

FUNDING YOUR TRUST

INTRODUCTION

You have executed a living trust as a part of your estate planning. In order for your trust to effectively meet your estate planning goals and to avoid probate of your assets, it is critical that your assets be titled in the name of your trust. The process of transferring your assets into your trust is referred to as “funding your trust.” The purpose of this Memorandum is to increase your understanding of what actions you will need to take in order to fund your trust.

1. TITLING ASSETS IN YOUR NAME AS TRUSTEE

Title to all of your currently owned and newly acquired assets should be put in the name of your trust. The following format should be used for titling assets in the name of your trust:

CLIENT 1 and CLIENT 2, Trustees of [REDACTED] TRUST, dated [REDACTED], 2021, and any amendments thereto.

2. USING YOUR CERTIFICATION OF TRUST

As you put property into your trust, the people involved in this process will often want to know four basic things about your trust – (1) whether it is really your trust; (2) that you are one of its trustees; (3) that you have the authority to act on its behalf; and (4) that the trust is valid. By giving them a copy of the Certification of Trust, you can answer all of these questions without giving them a copy of the entire trust, which contains personal information regarding the disposition of your assets.

Most financial institutions have their own trust certification forms for you to fill out. If the institution you are dealing with does not have such a form, you should provide them with a copy of your Certification of Trust. Your Certification of Trust provides only the information that the institution needs to see without disclosing confidential details.

3. YOUR TAX IDENTIFICATION NUMBER

Because your trust is a revocable living trust, it is not considered a separate taxable entity for federal and state income tax purposes. Accordingly, solely for income tax purposes you will continue to be treated as the owner of your assets after they have been transferred into the trust, and the trust will not need to obtain its own tax identification number. You will continue to use your social security number on all accounts opened in the name of the trust. When transferring securities or other assets into your trust, you may be asked to sign a Form W-9: *Payer's Request for Taxpayer Identification Number*. This form should be completed using your social security number.

INSTRUCTION FOR TRANSFERRING SPECIFIC ASSETS

Different types of assets are transferred to your trust in different ways. The following section will outline the general funding procedures for a variety of asset types as well as some special issues that you should be aware of. This list is not meant to be exhaustive; it is simply a guide for the most commonly held assets. If you have assets that are not listed below, and would like to discuss the funding procedures for such assets, please let us know. We would be happy to assist you.

1. CASH ACCOUNTS

You should instruct your financial institutions by letter or in person to change the title to any sizeable bank accounts, money market accounts and certificates of deposit, as well as cash equivalents such as treasury bills, to your name "as trustee" of your trust. It may also be necessary to sign new signature and ownership cards to complete the process. If your trust has more than one trustee, be sure to give each trustee signature power with respect to each account. You need not change the title on any small joint or other checking accounts used primarily for household expenses.

Before you re-title any certificates of deposit, however, you should consult with a bank officer to make sure that the 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 tax identification number for the account will remain the same.

Please note that re-titling your checking accounts *does not* require you to have the name of your trust printed on your checks. There is no legal reason to have the name of your trust on your printed checks unless you want to. Be sure to ask your bank to continue to print your individual name on the checks if you don't want the trust's name to appear.

2. INVESTMENT ACCOUNTS

If you hold publicly traded stocks and bonds that are already in brokerage or investment accounts, contact your brokers or custodians and direct them to change the title of the accounts to the name of your trust. The procedure for doing so is exactly the same as the procedure for re-titling cash accounts described above. You may have to complete new account applications and provide them with a copy of your Certification of Trust in order to change the title. Title to the accounts should be in your name "as trustee" of your trust.

3. STOCKS AND BONDS NOT HELD IN INVESTMENT ACCOUNTS

If you possess original stock or bond certificates, there are two ways to transfer the certificates to your trust:

- Deposit your original certificates into an existing or new brokerage or investment account titled in the name of your living trust. If you wish, you can then have your broker obtain new certificates in the name of the trust. Your future account statements, which will be titled in the name of your living trust, will prove your trust's ownership of the transferred stock or bonds.
- Contact the transfer agent for each of the companies that issued your certificates and ask them to reissue certificates with your living trust named as the new owner.

