

FUNDING YOUR REVOCABLE TRUST

Revocable (or “Living”) Trusts can be created for many reasons, including minimizing estate tax, ensuring privacy, and reducing or eliminating the role of the Probate Court at the time of your death. If your estate plan seeks to minimize tax, it is important that all of your assets are titled to be consistent with that plan. For example, assets titled jointly with rights of survivorship will bypass tax planning, and may also circumvent any specific instructions you have made in a Will or a Trust to divide and distribute assets to specific beneficiaries. Likewise, if avoiding probate is a goal, it will be important to fund your trust during your lifetime, so the Probate Court will not be required to supervise the funding process upon your death.

Changing ownership of assets from an individual to a Trustee is trust funding. The process is the same whether you have named yourself as Trustee, or you have named someone else.

This memorandum contains general instructions regarding how different assets should be transferred to trust. **Please call us if you have questions regarding the funding of your revocable trust and we will be happy to assist you.**

Name of Your Revocable Trust

Your trust has a legal name in which assets should be titled. The name of your trust is usually identified near the beginning of the trust document. This is the name that should be used when you fill out forms or signature cards that ask for the name your trust.

Copies of Trust Agreement

Do not be surprised if a bank, brokerage firm or other financial institution requests a copy of your trust as part of its “due diligence” in the titling process. This is becoming more and more common as financial institutions tighten regulations, particularly those related to non-personal accounts (accounts held by legal entities such as corporations or trusts).

Tax Identification Number

Whenever you are asked to supply a Taxpayer Identification Number (“TIN”), also called an “EIN” or “Employer Identification Number” for your trust, furnish your Social Security Number, if you are serving as Trustee of your own Trust. (This may also be the case if your spouse is serving as Trustee, but this should be confirmed with our office if so.) Using your own SSN for reporting means that funding your 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 during your lifetime. However, you must report any income earned by the trust on your personal income tax return, just as you reported the income before the assets were held in trust.

Savings & Checking Accounts, Certificates of Deposit, Money Market Accounts, Etc.

Cash accounts held at a bank, savings and loan, credit union, etc. (*not including retirement accounts*) are fairly simple to transfer to trust. Title to a bank account is normally indicated by a signature card that records the name of your trust.

Please note, an account held jointly with rights of survivorship cannot be held in trust. The account must be split, or be titled in the name of only one trust. Although jointly held accounts are not subject to probate, (and need not be placed in trust) the right of survivorship circumvents tax planning that may have been an important reason you created your trust. And because jointly held assets pass automatically to the survivor(s) upon death, they will not pass according to the instructions in your trust (or Will), nor will they be considered when dividing assets, if you have instructed assets to be split between certain beneficiaries. We should review all of your jointly held accounts to determine whether there may be significant risks associated with maintaining joint accounts.

Be Mindful of Automatic Debits and Withdrawals. When changing title to a cash account, some institutions may require that the original account be closed and a new account be opened; while other institutions will simply change the name on the original signature card to reflect the new ownership in the trust. If the institution will be closing the old account and opening a new account in the name of your trust, it will be important to review whether you have set up any regularly occurring deposits or withdrawals from the account to be closed. These could include direct deposit of Social Security, pension and payroll checks, mortgage and home equity line of credit payments, or other regularly occurring bills. Should these transfers occur, we recommend that you keep both accounts open concurrently for 30 to 60 days so you have time to make sure new electronic transfers are established and verified.

A word about CDs: If you are requesting that a bank change title to a certificate of deposit (CD) prior to its maturity date, inquire whether the institution will charge a penalty for the transfer. Generally, the branch manager has authority to waive the penalty. If you cannot secure a release of the penalty, wait to make the transfer until the CD reaches its maturity date.

Credit Unions Can be Tricky. Some credit unions specifically restrict membership and account ownership to individuals and will not allow an account to be titled in the name of a trust. Should this problem arise, there are several approaches to funding the credit union account we can explore.

