

Client Memorandum

To: Family Wealth Preservation Clients of the Firm
From: TIMOTHY S. BARKLEY, ESQUIRE, (301) 829-3778
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Subject: Administration of Your Family Wealth Preservation Plan

INTRODUCTION

It is critical to manage your estate carefully now that you have created a sophisticated, modern estate plan. If you simply file the documents and forget about them, they will not provide the benefits which you have sought: savings from avoiding death taxes, probate and administrative fees; privacy of your estate administration; and a shorter wait for your beneficiaries to whom you have left your hard-won assets, to name just a few of the more prominent benefits of your estate plan.

In this memorandum, I will lay out for you the steps which you should take in funding and administering your Revocable Living Trust (RLT). Please do not hesitate to contact me if you have any questions. If you are a married couple with a joint trust, a married couple with separate trusts or a single person with a single trust, please apply the instructions as appropriate for your situation.

If you are a married couple planning with a joint trust, references to your "Successor Trustee" refers to the person serving as Trustee upon the death of the second to die of the two of you. If you are a married couple planning for tax avoidance using separate trusts, I will advise you on which trust should hold what asset.

YOUR REVOCABLE LIVING TRUST

The Importance of Funding Your Trust. "Funding" your RLT, that is, transferring title to your assets **from** (1) yourself as an individual **to** (2) yourself as Trustee, is crucial. If you do not fund your Trust, you will lose most of the benefits of your Trust.

Remember, what you own individually at death passes through probate, but what you own as Trustee of your Trust avoids probate. Therefore, the less property you place in your trust, the more will have to "pour over" from your estate through your pour-over wills, through probate, into your trust. That property will be subject to the all delays, costs, and public inspection of probate assets. Further, if you have employed trusts for tax avoidance purposes and you do not transfer jointly owned assets to your trusts, your assets might be subject to the federal and state estate tax in the estate of the last owner to die.

It is important to understand that the process of funding your Trust is different for different assets. Usually, funding your Trust involves changing title to the asset; at other times, funding your Trust is accomplished by changing a beneficiary designation.

The Process of Funding Your Trust. The discussion which follows covers various methods of funding your Trust with assets which the average person commonly holds, pointing out the advantages and disadvantages of each. In the case of stocks, bonds, mutual funds, life insurance, and bank accounts, you, your banker, stockbroker or insurance agent can usually handle the transfer for you or your Trustee.

Of course, if you have any questions, call me. It would be my privilege to assist you in any way necessary, and to review all beneficiary designation forms, signature cards, and other such documents. In general, answering questions is included in your document drafting fees, but extensive advice or completing forms or other documents might be separately billable.

You will transfer your trust assets from yourself as individual to yourself as Trustee, or name the Trustee as (primary or contingent) beneficiary of instruments such as life insurance. Any variations from the norm will be noted in the instructions below, but the usual form:

“ [name] , Trustee of ‘THE [name of trust] TRUST,’ dated [date of signing] .”

The Tax Identification Number (TIN) of the Trust is your Social Security Number (SSN) or, if a joint trust, the SSN of one of you. Again, if you have any questions about what to transfer to your trust or how to transfer it, please call.

1. Securities to which you hold the shares directly: The most common method of transferring registered securities is to place them in the name of the Trustee(s) as Trustee(s), as above. More and more corporations are charging a fee for certificating shares, and strongly incent you to register your shares in "book entry" form on the records of the corporation. Unless you have a reason to keep your shares in certificate form, "book entry" is usually fine.

In either case you would need to send in your certificates, if you are holding certificates, along with the stock transfer agent's transfer forms. Please send stock certificates certified, return receipt requested with insurance in the amount of the "replacement bond" (discussed below) as usually provided in the paperwork from the transfer agent, or send the certificates "Registered," so you can track your certificates. If your certificates are lost in the mail or by the recipient and you have not insured the mailing, you might have to pay a fee for a replacement bond to insure against a subsequent attempt to negotiate or sell the same certificates.

Although it is not always required, it may be necessary to provide the corporation with a copy of the Trust or relevant pages thereof (usually the first page of the trust itself, the page on which successor trustees are set forth, and the signature page). Any securities which you purchase in the future should be purchased in the name of the Trust, by you as Trustee(s). This will provide clear evidence of the Trust's ownership of your assets.

