

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Introductory Material

Funding a Revocable Trust

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Abbreviations

Capacity	<u>Capacity and Undue Influence: Assessing, Challenging, and Defending (Cal CEB Action Guide February 2008)</u>
Complete Plans	<u>Complete Plans for Small and Mid-Size Estates (Cal CEB 2006)</u>
Conserv Prac	<u>California Conservatorship Practice (Cal CEB 2005)</u>
Domestic Partnerships	<u>California Domestic Partnerships (Cal CEB 2005)</u>
Decedent Estate Prac	<u>California Decedent Estate Practice (2d ed Cal CEB 2009)</u>
Estate Plan	<u>California Estate Planning (Cal CEB 2002)</u>
Practice Under Fam Code	<u>Practice Under the California Family Code: Dissolution, Legal Separation, Nullity (Cal CEB Annual)</u>
Revocable Trusts	<u>Drafting California Revocable Trusts (4th ed Cal CEB 2003)</u>
Transferring Prop	<u>Transferring Property Without Probate (Cal CEB Action Guide September 2008)</u>
Will Drafting	<u>California Will Drafting (3d ed Cal CEB 1992)</u>
12 Witkin, Summary, <i>Real Prop</i>	12 Witkin, Summary of California Law, Real Property (10th ed 2005)

Scope of Guide

This Action Guide helps the attorney who is transferring assets or who is helping a client to transfer assets into a revocable trust. Because it assumes that the client has already chosen to use a revocable trust in his or her estate plan, it does not include an extensive explanation of revocable trusts or why a client would choose a revocable trust over another type of estate planning mechanism. Except for some special issues that should be addressed when drafting the trust (see [steps 27-28](#)), this Action Guide does not generally include information about drafting the trust.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Planning to Fund the Trust/STEP 1.
UNDERSTAND IMPORTANCE OF FUNDING THE REVOCABLE TRUST

When Planning to Fund the Trust

STEP 1. UNDERSTAND IMPORTANCE OF FUNDING THE REVOCABLE TRUST

WHEN ISSUE ARISES

Client has *already* made a decision to use a revocable trust in his or her estate plan.

UNDERSTAND IMPORTANCE OF FUNDING TRUST

- a. The client should understand that the benefits of a revocable trust depend on the transfer of *title to the trustee* during the client's lifetime (see Drafting California Revocable Trusts, chap 21 (4th ed Cal CEB 2003), referred to throughout this Action Guide as Revocable Trusts; Complete Plans for Small and Mid-Size Estates, chap 12 (Cal CEB 2006), referred to throughout this Action Guide as Complete Plans; see also steps 47-51, below, for what to do if assets are not transferred).
- b. Transferring the asset during the client's lifetime will make it easier for trustees other than the settlor to manage and protect trust property.
- c. Funding reduces the potential for disputes over ownership of particular assets.

Further Research: To obtain an order that property listed on the trust schedule of assets that was not formally transferred to the trust is a trust asset, see Prob C §850(a)(3); Estate of Heggstad (1993) 16 CA4th 943, 20 CR2d 433; and California Trust Administration §§15.39A-15.40B (2d ed Cal CEB 2001).

NONTRANSFERABLE PROPERTY

- a. Some assets cannot be transferred during a settlor's lifetime.
 - (1) Many qualified pension plans cannot be transferred.
 - (2) Shares of individual professional corporations are usually not transferred to trusts because of statutory restrictions. But see step 21, below.
 - (3) Partnership agreements often limit or prohibit the transfer of a general or limited partner's interest.
- b. Other assets cannot be transferred without triggering a tax liability or suffering some other undesirable result.

Example: The assets of a traditional individual retirement account regulated by IRC §408 can be transferred to a revocable trust during life only by withdrawing the assets and paying income tax on the withdrawal.

RECOGNIZE BENEFITS OF CHOOSING REVOCABLE TRUST

Recognize that the client chose the revocable trust for one or more of the following reasons, *e.g.*:

To Avoid Probate

Assets that are transferred to the revocable trust will not be subject to probate when the client dies (see Revocable Trusts §§1.7-1.21); this allows the client to:

- a. *Avoid probate costs:* Although the client may pay costs of administering the trust:
 - (1) There will be no statutory probate charges for trust assets when the client dies (Revocable Trusts §1.8); and
 - (2) Costs of administering trust will usually be less than statutory probate charges.

NOTE

The amount of initial filing fees for formal probate and other court proceedings is likely to continue to increase. Additionally, fees are now required for many interim filings, *e.g.*, a petition for final distribution. See Govt C §§70650-70658.

b. *Keep disposition private:* Because no trust documents have to be filed with the court (as in a probate), there should be no public record of how the client's assets will be distributed (Revocable Trusts §1.21).

NOTE

If the trust or any portion of it becomes irrevocable, the trustee is required to disclose certain information about the trust to the beneficiaries and the settlor's heirs at law. The information includes advice to the beneficiary or heir that he or she is entitled to a complete copy of the terms of the trust on request. Prob C §§16061.5, 16061.7.

c. *Avoid probate delay:* The trust administration can continue uninterrupted after the client dies, without the need for a time of probate and the related costs.

NOTE

A revocable trust is just one method of avoiding probate. For a discussion of other methods, see Transferring Property Without Probate (Cal CEB Action Guide September 2008), referred to throughout this Action Guide as Transferring Prop.

To Provide for Incapacity

In the event client loses capacity, the trust can:

- a. Provide continuity in administering trust assets by providing for a successor trustee, cotrustee, or trustee other than the client (see Revocable Trusts §§1.22-1.23); and
- b. Avoid need for conservatorship.

To Manage Assets

By appointing another person or entity as trustee, the client can provide a mechanism for managing the client's property during and after his or her lifetime.

To Provide Tax Benefits

The trust may provide a mechanism to reduce or shift taxes after death of the settlor (see Revocable Trusts, chap 4), but be aware of common client *misconceptions* about the true tax benefits of the trust, *e.g.*:

- a. *False:* If assets are placed in the trust, there is no estate tax (see Revocable Trusts §§1.5, 4.2); and
- b. *False:* Insurance benefits are tax free and, therefore, should not be placed in the trust. See also step 24, below.

NOTE

A will can achieve most of the same tax savings that a trust provides.

METHODS TO USE TO FUND TRUST

The trust can receive assets in several ways, *e.g.*:

At the Time of Executing the Trust

- a. The attorney and client discuss and set up a plan to transfer the assets to the trust; and
- b. The client (and in some instances the attorney) transfers the assets to the trust.

During Client's Lifetime

a. While the client is capable, the client (and in some instances the attorney) transfers assets to the trust. For example, if client inherits property during his or her lifetime, the property should be transferred to the trust.

NOTE

Separate property assets should be identified as separate property when they are transferred to the trust. Use separate schedules for the community and separate property trust assets to clearly delineate what is community property and what is separate property.

b. While the client is capable, if the client sells an asset held by the trust and buys a replacement asset, the new asset should be purchased in the name of the trust.

c. After the client is incapacitated, assets can be transferred by (see steps 48-49, below):

- (1) The client's spouse (some assets);
- (2) Durable attorney-in-fact; or
- (3) Conservator.

After Client's Death

The client's will should usually provide that any assets in the decedent's name and not already in the trust will go to the trust. See California Estate Planning §6.41 (Cal CEB 2002), referred to throughout this Action Guide as Estate Plan. See also step 51, below.

Further Research: Estate Plan, chap 6; for a comprehensive discussion of revocable trusts, see Revocable Trusts.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Planning to Fund the Trust/STEP 2.
DETERMINE YOUR ROLE

STEP 2. DETERMINE YOUR ROLE

UNDERSTAND YOUR POSSIBLE ROLES

Generally, as attorney you will:

Prepare Trust Only

Prepare the estate plan and documents, *e.g.*, trust and will, durable power of attorney, and advance health care directive:

- a. Even if the client wants to limit your role to preparing the estate documents, you should at the very least advise the client about funding issues (see step 1, above) to avoid possible malpractice claims;
- b. Practically, most clients expect you to complete the estate plan, which would include funding the trust or helping to fund the trust; and
- c. If the client specifically wants to limit your role to preparing the documents, be sure to *confirm this in writing*.
- d. Give the client written instructions. This can be in the form of a general guide handed out to all clients.

Prepare and Fund Trust

Prepare estate documents and:

- a. Help the client in funding the trust, including handling certain transfers yourself; or
- b. Only instruct the client on how to fund the trust; or
- c. Handle the funding entirely for the client; or
- d. Most likely, a combination of a-c, above.

NOTE

Preparing trust deeds is best handled by the attorney for two reasons: they are complex documents, and real property often represents a large portion of the client's trust assets.

Help Fund Trust Only

If another attorney has already prepared the estate documents, you may be consulted by a client to help the client transfer assets to the trust.

NOTE

Generally, you will find yourself instructing the client on how to handle certain transfers and assisting with or handling other transfers.

EXPLAIN FUNDING TO CLIENT

You must explain to the client that:

Importance of Funding

As stated in step 1, above, the client will not realize the benefits of the estate plan if the assets are not transferred to the trust.

Mechanics of Funding

Funding requires that for *each* asset someone:

- a. Draft and prepare documents that change the title or registration; and/or
- b. Contact the holder of the asset and ask that the title or registration be changed; and/or
- c. File documents changing title or registration.

Time Consuming

The process will require time to:

- a. Complete the mechanics to change the title or registration of each asset;
- b. Wait for third parties, *e.g.*, security transfer agents, to make the change; and
- c. Follow up to make sure the changes have been completed.

Tedious

The process will seem tedious:

- a. If the client has numerous assets; and
- b. Especially if the name change is from the client as an individual to the client as trustee.

Cost

You will charge the client for:

- a. Your involvement in the mechanics of the funding, *e.g.*, preparing letters, contacting third parties;
- b. Advising the client on how to handle the mechanics of the funding; and
- c. Providing samples, forms, and other assistance to the client in transferring the assets.

CLARIFY YOUR ROLE WITH CLIENT

You and the client should both clearly understand what role you will play in the funding process, depending on whether:

Client's Ability and Willingness

The client is capable and willing to handle the mechanics.

Cost to Client

The client is willing to incur the costs of having you conduct or assist with the funding.

Complexity of Transfers

The transfer is complex or requires legal analysis; if so, you should be involved in the transfer, *e.g.*, transfer of a partnership interest that requires analysis of the partnership agreement.

DIVISION OF RESPONSIBILITIES

Funding is frequently a joint effort between the attorney and the client.

Real Property

Most attorneys prepare and record the deeds to transfer title to real property, even if they leave other funding transfers to the client. For transferring real property, see [steps 42-46](#), below.

Bank and Brokerage Accounts

It is generally easiest to have the client transfer title to bank and brokerage accounts, because these institutions generally require the client to:

- a. Sign a new account agreement reflecting the trustee as owner of the account; and
- b. Provide either a copy of the trust or a trust certification. For trust certification, see [step 30](#), below, and [Appendix C](#).

For transferring bank and brokerage accounts, see [steps 34-35](#), below.

Other Transfers

The degree to which you assist the client in accomplishing other transfers will largely depend on the client's willingness and ability to undertake the tasks and the client's willingness to pay the attorney to perform them.

SET UP SYSTEM

To assist you in whatever becomes your role, and to reduce the time and costs of funding the trust:

Easy Access

Set up a system in your office that will give you easy access to sample letters, important addresses, and commonly used forms that you will find in this Action Guide or develop in your practice.

NOTE

Funding is an excellent job to delegate to paralegals or other office staff, provided that staff is carefully trained and that the attorney provides adequate oversight.

Provide or Use This Information

You will be able to:

- a. Provide samples and information to the client to aid the client in the funding process; or
- b. Use the samples and information in handling the funding yourself; or
- c. Use some combination of these.

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When Obtaining Information and Documents About Assets

STEP 3. GATHER GENERAL INFORMATION FROM CLIENT

INFORMATION NEEDED

Ask the client about:

- a. Client's assets;
- b. Assets' approximate fair market value and attached debt;
- c. How title is held; and
- d. If there is a designated beneficiary, *e.g.*, on a life insurance policy or retirement plan, how that designation reads.

USE INTAKE FORM

Use a prepared form to record information you obtain from the client:

- a. Complete the form while meeting with the client, using it as a checklist; or
- b. Send it to the client to complete before the first meeting.

NOTE

Some clients are more willing than others to fill out forms; even if you send the form to the client to complete, a complex form might be overwhelming.

Sample Form: See [Appendix A](#) for a sample form.

REQUEST DOCUMENTS

Because clients often do not accurately remember all their assets, ask client to provide you with copies of:

- a. Deeds;
- b. Income tax returns for the past 3 years;
- c. Beneficiary designation documents; and
- d. Any documents that are relevant for a particular asset.

See documents for specific assets in [steps 4-13](#), below.

INCLUDE ALL ASSETS

Obtain information on *all* assets, even though certain assets are not subject to probate.

Recognize Assets Not Subject to Probate

Probate is not necessary in most instances to transfer title or benefits of some assets on the owner's death, *e.g.*:

- a. Life insurance policies;
- b. Pay-on-death accounts (sometimes called Totten Trusts; [Prob C §§5120-5407](#));
- c. Securities registered in beneficiary form ([Prob C §§5500-5512](#));

- d. Annuities;
- e. Pension and profit-sharing plans (both qualified and nonqualified) and IRAs (see discussion of these assets in [steps 23-24](#), below);
- f. Property subject to a power of appointment held by the client;
- g. Joint tenancy property;
- h. Community property with right of survivorship ([CC §682.1](#));
- i. Property that can pass by summary administration (see [step 50](#), below); and
- j. Property passing outright to a spouse.

NOTE

Generally, client *may* decide not to include these assets in the trust during client's lifetime. See [step 17](#), below. There are, however, many good reasons to place these assets (other than IRAs and retirement plans) in the trust: contingent disposition is built in, stepped-up income tax basis may be available, and asset management during incapacity is assured.

Further Research: For more information about assets that can be transferred outside of probate, see [Transferring Prop; California Decedent Estate Practice, chap 2 \(2d ed Cal CEB 2009\)](#), referred to throughout this Action Guide as Decedent Estate Prac.

Obtain Same Information

For tax and other planning purposes, obtain the same information for these assets as for the assets that the client will transfer to the revocable trust.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Obtaining Information and Documents About Assets/STEP 4. OBTAIN SPECIFIC INFORMATION AND DOCUMENTS CONCERNING ASSETS

STEP 4. OBTAIN SPECIFIC INFORMATION AND DOCUMENTS CONCERNING ASSETS

YOUR OBJECTIVE

Your objective in obtaining information is to:

- a. Help you advise client which assets to transfer to the trust; and
- b. Assist whoever transfers assets to the trust by gathering all the information.

REQUEST FROM CLIENT

For the various types of assets, ask client to provide you with information and documents relating to the asset.

NOTE

You do not necessarily need *all* the documents listed below for each asset; unless otherwise indicated, those listed are only examples of documents that will provide you with relevant information.

DO NOT OVERWHELM CLIENT

Your goal is to obtain enough information to assist the client in deciding which assets to transfer to the trust:

- a. Be aware that the client may not be able to provide all documents that might be helpful; and
- b. If the client is unable to provide necessary information or documents, suggest another method for obtaining the information, *e.g.*, a title report concerning real property. Many title companies will, for a nominal fee, provide the attorney with a copy of the last "vesting" deed.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Obtaining Information and Documents About Assets/STEP 5. OBTAIN INFORMATION AND DOCUMENTS CONCERNING REAL PROPERTY

STEP 5. OBTAIN INFORMATION AND DOCUMENTS CONCERNING REAL PROPERTY

OBTAIN DOCUMENTS

Ask client to provide you with a copy of these documents concerning real property assets, if the client has them available, *e.g.*:

NOTE

If the client does not have all these documents, you will be able to get some of the information in a title report from a title company. See [step 15](#), below.