FDIC Insurance: Please note, you will lose none of the benefits associated with FDIC insurance coverage, when titling accounts in the name of your trust.

Stocks, Bonds, Brokerage or Investment Accounts and Other Securities

If you own stocks, bonds or other securities, whether as individual holdings or as part of a mutual fund or investment account, title to these securities can also be placed in your revocable trust. Most forms of investment accounts (including mutual funds, brokerage accounts and cash management accounts) are funded by contacting the financial institution and **requesting that title to the account be changed to the name of your trust.** Although each institution has different internal procedures for changing title, most institutions will require that a "Change of Ownership" Form be completed.

As with Cash Accounts, **verify whether you have instructed that any electronic deposits or withdrawals are automatically made to or from the account(s)** in question, so arrangements can be made to continue these payments/withdrawals from the new account(s).

If you own individual securities for which you hold the stock certificates yourself, they can be transferred to trust in several ways. The easiest is to take the certificates to a brokerage firm with whom you do business and request they have them re-titled in your trust's name. The certificates will be sent to the stock or bond transfer agent, who will cancel your certificates and reissue new certificates in the name of your trust.

You can deal directly with the transfer agent yourself, although this method is more involved and more time-consuming. If the stock or bond certificate is lost in the mail, you will must have a new certificate issued. And the time to receive a re-issued stock certificate will vary from transfer agent to transfer agent. On average, it will generally take from 30 days to as long as six months to receive the re-issued stock certificate.

Whether you go through a broker or deal directly with the transfer agent, the back of the certificate (or an irrevocable stock power identifying the certificate) must be signed by you. **That signature must be verified "guaranteed" by a bank, trust company or a New York Stock Exchange firm before you can surrender your certificate for reissuance.** We can provide you with specific instructions for having your signature "Medallion Guaranteed" and can advise you regarding the appropriate wording for the new certificates.

A Word About Bonds. There are several types of bonds. The U.S. Treasury Department issues bonds in Series such as E, EE, H, HH, & I bonds. Municipalities and school districts can also issue bonds.

U.S. Savings Bonds (Series E, EE, H, HH & I): U.S. Savings Bonds are funded by preparing a form called a Form *PDF 1851*. We can provide you with a copy of the Form, or it can be obtained online at www.treasurydirect.gov. **Once you have completed the Form, it will need a Medallion Signature Guaranteed for it to be accepted by the U.S. Treasury Department.**

Income Tax Issues: Before any U.S. Savings Bonds are transferred to trust, the income tax implications of the transfer should be reviewed. Sometimes, the transfer to trust may accelerate income tax. The IRS has ruled that transferring a U.S. Savings Bond into a revocable living trust is not an income taxable event if the bonds were transferred to the trust of the Grantor that originally purchased the bonds. If the bonds were not originally owned by the Grantor, an acceleration of the accrued income will occur and you must pay additional income tax. Several common examples where income tax liability will be accelerated are:

- Spouse #1 originally owned the bonds and they were transferred to Spouse #2's separate trust;
- Both Spouses originally owned the bonds and they were transferred to either Spouse's separate trust; or
- One Spouse owned the bonds and they are transferred to a joint trust; or

- A parent or grandparent purchased the bonds and named the client as a co-owner.

Municipal Bonds, School District Bonds & Capital Improvement Bonds: Ownership is usually evidenced in a *Bond Certificate* similar in appearance to a stock certificate. Funding these bonds is done through a *Bond Power*. **The Bond Power must generally be Medallion Signature Guaranteed to have the bonds be re-titled.**

Beneficiary Designations for Retirement Plan Death Benefits (Pensions, Profit-Sharing Plans, Section 401(k) Plans, IRAs, Etc.)

Qualified Retirement Plans and IRAs are special investment accounts that grow income tax deferred until the plan proceeds are withdrawn. Over time this special tax deferred treatment may yield tremendous growth. **Ownership should never be transferred to your revocable living trust while you are still living, because the IRS will treat a transfer of a Qualified Plan or IRA to trust as a distribution, and the value of the plan will be treated as ordinary income.**

Naming Spouse as the Primary Beneficiary. The tax laws allow a surviving spouse to "roll-over" a retirement benefit plan distribution into an IRA, deferring income tax on that distribution until the surviving spouse withdraws or must withdraw the benefits. This may be the best answer for retirement assets.

