



THE IMPORTANCE OF TITLING YOUR ASSETS IN THE NAME OF YOUR TRUST

Client Golden Rule: All Current And Future Assets Need To Be Titled In The Name Of Your Trust (Except Qualified Retirement Plans):

Compared to probate, the ease with which a living trust can pass an estate is remarkably smooth and hassle free. Though the attorney plays a crucial role, **YOU -- MORE THAN ANYONE ELSE -- determine the smooth and successful outcome of your trust.** Whether or not your loved ones avoid the "probate quagmire" depends upon your current and continued diligence in making sure that all the assets which you presently own -- and all of the assets you acquire in the future -- are transferred to, and titled in, the name of your trust (except qualified retirement plans). That is your part in the process and doing so is not difficult, nor does it change your life in any way. You still maintain complete control over your assets to do with as you please; **real property cannot be re-assessed for transferring it to your trust; your social security number continues to function as your trust Tax I.D. #, and you continue to report, file, and pay your income taxes just as before.** Other than needing to title your assets in the trust, its present real effect on your life is completely transparent and neutral.

"Qualified Retirement Plans" SHOULD NOT BE TITLED IN YOUR TRUST. These include but are not limited to IRAs; KEOGHs, 401Ks; 403Bs. A discussion on how to identify a "Qualified Plan" and what to do with it is discussed under "QUALIFIED RETIREMENT PLANS".

PROPER WORDING FOR TITLING IN THE NAME OF YOUR TRUST. There are three essential elements for titling assets in a trust:

- 1) The Present Trustee (s) -- YOU!
- 2) The Name of the Trust (Usually "your last name trust")
- 3) The Date of the Trust

The very first page of your trust will set forth the proper wording in big bold letters and will read something like: **John Smith and Mary Smith, trustees of the Smith Trust, created on January 1, 1980.**

Note: Sometimes clients concern themselves that there may be other "Smith Trusts". Again, all three of the above elements distinguish the trust -- plus your social security number(s). (Note that there is no legal requirement that the title include the wording "Revocable Living Trust", as it only adds useless verbiage.

TITLING PROCEDURES FOR MOST ASSET TYPES ARE DISCUSSED IN THE FOLLOWING PAGES:

Though each institution (or asset type) differs slightly in their particular procedures and policies, nothing substitutes for your common sense and persistence in the asset re-titling process. Complying with their paperwork requirements helps guarantee a completed transfer, accurately reflected by their records, insuring a smooth transition at someone's death or incapacity (your true goal). Do not however, make the mistake of thinking this process to be a legally technical task. It is not -- and it is something you should be able to accomplish with minimal time and effort since most institutions receive such requests daily. Simply use a goal-oriented approach, tell them you want your asset titled in your trust, and ask what they need.

Though most common asset types are discussed it is impractical to cover every kind. If you don't see it discussed here, approach the logical person or entity in charge of titling or ownership records, tell them you want your asset titled in your trust, then comply with the necessary procedures and paperwork.

HELPFUL DOCUMENTATION (PROOF PAGES): Whenever you approach anyone to title an asset or account in the name of your trust we suggest you begin by **supplying a copy of the first page of your trust (“Declaration Page”) and last page (“Signature Page”) of your trust.** The first page (“Declaration Page”) provides titling and other relevant information for titling purposes, and when coupled with the “Signature Page” it proves the existence of your trust (which is why we refer to these as the “Proof Pages” of your trust). Generally this is the only paperwork from your trust that you need to supply. Once you give them a copy of the “Proof Pages” many entities will then only need your signature in a few places. Others however, may ask you to fill out some short forms sometimes referred to as a “Trust Certification Form”.

FILLING OUT A TRUST CERTIFICATION FORM: In filling out any forms remember the answer is almost always you (or you and your spouse if married)!

Who is the **Trustor**? You are (and your spouse if married).

Who is the **Settlor**? You are (and your spouse if married).

Who is the **Grantor**? You are (and your spouse if married).

Who is the **Trustee**? You are (and your spouse if married).

