

TRANSFERRING ASSETS INTO YOUR LIVING TRUST

General Information

The Trust Agreement prepared for you by the *Millhorn & Shanawany Law Firm* allows you to fund the Trust by transferring assets to the Trust during your lifetime. It is essential that your property be retitled in the name of the Trust in order to avoid probate.

Please review the following guidelines for the different assets you may wish to transfer into your Trust.

Tax Information

Regardless of the assets being transferred, a special tax identification number is not required so long as you are acting as trustee. Rather, you may use your social security number for the tax identification number. You may receive a form W-9, "Payer's Request for Taxpayer Identification Number." This form should be completed using your social security number and returned to the sender. Failure to complete and return the form may result in the withholding of 20% from certain earnings on investments which are in the Trust. No differentiation is made between personal income and trust income and no mention of the Trust is required on your income tax return, as long as you are the trustee.

Bank, Savings and Loan and Credit Union Accounts

In most cases, all bank, savings and loan, and credit union accounts, including checking accounts, savings accounts and certificates of deposit, should be held in your name(s) as trustee(s) of your Trust. In order to change accounts at banks, savings and loans, and credit unions, you will need to supply the institution with a copy of the *Certification of Trust*, or in the alternative, usually the first page and signature pages of the Trust. The institution will also need the original of the Certificate of Deposit or account book. The institution should also be provided with the following information:

1. The account should be titled as set forth the *Certification of Trust*.
2. The tax identification number will continue to be your social security number.
3. The language on checking accounts should not be affected by the transfer and no new checks will be needed.
4. Interest, dividends and other income should not be affected. If income or life insurance will be affected, the institution should be requested to notify you of this prior to the time the transfer is made.

When your checking accounts are transferred to the Trust, you usually need only sign new signature cards which show the account in your name(s) as trustee(s). Generally, the name(s) on the checks themselves need not be changed and the checks need not refer to the Trust.

When transferring Certificates of Deposit, make sure that the bank or savings and loan will not treat the transfer as an early withdrawal.

If you lease a safe deposit box, the name should be changed to your name(s) as trustee(s) of your Trust. This will make it easier for the successor trustee to have access to the box in the event of your death. If the Bank does not allow the safe deposit box to be held in the name of the Trust, then you should consider adding the name of the Successor Trustee as an authorized signor.

Real Estate

In order to transfer real estate to the Trust, new deeds must be prepared which retitle the property in the name of the Trust. The *Millhorn & Shanawany Law Firm* will assist you in transferring your property to the Trust. You will need to bring into our Law Office copies of the deeds to any and all of your real estate.

If you have lent money to someone else and have taken back a mortgage, this mortgage should be assigned to the Trust. We will need a copy of the mortgage to prepare the assignment. We recommend you record the assignment, but it is not required. However, if you choose not to record the assignment, it is essential that the assignment be kept in a safe place.

If you have either bought or sold property on a land contract, this contract should also be assigned to the Trust. We will need a copy of the land contract if you would like us to prepare the assignment. Again, we recommend you record the assignment. If you choose not to record the assignment, it is essential that the assignment be kept in a safe place.

Securities

Publicly Traded Securities: If you have an account with a broker and your securities are held in the street name of the brokerage firm, the brokerage account may be changed to the name of the Trust by simply notifying your broker that you wish to make a name change and supplying him or her with the name of the Trust as set forth on the *Certification of Trust*.

If you hold your securities in your own name, your broker can assist you with the name change. Simply take the original security certificates to the broker. The tax identification number will continue to be your social security number(s). This transaction is not subject to tax.

If you prefer, you can deal directly with the stock transfer agent for each security, rather than going through a broker. The name of the stock transfer agent can be found on your dividend check or statement. Submit the **original, unsigned, certificate** along with instructions regarding the name change, to the stock transfer agent by certified mail. Also send the transfer agent a signed "Stock Power", form which may be obtained from the Client Resources tab on our Website. The stock power gives the transfer agent the authority to endorse the stock certificate and reissue it in the name of the Trust. You must sign the stock power in the presence of a bank officer or member of the New York Stock Exchange who must guarantee (not notarize) your signature.

Closely-held Stock: Before assigning closely-held stock to a trust, the corporation's documents should be reviewed to insure that corporate redemption or stock restriction (buy/sell) agreements do not limit or prohibit the transfer or assignment of stock. If limitations apply, amendments to the corporate documents may be necessary in order to allow assignment of the stock to the Trust. Generally, transfers to a revocable living trust which is managed by the individual are not opposed by stockholders.

In the case of S Corporation stock caution must also be used when transfers are made into a Trust. The initial transfer of stock into a living trust does not pose a problem, but, if the stock later becomes part of an irrevocable trust, or the grantors are no longer the trustees, the S Corporation election could be invalidated. Therefore, if you are planning to transfer stock to which an S Corporation election relates, please let us know.

Life Insurance and Annuities

It is not necessary to transfer the ownership of your life insurance policies or annuity contracts into the name of the trust. You should request a Change of Beneficiary Form from the bank, insurance company or retirement plan administrator and change the beneficiary on the life insurance policies or annuity contracts, to your spouse first, if any, then to any named beneficiaries you wish to designate and, if none, to your Living Trust.

Retirement Accounts

Ownership of Individual Retirement Accounts (IRAs) **should not be transferred** to the name of your Trust, as this would defeat the tax-deferred status of the IRA. These assets are not subject to probate but are included in your Federal Estate Tax calculations. Instructions for the distribution of these assets are found in the IRA's Designation of Beneficiary. To change the beneficiary of your IRA, you should request a **Change of Beneficiary Form** from the plan administrator.

Because these assets are included in your Federal Estate Tax calculations, instructions for the naming of beneficiaries on these accounts differ based on whether you are married and whether you and your spouse are subject to the Federal Estate Tax.

If you are single: name any beneficiaries you wish.

If you are married and **are not** subject to the Federal Estate Tax: name your spouse as the primary beneficiary, and then name any other beneficiaries you wish as contingent or alternate beneficiaries.

If you are married and **are** subject to the Federal Estate Tax, each of you should have separate Trusts commonly referred to as "A/B" Trusts: name your spouse as the primary beneficiary, and then name your own separate Trust as the contingent or alternate beneficiary.

Savings Bonds

Government form PD 1851, "Request for Reissue of United States Savings Bonds/Notes in Name of Trustee of Personal Trust Estate," is used to change the name on savings bonds. These forms are available on the Client Resources tab on our Website. Your bank will be able to assist you with the transfer. You should let the bank know the name in which the bonds should be held as indicated above, that the tax identification number will continue to be your social security number, and that, for federal income tax purposes, you will be treated as the owner of the portion of the Trust represented by any tax-deferred accumulated interest on the bonds. This last information should be provided on the PD 1851 itself.

Automobiles, Mobile Homes, Motor Homes, Boats, etc.

Personal Automobile: Your personal automobile is not required to be transferred into your Trust, if you are married or if you have children. A personal automobile which passes to a surviving spouse, or, if there is no surviving spouse, to your children is exempt from probate in Florida. Transferring your personal automobile to your Trust will, however, allow that automobile to be sold to a third party much faster and with less paperwork. This office recommends that any new automobile purchased be purchased in the name of the Trust.

Mobile Homes, Motor Homes, Boats, etc.: Mobile Homes, Motor Homes and Boats all have Certificates of Title, just as your automobile. The Florida Statute that exempts the personal automobile, passing to a surviving spouse or child, from probate does not extend to Mobile Homes, Motor Homes and Boats. These assets should be transferred to your Trust to avoid probate.