

# Funding the Revocable Trust and Asset Ownership Considerations for Estate Planning

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## **I. Funding the Revocable Trust**

The following is a summary of the steps necessary to transfer assets into your Revocable Trust. As you know, funding your Revocable Trust is an important step in the estate planning process if you are to obtain the maximum probate avoidance from your Trust.

### **Joint Tenancy Property.**

Assets which you hold in joint tenancy with right of survivorship (and not as tenants in common) will avoid probate on the first death, but will not avoid probate on the survivor's death (unless the survivor transfers them into the survivor's Trust or makes other provisions). Too many joint assets can undermine the tax planning in your Trust because joint tenancy property passes to the surviving joint tenant(s) upon the death of one joint tenant, regardless of the provisions in your Revocable Trust Agreement. Consequently, joint tenancy should be used very carefully, and only a few (if any) of your assets should be held jointly in this manner.

### **Tax Identification Number.**

During your lifetime and while you are acting as Trustee of your own revocable trust, the tax I.D. number for the Trust will be your social security number. All income, deductions and credits attributable to your Trust assets will be reported by you on your individual income tax return. If in the future, you are no longer acting as Trustee of your own Revocable Trust, the successor Trustee must furnish your name, social security number, and the address of the trust to all payors. The successor Trustee additionally must provide you with tax information regarding all items of income, deduction, and credit for the trust, as well as other related information so that you are able to complete your individual income tax return. The successor Trustee may also apply for a separate tax identification number for the trust and follow the appropriate reporting requirements.

### **On-Going Process.**

Trust funding is an ongoing process. As you acquire additional assets or deal with your existing assets, you should consider whether the assets should be owned by your Trust. We also suggest that you maintain a schedule that lists your assets (including the value of each asset, the current ownership and the beneficiary designation, if any). This schedule will help your successor Trustee readily determine which assets are held in your Trust and will also provide a means by which your Trust can be reviewed on an ongoing basis.

### **Methods to Transfer Specific Types of Assets.**

The general rule to follow is that when an asset is transferred to your Trust, the asset should be titled as follows:

John A. Smith and Jill A. Smith, Co-Trustees of the John A. Smith Revocable Trust U/A dated November 6, 2014; or

Jill A. Smith and John A. Smith, Co-Trustees of the Jill A. Smith Revocable Trust U/A dated November 6, 2014.

For assets which will be payable to your Trust upon your death (such as a life insurance beneficiary designation), the beneficiary should be listed as follows:

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Trustee of the John A. Smith Trust U/A dated November 6, 2014; or

Trustee of the Jill A. Smith Trust U/A dated November 6, 2014.

The reason for this slight difference is that because the benefits will not be payable to your Trust until your death, there is no certainty as to who will be serving as Successor Trustee at that time. This will also allow you to amend your Trust and change Successor Trustees without having to change beneficiary designations.

## Discussion of Specific Asset Transfers.

The information below discusses how to transfer assets into your Trust and is organized by category of assets.

1. **Bank Accounts.** All cash held in a Revocable Trust should be in a separate account titled in the name of the Trust. After an asset is transferred into a trust, the Trustee should deal with the asset in his or her capacity as Trustee.

For convenience, you may wish to maintain a checking account which is not owned by your Trust. You might want this account to be payable upon your death into your Trust. Accounts which are payable to a named beneficiary such as your Trust upon the death of the account owner(s) are called payable on death ("POD") accounts, and your banker should be able to assist you in retitling or establishing an account in this form.

2. **Publicly Traded Stocks.** The change of title to publicly traded stocks can be done through a stock broker or directly through the transfer agent for the company. Although the requirements will sometimes differ depending upon the company with which you are dealing, usually all that will be required is a signed stock power (which will need to have a medallion signature guaranteed from a bank officer or a registered stock broker) and a letter of instruction to the transfer agent or broker. You will also have to surrender the stock certificate. If you mail these documents to the transfer agent, they should be sent by registered mail.

If you will be transferring more than one stock certificate of the same company to your Trust, you may want to request that a series of new certificates be issued; each corresponding to your old certificates, rather than one certificate consolidating all of your shares. This way, you will be able to trace your income tax basis in any shares that might later be sold.

3. **Bonds.**
  - (a) **Registered Bonds.** Bonds are transferred in a manner similar to stocks, but instead of a stock power, an assignment of bond is executed.
  - (b) **Unregistered Bonds/Bearer Bonds.** Unregistered or bearer bonds should be assigned to your trust by separate written assignment, or specifically receipted for in writing by the Trustee.
  - (c) **Savings Bonds.** Your bank can assist you with the procedure of changing the ownership of any United States Savings Bonds (Series E, EE, H or HH) to your Trust.