Tax Bill

The latest property tax bill, to obtain the parcel number.

Title Documents

- a. If client purchased the property, the deed vesting title in the client;
- b. If client inherited the property:
 - (1) Judgment or order of distribution (final or preliminary);
 - (2) Executor's deed; or
 - (3) Trustee's deed;
- c. Deeds from the client to another that changed the ownership of the property, *e.g.*, gift deeds or deeds on sale of part of the property; and
- d. Title policies.

NOTE

You may need to order a title policy to verify status of title. See [step 15](#), below.

Loan Instruments

Deeds of trust and mortgages.

Insurance

Property insurance policies.

Homesteads

Declarations of homestead.

Appraisals

- a. Recent appraisal, if any; and
- b. If no appraisal, ask client to give an estimate of value, based on comparable properties, if available.

Hazardous Waste Reports

Reports related to hazardous waste contamination, if any. See [step 26](#), below.

OBTAIN INFORMATION

Determine (*e.g.*, from the deed or title policy):

- a. Correct legal description of the property;
- b. Assessor's parcel number (APN), if the property is located in California;
- c. How title is held;
- d. If the client owns a partial interest, the exact portion owned; and
- e. Whether there are any easements, rights of way, restrictions related to subdivision approval, or homeowners association bylaws.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Obtaining Information and Documents About Assets/STEP 6. OBTAIN INFORMATION AND DOCUMENTS CONCERNING CASH ACCOUNTS

STEP 6. OBTAIN INFORMATION AND DOCUMENTS CONCERNING CASH ACCOUNTS

OBTAIN DOCUMENTS

Ask the client to provide you with, *e.g.*:

- a. The *most recent* statement for each cash account; or
- b. The passbook or other evidence of the account.

OBTAIN INFORMATION

Determine from these documents:

- a. The names of the banks and other institutions where the client has cash;
- b. Account numbers;
- c. How title is held;
- d. Approximate value or balance of each account; and
- e. Whether any accounts are "collection accounts," *i.e.*, sums are automatically transferred to the account from another source such as Social Security or note payments.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Obtaining Information and Documents About Assets/STEP 7. OBTAIN INFORMATION AND DOCUMENTS CONCERNING SECURITIES IN CERTIFICATE FORM

STEP 7. OBTAIN INFORMATION AND DOCUMENTS CONCERNING SECURITIES IN CERTIFICATE FORM

OBTAIN DOCUMENTS

Ask the client to provide, *e.g.*:

a. Identification of all securities, *e.g.*:

(1) A copy of each stock certificate, bond, and debenture client possesses;

NOTE

You will be able to obtain the most accurate information about the asset from a copy of the certificate.

(2) A list of:

(a) Number of shares and the name of the company for shares of stock; and

(b) How title is held.

b. Any other information about the securities, *e.g.*, any dividend reinvestment program.

OBTAIN INFORMATION

From the copies of the bonds and debentures, you have the best source of identifying information, *e.g.*:

a. Issuing authority;

b. Purpose;

c. Issue date; and

d. Rate of return and maturity date.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Obtaining Information and Documents About Assets/STEP 8. OBTAIN INFORMATION AND DOCUMENTS CONCERNING BROKERAGE ACCOUNTS AND MUTUAL FUND ACCOUNTS

STEP 8. OBTAIN INFORMATION AND DOCUMENTS CONCERNING BROKERAGE ACCOUNTS AND MUTUAL FUND ACCOUNTS

OBTAIN STATEMENTS

Obtain a copy of the *most recent* monthly statement for each brokerage and mutual fund account.

OBTAIN INFORMATION

Determine:

- a. What the holdings are;
- b. How title is held; and
- c. What the approximate value is.

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STEP 9. OBTAIN INFORMATION AND DOCUMENTS CONCERNING CLOSELY HELD BUSINESSES

WHEN ISSUE ARISES

The client may own or be a part of a business operating as a:

- a. Partnership (see below);
- b. Closely held corporation (see below);
- c. Limited liability company (LLC); or
- d. Sole proprietorship. See Sole Proprietorship, below.

INFORMATION NEEDED

You will need to gather information that will help you and the client to:

Transfer Information

Transfer the asset to the trust, *e.g.*, form of ownership, whom to contact, restrictions on transfer.

Value Information

Decide whether the asset is of such value that it should be transferred to the trust to avoid probate. See [step 17](#), below.

PARTNERSHIP

Obtain Documents

Ask your client to provide, *e.g.*:

- a. Partnership agreement, buy-sell agreement, and any amendments;
- b. Most recent partnership income tax returns, balance sheet, and annual statement; and
- c. Any appraisals available, *e.g.*, if a shareholder has recently dissolved his or her marriage or a partner has died, and valuation occurred in that context.

Obtain Information

Find out from your client and from reviewing the agreement, *e.g.*:

- a. The name of the partnership;
- b. Whether it is a general or limited partnership, and whether the client has a general or limited partnership interest;
- c. Who the other partners are;
- d. What percentage interest is owned by the client;
- e. Whether there are any restrictions on the transfer of a partner's interest;
- f. Who has to consent to the transfer, *e.g.*, the general partner, all partners;
- g. How title is held, *e.g.*, if clients are a married couple;
- h. An estimate of the value of the client's interest; and

- i. Whether any professional licensing laws restrict the transfer of a partnership to a trust, *e.g.*, law practice. See Corp C §13405.

CLOSELY HELD CORPORATION

Obtain Documents

Ask your client to provide, *e.g.*:

- a. Articles of incorporation, bylaws, minute books;
- b. Most recent corporate income tax returns, balance sheet, and annual statement;
- c. Any appraisals available, *e.g.*, if a shareholder has recently had property appraised in connection with a dissolution of his or her marriage or partner's death;
- d. Shareholders' agreements (*e.g.*, buy-sell agreements, voting trust agreements); and
- e. Copies or original of the stock certificate, with all the legends and restrictions on transfer.

Obtain Information

- a. The name of the corporation;
- b. How many shares are outstanding;
- c. Who owns the shares;
- d. Who are the officers;
- e. Whether the business of the corporation is being transacted with the proper formalities;
- f. Whether it is an S corporation;
- g. If possible, the value of the shares; and
- h. Whether the bylaws of the corporation, professional licensing laws, or other limitations (in corporate documents or state law) restrict the transfer of the interest (*e.g.*, law practice) to a trust. See Corp C §13405.

LIMITED LIABILITY COMPANY

Obtain Documents

Ask your client to provide, *e.g.*:

- a. Articles of organization;
- b. Operating agreement;
- c. Most recent company income tax returns, balance sheet, and annual statement;
- d. Any appraisals available; and
- e. Buy-sell agreements.

Obtain Information

- a. The name of the company;
- b. The number and identity of members.

SOLE PROPRIETORSHIP

Obtain Documents

Ask your client to provide, *e.g.*:

- a. Most recent balance sheet, statement of assets, list of assets in name of sole proprietorship;
- b. Schedule C to form 1040, income tax return;
- c. Fictitious business name statement; and
- d. List of licenses or permits in name of sole proprietorship.

Obtain Information

Find out whether any professional licensing laws restrict the transfer of a sole proprietorship to a trust, *e.g.*, law practice. See [Corp C §13405](#).

DETERMINING VALUE

To assist you and the client in deciding whether to transfer the business to the trust:

Consider Obtaining an Appraisal

Consider whether you need to get an appraisal:

- a. Accurate appraisals of business enterprises are expensive; and
- b. Appraisals may be necessary for estate or gift tax valuation and in litigation, but not for the transfer to the trust.

Consider Using an Estimate

Generally, it is sufficient to use the client's best estimate, or that of the client's accountant, to help you decide whether to transfer to the trust.

If Sole Proprietorship

The value of a sole proprietorship may be difficult to determine based on, *e.g.*:

- a. Value of the inventory, equipment, accounts receivable, and similar assets; plus
- b. Client lists;
- c. Goodwill; and
- d. The value of a favorable long-term lease and any restrictions on transfer of the lease.

STEP 10. OBTAIN INFORMATION AND DOCUMENTS CONCERNING PROMISSORY NOTES

OBTAIN DOCUMENTS

Obtain a copy of:

- a. Each note;
- b. Each deed of trust or other security instrument; and
- c. Any assignments of the note from other creditors to the client.

OBTAIN INFORMATION

Determine:

- a. Whether the note is secured;
- b. The present balance due;
- c. Identity of the debtors and creditors;
- d. Whether payments are due periodically or on demand;
- e. Interest rate and remaining term of the note;
- f. Whether note is part of an installment sale (for income tax purposes); and
- g. Location of original note and deed of trust.

DETERMINE WHETHER "LOAN" WAS A GIFT

Among family members, what appears to be a loan may in fact be a gift. Determine whether:

- a. Payments are being made and are expected to be made.
- b. The client's estate plan includes how the client wants the debt treated on death.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Obtaining Information and Documents About Assets/STEP 11. OBTAIN INFORMATION AND DOCUMENTS CONCERNING TANGIBLE PERSONAL PROPERTY

STEP 11. OBTAIN INFORMATION AND DOCUMENTS CONCERNING TANGIBLE PERSONAL PROPERTY

OBTAIN LIST

Have your client provide a general list of tangible personal property assets, *e.g.*:

- a. Personal vehicles;
- b. Household furniture, furnishings, equipment, and appliances;
- c. Jewelry;
- d. Antiques;
- e. Artwork and other valuable collectibles;
- f. Clothing;
- g. Boats; and
- h. Other personal effects, collections, and equipment.

General

Client can simply list, *e.g.*, "clothing" and "furniture" without being more specific; but

Specific

Client should specifically identify each individual piece of value, *e.g.*, valuable jewelry, antiques, and artwork.

DETERMINE VALUE

To determine value and decide whether to transfer to the trust (see [step 17](#), below), review:

Appraisal

Recent appraisals.

Insurance

Especially with antiques, collections, and jewelry, the amount of insurance the client has obtained may reflect what the client thinks the property is worth.

NOTE

An insurance policy may also provide a good list of assets with value.

Estimate

Ask the client to give you an estimate:

- a. Based on amount the client believes he or she would obtain if the doors of the house were thrown open and everything sold "as is"; and
- b. *Not* based on replacement value.

Receipts

Client may have receipts for recent purchases.

Vehicle/Boat

- a. Ask to see the ownership certificate for any vehicle or boat registered with the California Department of Motor Vehicles.
- b. Refer to the current Kelley "Blue Book" Auto Market Report, the ABOS Marine Blue Book, the BUC Used Boat Price Guide, or the NADA Marine Appraisal Guide for a value.

Aircraft

- a. Ask to see the bill of sale for aircraft registered with the FAA.
- b. Refer to the Aircraft Bluebook Price Digest for a value.

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STEP 12. OBTAIN INFORMATION AND DOCUMENTS CONCERNING INTELLECTUAL PROPERTY

OBTAIN LIST

Have client identify any intellectual property assets, *e.g.*:

- a. Copyrights;
- b. Patents;
- c. Trademarks; or
- d. Royalties.

NOTE

Clients often forget about these items, so ask!

OBTAIN DOCUMENTS

Ask for copy of a contract describing the rights attached to the property, *e.g.*, work of art (visual or literary), discovery, invention.

DETERMINE VALUE

Because it is difficult to value these assets, if they form a major part of the client's estate:

- a. Obtain a professional appraisal;
- b. Assist client in estimating value based on, *e.g.*, annual income from asset, value of other similar assets; and
- c. Consider associating attorney who specializes in patents or copyrights.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Obtaining Information and Documents About Assets/STEP 13. OBTAIN INFORMATION AND DOCUMENTS CONCERNING ASSETS IN FOREIGN COUNTRIES

STEP 13. OBTAIN INFORMATION AND DOCUMENTS CONCERNING ASSETS IN FOREIGN COUNTRIES

OBTAIN INFORMATION

Usually, the client will have some contacts in the foreign country and will be willing to associate legal counsel there to determine:

- a. Whether revocable lifetime trusts are a recognized way of holding title;
- b. Whether revocable trusts are a recognized way of transferring title on the settlor's death;
- c. Whether it is to the client's advantage under the laws of that nation to place title to a foreign asset into a trust; and
- d. If the answer is yes in all cases, how to make the asset a trust asset under the laws of that jurisdiction.

NOTE

Client may need to have a separate trust or estate plan for foreign assets. Local counsel in the country where the asset is located should be retained.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Obtaining Information and Documents About Assets/STEP 14. OBTAIN OTHER IMPORTANT DOCUMENTS

STEP 14. OBTAIN OTHER IMPORTANT DOCUMENTS

IDENTIFY AND OBTAIN OTHER IMPORTANT DOCUMENTS

In addition to information and documents describing your client's assets (see [steps 4-13](#), above), investigate these other sources of information.

JUDGMENTS AND LIENS

AGAINST CLIENT

Court orders requiring the client to pay money, tax liens, and other kinds of liens against the client's property may affect both the value of the property and its disposition.

IN FAVOR OF CLIENT

A judgment in favor of the client may be a valuable asset that should be considered in the estate plan, *e.g.*, if left out of the trust, will it be subject to probate? If transferred to the trust, will it be burdensome for the trustee to try to collect?

MARITAL/DOMESTIC PARTNERSHIP AGREEMENTS

PREMARITAL/PRE-REGISTRATION AND POSTMARITAL/POST-REGISTRATION AGREEMENTS

Ask your client to provide a copy of any marital or domestic partnership agreements—whether executed before or after marriage or registration—that state whether property and its proceeds are the separate property of one spouse/partner or the community property of both to determine whether the terms of the trust and trust asset schedules are consistent with the terms of the marital/domestic partnership agreement.

SETTLEMENT AGREEMENTS ON DISSOLUTION OF MARRIAGE OR DOMESTIC PARTNERSHIP

Obtain a copy of any marital settlement agreement or domestic partnership dissolution agreement.

NOTE

A temporary restraining order that prohibits transferring or disposing of property takes effect automatically on the filing of a petition for dissolution. [Fam C §2040\(a\)\(2\)](#). Severance of a joint tenancy by recording a declaration of severance, however, is not a transfer or disposition of property that violates the temporary restraining order. [Estate of Mitchell \(1999\) 76 CA4th 1378, 91 CR2d 192](#).

Use to Determine Title

Use agreement to help determine title to assets, because it:

- a. States which spouse/partner has the right to which assets formerly owned by the community; and
- b. May also confirm what is the separate property of one or both spouses/partners.

Use to Identify Support/Property Obligations

These marital settlement/domestic partnership dissolution agreements may also address support obligations and property divisions that you may need to incorporate into the estate plan.

TRANSMUTATION AGREEMENTS

Ask your client to provide a copy of any transmutation agreement between spouses or partners to determine whether the terms of the trust and trust asset schedules are consistent with the terms of the transmutation agreement.

TAX RETURNS

INCOME TAX RETURNS

Review copies of your client's personal income tax returns from the last 3 years, because they may reveal income from assets the client has forgotten.

GIFT TAX RETURNS

Review any gift tax returns for useful tax planning information.

Example: If client has used up part of the unified credit by making lifetime gifts, the design of the estate plan will need to reflect that fact.

ESTATE TAX RETURNS

Consider reviewing any estate tax returns for information on inherited property, *e.g.*, to determine:

- a. Valuation;
- b. The income tax basis of inherited property; and
- c. The possibility of any credits, *e.g.*, the previously taxed property credit under IRC §2013, that might affect your client's estate tax plan.

