personal Effects”) to your revocable trust using a one-page assignment that is included in your documents (the “Assignment”). The Assignment covers Personal Effects that you own as of the date of the Assignment and Personal Effects that you acquire after such date. The Assignment does not, however, transfer automobiles, boats, airplanes and similar titled property (“Vehicles”) to your revocable trust. We will need to officially transfer the title of the Vehicles to your revocable trust with the appropriate licensing agency. If you plan to get a new Vehicle in the next few years, I recommend not transferring the current Vehicle and merely purchasing the new Vehicle in the name of your revocable trust at a later date.

In Conclusion

Funding your trust should keep the assets in the trust free from probate before the state courts and permit their easy management by the successor Trustee in case of your disability. These may be very significant benefits, particularly with respect to certain assets, such as out-of-state real estate.

If you have any questions, please do not hesitate to call or write.