

## **Transfer of Assets to the Trustee of A Revocable Trust and Operation of the Trust**

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**GENERAL** The purposes of this memorandum are to outline the steps to be taken in transferring assets to the Trustee of a Revocable Trust (either at the inception of the trust or thereafter) and to review the operation of the trust after its initial funding.

Since one of the major purposes of using a Revocable Trust as the main dispositive instrument of an estate plan is to avoid probate of the assets of the trust at death, it is critically important that any assets as to which probate is to be avoided **BE OWNED BY THE TRUSTEE OF THE REVOCABLE TRUST AT DEATH AND NOT IN THE GRANTOR'S NAME.**

In the event a client owns any assets in their name at the time of their death, their "pour-over" Will, which was prepared as a part of their estate plan, provides that those assets (other than tangible, personal property) are to be added to the assets of the trust, so that they will be distributed as provided in the trust. However, all such assets will be subject to probate at death before they are added to the trust, unless, under the applicable state law in effect at your client's death, they are of such nature or value that they are either exempt from probate or eligible for some form of summary probate proceeding.

Because any assets which a client may own in their own name at the time of their death will be subject to probate at your client's death, even though they will ultimately be added to the assets held in the Revocable Trust, your client should carefully and continually review those assets held in their own name (whether now owned or acquired later) to be sure that such ownership is appropriate in light of their desire to avoid probate at death. As advisers to our clients, we can, of course, review the advisability of retaining ownership of any such assets in their name alone, putting them in joint names with another individual or transferring them to the Trustee of a Revocable Trust.

Legal title (record ownership) of any assets as to which a client desires to avoid probate at death, and which are therefore to be owned by the Trustee of your Revocable Trust, **MUST BE TRANSFERRED TO THE TRUSTEE**, either upon creation of the trust or some time thereafter, during your lifetime.

### **TRANSFER OF ASSETS TO THE TRUST**

Specifically, with regard to transferring ownership of assets to a Trustee, please note the following:

#### 1. Bank Accounts.

With regard to any bank (or other savings institution) accounts or certificates, the name on the account or certificate must be changed to reflect its ownership by the Trustee, and a new passbook or certificate (if applicable) must be issued in that name. You or your client should check with any such institution before attempting to transfer an account or saving certificate to verify that there will be no penalty for early withdrawal because of the transfer.

#### 2. Corporate Stocks.

Any corporate stocks (whether of publicly held or privately held corporations) or any mutual fund shares issued in certificate form must be registered in the name of the Trustee, and a new certificate or certificates issued reflecting that ownership. Please note that a client may be able to combine all certificates representing shares of one corporation into one new certificate registered in the name of the Trustee of the trust. However, you might want to consider advising your client to ask for a series of new certificates registered in the name of the Trustee, one corresponding to each old certificate, so that they will be able to trace their income tax basis in any shares which might be sold by the Trustee during their lifetime. Be aware too, that transfers made by using a Power of Attorney typically take longer because of the procedural safeguards insisted on by some transfer agents.

For corporate stock, bonds or mutual fund shares which are held in "street" name by a broker or in bookkeeping entry form, the name on the account must be changed to reflect its ownership by the Trustee. Many brokerage houses will request a copy of the Trust Agreement (or the first and signature pages only) before re-registering the account in the name of the Trustee.

### 3. Bonds.

Any registered bonds or debentures (whether issued by a publicly held corporation, a privately held corporation, the United States Government, an agency, any state or subdivision thereof) must be registered in the name of the Trustee and a new bond or debenture reissued in the Trustee's name.

Unregistered or bearer bonds or debentures (typically issued by the United States government, an agency or a state or municipality) can generally be converted into registered form and a new bond and debenture issued in the name of the Trustee.

For unregistered or bearer bonds or debentures, which are not to be converted into registered form, there must be some other indication that they have been transferred to the Trustee in order to avoid probate of them at your death. Typically, this is done by executing and delivering to the Trustee a transfer document, listing the bearer securities being transferred to the Trustee, which is retained by the Trustee with the permanent records of the trust.