2. Securities or mutual funds which you purchased through a broker: You should contact your broker, ask him or her to set up a new account in the name of the Trust, transfer all of the assets in your individual names into the new account, and close the old account(s). Your broker will probably want a copy of the Trust or the pages enumerated above, and will probably require that the transfer forms are signature guaranteed by your broker or your bank. This transaction should be at no cost to you, since you are really doing nothing more than changing the name on the account. Again, any securities purchased in the future should be purchased through the Trust's account.

3. Uncertificated securities: You should notify the owner of the corporation, and have the shares transferred to you as Trustee on the books of the corporation.

4. Real Estate: If we determine that it is necessary or advisable to transfer real property into your trust, I will prepare a deed for you to effectuate the transfer. Remember: If you purchase real estate in the future, either as a replacement of your current real estate or as an additional property, consult with us, but in general be sure to take title in your Trustee capacity. If you fail to do so, the new property must go through the probate process.

Out-of-state realty may pose a special problem, since in some cases your successor Trustee from your state of residence may not be empowered to act in the state in which the real estate is located. If you hold or acquire out-of-state realty, you should have me consult with an attorney in that state regarding the method to be used in taking title to the property.

Any interest in real estate that is less than absolute ownership, such as a time share, land contract or a lessee's interest, may also be assigned to the Trust. I will need to review the terms of the instrument to assure that assignment is permitted. Again, you should consult with me as to the proper method to transfer this interest.

5. Bank Accounts (including savings and money market accounts): You should open a new account in your name as Trustee, transfer the funds to the new account, and close the old account. Of course, wait for all checks and other drafts (such as automatic debits) to clear, and redirect automatic deposits or debits to the new account before closing the old one. Occasionally a bank can simply change the title on an account from you to your trust, but this is not usually the case.

Trusts cannot own accounts at credit unions. If you bank at a credit union, please consult with me on how to title your account(s) to preserve the benefits you have sought from planning with a trust.

6. Safe Deposit Boxes: Make sure your successor Trustee can get into the box. This will usually require adding him or her to the signature card.

7. Certificates of Deposit (CDs): In general, you cannot change the title to a CD until its maturity. Thereafter, and prior to rollover, retitle the CD into the Trust.

8. Life Insurance: If you are a married couple planning with a joint trust, life insurance policies should be owned by the insured, and payable to the surviving spouse. Your joint trust should be the contingent beneficiary, except in a situation in which all your trust beneficiaries are adults and you are making an outright distribution to them from your trust, in which case many of our clients will simply make the trust beneficiaries the direct contingent beneficiaries of the insurance policy. As always, please ask us.

If you are a single person planning with a trust, your trust should be the owner and primary beneficiary of your policy. Again, if all of your trust beneficiaries are adults and you are making an outright distribution, your policy could pay to them directly.

If you are a married couple planning with separate trusts for tax avoidance purposes, in general life insurance policies will be owned by the spouse of the insured, who will also be the primary beneficiary; that spouse's trust would usually be the contingent beneficiary. This is not always the case, however, and since tax planning is highly technical and sensitive, you should discuss this with us in detail before you make transfers.

9. Retirement Plans: Your surviving spouse, if any, should be the first beneficiary of your pension plan and any other retirement plans, such as IRAs, Keoghs, 401(k)s, SEPs, Corporate Pension or Profit-Sharing Plans, or ESOPs. In general, the wage-earner's trust would be the contingent beneficiary. If you are unmarried, then your beneficiary would usually be your trust or your adult beneficiaries directly, depending on many factors outside the scope of this memo. We will discuss your beneficiary designations, since they depend on many factors.

10. Series E or H bonds: If you have U.S. Savings Bonds, they can be transferred into the trust using a form which is available in our office, or at any bank. I would be pleased to provide it to you.

11. Automobiles and Vessels: There is a division of authority as to the advisability of transferring automobiles to your trust. Further, the desk staff at the MVA and DNR will often insist on the payment of transfer taxes. Therefore, most of my clients choose to leave their cars and vessels out of the trust.

