

# TRUST FUNDING INFORMATION

(Instructions for Transferring Assets into Your Trust)

**PLEASE NOTE:** *The following information outlines the method by which various assets should be transferred into, or otherwise interact with your Revocable Living Trust. If you are uncertain how to initiate a transfer or if you receive conflicting information from another professional, please contact us.*

**REMEMBER: YOU ARE RESPONSIBLE FOR KEEPING YOUR TRUST FUNDED THROUGHOUT YOUR LIFE.**

This Trust Funding Information is divided into two different sections: First, we have included a checklist for you to quickly and effectively transfer your assets into your trust; Second, we have included a reference of all of the different assets and how they are transferred into the trust. This reference will be a help to you while you initially fund your trust, as well as maintaining your trust funded throughout your life.

## TRUST FUNDING INSTRUCTIONS

The following checklist addresses the most common assets and answers the most common questions relating to trust funding. Although the checklist in this first section is not exhaustive by any means, it will be very helpful immediately after your trust is executed and as you begin the initial tasks of funding.

**\*\*\*PLEASE NOTE:** *As you begin to transfer assets into your trust, you may notice that you are asked two questions over and over again (and here are their answers): #1) What is the “EIN” or “TIN” of the trust? (As a revocable trust, there is no separate EIN or TIN; use either or both of your Social Security Numbers). #2) What is the address of the trust? (Use your home address).*

- ✓ Transfer *ownership* of all **BANK ACCOUNTS AND AFTER-TAX BROKERAGE ACCOUNTS** so that “THE SMITH FAMILY TRUST” is the named owner.
- ✓ For all **TAX-ADVANTAGED RETIREMENT ACCOUNTS** (401(k)s, IRAs, 403(b)s, etc.), change the *beneficiary designations* on each account so that the spouse is the primary beneficiary and “THE SMITH FAMILY TRUST” is the secondary beneficiary.
- ✓ For all **LIFE INSURANCE POLICIES** and **OTHER DEATH BENEFITS** change the *beneficiary designations* so that “THE SMITH FAMILY TRUST” is the named beneficiary. Although not necessary, feel free to name whomever as contingent beneficiaries, but only after the trust in succession.

- ✓ For all **REAL ESTATE**, be sure to take *ownership* as “LEVOID SMITH AND YVONNE SMITH, AS CO-TRUSTEES OF THE SMITH FAMILY TRUST, U/A dated (the date of the trust).” Unless explained to you otherwise, we have transferred ownership of your existing real property into the trust. *Please follow through with any recording instructions we gave you.* As you acquire additional real estate or if you refinance any real estate, be sure ownership results in the trust being the named owner. If you have any questions, feel free to reach out to our office.
  
- ✓ For all **BUSINESS INTERESTS**, be sure to transfer *ownership* as “THE SMITH FAMILY TRUST.” We have noted in your estate plan your intent to transfer your business interests into your trust, but the records of the business should also reflect this ownership change. *Please let us know if your business is not formally maintaining such records, or if you need assistance updating such records.*
  
- ✓ For **ALL OTHER ASSETS**, *please reference the information below or contact our office.*

### TRUST FUNDING REFERENCE INFORMATION

As you continue to accumulate assets throughout your life, you may have questions regarding how a specific asset should be treated in relation to your trust. The remaining portion of this document goes through a myriad of different assets and what you should do if you acquire ownership in any such asset. Of course, if you have any questions, please feel free to reach out to our office.

#### A. REAL PROPERTY

Most real estate should be held in the name of the Trust. To transfer real property into your Trust, a new deed reflecting the name of the Trust must be executed, notarized and recorded with the County Recorder in the County where the property is located. Care must be taken that the exact legal description in the existing deed appears on the new deed. If the deed is not executed properly and title of your real estate is not in the name of your Trust on your death, a probate proceeding may be needed to confirm that property to your beneficiaries.

If you have not already provided this office with the necessary documents relating to your real estate holdings, please forward copies of grant deeds and copies of the tax bills which you receive from the Assessor’s office to us as soon as possible so that we may assist you in a proper transfer. **Please do not send the original deed, a copy is sufficient.** Our office does not transfer out of state property or mobile homes. Further, we do not make an independent determination regarding the copy of the deed you provide; therefore, it is imperative that you supply our office only with copies of recorded grant deeds on property you currently own or in which you currently have an interest.

There will be no reassessment of your property under Proposition 13 as a result of this transfer. At the time of recording the Grant Deed, a “Preliminary Change of Ownership Report” must also be filed to prevent reassessment.