NOTE

Under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA-2001) (Pub L 107-16, 115 Stat 38), the step-up in basis at death (IRC §1014) is repealed for decedents dying after December 31, 2009, and replaced by modified carryover basis (IRC §1022) for 2010 (because of a sunset provision in EGTRRA-2001, the rules applicable before repeal of the federal estate tax, *i.e.*, before 2010, may be reinstated for estates of persons dying after 2010). Implementation of the carryover basis system requires additional recordkeeping by clients and will inevitably generate some uncertainty about the basis of assets. Clients should be advised to assemble basis information about the assets that they currently own and to maintain good records of the basis of assets they acquire in the future.

INSURANCE ON PROPERTY

OBTAIN POLICY

Ask to see copies of any policies, including schedules, insuring the client's property.

OBTAIN INFORMATION

From the policy you can learn:

- a. Insured value of any property; and
- b. Name and address of the insurer, in order to notify insurer of the transfer to the trust.

MISCELLANEOUS DOCUMENTS

OBTAIN OTHER DOCUMENTS

Obtain copies of any documents that might affect the estate plan, *e.g.*:

Guaranties

If the client has guaranteed a debt; or

Other Trusts

If the client has interests in other trusts.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Obtaining Information and Documents About Assets/STEP 15. VERIFY TITLE AND STATUS OF REAL PROPERTY

STEP 15. VERIFY TITLE AND STATUS OF REAL PROPERTY

WHAT TO VERIFY

- a. How client holds title; and
- b. Whether there are claims, liens, or judgments against the property.

WHY IMPORTANT

Because your client's disposition plans may be thwarted if title to the property is different from what the client believes.

HOW TO USE DEED

The deed or judgment of distribution by which the client originally obtained title to real property may or may not reflect *current* ownership.

Example: If the client just purchased the real property and indicates there have been no changes in ownership, you may decide to rely on the deed, *e.g.*, if it is dated a month earlier.

HOW TO VERIFY

If there is any question about the status of title, use one of the various available methods to determine how title to real property is currently held, *e.g.*:

Preliminary Report

Order a preliminary report from a reputable title insurance company that will:

- a. Show all liens and encumbrances of record;
- b. State how title is held; and
- c. Show any easements or other recorded rights in the property held by others.

NOTE

Often, a title company will not provide a preliminary report unless there is a pending escrow. In that case, order one of the reports discussed below.

Property Profile

- a. Consider obtaining a property profile or other moderately priced report issued by some title companies, usually to real estate agents, *e.g.*, lot book report, litigation guaranty; but
- b. Be aware that these reports:
 - (1) Do not guarantee how title is held;
 - (2) May examine only the most recently recorded deed; and
 - (3) If that deed conveyed a partial interest, will not show the percentages owned by all other persons who have interests in the property.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Obtaining Information and Documents About Assets/STEP 16. DETERMINE CHARACTER OF PROPERTY

STEP 16. DETERMINE CHARACTER OF PROPERTY

IF REPRESENTING BOTH SPOUSES/DOMESTIC PARTNERS OR OWNERS

You cannot represent clients with adverse or conflicting interests without taking specified actions described below (Cal Rules of Prof Cond 3-310):

Conflict

There is an actual or potential conflict when you advise clients about the characterization or changing the characterization of their property (see Cal Rules of Prof Cond 3-310(C); see, e.g., Radovich v Locke Paddon (1995) 35 CA4th 946, 41 CR2d 573):

- a. Characterizing property as separate property or community property;
- b. Changing from separate property into community property, or vice versa;
- c. Changing from community property into joint tenancy; or
- d. Terminating joint tenancy.

Inform

You must inform the clients in writing of (Cal Rules of Prof Cond 3-310(A)(1)-(2)):

- a. Relevant circumstances; and
- b. Actual and reasonably foreseeable adverse consequences to the clients.

NOTE

Consider also advising the clients to seek independent counsel.

Waiver

The clients must both sign written agreements that you will continue to represent both spouses. Cal Rules of Prof Cond 3-310(A)(2)-(3).

Further Research: For a discussion of conflicts of interest and attorney's liability arising from dual representation, see Estate Plan §§2.11, 2.25-2.27.

Sample Form: For a sample statement to be signed by clients acknowledging an attorney's dual agency, see Estate Plan §1.62.

COMMUNITY OR SEPARATE PROPERTY

DETERMINE STATUS OF CLIENT

Because deeds or title reports do not usually state the character of property, ask client:

Marital/Domestic Partnership Status

His or her marital/domestic partnership status:

- a. When client acquired title to the asset;
- b. During the time the client held title to the asset; and

c. When client disposed of property.

Further Research: On domestic partnership property rights, see California Domestic Partnerships, chap 6 (Cal CEB 2005), referred to throughout this Action Guide as Domestic Partnerships.

Source of Funds

Where client obtained funds to acquire or improve the property, including payment of loans secured by the property.

Official Records

Whether there are any judgments, distribution decrees, executor's, or trustee's deeds.

Marital/Domestic Partnership Agreements

Whether there are any agreements between the spouses/partners concerning spousal/domestic partnership property.

WHY IMPORTANT

You need to know whether property is community or separate property or both, because whether a client has authority to transfer an asset to the trust and dispose of it on the client's death may depend on the character of the property. See, *e.g.*, Fam C §§770, 1100.

RECOGNIZE THAT CHARACTER MAY CHANGE

Be aware that the character of spousal/domestic partnership property may change, *e.g.*:

Community Property Investment

A spouse/partner can acquire a community property interest in the other spouse's/partner's separate property, *e.g.*, if the other spouse/partner devotes substantial time to his or her separate property or uses community property income to satisfy debt secured by separate property. See Practice Under the California Family Code: Dissolution, Legal Separation, Nullity, chap 5 (Cal CEB Annual) referred to throughout this Action Guide as Practice Under Fam Code.

Commingling

A spouse/partner can convert separate property to community property, *e.g.*, by commingling the two or by making improvements to community property with separate property funds.

Further Research: See Complete Plans §4.8; Practice Under Fam Code §5.23; 11 Witkin, Summary of California Law, *Community Property* §§112-128, 151, 157 (10th ed 2005).

Agreement

The clients may already have, or they may want you to prepare, a property agreement. For discussion of the formal requirements for a valid transmutation, see Fam C §852. See California Marital Settlement and Other Family Law Agreements, chap 18 (3d ed Cal CEB 2005); Practice Under Fam Code §5.28.

COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP

ATTRIBUTES

a. Real property held as "Community Property With Right of Survivorship" (CC §682.1) retains all the features of community property (including receipt of a new basis on death for both halves under IRC §1014), *except* that the property passes on death to the survivor, without administration, in the same manner as joint tenancy property.

b. Provisions applicable to community property with right of survivorship include those relating to (CC §682.1(a)):

(1) The effect of death on nonprobate transfers (Prob C §§5000-5032);

(2) The right of the surviving spouse/domestic partner to dispose of property (Prob C §§13540-13545);

(3) Liability for debts of the deceased spouse/domestic partner (Prob C §§13550-13554); and

(4) Liability for decedent's property (Prob C §§13560-13564).

VERIFY HOW TITLE HELD

Review the deeds and other documents conveying or affecting title to determine whether client holds title to assets as community property with right of survivorship.

- a. The transfer document must expressly declare that the property is community property with right of survivorship.
- b. The declaration "may be accepted in writing on the face of the document by a statement signed or initialed by the grantees." CC §682.1(a).

NOTE

Although the phrase "may be accepted" sounds permissive, the report of the Assembly Judiciary Committee states that the proposal "affirmatively requires the signature or initials of the parties on the face of the document." Assembly Judiciary Committee Analysis of AB 2913 (Aug. 25, 2000).

RECOGNIZE ADVANTAGES AND DISADVANTAGES

No Probate

Title to asset is immediately vested in the surviving spouse/domestic partner without need for probate or spousal/domestic partner property petition.

Limits Estate Planning Opportunities

- a. The property may go to a surviving spouse/domestic partner who is incapacitated, requiring a conservatorship.
- b. The property is *not* subject to the estate plan in the deceased spouse's/domestic partner's will or trust.
- c. Unless the surviving spouse/domestic partner does his or her own estate planning, the assets will be subject to probate in that spouse's/partner's estate.

CONSIDER ELIMINATING RIGHT OF SURVIVORSHIP

Discuss with the client whether the client wants to terminate the right of survivorship so that the trust document controls the disposition of the settlor's interest in the property.

TERMINATING RIGHT OF SURVIVORSHIP

Before the death of either spouse/domestic partner, the right of survivorship may be terminated under the same procedures as a joint tenancy. CC §682.1(a). See Terminate Joint Tenancy, below.

JOINT TENANCY PROPERTY

WHY IMPORTANT

On the death of a joint tenant, the survivor gets title by operation of law, without needing probate or a trustee to transfer title. See CC §683. For this reason, client may be using joint tenancy as a probate avoidance device.

IDENTIFY JOINT TENANCY

Review the deeds and other documents conveying or affecting title to determine whether client holds title to assets in joint tenancy:

- a. Joint tenancy property is created by expressly designating owners as "joint tenants."
- b. Sometimes joint tenancy is created by the phrase "joint tenancy with rights of survivorship."

RECOGNIZE ADVANTAGES

Recognize joint tenancy's advantages, *e.g.*:

No Probate

Title to asset is immediately vested in the surviving joint tenant without need for probate. *Grotbe v Cortlandt Corp.* (1992) 11 CA4th 1313, 1317, 15 CR2d 38.

Not Subject to Creditors After Death

Because nothing "passes" from the deceased joint tenant to the survivor (*Grotbe v Cortlandt Corp., supra*), the asset is not subject to creditors' claims.

RECOGNIZE DISADVANTAGES

Recognize joint tenancy's disadvantages, *e.g.*:

No Control Over Joint Tenant

Your client has no control over the other joint tenant, *e.g.*:

- a. The other joint tenant may decide to withdraw, sell, or give away the joint tenancy interest; and
- b. While the joint tenant is alive, his or her creditors may attach the joint tenant's interest.

Limits Estate Planning Opportunities

- a. The property may go to a surviving joint tenant who is incapacitated, requiring a conservatorship.
- b. Worst of all, the property is *not* subject to the estate plan in the deceased joint tenant's will or trust:
 - (1) If there is a conflict, the joint tenancy will generally prevail; and
 - (2) The client may not understand effect of joint tenancy, *i.e.*, that the client's chosen beneficiary may not receive the asset after the client's death.

Loss of Tax Advantage

- a. There may be insufficient assets to fully fund a bypass trust and to achieve the estate tax savings.
- b. If community property is held as joint tenancy, a surviving spouse will probably incur much higher income taxes when selling the property. See Revocable Trusts §§4.46, 4.51, 4.56 for discussion of this tax consequence.
- c. IRS *may* consider all of the joint tenancy property as part of the estate. See IRC §2040.
- d. Creation of a joint tenancy may trigger a gift tax.

Further Research: Revocable Trusts §§4.46, 4.90, 4.165, 4.231.

CONSIDER ELIMINATING JOINT TENANCY

Carefully discuss with the client whether the client wants to:

Continue Joint Tenancy

Continue to hold the property as a joint tenant and not transfer it to the trust, meaning that the surviving joint tenant gets the entire asset.

Terminate Joint Tenancy

Terminate the joint tenancy so that the trust document controls the disposition of the settlor's interest in the joint tenancy property by having:

- a. All joint tenants:

(1) Execute a deed transferring the property held in joint tenancy to the trustee (see CC §683.2(d); *Black v Commissioner* (9th Cir 1985) 765 F2d 862 (both spouses transferring joint tenancy property to trust terminated joint tenancy)); or

(2) Enter into a written agreement executed by all the joint tenants that severs the joint tenancy (*Estate of Powell* (2000) 83 CA4th 1434, 100 CR2d 501 (joint tenancy severed by settlors' declaration that property held in trust)).

NOTE

Be careful to advise clients about the actual or possible conflicts in interest, and follow the California Rules of Professional Conduct.

b. Settlor transfers property to the trust, unilaterally terminating the joint tenancy under CC §683.2(a). See *Estate of Propst* (1990) 50 C3d 448, 268 CR 114.

NOTE

Even if a dissolution is pending and no division of property has occurred, a unilateral transfer of an interest in joint tenancy to a trust will sever the joint tenancy. *Estate of Mitchell* (1999) 76 CA4th 1378, 91 CR2d 192.

Terminating Joint Tenancy Between Spouses

If the joint tenancy is between husband and wife, discuss with the client the importance of executing a deed to themselves as joint tenants to themselves as community property before the execution of a deed into the trust.

NOTE

The nature of the asset before transfer to the trust is maintained in the hands of the trustee. Therefore, if the joint tenancy is not transmuted to community property, there is a risk of losing the advantage of the community property basis step-up on the death of the first of the spouses.

Further Research: For discussion of terminating the joint tenancy, see 12 Witkin, Summary of California Law, *Real Property* §§54-84 (10th ed 2005), referred to throughout this Action Guide as 12 Witkin, Summary, *Real Prop*. For deed language to sever a joint tenancy of unmarried persons see Complete Plans §12.49.

DOCUMENT CLIENT'S DECISION

Whether the client decides to continue the joint tenancy or not, make sure you verify in writing what the client decided and what factors influenced the client's decision.

Further Research: For discussion of the tax considerations involved in characterizing property as separate, community, quasi-community, or joint tenancy property, see Revocable Trusts §§4.46-4.51, 4.90, 4.165, 4.231, 5.20-5.37.

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When Determining Which Assets to Transfer to the Trust

STEP 17. EVALUATE WHICH ASSETS TO TRANSFER TO THE TRUST

MEET CLIENT'S GOALS

Generally, *all* assets that need protection and management if the client is incapacitated and all assets subject to probate should be transferred to the trust, consistent with the client's purpose in creating the trust (see [step 1](#), above), *e.g.*, to avoid probate.

CONSIDER ASSET VALUE

If the asset is not in the trust, will it require probate?

- a. If the value of all the nontrust assets is less than \$100,000, provided a pour-over will is in place, the asset can be transferred on death to the trust by affidavit under [Prob C §13100](#) without the need for a probate proceeding.
- b. If the value of the nontrust assets is greater than \$100,000, then they will be subject to probate.

IF USING ASSET TO SECURE LOAN

A client may be reluctant to transfer assets to the trust because the client may want to refinance real property or use the property for securing a new loan:

- a. Client as trustee can apply for the loan or refinance; and
- b. If the lender requires that the property be transferred out of trust, explain to the client that he or she can:
 - (1) Transfer property out of the trust for a day or two, long enough for the deed of trust to be recorded against the property; and
 - (2) Arrange with the title company to:
 - (a) Prepare a deed back into the trust to be signed by the settlor simultaneously with all the other escrow documents; and
 - (b) Record this deed to the trust immediately *after* the loan documents are recorded.

Further Research: [Revocable Trusts §§5.20-5.37](#) and [chap 21](#).

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Determining Which Assets to Transfer to the Trust/STEP 18. MAKE SURE THE TRUST GIVES TRUSTEE AUTHORITY OVER ALL ASSETS YOU WILL TRANSFER

STEP 18. MAKE SURE THE TRUST GIVES TRUSTEE AUTHORITY OVER ALL ASSETS YOU WILL TRANSFER

REVIEW THE TRUST

Determine whether the trust:

- a. Expressly authorizes the trustee to receive the assets that settlor will transfer to the trust, *e.g.*, personal property;
- b. Expressly rejects certain assets, *e.g.*, property that may create a liability (see [step 26](#), below); and
- c. If client desires specific directions with respect to how certain assets are to be managed and distributed, states those directions clearly.

