

# INSTRUCTIONS FOR TRANSFERRING ASSETS TO TRUST

The following information outlines the method by which assets should be transferred into your Revocable Living Trust.

**REMEMBER, YOU ARE RESPONSIBLE FOR KEEPING YOUR TRUST FUNDED DURING YOUR LIFETIME.**

## A. REAL PROPERTY

Most real estate should be held in the name of the Trust. By transferring title to real property to the trustees of your trust you avoid probate in the counties where that property is located. This includes real property you own in other states.

To transfer real property into your Trust, a new deed reflecting the name of the Trust must be executed, notarized and recorded with the County Recorder in the County where the property is located. Care must be taken that the exact legal description in the existing deed appears on the new deed. If the deed is not executed properly and title of your real estate is not in the name of your Trust on your death, a probate proceeding may be needed to transfer that property to your beneficiaries.

Federal law prohibits acceleration of any indebtedness by any lending institution or private individual on a transfer of residential real estate into a revocable trust. However, where there is an existing indebtedness on real estate other than residential (e.g., commercial and/or multi-unit), it will be necessary to contact the financial institution holding either the mortgage or deed of trust before placing it in the name of the Trust. The failure to obtain the lender's consent to the transfer of non-residential property could potentially lead to the lender attempting to accelerate the loan based on a "due-on-sale" clause contained in the note or deed of trust. Typically, such consent will be granted by the lender after it has reviewed the Certificate of Trust and the appropriate assignment documents have been executed.

There can be special problems with the transfer of property held under a land lease; therefore, you should obtain the appropriate advice prior to any such transfer. If you sold real property by way of contract for deed you retain an interest in that property as long as there is an unpaid balance. You should transfer your interest (sometimes referred to as a "vendor's interest") in the contract for deed to your revocable trust.

When your insured property (e.g., your residence) has been re-titled in the name of your Trust, you should notify the insurance company (or agent) of the transfer and ask whether any change in the policy is required. This should apply to both casualty and liability insurance. It may be desirable for the policy to indicate that the Trust is an additional insured. Additionally, if you purchased an owner's title policy of insurance when you purchased your home, you should notify that insurer of your trust as well and determine whether an endorsement on your policy will be required. If your title insurer indicates no additional paperwork is required, you should get that determination in writing.

Please note that if you should refinance or borrow against your property, the lender or the title company may require that the property be transferred out of your Trust and into your name as an individual (this saves the lender and the title company the task of reading the trust in order to verify that it does not contain any terms or conditions which could interfere with the lender's security interest). *Be sure that you ask the title company to prepare and record a deed transferring the property back into the Trust as soon as the refinancing is complete.* If this does not occur, probate of the property may be necessary. In the

event the title company will not cooperate, be sure to contact me (or another attorney) so that I can prepare and record the appropriate deed to return the property to your Trust.

As you acquire new property, simply instruct the escrow officer handling the transaction that you wish to have the title recorded in the name of your Trust. You may need to provide the escrow officer or title company with a copy of the Certificate of Trust.

#### B. SECURITY INTERESTS

Most real estate security interests (e.g., sales contracts or deeds of trust) should be held in the name of the Trust. To transfer security interests into your Trust, an assignment of the contract/deed of trust reflecting the name of the Trust must be executed, notarized and recorded with the County Recorder in the County where the property is located.

#### C. OIL, GAS, AND MINERAL RIGHTS

Oil, gas and mineral rights are often the most troublesome of assets to transfer to a Revocable Living Trust. The reason for this is that, depending on the location or depending on how the assets came into existence, they may be treated either as an interest in real estate or an interest in personal property. Only through an examination of the title documents is it possible to determine the exact method by which such right should be transferred to the Trust.