Who is the **Beneficiary**? You are (and your spouse if married).

Successor Trustees? That's who you named to take over management of the trust if something happens to you (if you don't remember the names are listed on page 2 of your trust).

Powers and Authorizations? As a rule, anything they are asking about is usually already spelled out and specifically authorized by your trust. Further, this is your trust and you are essentially empowered to do anything you want, so answering “yes” to the question can be considered your authorization anyway!

AUTHORIZING OTHERS TO SIGN ON OR REMAIN ON AN ACCOUNT: Our advice is to **title all your accounts in the name of your trust.** If you then wish another “authorized signer” (such as a child) to remain on, or be placed on your account then you will generally have to appoint them as an authorized co-trustee and you can do so by using a form available on our website called “Appointment of Co-Trustee”. Before doing so however please be sure to read the full discussion on granting others signature power as it is important to remember you are essentially giving someone the keys to the safe. If they misuse the asset you still have to pursue them and collect from them! (If they have squandered all the money this could prove difficult to say the least.) So be careful who you grant signature power to. If on balance you are comfortable with authorizing someone to sign on an account then execute the “Appointment of Co-Trustee” form and supply a copy to the appropriate institution. Doing so will allow you to title the account in the trust and should allow the person to be added or to remain on the account.

Beneficiary or POD Accounts: Some types of accounts allow designating a beneficiary to be paid directly on your death. (Sometimes called POD accounts – Paid on Death.) Though this avoids probate, it does nothing to deal with the event of your incapacity -- **and often unintentionally enriches the beneficiary with a greater portion of your total estate than others (contrary to what you really intended).** The general advice is to title the account in the trust unless it is a small account that you have earmarked for a special person such as a grandchild, or you are sure you understand the repercussions and wish it to stay that way.

Individual Type Assets Discussed

(1) Bank, Savings, & Credit Union Accounts, Etc.: As a general rule you should title **ALL** bank accounts in your trust. Doing so is one of the easiest procedures as most banks are extremely accommodating and current in their practices regarding living trusts. Do not listen to misinformed advice to leave accounts out of your trust. Your checks do not change. What is printed on your checks does not change. (Nothing about the trust needs to be printed on your checks.) Your account number does not change. How you sign your checks does not change. Everything still appears the same to the outside world. The bank usually only modifies its internal records. The only change you need to look for is a reference to the trust or trustees on your monthly bank statements (as confirmation that it is in the trust).

(2) Certificates of Deposit or CDs CDs are treated the same as other accounts at the bank. Most banks will re-title your CDs immediately. In rare instances some banks will not re-title until the CD matures (an arbitrary stance that should give you thoughts of banking elsewhere).

(3) Treasury Notes and T-Bills are usually accounts held through the Federal Reserve Bank. Re-titling these accounts in the name of your trust is handled much the same as you handle your bank accounts. Contact the appropriate Federal Reserve Bank (where the account is held) and tell them you would like to title the account(s) in your trust.

(4) Money Market and Mutual Funds Accounts (Franklin, Fidelity, Vanguard etc.) are basically handled the same as bank and other type accounts. Contact them and tell them tell them you want to title the account(s) in your trust. (Remember not to title the Qualified Retirement Plan portion of the account in your trust.)

(5) Real Estate Property: Whether you now own 100% of a piece of real estate or own a part interest as co-owner, **it is vitally important that you execute a deed for each whole or part interest – conveying and transferring it to your trust** (if you want your trust to pass the property). Generally, real property is any ownership interest in or right to land, whether or not there is a house or building on it. Oil and mineral rights are also a real property interest. Mobile homes are not a real property interest (but any land it sits on is if you own that). Contrary to an often popular belief, you are the full legal owner of your real estate property, regardless of any outstanding loans used to purchase the property (or funds obtained through equity loans). The lender does not enjoy any ownership interest, but rather holds a “lien” against the property.

New Real Estate: It is very common for people to forget to title their new real estate in their trust. **Don't forget about this!** If you want your trust to pass the property then **be sure to execute a deed transferring and titling any new (whole or part) interest in real estate into the name of your trust** (unless you acquire title directly in the name of your trust).