IF CONSIDERING PERSONAL PROPERTY IN TRUST

Because a trustee may be reluctant to hold and manage non-income-producing personal property (see [step 19](#), below), determine whether the agreement includes a provision exempting the trustee from liability for management of tangible personal property.

NOTE

If this provision has not been included, a corporate trustee may insist that you amend the agreement to include the provision.

DETERMINE ASSETS TO TRANSFER

Based on the trust provisions, you may decide not to transfer certain assets to the trust, *e.g.*, if the trust documents exclude contaminated property that may create a liability, do not transfer contaminated real property to the trust. See [step 26](#), below.

CONSIDER AMENDING THE TRUST

If a necessary provision is not in the trust, consider amending the trust to provide for the particular asset.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Determining Which Assets to Transfer to the Trust/STEP 19. CONSIDER REASONS NOT TO TRANSFER TANGIBLE PERSONAL PROPERTY TO THE TRUST

STEP 19. CONSIDER REASONS NOT TO TRANSFER TANGIBLE PERSONAL PROPERTY TO THE TRUST

CAN BE DISPOSED OF BY WILL

The settlor may prefer to dispose of tangible personal property by will.

CONSIDER VALUE OF ASSETS

Transfer to the trust may not be necessary, provided the value of this property combined with the value of other assets outside the trust is less than \$100,000. See Prob C §13100.

Further Research: For how to transfer property that is less than \$100,000 in value, see Transferring Prop, steps 13-15.

CONSIDER AUTOMOBILES, WATERCRAFT, AND MOBILE OR FLOATING HOMES

- a. Transfer of automobiles to the trust may not be practical because the settlor may buy and sell automobiles frequently.
- b. If all other nontrust assets are valued at less than \$100,000, the following assets are not included in the value of the estate and can usually remain outside the trust without jeopardizing the probate avoidance plan (see Prob C §§13050(b)(1), 13100, and discussion in step 50, below):
 - (1) DMV registered vehicles and watercraft; and
 - (2) Any manufactured home, mobilehome, commercial coach, or truck camper, and all floating homes registered with the Department of Housing and Community Development (HCD) (see Health & S C §§18010, 18075).
- c. If title is held in joint tenancy, the vehicle, boat, or HCD-registered property will not need to be probated in any event on the death of the first joint tenant.

CONSIDER WHETHER TRUSTEE WILLING TO HANDLE PERSONAL PROPERTY

- a. The trustee, especially a corporate trustee, may not be willing or able to assume responsibility for management of tangible personal property, *e.g.*, a coin collection or furniture in the settlor's home.
- b. Make sure the trust agreement includes a provision exempting the corporate trustee from liability for management of the tangible personal property.

NOTE

If this provision has not been included and a corporate trustee is appointed, amend the agreement.

Further Research: See Revocable Trusts §§16.21-16.23.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Determining Which Assets to Transfer to the Trust/STEP 20. DECIDE WHETHER TO TRANSFER BANK, SAVINGS AND LOAN, CREDIT UNION, AND OTHER ACCOUNTS TO THE TRUST

STEP 20. DECIDE WHETHER TO TRANSFER BANK, SAVINGS AND LOAN, CREDIT UNION, AND OTHER ACCOUNTS TO THE TRUST

CONSIDER NEED TO SEGREGATE FUNDS

If the trustee is a third party, advise the trustee to preserve the separate identity of the trust, and segregate all trust income and expenses from the settlor's income and expenses (and from the trustee's personal income and expenses) by creating or setting aside a separate trust bank account for:

- a. Deposit of trust income; and
- b. Payment of trust expenses.

NOTE

Although this formality concerning trust income is not required for the settlor who also serves as a trustee, advise the settlor that any account held in his or her name as an individual, instead of as a trustee, may be subject to probate proceedings on death.

Further Research: See Revocable Trusts §§5.10, 17.48, 17.54 for discussion of accounting duties of trustee and establishing separate accounts.

DETERMINE WHICH ACCOUNTS TO TRANSFER

Consider which accounts to transfer to the trust, *e.g.*:

Convenience

The client should keep at least one checking account for personal use, *e.g.*, to pay for groceries, utilities.

Size of Account

- a. Client does not need to transfer smaller accounts to the trust, provided the balances in these accounts, when combined with other nontrust assets, do not exceed \$100,000. See Prob C §13100.
- b. Caution the client that if the balances in these accounts exceed a certain limit, *e.g.*, \$10,000 or \$20,000:
 - (1) The excess should be transferred to a trust account; or
 - (2) The account should be transferred to the trust.
- c. You will have to keep in mind all of the circumstances of the client's estate plan in helping set the limit for which accounts to transfer to the trust.

Example 1: The client has ten accounts with \$11,000 in each. Advise the client to transfer most of the accounts to the trust. If the client keeps one account for personal use, you might caution the client to keep the balance in that nontrust account to less than \$10,000.

Example 2: The client drives an automobile valued at \$40,000 and has three accounts with balances of \$20,000 each, and two with balances of \$5000. If the client is not going to transfer the automobile to the trust (see step 19, above), advise the client to transfer the larger accounts to the trust. The balance in the smaller accounts should remain under \$10,000.

Maintaining Settlor's Account to Avoid Penalties

If the settlor is trustee, check with the institution to determine whether transfer of a bank, savings and loan, or credit union account to the trust will:

- a. Require opening of a new account or a change in the account number; or

- b. Prematurely terminate a certificate of deposit with a resulting interest penalty.

PAY-ON-DEATH ACCOUNTS

California permits Pay-on-Death (P.O.D.) or "Totten Trust" bank accounts (see Prob C §§5120-5152) that, like revocable trusts:

- a. Are wholly owned and revocable by the settlor; and
- b. On the settlor's death, transfer funds to designated payees without probate.

NOTE

These accounts do not provide other advantages of revocable trusts, such as surrogate management and minimizing taxation on death of surviving spouse. However, they can be used to provide simple means of making small cash gifts outside of the trust if the named beneficiary survives the account owner.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Determining Which Assets to Transfer to the Trust/STEP 21. DETERMINE WHETHER TO TRANSFER STOCKS AND OTHER INTERESTS IN BUSINESS OWNED BY SETTLOR

STEP 21. DETERMINE WHETHER TO TRANSFER STOCKS AND OTHER INTERESTS IN BUSINESS OWNED BY SETTLOR

CLOSELY HELD CORPORATIONS

WHEN ISSUE ARISES

Client owns stock in a closely held corporation, *e.g.*, family-owned business that has been incorporated.

DETERMINE WHETHER ANY RESTRICTIONS IN TRANSFER

By Agreement

Review corporate and stockholder documents, *e.g.*, buy-sell agreements, to determine whether any restrictions on transfer exist.

By Statute

The closely held corporation may also:

- a. Be a professional corporation (see below); or
- b. Elect to be treated as an S corporation (see below).

DETERMINE WHETHER TRUST CAN PROPERLY RECEIVE STOCK

Make sure that the trustee is authorized to receive, hold, and possibly conduct the closely held corporate business. See [Revocable Trusts §§21.31, 21.36](#).

incentive stock options

RESTRICTIONS ON TRANSFER

Incentive stock options usually cannot be transferred to a revocable trust.

Tax Consequences

Incentive stock options cannot be transferred by an employee except by will or the laws of descent and distribution. IRC §422. Violation of this restriction will result in loss of favorable tax treatment.

Plan Restrictions

Many stock option plans prohibit transfers.

AVOIDING INCLUSION IN PROBATE ESTATE

An employee can avoid inclusion of the options in the probate estate by designating a legal representative who is entitled to exercise the options after the employee's death. The employee may designate the successor trustee of the revocable trust as the legal representative to exercise the options. (An agent under a durable power of attorney has, of course, no legal authority after the principal's death.)

SECURITIES REGISTERED IN BENEFICIARY FORM

IDENTIFY SECURITIES REGISTERED IN BENEFICIARY FORM

- a. Review registration of securities to ascertain whether any are registered in beneficiary form.
- b. Registration in beneficiary form is shown by the words "transfer on death" or "pay on death" or the abbreviations "TOD" or "POD" following the registered owner's name and before the beneficiary's name. Prob C §5505.

WHY IMPORTANT

On the death of the registered owner or the last to die of multiple owners, the beneficiary of a security registered in beneficiary form may have the security transferred without probate. See Prob C §§5500-5512.

DISADVANTAGES

- a. The property is *not* subject to the estate plan of the registered owner's will or trust.
- b. There may be insufficient assets to fully fund a bypass trust and to achieve estate tax savings.
- c. The property may go to a beneficiary who is incapacitated, requiring a conservatorship.
- d. The named beneficiary may predecease the registered owner.
- e. If the beneficiary is the surviving spouse and he or she does no further estate planning, the security will be subject to probate in that spouse's estate.

CONSIDER TRANSFERRING SECURITY TO TRUST

Discuss with the client whether the client should:

- a. Continue holding the security in beneficiary form; or
- b. Transfer securities to the trust, particularly if the holdings are substantial.

PROFESSIONAL CORPORATIONS

WHEN ISSUE ARISES

Client conducts a professional practice as a professional corporation, *e.g.*, medical or legal practice.

DETERMINE WHETHER TRUST CAN RECEIVE STOCK

- a. Review statutory and regulatory restrictions of licensing requirements for the profession (see, *e.g.*, Corp C §13407 (all shareholders must be licensed)).
- b. Make sure that the trust can meet required restrictions on interests of nonlicensed spouse and spouses' children in professional corporation transferred to a revocable trust.

When Shares in Professional Corporation May Be Transferred to Trust

Shares in a professional corporation may be transferable to a revocable trust under the following conditions (Cal Dep't of Consumer Affairs Legal Opinion 79-5):

- a. The trustee and current beneficiaries of the trust are licensed;
- b. A nonlicensed spouse of a licensed spouse-trustee does not have an interest in the trust greater than his or her community property interest in the shares; and
- c. The trust instrument specifies that:
 - (1) The licensed spouse/trustee has exclusive control and powers relating to the shares of the professional corporation; and
 - (2) On the nonlicensed spouse's death, the spouses' children (or other beneficiaries) have a beneficial interest, if at all, only in

the proceeds that may be received from the shares and not equitable title to those shares.

Further Research: For further discussion of the restrictions and possible trust provisions, see [Revocable Trusts §§19.17-19.18](#).

ALTERNATIVES

Instead of transferring shares of professional corporation to the trust, consider having the client:

Assignment of Income Interest to Trustee

Execute an assignment of the income interest in the entity to the trustee in the event of incapacity or death. That way, the income continues to flow to the trust while control remains with the shareholder and the bylaws control what happens when the shareholder is incapacitated or deceased.

Written Agreement

Enter into a written agreement with the client's business colleagues (partners, shareholders, etc.) that the trustee will succeed to the client's interest, if it is a small organization.

S CORPORATIONS

WHEN ISSUE ARISES

Client owns stock in a corporation that qualifies as a small business corporation under Subchapter S for special tax treatment. See IRC §§1361-1379.

DETERMINE WHETHER TRUST CAN RECEIVE STOCK

- a. Make sure that the trust meets the restrictions and can continue to be a shareholder. IRC §1361(c)(2)(B)(i).
- b. If the trust meets the restrictions, it will continue to be treated as a shareholder for a certain time after settlor's death. IRC §1361(c)(2)(A)(ii).

Further Research: For further discussion of the restrictions, see [Revocable Trusts §§4.12, 7.43](#).

COMMERCIAL PARTNERSHIPS AND FAMILY LIMITED PARTNERSHIPS

RESTRICTIONS ON TRANSFER

Review partnership agreement to determine whether restrictions prohibiting transfer of partnership interest to trust exist.

AVOIDING TRANSFER RESTRICTIONS

- a. Transfer restrictions can sometimes be circumvented by a written agreement between the limited partner and the general partner that the trustee will succeed to the limited partner's interest on the limited partner's death. This is easier in a smaller company.
- b. Amending the controlling document is a more prudent way to address transfer restrictions.

Further Research: For further discussion of transfer restrictions, see [Revocable Trusts §§21.32-21.35](#).

SOLE PROPRIETORSHIPS

Some assets, such as business lines of credit, may be difficult or impossible to transfer to a trust because of bank restrictions on transfers. A deed to commercial property may trigger a due-on-sale clause. See [step 25](#), below.

Further Research: For further discussion, see [Revocable Trusts §21.38](#).

LLCs

A trust can be a member of a limited liability company. Check the articles of organization and operating agreement regarding any restrictions or limitations on transfer of a membership interest.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Determining Which Assets to Transfer to the Trust/STEP 22. DETERMINE WHETHER TO TRANSFER PROMISSORY NOTES AND UNDOCUMENTED LOANS TO THE TRUST

STEP 22. DETERMINE WHETHER TO TRANSFER PROMISSORY NOTES AND UNDOCUMENTED LOANS TO THE TRUST

TAX PLANNING CONSIDERATION

If the loan is an installment obligation, transferring it to a grantor trust should not be deemed a "disposition" that triggers realization of gain, because the settlor of a revocable trust remains the owner of the obligation for tax purposes. See IRC §453(e); Rev Rul 81-98, 1981-1 Cum Bull 40. On promissory notes, see Revocable Trusts §§21.42-21.43, and on income tax consequences for grantor trust in general, see Revocable Trusts §4.4.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Determining Which Assets to Transfer to the Trust/STEP 23. COORDINATE BENEFICIARY DESIGNATIONS

STEP 23. COORDINATE BENEFICIARY DESIGNATIONS

WHEN ISSUE ARISES

Client is determining whether to transfer to the trust assets that will be paid to a named beneficiary, *e.g.*, life insurance policies, IRAs, retirement plan benefits, and annuities.

MAKE SURE YOU COORDINATE WITH THE ESTATE PLAN

Review the estate plan to determine whether it *requires* certain assets to be transferred to or excluded from the trust, *e.g.*, the estate plan contemplates that the spouse is the primary beneficiary of a life insurance policy with the option to disclaim the proceeds of the policy so that they can go to the trust. See [step 24](#), below.

RECOGNIZE NONPROBATE ASSETS

If the owner designates a beneficiary other than the trust or estate, generally, probate is not necessary to transfer title or benefits on the owner's death, *e.g.*:

- a. Life insurance policies;
- b. Pay-on-death accounts (sometimes called Totten Trusts);
- c. Securities held in beneficiary form (see [step 21](#), above);
- d. Annuities;
- e. Pension and profit-sharing plans (both qualified and nonqualified) and IRAs (see discussion of these assets in [step 24](#), below);
- f. Property subject to a power of appointment held and exercised by the client; and
- g. Deferred compensation.

Further Research: See [Transferring Prop.](#)

RECOGNIZE DISTINCTION BETWEEN "TITLE" AND "BENEFICIARY"

Title

Usually, your client has title to life insurance, pension plans, and IRAs, *i.e.*, the client has paid the premiums or made the contributions.

Beneficiary

The client, as owner of the asset, designates another person to receive the benefits of the insurance policy, pension plan, or IRA after the client dies, *e.g.*, the beneficiary may be the surviving spouse, a child, or the trust.

KEEP *TITLE* IN SETTLOR'S NAME

Assuming that the client is the "owner" of the asset:

IRAs and Retirement Plans

Advise your client *not* to transfer title to individual retirement accounts (IRAs) or IRC §401 "qualified plans," *e.g.*, pensions or profit-sharing plan or Keogh Plan, to the trustee, because the transfer could trigger payment of income tax and maybe penalties. See [step 24](#), below.

NOTE

By law, title to qualified plans must be held in the name of the individual taxpayer; transfers to another name result in the loss of tax-deferred status.

Life Insurance

Ownership of life insurance policies can be, but generally is not, transferred to the trust. Life insurance proceeds are paid directly to the named beneficiary without the need for court administration. For that reason it is usually not necessary to transfer ownership to the trust.

