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Funding Instructions for Revocable Living Trusts

The revocable living trust is a powerful estate planning tool, but its effectiveness depends on whether it is *fully funded*. An unfunded or partially funded trust may trigger an unexpected probate action and eliminate other potential estate planning benefits of using a trust-based estate plan. These instructions will help you understand how to fund your trust.

- You will make ownership changes to change the title of selected assets from your name as an individual to your name as Trustee of your trust.
- For other assets, such as life insurance and retirement accounts, and in some cases real estate, you will make beneficiary changes to properly distribute those assets upon your death.

Generally, to fund your trust, you must record new deeds for real estate, update account documentation at banks and credit unions, submit new account applications for brokerage accounts, amend articles of organization for LLCs, and complete change of beneficiary forms for retirement accounts and life insurance.

Your financial advisor, accountant, or life insurance agent may need to help you make ownership or beneficiary changes. These instructions will give you general knowledge regarding how to fund your trust, but they do not address every type of funding action. Please email or text me if you have specific questions about how to fund specific assets to your trust.

Titling Assets in Your Name as Trustee

Title to all your currently owned and newly acquired assets (that would otherwise be subject to probate) should be put in the name of your trust. I prefer the following format for titling assets in the name of your trust (although many variations are acceptable):

[Trustee Name/s], Trustee/s of the [Trust Name] dated [Trust Date]

Tax Identification Number for the Trust

If you are acting as Trustee of your trust, you do not need to obtain a separate tax identification number for your trust or file a separate trust tax return. The Internal Revenue Service (IRS) prefers that you use your own Social Security number. Then you can report all the income generated by trust assets on your personal IRS Form 1040. After your death, your trust becomes irrevocable for income tax purposes. It may split into multiple trusts, each of which may be treated as a separate taxable entity for income tax purposes.

How to Use a Certification of Trust

Your estate plan includes a Certification of Trust form that may be given to someone who needs information about your trust in order to complete a transaction or re-title an account. In this document, you state in writing that (1) your trust exists, (2) you are a current Trustee, and (3) you have the authority and power to transact business as a Trustee.

Many financial institutions have their own customized form of Certification of Trust, which you should use if made known to you. If no such form is available, then use the Certification of Trust document included with your estate plan. If you received a USB flash drive with copies of your documents, note that it likely includes a Microsoft Word file so that you can print and sign a new certification (or edit your address if you move). The purpose of the Certification of Trust is to provide essential information about the trust without disclosing confidential details about your estate plan.

Although Arizona law (see A.R.S. §14-11013) eliminates the need for you to supply a copy of the entire trust document to a bank, credit union, brokerage/investment company, or title company, you may encounter a situation where Arizona law is disregarded. If this occurs, and you are amenable to giving a copy of the entire trust document, then do it. But if you prefer not to cooperate, I suggest you use the following approach:

1. Plan A is to formally request what provisions in the trust document the legal department is hoping to examine. Ask, “What particular information does the legal department want to see?” Then you should be willing to provide copies of the appropriate pages from the trust document. This approach usually works if asked in a confident and polite manner. The legal department will often respond by asking for copies of (a) the first, or “title” page, (b) the last, or “signature” page, (c) the article listing each power of the Trustee, and sometimes (d) the successor Trustee provisions.
2. Plan B is the nuclear option. For example, if you have been a customer of the financial institution for a long time and/or have substantial assets on deposit, you might threaten to withdraw your funds and move them to a more cooperative financial institution. This may work very effectively, especially if you communicate this through a banker or financial advisor who knows you well. You can bet that Donald Trump and Bill Gates do not send copies of their entire trust document around to people if you get my point. Just be sure to try Plan A before trying the nuclear option.

The above instructions apply to revocable trusts only. After a death, the successor Trustee should provide a complete copy of the trust to financial institutions and title companies that request it. This is customary and reasonable. However, one of the communication problems that may occur when funding your trust is that an employee you are working with, or the legal department who is relying on incomplete information, assumes the trust is irrevocable and thus demands a copy of the entire revocable trust document.

Instructions for Funding Specific Assets into Trust

Personal Bank & Credit Union Accounts

You should complete and sign whatever documentation a financial institution requires in order to re-title any sizeable bank or credit union accounts, treasury bills, savings bonds, money market accounts, and certificates of deposit, to name yourself as Trustee of those accounts. Although recommended, it is not essential to re-title a personal checking account used primarily for day-to-day household expenses (for example, accounts with daily balance never exceeding \$10,000). But if you choose not to re-title a checking account – perhaps because you do not want to bother with updating direct deposit or auto-debit settings – then I do suggest you name your trust as Pay-on-Death beneficiary whenever possible.

