



## **THE PRIMARY PURPOSE OF HAVING ASSETS IN YOUR TRUST**

The primary purpose of placing your assets into a Revocable Trust is to avoid the expense and delay of the probate process. Keep in mind that anything that **you own in your name** at the time of your death will go through probate. Therefore, the objective is to transfer the ownership of as many assets as possible into your Revocable Trust, so that these assets will not be involved in the probate process.

Some people transfer everything that they own into their Revocable Trusts. Other individuals transfer almost everything. It is not imperative to transfer everything, if, for one reason or another, you want to leave some things out. A "Pour Over" Will is prepared for this purpose. When we speak of avoiding the probate process, primarily, what we are trying to accomplish is to avoid the Formal Probate process, which can be expensive and time consuming.

### **VARIOUS TYPES OF PROBATE PROCEEDINGS**

Probate is the legal process by which a decedent's property is transferred to his or her beneficiaries or heirs, and where the decedent's debts are satisfied. If the decedent left a Will, the Will will determine the beneficiaries. If the decedent did not leave a Will, the intestate law of Michigan will determine the decedent's heirs.

In Michigan, there are two types of probate proceedings. The procedure to be utilized is generally based upon the value of the assets and the type of assets in the estate. The three types are:

#### **1. The Regular Estate**

The regular estate is opened for a decedent who owned assets in his or her name alone or as tenants in common with a value in excess of \$19,000.

#### **2. The Small Estate**

The small estate is opened for a decedent who owned assets in his or her name alone or as tenants in common with a value of less than \$19,000.

# **THE PRIMARY PURPOSE OF HAVING ASSETS IN YOUR TRUST**

## **HOW TO TRANSFER TITLE OF TRUST PROPERTY INTO THE TRUST'S NAME**

Your Revocable Trust can't have any beneficial effects if it is unfunded (empty). The trust cannot deal with property that it does not own. So, it is an essential step in making your trust effective, to transfer ownership (title) of property into the name of the trust (i.e., "The John Doe Family Revocable Trust").

This trust agreement provides an area to list assets transferred into the trust. This area is called a Schedule A. Listing assets (and insurance) in such a schedule has no legal purpose. It's only intent is to provide information, to be a road map to you and your Successor Trustee. The important thing to remember is that listing your assets in such a schedule merely identifies the assets that have been transferred into your trust – but listing the assets does not have the effect of *actually transferring* the assets into your trust.

Some attorneys recommend that you transfer title into the name of the trustee ("... to John Doe, Trustee"). However, I recommend that you transfer title into the trust's name, rather than the trustee's name. Trustees may change, but the trust name remains the same throughout the trust's existence. So, when the trustees change, no new transfer of title is needed. I recommend that the transfer be worded "... to The Revocable Trust Agreement of John Doe dated..." or "... to The Revocable Trust Agreement of John and Mary Doe dated..."

## **WHAT TO LEAVE OUTSIDE OF YOUR TRUST**

As a general rule, you should leave nothing outside of your Revocable Trust. However, only **your** assets (such as house, stocks, bonds, savings accounts, and so on) need to be transferred into the name of your Revocable Trust. Liabilities (such as any debts you owe) and general insurance policies (such as house and automobile insurance) are not transferred into the name of the trust. In addition, for convenience, there are a few exceptions to the general rule for assets. These exceptions are your checking accounts and your automobile.

## **WHAT TO TRANSFER INTO YOUR TRUST**

Other than the limited exceptions, all of your assets should go into your Revocable Trust. Any assets, in your name, outside of your trust will be subject to the probate process. Transferring assets into your trust is really very simple. Basically, there are two types of property that are transferred into a trust – property with ownership (title) documents and property without such title documents. Each type of property is treated differently when it comes to transferring it to your trust.

### **1. Property Without Ownership (Title) Documents**

Many types of property don't have title documents, including all kinds of household possessions and furnishings, clothing, jewelry, furs, tools, farm

# **THE PRIMARY PURPOSE OF HAVING ASSETS IN YOUR TRUST**

equipment, antiques, electronic and computer equipment, art works, bearer bonds, cash, precious metals, and collectibles. Some estate planners suggest that you can transfer these items to the trust simply by listing them on a trust schedule and that no other action is needed. However, I recommend that such items be listed on a schedule attached to a transfer document such as a Bill of Sale, which simply and legally formalizes the transfer.