#### D. BANK/SAVINGS ACCOUNTS/SAFE DEPOSIT BOXES

The transfer of Money Market Accounts, Savings Accounts and Timed Deposits (CD's) into your Living Trust can sometimes be accomplished quite easily. Not all financial institutions have the same policies so expect variations among institutions. Typically, all you need do is provide your bank with a copy of the Certificate of Trust which has been prepared for you. You will then sign new signature cards as Trustee of your Trust. Some financial institutions will require you to open a new trust account to replace existing accounts. When you open up new accounts, simply instruct the bank that you wish to have the title of the account in the name of your Trust. You may need to provide the bank with a copy of the Certificate of Trust. You also have the option of naming your trust as beneficiary of your accounts rather than transferring ownership of those accounts to your trust. Only one trust account is needed and it is not required that you have your trust own all of your accounts. You may want to leave some of your individual accounts in your name as opposed to transferring ownership to the trust. If you want to do the latter, then simply name your trust as beneficiary of those accounts rather than transferring ownership of the account to your trust.

Safe deposit boxes should be placed in the name of your Trust so your successor Trustee will have no difficulty in gaining access to the box.

#### E. STOCKS AND BONDS

To transfer stocks or bonds into the name of your Trust, a different procedure is used for privately held stock compared to that which is used for stock publicly traded on an exchange.

##### 1. Privately Held Stock

The transfer of privately held security instruments, such as stocks in a privately held corporation, can be accomplished simply by surrendering the existing stock certificates and having new stock certificates prepared in the name of the Trust. This normally does not require a permit from a

state agency, nor does it usually have any type of adverse tax consequence. However, the transfer of stock in a privately held corporation normally requires the approval of the corporation. Typically, such consent will be granted by the corporation after it has reviewed the Certificate of Trust and the appropriate assignment documents have been executed. Shares of individual professional corporations are usually not transferred to trusts because of statutory restrictions. You should obtain legal and tax advice prior to assigning any privately held stock or other security interest to your Trust.

## 2. Publicly Held Stock

In the case of publicly held stocks or bonds, it will be necessary to work through a stockbroker or through the institution from which the assets were purchased (such as a Dividend Reinvestment Plan or an Electronic Registration Plan). If you currently possess the certificate(s), the broker will require you to surrender the certificate(s) and sign certain transfer documents. We suggest that certificates always be sent certified mail. For a standard brokerage (and/or a mutual fund) account, all that is generally required is a request to the broker or account manager. They may also request a copy of the Trust Agreement, but frequently all that is required is a copy of the Certificate of Trust.

## F. PARTNERSHIPS

Partnerships generally are either public or non-public.

### 1. Public

If a partnership was bought through a public offering, the institution making the sale should be contacted and given a copy of this instructional letter with a request that ownership name be changed to the name of the Trust. The institution may also require a copy of the Certificate of Trust Agreement.

### 2. Non-Public

The transfer to Trust of a non-public Partnership Interest (whether General or Limited) is generally accomplished by an Assignment which may or may not need the approval of the general partners or the approval of all the partners. The best way to proceed is to contact the general partners for guidance. Typically, such consent will be granted by the partnership after it has reviewed the Certificate of Trust and the appropriate assignment documents have been executed.

Further acquisition of partnership interests creates no problems. The purchase of the partnership interest is simply titled in the name of the Trust at the time of acquisition.

## G. LIMITED LIABILITY COMPANIES

A trust can be a member of a limited liability company (“LLC”). The transfer of a LLC interest to a Trust may require the approval of the LLC. Typically, such consent will be granted by the LLC after it has reviewed the Certificate of Trust and the appropriate assignment documents have been executed.

If you acquire any future LLC interest, simply instruct the LLC that you wish to hold title in the name of your Trust. You will probably need to provide the LLC with a copy of the Certificate of Trust.

#### H. BUSINESS INTERESTS

Any other business interest or sole proprietorship can generally be transferred to the Trust by an “Assignment of Business Interest”. This document assigns all property/assets owned in the name of the business, for the purpose of determining title, into your Trust so that these interests will avoid probate. However, there may be specific issues with the transfer of interests in businesses (such as permits and licenses) and thus it is necessary that they be reviewed in detail before making the transfer. Accordingly, it is recommended that you obtain legal and tax advice prior to transferring any business interest to your Trust.

If you have a business interest in a franchise, any transfer of such interest to your Trust will probably require the consent of the franchisor. Typically, such consent will be granted by the franchisor after it has reviewed the Certificate of Trust and the appropriate assignment documents have been executed.