But if passing retirement assets directly to a surviving spouse would create increased estate tax liability, naming a trust as a beneficiary may be a more appropriate answer. **If your trust is named as a beneficiary, the trust must meet specific requirements.** The IRS may allow you to name a trust for a specific individual as the designated beneficiary, preserving the right to pay the death benefits over the beneficiary's lifetime. **To do this, you must provide the Plan Administration with certain material information related to the trust and its beneficiaries by a specified date, or the tax deferral period will be limited to five years.**

All retirement accounts should be reviewed for the appropriate beneficiary designations with your estate planning attorney. To actually make a new Beneficiary Designation, you must complete the Forms provided by the Plan or Financial Institution. Most Forms can be obtained online at the Institution's website.

Life Insurance

Life Insurance proceeds are paid under beneficiary designation. Proceeds will not be subject to probate unless the policy has no beneficiary designation, or because the estate is listed as the beneficiary. Naming your trust as the primary beneficiary of life insurance proceeds is generally recommended, because it will help accomplish any tax planning goals your trust achieved, and (usually) still benefit the same people that would have benefited had the received the proceeds outright (e.g., a surviving spouse and/or children).

To actually make a new Beneficiary Designation, you must complete the Forms provided by the Plan or Financial Institution. Most Forms can be obtained online at the Institution's website.

Change of Ownership to an ILIT. Sometimes, we may advise that ownership of a life insurance policy be transferred to an irrevocable trust called an ILIT (“Irrevocable Life Insurance Trust”). Provided certain conditions are met, this allows the proceeds of the life insurance to be excluded from the Grantor’s taxable estate upon death. This trust would be separate from your revocable trust – and because an ILIT is irrevocable, you could maintain no control over the policy once it was transferred to the Trustee(s).

Annuities

An annuity can be commercial or private. A *Commercial Annuity* is a contract signed with a company that sells financial products. The commercial annuity contract will specify that the company must make payments to the designated beneficiary for a defined period. The period may begin immediately or it may not begin until a future date or event. Some commercial annuities also provide benefits to a separate beneficiary after the death of the owner. When funding a commercial annuity, both the lifetime beneficiaries and the after-death beneficiaries should be addressed.

No Change in Ownership: Due to restrictions in the Internal Revenue Code, changing ownership of an annuity into the name of a revocable living trust is not recommended. Rather, like retirement accounts, only the beneficiary of an annuity should be changed to your revocable trust. This can be accomplished by completing the institutions “Change of Beneficiary” Form. Most beneficiary forms are now available online.

Limitations on Distribution Options: Please note, sometimes, changing the beneficiary designation to the trust may affect the distribution options available under the annuity contract. **Some annuity contracts provide that only a spouse or child of the annuity owner may select between different distribution options. If a trust is named as the beneficiary, the trust may only select from a few distribution options.** You should review the preferred distribution options before any Change of Beneficiary Form is submitted for processing.

Private Annuities Cannot Be Funded. A *Private Annuity* is also a contract to make payments to a designated beneficiary for a specified period; however, it is entered into between individuals, and the payment obligations automatically cease at the death of the recipient. **Because payments only occur during the lifetime of the Owner, the private annuity has no death benefits to be funded.**

Business Interests

The steps to fund a business interest will depend on the entity.

Corporations: Corporations are funded by re-issuing the stock certificates in the name of your trust. It will be important to verify there are no restrictions in the corporation documents that restrict ownership. We request you provide us with a copy of the pertinent organizational documents so we can ascertain what actions we must take to effectuate transfer to trust.

Partnerships: A partnership is funded through an Assignment which we can prepare here in our office. Like corporations, it will be important that we verify there are no restrictions in your

partnership documents restricting changes of ownership. We request you provide us with a copy of partnership agreements to ascertain what actions we must take to effectuate transfer.

