



# MAZENKO LAW FIRM

Wills, Trusts, and Probate

## Funding Your Revocable Trust: A note to Our Clients

### **Generally**

A major purpose of using a revocable trust is to avoid probate on the trust assets at your death and to protect your assets upon your disability. To obtain the benefits of probate avoidance, disability protection, and all the other benefits that we have discussed, it is very important that the Revocable Trust be properly “funded” during your lifetime. That is, you should transfer all your property to the Revocable Trust as soon as possible, with a few exceptions noted below.

You should carefully and continually review the assets held in your own name (both assets that you now own and any that you acquire later) to be certain that this is consistent with your desire to avoid probate. We will be glad to discuss the advisability of retaining ownership of various assets in your name alone, holding assets in joint names with another person, or transferring assets to the trustee of your revocable trust.

### **Certificate of Trust**

When you transfer assets to your Trust and when the Trustee buys and sells various assets owned by the Trust, the people with whom you will be dealing will need verification that your trust actually exists and that the Trustee has the authority to act on behalf of the trust. The Certificate of Trust is essentially a summary of your Trust and provides third parties with the necessary verification they may need to transact business with the Trustee. Also, the Certificate enables you to avoid disclosing the particulars of your estate plan by disclosing only the information which is necessary. I would recommend using your Certificate of Trust whenever dealing with third parties who may need verification of your Trust.

### **Transfers of Assets**

On the following pages, we offer some general guidance on transferring specific types of assets to your Trust. Those comments are general in nature, and we suggest that you consult us before funding your trust, if you have any questions or concerns.

**1. Accounts or Certificate issued by a Bank or Other Savings Institution.**

The name on the account or certificate must be changed to reflect its ownership by the trustee, and a new passbook or certificate must be issued in the name of the trustee. Be careful to confirm with the financial institution before transferring a savings certificate that there will be no penalty for early withdrawal. New account cards should be completed at each financial institution changing the current owner of the existing accounts to the Revocable Trust. It should be possible to retain your existing checks which list you individually on the face of the check, provided the ownership of the account is properly changed at the bank. I would recommend that you not reference your Trust on the face of your check, for privacy reasons.

**2. Brokerage Accounts**

If you own stocks, bonds, or other securities through a brokerage account, and if the certifications for those assets are not issued in your name but are held instead in a street name or in the brokerage firm's name, the brokerages firm's records must be changed to indicate that the trustee owns the account and not you individually. Simply request your broker to change the name of your account to the Trust. If you are holding the certificates and they are issued in your name, you should turn the certificates in to your broker and request that they either be placed into an account for your Revocable Trust, or, if you desire to retain the certificates, the broker should re-register the certificates in the name of the Revocable Trust and return the certificates to you.

**3. Corporate Stocks (Issued by Publicly or Privately Held Corporations) or Mutual Fund Shares.**

If certificates are issued in your name, new certificates must be issued to reflect the trustee's ownership of the stock or shares. You may be able to combine all certificates representing shares in one corporation into one new certificate, but you might consider requesting a series of new certificates one corresponding to each old certificate, in order to trace your income tax basis in any shares sold by the trustee during your lifetime.

**4. Registered Bonds or Debentures (Issued by Publicly or Privately Held Corporations, the U.S. Government, an Agency, any State, or Subdivision Thereof).**

These securities must also be registered in the name of the trustee and new bonds, or debentures reissued. As with stock certificates discussed in paragraph 2, if bonds or debentures are held in brokerage account, title to the account must be changed.

**5. Unregistered or Bearer Bonds or Debentures.**

These Securities, typically issued by the United States government, an agency, a state, or a municipality, generally cannot be registered in the name of the trustee, so that there must be some other evidence that these securities have been transferred. This can be done by executing

and delivering to the trustee a transfer document listing the bearer securities being transferred, which document will be retained by the trustee with the permanent records of the trust.

**6. Tangible Investment Assets (Such as Gold Bullion, Silver Coins, Art Objects, Etc.).**

Because there is no proof of registration or ownership of these assets, their transfer to the trust should be handled in a manner similar to that described in paragraph 5 for bearer securities. Any new investments of this type should be purchased directly in the name of the trustee with the confirmation or other purchase slip retained with the instrument or investment to prove the trustee's ownership.

