

Keeping Your Revocable Living Trust Properly Funded

The advantages of having a revocable living trust as the centerpiece of your estate plan include the following: (1) the ability to avoid a *probate of your estate* upon your death and (2) the ability to avoid a *conservatorship of your estate* upon your incapacity. However, such advantages can be realized only if the legal title to each of your assets indicates that the asset is part of your trust estate (i.e., that the asset is “in your trust”).

Keeping Your Trust Funded Is An Ongoing Process. At the time you established your trust, you should have transferred much of the property you owned from yourself as an individual to yourself as Trustee. However, funding your trust is an *ongoing process*, one that you must continue to follow each time that you acquire a new asset. If you take the legal title to an asset in your own name as an individual or in your name as a joint tenant with your spouse or child, or some other third party, that asset will not be “in the trust.” Therefore, the terms governing your trust will NOT govern the management and disposition of that asset upon your death or incapacity. Instead, that asset could be subject to probate on your death or a conservatorship upon your incapacity.



The Use Of Joint Tenancy Title For Convenience Only. Even if you have a trust, you might feel it is more *convenient* to put one of your children on the legal title to one or more of your bank accounts so that s/he has access your funds in an emergency or in case you become incapacitated. Usually, the intent is to provide someone with *access* to the funds, not to make a *gift* of the funds to your child who is on title to the account. **But Beware!** There are substantial risks involved in this practice.

First, upon your death, the child who is on title as a joint owner to your bank account will be sole owner of all of the proceeds in the account, by operation of law. If you have more than one child, you can imagine that your other children might be less than pleased with their sibling receiving all of this property outside of your trust or estate. Moreover, the child who now owns the account may not be inclined to share the proceeds with some or all of your other children.



Second, a problem with sharing the legal title to one of your bank accounts with a child can arise if that child has any *financial* or *marital* problems. Under California law (and, for that matter, the law of most states), all of the funds in an account on which the child is a joint owner can be reached by that child’s creditors, including his or her ex-spouse! If this were to happen, the only possible way to save your account would be for you to prove that you were the only person who contributed funds to the account and that your child was on title *for convenience only*. This is not always easy or convenient to do, especially with the passage of time.

A Properly Funded Trust Avoids These Problems. Having a properly funded trust enables you to avoid the problems described above.

First, if you become incapacitated, your successor Trustee (who is probably the child you wanted to have access to your funds in an emergency) will have complete access to the funds in the accounts. Remember that the legal title to the account is in the name of the *Trustee* of your trust. That means that



whoever is the Trustee of your trust will have control of the accounts that are “in the trust.” In addition, since your trust already contains the provisions describing how your property is to be divided and distributed upon your death, you can avoid the case in which one of your children unintentionally receives all of the funds in an account on which s/he was a joint tenant with you.

Second, if one of your children is acting as a successor Trustee of your trust and later finds himself or herself in financial or marital difficulty, the assets in your trust are protected from that child’s creditors and ex-spouses.

By the way, when we inform you that you should take legal title to a particular asset in your name as *Trustee of your trust*, review the following examples for guidance:

Example: An Unmarried Client Who Has Established His/Her Revocable Trust Or A Married Client Who Has Established A Revocable Trust To Hold His/Her Separate Property. Sylvia Rossi, an unmarried woman, established a revocable living trust on November 1, 2006. She is the initial Trustee of her trust. Sylvia’s trust was established *under a declaration of trust* (“UDT”) that she signed on November 1, 2006. To fund her trust with her real and personal property, she should take legal title to each of her assets as follows:

Sylvia Rossi, Trustee of The Sylvia Rossi 2006 Trust
Created UDT Dated November 1, 2006.

Example: Married Clients Who Have Together Established A Revocable Trust To Hold Their Property. Henry and Wendy Covington, a married couple, established a revocable living trust on December 15, 2006. They are the initial Trustees of their trust. The couple’s was established *under a trust agreement* (“UTA”) that they signed on December 15, 2006. To fund their trust with their real and personal property, they should take legal title to each of their assets as follows:

For Community Property Assets, Owned by Both Henry & Wendy:

Henry Covington and Wendy Covington, Trustees of
The Henry & Wendy Covington 2006 Trust
Created UTA Dated December 15, 2006

For Separate Property Assets, Owned by Henry alone:

Henry Covington, Trustee
The Henry & Wendy Covington 2006 Trust
Created UTA Dated December 15, 2006
(As the separate property of Henry Covington)



Funding Your Trust With Specific Assets. In the paragraphs below, we explain the steps you must take to ensure that the various assets you own are properly titled. We have divided the following discussion into sections based on *asset type* because funding your trust with different types of assets requires you to follow somewhat different procedures, depending on the type of asset you wish to transfer to your trust.

