

The Revocable Trust

There are a few things you should know about the Revocable Trust and how it works during the lives of the person or persons who created it.

What is a “Revocable Trust”?

When the Trust Agreement was executed, a new legal relationship was created among the persons named in the Trust. These persons are in three roles.

- The first is the role of the “Grantor,” which is the person or persons who create the trust and transfer assets to it.
- The second is the role of the “Trustee,” who manages the Trust, decides about its assets, and in whose name title of trust assets is held.
- The third is the role of the “Beneficiary,” who benefits from the Trust.

Amendment

This memo describes a “revocable trust” or, as it is often referred to, a “living trust.” The correct legal term is “revocable trust” because the grantor retains the power to amend or revoke the trust. The grantor holds this power as long as he or she is alive and has the mental capacity to do so.

The power to amend means that the grantor can change any of its terms, including such things as the names of the successor trustees and the names of the persons who are to receive the trust assets upon the grantor’s death. If the grantors are husband and wife, unless limited in some way, usually the surviving spouse may do whatever he or she likes with the trust assets.

There are certain formalities that must be respected if the grantor wishes to change the terms of a revocable trust. Amending the trust by writing on it, scratching in the margins, etc., is almost always a bad idea. Give us a call if you wish to amend the trust so that the proper steps can be taken.

Funding

After the trust is signed (“executed,” in lawyer-speak), the next step in the implementation of the trust is *funding the trust*. Whatever purpose is to be served by the trust – such as probate avoidance, asset management, protection of estate for heirs, or tax planning – can be affected only for trust assets. This is sometimes called “funding” or “titling” or “transferring” the grantor’s assets to the trustee of the trust.

Another major reason for establishing the trust – avoidance of conservatorship – can be achieved only if the trustee has trust assets under his or her management and control. If the grantor becomes incapacitated, the trustee will continue to manage the grantor’s assets without court involvement or other difficulty.

Assets not transferred to the trustee may not avoid probate. A grantor often will have executed what is called a “pour-over will,” however, so that at the grantor’s death non-trust assets will be transferred, or “poured over”, to the trustee of the revocable trust and distributed by the trustee in accordance with the trust. (More on this on

Page 4.)

NOTE: Trust assets must be titled in the name of the trustee, not the trust itself.

The right way:

John Doe and Mary Doe, Trustee under the Revocable Trust Agreement of John Doe and Mary Doe, Grantor, dated m/d/y

OR (using a bank's abbreviations)

John Doe and Mary Doe, Trustees, udt dated m/d/y ["udt" = "under declaration of trust"]

The wrong way:

John and Mary Doe Revocable Trust, dated m/d/y

The Trust document itself gives the exact wording, identifying the names of the Grantor and the Trustee and the date of the trust.

NOTE: Because the trust is revocable, trust assets are held under the grantor's Social Security number. A tax ID number is *not* necessary.

How Assets Are Transferred or Titled to the Trustee of the Trust

The Residence: In most cases the Grantor will title the home in the name of the trustee. This will not trigger a reassessment by the Tax Assessor because it is not a change of ownership for property tax purposes. There will be no transfer tax. The transfer does not need to be reported to the homeowner's insurance company or to the mortgage company.

Cooperatives or Condominiums: A grantor with such an ownership interest should ask the manager of the cooperative or condominium how it should be transferred to the trustee.

Other Real Property: A new deed is re-

quired for every other piece of real property.

Savings Accounts and Certificates of Deposit: Most banks should be familiar with transferring accounts into the name of a trustee of the revocable trust. Some may require a copy of the Trust Agreement or an Abstract of Trust. The grantor should keep a copy of any new card or document signed to effect the change.

Checking Accounts: While such accounts can be titled to the trustee, some people prefer that their household checking accounts remain "outside the trust," mostly so the world is not put on notice at the grocery store of the existence of the trust. Avoid carrying large balances on the checking and name the trustee of the trust as the Pay on Death (POD) beneficiary of the account.

Keeping this account in the grantor's name instead of the trustee sometimes avoids problems with automatic deposits (Social Security) and withdrawals (the phone company).

Life Insurance Policies: The life insurance company or agent should be asked to furnish a "Change of Beneficiary" and "Change of Ownership" forms. Otherwise, any life insurance benefits or cash value could be considered a part of the probate estate at death. The grantor should name the owner and the beneficiary to be the trustee of the trust. Because these changes are not effective until they are received and acknowledged by insurance companies, this step should be taken as soon as possible.

Another option is simply to name a particular individual as a beneficiary. This means that the proceeds of the policy will not go into the trust upon the insured's death.

Annuities are similar to life insurance policies. These should not present a problem

for purposes of probate avoidance provided that no lump sum benefits (as opposed to benefits payable to the annuitant) are paid to the estate of the annuitant.