NOTE

It is sometimes advisable to name the trust as beneficiary of life insurance to protect and manage the proceeds and to fully fund a bypass trust.

REVIEW MARITAL/DOMESTIC PARTNERSHIP PROPERTY AGREEMENTS

Be sure to review any premarital or preregistration domestic partnership agreements, marital or postregistration domestic partnership property agreements, or marital settlement or domestic partnership dissolution agreements to determine whether they *require* a specific designation, *e.g.*, beneficiary must be the spouse/domestic partner, ex-spouse/domestic partner, certain trusts, or children of a prior marriage or partnership.

RECOGNIZE SPOUSE'S OR DOMESTIC PARTNER'S INTERESTS

The client's right to designate a beneficiary to the following assets may be limited (see Prob C §5020) by the spouse's/domestic partner's right to his or her one-half community property interest in proceeds or plan benefits attributable to premium payments or contributions made from earnings on other community property during marriage/domestic partnership to:

- a. Life insurance;
- b. Pension or retirement plan;
- c. IRA; or
- d. Annuity.

See step 24, below.

Further Research: For discussion of employee benefit issues for domestic partners, see Domestic Partnerships, chap 8.

If Spouse Not Beneficiary

- a. On certain qualified plans, the spouse's written consent is *required* for designation of any beneficiary and form of payment other than a joint and survivor annuity. IRC §417(a)(2).
- b. Written consent of the spouse is required for certain nonprobate transfers of community property under California law as well. Prob C §5020.

Name Trustee as Alternate Beneficiary

Sometimes, the client names the surviving spouse or domestic partner as the *primary* beneficiary and the trust as the alternate beneficiary, although serious tax issues arise if a trust is the beneficiary of a qualified plan or IRA. See step 24, below, for discussion of benefits and disadvantages in naming trustee as beneficiary. For a discussion of the use of disclaimers in postmortem planning, see Revocable Trusts §§14.28-14.35.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Determining Which Assets to Transfer to the Trust/STEP 24. EFFECTS OF NAMING TRUST AS BENEFICIARY OF LIFE INSURANCE POLICY, IRA, OR QUALIFIED RETIREMENT PLAN

STEP 24. EFFECTS OF NAMING TRUST AS BENEFICIARY OF LIFE INSURANCE POLICY, IRA, OR QUALIFIED RETIREMENT PLAN

BENEFITS OF DESIGNATING TRUST

After careful consideration of complex tax issues, naming the revocable trust as primary beneficiary, or as alternate beneficiary after the spouse or domestic partner, may provide any one or more of the following benefits:

Controls Proceeds

Trustee will dispose of insurance policy or IRA proceeds, or plan benefits, in accordance with the intended dispositive provisions of the trust.

Allows Disclaimer in Trust Funding

The trust should be named as alternate beneficiary if the estate plan contemplates a disclaimer by the spouse of the proceeds of an insurance policy, so that proceeds can pass to a trust that uses the unified credit (IRC §§2010(a), (c), 2505(a)) to shelter the applicable exclusion amount (*e.g.*, "exemption equivalent," "credit shelter," or "bypass" trust).

Further Research: See [Estate Plan §21.34, chap 27](#); see also [Revocable Trusts §§14.28-14.35](#) (disclaimers); [California Will Drafting, chap 20](#) (3d ed Cal CEB 1992), referred to throughout this Action Guide as Will Drafting.

NOTE

This strategy is useful if it is anticipated that the assets in the trust will not be sufficient to allow appropriate use of the unified credit.

Provides Control of Proceeds Qualifying for Marital Deduction

The trustee of a qualified terminable interest property (QTIP) trust, established under the revocable trust on the death of the first spouse to die, may be made the primary beneficiary if the estate plan is structured so that proceeds of insurance policies and employee benefit plans qualify for the marital deduction.

Further Research: For discussion of the marital deduction, QTIP election, and marital deduction trusts, see [Estate Plan, chap 12](#); [Revocable Trusts, chaps 9, 11-13](#); [Will Drafting, chaps 17-19](#).

Avoids Inequalities

Avoids unintended inequalities that may arise if different individuals are named as beneficiaries under different policies or plans.

Provides Management for Children

Proceeds or plan benefits can be paid to the trustee to hold in trusts created under the revocable trust agreement for children, instead of being paid directly to immature children or subjected to court-supervised guardianship proceedings for minor children.

Further Research: See [Will Drafting, chap 22](#).

Implements Contingent Plans

Complicated contingent dispositions can be implemented through the trust document; complex dispositions usually cannot be incorporated directly in a typical beneficiary designation.

Example: Client may want a different distribution of proceeds if a named individual predeceases the client. This would be more easily implemented by naming the trustee as beneficiary and putting the contingency in the trust. It would be unwieldy and unsatisfactory to try to explain the contingency on a beneficiary designation form.

Ensures Estate Tax Payment

Trustee as recipient of proceeds can ensure orderly payment of estate taxes attributable to proceeds, and avoid possible disputes and additional expenses of obtaining reimbursement for taxes from individual beneficiaries.

Further Research: For general discussion of life insurance and pensions in estate planning, see [Estate Plan, chaps 19-21](#).

LIFE INSURANCE

TRUST AS BENEFICIARY OF LIFE INSURANCE POLICIES

Life insurance proceeds will be included in the estate of the insured settlor if the insured holds any incidents of ownership. If the life insurance premiums are paid with community property, each spouse will be deemed to own one-half of the policy and proceeds for gift and estate tax purposes.

Assigning Proceeds to Irrevocable Trust

Because of significant opportunities for estate tax savings, it is sometimes appropriate to assign life insurance policies to an *irrevocable* trust for the benefit of the insured settlor's surviving spouse or children. See [Drafting California Irrevocable Trusts, chap 11 \(3d ed Cal CEB 1997\)](#).

If Irrevocable Trust Is Inappropriate

If an irrevocable trust is inappropriate, consider structuring the beneficiary designation so that the uninsured spouse's interest in the policy can be used to fund the bypass trust.

NOTE

Inattention to the impact of incidents of ownership and distribution in satisfaction of a pecuniary bequest could result in unwanted tax consequences. See [Revocable Trusts §§4.78, 4.83, 4.109, 4.166, 21.39-21.40](#).

Commercial Annuities

A trust may also be named beneficiary of a commercial annuity. However, the distribution provisions and tax consequences of commercial annuities may be affected by the identity of the beneficiary. Designation of the revocable trust may limit distribution options.

- a. Review the contract; and
- b. Contact the company that issued the annuity.

retirement PLANS

RETIREMENT PLAN DEFINED

The term "retirement plan" as used in this Action Guide refers to an income-tax-deferred plan—typically an IRA (IRC §408(a)), IRC §§401(k), 403(b), 457, or other plan to which pre-tax dollars are contributed by the client.

Further Research: See [Complete Plans §8.7](#); [Estate Plan, chap 21](#); [Revocable Trusts §§21.2, 21.39, 21.41](#).

DESIGNATING REVOCABLE TRUST AS BENEFICIARY

A revocable trust can be named as the beneficiary of retirement benefits and the trust's beneficiaries will be treated as designated beneficiaries if the requirements of Treas Reg §1.401(a)(9)-4, A-5, A-6 are met.

NOTE

Warning: Complying with the requirements is more complicated than it may appear. In view of the significant complexities and disadvantages involved in designating a trust as beneficiary of retirement benefits, approach this strategy carefully. It is ordinarily preferable to leave retirement benefits outright to intended beneficiaries rather than to have them paid to a trust.

DISADVANTAGES OF NAMING TRUST AS BENEFICIARY OF QUALIFIED PLAN OR IRA

There are several obstacles to naming a trust as beneficiary, most importantly the complex IRC requirements regarding "designated beneficiaries." See [Estate Plan §21.44](#).

May Cause Rapid Distribution if Not Designated Beneficiary Trust

- a. If the beneficiary designation and trust document does not conform to Internal Revenue Code requirements and Treasury regulations, naming the trust as beneficiary of employee's qualified plan or IRA may cause benefits to be distributed more rapidly than would occur if the surviving spouse or the employee's children or other younger persons were named as beneficiaries.
- b. Naming a trust as a beneficiary could cause income tax to be payable in a lump sum, or at best over 5 years. Treas Reg §1.401(a)(9)-3, A-1.

Further Research: [Revocable Trusts §21.41](#).

Income Tax Effects

Generally, proceeds that are employer contributions or deductible employee contributions are considered *taxable income* when received. IRC §§72, 219. If client designates the trust as primary beneficiary, the trust will have to accept and pay income taxes on distribution of plan proceeds; the trust cannot roll over to a new IRA.

Exception: If the designated beneficiary is the spouse of the deceased employee, the spouse may roll over the proceeds into a new IRA and avoid income tax on the distribution at that time. IRC §402(c)(9).

Spousal Rollover When Trust Is Beneficiary

Generally, an IRA that passes to a spouse through a trust cannot be rolled over, because it is acquired from a third party and not from the decedent. However, the IRS has liberally treated some dispositions to trusts as being dispositions to the spouse, provided the spouse is able to withdraw the IRA benefits from the trust without the aid of an exercise of discretion by a fiduciary other than the spouse.

Further Research: [Estate Plan, chap 21](#); [Decedent Estate Prac §§33.47-33.50](#).

WHEN DESIGNATION OF TRUST AS BENEFICIARY OF QUALIFIED PLAN OR IRA MAY BE APPROPRIATE

Designating revocable trust as beneficiary *may* be appropriate under certain circumstances, *i.e.*, when:

- a. Designation of spouse as beneficiary is undesirable or inappropriate (*e.g.*, because of management issues or desire to preserve benefits for children of prior marriages); attorney should also consider establishing irrevocable trust to serve as designated beneficiary; or
- b. Trustee has power to disclaim benefits, in which case designation of revocable trust as beneficiary may preserve flexibility.

NOTE

If the trust is named as the beneficiary, the client will be able to amend the estate plan more easily and, if estate taxes are due, the trustee can withhold the necessary funds in advance and avoid the necessity of collecting each transferee's legal share.

Further Research: [Estate Plan, chap 21](#); [Revocable Trusts §§21.2, 21.39, 21.41](#).

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Determining Which Assets to Transfer to the Trust/STEP 25. DETERMINE WHETHER TO TRANSFER REAL PROPERTY TO THE TRUST

STEP 25. DETERMINE WHETHER TO TRANSFER REAL PROPERTY TO THE TRUST

CONSIDER EFFECT OF TRANSFER ON TAXES

Transfers of real property to a revocable trust or from a revocable trust back to the settlor are excluded from the definition of "change of ownership" and should *not* result in reassessment. Rev & T C §§60, 62(d), 62(p); 18 Cal Code Regs §462.160. The following transfers also will not result in reassessment (Rev & T C §63(a); Fam C §§297.5, 299.3):

- a. Transfers to a trustee for the beneficial use of a spouse or registered domestic partner;
- b. Transfers to a trustee for the beneficial use of a deceased transferor's surviving spouse or registered domestic partner; and
- c. Transfers by a trustee to a surviving spouse or registered domestic partner.

NOTE

Any registered domestic partner whose property was reassessed because of a transfer between the domestic partners that occurred between January 1, 2000, and January 1, 2006, can have the reassessment reversed under Rev & T C §62(p)(2).

Further Research: See Revocable Trusts, chap 4, for further discussion of this topic.

Preliminary Report

You must complete the Preliminary Change of Ownership Report form (Appendix F). See step 43, below.

Reappraisal May Occur Later

Property *may* be reappraised at a later time, *e.g.*, when trust vests in persons other than settlor or spouse or registered domestic partner (see Rev & T C §61(h)). See Estate Plan, chap 15, for discussion of reappraisal.

CONSIDER WHETHER TO TERMINATE JOINT TENANCY PROPERTY

If ownership is in joint tenancy, transfer to the trust will result in termination of the joint tenancy. See step 16, above.

REVIEW SECURITY INSTRUMENT

Review any mortgage or deed of trust encumbering the property for restrictions on transfers, sometimes referred to as "due-on-sale clauses."

Determine Whether Restriction Is Enforceable

The transfer is exempt from a due-on-sale clause if the property is residential with up to five dwelling units, and the settlor is also a trust beneficiary. 12 USC §1701j-3(d)(8).

Further Research: See Revocable Trusts §21.9.

Comply With Requirements

If the due-on-sale clause is applicable and enforceable, discuss with client how to proceed, *e.g.*, request consent of the lender, do not transfer it to the trust. See step 45, below.

NOTE

Many practitioners do not apply for waivers, noting that historically lenders have not attempted to accelerate loans merely because of a transfer to a revocable trust.

Further Research: For discussion of due-on-sale clauses, see Revocable Trusts §21.9.

CONSIDER DISADVANTAGES OF TRANSFER

- a. The settlor's principal residence does not produce income, and may pose administrative problems for a trustee after the settlor dies. See Revocable Trusts §§13.2-13.10, 13.14.
- b. Some corporate trustees may charge an annual fee to hold title to the settlor's principal residence.

CONSIDER WHETHER TO TRANSFER MINERAL RIGHTS

Consider complexity of the transfer of mineral rights to a trust, *e.g.*:

If Out of State

- a. In some states, mineral rights are real property; in others, personal property.
- b. Generally, you should examine the instrument of acquisition and use it as a guide. In most cases, such instruments should be acknowledged and recorded.
- c. To be safe, when transferring out-of-state mineral rights, *obtain the advice of a lawyer in that state*.

In Any State

Check with client's accountant to determine whether the transfer to the trust *may* affect or eliminate the depletion allowance on the interest. See IRC §§612, 613, 613A.

REVIEW LEASE

If you are considering assigning a leasehold interest to the trust, review the lease to determine whether there are any restrictions on assignment in the lease document, *e.g.*, that the lessor approve the assignment, a right of first refusal.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Determining Which Assets to Transfer to the Trust/STEP 26. IF REAL PROPERTY MAY BE CONTAMINATED, DECIDE WHETHER TO TRANSFER IT TO THE TRUST

STEP 26. IF REAL PROPERTY MAY BE CONTAMINATED, DECIDE WHETHER TO TRANSFER IT TO THE TRUST

RECOGNIZE POTENTIAL LIABILITY

Transferring property contaminated with toxic wastes to a trust may cause the trustee, if not already an owner or operator, to incur potential personal liability for toxic cleanup costs:

CERCLA

- a. The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 USC §§9601-9675) imposes liability on any owner of property or a leasehold, or an operator of a facility, that is in violation of this Act.
- b. Mere ownership of contaminated property, without any activity whatsoever, is sufficient to incur personal liability.

Other Laws

Various state and federal laws impose trustee responsibilities regarding underground tanks, transportation and disposal of hazardous materials, and ground water contamination.

Trustee Protection Law

Although Prob C §18001 conditionally insulates a trustee from personal liability, CERCLA, as federal law, preempts this exculpation provision and can impose personal liability on the trustee.

CONSULT AN EXPERT

If there is any concern with past or present toxics or hazardous waste contamination on a trust property or leasehold, or in the operation of a trust business, the potential trustee should *immediately* consult a knowledgeable attorney specializing in this area *before*:

- a. Becoming a trustee;
- b. Taking title;
- c. Operating a business; or
- d. Taking over a leasehold.