- ✓ Checking and Savings Bank Accounts. With regard to changing the legal title or registration to a bank account, the procedure is fairly straightforward. You should inform the financial institution in writing that you have executed a revocable trust and that you wish to change the legal title to each of your bank accounts from you as an individual (or, in the case of spouses who own the account in joint tenancy, from you both as joint tenants) to you as Trustee of your trust. (See the examples above to determine the specific language you should use for this purpose.) Be prepared to present the financial institution with a copy of your *Certification of Trust* and a *redacted copy* of the trust document.✘ The information contained in these documents should be all that most competent financial institutions will need to process your request.

In *most* cases, the bank will need to change your account numbers and issue new checks to you, which can be inconvenient. But the expense is nominal, compared to the risks of leaving this account outside of your trust or putting a child on title for convenience only (see above).

- ✓ Real Property. To change the legal title to your real property, which would includes your personal residence, you must execute a document known as a *Grant Deed* (that we will prepare for you if needed), which must then be recorded with the County Recorder of the County in which your real property is located. In accordance with California Revenue & Taxation Code Section 62(d), there will be no revaluation of the property (also known as a “reassessment” of the property) for property tax purposes when



the property is transferred into your revocable living trust. In other words, your property taxes will NOT increase as a result of your having transferred the property into your trust. In addition, with regard to a mortgage on your property, there is usually no need to worry that changing the legal title to your real property will be a problem; most lenders will not demand that you pay off the loan simply because you have transferred your real property into your revocable living trust.

- ✓ Securities & Brokerage Accounts. If you hold your investment assets through a brokerage firm, you need only change the legal title on the brokerage account(s), rather than on each individual investment. For example, if you want to put your UBS brokerage account into your trust, you should first contact your financial advisor at UBS, tell him or her that you would like to change the title to your account so that it will be held in your name as Trustee. Of course, UBS has a form for this purpose, which you need to complete, sign, and return, along with a copy of your *Certification of Trust* and a *redacted copy* of your trust document. By the way, to ensure that you are the person who has the power to make changes to the title on the account, your signature (on the

✘ By a *redacted copy* of your trust document, we mean a copy of the entire copy of the trust document **EXCEPT** the sections that describe “who gets what” upon your death. These sections are usually Articles Five and/or Six of the trusts that we have drafted for you. No financial institution has a right to review these sections of your trust when changing legal title to the account. **NEVER PROVIDE THESE SECTIONS TO ANY FINANCIAL INSTITUTION, TITLE OR ESCROW COMPANY, OR THEIR EMPLOYEES.**



institution's forms) must usually be *Medallion Signature Guaranteed*. An acknowledgment by a notary public is not sufficient.

“What is a *Medallion Signature Guarantee*?” For the purpose of changing the title to an account holding publicly traded securities, the **Medallion Signature Guarantee** is only method by which your identity can be authenticated throughout the financial services industry. A holder of a **Medallion Signature Guarantee** stamp can only be a representative of a “Commercial Bank or Trust Company having a New York Correspondent.” Most banks have at least one person on staff who can guarantee your identity in this manner.

- ✓ **Certificates of Stock.** If you hold *original* certificates representing shares of stock held in companies whose stock is publicly traded, we strongly suggest that you open a brokerage account with a brokerage company before attempting to change the title to the shares of stock. This is because of the specific rules you must follow in order to change title to the stock shares, which are time-consuming, tedious, and potentially expensive. If you elect to hold original certificates rather than hold your shares with a brokerage firm, the transfer of the stock shares to your trust can only be accomplished through the issuance of a new original certificate with your name *as Trustee* of your trust on its face. Most companies whose stock is publicly traded have enlisted agents to process transfer-of-title requests. These agents are known as *Transfer Agents*. Because these transactions are usually processed by mail, thereby preventing transfer agents from being able to confirm your identity in person, transfer agents require strict adherence to certain rules regarding the change of title on original certificates of stock.

First, you must ascertain the identity of the Transfer Agent that processes title transfers for the company whose stock you own. You can usually find this information by contacting the company whose stock you own and asking for the name and contact information of the company's Stock Transfer Agent (or log onto the company's website and look for the “[Shareholder Relations](#)” link).