Insurance on Property Held by the Trust: Insurance policies that provide for payments to be made if there is loss or damage on property held in trust (such as the home) should be amended. The trustee and the trust should be named as additional insureds, using the “name” suggested on Page 2.

Stock/Stock Certificates: The transfer of stock to the trust must be accomplished by changing title on the stock certificates themselves. For existing accounts, most brokers will make this change for free or for a small charge. If, however, shares are held only through a brokerage account, it will only be necessary to change the title on the brokerage accounts, not to the shares themselves.

Brokers should be furnished a copy of the Abstract of Trust or asked what instruments apart from the entire agreement will be needed to effect the changes.

Stock in closely held corporations can be changed by having the secretary of the corporation issue certificates in the name of the trustee as listed on Page 2.

Partnerships: Partnership interests can be complicated. A limited partnership agreement or a general partner may indicate what is needed to transfer the interest.

Promissory Notes: A promissory note is assigned to the trustee of the trust by an endorsement, like on a bank check, similar to the following:

Pay to the order of John Doe and Mary Doe, Trustee under the Revocable Trust Agreement of John Doe and Mary Doe, dated ____.

Dated: _____.

Name: _____ [Signature of Named Payee]

The mortgage or the deed of trust securing payment of the note should also be assigned to the trustee. If the note is in default, the assignment is then recorded.

IRAs: IRAs *must* be held in the name of the individual who created the account. Beneficiaries are named in a “designation of beneficiary” provision on a form provided by the financial institution. Individuals as beneficiaries may have a few more tax elections available to them than the trust will have. Note, however, that the form of the IRA and the beneficiaries named will require thoughtful consideration of what is right for the IRA owner.

Retirement Benefits: Retirement benefits require special consideration since both the form of benefit and the choice of beneficiary affect estate plans and can have significant tax consequences.

We recommend that our clients consult with the retirement plan administrator about those options available now and in the future.

Ordinarily you should first designate an individual as beneficiary of qualified plan benefits. The trust can be the contingent beneficiary. Again, this is accomplished by naming the trust in a designation of beneficiary form.

Automobiles: At this time we do not recommend that any motor vehicles be titled to the trustee.

Other Personal Property: Titled property such as airplanes, boats; or copyrights, patents, and royalties can be titled to the trustee of the trust.

Personal property items that are very valuable i.e. jewelry, furs, art objects, etc., may avoid probate by being transferred by a general assignment with particular descrip-

tions of valued items and a provision to cover after-acquired items.

Administration of the Trust

The trustee can do anything the trust lets the trustee do. Trustee powers are spelled out in the trust agreement. If not, the trust can be amended; or the attorney-in-fact under a Durable Power of Attorney may be authorized to amend the trust.

Income Tax Returns: Because the trust is revocable, the Internal Revenue Service regards the trust as transparent for income tax purposes. Trust assets are invested under the grantor's Social Security number.

There will be no income tax to be paid by the trustee as long as the grantor is living. The grantor will continue to file an individual income tax return as has always been done in the past.

If, however, the grantor becomes disabled or incapacitated and the trust cannot be amended or revoked, the trust will become an irrevocable trust, and the successor trustee will take over.

The successor trustee will obtain a tax ID number. When the number is received, it should be made known to the accountant or tax return preparer as it will be used on the tax information return to be signed by the trustee.

Record Keeping: We do not believe that any extraordinary record keeping is necessary beyond that which would ordinarily maintain. It is important that the trustee keep a schedule of trust property separate from property that may not be in the trust. Once changes that are recommended in

this letter are made, the trustee will receive monthly and other account statements in the name of the trust. Information received from the trust stockbroker or other source of financial information should also be adequate.

Future Changes in Trust Assets: If the trustee should subsequently dispose of a listed asset, it may be removed from the schedule by keeping a separate schedule and indicating its disposition and the date in the margin.

The schedule of trust assets should be reviewed at least annually when income tax returns are prepared.

Pour-Over Will

To make sure your trust "works" (to get probate avoidance), all or most of your probate assets will be owned by the trust and not be subject to disposition by your will. Nonetheless, a pour-over will has been written to provide for the disposition of any assets (other than tangible personal property) which, either by design or inadvertence, have not been transferred into the trust. Tangible personal property may not have been transferred to the trust.

The Will's only effect is to transfer these assets to the trust in order that they might have coordinated administration and disposition. If all of these assets are effectively owned by the trust, in the usual case, probate administration under the will should not be required. Property must be held in the name of the trustee(s) since any property held in joint tenancy, tenancy-in-common or any other form will not be considered to be an asset of the trust.