

# HOW TO FUND YOUR REVOCABLE TRUST

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## 1. Real Estate

### Legal Requirements

- Deed/Title to Real Estate
- Executed according to South Carolina Law
- Recorded in the records of the County Courthouse
  - May require consent of mortgagees if property is mortgaged
    - Avoids "due on sale" problem
    - However Federal Law allows for most grantor trusts and inter-spousal transfers without mortgagee consent

### Real Estate Attorney Needs

- Copy of correct recorded deed/title to real estate
- Copy of executed Trust Agreement
- Address of Trustee
- Name, address, telephone number and loan number of mortgagee, if any
- Certificate of Trust

### Action Required by Attorney

- Prepare and execute deed transferring title
- Record the Deed
- May also require filing documents with plantation or subdivision, etc.

### Action Required by Client

- File request for Homestead Exemption with county if Grantor is eligible
- File request for 4% assessment ratio with county if Grantor is eligible
- Otherwise, can cause substantial and unnecessary increase in property taxes

### Other Issues

- Splitting property owned jointly, whether real estate or other Trust property
  - Split ownership first
    - Then each spouse places their interest in their own Trust
    - Avoids possible hyper technical marital deduction arguments and related estate tax arguments
    - Can also produce fractional interest discounts and lower estate tax upon second death

### Out of State Property

- Coordinate with estate planning attorney and out-of-state real estate attorney and possibly in-state real estate attorney

### If Real Estate is Sold

- Must be by the Trustee(s) as the legal owner(s)

### Gift of real estate or any other Trust property after funding

- Take out of Trust and place in Grantor's name
- Then Grantor makes the gift
- Leaves paper trail
  - Avoids possible and very technical IRS arguments
    - No longer necessary but still good procedure

## 2. Personal Property

- Titled property
  - Cars and boats
    - Re-register title with proper agency
      - Automobiles
        - Highway Department
      - Boats
        - May be South Carolina Department of Natural Resources
        - May be Coast Guard
    - Obtain lienholder consent anytime any property is subject to a lien
  - Untitled property
    - Household and personal effects
    - Bill of Sale

## 3. Stocks and Bonds

- Requires re-registration
- If in brokerage account
  - Broker will need letter of instruction
    - May also require specific firm forms
    - Usually have their own Certificate of Trust, but we prefer use of UTC form
  - If Grantor holds certificates
    - Have to go through transfer agents
      - Specific firm forms, etc.
    - Suggest
      - Open brokerage account
        - Have broker take care of all re-registration
          - Inexpensive and easy
- Suggest all securities be held in one brokerage account
  - Provides clean records
  - Inexpensive
  - Review SIPC or insurance other coverage on accounts
  - Make sure you are comfortable with broker' financial stability
  - Some mutual funds can not be held in some brokerage accounts
    - Check with your broker
- To be safe
  - Always give broker a clear letter of instruction that you are placing the assets in a grantor trust and anticipate that the funding is tax neutral and to advise, if not, and provide a copy of the Certificate of Trust
    - Can do this for all transfers
    - Makes sure there are no misunderstandings
  - If broker asks for a complete copy of the trust agreement, tell them it is not necessary

- If they insist, then it may be acceptable to give them the first page and the signature pages and maybe the pages with the Trustee powers
  - If they insist on a complete copy, then contact us before giving it to them
4. Bank Accounts
- Requires changing names on all accounts
  - Give the bank a letter of instruction and a Certificate of Trust
  - If broker asks for a complete copy of the trust agreement, tell them it is not necessary
    - If they insist, then it may be acceptable to give them the first page and the signature pages and may the pages with the Trustee powers
    - If they insist on a complete copy, then contact us before giving it to them
  - Will need social security number of Grantor, if a Grantor Trust
  - Will need taxpayer identification number, if not a Grantor Trust
  - May need assignment forms for certificates of deposit
    - Check to see if any penalties
  - Will also have to complete and sign other bank forms
5. Safe Deposit Boxes
- Similar to requirements for bank accounts in general
  - Can also name deputies (agents) who can enter safe deposit box
    - Can take out or add contents
      - Deputy's authority terminates with the death or incompetency of person who appointed him or her
  - Successor Trustee can close safe deposit box and open a new one
6. Life Insurance
- Change beneficiary
    - Change of ownership is not required
  - Standard beneficiary forms are available
    - Not accepted by all insurance companies
    - Probably best to use specific company forms
    - Some companies have special forms if trusts are involved
  - If you have a local agent
    - Let him or her process the change of beneficiary forms
      - Very cost effective
  - If you do not have a local agent
    - Call company to obtain forms
      - Better yet, obtain name of local agent
7. Annuities
- Requires assignment
  - No standard forms
  - Need specific company forms
  - If annuitant, owner and beneficiary *are not* the same

- Don't change anything without consulting estate planning attorney and/or CPA
    - Can be serious tax consequences
  - Assuming annuitant, owner and beneficiary are the same
    - Change beneficiary to owner's Trust
    - There are risks in changing ownership of annuities, even to a trust
  - You should never place an annuity, which includes a commercial annuity, pension, profit sharing plan, 401K or IRA, just to name a few, into your trust without a letter from us or your CPA saying to do so
    - Changing the ownership to trust can trigger immediate ordinary taxation
    - Changing the beneficiary can have adverse income tax result
8. Notes and mortgages owned
- Requires assignment
  - Requires real estate attorney
9. Limited Partnerships
- Requires assignment
  - Normally requires consent of general partners and others
    - Write a letter to general partner requesting transfer to Trust
  - Often time-consuming
  - Often not easy
  - Probably requires an attorney
10. Closely held corporations and LLCs
- Must re-register stock with company or with company transfer agent
  - Often company doesn't know what to do
  - Can be time consuming
  - Can be expensive when compared to traded securities
  - Probably requires an attorney
  - Be careful if an S Corp
    - Special trust rules apply and special trust language is needed
11. Tax Aspects
- Revocable Living Trusts are Usually Grantor Trusts
    - If Grantor is Trustee or Co-Trustee
      - No separate tax return required
        - All income and expenses are reported on Grantor's personal income tax return
      - No taxpayer identification number needed
        - Use Grantor's social security number
      - \$250,000/\$500,000 gain exclusion available
        - If Grantor otherwise qualifies
    - If Grantor is not Trustee or Co-Trustee
      - Grantor Trust tax return or other report requirements must be met
      - Need separate taxpayer identification number