

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's 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