

Review of Trust Funding a Client Action Guide

This is a general memo that I provide to my estate planning clients once we have executed their estate plan documents. The next task is to “fund” the trust by changing title to assets. This probably covers more issues than apply to you directly. Please use this as an action guide and as a resource.

1. Title to Trust Assets.

To obtain the benefits of your Trust, you must take title to any assets in your name(s) as the Trustee(s) of the Trust. I recommend one of the following legal designations:

NAME and NAME, Trustees, U/D/T dated April 28, 1998 as Amended and Restated on January 30, 2007, F/B/O the NAME FAMILY TRUST

NAME and NAME, Trustees, of the NAME FAMILY TRUST, u/d DATE, as amended

It is sufficient under some circumstances to use a shorter designation. However, most of the third parties with whom you will deal will be more comfortable with one of the longer designations.

2. Transferring Assets to Trust.

A. Real Estate.

The longer designation that we recommended above should be used in taking title to real estate.

1. Additional Properties

If there are any other properties that you own which should be transferred to the trust, please send me copies of the existing deeds, along with a copy of the most recent tax bill for each property, so that we will have the necessary information to prepare appropriate transfer documents. Do not mail in original deeds or tax bills. Copies are sufficient. I will charge you for the time involved at my usual hourly rate.

2. Personal Residence.

If there is a mortgage or other indebtedness on your personal residence, transferring your residence to the Trust will not cause acceleration of the outstanding balance due to any lending institution or private individual. Acceleration on any outstanding indebtedness on your personal residence by virtue of a transfer to your Trust is prohibited under federal law.

3. Real Estate Other Than Personal Residence.

If real estate that you own, other than a personal residence, is encumbered by any indebtedness (such as a mortgage or deed of trust), the same procedures for preparing, signing, notarizing and recording the deed will be followed. As mentioned above, before recording a deed, we recommend that you contact your financial institution holding either a mortgage or deed of trust to obtain their permission for the transfer of such real estate from yourselves as individuals to yourselves as Trustees of the Trust.

Please let me know if you have any other real property with a mortgage or other loan on it, and we will send you a sample letter to present to the lender for the lender to approve the property's transfer to the Trust. If you would like this office to contact the lender, please send, along with a copy of the deed and tax bill for each such property, the lender's name, address, and loan number so that we can obtain the lender's approval. We will charge you for the time involved at our usual hourly rates.

4. Non-California Real Property.

If you have real property located in another state, we recommend that you send to counsel, located in the states where such real property is located, for pre—recordation review, a copy of your Trust and any deed formats if non—California real property interests are to be transferred into your Trust. Some states have requirements that are different than California for the validity of a trust and for properly recorded deeds. Thus, local counsel should be consulted to ensure compliance with another state's laws.

5. Title Insurance.

Please check with your title company(ies) on each parcel of real property you own, including those we have already transferred into your trust, to see if you need an endorsement to your existing title policy to cover your Trust as owner of the property. We strongly recommend that you get this endorsement as some companies may claim, and some courts may agree, that an ownership transfer, even to your Trust, negates the title insurance.

Also, please note that when properties are transferred out of the Trust for refinancing purposes, there may be a break in title insurance coverage. Again, please check with your title insurance company(ies) to see what their policies might be. Always return the property to the trust bane after refinancing is completed.

6. Property Insurance.

We strongly recommend that you consult with your insurance agent to ensure that any property damage and liability insurance and any other real property insurance will be effective when the ownership of your real property is transferred to your Trust. You should ask to add the Trustees of your Trust as an "additional insured" under such policies.

B. Bank and Savings Accounts.

We recommend that any CD, savings or money market accounts be held in the name of the Trust, as well as any checking accounts that hold over \$30,000. To accomplish this, bring the "Certification of Trust" to the bank and have them transfer the name on the account to your name(s) as Trustee(s)

Occasionally, banks and savings and loan associations will request a copy of the Trust. Please note that the "Certification of Trust" satisfies two requirements, and you do not need to give them the complete Declaration of Trust.

Note that when you transfer title to these accounts to your names as Trustees, be careful to ascertain from the institution that the change from you as individuals to you as Trustees will in no way adversely affect the interest being paid on the investment. On occasion, we have found that such a change may create some form of forfeiture. If this is the case, we recommend that you

wait until the certificate matures and at that time change ownership to your names as Trustees of the Trust to ensure that there is no financial loss.