## **2. Property With Ownership (Title) Documents**

After your trust agreement has been signed, witnessed, and notarized, it is essential that you formally re-register the ownership of all items of property, which you want to transfer into your trust, with ownership documents (title papers). Here is a list of some of the types of property that must have the title documents re-registered, if you want such property transferred into your trust:

- Bank Accounts
- Business Interests
- Motor Vehicles
- Real Estate (Real Property)
- Safety Deposit Boxes
- Stocks, Bonds, & Mutual Funds

You must re-register property in the name of your trust promptly. Your trust won't be effective for any property with an ownership document, which is not re-registered in the trust's name. The new document of title must show that the trust – not you, the grantor – is the legal owner of the property. If the trust isn't the legal owner of the property, the trustee (and successor trustee) has no legal authority to deal with the property for the benefit of the beneficiaries and no authority to transfer that property to the beneficiaries as your trust directs.

If the title to property listed on the trust schedules remains in your name (you fail to re-register it to your trust) that property will pass under the terms of your will. Since it's not usually specifically listed in your will, it will go to the residuary beneficiary, who, of course, may not be the person who you intended to receive it. Even if your residuary beneficiary in your will is your trust, that property will have to pass through the probate process. If you have no will, any property not transferred to your trust will be left under the terms of the Michigan intestate succession law. In either case, it will be subject to all the expense and delay of the probate process – the very things you are trying to avoid.

### **a. Bank Accounts**

Title to bank accounts can be readily transferred to your trust's name by completing the appropriate bank forms. The same applies to money market accounts.

Many individuals keep a small checking account in their own name, or use an informal bank trust account, wherein you name your trust as the beneficiary on the account form, so that your trust will receive the funds in the account after you

## **THE PRIMARY PURPOSE OF HAVING ASSETS IN YOUR TRUST**

die. The account itself remains in your name. This is often desirable for your personal checking account used to pay normal bills, because most people don't want to hold that account, and its checks, in the name of a Revocable Trust.

### **b. Business Interests**

A Revocable Trust can be a good way to transfer business interests to beneficiaries, since the hassles and delays of the probate process can be extremely damaging to a business. How you transfer the title to a business depends on the form of business interest.

If you own all or part of a business in the form of stock that is publicly traded over the counter or on one of the stock exchanges, the company's transfer agent should change the ownership of your stock to the name of your trust. This can usually be done through the company's personnel office or treasurer.

A solely owned corporation can be transferred to your trust by preparing the appropriate corporate records, and then re-registering the share certificates in your trust's name. So, if your business interest is in a privately owned corporation, it may be easily transferred by voiding your existing stock certificates and reissuing new stock certificates in the name of your trust. Blank stock certificates are generally found in your corporate record book.

To transfer a partnership interest or sole proprietorship, an attorney should draw a legal Bill of Sale or Letter of Assignment, which describes the business and transfers it into your trust. (Any ancillary title documents of property owned by the business, such as real estate, must be re-registered in your trust's name).

If you own shares in a limited partnership, ask the general partner to transfer your interest into your trust. Generally, if you contact the general partner's office, they can tell you what documentation is needed. Sometimes, a general partner might state that your interest cannot be transferred into a trust – this is generally not correct – the individual simply does not understand the process and does not know how to do the transfer. An attorney can resolve this dilemma by creating a Bill of Sale or a Letter of Transfer for your limited partnership interest. The same approach would apply to any other assets that the agents will not readily transfer, including such things as expensive art works, valuable antiques, etc. This approach would also apply to interests in patents and copyrights.

### **c. Motor Vehicles**

You may or may not want to transfer your motor vehicles into your trust. Be sure to check with your insurance company to be sure that they'll continue your insurance, if the motor vehicle is technically owned by your trust. If you do decide to transfer motor vehicles into your trust, this can be done at the local Department of Motor Vehicles office in your area.

### **d. Real Estate (Real Property)**

## **THE PRIMARY PURPOSE OF HAVING ASSETS IN YOUR TRUST**

The term “real estate” includes land, houses, condominiums, cooperatives, time-share interests, and any other interest in what attorneys call “real property”.

Transferring real estate into your trust is one area of funding your trust that should not be a do-it yourself project. I may have prepared a quitclaim deed for your Michigan real estate. This deed re-names your interest in the real property into the name of your trust. Real property that you own outside of Michigan will need to be re-titled by an attorney in the state in which the real property is located. Transferring the deed to your house, for example, into your trust will not affect your right to borrow against your house or to refinance it.

### **e. Safe Deposit Boxes**

Although it is not necessary to put your safe deposit boxes in the name of the trust, such an action is usually a wise move. Therefore, to be on the safe side, you may wish to put your safe deposit boxes in the name of your trust. To transfer your safe deposit boxes into your trust, you simply go to the bank and have the bank representative rewrite your file card for the safe deposit boxes in the name of your trust.