Further Research: See California Trust Administration, chap 6 (2d ed Cal CEB 2001); Graham & Lindquist, *Fiduciaries and CERCLA*, Estate Planning 1993 (UCLA-CEB 1994), chap 8.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Before Funding the Trust/STEP 27. NAME THE TRUST(S) AND USE NAME CAREFULLY

Before Funding the Trust

STEP 27. NAME THE TRUST(S) AND USE NAME CAREFULLY

YOUR GOAL

Name the trust accurately and:

- a. Choose a simple and short name for the trust(s) that will fit on account application forms and statements, deeds, and the like; and
- b. Adequately identify the trust to avoid confusion among different trusts, especially if the original trust will split into subtrusts after the settlor(s) dies (see below). For example, if the irrevocable bypass/credit shelter trust is identified in the trust document as the "Family Trust," do not use the word "Family" in the title of the original revocable trust.

USE TRUSTEE'S NAME IN TRANSFER TO THE TRUST

You will be transferring assets to the trustee to hold them in the name of the trust, *e.g.*:

- a. "John Smith, Trustee of the Smith Revocable Trust under document dated 1/15/01";
- b. "John Smith, Trustee of the Smith Revocable Trust UTD 1/15/01" (UTD means "under trust dated"); or
- c. "John Doe and Jane Doe, Trustees of the John and Jane Doe Trust."

USE DATE

Many practitioners use the date in the name, especially if the name is a common one, in order to distinguish from a similar name.

Example: "John Smith, Trustee of the Smith Revocable Trust UTD 1/15/01" is easily distinguishable from "Jane Smith, Trustee of the Smith Trust UTD 12/1/82." There is no question that two different trusts are involved, although the names are similar.

BE CONSISTENT

You should try to use the same form for the name of the trustees and trust when you transfer all the assets, *e.g.*, do not call the trustee "Jane Doe, Trustee of the Jane Doe Trust," on a savings account and "Jane E. Doe, Trustee of the Jane Doe Trust dated 7/7/01" on a deed.

Sometimes, you may have to abbreviate words and dates in order to fit the name in the space provided, *e.g.*, "Jane E. Doe, Trustee, Jane Doe Trust dtd 7/7/01."

ORIGINAL TRUST

USE SIMPLE NAME

Use a short, simple name for the original trust, if possible, *e.g.*:

- a. If spouses are settlors, title it the George and Gina Goforth Trust;
- b. If there is a single settlor, name it the Donna Diamond Trust; or
- c. If the clients have long names, you may suggest a combination of letters for the name of the trust: *e.g.*, Nicholas Stanopoulos-Richardson and Rosemary Stanopoulos-Richardson might prefer to name their trust the NSRR Trust or the NRSR Trust.

CONSIDER DESCRIBING TRUST

- a. Many practitioners use the word "revocable" in the name of the trust, *e.g.*, John Smith Revocable Trust.
- b. You may decide not to use the word "revocable" in the name if the original trust might become irrevocable *without* a name change after the death of the settlor.

Example 1: The client is a single person and the assets are transferred to her as "Jane Doe, Trustee of the Jane Doe Trust dated 2/3/01." After Jane Doe dies, the trust is not divided into subtrusts, and the name of the trust can continue as "Jane Doe Trust."

Example 2: The clients have one trust entitled the "John and Jane Black Revocable Trust dated 2/3/01." They have another trust named the "Black Children Irrevocable Trust dated 5/23/98." The descriptive names will prevent confusion.

SUBTRUSTS

SUBTRUSTS DEFINED

Within the Original Trust

Trusts often call for separate trusts to be created within the original trust, *e.g.*:

- a. On the death of the first spouse;
- b. To create separate shares for multiple beneficiaries; and
- c. To hold separate property transferred to the trust.

Administrative Trust

On death of settlor, administrative trust may be created:

- a. Pending termination and distribution of trust; or
- b. Pending funding of subtrusts.

MINIMIZE CONFUSION

To avoid confusion, do not use the same word in the name of the original trust and subtrusts that will replace the original trust. If, *e.g.*, the original trust is the Smith Family Trust, do not have it replaced with the Smith Family Bypass Trust.

USE DESCRIPTIVE NAMES

Use descriptive names for the administrative trust or subtrusts, *e.g.*:

- a. The Billy Bong Trust (using the name of the beneficiary);
- b. Administrative Trust under the Smith Trust UTD 1/15/01; or
- c. Names that reflect the tax implications of the subtrust, *e.g.*:
 - (1) The Marital Trust (for marital deduction property);
 - (2) The Bypass Trust (for exemption equivalent property); and
 - (3) The Survivor's Trust.

KEEP IT SIMPLE

Keep the subtrust name short also because in many cases title to assets will incorporate the name of the subtrust and of the original trust, *e.g.*, "John Smith, Trustee of the Bypass Trust under the Smith Revocable Trust UTD 1/15/01."

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Before Funding the Trust/STEP 28. PREPARE ACCURATE SCHEDULES OF ASSETS

STEP 28. PREPARE ACCURATE SCHEDULES OF ASSETS

PREPARE SCHEDULES

All assets to be transferred to the trust should be accurately identified on one or more schedules, attached to the trust.

NOTE

Remember: Merely listing an asset on a trust schedule does not always transfer title of that asset to the trust. Listing the property on a schedule made a part of the trust declaration may be adequate for a court to include the property in the trust *if* the settlor is also the trustee, but inadequate if the trustee is a third party. In any case, to avoid challenges, transfer the assets and *do not rely on the schedule*.

Further Research: Compare *Estate of Heggstad* (1993) 16 CA4th 943, 948, 20 CR2d 433, and *Osswald v Anderson* (1996) 49 CA4th 812, 820, 57 CR2d 23 (distinguishing *Heggstad*; trustors not trustees), with *Estate of Powell* (2000) 83 CA4th 1434, 100 CR2d 501 (real property trust can be created by unrecorded declaration by trustor who was not trustee).

Serves as a Reminder

The main purpose of the schedule of assets is to remind the interested persons of just what has been transferred to the trust (or, more accurately, what was intended to be transferred).

Serves as a Checklist

The schedule of assets can serve as a useful checklist for the funding process.

Sample Forms: For a sample schedule, see [Appendix B](#).

NOTE

Some practitioners do not use schedules, because they can become outdated and inaccurate, *e.g.*, when clients actively trade stocks or any other asset. They are, however, useful as a baseline for determining how the settlor intended to fund the trust.

USE SEPARATE SCHEDULES FOR MARITAL PROPERTY

If the trust instrument governs both community and separate property, the trust agreement should recite that:

- a. Community property is listed on one schedule; and
- b. The separate property of a spouse is listed on another schedule.

Further Research: For discussion of the reasons for carefully identifying the character of property, see [step 16](#), above.

CONSIDER PROPERTY AGREEMENT, IF APPROPRIATE

If there is any likelihood of disagreement between the settlors or among beneficiaries about the character of marital property, advise the clients to consider executing a property agreement separate from the trust. See [step 16](#), above, concerning your ethical responsibilities if you are representing both spouses.

Further Research: On the formal requirements for a valid transmutation, see [Fam C §852](#).

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Before Funding the Trust/STEP 29. PREPARE A DURABLE POWER OF ATTORNEY

STEP 29. PREPARE A DURABLE POWER OF ATTORNEY

YOUR OBJECTIVE

Your objective is to provide authority to a third party to transfer assets to the trust in the event the settlor is incapacitated.

POWER OF ATTORNEY DEFINED

"Power of attorney" is the document that gives authority to a third party, the "attorney-in-fact," to sign and act on behalf of the client.

Durable

A "durable" power of attorney survives the incapacity of the client. See Prob C §§4124-4127, 4206, 4304-4305. See generally Prob C §§4000-4545 (Power of Attorney Law).

WHOM TO APPOINT

Appoint a third party the client trusts to carry out his or her wishes, *e.g.*, the attorney-in-fact is often the same person the client has designated to act as a successor trustee.

PREPARE DURABLE POWER OF ATTORNEY

With respect to the trust, the instrument appointing the agent should also authorize the agent to, *e.g.*:

- a. Transfer assets to the trust;
- b. Perhaps amend or modify the terms of the trust;
- c. Change beneficiary designations on insurance, IRA, pensions;
- d. Perhaps withdraw assets for a gifting program;
- e. Perhaps withdraw property to change or add a security interest because of a loan; and
- f. Do whatever else is conceivably possible for the benefit of the settlor.

Regarding Real Property

You will make title companies more comfortable with instruments executed by the attorney-in-fact if you:

- a. Include specific authority to transfer the real property; and
- b. Attach to the durable power of attorney a legal description of the property.

NOTE

Make sure that you do not limit the attorney-in-fact's authority to act to the property described in the legal description attached to the durable power of attorney.

HAVE NOTARIZED

The durable power of attorney should be notarized so that:

- a. Power of attorney can be recorded; and
- b. Attorney-in-fact can deal with the real property.

Further Research: See generally California Powers of Attorney and Health Care Directives, chaps 4-6 (Cal CEB 2008); Estate Plan, chap 28.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Before Funding the Trust/STEP 30. PREPARE A CERTIFICATION AS EVIDENCE OF THE TRUST

STEP 30. PREPARE A CERTIFICATION AS EVIDENCE OF THE TRUST

WHEN NEEDED

a. Third parties will ask the client to provide a copy of the trust to complete a transfer, because, *e.g.*, the transfer agent needs to know that:

- (1) Trustee has authority to act regarding a certain asset (see, *e.g.*, Com C §8402); and
- (2) Trust does exist.

b. The client can present a certification of trust in lieu of providing a copy of the trust to prove the trust's existence and terms. Prob C §18100.5.

NOTE

Most institutions will require the client to complete their own in-house form certification.

PROTECT CLIENT'S PRIVACY

The certification provides information about the trust to the third parties without revealing the sensitive language of the trust that:

- a. Disposes of the assets (Prob C §18100.5(d)); and
- b. May discuss private family issues.

Review Statute

If the third party insists on seeing the trust documents, that third party may be liable for damages, including attorney fees incurred as a result of refusing to accept the certification of trust if (Prob C §18100.5(h)):

- a. You prepare the certification in compliance with the statute, providing the information needed by the third party; and
- b. Court finds that the third party was acting in bad faith.

PREPARE TRUST CERTIFICATE

Nature of Matters Certified

Prepare a document that, among other assertions:

- a. States that the trust has not been revoked, modified, or amended in any manner that would cause the representations in the certification to be incorrect;
- b. Explains how title to trust assets should be taken (for discussion of naming the trust, see step 27, above);
- c. Certifies that any attached pages of the trust are a true and correct representation of the relevant portion of trust; and
- d. States that it is being signed by all the currently acting trustees under penalty of perjury.

Sample Form: For a trust certification, see Appendix C.

Attach Copy of Relevant Pages

Although the certification of trust may contain information such as the identity and powers of the trustee, it is easier to provide information about the trust by attaching a copy of:

- a. Initial page;

- b. Page showing opening declaration of trust;
- c. Signature page, showing identity of settlors and trustees, and notary acknowledgment;
- d. Pages including the relevant trustee powers;
- e. Pages showing the identity of successor trustees and the procedures for changing trustees;
- f. Page showing whether the trust is revocable and, if so, by whom and how; and
- g. If more than one trustee, the page showing whether one trustee is authorized to sign for the trustees or whether all trustees are required to sign.

NOTE

A third party may require that you provide copies of relevant pages of the trust. Prob C §18100.5(e). The certification of trust does not have to contain dispositive provisions of the trust. Prob C §18100.5(d).

CONSIDER USING CUSTODIAN'S FORM

Ask the custodian if it has its own forms for this purpose:

- a. You will be sure to provide the information the custodian needs; and
- b. It is easier for you.

NOTE

The custodian may accept a certification in a form other than that specified in Prob C §18100.5, *e.g.*, signed by the attorney or not notarized.

Sample Form: See Appendix D for a sample certification form from an investment firm.

WHO SIGNS

To comply with Prob C §18100.5, the certificate should be signed by each of the currently acting trustees, under penalty of perjury.

HAVE NOTARIZED

To comply with Prob C §18100.5, the certificate should be acknowledged.

IF CUSTODIAN DEMANDS COPY OF ENTIRE TRUST

If the custodian asks for the entire trust instrument:

- a. Discuss the demand with the custodian in light of the provisions of Prob C §18100.5 (third party may be liable for demanding a copy of the trust if certification complies with statute);
- b. Explain options to client, who:
 - (1) May prefer to change custodians; and
 - (2) Is the only one who can consent to release copy of trust;
- c. If you do provide a copy of the trust instrument, you should excise the provisions about distribution of assets from the copy sent to the custodian; and
- d. In any event, *never* provide the schedules to the custodian; the custodian does not need to know what other assets are in the trust.

Further Research: Prob C §18100.5; Revocable Trusts §§22.1-22.2.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Before Funding the Trust/STEP 31. DEVELOP A PLAN FOR TRANSFERRING ASSETS TO THE TRUST

STEP 31. DEVELOP A PLAN FOR TRANSFERRING ASSETS TO THE TRUST

YOUR OBJECTIVE

Your objectives are to:

- a. Make sure that you and the client understand:
 - (1) The transfer procedure for each asset; and
 - (2) Who will handle each procedure; and
- b. Ensure that each asset is transferred to the trust.

REVIEW ASSET LIST

Review the asset schedule(s) attached to the trust (see [step 28](#), above, and sample in [Appendix B](#)).

CONSULT WITH CLIENT

Consult with your client to determine whether you or your client will attend to transfer of each asset. See [step 2](#), above.

USE PLANNING TO EDUCATE CLIENT

Use the development and implementation of the plan to educate your client about:

- a. How the trust should function; and
- b. The importance of establishing and maintaining the trust as a separate entity.

DOCUMENT PLAN

To document the transfer decisions that you make, prepare:

- a. Memo or checklist for your file; and
- b. Funding memorandum or letter to the client:
 - (1) Outlining the transfer procedure for each asset;
 - (2) Confirming who will handle each procedure; and
 - (3) Stressing the importance of:
 - (a) Transferring assets acquired in the future to the trust; and
 - (b) Transferring title back to the trust after refinancing.

NOTE

One of the most common unintentional omissions is not transferring title back to the trust after refinancing, as most people do not consult their estate planning attorney when refinancing. Counsel should be aware that in at least one county the probate court has refused to allow a *Heggstad* petition in this situation, based on the assumption that the failure to deed the property back to the trust showed a lack of intent that the property was to be subject to the trust.

Sample Form: For a sample funding plan, see client letter in [Appendix G](#).

CALENDAR REVIEW OF PLAN

After developing the plan, calendar regular reviews, *e.g.*, after 30 days, to:

Review Checklist

Review memo or checklist in your file to determine that you have initiated or completed all asset transfers that are your responsibility.

Check With Client

Prepare a follow-up letter to the client:

- a. Asking about the status of all transfers the client is handling; and
- b. Confirming status of transfers you are handling.

Follow Through

- a. Take appropriate action for those assets that client wants you to transfer.
- b. Remind client to complete transfer for assets that client will handle.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Funding the Trust/STEP 32. ENSURE PROPER EXECUTION OF DOCUMENTS

When Funding the Trust

STEP 32. ENSURE PROPER EXECUTION OF DOCUMENTS

YOUR OBJECTIVE

Make sure that the funding and transfer documents are properly executed and have a binding effect.

DETERMINE REQUIRED FORMALITIES

To determine the formalities required, see the appropriate step in this Action Guide for the type of asset being transferred, as indicated below, *e.g.*:

Real Property

Deeds and Assignments of Deeds of Trust must be notarized so they can be recorded in the official records of any county. See [step 42](#), below.

Stock Certificate

Stock powers always require that a bank officer or broker "medallion guarantee" the signature of the transferor for publicly traded securities. See [step 35](#), below.

Life Insurance

Beneficiary designations for life insurance policy may require a witness. See [step 41](#), below.