4. **Brokerage Accounts.** When stocks, bonds and similar assets are held in street name in a brokerage account, all that is generally required is a letter of instruction to the broker requesting a change in the ownership of the account and completion of forms that will be furnished by the broker. Some brokerage firms issue a new account number when ownership is transferred.
5. **Mutual Funds.** The transfer of shares in a mutual fund is similar to transfer of publicly traded stocks when the evidence of ownership is in certificate form. When the shares are held in bookkeeping entries, rather than certificates, contact the fund's agent to obtain forms and instructions.
6. **Closely Held Stock.** Stock in a closely held company is transferred by endorsing the existing certificates or signing stock powers, then surrendering the certificates to the person holding the stock book so that existing certificates can be cancelled and new certificates can be issued. The new certificates will be issued in the name of the Trust. You should check any applicable buy/sell or other shareholder's agreements to make sure that transfer restrictions do not prohibit the transfer to a revocable trust. We can assist you in preparing stock powers to transfer any closely held stock.
7. **Partnership and Limited Liability Company Interests.** A partnership or limited liability company interest is transferred by an Assignment of Interest. The Assignment is delivered to the managing general partner or managing member who will record the change of ownership in the partnership or company records. The Partnership Agreement or Operating Agreement may contain certain restrictions on the transfer of partnership/membership interests. The restriction may require the other partners' or members' consent to the transfer, or the transfer may be prohibited, in which case an amendment to the agreement would be necessary.
8. **Real Property.**
  - (a) **Transfer by Special Warranty Deed/Quit Claim Deed.** Any interests in real property are transferred to the Trust by special warranty deed or quit claim deed filed with the Recorder of Deeds in the County where the property is located. The deed contains a legal description of the real property. If there is a loan secured by the real property, permission of the lender may be needed (we suggest that you always obtain the lender's written consent) before the property can be transferred in order not to trigger any "due on transfer" or other acceleration type clauses.
  - (b) **Contract for Deed.** If you are purchasing real estate under a "contract for deed" or land installment contract, your interest in the contract and any escrow agreement should be assigned to your Trust and a deed conveying the subject property to the Trust given to the escrow agent, so that upon completion of the contract, not only the deed conveying the subject property to you, but also the deed conveying the property to the Trust may be filed of record. This should also protect you should you die prior to full performance under the contract.

- (c) Mineral Interests. Mineral interests (including those under which you are receiving production payments) should be assigned to your Trust by Mineral Deed. Mineral Deeds should be recorded in the counties where the interests are located. After the Mineral Deeds are recorded, transfer orders should be obtained from the purchasing oil and gas companies so that oil and gas production proceeds will be paid directly to the Trust.
- d) Property and Casualty Insurance. When insured property such as real estate or an automobile is transferred to a trust, we also suggest that you contact the insurance carrier and advise them that the Trust should be added as an additional named insured party on the policy. Most insurance companies do not charge a fee for adding the Trust as an additional party.
9. Oil and Gas Interests. Oil and Gas Leasehold interests should be assigned to the Trust by Assignments and the Assignments should thereafter be recorded in the counties where the interests are located. After the Assignments are recorded, transfer orders should be obtained from the purchasing oil and gas companies so that oil and gas production proceeds will be paid directly to the Trust.
10. Life Insurance Policies. Proceeds of life insurance policies are made payable to the Trust by change of beneficiary forms which are provided by the life insurance company (and can be obtained through your life insurance agent). Ownership of individual policies and some group policies can also be transferred to the Trust (so the Trustee can exercise policy rights on your behalf). Again, obtain these forms through your life insurance agent. Your agent should also be able to assist you in having change of ownership and beneficiary forms properly submitted to your insurance carrier.
- Remember that, (i) who you name as beneficiaries of life insurance policies, (ii) the extent to which you retain ownership rights in life insurance policies, and (iii) how and when you transfer policies can have significant estate tax, income tax, and generation skipping transfer tax consequences. We suggest that you discuss your particular planning situation with us to coordinate your existing policies with your estate plan. We also suggest that you talk with us before you purchase additional insurance, transfer insurance, or change beneficiary designations.
11. IRAs and Qualified Retirement Plans (401(k)s, Pension, Profit-Sharing, Keoghs, ESOPs, etc.). Although it is not possible to change the ownership of IRAs and retirement plans, you may want to name your Trust as beneficiary. This can be done through beneficiary designation forms provided by the administrator of the IRA or retirement plan.