Warning about Re-Financing Transactions: If you re-finance property which is, or should be part of your trust, we advise doing a new deed immediately after the closing. That is because more often than not, (to make it easier), they demand and have you remove the property from the trust and/or obtain the financing in your individual name.

(6) Mobile Homes: The agency in California for re-titling your mobile home into your trust is the Housing and Community Development Department. This agency is usually very helpful in the process. Look in the front of your White Pages phone book under State Government Offices. If you still have a loan on your mobile home, you will also need to work with your lender.

(7) QUALIFIED RETIREMENT PLANS (IRA, 401K, 403B, ETC) -- Cannot title in trust but can Designate a Pay on Death Beneficiary: TAX LAWS DO NOT PERMIT TITLING ANY QUALIFIED PLAN INTO YOUR TRUST (UNLESS YOU WISH TO INCUR VERY UNFAVORABLE TAX CONSEQUENCES). Any qualified

plan must be in an individual's name. Fortunately, most qualified plans allow you to name a beneficiary to receive it upon your death – thus avoiding probate. In this regard most of our married clients continue with their spouse as the primary beneficiary and often name their trust as the contingent/secondary beneficiary (especially if they have young children so the trust can manage the funds until the stated age milestones). For those latter reasons many single folks with young children decide to name the trust as the primary beneficiary (to manage the funds to the specified ages).

Identifying a Qualified Plan: The unending variation and list of "qualified plans" make it impractical to name them all. However, you can usually identify a qualified plan since most seem to share the following characteristics: **1) Tax-Sheltered Income** -- Any amounts funneled into it are deductible from your taxable income. (In other words you are not presently taxed on this money.) **2) Tax-Sheltered Growth** -- Any growth, interest, or other income which occurs with-in it is also are not presently taxed. **3) Tax-Deferred Until Drawn On** -- You are only taxed on the amounts which you withdraw. (Theoretically occurring only after retirement when you are in a lower tax bracket.). In some instances there are **plans that are part qualified and part unqualified**. For estate planning purposes, **practicality dictates treating it as if all parts were qualified** (relying on the beneficiary designation).

Other Notes on Qualified Plans: Many clients have significant amounts invested in their Qualified Plans. Remember, the qualified plan exists outside of your trust and therefore your trust and trustees are powerless to access it should you become incapacitated. You may want to consider providing a way for someone to access these funds (power of attorney) in the event of your incapacity. Finally, qualified plans are a highly complex, specialized area of law. If you wish to pursue a different beneficiary designation strategy, check with the experts (we are not). The above rules are generally desired and applicable to most.

(8) Other Non-Qualified Retirement & Pensions Plans: Many times a company provides pension payments during a retired employee's lifetime. Sometimes these payments continue on through the surviving spouse's life. After the surviving spouse's death all rights terminate. No action is required in such situations since no property or assets are left to pass on. In other situations a residual amount can remain after death. In such a case, investigate actually titling it in your trust -- or if that is impractical – investigate naming the trust as the beneficiary to receive the residual.

(9) Life Insurance & Beneficiary Designations: Several types of assets (including life insurance) allow designating a beneficiary. At your death an immediate payment is made to the named beneficiary. No probate is involved (unless someone took the misinformed step of designating their estate as the beneficiary). Therefore, even though you can, there is little need to title Life Insurance in your trust (unless you care about your trust exercising ownership options in case of your incapacity.)

Why Name Your Trust as Beneficiary of Life Insurance or Anything Else: Think of your living trust as your master estate plan. Theoretically, it is somewhat advantageous to have one master estate plan governing the distribution of the whole, rather than several part and partial plans – and to have everything flow to and through the trust. Part and partial estate planning also sometimes has the unintended consequence of enriching a beneficiary with a larger portion of your total estate than you intended. Think of your trust as your one master estate plan. Usually, if you name the trust as beneficiary the funds end up with whom you want anyway. Further, **the trust has the advantage of addressing the issue of administering funds to minor children or who to pay if someone does not survive**. A simple beneficiary designation of a named individual does not. Also, it simplifies tax reporting and collecting. After consideration, you may favor leaving well enough alone (especially if it is a small amount). Regardless of your decision, any suggested change in beneficiary designation generally takes a lower priority to first titling your "probatable" assets in the trust.