Second, you must send a letter of direction directing the Transfer Agent to change title on the certificate to you as Trustee of your trust. You must include the original certificate(s) with your letter to the Transfer Agent.

Third, along with the original stock certificate, you must send a completed and duly executed form entitled “*Stock/Bond Transfer Form*” to the Transfer Agent. Your signature on this form must be *Medallion Signature Guaranteed* by a representative of a Commercial Bank or Trust Company having a New York Correspondent. As indicated above, most banks have at least one person on staff who can guarantee your identity in this manner. Unfortunately, these rules do not allow a notary public to acknowledge your signature as an acceptable way to confirm your identity for transfers of title to stock certificates.



Fourth, you must send a completed and sign IRS Form W-9 indicating your social security number and whether you are subject to tax withholding.

Fifth, you must remember to send your trust information (i.e., the *Certification of Trust* and the *redacted* copy of your trust) with the original stock certificate and the other forms.

Sixth, you must mail the entire packet to the Transfer Agent via certified mail, return receipt requested. (You should also insure the packet for a dollar amount that is equal to approximately three percent (3%) of the market value of the stock valued as of the day you send the packet. Though it can be expensive, this insurance is highly recommended to cover the cost of replacing lost or stolen stock certificates.)

If you do not follow these rules exactly, the entire packet will be returned to you unprocessed. Are you still sure you would rather not hold your stock with a brokerage firm and let the firm handle all of this for you? (See [Securities & Brokerage Accounts](#) above for the applicable procedure.)



- ✓ **Partnership Interests (Limited and General); Limited Liability Company Interests.** If you own an interest in a limited or general partnership or in a limited liability company (LLC), we strongly recommend that you change the registration of this interest so that it is held in your revocable living trust. However, you must review the partnership or operating agreement to determine how your interest may be transferred from you as an individual to you as Trustee of your trust. Keep in mind that there is usually a section of the agreement describes how your interest can be transferred to your trust. Usually you must send a letter of direction to the managing partner of the partnership or the managing member of the LLC stating that you wish for your ownership interest to be held in your name as Trustee of your trust.
- ✓ **Automobiles and Other Motor Vehicles (Exception to the General Rule).** It can become tedious and frustrating to attempt to take legal title to your automobile as Trustees of your trust. The staff at the Department of Motor Vehicles may not understand the concept of holding title to your automobile in your name as Trustee, or they may make it time-consuming to do so. Moreover, the California Probate Code exempts automobiles from the list of property that is used to determine if a probate of your estate is necessary.* Therefore, there usually is not a problem with holding title to the automobile or other motor vehicles in your name as an individual, or jointly with another person (spouse, partner), as joint tenants.
- ✓ **DO NOT TRANSFER THESE ASSETS INTO YOUR TRUST: Retirement Plans, Insurance Policies, and Tax-Deferred Annuities.** While your trust is intended to hold much of your property, you should NOT transfer the ownership of your retirement plans, insurance policies, and tax-deferred annuities to yourself as Trustee of your trust. First of all, this type of asset is known as a “pay on death” contractual arrangement. By their very nature, these assets avoid being subject to probate so long as you have designated someone or some entity other than your estate as the beneficiary.

However, you may designate Trustee of your trust as a *beneficiary* to receive the proceeds of the retirement plan or insurance policy upon your death. If you have young children, or have a rather complicated method by which your assets will be distributed upon your death, consider channeling the proceeds of these plans through your trust so that your entire estate will be distributed in accordance with the provisions of your trust. Many people go to great lengths to have elaborate trusts drafted for their children and family only to neglect to channel the large sums of money in their insurance policies and retirement plans into such trusts. Instead, the children receive huge sums of money outright quickly because no attention was paid to the disposition of these assets. An outright payment of the proceeds can circumvent the objectives and protections contained in the trust instrument.

If you have neglected to change your beneficiary designations, **DO SO NOW** so that your estate plan will be well-integrated. Contact your insurance agent or the administrator of your retirement plan or IRA and have new beneficiary designation forms sent for your completion. Call us with questions as to the manner by which the forms should be completed. We will be happy to help you.

- ✓ **Other Personal Property.** Don't forget to transfer other personal property to your trust, such as an airplane, a yacht, horses, copyrights, patents, mineral rights, or royalty contracts. Otherwise, these and similar assets would be subject to probate upon your death. ■JC

* California Probate Code Section 13050(b) specifically excludes automobiles, other motor vehicles, mobile homes, campers, trailers, etc. from one's estate for the purposes of determining if a probate is necessary.