

# *The Care and Maintenance of Your Revocable Living Trust*

This summary explanation will likely be helpful when you place assets in your Trust and review your Trust in the future. Please call us if you have any additional questions.

## *I. What is a "Revocable Trust"?*

By signing the Trust instrument - the Trust Agreement or Declaration of Trust - you created a new legal entity, or legal being. This is the Trust itself. Within it, you established a number of rights and responsibilities for persons named in the Trust. These persons are in three roles:

- The first, is the role of "Grantor", and that is you, the persons who created the Trust and transferred assets into it.
- The second is the role of the "trustee", who manages the Trust, decides about uses of its assets, and whose name title of Trust assets is held.
- The third, is the role of "beneficiary(ies)", for whose benefit the Trust exists.

Any person can be chosen by the Grantor to serve as trustee or to be the beneficiaries of the Trust.

The responsibilities and the powers of the trustee(s) are first described in the Trust instrument. All trust instruments do not contain the same powers, so the trustee does have to pay attention to the language in your Trust to be certain of the trustee's authority and options. Some of the Trust provisions reflect existing trust law, while others are included because they suit you and may supersede such existing rules for revocable trusts.

Yours is a "revocable" Trust. This same type of arrangement is sometimes referred to as a "living trust" or an "inter vivos trust." They are all the same thing. I like to refer to it as a revocable trust because you as a Grantor keep the power to end the trust's existence by revoking it. You have this power, as a general matter, while you are alive and as long as you have the legal capacity or "competency".

## *II. Changing the Trust*

You have the power to amend your Trust. This means that you can change any of its terms, including such things as the names of successor trustees and the names of persons who are to receive your assets upon your death.

There are certain formalities that must be respected if you wish to change the terms

of your Trust.

DO NOT ATTEMPT TO AMEND THE TRUST BY WRITING IN THE MARGIN, OTHERWISE ADDING WORDS, STRIKING OUT CERTAIN WORDS OR BY PUTTING LINES THROUGH THEM. GIVE ME A CALL IF YOU WISH TO AMEND THE TRUST SO THAT THE PROPER STEPS CAN BE TAKEN.

### *III. Funding the Trust or Transferring Assets Into It*

#### *A. The Importance of Funding the Trust*

Though you have created a Revocable Trust to accomplish your estate planning goals, there are benefits to funding your Revocable Trust before your death. Assets placed into your Revocable Trust before your death escape the probate process, and can be managed for you during your life by your Trustee. Assets in the trusts also do not have to be reported to the court upon death, thus adding a very desirable level of privacy to your estate planning.

It is also necessary because the trustee only has control of the property if it is in the Trust. Another major reason for establishing the Trust - avoidance of guardianship - will only be achieved if the trustee has such management and control. If you should become incapacitated, you want your chosen trustee(s) to continue to manage your assets without court involvement or other difficulty. This result will be best realized if your assets are in the Trust at the time of incapacity.

If your trust is not completely funded now, then upon your death, your trust will be funded in two ways: (i) your Will will “pour” into the trusts assets in your individual name and assets made payable to your estate, and (ii) assets made payable to the Trust by beneficiary designation will be distributed into your trust.

Finally, prior to funding your Trust, we strongly recommend that you consult with us to determine any income and estate tax consequences which may result from the transfer of assets to your Trust.

**Please note: it is not necessary to fund your trust now, and not necessary to place every single asset you own into trust.** This trust is a tool to reduce the publicity and difficulties involved in the estate administration process for the vast majority of your assets, not to completely avoid the estate administration process. The total avoidance of the estate administration process is very difficult, and often not a worthwhile goal in North Carolina, as North Carolina has a reasonable estate administration process. Therefore, we suggest that you retitle assets that are easily retitled, such as brokerage accounts, and ignore assets that would be bought and sold several times in your lifetime, such as automobiles, and assets that are difficult to retitle, such as personal property and real property.

**CAUTION: Be careful what you place or direct into your Revocable Trust.** Please note that placing some assets into your Revocable Trust should not be done without a careful understanding of the tax and legal effects of doing so. For example, please call us to discuss whether contributing any of the following assets is appropriate for you: IRA or other retirement benefits; commercial annuities; installment obligations; automobiles; personal property; savings bonds; contracts and leases.

*B. In What "Name" Will Your Trustee Hold These Assets?*

It is recommend that your assets be held in the name of the Trust and that the title to Trust assets be held by the trustee in substantially the following format:

**[YOUR NAME], Trustee, [YOUR NAME] Revocable Trust, [date of trust].**

Please use the date of the FIRST signing of the trust, NOT the date of subsequent amendments.

It presents no problems if a bank or other financial institution wants you to hold an asset in a slightly different name. The important thing is to be sure that your Trust is not confused with any other Trust and that the assets are clearly held in your Trust.