(10) Publicly Traded Stocks & Securities & Brokerage Accounts: Generally you will know if you own this kind of stock or security – because usually it is presently traded on an exchange of some sort. Though we often associate this with stock in major corporations, it also extends to some types of bonds, some limited partnerships, and other types of rights and assets, etc. These types of assets are usually purchased and sold through a stock-broker or investment firm. (Privately stocks and securities are discussed in another section.)

If you have a brokerage account -- and your stock and other ownership certificates are held by the firm

as part of your account, all you have to do is change ownership of the account into the name of your trust and you are done. If you physically possess some (or all) of the certificates yourself, the easiest method is to deposit the certificates into an existing account that you have re-titled or opened in the name of your trust (easily done). You can always ask for them back later -- and the certificates will have the trust name on them (assuming the account is in the name of the trust when you ask for them back). Simply put, using a broker and/or brokerage account to re-title your securities is the easiest way to accomplish the task. (There are some brokers who will help you, without obligation, as a gesture of goodwill.) Absent your willingness to use a broker or brokerage account as advised, you must go through, for what is to most people, an arduous process. Contact the transfer agents listed on the certificate and ask their procedure.

***For many reasons it is more practical to leave your securities with a brokerage firm.** (Decisions otherwise are usually based on emotion or misinformation.) It is a much easier transition if you pass away or become incapacitated. Also your holdings are generally consolidated, insured, and better safe-kept.*

(11) Private Corporations (not publicly traded) If you own private corporation stock, (also the case when you are incorporated and doing business as a corporation) you must **locate** who has, or is in charge, of the **stock certificate book** (and other corporate records). You need only **exchange the present certificate(s) for a re-issue of new ones in the name of your trust**. If such cannot be found you have bigger problems. It is very important that corporate formalities be observed, and the inability to locate something as basic towards that end as the stock certificate book indicates a serious deficiency in said formalities. It is suggested that you consult the appropriate attorney at once, not only about issuing the stock in your trust name, but also about cleaning up any other deficiencies in observing corporate formalities.

(12) Limited Liability Companies -- LLCs (not publicly traded): Much like corporations there are internal records and books (and often certificates) which reflect your ownership in an LLC. Again it is simply a matter of updating the internal records, and where applicable, exchanging your current certificate of ownership for one in the name of your trust.

(13) Partnerships: A partnership is a formal arrangement, with a formal name, with assets held in the name of the partnership, and filing of annual partnership tax returns. You will clearly know if this situation applies to you.

***Understanding the Difference Between a Partnership & Co-Ownership:** Confusion often arises when people own real estate together. If it is a partnership interest, the deed names the partnership as the owner and no individual name will appear. If it is co-ownership, the deed names individuals. In such cases, you own a real (estate) property interest which should be transferred to your trust by deed (covered under real estate). On the other hand, a partnership interest is not a real property interest -- even if the partnership owns real estate (and a deed is not appropriate).*

(14) Limited Partnerships & LLPs: A limited partnership is more like an investment or private security. Unlike a general partner, a limited partner does not engage in managing the business. Generally, the worst-case liability a limited partner faces is the lost investment. A limited partnership interest is often acquired through a dealer or some sort of point person. First ask the dealer or point person to handle the re-titling into your trust. (Reputable ones will perform this task for little or no charge.) If you are unable to work through the dealer, contact and instruct the general partner on your wishes. (If it is a publicly traded partnership see the previous section on publicly traded securities.)