Also keep in mind that the basic insured amount under FDIC insurance for a depositor is up to \$100,000 per “ownership category,” which includes accrued or anticipated interest or earnings. Ownership categories include single ownership accounts and joint accounts, but a revocable trust is not a separate “ownership category.” Therefore, you will want to be sure you have no more than \$100,000 in each ownership category at each institution. Sometimes you can get around these rules by using different forms of the name(s), different Social Security or Tax ID numbers, or by opening the accounts at different branches of the same institution. You can also protect your FDIC insurance coverage by opening accounts at different institutions when you are getting close to the maximum \$100,000 coverage for each category. There are multiple rules and some exceptions to the above, so if you have a specific question regarding a specific amount, we encourage you to talk with your banker concerning FDIC coverage.

3. Stocks and Bonds.

In the transfer of either stocks or bonds to your Trust, different procedures need to be followed for privately-held stock and publicly-traded stock.

1. Privately-Held Stock or Bonds.

The transfer of privately-held security instruments, such as stocks and bonds in a privately-held corporation, can be accomplished simply by having new stock certificates prepared in your names as Trustees of the Trust and surrendering the prior stock certificates. This does not require a permit from a state agency, nor does it have any type of adverse tax consequences.

If the secretary of the corporation has any problems with this transfer, please have that individual contact our office.

Before transferring privately-held security instruments to the Trust, be sure that the terms of any Buy-Sell Agreement will not be violated.

2. Publicly Held Stock.

In the case of publicly-held stocks or bonds, it will be necessary to work through a stock broker or through the institution from which the asset was purchased. In the case of publicly-traded stock, the stock brokers will require you to surrender the certificate and sign certain transfer documents. They may also ask for a copy of the Trust; but, as in the case of financial institutions, a Certification of Trust can be sent in lieu of a full copy of the Declaration of Trust. If you wish, our office can handle the transfer for you. However, experience has demonstrated that the brokerage firm will be substantially less expensive.

3. Bearer Instruments.

A written assignment of Bearer Bonds into the name of the Trust can expedite payment, transfer, or redemption in the event of a death without proof of initial purchase of the bonds in your names as Trustees of the Trust. (Transfer agents sometimes require probate of the Bearer bonds after death). If you have not assigned your bonds to the Trust, you will want to do so.

4. S Corporation Stock.

If any stock you hold may be “S Corporation Stock,” you should be sure that holding the stock in the Trust will not jeopardize the “S” classification. This is extremely important. If you have never heard of S Corporation Stock or Subchapter S Corporation Stock, chances are you do not own any. If we have not already discussed this issue with you and you have S Corporation Stock, please contact this office immediately.

4. Checking Accounts and Automobiles.

There are two assets that are not typically transferred into your trust because the transfer can be effected easily in the future by your agent under power of attorney or under the small estate collection statute by your executor or trustee.

One is your small regular checking account having a modest balance that you probably use day-to-day for bill paying. This suggestion does not apply to checking accounts in which large amounts of funds (e.g., more than \$30,000.00) are held on an ongoing basis.

Another asset you may keep out of your trust for the present would be the car(s) you use regularly for transportation. There are simple DMV procedures your agent, trustee or executor may use to do the transfer later on. This suggestion does it apply to automobiles which are not primarily transportation vehicles, collectable vehicles, and those having a significant value over \$30,000-\$40,000). This latter group of vehicles should be transferred into your Trustee’s name sooner rather than later.

5. Other Vehicles and Vessels.

If you own a mobile home or some type of other vehicle, the best course of action is for you to contact the appropriate state office (e.g., the Department of Housing and Community Development, Registration and Titling Section) to change the ownership name from its present form to you as Trustees of the Trust. Depending on the size of the mobile home or other vehicle, the licensing and ownership documents may vary greatly.

6. Partnerships.

Partnerships fall into two (2) categories. Those categories are General Partnerships or Limited Partnerships. If a partnership was bought through a public offering, then the institution making this sale should be contacted and given a copy of the title of the Trust with a request that the name of the ownership be changed to your names as Trustees of the Trust. On rare occasions, such institutions may also require some type of evidence as to the existence of the Trust, but nonnally they will tell you exactly what they require. This may raise questions for you which are best discussed with my office.

Regarding privately held interests in either General or Limited Partnerships, you may want to work directly with the General Partner to transfer ownership to the Trust, or we can do that for you. If you want our assistance, provide me with the name and address of the General Partner, and a copy of the partnership agreement, all amendments, and any certificate of partnership. This will enable me to determine whether there are prohibitions within the agreement that would require special handling of the asset in making the transfer to the Trust.

7. Promissory Notes and Deeds of Trust.

If you own a promissory note or some other type of debt instrument being paid to you, and which is not payable to yourselves as Trustees of your Trust, if you will send a photocopy of the debt

instrument along with any security documents, (such as a deed of trust or a mortgage), to our office, we can make the transfer into the Trust name.

