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FUNDING REVOCABLE TRUSTS

What it Means to “Fund” a Revocable Trust

After an individual (the “grantor” also known as the “settlor” or “trustor”) creates a revocable trust, the next step is to implement the trust by “funding” it. “Funding” the revocable trust simply means transferring ownership of assets owned by the grantor as an individual to the trustee of the revocable trust. Funding a trust also sometimes refers to designating his or her trust as the beneficiary of life insurance, retirement plans and other similar arrangements.

Why a Revocable Trust Should Be Funded

In most instances, a grantor should transfer all assets in his or her own name to his or her trust to take advantage of the benefits of a revocable trust. Important benefits of a revocable trust include:

- Continuous management of property in the event of disability.
- Avoidance of the costs, delays and publicity of possible judicial proceedings such as conservatorship, guardianship, probate and ancillary probate proceedings.
- Flexibility in disposing of non-probate assets.

Many clients believe that if they simply set up a revocable trust, all of the above benefits will follow automatically. Clients often forget, however, that only what is held in the name of the revocable trust avoids probate and ancillary probate at death and formal conservatorship/guardianship in the event of disability. In addition, naming a revocable trust as the beneficiary of certain non-probate assets (such as life insurance proceeds, annuities and death benefits under retirement plans) will ensure that these assets pass at death in accordance with the terms of a revocable trust. (Note, however, that the tax consequences of such actions must be examined.) Typically, the full benefit of a revocable trust will be realized only if most of the assets have been transferred into a revocable trust during the grantor’s lifetime.

Further, for married couples, it is desirable for each spouse to have assets equal in value to his or her estate tax exemption (currently \$1,000,000, and increasing to \$3,500,000 by 2009) in his or her trust (or payable to his or her trust) at death. This will allow both spouse’s estate tax exemptions to be fully utilized, regardless of the order of death. Assets held in joint tenancy with rights of survivorship are not subject to the terms of the revocable trust and, therefore, are not available to shelter assets utilizing the estate tax exemption. Accordingly, spouses may wish to divide joint tenancy assets and transfer them to each spouse’s revocable trust. A grantor may also wish to transfer assets held in one spouse’s name to the other spouse’s revocable trust. Grantors should keep in mind, however, that any assets transferred to a spouse or a spouse’s trust

become a spouse's sole property. The spouse then can sell or give away the property or claim it in a divorce proceeding.

How to Fund a Revocable Trust

Funding a revocable trust will involve the team effort of the grantor and his or her professional advisors, such as an attorney, banker, stock broker, insurance agent, financial planner and accountant. It may be advisable to have a trusts and estates attorney review the work of other professionals who have assisted in the funding process to make certain the funding requests have been completed accurately and in accordance with the grantor's overall estate plan.

The method of transfer of a particular asset will depend on the asset type. The usual form of transfer, however, is a transfer from the grantor to "[NAME OF TRUSTEE], as Trustee of the [NAME OF REVOCABLE TRUST], dated [DATE OF SIGNING]."

Real Estate. A deed is required to transfer real estate. If real estate is held in joint tenancy or tenancy by the entirety (joint tenancy between spouses), it need not be transferred to the trust, unless the real estate needs to be used to fully utilize the grantor's or the grantor's spouse's estate tax exemption. Because jointly held property passes directly to the surviving joint owner by operation of law, such property will not be subject to probate at the first spouse's death. Thereafter, the surviving spouse should transfer the property to his or her revocable trust to avoid probate of the property at the surviving spouse's death. At a minimum, real estate located outside a grantor's state of legal residency should be placed in the surviving spouse's revocable trust to avoid a separate probate proceeding in the state in which the real estate is located.

For spouses who own their home as tenants by the entirety, the home is protected from the judgment creditors of one spouse, which is a protection not offered by a revocable trust or by joint tenancy property. If the debtor spouse dies first, the lien cannot be enforced against the property. Of course, if the non-debtor spouse dies first, the lien could be enforced. Married couples should therefore weigh the benefits of keeping the home in tenancy by the entirety and later transferring the home to the surviving spouse's revocable trust.

If the real estate is subject to a mortgage, approval of the transfer to the trust should be obtained from the mortgage lender before any transfer of the property. This approval may be necessary under a mortgage to avoid acceleration of the balance due under the mortgage.

Retirement Benefits. If the grantor is married, to maximize income tax savings opportunities, the grantor usually should name his or her spouse as the primary beneficiary at death of individual retirement accounts (IRAs), profit sharing plans, pension plans and other retirement benefits. A different beneficiary may be appropriate in some cases, particularly if the grantor would not otherwise have the estate tax exemption amount in his or her trust.

If the grantor decides to name his or her spouse as the primary beneficiary of retirement benefits, the grantor should name the revocable trust as the contingent beneficiary, in the event the grantor's spouse does not survive the grantor. The form of beneficiary designation is as follows: "the then acting Trustee of the [NAME OF REVOCABLE TRUST], dated [DATE OF SIGNING]."