(15) General Partnerships: A general partner enjoys full participatory rights in the day-to-day management of the business and is fully liable for the debts and obligations of said partnership. If you are involved in a partnership and you are not a limited partner then you can just about count on the fact that you are a general partner. You will usually know if you are a general partner. Ask that the partnership records be updated to reflect your interest (and any "buy-out" agreements) as being owned by your trust. **Assignment of Partnership Form** If you cannot obtain cooperation to title a partnership interest in the trust, utilize our downloadable form entitled "Assignment of Partnership". It will legally assign your interest to your trust -- though it is not the optimal method for doing so because those you leave behind will have to enforce it. Of

course this may be the best way to deal with perceived low value partnership interests.

(16) Sole Proprietorships: (your own business, not a corporation, LLC, LLP, or Partnership). To transfer title of a sole proprietorship into your trust, first complete the downloadable form entitled "Assignment of Sole Proprietorship". If you are not operating under a fictitious name you can title all of the assets of the business, including bank accounts, directly in the name of your trust. If you are operating under a fictitious name, you can file a new fictitious business statement naming the trust (doing business as the "fictitious name") -- at which point you can title all of the assets directly in the name of the trust. If for all intents and purposes you are the real value (and value of all good will) of your business – and there is nothing else of real value (equipment, contracts, other good will) – there is little need to do anything. In such cases, once you are deceased, there is generally nothing of your business to leave to your beneficiaries!

(17) Automobiles: Given the relative value of most vehicles, the paperwork and process which the DMV requires to title your vehicle in the trust generally makes it more trouble than it is worth. On the other hand, the DMV's procedure for passing most vehicles at death is generally much less cumbersome than normal probate. The method which some clients use is to pre-sign the pink-slip **without dating it**. The pre-signed pink slip is then put in a safe place, with attached instructions and wishes. You rely on the goodwill of those left behind (who have access to the papers) to fill in a then current date and follow your instructions. Of course you must own the vehicle outright to utilize this method.

Valuable Vehicles: *If you own or acquire a very valuable vehicle you may want to consider going through the DMV process to title it in your trust. The more valuable the vehicle, the more seriously you should consider this and if you title it in your trust be sure to notify your insurance agent.*

(18) Boats, RVs & Airplanes: Use the above guidelines if you need to presently title it in your trust.

(19) U.S. Savings Bonds: The U S. Treasury will re-issue savings bonds in the name of your trust when you fill out the appropriate form and turn in your bonds with the completed form. You can handle this directly through the Treasury/Federal Bank or usually through any institution, which sells savings bonds. Request the form from them. This re-issue does not trigger any taxes but they may require issue of larger denomination bonds in exchange for certain smaller denomination bonds that have fully matured.

(20) Deeds of Trust (owed to you): It is important to note that this discussion pertains to deeds of trust, which **are owed to you (you receive the payments)**. You do not need to worry about transferring debts to your trust -- meaning you don't need to worry about **deeds of trust you owe on (you make the payments.)** Also be aware that deeds of trust are not a real property interest (they are promissory note receivable secured by real property). Whether you provided financing directly and received a note secured by a deed of trust in return, -- or -- purchased deeds of trust as an investment, the path is the same. That is, you must execute an "Assignment Deed of Trust" transferring the interest to your living trust. If you purchased the deed of trust from a dealer they should be happy to help you with this as a courtesy or for a nominal fee. (Please emphasize that only the Assignment needs to be done – formal title searches and recording are unnecessary at this time.) For a reasonable charge we can draw this up if you provide us a copy of the deed of trust.

(21) Other Type Loans, Money or Payments Owed to You: When money is loaned, it is highly advisable to put it in writing (draw up a note) – which amounts to a written promise to pay according to the terms set forth. Otherwise, you or your heirs have no legal protection. Always document any loan or be ready to say goodbye to your money. Or maybe if the loan was to one of your heirs, if it is not put in writing they will unjustifiably receive a larger portion of your estate than they should have. Even if the person you loan the money to is completely honest, if something happens to that person, no one can substantiate your claim. Also, those left behind may not be so honorable. Undocumented loans should be put in writing with payment rights to your trust. Future loans should be handled the same. Present documented loans should either be assigned to your trust or a new note drawn naming the trust (preferred).