#### I. INSURANCES AND ANNUITIES

Life Insurances and Annuities are assets that may or may not need to be placed in Trust because the proceeds transfer contractually to the named beneficiary and, therefore, already avoid probate. However, if you wish the proceeds to be distributed in the same manner as the other trust assets (which is usually the case), the Trust should be the beneficiary. You must instruct each insurance company or your insurance agent to designate your Trust as the beneficiary.

#### J. IRA’S/KEOGH’S/401(k)’S/ETC.

An IRA, 401(k) plan or Keogh plan, wherever invested, must remain in the owner’s name and Social Security number; this is not a major problem in estate planning since the account is paid, at your death, to a named beneficiary and, thus, does not have to go through probate. However, it may be desirable to have the account paid to your trust instead of to a named beneficiary (e.g., the beneficiary is a minor or the trust has more details for all contingencies); For a husband and wife, the non-owner spouse is usually named the primary beneficiary and the Trust may be named the contingent beneficiary. Please realize that any change of a beneficiary designation of a retirement plan could have important income tax consequences; therefore, you should consult with your tax advisor prior to making any change.

#### K. DIGITAL ASSETS AND/OR RIGHTS

Your digital assets and/or rights (including any “social media”, on-line accounts and/or email accounts) were automatically transferred to the Trust with the “Assignment of Personal Property” which was part of the original package. However, it is important to maintain a list of all of your digital assets and print it out on paper; this list should include all of your on-line accounts as well as a list of usernames and passwords. This is sensitive information, so protect this information by keeping it in a secure place. Some people will put this information in a sealed envelope to be opened only upon death or incapacity. Wherever you keep this information, make sure you tell your successor Trustee (and agent under the Power of Attorney, if different) where this information can be found. You should update this list at least yearly. In addition, tell your successor Trustee what you want done with your digital assets. If you have a social networking site, such as Facebook or LinkedIn, let your successor Trustee ones know whether you want the site maintained following your death or whether you want the site removed (some sites have specific policies regarding what happens when a person dies or is incapacitated, so make sure

you check each site's policy). If you have a collection of music or photographs, tell your successor Trustee what you want done with those.

L. INTELLECTUAL PROPERTY

Intellectual property assets such as copyrights, patents, trademarks and royalties that have significant value should be assigned to your Trust. This is normally accomplished by a specific assignment which should be acknowledged by a Notary. You may need to consult with an attorney who specializes in patents or copyrights prior to any transfer.

M. MOTOR VEHICLES/RV's/BOATS

Automobiles, RVs, boats, etc. are items which are placed in your Trust by means of your "Assignment of Personal Property." No Department of Motor Vehicle transfer is required.

N. MOBILE HOMES

Mobile homes may be placed into your Trust by contacting the same state authority that issues you the registration for the home

O. PERSONAL PROPERTY

Personal property such as furniture, household effects, art work, jewelry, etc. should be transferred to the Trust. The "Assignment of Personal Property" document located in your Portfolio assigns all of the above-mentioned personal property into your Trust. This Assignment covers not only the property you currently own but any additional personal property acquired up to the date of death.

P. JOINT TENANCY

You should not hold any assets in joint tenancy, except for small checking accounts and automobiles. A joint tenancy asset will not be subject to the terms of the Trust, may frustrate your intentions and could have adverse income and estate tax consequences.

Q. SEPARATE PROPERTY

In the event you should ever fund your Trust with any separate property, it must be specifically designated as the separate property of such spouse in order for such property to retain its character as separate property. For example, if a spouse receives an inheritance or gift in such spouse's name, this property will be considered separate rather than jointly owned property. Unless the inheriting or gift recipient spouse wishes to change the character of the property from separate to jointly owned, the property must be specifically designated as such spouse's separate property at the time it is transferred to the Trust. Changing the character of any property from separate to jointly owned may have significant income and estate tax consequences and could affect the division of property in the event you should dissolve the marriage. Therefore, you should obtain legal and tax advice prior to changing the character of any property from separate to jointly owned.