IF DOCUMENTS MUST BE NOTARIZED

ENSURE COMPLIANCE

If the document is to be notarized, the person signing the document should (see [CC §1189\(a\)](#)):

- a. Personally appear before notary;
- b. Positively identify himself or herself to notary; and
- c. Acknowledge his or her signature to notary.

PROVE IDENTITY

The client should be prepared to prove his or her identity to the notary ([CC §1185](#)), *e.g.*:

Picture Identification

Client provides picture identification in form specified in [CC §1185\(c\)\(3\)\(A\)-\(B\)](#), *e.g.*, a current California driver's license or passport issued by United States Department of State.

Credible Witnesses

If the client does not have any picture identification (common with elderly clients), provide two credible witnesses to identify the client under oath. For additional requirements for witness identification, see [CC §1185\(b\)\(2\)](#).

SIGNATURE BY MARK CAN BE NOTARIZED

If your client is physically unable to sign a document but mentally alert, recognize that it is possible to notarize documents signed by mark. See [CC §14](#).

IF CLIENT LACKS CAPACITY TO EXECUTE FUNDING DOCUMENTS

EVALUATE CLIENT'S CAPACITY TO EXECUTE FUNDING DOCUMENTS

At Time of Signing Trust

If your client has the capacity (physical and mental) to sign the revocable trust document, he or she should have the requisite capacity to sign the funding documents at the same time. See [step 48](#), below.

At Time of Signing Transfers

If time has passed since the trust was executed, determine whether your client has lost capacity to execute transfer documents. See [step 48](#), below.

DETERMINE WHETHER POWER OF ATTORNEY HAS BEEN EXECUTED

Determine whether the client has executed a durable power of attorney, *i.e.*, a power of attorney that survives the incapacity of the client. [Prob C §§4000-4545](#); see [step 29](#), above.

Have Attorney-in-Fact Transfer

If the client has executed a durable power of attorney that authorizes the agent to fund a revocable trust, have attorney-in-fact complete the transfer to the trust. See [step 48](#), below.

IF NO POWER OF ATTORNEY

If the client has not executed a durable power of attorney, you must find other ways to transfer the assets to the trust. See [steps 49-51](#), below.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Funding the Trust/STEP 33. TRANSFER TANGIBLE PERSONAL PROPERTY TO THE TRUST

STEP 33. TRANSFER TANGIBLE PERSONAL PROPERTY TO THE TRUST

PREPARE DOCUMENT TRANSFERRING PROPERTY

Usually there is no record of ownership of tangible personal property. If your client decides to transfer personal property to the trust, *e.g.*, furnishings, for which there is no record of ownership (*e.g.*, bill of sale) (see [step 19](#), above), prepare:

Assignment

An assignment of personal property to the trust to document the transfer. The assignment shows the settlor's intent to transfer the assets and to vest title in the trustee.

Identify Valuable Items

Specifically identify particularly valuable items in the assignment, especially items that are specifically devised in the trust document, to avoid any later issue about the trustee's authority over those items.

NOTE

Many attorneys routinely prepare a general assignment as an exhibit to the trust, sometimes adding schedules to list both real property and personal property. Although this should not be a substitute for making actual title transfers, it does show the client's intent to hold the assets in trust if the client becomes incapacitated or dies before the transfers can be completed. When general assignment is used for real property, transfers at time of settlor's death may require the additional step of filing a *Heggstad* petition under [Prob C §850\(a\)\(3\)](#). See [Estate of Heggstad \(1993\) 16 CA4th 943, 948, 20 CR2d 433](#). See [step 28](#), above.

Sample Form: For assignment of tangible personal property, see [Appendix H](#). For a general assignment, see [Appendix I](#).

PURPOSE OF DOCUMENT

Assignment:

- a. Shows intent to transfer and hold the assets in the trust;
- b. May help prove the trustee's title; and
- c. Will not necessarily be conclusive if someone else claims ownership of the assets, because usually there is no record of ownership of tangible personal property (*e.g.*, when your client bought his or her furniture, the merchant did not sign bills of sale transferring title to your client).

Example: After settlor dies, settlor's daughter, one beneficiary under the trust, claims that in 1985 settlor gave her an antique 14-carat emerald and diamond ring, even though the settlor continued to keep the ring in a safe at settlor's house. In 1986 the ring was listed in the assignment of personal property as being transferred to the trust. The assignment is evidence that the ring was transferred to the trust, but not conclusive.

NOTE

Some attorneys include a notary acknowledgment in their assignment forms. This can facilitate third party acceptance and might be useful if litigation arises over the authenticity or date of execution of the assignment. Because the general assignment in [Appendix I](#) specifically includes real property, and therefore may be recorded, it should be acknowledged.

ADD TRUSTEE TO INSURANCE POLICY

If title is transferred to the trustee, make sure that the trustee is added as an additional insured to any insurance policy covering tangible personal property transferred to the trust.

MOTOR VEHICLES, MOBILE HOMES, AND OTHER STATE-REGISTERED PROPERTY

DETERMINE PROPER AGENCY

Certain assets are registered with the state of California. Refer to the current registration to determine which department will handle the transfer, *e.g.*, Department of Motor Vehicles (DMV) or Department of Housing and Community Development (HCD):

Check Vehicle to Determine Registration

If you are uncertain about the appropriate department and cannot locate any ownership or registration forms:

a. Inspect the vehicle and look for:

- (1) A Vehicle Identification Number (VIN) (used by DMV); or
- (2) A Housing and Urban Development (HUD) or Department of Housing (DOH) number assigned to each manufactured home or mobilehome, located on the lower left corner of the rear exterior wall of the mobilehome or on the exterior wall immediately adjacent to the main door (used by HCD); and

b. Check with agencies (DMV, HUD, DOH) for assistance with registration information based on the number.

DMV-Registered Property

The DMV handles automobile transfers, as well as other vehicles registered with the DMV (see Veh C §§4000, 9840, 38012), *e.g.*:

- a. Mobilehomes and commercial coaches (up to 40 feet in length and 8 feet in width) (Veh C §396);
- b. Motor homes (all sizes) (Veh C §415; Health & S C §18010);
- c. Camp trailers up to 16 feet in length, from trailer hitch to rear of trailer and up to 8 feet in width (if either dimension exceeds these limitations, the trailer must be registered with the HCD) (Veh C §242);
- d. Trailer coaches up to 40 feet in length from trailer hitch to rear of trailer and up to 8½ feet in width (if either dimension exceeds these limitations, the trailer coach must be registered with the HCD) (Veh C §§635, 35100, 35400);
- e. All-terrain vehicles (Veh C §§38010, 38012);
- f. Snowmobiles and sandbuggies (Veh C §38012(b)(2)-(3)); and
- g. Movable water vessels that are (Veh C §§9840, 9873):
 - (1) Motor-driven or sail-powered; or
 - (2) Over 8 feet and less than 30 feet in length.

NOTE

Vessels without motors or sails and under 8 feet in length do not need to be registered. Veh C §9873. Vessels over 30 feet in length are registered with the Coast Guard.

HCD-Registered Property

The HCD handles the transfer of certain manufactured homes, mobilehomes, commercial coaches, camp trailers or trailer coaches, truck campers, all floating homes and other property registered with HCD (see Health & S C §§18010, 18075-18075.55) as follows:

a. Mobilehomes or manufactured homes more than 40 feet in length or 8 feet in width and not permanently affixed to a foundation (if permanently affixed, it is real property) (Veh C §387; Health & S C §§18007, 18008; see Veh C §396);

NOTE

The definitions of "mobilehome" and "manufactured home" were amended to specify that manufactured homes are structures built on or after June 15, 1976 (Health & S C §18007), and mobilehomes are constructed before June 15, 1976 (Health & S C §18008). The changes are not intended to cause any substantive change in treatment. Health & S C §18000.

b. Commercial coaches more than 40 feet in length or 8½ feet in width (Health & S C §§18001.8, 18218; see Veh C §§35100, 35400);

c. Camp trailers or trailer coaches larger than the limit allowable for property transferred through DMV (for discussion of DMV-registered property, see above) (see Veh C §§635, 35100, 35400);

d. *All truck campers* (trucks must be registered with DMV, but campers must be registered with HCD) (Health & S C §§18012.4, 18013.4, 18075.7):

- (1) Transfer must be registered with HCD if currently registered;

(2) If not currently registered, registration of transfer is voluntary;

e. *All floating homes* (Health & S C §18075.55).

CLIENT WILL PROBABLY HANDLE TRANSFER

Your client will probably prefer to save money by personally going to the DMV or HCD to re-register the property in the name of the trust.

DMV-Registered Property

For DMV-registered property, the client should submit:

a. The original DMV Certificate of Title (pink slip) endorsed by all registered owners with the names of the trust and the trustee(s) shown in the new-registered-owner section.

NOTE

A Bill of Sale (DMV Form REG 135) showing that the transfer is a gift to the trust is acceptable in lieu of the owner's signatures on line 1.

b. An odometer mileage certification for vehicles less than 10 years old. For Certificates of Title that do not include an odometer disclosure section, a Vehicle Transfer and Reassignment form (DMV Form REG 262) should be used.

c. A Statement of Use Tax Exemption (DMV Form REG 256) to receive smog certification exclusion and the use tax exclusion.

d. The transfer fee.

Further Research: For DMV forms, see the DMV website at <http://www.dmv.ca.gov>.

HCD-Registered Property

For HCD-registered property, the client should submit:

a. The original HCD Certificate of Title signed off by all owners printed on the title;

b. The original last-issued registered owner's Registration Card;

c. The Designation of Trust form (HCD 476.6B) or the appropriate sections of the Multi-Purpose Transfer Form (HCD 481.2); and

d. The transfer fee.

Further Research: For HCD forms, see Registration and Titling on the HCD website at <http://www.hcd.ca.gov>.

If Client Is Auto Club Member

If your client belongs to the California State Automobile Association (CSAA) or Southern California Automobile Association (SCAA), he or she should seek their expert assistance.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Funding the Trust/STEP 34. TRANSFER BANK, SAVINGS AND LOAN, CREDIT UNION, AND OTHER ACCOUNTS TO THE TRUST

STEP 34. TRANSFER BANK, SAVINGS AND LOAN, CREDIT UNION, AND OTHER ACCOUNTS TO THE TRUST

CHANGE ACCOUNT TITLE

Bank, savings and loan, and credit union accounts can be transferred by changing the title to the account to the name(s) of the trustees. Title should read, *e.g.*, "John Smith, Trustee of the Smith Revocable Trust U/A dated 1/15/01." See [step 27](#), above, for how to use the name of the trust.

Sign New Signature Cards

- a. Even if the trustee is also the settlor, it may be necessary for the settlor to execute new signature cards or account agreements.
- b. These documents will always be required if the trustee is someone other than the settlor.

NOTE

Financial institutions commonly require the client to open a new account and close the original account for internal administrative and computer software reasons.

Check With Institution Whether New Account Required

When the settlor is trustee, check with the institution to see whether transfer of an account to the trust will require:

- a. Opening a new account;
- b. Change in the account number; or
- c. Printing of new checks.

IF CLIENT EFFECTS THE TRANSFER

Although you should provide the client direction and instruction, the client can usually transfer bank, savings and loan, and credit union accounts to the trust:

Provide Instructions

Include the transfer instructions in your letter to the client about funding the trust.

Provide Certification

Provide the client with a trust certification (see [step 30](#), above) (more than 1 original may be needed because some financial institutions will need to keep an original):

- a. Your client may deliver a copy of this document to the financial institution, simplifying the transfer process for the client.
- b. Use of the certification should eliminate the necessity for presenting a copy of the entire trust agreement.

Sample Form: For a trust certification, see [Appendix C](#).

Provide Taxpayer Identification Number, If Appropriate

The client will need to advise the financial institution of the taxpayer identification number (TIN) for the trust, if it is different from the client's Social Security number. For discussion of TINs, see [Revocable Trusts §§4.4, 5.10, Comment in §21.5](#).

IF YOU EFFECT THE TRANSFER

If the client is unwilling or unable to effect the transfers:

Prepare Letter for Client's Signature

Have the client sign a letter of instruction to the financial institution requesting transfer of the account to the trust.

Sample Form: For a sample letter, see [Appendix J](#).

Forward Letter

Forward the letter of instruction to the financial institution with your own transmittal letter.

Provide Trust Certification

Provide the institution with a trust certification. See [step 30](#), above.

Sample Form: For a trust certification, see [Appendix C](#).

Provide Taxpayer Identification Number, if Appropriate

Provide the institution with the taxpayer identification number (TIN) of the trust if it is different from the settlor's Social Security number. For discussion of TINs, see [Revocable Trusts §§4.4, 5.10, Comment in §21.5](#).

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Funding the Trust/STEP 35. TRANSFER SECURITIES, BONDS, AND INVESTMENT ACCOUNTS TO THE TRUST

STEP 35. TRANSFER SECURITIES, BONDS, AND INVESTMENT ACCOUNTS TO THE TRUST

OBJECTIVE

Your objectives are to:

- a. Identify who will handle the transfer, depending on who will hold the certificates after transfer, *e.g.*:
 - (1) If a broker or investment house holds the certificates, they will handle the transfer (see If Broker to Hold, below in this step); or
 - (2) If the client holds the certificates, you will need to handle the transfer through a transfer agent (see If Client to Hold, below in this step); and
- b. Have the securities, bonds, and investment accounts transferred to the trustee.

NOTE

United States Savings Bonds can be transferred to the trust by filing form PD F1851 E (Request to Reissue United States Savings Bonds to a Personal Trust). See United States Savings Bonds, below in this step.

DETERMINE WHO WILL KEEP CERTIFICATES

To determine who will transfer title to the securities and bonds to the trustee, decide who will *physically* hold the certificates:

Client

Some clients physically hold certificates because they acquired shares through direct stock-purchasing programs; others physically hold certificates because they feel insecure if they do not retain possession of the original certificates.

Broker

Other clients will be comfortable having an investment house or broker open an account and retain the certificates for them.

NOTE

The trust may hold corporate or municipal bonds. For corporate bonds, the registration should be in the same form as that of other securities, and the requirements for transfer are the same. Many municipal bonds are not registered. Unregistered bonds are in bearer form with the proceeds payable to the holder.

Unregistered Bonds

Have the trustee place unregistered bonds or similar assets in a safe-deposit box rented for that purpose in the trustee's name as trustee of the trust in question.

CONSIDER ADVANTAGES OF BROKER

A broker or investment house will:

- a. Establish an account for the client;
- b. Take care of transferring title into the name of the trustee;
- c. Hold the certificates; and
- d. Provide comprehensive year-end reports that are helpful when completing the client's income tax returns.

IF BROKER TO HOLD

BROKER TRANSFERS

If the certificates are held by a broker or investment house, the broker or investment house will take care of transferring the title

to the trustee.

CLIENT OPENS ACCOUNT

If the client does not already have a brokerage account, instruct client, in writing, to:

Open Account

Take the certificates to the broker and open a new account.

Owner of Account

Advise broker that the trustee holds title to the new account, *e.g.*, John Jones and Mary Jones, Trustees of the Jones Family Trust.

Provide Certification

Provide the broker with a trust certification. See [step 30](#), above, and [Appendix C](#).

Transfer by Broker

The broker or investment house will then have title to the securities changed to the name that appears on the new account.

IF ACCOUNT ALREADY OPEN

If the client already has an account with a broker or investment house:

Determine Who Will Handle

Client can ask:

- a. Broker to handle transfer to the trustee; or
- b. You to prepare a stock power and forward that to the broker (for discussion about preparing stock power, see Prepare Stock Power, below).

IF CLIENT TO HOLD

YOU HANDLE TRANSFERS

- a. If the client intends to retain possession of the certificates after title is transferred to the trustee, you will need to handle the transfer.
- b. The client might also pay a fee to a broker for the broker to handle the transfer.