### **f. Stocks, Bonds, & Mutual Funds**

To register stocks, bonds, or mutual fund accounts in your trust’s name, ask your broker or money fund officer what is required. Usually, they require a copy of the trust certificate with your notarized signature for their files, and a letter instructing them to register the account in your trust’s name. They should then confirm in writing to you that this has been done.

The easiest way to transfer stocks and bonds into your trust is to take them to your stockbroker and ask the brokerage firm to transfer them for you. The firm may want to charge you for such a transfer, however, since you probably have bought your stocks and bonds in the past from this particular brokerage firm, the firm should be willing to make the transfers for you at no charge (if it would like your continued business). If you do not have a stockbroker, you will have to send your stocks and bonds to a transfer agent, whose name is usually listed on the stocks and bonds. When you send stock certificates to a transfer agent, you should do so by using an Irrevocable Stock/Bond Power, which the transfer agent should be able to provide for you. You must sign the form in exactly the same manner as the stock or bond has been registered. You must have your signature guaranteed – which can be done only by a stock brokerage firm with a seat on any stock exchange or by any bank. Stocks and bonds are non-negotiable as long as they are unsigned. Once signed, your stock or bond certificates are negotiable by anyone. For your protection, send the unsigned stocks or bonds in one letter and the transfer form in a separate letter. Then when both envelopes arrive at the destination, they can be put together, at which time the stock and bond certificates will be negotiable. An alternative solution is to name the transferring brokerage firm as the designated power of attorney. Your letter of transfer for the stocks and bonds should be sent to the transfer agent along with the other paperwork.

## **THE PRIMARY PURPOSE OF HAVING ASSETS IN YOUR TRUST**

Mutual funds should be re-registered in the name of your trust by communicating with the company and meeting its requirements. These normally consist of sending a letter of instructions (or the form which they provide) and a copy of your trust certificate.

To re-register T-Bills and other government corporate and U.S. bonds, notes, bills and securities in your trust's name contact the appropriate government office directly or have your broker do it.

### **OTHER PROPERTY WITH DOCUMENTS OF TITLE**

All other property with documents of title, that are to be transferred to your trust, must be re-registered in your trust's name. For example, if you want to transfer a promissory note (or a promissory note and mortgage) to your trust, you must complete an assignment, formally placing the title to the promissory note (or the promissory note and mortgage) in the name of your trust. Such a document is called a Notice of Assignment or an Assignment of Mortgage.

Other types of property which can be assigned, in this manner, to your trust include patents and copyrights.

### **ASSETS WITH A BENEFICIARY**

Annuities, insurance, IRA's, Keoghs, and other property naming a Revocable Trust as the beneficiary don't have to be re-registered into your trust. You do not have to re-register title for the types of property where you name the trust itself as the beneficiary to receive specific property after you die. For example, if you want your trust to receive your life insurance policy, IRA, or Keogh plan, you do, of course, have to be sure that your trust has been properly designated as the beneficiary. But you do not have to transfer the ownership of the policy, IRA, or Keogh accounts into your trust's name. While you are the Grantor/Trustee of the Revocable Trust, the trust is not legal owner of these types of property – you remain the legal owner. The trust is simply whom you've named to receive any benefits payable upon your death – life insurance proceeds, or the balance in your IRA or Keogh accounts. (Since your trust never owns the insurance policy, IRA, or Keogh, these assets are not listed on a trust schedule.)

Your trust should be the beneficiary of all annuities and life insurance policies and the contingent beneficiary of these legal documents (such as an insurance policy or an IRA) will take precedence over any will or trust. If, for example, you have named your spouse as the beneficiary of your life insurance policy, and you and your spouse happen to be killed simultaneously, the insurance policy will pass to your spouse, but then must go through probate to pass on to your children. Although some people name contingent beneficiaries (such as their children), most people have not bothered to do so. Contingent beneficiaries would be the recipients of the insurance (without the probate process) upon the simultaneous death of both husband and wife.

If you have a pension plan, which has a death benefit, or which provides for continues payments after your death (other than to your spouse), your trust should be named as the beneficiary or contingent beneficiary.

Remember to make sure that you are transferring only the beneficial interests in these assets (assets with a beneficiary), not the ownership of the asset.

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I hope that this lengthy document will be helpful to you and that you will refer to it as you have any questions regarding the funding of your Revocable Trust. So, after your trust is properly funded, just relax, sit back, and enjoy! Life will go on as usual. There are no additional tax obligations regarding your trust that you need to be concerned with and I will keep you informed of any changes in the law that may affect your trust.