8. Miscellaneous Assets.

For other assets not mentioned above, please discuss them with me so that I can guide you in transferring title to the Trust (if necessary). If there is any beneficial interest in another trust or in an estate, (such as where a family member is a beneficiary of a probate presently in process), then that should be discussed as well.

9. Life Insurance.

I recommended that the Trust be named as beneficiary or contingent beneficiary of all existing and future life insurance policies of a significant size. The beneficiary or contingent beneficiary designation should read substantially as follows:

JOHN ADAMS and SARAH ADAMS, Trustees, F/B/O
the ADAMS FAMILY TRUST, u/d 04/28/1998

Regarding ownership of life insurance by a couple, I recommend that you consider having husband own the insurance policy on the life of wife, and vice versa, and that the Trust be named as a beneficiary using the designation given above. You should contact your insurance agent and request him or her to provide you with the necessary forms to change ownership of the policies and to make the change of beneficiary as indicated. Feel free to have your agent contact me to work out the details.

Alternatively, you may wish to use your life insurance to distribute directly to your beneficiaries instead of through the trust. Be sure to take this into account in the section of your trust covering distribution of your estate so that unintended inequalities do not result from this approach.

Use of an irrevocable life insurance trust can be employed to fund distributions or provide your beneficiaries with funds to meet anticipated debts and obligations. An example of this would be an estate having few liquidable assets where you want to avoid having to sell particular assets to raise funds necessary for the administration of your estate. Another example is where your estate is quite large and will be subject to the estate tax, the generation skipping transfer tax, and/or it is likely that the surviving spouse will not be a US citizen when the other passes.

10. IRA's and Pension Plans.

Because of the present status of law in those situations where either party is covered under a corporation or individual pension plan, such as a Keogh plan or IRA, it usually is recommended that the primary beneficiary be the spouse and that, in most cases, other individual beneficiaries be named as contingent beneficiaries.

The reason for recommending that the spouse be named as the primary beneficiary is that failure to name the spouse may require waiver documents, the exact design of which is in much dispute, to insure compliance with the law. It has been found to be simpler to name the spouse, recognizing that there are normally sufficient other assets to fund the Trust so that there will not be an adverse tax consequence imposed on the family by virtue of this type of situation. Also, by naming the spouse as the beneficiary, the marital deduction will be available and relieve the plan of estate taxes on the death of the first spouse. This provision states that the transfer of any asset

to the surviving spouse by virtue of a death is tax exempt. In addition, the spouse may have the option of rolling over the funds into the spouse's own retirement account, and individual beneficiaries may have the option of a longer payout period, (not available to a trust). Please be sure we have discussed with you any IRAS and/or other retirement accounts you may own.

11. Tax Deferred Annuities.

Tax deferred annuities present a host of additional problems similar to IRAS and Pension Plans but without some of the flexibility accorded to those assets. Please discuss with me how to handle the beneficiary designations for any tax deferred annuities that you may own.

12. Treatment of Debts.

The only transfers which are to be made to your Trust are interests which are owned as assets. Debt that has been incurred by the family is not usually transferred to a trust.

Miscellaneous Information.

On rare occasions, I have found that some institutions, because of particularities in their charter documents, may require a minor modification in the Trust to accommodate their individual rules. If this is the case, please request that they give you and/or my office, in writing, the verbiage that they require. From that information, an appropriate Amendment can be prepared to ensure that the asset can be transferred to the Trust.

Occasionally, the question arises as to whether the assets that have been transferred to the Trust are protected from creditors. The answer is that the Trust is not designed for the protection of assets from creditors, and therefore, it does not affect any rights that creditors have whether or not you had a Trust. However, after the death of one of you, this changes, and at that time, a thorough analysis should be undertaken with counsel.

Also, the question often arises as to whether a separate income tax return is required on an annual basis for your trust, until it becomes irrevocable. Trust returns are filed on separate IRS (Form 1041) and FTB (Form 541) forms under a separate tax ID number obtained for the trust because, when the trust becomes irrevocable, it becomes its own taxpayer. Trusts usually become irrevocable upon the Settlor's death. For couples, all or a part of the trust probably will continue in revocable form under the surviving spouse or partner's Social Security number.

As a practical matter, some assets that have been transferred to the Trust after death may require court oversight; for example, if there is a cloud on the title of a piece of real estate. Fortunately, in most jurisdictions, this would simply require the use of the probate court to determine the ownership rights as to that particular asset, and would not require that any other asset of the Trust be subjected to probate. In most situations, however, as long as all your assets are vested in the name of yourselves as trustees at the time of your death, no court administered probate proceedings shall be necessary.

If you have any questions or concerns about our project, please don't hesitate to ask. I appreciate your trust and confidence.