Any new such instruments ought to be purchased directly in the name of the Trustee, and the confirmation or other purchase slip retained with the instrument, to prove its ownership by the Trustee.

### 4. Tangible Investment Assets

A similar problem exists with respect to any tangible investment assets (such as gold bullion, silver coins, art objects, etc.) which are to be owned by the Trustee of your trust, since there is likewise no proof of registration or ownership of those assets. Their transfer to the Trustee ought to be handled by an instrument of assignment in the same way as bearer bonds or by a Bill of Sale for no consideration. Again, any new such investment ought to be made by the Trustee and the purchase confirmation in the Trustee's name retained to prove ownership.

### 5. Partnership Interests

Any partnership interest (whether in general partnership or in a limited partnership) must be registered in the name of the Trustee and a new certificate of partnership interest issued or an amendment to the partnership agreement be executed to reflect ownership of the interest in the name of the trustee. Be certain you or your client obtain a copy of the underlying partnership agreement and comply with any transfer restrictions.

Note that some partnerships will require that you pay for the preparation of the amendment and related certificate. In some cases, such fees are substantial and, accordingly, you should determine any such cost in advance of a transfer of a partnership interest to your trust.

### 6. Real Estate

With regard to real property or any interest in real property (whether your personal residence or investment real estate), legal title must be transferred to the Trustee by means of an executed, notarized and recorded deed. It is important to carefully comply with any state law requirements of the state where the realty is located in any such transfer.

Before transferring any such real estate, you should be careful to determine whether any existing mortgage or deed of trust secured by that real estate would be affected by the proposed transfer and specifically whether the proposed transfer would trigger any "due on sale" clause in the mortgage or deed of trust. If there is a mortgage or deed of trust, you will usually need the written consent of the holder of the mortgage

or deed of trust before you can transfer the property to the trust. Alternatively you can send a letter to the mortgage holder explaining why you are transferring the property and stating that unless you hear otherwise in ten (10) days, you assume consent.

## 7. Life Insurance

Ownership of life insurance policies is generally not transferred to a revocable trust, but the death benefits under insurance policies can be made payable to the Trustee of your trust, if desired. Change of beneficiary forms from the insurance companies must be obtained, filled out, executed and recorded with the insurer to name the Trustee of your trust as the revocable beneficiary of any such benefits.

## **OPERATION OF THE TRUST**

Once an asset has been transferred to the Trustee of a Revocable Trust, all transactions regarding that property must be handled by the Trustee. For instance, once corporate stock has been transferred to the Trustee of a Revocable Trust, only the Trustee has the legal power to sell, mortgage or assign those shares of stock or vote them at a shareholder's meeting.

A client may transfer additional assets to the trust at any time after the initial transfer, either by purchasing and/or registering those assets in the name of the Trustee or by delivering them to the Trustee with appropriate instructions of transfer for re-registration in the Trustee's name (or other transfer documents if the asset is of a non-registered type).

A client may withdraw property from the trust at any time, but only in compliance with the provisions of the trust. In addition, the trust can typically be amended in any way or can be revoked in its entirety; again, in either case, only by complying with the procedural requirements specified in the Trust Agreement.

Because the Trust Agreement is revocable, the client will be treated as the owner of the trust for income tax purposes. Accordingly, the client will continue to report all items of trust income, deductions and credits as if the client had received or paid them directly. The trust will be ignored for income tax purposes. If the grantor is a Trustee or Co-Trustee, the trust will not have its own taxpayer identifying number (instead, it will use the grantor's social security number) and no tax return will need to be filed for the trust. Treasury Regulation 1.671-4. If the client is not the sole Trustee or a Co-Trustee of the trust, the trust will have its own identifying number and will be required to file its own tax return, but again, all trust income and deductions will be reported by the client.