Before you retitle a certificate of deposit (“CD”), consult with a banker to make sure that the financial institution does not consider the change in account name to be an “early withdrawal” that incurs a penalty. Generally, this should not be a problem because your social security number and the trust’s tax identification number are the same.

If your trust names an additional co-Trustee (such as one of your children), be sure to alert the financial institution to this fact.

You should re-title existing accounts, and not transfer funds to new accounts unless your financial institution has a policy requiring new accounts. Although there are some notable exceptions (for example, Chase Bank), most major banks and many smaller banks and credit unions will permit re-titling of existing accounts when (1) the Trustor and existing account owner are the same person, and (2) the trust uses the Social Security number of the Trustor as its tax identification number. If your banker says a new account is required, I suggest you have your banker verify this with management before proceeding. This is not a common policy, unless for example, you are attempting to re-title an individual account into a joint trust with co-Trustees. Then a new account would be expected.

There is also no reason to have the name of your trust on your printed checks. If you re-title an existing checking account, you should be able to continue using the same checkbook without any changes to the wording on each check.

Your estate plan includes a memorandum, “Memo to Banks & Credit Unions Regarding Re-titling of Personal Cash Accounts into Living Trust,” which I suggest you share with your banker when you attempt to re-title accounts into trust.

Taxable Investment Brokerage Accounts (Non-Retirement)

If you hold publicly traded securities (stocks, mutual funds, EFTs, REITs, and bonds) that are already in an investment brokerage account, contact the account custodian and initiate the process of re-titling the account into your trust. The procedure for doing so is roughly the same as the procedure for re-titling a personal cash account. You may have to complete a new account application and present a Certification of Trust in order to change the title.

A new account number may be necessary due to applicable federal laws. If you find this process unduly burdensome, an alternative is to name your trust as Transfer-on-Death beneficiary. This method will achieve probate avoidance, assuming that is your primary objective. But you should

strive to re-title accounts whenever possible as this approach is better in the event you should become incapacitated.

After changing title, your next account statement should confirm the change by referring to you as Trustee in the caption identifying ownership records for the account.

Stocks and Bonds Not Held in Investment Accounts (Non-Retirement)

If you possess stock or bond certificates in paper form, there are two ways to transfer the certificates to your trust.

1. Open a brokerage or investment account in the name of your trust and deposit your original certificates in the account. (You may later have your broker deliver the certificates to you made out in the name of the trust if you wish.) Your future account statements, which will be titled in the name of your trust, will prove your ownership of the transferred stock or bonds.
2. Work directly with the transfer agent for the stock or bond and direct the agent to reissue your stock with your trust named as the new owner.

If you have U.S. savings bonds, go to <www.treasurydirect.gov> for forms and instructions for trading in your bonds.

Real Estate

Re-titling your real property to your trust will require consideration of ownership and tax issues based on the nature of the current title to the property. Usually, the process will require preparing, executing, and recording a new deed for each property. In some cases (for example, when you have negative equity in the property), I recommend the use of a beneficiary deed as an alternative to the usual process of re-titling.

Upon creation of your trust, I will assist with re-titling of your primary residence (and one additional property) as part of the agreed-upon fixed price for the estate plan. For an additional fee, I can assist you with re-titling of additional Arizona properties. If you own a property outside Arizona, I suggest you retain a law firm in the state and county where the property is located or use an Internet-based company like SmartDeeds (www.smartdeeds.com) to complete the task for less than \$150 dollars in many cases.

In order to prepare the new deed, I will need a copy of the current deed to the property and the property address. There is a recording fee of \$30 per property in all Arizona counties.

When you re-title property into trust, I suggest you let your insurance agent know so the trust can be added as an additional insured (aka “endorsee”) to your homeowner policy. Also, if you re-title investment real estate (a property you don’t live in) into trust, and you are still paying the mortgage loan, you are supposed to request permission from your mortgage lender prior to recording the new deed. Failing to do so may trigger the due-on-sale clause. This is not an important issue if you stay current on your payments, so most people do not even bother contacting the lender. If you are concerned about this issue, an alternative to re-titling the property is to use a beneficiary deed naming your trust as beneficiary upon death.

