

FUNDING YOUR REVOCABLE LIVING TRUST

This guideline is prepared to assist you in funding your Living Trust. It is not intended to be a comprehensive statement of the law. As such, any specific questions should be directed to your attorney.

As creators (trustors) of a Revocable Living Trust, you want to understand the process of transferring assets. This is essential if probate is to be avoided. In effect, the Trustors of a trust are transferring property while they are capable of doing so rather than leaving assets in his or her name to be cleared through a probate administration at his or her death. Under present Arizona probate procedure, it is much easier for a living individual to transfer his or her own property than for a personal representative to do so after death through a probate.

I. FUNDING THE TRUST

Funding the Trust is crucial. A probate administration can be avoided with regard to all assets, which are in the name of the Trust at your death. To the extent that any assets in your name are overlooked and are not transferred to the Trust prior to your death, those assets will be subject to a probate administration of your estate and be distributed pursuant to your will. All assets transferred to the Trust should be re-titled as shown in the following sample:

“John Smith or Mary Smith, Trustees of the John Smith and Mary Smith Trust under Agreement dated _____.”

Please refer to the title page of your Trust Agreement for the proper title of your individual Trust. Although the above is the legal name of the Trust, don't be concerned if banks, stock companies, and bond companies may shorten it.

1. Securities. The most common method of transferring registered Securities to the Trust is to re-title the securities in the name of the Trust as described above.

If you are dealing with a broker, most brokers will perform the transfers for you without a fee. Simply, call or write to the broker or transferring agent and request the documents needed to transfer the certificate to a New York Stock Exchange firm or to a commercial bank having a New York City correspondent and have your signature verified for endorsement of the certificate to the trust. You will need to complete a “Stock or bond Transfer Instruction” form and send by registered mail, along with your endorsed certificate to the transfer agent.

Unregistered securities – i.e. those in bearer form - present no particular transfer problems, and obviously there are no registration problems. A short form of assignment from the trustor to the trustee of the Trust should be executed. This assignment should describe the property with some specificity to adequately evidence the trustor's intent that it be considered a trust asset. The broker or transfer agent can provide you with the assignment form.

2. Bonds. All municipal, city, utility bonds, etc. should be transferred to the Trust. This can be accomplished by contacting the transferring agent for each bond and obtaining the instructions directly from it. Most transferring agents will require the following
 - (a) A completed copy of the "*Stock or bond Transfer Instructions*" form.
 - (b) Sign off on the back of the bond and have the signature bank "medallion guaranteed." (See paragraph 1 regarding securities)
 - (c) A copy of the first and last page of the Trust.

Either take these items directly to the transfer agent or send by certified mail.

3. Real Estate. All real estate should be conveyed to the Trust. This can be easily accomplished by preparing and recording a warranty deed in the county where the property is located re-titling the property as described on page 1.

Unless one is familiar with the blind trust laws in Arizona and the exemption provisions for Affidavits of Real Property Value, it is suggested that you have an attorney prepare all deeds conveying title to real estate to the Trust.

Out of state real estate presents special problems. For this reason, it is advisable to have an attorney licensed in the state of the situs of the real property to assist in conveying title to the Trust.

Any interest in real estate less than absolute ownership, such as an Agreement for Sale or Lease may also be assigned to the Trust. The terms of the Agreement of Sale, Lease or other relevant document should, of course, be reviewed to assure that assignment is permitted. Once again, it is advisable to have an attorney prepare the assignment.

A Promissory Note secured by a Deed of Trust or a Mortgage against real property can also be transferred to the Trust by executing an assignment of the interest in the real estate along with an endorsement to the promissory note. Because of the complexities associated with these documents, it is also advised that an attorney prepare these documents.

4. **Tangible Personal Property.** Since tangible personal property, such as household furniture and furnishings, jewelry, etc. is without any recognized documentation of title, it is not necessary to transfer these assets to your Trust. Items of tangible personal property will be disposed of pursuant to the separate personal property list referred to in your Last Will and Testament.

5. **Bank Accounts.** Generally, your personal checking account need not be transferred to the Trust so long as your account balance does not exceed \$5,000. However, your personal savings account should be titled in the name of the Trust.

All other accounts, certificates of deposits, market accounts, premium accounts, safe deposit boxes, etc. should also be in the name of the Trust, as described on page 1. These assets can be re-titled by sending a letter of instruction institutions where your assets are held or going directly to the bank. If you go to the bank make sure you take a copy of the Trust with you.