12. Tangible Personal Property: Tangible personal property that does not have a title or registration can be transferred to your trust without any documentation. Firearms present special issues; consult with us on that matter. Make sure that you list any items that are intended to be distributed to specific persons at your death. This simplifies administration and reduces contention.

Protecting Trust Assets. Once the Trust document has been signed and assets have been transferred to the Trust, the Trust is fully operative as to those assets. At this point, there are certain basic steps which the Trustee should take.

A. Insurance Coverage: If you currently have insurance coverage (i.e. homeowner's insurance) on the assets which you transfer to the Trust, you should continue the coverage. The insurance policy should be revised to add the Trustee(s) as named insured(s) on the policy. This can usually be done at no cost.

B. List Your Advisors: Make and maintain a list of your advisors and your assets. Your successor Trustee and your beneficiaries will be greatly benefited if your successor can determine, at a glance, where your assets are held and who to contact to follow your instructions set forth in your trust.

Administering Your Trust. As Trustee, you are the legal owner of the Trust assets. At law, however, the Trust property belongs beneficially to the Trust itself. That is to say, the Trustees hold title to the Trust assets, but the Trust gains all the benefit from your actions. Since the Trust exists for the benefit of its beneficiaries, the Trustee must account to them.

Since you are the Settlor, the Trustee, and the only Beneficiary with an interest which is certain to be vested in you, and because the Trust is fully revocable during your life, you are in effect accounting to yourself for the stewardship of your own assets, not different from when you owned the assets outright. And since you can revoke the Trust at any time, you are the only beneficiary that legally matters. Therefore, you have a legal duty to see only to your own best interests.

The interests of the other Revocable Living Trust beneficiaries are "contingent," that is, the interests of the other beneficiaries depend on the fact that you choose not to revoke their interest. Until you die and their interests become irrevocable, you have no legal duty as Trustee to any beneficiaries of the Trust besides yourself.

The theoretical split ownership between Trustee and Beneficiary as described above is a protection for you and your beneficiaries when you are not able to administer the trust. For example, if you become incompetent, your interests will be protected by the laws governing Trustees ("fiduciary" laws) to ensure that the successor Trustee does not abuse his position of trust and appropriate assets for his own benefit.

A. Record Keeping: Even where the Settlor is the Trustee of a Trust for his or her own benefit, a Trust cannot be set up and funded and then forgotten. The Trustee has a responsibility to keep accurate records concerning the Trust assets. This will also make the Successor Trustee's job much easier.

You should not feel burdened by accounting responsibilities when you are not comfortable in that role. Basically, if you do your own bookkeeping now, you should be able to do your Trust accounting, since the record keeping is

basically the same. If, on the other hand, you currently use the services of an accountant or other financial professional, you should consider doing so for your Trust. You might also choose a bank or other professional to perform this function. This entity might be named as the Successor Trustee and could also serve as custodian of the Trust assets while you are still acting as Trustee. This alternative allows for continuity in trust administration.

B. Additions and Deletions of Assets in the Trust: Again, be sure to take title to additional assets in the name of the trust. If you move brokerage accounts or change banks, be sure to set up the new accounts in the name of the Trust, or you will have effectively “de-funded” your trust and lost many or all of the benefits you sought from planning with a trust.

C. Taxation of Your Trust: Since your Trust can be revoked at any time, it is indistinguishable from you. It does not have a separate tax identification number, but uses your Social Security Number. You report income and losses of the Trust on your Form 1040.

When you pass away, the Trust becomes an irrevocable trust. At that time, the now-irrevocable trust becomes a separate taxable entity, and must have a Taxpayer Identification Number (TIN). I can assist your successor Trustee in applying for the tax I.D. number for the Trust. At that time, the Trust would file its own tax returns, Form 1041. Please have your successor Trustee call me when it is time to make these changes, and I will assist you.

SUMMARY

A sophisticated estate plan has been created especially for you. A great deal of thought and effort was devoted to the creation and funding of your Trust.

If at this point you simply forget about the Plan, many of the benefits which it would otherwise provide you may be lost. If you familiarize yourself with the requirements and guidelines set forth above, you should be able to maintain the full effectiveness of the Plan with minimum effort. However, if questions arise from time to time which you are unable to answer, you should not hesitate to contact me.