**7. Partnership Interest (Whether in a General Partnership or Limited Partnership)**

In order to register these property interests in the trustee's name, a new certificate of partnership interest or an amendment to the partnership agreement may need to be executed. There may be restrictions against transfer in the partnership agreement, so it should be reviewed before transfer.

**8. Interests in Real Property (Personal Residence or Investment Real Estate).**

Legal title to real estate must be transferred to the trustee by means of an executed, notarized, and recorded deed. If you have mortgaged, pledged, or allowed a lien to be placed upon any of your property (other than the home you are occupying) to secure the payment of any loan, you should first obtain written permission of your lender prior to transferring your real property into your Revocable Trust in order to avoid triggering any "due on sale or transfer" clause in the mortgage or deed of trust. Federal law generally prohibits your lender or the holder of the mortgage from enforcing a "due on sale" clause with regard to residential real property.

It is important to comply carefully with the requirements of the law of the state where the property is located. A land trust deed under Section 689.071, Florida Statutes may be advisable, you should consult with us before deeding any real property (especially a residence in Florida) into the trust.

**9. Life Insurance Policies, Annuities, and Retirement Plan Benefits**

Ownership of these assets is generally not transferred to a revocable trust, but the death benefits can be made payable to the trustee, if desired, for the distribution under the terms of the trust. In other words, if you would like for the trust to control the distribution of your life insurance proceeds, then you should name your trust as beneficiary. Although life insurance policies generally pass outside of probate, ownership can be transferred to the trust to give the trustee more control over the policies in case you become disabled. Change-of-beneficiary or ownership forms from the insurance company or the administrator of the retirement plan must be completed and recorded with the insurer or the plan trustee to name the trustee of your trust as the revocable

beneficiary of any benefits. Some annuities do not permit transfers and others have negative tax consequences if put into the trust, so caution is advised.

**SPECIAL NOTE: Ownership of IRAs should not be transferred to the trust-doing so could cause disastrous income tax penalties.**

As with life insurance benefits, you may want to name the trust as the IRA beneficiary so that the trust will control the distribution of your IRA upon your death. I generally recommend for married clients that your spouse be named as the IRA beneficiary. In this way, your surviving spouse will be entitled to an IRA Tax free rollover. The IRA could name your trust as contingent beneficiary if you would wish for the trust to control the distribution of your IRA benefits should your spouse predecease you. While it is possible to name your trust as an IRA beneficiary or contingent beneficiary, these rules may negatively affect the timing of IRA distributions, and the taxations of those distributions, after your death. You should consult your tax advisor for a complete review of these complicated issues prior to naming your trust as an IRA beneficiary.

**Withdrawals**

Withdrawals of property from the trust must come with the provisions of the trust agreement. We can prepare documents for you to accomplish such withdrawal. The Trust can be amended, of course, or revoked in its entirety, but any amendment or revocation must comply with the procedural requirements of the trust agreement.

**Tax Consideration**

Federal income tax returns for a revocable trust are not required. If the grantor is also the trustee or a co-trustee, a federal tax identification number for the trust is also not necessary, and all income is reported using the grantor's social security number (which becomes the trust's taxpayer identification number). If the grantor is not a trustee, the grantor's social security number can still be used, but the trustee must meet certain other requirements in that case. After the grantor's death, a federal tax identification number must be obtained for the trust.

**Death of a Grantor**

Upon the death of a grantor, there will be certain actions to be taken by the successor trustee and the surviving spouse. It is important that the successor trustee and the surviving spouse seek legal advice as to any necessary or required actions in the administration of the trust. Some required actions include filing the decedent's will, and a notice of the trust's existence with the clerk of the local circuit court, recording the death certificate, and providing a notice to all beneficiaries of the successor trustee's acceptance of the trust. It may be necessary to file an estate tax return with the IRS or obtain a certificate of estate tax clearance from the Florida Department of Revenue. Also, the successor trustee will be responsible for assuring that all debts and taxes are paid, prior to distributing all the trust's assets.

## **Conclusion**

Once an asset has been transferred to the trustee of your revocable trust, all transactions regarding that property must be handled by the trustee, rather than by you individually (even if you are the trustee of the trust). Any document evidencing the transfer of assets must be signed by the trustee.

Please call or email me if you have any questions about the transfer of property to your trust or about the operation of the trust in the future. This memorandum is for your guidance only and does not encompass all possible situations. Please contact me if you have any additional Questions or concerns.