Life Insurance Policies and Annuities

It is a customary and usual practice to name a living trust as primary beneficiary of life insurance policies and individual annuities (for joint annuities, name your spouse as primary beneficiary, then the trust). You should do this unless we have clearly identified a reason not to do so.

An exception may occur if your net worth including life insurance is large enough to trigger an estate tax. Then it may be appropriate to name a separate stand-alone life insurance trust as owner and beneficiary of one or more life insurance policies. This arrangement is referred to as an irrevocable life insurance trust (“ILIT”). This type of trust prevents the death benefits from being included in your taxable estate for estate tax purposes.

In order to name your trust as beneficiary of a life insurance policy or annuity, contact your insurance agent, or financial advisor, or go to the company’s website to obtain the form to change beneficiaries.

Each company will have its own preferred format for designating a trust as the beneficiary. Here is a typical format:

Primary Beneficiary:

[Trust Name] dated [Trust Date]

Contingent Beneficiary:

N/A

Tax-Deferred Retirement Plan Accounts

You should never transfer the ownership of a tax-deferred retirement plan account to your trust. However, it may be appropriate to name a trust as beneficiary.

There are various issues that should be considered simultaneously when naming beneficiaries of a retirement account. I have written a separate article that provides a structured analysis, i.e., a decision tree; for determining whether to name a trust as beneficiary of a retirement account. The article, “Decision Tree for Naming Retirement Account Beneficiaries after the SECURE Act.” is available on my website. This is a summary from the article:

Summary for Spouse Beneficiary:

If married, name your spouse as primary beneficiary of your retirement account **unless** (1) you want to prevent your spouse from disinherit your children or other preferred remainder beneficiaries after your death, which often occurs when family dynamics are disrupted, or your spouse chooses to remarry; or (2) you need to protect the account from a clear and present danger related to your spouse, such as concerns about your spouse’s spendthrift habits, susceptibility to undue influence, or qualification for government-sponsored health benefits.

If one of the above-described exceptions applies, then choose a type of trust to name as beneficiary:

1. Conduit (favors income tax optimization, qualifies for stretch IRA treatment, all withdrawals pass through to spouse, trustee may not accumulate assets in trust, only makes sense if you name a third-party trustee)

2. Accumulation (favors asset protection, subject to usual 10-year liquidation rule, trustee may accumulate withdrawals from account or pass them through to beneficiary, only makes sense if you name a third-party trustee)
3. Charitable remainder (balances both income tax optimization and asset protection, trust assets remain in tax-deferred environment until distributed, trust pays out annuity or percentage amount to spouse for life then to contingent beneficiaries for term of years or life, balance to charity when distribution period ends, spouse may serve as trustee)

Summary for Non-Spouse Beneficiaries:

When naming non-spouse beneficiaries, you should first determine your primary objective regarding how to distribute the retirement account to your beneficiaries:

1. Give outright (no desire to delay, restrict, or protect)
2. Delay for young child
3. Restrict in response to an identifiable clear and present danger
4. Protect from future threats (lawsuits, ex-spouse, debt collectors, etc.)

If GIVE OUTRIGHT, then list the beneficiary names on the standard beneficiary designation form.

If DELAY and account value is more than \$100,000 per beneficiary, then name a type of trust as beneficiary instead:

1. Conduit (favors income tax optimization, qualifies for stretch IRA until beneficiary attains age of majority then usual 10-year liquidation rule goes into effect, all withdrawals pass through to beneficiary, trustee may not accumulate asset in trust, requires third-party trustee)
2. Accumulation (favors asset protection, subject to usual 10-year liquidation rule, trustee may accumulate withdrawals from account or pass them through to beneficiary, no distributions required, requires third-party trustee until a specified age)

If RESTRICT, then choose an *Accumulation* trust to name as beneficiary (same as accumulation trusts above and below, except beneficiary is ineligible to serve as trustee in most scenarios). Conduit and charitable remainder trusts might be feasible, but both require mandatory distributions that would not be restricted.

If PROTECT and account value is more than \$100,000 per beneficiary, then choose a type of trust as beneficiary instead:

1. Accumulation (favors asset protection, subject to usual 10-year liquidation rule, trustee may accumulate withdrawals from account or pass them through to beneficiary, no distributions required, beneficiary may serve as trustee)
2. Charitable remainder (adds income tax optimization, trust assets remain in tax-deferred environment until distributed, trust pays out annuity or percentage amount to beneficiaries for a term of years or life, balance to charity when distribution period ends, beneficiary may serve as trustee)

My desire is to counsel you regarding the best option for your situation, so please reach out to me if you are unsure what to do.