4. EMPLOYEE STOCK OPTIONS

Transferring or assigning stock options you received in connection with your employment requires a careful analysis of the tax and legal issues. We recommend you contact your attorney and your company's stock plan administrator to inquire about your choices in assigning your options to your living trust. If you would like us to assist you, we would be happy to do so on an hourly fee basis.

5. TANGIBLE PERSONAL PROPERTY

Tangible personal property includes such items as household furnishings, appliances and fixtures, works of art, motor vehicles, pictures, collectibles, personal wearing apparel and jewelry, books, sporting goods, and hobby paraphernalia. Your tangible personal property has been transferred to your living trust through your Assignment of Personal Property, which is a blanket assignment of all of your tangible personal property. Pursuant to the terms of your trust, items of tangible personal property are to be distributed as directed in your Personal Property Memorandum. You can change and update your Personal Property Memorandum without legal assistance. Be sure to sign and date the Memorandum, as the most current will be controlling. Please remember that this is the only document within your estate planning documents that you can change or modify on your own.

6. RETIREMENT PLANS

You should never transfer the ownership of a qualified retirement or pension plan or individual retirement account to your living trust. Instead, if your plan provides for pre or post-retirement death benefits, our general recommendation is that you choose from among your spouse, children, or partner in naming the primary and contingent beneficiaries for your plan benefits rather than naming your trust.

Making the proper beneficiary designations for your retirement plan benefits involve many complex tax and family issues. It is therefore extremely difficult to make a generic recommendation without careful consideration of your individual situation. You have many trade-offs to consider in naming your beneficiaries – tradeoffs that affect your required minimum plan distributions and the taxation of your benefits after your death.

If you would like to discuss the issues and solutions for designating your retirement plan beneficiaries to best match your unique estate planning objectives, we would be pleased to assist you.

7. LIFE INSURANCE POLICIES

Life insurance policies do not necessarily need to be transferred to your trust, as life insurance policies are not subject to probate. It is important to remember, however, that while life insurance proceeds are not subject to income tax, they are subject to federal and state estate taxes. To avoid estate taxation of your life insurance proceeds you may want to consider creating an irrevocable life insurance trust to hold your life insurance policies. By consulting with us we can help you determine the proper ownership and beneficiary designation for each policy.

If you are considering naming your living trust as the beneficiary of a policy, here are several points you should consider:

- (1) Your policy beneficiary designation, and not your will and living trust, will control who receives the proceeds of the policy.
- (2) If you designate your living trust as the primary beneficiary of your life insurance policies, the distribution of the policy proceeds will be governed by the terms of your living trust. In order to make your trust a beneficiary of your life insurance policy, we recommend you contact your insurance agent, who can either make the necessary change for you or provide you with a new beneficiary designation form for you to complete.
- (3) If you wish to name your living trust as a beneficiary of your life insurance policy, we recommend that you consider making it the secondary beneficiary with the primary beneficiary being your spouse or another individual.

8. MONIES OWED TO YOU

It is not uncommon for individuals to loan money to a child or to a third party. Often these loans are memorialized in a written promissory note that specifies the terms upon which the loan will be repaid. Because this promissory note is often the only legally binding documentation evidencing the loan, it is important that the note be assigned to your trust to avoid subjecting loan payments to probate proceedings in the event of your death prior to the repayment of the loan. Should family members or friends owe you money that has not been reflected in a promissory note or other legal documentation, we recommend that a note be prepared to memorialize the terms on which the loan is to be repaid to your trust. We would be happy to prepare such a promissory note upon request on an hourly fee basis.

A promissory note can be transferred to your trust through a simple form of assignment that references the specific note being transferred and that has a copy of the original note attached. It is also important that notice be given to the debtor that they should make future payments to your trust in accordance with the terms contained in the note.

9. INTERESTS IN PARTNERSHIPS AND LIMITED LIABILITY COMPANIES

Most general and limited partnership agreements and limited liability company (LLC) operating agreements contain limitations on the transfer of interests by their members. It is common, however, to permit partners and LLC members to transfer their interests to a family trust like yours. You should present the Assignment of your interest in any partnerships or LLCs to the custodian of record for the partnership or LLC. The custodian of record will then need to update the partnership or LLC records to reflect your trust as the partner or LLC member. As an example, the custodian of record should amend the Operating Agreement to reflect your trust as the owner of your membership interest.