*C. How to Transfer or Place Specific Assets Into Your Trust*

Even though you may not have all types of assets that are addressed below, I feel that it is helpful to discuss them. You may obtain such assets in the future. You may also simply be curious.

*1. Your Residence*

It is generally not recommended that your home/residence be transferred to your Trust. However, if you desire to transfer your home/residence to the Trust, we can prepare a deed to achieve this transfer. You can sign it and have it notarized in our office or at the location of your choice. After it is notarized, we can prepare any additional paperwork and then have it recorded and return the original to you. If you have it notarized and recorded, be sure to send us a copy of the recorded deed.

*2. Cooperative or Condominium*

If you have such an ownership interest, ask the manager of the cooperative or condominium about how it should be transferred into the Trust. We rarely put this property into a revocable trust, UNLESS the property is in another state or country.

### 3. *Other Real Property*

A new deed is required for every piece of real property that you own if the property is to be placed in trust. Again, we rarely put this property into a revocable trust, UNLESS the property is in another state or country.

If any of your real property other than your home is encumbered, it may be unwise to record the deeds. Alternatively, it may be necessary to obtain the permission of your lender prior to transferring the real property into the Trust. If you have such other real property, please let us know so that we can assist you further.

In addition, if you have real property in another state, it is strongly suggested that prior to transferring it into the trust, that you consult with a tax advisor in that state to determine if there would be any adverse tax results that may occur. States, such as California and New York, have certain laws which may cause estate tax to be due upon death. Placing real estate in other states into your trust is a WONDERFUL use of this Trust, as it may save you from having to administer your estate in that other state (called an "ancillary administration").

### 4. *Savings Accounts and Certificates of Deposit*

These accounts should be held by your chosen person as trustee of your revocable Trust. A copy of the Trust maybe required to be given to the bank. Suggest that the bank make a copy of THOSE ITEMS WHICH they require for their records. If a particular savings account cannot be transferred before a set date without losing accrued interest, you may want to wait to make that transfer.

### 5. *Checking Accounts*

While such accounts can and, in almost all cases, should be put into the name of your Trust, you may want to leave one account in your name as an individual. Your main account may be difficult to retitle, as direct deposits (social security payments, etc.) and direct debits (insurance, medical premiums, etc.) may be tied to that account. Be sure, however, to always keep a low balance in such account.

Your bank records should indicate accounts are held in the name of the Trust.

### 6. *Life Insurance Policies*

To place this asset into your Trust, you must write to your insurance agent or to the company itself to obtain their "Change of Beneficiary" forms. In most cases, the beneficiary should be your Trust. Because these changes are not effective until they are received and acknowledged by insurance companies, you are advised to take care of this as soon as possible. Be sure you receive written assurance from the insurance company that the desired changes have been effected in the company records and by endorsement on the policy. We can help you with this process.

7. *Insurance on Property Held by the Trust*

Insurance contracts which provide for payments to be made if there is a loss or damage to assets held in the Trust (for example, if your house or other real property are held in the Trust then the insurance on this real property) should be amended. You should ask your insurance agent to have the policy or policies amended. The trustee(s) and the Trust should be named as additional insured parties, using the "name" suggested above.

You, as an individual, should continue to be named as an insured party even though the Trust and trustee are added as additional insured parties.

8. *Stock/Securities/Mutual Funds*

The transfer of stock, mutual funds, etc., to the Trust must be accomplished by changing the title on the stock certificates, mutual funds, etc. Your broker can help you make this change for free or for a small charge per certificate. If, however, you hold shares through a brokerage firm, you need to change the title on only the brokerage account, rather than on each share certificate.

Your Stockbroker may request a copy of the signed Trust instrument for examinations by his or her firm's legal department.

If you hold shares in a closely held corporation, you should have the corporation's secretary issue new certificates in the name of the Trust. The existing (old) certificates should be canceled. Before this is done, however, it should be determined whether there is a stock restriction agreement, whether an assignment might cause some sort of forfeiture, and whether the board must approve the transfer. It would be wise to consult with corporate counsel in this regard.

9. *Partnerships/Limited liability companies (LLCs)*

The transfer of partnership or LLC interests to the Trust can be complicated. A partnership agreement may describe what is needed to transfer the interest. If you have a copy of a partnership agreement it should be reviewed to determine: (a) whether or not you can transfer your interest into the Trust and, if so, (b) how you are to achieve this result. You may want us to help you with this. If you do, we will need a copy of any partnership agreements to which you are a party (especially the operating agreement). We can then advise you.

