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Memorandum re Revocable Living Trust Funding Instructions

From: David L. Howell,
To: Estate Planning Clients

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Dear Clients:

In most cases, the main reason to have a Living Trust is to avoid the cost and expense of a formal probate proceeding when you die. In order to do so, your assets must be formally transferred into the Trust, a process called “Funding”. Think of your Living Trust as an empty box or receptacle waiting to receive assets. It offers no protection from probate until title to your property is actually in the name of your Living Trust. In this section we will explain the way to change title to assets you already own and how to take title to new assets you purchase in the future.

How to Put New Assets in the Name of Your Living Trust

Title to new assets preferably should be taken in the name of your Living Trust as that name is given in your Trust document. Generally speaking, you will see something like this on financial asset statements and other title documents after you have retitled the asset: “**John Doe and Jane Doe, Trustees, 2014 Doe Family Trust, u/d/t [DATE]**” That “u/d/t” stands for “under declaration of trust dated.”

General Instructions on the Transfer of Existing Assets

The funding instructions that follow will help you determine the best methods for transferring different types of property into your Living Trust. The mechanics of getting particular pieces of property into the Trust vary from one asset to the next. As you deal with buying, selling and conveying your Living Trust assets, you may wish to accomplish many of the funding tasks yourself. However, it is important that your funding be accomplished in a precise and legally correct way. Therefore, we caution you to utilize the services of a competent estate planning professional any time you have questions or concerns about the transferring of an asset to or from your Living Trust.

Real Property

To transfer real property to your Living Trust, you may use a simple quitclaim deed or a grant deed. Prepare the deed so that it transfers title from the way it is now held to your Living Trust under the formal title designation found in your Trust. Our office typically prepares deeds to accomplish this when we prepare a full estate plan. Care must be taken that the legal property description is entered exactly as it is on the

current deed. Signatures must then be notarized. After the deed is signed and notarized it should be recorded with the County Recorder where the property is located.

Before the new deed is recorded you should check with any financial institutions that hold a security interest in the property (i.e., trust deeds and mortgages). This will ensure that the transfer of the property does not trigger any acceleration (“due-on-sale”) clauses in the loan. Under Federal law (Garn-St. Germain Depository Institutions Act; 12 U.S.C. 1701j-3) transferring your personal residence to your Living Trust should be exempt from triggering the acceleration clause in your mortgage. However, as to other real property (such as investment properties), it is not as clear. Thus, getting the necessary approval is preferable to inviting a dispute. This approval should be received in writing to avoid future problems. If any complications arise, consult our offices or your attorney for guidance.

Additionally, Texas is one of the few states that has not created a blanket rule for continued viability of title insurance on a property when that property is transferred into a living trust. You or I as your attorney will have to contact the title insurance company to determine their policy on a given piece of property with the particular title insurance policy in effect on that property.

When you acquire a new piece of property simply instruct your escrow officer to title the property in the name of your Living Trust. The escrow officer will help with the title insurance process to make sure that this does not become a stumbling block in the transaction. Inform any mortgagor on property that you do not intend to occupy as your primary residence of the Living Trust while you are negotiating the terms of the loan.

Out-of-State Real Property

If you have real property not in Texas (or California where I am also licensed), I recommend using a local attorney or title company to effect a legal transfer to your trust. I can help to locate such a person/agent if you like. That person or company will need a copy of the Certificate of Trust, and will prepare a deed or deeds for your signature. There will be fees associated with the out-of-state attorney/title agent and for recording the documents there.

Trust Deed or Mortgage

Some clients hold trust deeds and mortgages as security for loans they have made to others on real property. You, as a lender, are entitled to foreclose on the property in the event payments on the loan are in default. The trust deed or mortgage can easily be assigned to your Living Trust by preparing an Assignment of Deed of Trust or Assignment of Mortgage, whichever applies. This assignment should be notarized and recorded in the same manner as a transfer of real estate.

Bank or Savings & Loan Account

The transfer of an existing checking or savings account, or one that is created in the future, can be accomplished quite easily. Take a copy of your Affidavit or Certificate of Trust to the new accounts department of your bank or savings and loan and request that the accounts be set up in the name of your Living Trust. You will then sign the new signature cards as Trustee. You need not change the face of your checks to indicate trust ownership. If you have a certificate of deposit with the bank or savings & loan, you may have to wait until the account matures before transferring it into the Trust; otherwise, interest penalties

for early withdrawal may apply. Consult with your bank officer for the regulations on individual accounts. If there are no penalties you may want to transfer the asset to your trust.

Furniture and Personal Property

Even your furniture and household effects may be transferred to your Living Trust. Remember that all assets transferred to the Trust are outside the jurisdiction of the probate court. These items can be placed in the Trust by use of a written assignment. Our office prepares a "Personal Property Declaration" as part of our standard estate planning package, which generally accomplishes this task. However, it is recommended that for each asset of substantial value (such as an expensive piece of jewelry or art) a separate and specific assignment be prepared and executed.

Cars, Aircraft, Boats

These are titled personal property assets - they are registered with a government agency. If you only have a car or two, not of particularly great value, then we recommend not doing anything. There is a simple process for transferring title when you have died that will not be difficult or time-consuming for your successor trustees. However, if you own very valuable vehicles, consult the DMV for transfer of your titles. If you have an airplane, then you will want to formally transfer title with the FAA. We recommend consulting the FAA Aircraft Registration Branch in Oklahoma City or the Aircraft Owners and Pilots Association for more information.

Bearer Bonds

Bearer Bonds generally have no names inscribed on them to indicate ownership. They are negotiated by any individual having possession of them. To place them in your Living Trust you should use a written assignment similar to the one described above.