For all accounts in the name of the Trust, your personal social security number should be used as the federal identification number for reporting purposes.

WARNING: When transferring bank accounts to the Trust, please be aware of the FDIC insurance limits for each financial institution. If the total of all accounts in any one institution equals or exceeds \$100,000, you should consult with your banker or attorney.

6. **Life Insurance.** In the usual case, insurance proceeds on the trustors' lives will be made payable to the Trust. This can be accomplished by completing a change of beneficiary form and sending it to your insurance company. If you would prefer to make the trust your contingent beneficiary (leaving your spouse, for example, as your primary beneficiary) You will need to complete a change of beneficiary form naming spouse as "Primary Beneficiary" and the Trust as "Contingent Beneficiary" and submit to your insurance company.

If the proceeds of the life insurance are less than \$10,000, it may be advisable to bypass the Trust and name the surviving spouse as the primary beneficiary and the children as the contingent beneficiary.

7. **Individual Retirement Accounts (IRA), Keogh's, and Tax Deferred Annuities.** In most cases, the spouse should be named as the primary beneficiary of a retirement plan of IRA with the Trust or the Children named as contingent beneficiary. This can be accomplished by executing a "Change of Beneficiary Form" and filing it with the retirement plan custodian. For income tax reasons, normally you should not name the Trust as primary beneficiary of an IRA. If your IRA is above \$50,000, you should consult your attorney or tax advisor regarding beneficiary designations.

8. **Series E Bonds.** If a trustor has Series E bonds and desires to retain them, an application made to the Department of Treasury on the Bureau's Form PD 1851,

will result in a reissuance of each bond in the name of the Trust. This application can be obtained in most banks. The original issue date is given on each new bond and no income tax consequences result. Send Form PD 1851 and the bonds by certified mail.

9. Vehicles. Any motor vehicle, motor home, or motorcycle, etc. can be transferred to the Trust by going to the nearest Arizona Department of Motor Vehicles and re-titling the vehicles as described on page 1. Please take a copy of the Trust with you.

As a general rule of thumb, any vehicle with a value of less than \$10,000 need not be transferred to the Trust.

10. Partnership Interest. Any partnership interest you own should be assigned to the trust. To complete the assignment, "Instructions to General Partner" and submit it to the General Partner

11. Safe Deposit Box. You may change the ownership of the box to the name of the Trust by going directly to the bank. Please take a copy of the Trust with you.

II. IDENTIFYING THE TRUST FOR TAX PURPOSES.

Although the Trust is a separate entity, during the lifetime of the trustors the Trust need not apply for a separate identification number. The trustors may continue to use the personal social security numbers as the federal identification number for the Trust. However, upon the death of a trustor, it may become necessary to obtain a separate federal identification number for the Trust. As such, the surviving spouse and beneficiary should seek legal counsel at that time.

III. PROTECTING TRUST ASSETS

Once the Trust Agreement has been signed and assets have been transferred to the Trust, the Trust Agreement is fully operative as to those assets. At this point, there are certain basic steps to be taken by the trustee.

Any assets, which have been transferred to the Trust, which should be covered by insurance, should be so protected. If insurance is already covering a Trust asset, you should consult with your insurance agent or attorney to determine if the policy should be reissued to add the Trust as a named insured on the policy.

Assets such as stocks and bonds, which have been transferred to the Trust, should be placed in a safe place, such as a safe deposit box. If the safe deposit box holds only Trust assets and is in the name of the trustees, there will be no problem in identifying bearer bonds or unregistered securities as Trust assets.

IV. PREPARATION OF SCHEDULE A

A list of all of the assets that have been transferred to the Trust should be prepared, titled "Schedule A", and attached to the Trust document. The schedule A should show property descriptions, account numbers, and any other identifying device to make it clear which assets are owned by the Trust. The Schedule A should also designate each asset as community property or the sole and separate property of a Trustor. Both Trustors must sign the Schedule A. As assets are bought, sold, redeemed and mature, and so forth, the Schedule A should be updated to show the current trust assets.

But remember, the Schedule A is not a legal document. Merely listing an asset on the Schedule A does not give title to the trust. Each asset must be transferred in accordance with these funding instructions before it can be listed on the Schedule A.