Federal law prohibits acceleration of any indebtedness by any lending institution or private individual on a transfer of residential real estate into a revocable trust. However, where there is an existing indebtedness on real estate other than residential (e.g., commercial and/or multi-unit), it will be necessary to contact the financial institution holding either the mortgage or deed of trust before placing it in the name of the Trust. The failure to obtain the lender's consent to the transfer of non-residential property could potentially lead to the lender attempting to accelerate the loan based on a "due-on-sale" clause contained in the note or deed of trust. Typically, such consent will be granted by the lender after it has reviewed the Certificate of Trust and the appropriate assignment documents have been executed.

There can be special problems with the transfer of property held under a land lease; therefore, you should obtain the appropriate advice prior to any such transfer. If you purchased a home under the Cal-Vet program, you should contact the Department of Veterans Affairs for the proper method of transferring your purchase contract to your Trust.

When your insured property (e.g., your residence) has been re-titled in the name of your Trust, you should notify the insurance company (or agent) of the transfer and ask whether any change in the policy is required. This should apply to both casualty and liability insurance. It may be desirable for the policy to indicate that the Trust is an additional insured.

Please note that if you should refinance or borrow against your property, the lender or the title company may require that the property be transferred out of your Trust and into your name as an individual (this saves the lender and the title company the task of reading the trust in order to verify that it does not contain any terms or conditions which could interfere with the lender's security interest). *Be sure that you ask the title company to prepare and record a deed transferring the property back into the Trust as soon as the refinancing is complete.* If this does not occur, probate of the property may be necessary. In the event the title company will not cooperate, be sure to contact me (or another attorney) so that I can prepare and record the appropriate deed to return the property to your Trust.

As you acquire new property, simply instruct the escrow officer handling the transaction that you wish to have the title recorded in the name of your Trust. You may need to provide the escrow officer or title company with a copy of the Certificate of Trust.

#### B. SECURITY INTERESTS

Most real estate security interests (e.g., sales contracts or deeds of trust) should be held in the name of the Trust. To transfer security interests into your Trust, an assignment of the contract/deed of trust reflecting the name of the Trust must be executed, notarized and recorded with the County Recorder in the County where the property is located.

#### C. OIL, GAS, AND MINERAL RIGHTS

Oil, gas and mineral rights are often the most troublesome of assets to transfer to a Revocable Living Trust. The reason for this is that, depending on the location or depending on how the assets came into existence, they may be treated either as an interest in real estate or an interest in personal property. Only through an examination of the title documents is it possible to determine the exact method by which such right should be transferred to the Trust.

#### D. BANK/SAVINGS ACCOUNTS/SAFETY DEPOSIT BOXES

The transfer of Money Market Accounts, Savings Accounts and Timed Deposits (CD's) into your Living Trust can be accomplished quite easily. All you need do is provide your bank with a copy of the Certificate of Trust which has been prepared for you. You will then sign new signature cards as Trustee of your Trust. Generally, you will not have to open new accounts to replace existing accounts; the only change is on the bank signature cards.

It is not necessary to hold your regular checking account in the name of the Trust; however, there is no harm in it.

When you open up new accounts, simply instruct the bank that you wish to have the title of the account in the name of your Trust. You may need to provide the bank with a copy of the Certificate of Trust.

Safety deposit boxes should be placed in the name of your Trust so your successor Trustee will have no difficulty in gaining access to the box.

#### E. STOCKS AND BONDS

To transfer stocks or bonds into the name of your Trust, a different procedure is used for privately held stock compared to that which is used for stock publicly traded on an exchange.

##### 1. Privately Held Stock

The transfer of privately held security instruments, such as stocks in a privately held corporation, can be accomplished simply by surrendering the existing stock certificates and having new stock certificates prepared in the name of the Trust. This normally does not require a permit from a state agency, nor does it usually have any type of adverse tax consequence. However, the transfer of stock in a privately held corporation normally requires the approval of the corporation. Typically, such consent will be granted by the corporation after it has reviewed the Certificate of Trust and the appropriate assignment documents have been executed. Shares of individual professional corporations are usually not transferred to trusts because of statutory restrictions. You should obtain legal and tax advice prior to assigning any privately held stock or other security interest to your Trust.

##### 2. Publicly Held Stock

In the case of publicly held stocks or bonds, it will be necessary to work through a stockbroker or through the institution from which the assets were purchased (such as a Dividend Reinvestment Plan or an Electronic Registration Plan). If you currently possess the certificate(s), the broker will require you to surrender the certificate(s) and sign certain transfer documents. We suggest that certificates always be sent certified mail. For a standard brokerage (and/or a mutual fund) account, all that is generally required is a request to the broker or account manager. They may also request a copy of the Trust Agreement, but frequently all that is required is a copy of the Certificate of Trust.

#### F. PARTNERSHIPS

Partnerships generally are either public or non-public.