*10. Promissory Notes*

You should assign each promissory note you own to the Trust. We suggest that you do so by typing on the back of each note the following endorsement:

Pay to the order of [YOUR NAME] as Trustee under the [YOUR NAME] Trust dated [DATE OF TRUST]

Dated:  
Name:  
Signature of Named Payee

You should also assign the deeds of trust or mortgages securing payment of the notes to the Trust. You should have prepared and record an Assignment of Mortgage. We can prepare the necessary documents to achieve this assignment.

*11. IRA's and other Retirement Benefits*

TO AVOID VARIOUS UNFAVORABLE TAX CONSEQUENCES, IRA'S MUST BE HELD IN THE NAME OF THE INDIVIDUAL WHO CREATED THE ACCOUNT. IT IS SUGGESTED THAT YOUR IRA NOT BE TRANSFERRED TO YOUR TRUST.

With respect to the IRA, you name beneficiaries (successor to you) in a "designation of beneficiary" provision on a form provided by the financial institution. Normally, you would name the individual(s) you have named in your Trust as first beneficiary(ies) and as alternate beneficiary you would name the Trust. Individuals as beneficiaries may have a few more tax elections than the Trust will have. Note, however, that both the form of the IRA and the beneficiaries you name require thoughtful consideration of what is right for you.

MAKE CERTAIN that we are aware of any retirement benefits payable to your Trust. There are certain very complicated rules that must be followed for the best income tax consequences.

*12. Automobiles*

At this time we do not recommend that you transfer your automobiles to the Trust. If, however, you have a number of automobiles, or ones of particularly high value, these probably should be transferred to the Trust immediately. Please call my office prior to making this transfer.

*13. Annuities*

We strongly recommend that you consult with us prior to transferring annuities into your Trust. The taxability of annuities both prior to and after your death may depend on numerous factors to which your accountant can advise.

#### 14. *Other Personal Property*

Please let us know if you have any other property which we may not have considered such as airplanes, yachts, horses, art work, copyrights, patents, or royalty contracts, a family business, stock options, mobile homes, or partnership interests. We will need to give you specific advice based on the particular asset.

Personal property (jewelry, furs, furniture, and art objects, etc.) that are very valuable such that avoidance of probate may be desirable, can be transferred by a general assignment with particular descriptions of valued items and a provision to cover after-acquired items. These items can be listed by you on Exhibit "A" which is attached to your Trust.

#### IV. *Administration of the Trust*

The trustee can do anything the Trust lets the trustee do (see Trustee Powers in your Trust instrument). If you want to do something not specifically allowed by existing terms of the Trust, you can amend the Trust.

##### A. *Income Tax Returns*

As long as you serve as the Trustee, you will use your Social Security Number as the tax identification number for the Trust. You will file the same income tax return you have always filed. If your successor trustee takes over, a tax identification number must be obtained so that the Trust can file an income tax return. The Trust will, in effect, file a return with the same information and pay no more taxes than you pay now. It will, in effect, report the same information on an IRS form designated for trustees and fiduciaries.

Your successor trustee will use IRS Form SS- 4 to obtain a new tax identification number. When the number is received, it should be communicated to your accountant or tax return preparer as it will be used on the tax information return to be signed by the trustee.

##### B. *Record Keeping*

We do not believe that extraordinary record keeping is necessary beyond that which you would ordinarily maintain. It is important, however, that your trustee keep records of Trust property separate from property that may not be in the Trust.

##### 1. *Preparation of List of Trust Assets*

You and your trustee should prepare and periodically update a listing of all assets transferred to the Trust. This listing should be reviewed and amended from time to time so as to accurately reflect those assets transferred to your Trust. Examples of these listings are:

- (a) 100 shares, P, G, & E, common;
- (b) Real property at 000 South Church Street, Burlington, NC;
- (c) Limited partnership interest in XXX Fund 1 unit, etc; and
- (d) Diamond 1 Carat wedding ring
- (e) Certificate of Deposit No. 11111 in the amount of \$10,000.00 with XYZ Bank.

##### 2. *Future Changes in Trust Assets*

If the Trust should subsequently dispose of a listed assets, this asset should be removed from the list by keeping a separate schedule and indicating its disposition and the date in the margin. The list as originally prepared need not be changed as it only indicates assets as of a particular day. As assets are removed, your trustee should keep a record of the change. Likewise, if a new assets is acquired by the Trust by contribution by you, the Grantor, or by reinvestment of Trust assets, it may be added to a new schedule.

It is recommend that you review the list of trust assets each year when income tax returns are prepared. Delete what has been sold. Add what has been acquired and confirm that is held in the name of the Trust.

Finally, it is suggested that you have all of your estate documents reviewed every two years. This will guarantee that the documents will remain as up to date as possible should any changes occur either in your intent regarding the distribution of your estate or regarding any changes in the state, federal or tax laws.

I hope the above provided you with enough guidance regarding the administration of your Trust. If you have any questions, please give us a call.