Stocks and Bonds

For existing stocks and bonds the transfer procedure can be difficult and time consuming. These problems can be reduced if you have a working relationship with a stockbroker who will agree to help you with the transfer. If a broker is not used, a letter for the particular stock should be sent to the transfer agent. An agent outside the state of New York should be located because of the substantial transfer tax imposed by that state. Sometimes a telephone call directly to the corporate offices of the company may be helpful in eliminating the red tape of transfer. A waiting period of four to eight weeks is not uncommon in accomplishing the transfer. You will likely have to fill out several transfer forms for each stock and get a Medallion Signature Guarantee stamp from a local bank or brokerage (this is like a notarization, but not as widely available).

A copy of the Affidavit or Certificate of Trust should be sent along with your letter to the transfer agent for his or her records. This will demonstrate to him or her that your Living Trust is Valid and exists under the laws of your state. It is a much easier task for stocks acquired in the future. You need only instruct your broker that title to the stocks should be taken in the name of your Living Trust. Your broker may also want a copy of the Affidavit of Trust for his or her records.

However, the entire process can be simplified by holding the shares in a brokerage account rather than

holding the individual certificates. If a brokerage account or "street name" is used, the local brokerage firm would simply open an account in the name of your Living Trust. All transactions could then be handled without assigning certificates or having to produce a copy of the Living Trust on each purchase or sale of shares. We strongly recommend this procedure, rather than holding stock certificates yourself as it simplifies transfers into and out of your Trust, prevents loss of certificates, and greatly simplifies the duties of your successor trustee after your death.

Small Corporation Ownership Interests

If you own an interest in small corporation, transfer of ownership is accomplished, theoretically, the same was a with regular stocks and bonds - sending notice to the transfer agent and having the books of the corporation updated. However, most small, privately-held companies do not have transfer agents. So, you should send a letter to the secretary of the company directing him or her to arrange a transfer of the stocks on the corporate books. If you have a physical stock certificate, return it to him for replacement. You may very well be the corporate secretary, and if so, and if you need assistance, please contact our office.

Professional Corporation Ownership Interests

Please note that there are specific rules in most states for Professional Corporations, such as those run by and providing services by doctors, attorneys, veterinarians, accountants, etc. Generally speaking, it is impermissible for a professional to transfer ownership of a Professional Corporation to a trust where any of the trustees are not members of that same profession (or are not members of specifically approved adjunct professions). Please consult us if you have such an interest to transfer as this must be done correctly so as not to jeopardize your state license to practice the profession in question.

General Partnership Interest

You should check with the Partnership Agreement to make sure that there is no reason why you cannot transfer any interest in a general partnership into a trust. If there is no reason why you cannot, then you can simply execute an assignment form transferring the interest into the Trust.

Limited Partnership Interest

Just as the transfer of stock can be a complicated and cumbersome affair, so can transferring an interest in a limited partnership. The actual Limited Partnership Certificate should be examined closely. These documents typically provide for one of three methods outlined for transfer of an interest. First, only the approval of the general partners will be needed. Second, the approval of all partners both limited and general will be required. Finally, and least common, no approval of any partners is needed.

The best way to proceed in any of these three categories is to personally contact the general partners for guidance. We have found that mailing instructions without first contacting the general partners merely confuses the people running the partnership.

Once you have received directions from the general partners, a simple transfer document should accomplish your goal of transferring the interest to your Trust.

U.S. Savings Bonds

U.S. Savings Bonds are transferred into your Trust by completing Treasury Form PDF 1851. The form needs to be signed and dated with your signature guaranteed. The completed and signed form should be sent along with the savings bonds to the Federal Reserve Bank that services your area.

Life Insurance

The determination of what to do with your life insurance policies is dependent on a number of factors. If you have a taxable estate (i.e. your total assets exceed your available lifetime estate tax exemption) of \$5,340,000 per person (as of 2014), \$10,680,000 for a couple when an A/B trust is used, the best course of action is likely to transfer your insurance policies to an irrevocable life insurance trust, or ILIT. If your estate is not taxable, it is often best to leave ownership of the policy outside your trust and name your spouse as primary beneficiary and your trust as contingent beneficiary. However, there are a number of reasons why you may want your trust to be the owner and/or primary beneficiary of your life insurance policy. Therefore, you should consult with our law firm, if you have not already done so, to discuss your circumstances before making any changes to the ownership or beneficiary designation of your life insurance policies.

Lifetime Gifts

Finally, something to consider under the right circumstances is to remove certain property from your estate altogether. It may be appropriate to make gifts during your lifetime of assets (often personal property items or interests in real property). Each person enjoys a \$14,000 gift tax exclusion as to gifts to any person in any calendar year. Thus, a set of parents can make gifts of up to \$56,000 to a child and that child's spouse, without generating a gift tax, or using up any part of their lifetime combined estate/gift tax exclusion. Some transfers are as easy as handing the object to the recipient, thus removing the object from your estate. Some transfers, such as real estate, require proper documentation including deeds, assessor's forms, etc.

Retirement Accounts

Tax-Deferred Retirement Accounts such as 401Ks and IRAs, generally speaking, should **NOT** have your trust listed as its primary beneficiary. In order of preference, we recommend the following hierarchy of beneficiaries, (these assume an ordinary family situation, of course this can be modified depending on your particular situation):

1. Your spouse
2. Your children
3. Your Living Trust

The reason for this is that when your trust becomes the owner of the account, the IRS will treat this as an early withdrawal and seek payment of all of the deferred taxes accrued to that point. This can be ruinously expensive. Far better to allow your beneficiary to roll the account over and continue to defer the taxes.