

# Sempre Avanti!

*Always forward...*

Welcome to the Summer 2010 issue of **Sempre Avanti!**

In this issue, we will discuss the importance of keeping your revocable living trust properly funded. The advantages of having a revocable living trust as the centerpiece of your estate plan (namely, the ability to avoid a **probate of your estate** upon your death and the ability to avoid a **conservatorship of your estate** upon your incapacity) can be realized **ONLY** if the legal title to, or registration of, each of your assets indicates that the asset is "*in your trust*".



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## KEEPING YOUR TRUST FUNDED IS AN ONGOING PROCESS.

At the time you established your trust, you should have transferred much of your property **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 you acquire a new asset. If you take legal ownership of an asset in **any** manner other than in your name as Trustee of your trust (e.g., as Joint Tenants or Tenants-in-Common with others, as Community Property with your spouse, in your name as an individual, etc.), that asset will not be "in the trust" and 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 to a conservatorship if you become incapacitated.

You would be surprised at the number of people who go to the expense of having an estate plan built around a revocable trust but never actually transfer their assets into the trust. Unfortunately, under this scenario, a decedent's estate could be subject to probate, and his or her assets may ultimately be distributed in a manner other than that which is set forth in the trust document.

Later in this issue, we will discuss which types of assets are commonly held in one's trust and which types should remain outside of the trust (usually staying in the name of the individual owner). The process of transferring title to one's assets is often quite simple and virtually all financial institutions are familiar with such transfers.

However, for some transfers (such as the transfer of title to real property into your trust, for example), we recommend that you seek the assistance of a duly licensed attorney who is competent to handle such transfers.



*Be sure to complete your estate plan by transferring your assets INTO your trust!*

## WHAT IS A CERTIFICATION OF TRUST?

A **CERTIFICATION OF TRUST** is a document by which you attest, under penalty of perjury, to the existence of your trust and in which certain provisions of the terms governing your trust are included. In order to take legal ownership of your assets as Trustee of your trust, financial institutions will require such evidence of the trust's existence. Often, personnel of these institutions will simply ask you for a "*copy of your trust document.*" However, some sections of the trust document are **private** and **confidential** – your trust

document is **not** a public document and you have the right to keep certain provisions private and from public view. In our office, we attach to the **CERTIFICATION OF TRUST** a **redacted copy** of the trust's governing document which, together with the **CERTIFICATION OF TRUST**, provides everything a financial institution needs to process your request to fund the trust with your property. (By a "**redacted copy** of the trust's governing document," we mean a copy of the entire trust document **EXCEPT** the sections that describe "who gets what" upon your death. No financial institution has

a right to review these sections of the document (during your lifetime) when changing legal ownership of an asset. With access to the information contained in the **CERTIFICATION OF TRUST**, financial institutions and other third parties are much more likely to honor your authority and power as Trustee than they might otherwise be. Whenever changing or taking title to or registration of an asset as Trustee of your trust, always be prepared to present to the financial institution a copy of your **CERTIFICATION OF TRUST** and a **properly redacted copy** of the trust document.

## ISN'T JOINT TENANCY MORE CONVENIENT?

Even if you have a trust, you might feel it is more convenient to add one of your children to the registration to one or more of your bank accounts so that s/he has access to your funds in an emergency or in case you become incapacitated. ***But Beware! There are substantial risks involved in this practice.*** **FIRST**, upon your death and under the current law, the child who is named as a joint owner to your bank account will **automatically** become the **sole owner** of **ALL OF THE PROCEEDS IN THE ACCOUNT**. And a conscience-driven child who shares the proceeds with his/her siblings may face gift tax consequences for doing so. **SECOND**, a problem with sharing the registration 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), **SOME, MOST, OR POSSIBLY ALL OF THE FUNDS IN AN ACCOUNT ON WHICH THE CHILD IS A JOINT OWNER MAY BE REACHED BY THAT CHILD'S CREDITORS, INCLUDING HIS OR HER EX-SPOUSE!**

### LEARNING THE LINGO

Terms vary when referencing ownership of different types of assets. While ownership of a parcel of real property or a motor vehicle is known as the "title" to the asset, ownership of a bank account, investment account, or similar asset is known as the "registration" of the account.

## 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 all of the trust's bank accounts. Remember that the registration of

each of the trust's accounts 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 assets that are "in the trust." You can avoid the case in which one of your children unintentionally receives all of the funds in an account on which s/he is 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-spouse.

