

DAVIDSON, DAWSON & CLARK LLP
C O U N S E L L O R S A T L A W

CLIENT MEMORANDUM

FUNDING YOUR LIVING TRUST

The usual reasons for creating a “Living” or “Revocable” Trust are (1) to make a definite and binding arrangement for managing your assets in the event of your incompetence, and (2) to avoid probate at the time of your death. The trust will serve these purposes only as to assets held in the trust.

With perfect foresight, funding could be deferred until just before it was needed. The practical approach, however, is to fund the trust as soon as it is created. Typically, funding such a trust during your lifetime entails no permanent commitment or tax complications of any kind. You can always remove your assets again, amend the trust or change the trustee, if you are so inclined.

It is important that the funding process be properly handled. The following guide should allow you to fund the trust without engaging more legal services than necessary.

Funding the Trust – In General

Funding the trust consists of titling assets in the name of the trustees. All of the assets which are to be a part of your Trust (for example, bank accounts) should be titled in the name:

"[Your Name] and [Co-Trustee's Name, if any] and their successors as Trustee under the [Your Name] 20__ Trust dated _____, 20__".

If (as is almost invariably the case) you are one of the trustees, or the only trustee, of your trust, it will use your Social Security Number as its Tax I.D. Number.

Some financial institutions and transfer agents for corporate securities may use an abbreviated form of this title, such as the “[Your Name] 199__ Trust”. The essential elements are (1) a unique and unambiguous reference to the Trust and (2) the date of the Trust Agreement.

Any assets that you acquire in the future that you want to be part of your Trust must be titled as above. If you take title to any property in your own name without the "trustee" designation, that asset will not be subject to the provisions of your Trust Agreement.

Bank Accounts

Your bank accounts, with the possible exception (for convenience) of your regular checking account, should be transferred to the name of your Trust as shown above. Time deposits and CD's may have to mature before they can be transferred without losing interest. Contact your bank to begin the process.

Brokerage and Custody Accounts

Your brokerage or custody account should be transferred to the name of your Trust as shown above. Again, contact your broker or banker to start the process. Some institutions will simply change the name on the account because the Social Security Number is unchanged; others require a new account.

Securities in Certificate Form

Securities physically held by you or in a safe deposit box should be removed and mailed to the appropriate transfer agents for transfer. Numerous side documents and signatures may be required; we recommend you have your stockbroker undertake this task for you.

Bearer municipal bonds should have a written statement attached to them, signed and dated by you, stating that the bonds (give a complete description) are "hereby given to [name of trust]". They may also be held in a safe deposit box in the name of the Trust.

Partnership interests differ and can be cumbersome to transfer. Contact the general partner.

Real Estate

Real property may be titled in the name of the trust, using the designation quoted above. A deed, typically prepared by a lawyer, is required.

In a few states, such as Massachusetts, there is a requirement that the trust be recorded with the deed on the public land records. In these jurisdictions local counsel customarily use a simple "nominee" trust as an intermediary title holder, so that your main trust can remain private.

Care should be taken to preserve any owner's title insurance coverage that you have on the property, however. You will probably need to obtain an endorsement of your existing policy, which may cost \$100 or so.

Now that mortgages almost invariably must meet rigid requirements that allow them to be packaged and re-sold by the original lender, *it may be difficult to mortgage or refinance your home while it is in trust*. A legal opinion may be required, and occasionally mortgage lenders will even require that your property be briefly removed from your trust to refinance a mortgage. However, Federal Banking Regulations prohibit lenders from accelerating mortgages because of a transfer (or re-transfer) of your *primary* residence to a Revocable Trust. For other residences, bank approval is advisable.

Finally, joint property can avoid probate even without being in trust, and it may be inadvisable (for tax reasons) to disturb a joint title created before 1977.

Insurance

Life Insurance payable to a beneficiary other than your estate will always avoid probate, but making it payable to your trust will integrate it into your estate plan. Life insurance on your own life, which you own and is not part of some other estate planning technique, is easy to make payable to your trust as beneficiary. It will be necessary to obtain forms from the individual life insurance companies, as they all use different forms. Often the forms contain suggestions as to how a trust should be identified, but the description quoted above should be acceptable.

IRAs, Thrift Plans, Annuities, Etc.

Qualified retirement plans cannot, by law, be transferred during your lifetime. Tax-deferred annuities should not be transferred for income tax reasons.

Although it is possible to name a trust as a beneficiary of these plans, this step should be taken only with extreme care and with specific advice of competent tax counsel. The tax penalties of naming a trust in the wrong circumstances, or with inadequate documentation, are potentially significant.

Miscellaneous Titled Assets

Partnership interests, annuities, closely held stock, and co-operative apartment stock are often not transferable because of their governing agreements. These types of asset must be reviewed on a case-by-case basis.

Automobiles, Pets, Guns, Etc.

Some property which could be titled in the name of your trust makes an exceedingly awkward trust asset. Your trust has no driving record and no automobile insurance; it may not be possible to determine whether it is eligible to possess a firearm, and trustees may not wish to undertake the care of live animals. It is suggested that assets of this sort remain in your own name.

Assets Without Titles

Many common items, such as furnishings, art and antiques, do not have any means of registering title. There is no official filing to prove that such items are owned by your trust, rather than by you. In such cases, the best that can be done is to sign an instrument in the form reflected in Appendix A. Multiple copies of the form may be left with your other personal records as well as with your Will and your attorney.

Trust Administration

Once your assets have been transferred to your Trust, you may conduct your financial affairs essentially as you have before, except that assets which belong to your Trust should be purchased and sold by you as trustee rather than by you personally. If you are a trustee of your Revocable Trust (which is usual), the tax identification number for the Trust is your Social Security number; the Trust is not a separate taxpayer, and no separate tax return is required as long as you are serving as the trustee. If you cease to be a trustee in the future, special measures are required to avoid the requirement of filing annual income tax returns. The income will still be taxed to you.

You should maintain complete and permanent records of all trust activities in a separate file, including a record of the assets held in the Trust. If the Trust maintains bank or securities accounts, keep the statements permanently in your file.

It is extremely important that these accounting and titling formalities be observed. Failure to do so may jeopardize the legal existence of the Trust or limit the ability of a successor trustee to administer your assets. If you delegate administrative details for the Trust to a third party, be certain that party observes the formalities and maintains the necessary records.

Confidentiality

Your Trust is a private document. You have no legal obligation to divulge the dispositive terms of your Trust Agreement to persons not beneficially interested. You may nevertheless be asked to submit a copy to brokers, bankers, etc. We suggest you provide the requesting party with a description of the administrative provisions of the Trust and a copy of the signature pages.

If you have any questions regarding any aspect of these procedures, please do not hesitate to call .

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APPENDIX A

ASSIGNMENT OF TANGIBLE PERSONAL PROPERTY
TO _____ 20__ TRUST

WHEREAS, I, _____ established an Agreement of Trust on
_____, 20__, with _____ and _____ as trustees; and

WHEREAS, I wish to assign certain tangible personal property to the
trust;

NOW, THEREFORE, I do hereby assign to said trustees all of my
tangible personal property now or hereafter acquired, exclusive of living animals and
registered motor vehicles and vessels, to be added to the principal of such trust and
held, administered and disposed of as a part thereof.

Date: _____ 20__ _____

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