Personal Effects

Tangible personal property refers to such items as household furnishings, appliances and fixtures, works of art, motor vehicles, pictures, collectibles, clothing and jewelry, books, sporting goods, firearms, and other hobby paraphernalia. Your tangible personal property has been transferred to your trust by declaration in the trust document.

Your personal motor vehicles can be titled in the name of your trust by applying for a transfer of title and registration at the motor vehicle department, but I find that most clients prefer to leave their motor vehicles outside their trust for several reasons. First, should they have an accident, the fact that they have a trust could cause the other parties to the accident to assume they have deep pockets and encourage a lawsuit. Second, beneficiaries can usually transfer motor vehicles by using a simple affidavit available from the motor vehicle department. On the other hand, I will always advise re-titling of motor vehicles when your combined equity in those you own outright is substantially more than \$75,000.

If you still owe money on a motor vehicle loan, the lender will not let you re-title it into a trust so don't bother asking.

If you decide to re-title your RV, boat, or motor vehicle in the name of your trust, I suggest you tell your insurance agent to add the trust as an additional insured (aka "endorsee") on your auto policy. This is also recommended for your personal umbrella liability policy if you have one.

Small Business Ownership Interests

If you own all or a portion of a small business, I recommend that you re-title your ownership interest in the trust. This task is usually completed by written assignment and is not difficult unless the bylaws or operating agreement of your company add additional requirements or conditions to this task. I may be able to help you prepare the required documentation for an additional fee.

If your business is an Arizona limited liability company ("LLC"), you must file an amendment of the Articles of Organization with the Arizona Corporation Commission ("ACC"). The amendment form is available free of charge on the ACC website and is something you should be able to do yourself. The filing fee is \$25.

If your business is an Arizona corporation, you should cancel any share certificates held in your personal name and re-issue them in the name of your trust.

If your business is an Arizona partnership, you may need to file an amendment of the partnership records with the Arizona Secretary of State.

If your business is a sole proprietorship, a written assignment that identifies each asset of the business is enough.

Mortgages, Notes, and Other Receivables

If you have loaned money to anyone, you should assign your interest as lender to your trust by a written document and notify your debtor of the assignment. For a nominal fee, I can prepare an assignment form for each interest.

Oil, Gas, and Mineral Interests

The method of transferring interests in oil, minerals, and gas depends on whether you own or lease the interests. Generally, if you own the interests, you should record a deed that re-titles your interests to your trust. If your interest is a lease, you should assign your rights as a lessee to your trust by a written assignment. The recorded deed or assignment should be submitted to the administrator for your ownership interests so that its records can be updated accordingly. The administrator may have additional forms for you to complete, and likely, documentation fees to pay.

Qualified Tuition Plans (“529 Plans”)

It usually makes sense to re-title a 529 college savings plan into your trust, but it is important that your trust contain specific language enabling the Trustee to manage the account. Ask me to check if you are unsure. If you find the process of re-titling the account too burdensome, it is acceptable to name your trust as successor owner upon your death. Your 529 plan custodian may refer to this designation by a different name, but all custodians should permit you to name a successor owner.

Optional Third Party Funding Services

Funding your trust accurately and completely is crucial if the benefits and protections of the trust are to be effective. This task has the potential to be challenging and frustrating to those unfamiliar with the process. If you feel overwhelmed, but still want to use a revocable living trust, I suggest you reach out to PBO Solutions for third-party assistance. <<https://www.pbosolutions.com/client-direct-funding.html>>

Summary of Funding Instructions

Re-title into living trust:

1. Personal banking accounts (checking, savings, etc.) *
2. Taxable investment brokerage accounts
3. Stocks and bonds not held in investment accounts
4. Real estate (personal residence, rental properties, and vacation homes)
5. Small business ownership interests
6. Motor vehicles (but only if combined value of paid-off motor vehicles exceeds \$75,000)

Name living trust as primary beneficiary:

1. Life insurance policies and annuities

Name living trust as beneficiary (if single, primary; if married, secondary):

1. Tax-deferred retirement plan accounts (IRA, 401k, TSP, etc.) **

* For checking/savings accounts with less than \$10,000 average balance, it may be appropriate to name pay-on-death beneficiaries instead.

** For retirement accounts, it is usually better to name individuals or charities as beneficiaries unless your intent is to restrict or protect inheritance.