Sole Proprietorships: Transfer of sole proprietorship interests are also funded through an Assignment. We can prepare the documentation to effectuate the transfer. And if you maintain a business liability insurance policy, it will be important that we name your trust as an additional insured. We will request you provide us with information pertaining to your insurance policy so we can take the steps regarding this policy.

Professional Business Interests: Many professionals (such as doctors, lawyers, real estate brokers, CPAs, etc.) own their businesses in a partnership or a corporation. Each state's its own laws regulate both the licensing and conduct of professionals. Many states may restrict ownership of professional corporations to only those individuals that hold the appropriate professional license. There are several "special" steps we must take to fund professional business interests depending on the professional interest you own. We will review these steps with you if applicable.

Real Estate

You should be fully aware of the advantages and disadvantages of holding title to real estate in trust. Often, the value of your real estate may be a significant portion of your net worth. If so, holding title to the property in trust will be critical to make sure that the tax goals you crafted your estate plan to achieve are actually satisfied.

Transferring the property to trust will require certain additional steps. If there is a mortgage on the property, the mortgage holder should be contacted in writing to ensure that transferring ownership to the trust will not cause the debt to become due. Usually the transfer to trust will not be a transfer which would trigger a "due on sale" clause, but this should be verified before the property is transferred. Even if the debt will not become due, the lender may want to record a new mortgage (or deed of trust), with attendant fees or other charges.

Second mortgages and equity lines of credit are often subject to additional restrictions which may make transfer of real estate to trust impractical or even undesirable. You may find it is more difficult to secure an equity line of credit if your property is in trust. Similarly, if you enjoy a special tax incentive because of senior or veteran or farmland status, transferring your property to trust may trigger an automatic termination of your exemption. If these factors are an issue, please let us know immediately so we can help you evaluate whether transfer to trust is a good idea.

If transfer to trust is the best solution, the title insurance company should also be contacted to determine if the transfer will affect the title policy and/or if the trust should be named on the policy. Similarly, any other property or casualty insurer should be notified of the transfer to make sure that the trust is added to the policy as an additional insured. We can provide you with sample language or can make those notifications for you you're your request.

If tax planning is a primary goal of your plan, and if the value of your real estate is a significant portion of your overall wealth, holding real estate in trust may be a very important part of your

estate plan, but understand that it will require follow up to make sure that the other issues related to your ownership of the property are all addressed.

Finally, if you own real estate in a state other than Connecticut, transferring that property to trust may avoid the added costs of ancillary probate proceedings in the state in which the real estate is located. The costs of ancillary probate proceedings (or recording of the probate record) usually exceed the real estate transfer costs of recording and attorneys' fees. However, the same practical realities related to property ownership discussed above must be discussed with a local attorney before a transfer is initiated.

Automobiles, Furniture, Furnishings and Personal Effects

Tangible personal property (e.g., clothing, jewelry, household goods and coin and stamp collections, etc.) can be easily transferred to trust. This provides for simple transfer to beneficiaries at the time of death, without itemizing property for probate. However, if items are separately insured, it will be important to contact the insurance company prior to transfer to determine whether any changes must be made to the policy. At a minimum, most companies will want to designate the trust as an additional insured.

Title to automobiles should not be placed in trust. Automobiles carry liability, and generally you do not want to expose the other items in trust to the risk.

In Conclusion

Please remember, funding your revocable trust does not exempt assets from estate taxes or income taxes. **Every asset you own (whether in your own name or the name of your trust), and assets that pass by survivorship to joint owners or by beneficiary designation, will be counted towards your gross taxable estate when you die.** But assets that pass by trust can be protected from estate taxes upon the death of your spouse, whereas had those assets passed outside of trust, they will be counted upon the second death. Likewise, holding your assets in trust while you are living will not exempt them from income taxes, if those assets generate interest, dividends or capital gains. You must report income generated by assets held in trust as you report income on any other assets.