The Trustee of the grantor's IRAs can provide the beneficiary designation forms for the IRAs. The grantor's employer should provide beneficiary designation forms for other retirement plans. When beneficiary designations are submitted, the grantor should request a written acknowledgement that the designations have been processed.

Life Insurance. If the grantor does not have an irrevocable life insurance trust, the beneficiary designation of any life insurance policies should be changed to "the then acting Trustee of the [NAME OF REVOCABLE TRUST], dated [DATE OF SIGNING]." A life insurance agent or the local office of each company can provide change of beneficiary forms. The grantor should complete the forms and send them to the insurance companies and request confirmation of the changes in the beneficiary designations.

If the grantor has an irrevocable life insurance trust, the grantor should discuss with his or her lawyer the appropriate beneficiary designations for the life insurance policies. (See, "Irrevocable Life Insurance Trust" Article)

Registered Securities. If securities are held in a brokerage or custody account, the account should be re-registered in the name of "[NAME OF TRUSTEE], as Trustee of the [NAME OF REVOCABLE TRUST], dated [DATE OF SIGNING]."

For other securities, a stock or bond power should be signed in front of a bank officer or stock broker, who must then guarantee the signature. Each stock or bond certificate should be sent to the appropriate transfer agent by registered mail. The certificates should be insured to cover the cost of the bond that must be paid if the certificates are lost and replacement certificates obtained. Stock or bond powers should not be signed in blank. A stock broker usually can assist with this process.

Money Market Funds, Mutual Funds and Agency Accounts. Each money market and mutual fund or agency account should be notified and directed to re-register the fund or account in the name of "[NAME OF TRUSTEE], as Trustee of the [NAME OF REVOCABLE TRUST], dated [DATE OF SIGNING]."

Bank Accounts. Personal or household bank accounts may be left outside of the trust if desired. All other funds should be placed in a new bank or money market account in the name of "[NAME OF TRUSTEE], as Trustee of the [NAME OF REVOCABLE TRUST], dated [DATE OF SIGNING]." The necessary forms may be requested from the desired banking institution.

Certificates of Deposit. Certificates of deposit should be re-registered in the name of "[NAME OF TRUSTEE], as Trustee of the [NAME OF REVOCABLE TRUST], dated [DATE OF SIGNING]." Before directing the bank to re-register the certificate, it should first be confirmed with the bank that this change will not be treated as a premature surrender of the certificate that will cause a loss of interest. If such a lost interest penalty will be assessed, the certificate should not be re-registered. Rather, wait until the certificate matures and then invest the proceeds in a new certificate in the name of "[NAME OF TRUSTEE], as Trustee of the [NAME OF REVOCABLE TRUST], dated [DATE OF SIGNING]."

Other Assets. Other assets, such as partnership interests or valuable antiques or art work, also can be transferred to the trust.

Future Investments. All future investments to be held in the revocable trust should be registered in the name of “[NAME OF TRUSTEE], as Trustee of the [NAME OF REVOCABLE TRUST], dated [DATE OF SIGNING]” as indicated above.

What Else the Grantor Should Keep in Mind

Record Keeping. As a part of the funding process, written confirmation should be obtained that the various funding requests have been completed. In addition, current copies of account statements, change of beneficiary forms, deeds, assignments and other similar written evidence showing the trust as the owner or the beneficiary should be compiled and kept current, as the case may be. In the event of disability or death, such an inventory will prove to be invaluable to the grantor’s professional advisors, the successor Trustees, and family members.

Taxpayer Identification Number. During the funding process, many financial institutions may request the revocable trust’s taxpayer identification number. The revocable trust is not a separate taxpayer and will not have its own taxpayer identification number. Therefore, the Social Security number of the grantor should be used as the trust’s taxpayer identification number. In addition, the grantor’s Social Security number will be utilized for reports of income from all bank accounts and other assets held in the trust.

Copies of the Trust Documents. In making some of the asset transfers or changes in beneficiary designations, or in dealing with trust investments, financial institutions may ask for a copy of the trust document. In making this request, the institutions want to make sure the trust exists, who the proper Trustee is, and whether the Trustee has the power to take the action in question. The institutions have no need to see the dispositive provisions of the trust, as the trust instrument is a private document. Therefore, the dispositive provisions of a trust may be kept confidential by supplying the institutions with only the relevant pages of the trust document or a document certifying the trust provisions. Such a document includes a certification by an attorney stating that the trust is in full force and effect and is attached to copies of relevant pages of the trust document. Relevant pages of the trust document include:

- the first page of the trust identifying the name of the trust, as well as the grantor;
- the provisions naming the original Trustee and successor Trustees of the trust;
- the provisions enumerating the powers of the Trustee, specifically those dealing with the transfer of the particular asset type in question; and
- the signature page (and notary page) showing execution and the date on which the trust was signed.

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Please contact Albertson & Davidson, LLP at (951) 686-5296 for further information regarding funding revocable trusts or any other estate planning options.

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