## WHAT TYPES OF ASSETS SHOULD BE “IN MY TRUST”?

We recommend that the legal ownership of **most** of your assets be held in your name as **Trustee of your trust** (e.g. “*John Smith and Susan Smith, Trustees of The Smith Family 2010 Trust, Dated February 15, 2010*”), including the following assets:

- **Checking accounts, savings accounts, money market accounts, and certificates of deposit (CDs)** that are not structured as “*pay on death*” or “*POD*” accounts.
- **Real property.** Note: With regard to property taxes, don’t worry. California’s **Revenue & Taxation Code §62(d)** provides that your property taxes will **not** increase as a result of transferring your real property into your revocable living trust.
- **Investments in Brokerage Accounts** that are not structured as “*pay on death*” or “*POD*” accounts.
- **Certificates of Stock.** Note: If you hold **original** certificates representing shares of stock held in companies whose stock is publicly traded, we strongly suggest that you open an account with a brokerage company **before** attempting to change the registration of the shares of stock yourself. This is because the specific rules you must follow in order to change the registration of the stock shares make the process very time-consuming, tedious, frustrating, and potentially expensive—and that’s if you do it correctly!
- **Interests in Partnerships (limited & general) and Limited Liability Companies (LLCs).** Note: Be sure that a transfer of these interests into your trust is permitted by the entity’s governing agreement, which is usually the case.
- **Other personal property.** Don’t forget to transfer other personal property to your trust, including airplanes, yachts, horses, copyrights, patents, mineral rights, or royalty contracts. Otherwise, these and similar assets could be subject to probate upon your death.



*Don’t forget to put these assets  
INTO your trust!*

## WHAT TYPES OF ASSETS SHOULD NOT BE “IN MY TRUST”?

While your trust is intended to hold **most** of your property, generally you should **NOT** transfer the ownership of the following types of assets to yourself as Trustee of your trust:



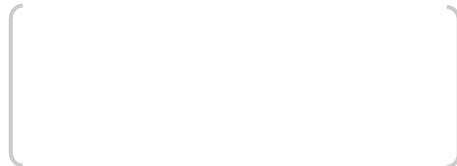
*You should keep cars, retirement plans, insurance policies, and annuities OUT of your trust.*

- **Retirement plans, insurance policies, and tax-deferred annuities.** These types of assets are known as “*pay on death*” or “*POD*” contractual arrangements. By their very nature, these assets **avoid** going through probate so long as you have designated someone **other than your “estate”** as the beneficiary to receive these assets upon your death. However, you *may* designate your trust (i.e., the Trustee of your trust) as a primary or contingent beneficiary to receive the proceeds of the assets upon your death. By doing this, these assets will be distributed to your intended beneficiaries in accordance with the terms governing your trust. (Note: With regard to retirement benefits or other tax deferred assets, please obtain competent legal advice when designating your trust as a beneficiary of these assets).
- **Automobiles and other land vehicles.** It can become tedious and frustrating to try to register your automobile as a trust asset. The staff at the **Department of Motor Vehicles** may not understand the concept of holding the registration to your automobile in your name as Trustee, or they may make it time-consuming to do so. Moreover, and importantly, California’s Probate Code exempts automobiles from the list of property used to determine if a probate of your estate is necessary. Therefore, **generally speaking**, there usually is no problem with holding the registration to your automobile or other motor vehicles in your name as an individual or with another person (spouse, partner) as joint tenants.



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*The summer nights are short  
Where northern days are long  
For hours and hours lark after  
lark trills out his song  
The summer days are short  
Where southern nights are long  
Yet short the night when night-  
ingales trill out their song*

***The Summer Nights are Short***  
***Christina Rossetti***

## The Fine Print

The information contained in this newsletter is for **general information purposes** only and is not intended to offer legal advice on specific cases.

If you have any questions about the information in this newsletter, please contact

**Creighton Law Offices** or another appropriate professional legal services provider to determine how this information might affect you.

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**IRS Circular 230 Disclosure:**  
To ensure compliance with requirements imposed by the IRS, we inform you that any US tax advice contained in

this communication is not intended to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code, or (ii) promoting, marketing, or recommending to another party any matter addressed by this communication.

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**Creighton Law Offices** is located in San Mateo, California. The firm specializes in providing exemplary estate planning, trust administration, probate, and long-term care planning services to its clients.

**Visit our new website!**  
**Creighton Law Offices** has launched a new website that features, among other things, more information on **Funding a Trust** and other estate planning topics. We encourage you to contact us with suggestions for what you would like to see on the site or in our newsletters.

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If you would like additional copies of this or previous newsletters, or know someone who would benefit from receiving this information directly, please contact **Peter** at (650) 344-0700.