If you would like us to assist you in this process, we would be happy to do so on an hourly fee basis.

10. CORPORATE BUSINESS OR PROFESSIONAL INTERESTS

You should contact your corporate counsel or ask us to assist you in transferring your corporate business interests to the living trust. If you are providing professional services through a corporation, the rules of the body that regulates your profession may place limitations on who can be a shareholder of your corporation that preclude the transfer of your shares to your trust.

As regards the mechanics of transferring corporate shares to your trust, your corporation would have to cancel any shares held in your name and reissue them in your name as trustee of your living trust.

11. SOLE PROPRIETORSHIP BUSINESS INTERESTS

A sole proprietorship is a business entity owned by one individual. Ownership of a sole proprietorship can be transferred to a living trust with a written assignment of interest. All items of tangible personal property used in the business should be listed individually or by category in the assignment.

12. OIL, GAS, AND MINERAL INTERESTS

The method of transferring interests in oil, minerals, and gas depends on the specific type of ownership interest involved. Generally, if you own such an interest outright, you would record a deed that transfers title to that interest to your living trust. If your interest is a leasehold, you would assign your rights as a lessee to your living trust by a written assignment. Since there are many types of oil, gas and mineral interests, we recommend that you consult with an attorney before attempting to transfer an interest to your trust. If you would like us to assist you in this process, we would be happy to do so on an hourly fee basis.

13. REAL PROPERTY

Transferring real property to your trust will require consideration of ownership and tax issues based on the nature of the current title to the property. Ultimately, the transfer will require preparing, executing and recording new deeds for each property.

Real Estate is probably the most critical property to have in Trust as a separate probate has to be initiated in every State where real estate is located. New deeds will, therefore, have to be prepared to accomplish this transfer. If you request, we will be happy to prepare any deeds for you. Our fee is \$200.00 for each Nevada deed and \$250.00 for each out-of-state deed plus recording charges (usually \$16.00).

14. MOTOR VEHICLES

If you have a collectible or an expensive automobile that could keep its value in excess of \$20,000.00 for years to come, I recommend that you transfer it to the Trust. In transferring your motor vehicles, complete the back of the title, signing off as Owner and indicating the designated Trustee as Purchaser, then take the completed certificate to the Department of Motor Vehicles. The Department of Motor Vehicles may have additional forms for you to fill out and submit. It may also assess additional fees and/or taxes. In addition, you will need to obtain a statement from your automobile insurance carrier, to present to the Department of Motor Vehicles, stating that the insurance company will continue to insure your automobile, once it is transferred to your Trust.

Effective January 1, 2008, the Nevada Legislature created a new way to transfer title in an automobile to another person upon the death of the owner (DMV form attached). **By submitting an application form to the DMV, you can now title the car as “Your Name, TOD (transfer on death) the person you are giving it to”.** If the automobile is titled in this manner, only you are deemed to own the auto, and the person you are giving it to cannot sell the auto without your signature (the person you are giving it to inherits the car upon your death) and you can change the beneficiary at any time by completing all required DMV paperwork.

15. GAMING LICENSE

If you are a shareholder or partner in an entity which holds a gaming license, you will need approval from the Nevada Gaming Commission and State Gaming Control Board prior to transferring your shares, or interests, to your Trust. All currently acting Trustees and current beneficiaries must hold a gaming license. We can assist you in this process for an hourly fee.

16. ANTICIPATED INHERITANCE, GIFT, OR LAWSUIT JUDGMENT

If you are the beneficiary of an estate of someone who has already died, or if you are a plaintiff in a lawsuit, you can assign your interest in the estate or lawsuit to your living trust in case you are disabled or die before receiving distributions or payments.

Reviewing Your Estate Plan

You should review your estate plan with an attorney every two to three years because all estate plans require on-going maintenance. Changes in your family circumstances, significant fluctuations in your net worth, and changes in the tax law can all significantly impact the effectiveness of your plan.

Funding Acknowledgement

We acknowledge that we have been advised by counsel of the importance of funding our living trust and we understand that funding our living trust is my responsibility. We understand that our attorneys, Burdick Law PLLC, are not responsible for funding our living trust. In addition, we acknowledge we have reviewed the funding instructions and we understand the instructions have been provided to assist us with the funding of our living trust.