**Failing to designate the proper beneficiary on your retirement plans can result in unintended estate, inheritance and other death tax consequences, but it can also cause premature income taxation. This is particularly true when estate planning is accomplished through a Revocable Trust. Due to the proper beneficiary designation being situation sensitive and subject to exceptions and subsequent changes in the law, no beneficiary designation or change in beneficiary designation should be implemented on qualified retirement plans or IRAs without consulting an attorney or your tax advisor.**



- 12. Tax Deferred Annuities.** The ownership of a tax deferred annuity may be changed to your Trust. In some circumstances, it may be desirable from an estate tax point of view or for asset management, to name the owner's Trust as primary beneficiary. Thus, you should consult an attorney prior to making any such designations.
- 13. Promissory Notes.** Promissory Notes are transferred by executing an Assignment of Promissory Note. This is then forwarded to the maker of the Note with instructions to make subsequent payments to the Trustee. Alternatively, the original promissory note may be endorsed on the reverse side of the note as follows:
- “Pay to the order of John A. Smith and Jill A. Smith, Co-Trustees of the John A. Smith Revocable Trust dated November 6, 2014;” or
- “Pay to the order of Jill A. Smith and John A. Smith, Co-Trustees of the Jill A. Smith Revocable Trust dated November 6, 2014.”
- 14. Safe Deposit Boxes.** You should retitle your safe deposit box(es) so that your Trust is listed as the owner. In this manner, all unregistered assets (such as bearer bonds, cash, jewelry, etc.) held in the safe deposit box will be in your Trust.
- 15. Tangible Personal Property.** Your interest in furniture, fixtures, artwork, jewelry, personal belongings and effects may be transferred to your Trust by a general assignment document called an Instrument of Transfer which we can prepare for you.
- 16. Automobiles (and Boats, Planes, or other titled assets).** Many individuals choose not to transfer automobiles they already own into a Trust. Instead, they wait until they purchase a new automobile and then purchase it in the name of a Trust. The risk of waiting to retitle existing automobiles is that the automobile may be subject to the probate process (if the total value of personal property individually owned is greater than \$100,000). Many people determine that this risk is outweighed by the difficulty of working with the Department of Motor Vehicles to have a title reissued for an existing automobile.

In addition, if either of you collect automobiles, or have boats, planes, or other titled assets which you anticipate keeping, you may choose to have some or all of these assets retitled in the name of your Trust. If any automobiles or other titled assets are transferred to a trust, we suggest that you have your property and casualty insurer add the Trust as an additional named insured (see the discussion of property and casualty insurance above).

### **Documentation.**

When you are transferring assets into your Trust, financial institutions or other transfer agents may request a copy of your Trust. You should furnish only the first page, signature pages, and the Trustees Powers and Trustee Succession sections of your Trust Agreement. The dispositive provisions of your Trust are personal and the financial institution or transfer agent does not need to see them. Many financial institutions only require the first page and signature pages.

Please remember that we are available to assist with transfers or to answer any questions. Please call me if you have any questions regarding this information or if we can assist you in transferring assets into your Trust.

### **II. Ownership of Assets**

Certainly, the value of an individual's assets will affect potential estate tax liability. The form of ownership of assets and the division of assets between a husband and wife will also have estate tax significance.

The form of ownership of an asset may determine the ultimate recipient of that asset upon the death of an individual, irrespective of the terms specified in the individual's will or trust. For example, an asset owned in joint tenancy automatically and by operation of law passes to the surviving tenant upon the death of one tenant and is unaffected by the terms of the decedent's will or trust. The form of ownership of an asset may affect the recipient of the asset upon one's death which may in turn impact one's estate plan by bypassing one's will and trust.

Joint ownership is common for such items as checking or savings accounts, certificates of deposit, brokerage accounts, securities, and real estate. Other types of property, such as life insurance policies, retirement plan or IRA benefits and annuities will pass to the beneficiary designated, irrespective of the terms of one's will or trust. An individual should carefully consider the form of ownership of assets to be consistent with his estate plan.

If one spouse or the other own a disproportionate amount of their collective assets, they may fail to fully utilize each of their exemption equivalent amounts and thereby incur more estate tax than may be otherwise necessary. Equalizing the ownership of assets between spouses may be necessary. (Portability rules may mitigate to some extent the general planning techniques of equalizing assets between spouses for federal estate tax purposes but may not apply for State estate tax purposes).

### **Probate.**

The process by which a deceased person's last will is determined to be a valid will, provides notice to heirs, creditors, and other interested parties, provides for the administration of estate assets, payment of claims and distributions according to the will.

### Asset Ownership.

1. Individually or solely owned assets typically subject to probate and creditor's claims. Tenants in common property are typically subject to probate.
2. Jointly held assets are typically not subject to probate, as ownership will pass to surviving joint tenant upon death of the other tenant. Tenancy by the entirety limited to married couples and residential property.
3. Payable on death accounts: Payable on death or transfer on death accounts are not probate assets as the account passes to the named beneficiary.
4. Life insurance and retirement accounts are generally not probate assets because of beneficiary designation.