1. Public

If a partnership was bought through a public offering, the institution making the sale should be contacted and given a copy of this instructional letter with a request that ownership name be changed to the name of the Trust. The institution may also require a copy of the Certificate of Trust Agreement.

2. Non-Public

The transfer to Trust of a non-public Partnership Interest (whether General or Limited) is generally accomplished by an Assignment which may or may not need the approval of the general partners or the approval of all the partners. The best way to proceed is to contact the general partners for guidance. Typically, such consent will be granted by the partnership after it has reviewed the Certificate of Trust and the appropriate assignment documents have been executed.

Further acquisition of partnership interests creates no problems. The purchase of the partnership interest is simply titled in the name of the Trust at the time of acquisition.

G. LIMITED LIABILITY COMPANIES

A trust can be a member of a limited liability company (“LLC”). The transfer of an LLC interest to a Trust may require the approval of the LLC. Typically, such consent will be granted by the LLC after it has reviewed the Certificate of Trust and the appropriate assignment documents have been executed.

If you acquire any future LLC interest, simply instruct the LLC that you wish to hold title in the name of your Trust. You will probably need to provide the LLC with a copy of the Certificate of Trust.

H. BUSINESS INTERESTS

Any other business interest or sole proprietorship can generally be transferred to the Trust by an “Assignment of Business Interest”. This document assigns all property/assets owned in the name of the business, for the purpose of determining title, into your Trust so that these interests will avoid probate. However, there may be specific issues with the transfer of interests in businesses (such as permits and licenses) and thus it is necessary that they be reviewed in detail before making the transfer. Accordingly, it is recommended that you obtain legal and tax advice prior to transferring any business interest to your Trust.

If you have a business interest in a franchise, any transfer of such interest to your Trust will probably require the consent of the franchisor. Typically, such consent will be granted by the franchisor after it has reviewed the Certificate of Trust and the appropriate assignment documents have been executed.

I. INSURANCES AND ANNUITIES

Life Insurances and Annuities are assets that may or may not need to be placed in Trust because the proceeds transfer contractually to the named beneficiary and, therefore, already avoid probate. However, if you wish the proceeds to be distributed in the same manner as the other

trust assets (which is usually the case), the Trust should be the beneficiary. You must instruct each insurance company or your insurance agent to designate your Trust as the beneficiary.

J. IRA's/KEOGH's/401(k)'s/ETC.

An IRA, 401(k) plan or Keogh plan, wherever invested, must remain in the owner's name and Social Security number. Between spouses, the Surviving Spouse is usually named the primary beneficiary and the Trust may be named the contingent beneficiary. Please realize that any change of a beneficiary designation of a retirement plan could have important income tax consequences; therefore, you should consult with your tax advisor prior to making any change.

K. INTELLECTUAL PROPERTY

Intellectual property assets such as copyrights, patents, trademarks and royalties that have significant value should be assigned to your Trust. This is normally accomplished by a specific assignment which should be acknowledged by a Notary. You may need to consult with an attorney who specializes in patents or copyrights prior to any transfer.

L. MOTOR VEHICLES/RV's/BOATS

Automobiles, RVs, boats, etc. are items which are placed in your Trust by means of your "Assignment of Personal Property." No Department of Motor Vehicle transfer is required.

M. MOBILE HOMES

Mobile homes may be placed into your Trust by contacting the State of California Department of Housing and Community Development. You may call toll-free (800) 952-8356 for the appropriate form(s) to effectuate this transfer. Please note that mobile homes less than eight and one-half (8 1/2) feet in width and forty feet in length are handled by the Department of Motor Vehicles.

N. PERSONAL PROPERTY

Personal property such as furniture, household effects, art work, jewelry, etc. should be transferred to the Trust. The "Assignment of Personal Property" document located in your Portfolio assigns all of the above-mentioned personal property into your Trust. This Assignment covers not only the property you currently own but any additional personal property acquired up to the date of death.

O. JOINT TENANCY

You should not hold any assets in joint tenancy, except for small checking accounts and automobiles. A joint tenancy asset will not be subject to the terms of the Trust, may frustrate your intentions and could have adverse income and estate tax consequences.

P. SEPARATE PROPERTY

In the event you should ever fund your Trust with any separate property, it must be specifically designated as the separate property of such spouse in order for such property to retain its character as separate property. For example, if a spouse receives an inheritance or gift in such spouse's name, this property will be considered separate rather than community property. Unless the inheriting or gift recipient spouse wishes to change the character of the property from

separate to community, the property must be specifically designated as such spouse's separate property at the time it is transferred to the Trust. Changing the character of any property from separate to community may have significant income and estate tax consequences and could affect the division of property in the event you should dissolve the marriage. Therefore, you should obtain legal and tax advice prior to changing the character of any property from separate to community.

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