OBTAIN CERTIFICATES

- a. Obtain the original certificates that you will need to surrender to the transfer agent (see Obtain Name and Address of Transfer Agent, below in this step, for how to identify transfer agent) in order to have new certificates issued with trustee as owner.
- b. Give client a receipt for the certificates, *e.g.*, photocopy the certificates, sign the copy, and give it to the client.

IF CERTIFICATE LOST

To replace lost or missing certificate:

Obtain Form

Write to the transfer agent (see Obtain Name and Address of Transfer Agent, below in this step, for how to identify transfer agent) and request an Affidavit of Lost Certificate and Indemnity Agreement.

Have Client Sign

Have the client complete and sign the affidavit in the presence of a notary, swearing that the certificate is lost.

Client Furnishes Bond

Follow instructions on the affidavit for client to furnish bond.

PREPARE STOCK POWER

To begin the transfer, prepare a document in which client:

- a. Recites that he or she assigns the securities or bonds to the trustee;
- b. Identifies:
 - (1) The interest to be transferred, *e.g.*, 100 shares of IBM;
 - (2) Certificate numbers to be transferred, *e.g.*, certificate numbers QSA90876 and QSA90877; and
 - (3) Name of the trustee, *e.g.*, Joe Smith and Jan Smith, Trustees under the Smith Trust Agreement dated August 6, 2001; and
- c. Leaves the line for the name of the transfer agent blank, to be completed by the transfer agent.

Sample Form: See Appendix L for sample stock power.

HAVE STOCK POWER SIGNED AND SIGNATURE GUARANTEED

Client Goes to Banker

Client must go to a bank or broker:

- a. Where client has an account; and
- b. That is a member of a "medallion program," *i.e.*, ask your bank or broker whether it is a member of a program that sets standards for persons authorized to guarantee a signature, *e.g.*, bank or broker should be a member of:
 - (1) Securities Transfer Agents Medallion Program (STAMP);
 - (2) The New York Stock Exchange Medallion Program; or
 - (3) Stock Exchange Medallion Program.

NOTE

Transfer agents can establish written standards and procedures for the acceptance of signature guaranties, including the requirement that the guarantor be a member of a medallion program. 17 CFR §240.17Ad-15.

Client Signs

Client signs in the presence of bank officer or broker.

Bank or Broker Guarantees

The bank or broker affixes a stamp that "guarantees" the signature.

OBTAIN NAME AND ADDRESS OF TRANSFER AGENT

Determine agent that can transfer title:

Bonds

If the client holds a bond, the transfer agent is usually the institution from which the client is receiving payments on the bond.

Investment Account

If the client has an investment account with a broker or investment house, the transfer agent is the company named on the monthly or quarterly statement that the client receives from the investment house.

Stocks

If the client holds stocks, look for the name of the transfer agent:

- a. Commerce Clearing House, Inc., Securities Transfer Guide, Volumes 1-3;
- b. Financial Information Inc., 1 Cragwood Rd., 2d Floor, South Plainfield, New Jersey 07080, (800) 367-3441, <http://www.fiinet.com>;
- c. Secretary of State for the state in which the company was incorporated; or

d. On the Internet at <http://www.stocktransfer.com>.

NOTE

Do not rely on the name of the transfer agent on the certificate. Transfer agents change often; the information on the certificate may no longer be accurate. Note that a registered transfer agent must provide written notice to a registered security depository when terminating or assuming transfer agent services, or when changing its name or address. 17 CFR §240.17Ad-16.

PREPARE INSTRUCTIONS FOR TRANSFER AGENT

Prepare a cover letter that explains what you are enclosing and how you want the new certificates to be issued.

SEND CERTIFICATE AND ASSIGNMENT TO TRANSFER AGENT

Send by certified mail to the transfer agent the:

- a. Cover letter of instructions;
- b. Certification of trust;
- c. Certificate to be transferred; and
- d. Stock power/assignment.

NOTE

Always send the certificate and power in separate envelopes to avoid someone intercepting the certificate and stock power together (certificate would be negotiable if found with the stock power).

CHECK NEW CERTIFICATES

Ask the transfer agent to return the certificates to you so that you can make sure that the certificate has been transferred correctly.

Return if Wrong

If there is an error in the certificates, return them to the transfer agent with letter of instructions to correct any error.

Further Research: For further discussion of transferring securities to a trust, see [Revocable Trusts §§21.21-21.30](#).

NOTE

Some brokerages offer clients transfer-on-death forms for signature, under which, on client's death, account will transfer to designated payee outside terms of trust. This could result in loss of tax-planning and surrogate-management benefits of trust. Clients should be advised accordingly.

CLOSELY HELD SECURITIES

IDENTIFY TRANSFER AGENT

Generally, transfers are handled by the corporate attorney or an officer of the closely held corporation. See [step 9](#), above, regarding gathering information about the closely held corporation.

If Third Party

- a. Prepare a stock power assignment just as you would for a publicly held corporation. See Prepare Stock Power, above in this step.
- b. Forward the certificate and stock power to the attorney or officer handling security transfers.

If Client Has Corporate Records

If the client has the corporate records, you may need to handle the transfer. For corporate duties in transferring stock, see [Counseling California Corporations, chap 1 \(3d ed Cal CEB 2008\)](#).

Further Research: For further discussion of transferring securities to a trust, see [Revocable Trusts §§21.21-21.30](#).

United States Savings Bonds

REQUEST REISSUANCE IN NAME OF TRUSTEE

- a. To transfer United States Savings Bonds to the trust, request reissuance of the bonds on PD F1851 E (Request to Reissue United States Savings Bonds to a Personal Trust).
- b. The owner of the savings bond must sign the form in the presence of an authorized certifying officer.
- c. Obtain form from any Federal Reserve Bank or at most other banks or at <http://www.savingsbonds.gov>.

Sample Form: For PD F1851 E (Request to Reissue United States Savings Bonds to a Personal Trust), see [Appendix S](#).

Mutual Funds

CHANGE TITLE

To change title to mutual funds, send the fund operators:

- a. A letter signed by the settlors; and
- b. A copy of the certificate of trust that includes a statement of the trustee's investment powers (see [step 30](#), above, and [Appendix C](#)).

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Funding the Trust/STEP 36. TRANSFER PROMISSORY NOTES AND UNDOCUMENTED LOANS TO THE TRUST

STEP 36. TRANSFER PROMISSORY NOTES AND UNDOCUMENTED LOANS TO THE TRUST

PROMISSORY NOTES

ASSIGN RIGHTS UNDER NOTE

If your client holds an interest in any promissory note, transfer to the trustee all the client's rights under the note by:

Prepare Assignment

a. Preparing a document for client's signature, assigning the client's interest in the note to the trustee (for discussion of assignment of secured note, see below); and

b. Attaching copy of the note.

Have Client Endorse Note

Client/payee can endorse the original of a negotiable promissory note to the trustee, *e.g.*, by writing on the back of the note "Pay to the order of Janet Jones, Trustee," followed by the client's signature.

NOTE

If the note is secured, see below.

NOTIFY PAYOR

Prepare a letter for client's signature, advising the payor that future payments should be sent to the trustee.

Sample Form: For a sample letter, see [Appendix M](#).

Further Research: [Revocable Trusts §21.42](#).

SECURED NOTES

TRANSFER RIGHT TO PAYMENT AND SECURITY INTEREST

If the note is secured, transfer to the trustee your client's:

a. Right to receive payments; and

b. Security interest.

PREPARE ASSIGNMENT

Prepare "Assignment of Note and Deed of Trust" for each secured note.

NOTARIZE THE ASSIGNMENT

Have your client sign the document before a notary public so that it can be recorded.

RECORD THE ASSIGNMENT

Record the assignment in the official records of the county where the property is located.

NOTIFY PAYOR

Prepare a letter for client's signature, advising the payor that payments should be sent to the trustee.

Sample Form: For a sample letter, see [Appendix M](#).

Further Research: Regarding the notary requirement, see [Govt C §27287](#); [CC §§1189-1190](#).

UNDOCUMENTED LOANS

WHEN ISSUE ARISES

Client has lent money without documenting the loan.

RECOMMEND DOCUMENTATION

Recommend that the loan be documented by a note signed and acknowledged by debtor, to avoid disputes regarding the terms and nature of the loan.

PREPARE ASSIGNMENT

Even though the loan is undocumented, prepare an assignment to be signed by your client transferring the loan to the trust.

NOTIFY PAYOR

Send a letter to the payor advising the payor that payments should be sent to the trustee.

Sample Form: For a sample letter, see [Appendix M](#).

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Funding the Trust/STEP 37. TRANSFER INTELLECTUAL PROPERTY TO THE TRUST

STEP 37. TRANSFER INTELLECTUAL PROPERTY TO THE TRUST

TRANSFERRING A COPYRIGHT

Transferring a copyright to a trust is accomplished by:

a. Preparing an assignment of copyright to the trust. The assignment is executed by the settlors before a notary public. It must be complete by its own terms and capable of being reproduced in legible imaged copies.

b. Preparing:

(1) A letter of instructions to the copyright office regarding recordation of title of the copyright in the name of the trust; or

(2) An original and a copy of the Document Cover Sheet, United States Copyright Office, to accompany the assignment (cover sheet that can be filled in on-screen is available from the Copyright Office website at <http://www.copyright.gov>).

NOTE

Use of the Document Cover Sheet is optional but encouraged by the Copyright Office.

c. Mailing the assignment and letter of instructions or Document Cover Sheet, together with the appropriate fee (see <http://www.copyright.gov> for current fees), to:

Library of Congress
Copyright Office
Documentation Recordation Section
101 Independence Avenue, S.E.
Washington, D.C. 20559-6000

RECORDING ASSIGNMENT

The clerk will record the assignment in the copyright records and return a certification of recordation that transfers title to the trust. The recorded assignment becomes a part of the public record and gives constructive notice of claim of ownership of the copyright.

Sample Form: For sample Assignment of Copyright, sample Letter to Copyright Office, and Document Cover Sheet, United States Copyright Office, see [Appendixes P](#), [Q](#), and [R](#).

TRANSFERRING A PATENT OR TRADEMARK

Transferring a patent or trademark to a trust is accomplished by:

a. Preparing an assignment of patent or trademark to the trust. The assignment is executed by the settlors before a notary public.

b. Preparing the appropriate cover sheet to accompany the assignment:

(1) Recordation Form Cover Sheet: Patents Only (Department of Commerce Form PTO-1595); or

(2) Recordation Form Cover Sheet: Trademarks Only (Department of Commerce Form PTO-1594).

c. Preparing a self-addressed postcard for use by the Patent and Trademarks Office to confirm receipt of assignment.

d. Mailing the assignment, cover sheet, and postcard, together with the appropriate fee, to:

Mail Stop Assignment Recordation Services
Director of the US Patent and Trademark Office
PO Box 1450
Alexandria, VA 22313-1450

NOTE

Documents with cover sheets can be faxed to (571) 273-0140 or submitted electronically at <http://epas.uspto.gov> for patents and <http://etas.uspto.gov> for trademarks.

RECORDING ASSIGNMENT

The clerk will record the assignment and complete a certification of recordation that transfers title to the trust. The recorded assignment becomes part of the public record and gives constructive notice of claim of ownership of the patent or trademark. The recorded assignment and certification of recordation are returned to the settlors.

Sample Form: For sample Assignment of Patent and Form PTO-1595, see [Appendixes V](#) and [W](#). For sample Assignment of Trademark and Form PTO-1594, see [Appendixes X](#) and [Y](#).

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Funding the Trust/STEP 38. ASSIGN PARTNERSHIP INTERESTS TO THE TRUST

STEP 38. ASSIGN PARTNERSHIP INTERESTS TO THE TRUST

YOUR OBJECTIVE

Your objective is to substitute the trustee as a partner instead of the settlor/partner.

REVIEW PARTNERSHIP AGREEMENT

Review the partnership agreement to determine the requirements and restrictions on transferring a partnership interest.

IF LIMITED PARTNERSHIP

IF APPROPRIATE, USE PARTNERSHIP FORMS

Contact general partner to determine whether he or she will prepare or provide own forms for the assignment.

PREPARE ASSIGNMENT

Prepare an assignment of the limited partnership interest that includes:

Generally

- a. The interest to be transferred, *e.g.*, 100 units of Golden Gate, a limited partnership; and
- b. Name of the trustee, *e.g.*, Joe Smith and Jan Smith, Trustees under the Smith Trust Agreement dated August 6, 2001.

Include Acceptance of Liabilities

Because the trustee is being substituted as a partner, include in the assignment that the trustee accepts any liabilities as well as the benefits.

Designate General Partner as Attorney-in-Fact

Because numerous documents may need to be prepared in order to complete the transfer, designate the general partner as attorney-in-fact to execute the necessary documentation.

Sample Form: For sample assignment of limited partnership interest, see [Appendix T](#); for consent to assignment of limited partnership interest, see [Appendix U](#).

SEND ASSIGNMENT TO GENERAL PARTNER

Send a letter instructing the general partner to transfer the partnership interest and enclose assignment and consent to assignment.

IF REQUESTED, PAY FEE

General partner may charge client a fee for completing the assignment.

IF GENERAL PARTNERSHIP

IF APPROPRIATE, USE PARTNERSHIP FORMS

Contact general partner to determine whether he or she will prepare or provide forms for assignment.

PREPARE ASSIGNMENT

Prepare an assignment of the partnership interest that includes:

Generally

- a. The interest to be transferred, *e.g.*, 100 units of Golden Gate, a partnership; and
- b. Name of the trustee, *e.g.*, Joe Smith and Jan Smith, Trustees under the Smith Trust Agreement dated August 6, 2001.

Include Acceptance of Liabilities

Because the trustee is being substituted as a partner, include in the assignment that the trustee accepts any liabilities as well as the benefits.

NOTE

You may need to request that the partners amend the statement of partnership.

Sample Form: For sample assignment of partnership interest, see [Appendix T](#).

SEND TO PARTNERS

If required by the partnership, send the assignment and the consent to assignment to the general partner or other partners so that they can sign, accepting the assignment, and return documents to you.

Sample Form: For consent to assignment of partnership interest, see [Appendix U](#).

Further Research: [Revocable Trusts §§21.32-21.35](#).

IF FAMILY LIMITED PARTNERSHIP

PREPARE ASSIGNMENT

Using above procedures, assign to trust general and/or limited partnership interest owned by settlor.

- a. If general partnership interest in a family limited partnership is transferred to revocable trust, file with Secretary of State Amendment to Certificate of Limited Partnership (Form LP-2) (see [Appendix O](#)).
- b. If settlor creates family limited partnership *after* revocable trust has been created and settlor is to be general partner and/or limited partner, partnership agreement should be signed by settlor as trustee of trust rather than by settlor individually. The Certificate of Limited Partnership (Form LP-1) filed with the Secretary of State should reflect this fact. See [Appendix N](#).

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Funding the Trust/STEP 39. TRANSFER LIMITED LIABILITY COMPANY MEMBERSHIP INTEREST TO THE TRUST

STEP 39. TRANSFER LIMITED LIABILITY COMPANY MEMBERSHIP INTEREST TO THE TRUST

PREPARE ASSIGNMENT OF LLC INTEREST

Prepare an assignment of the client's LLC membership interest to the trustee.

CONSENT TO ASSIGNMENT

Depending on the operating agreement, the consent to assignment may be signed by an officer of the LLC. In a member-managed LLC, the consent to assignment must be signed by all of the other members.

Sample Form: For forms designed to be used by an LLC taxed as a partnership, see [Appendixes Z](#) and [AA](#).

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Funding the Trust/STEP 40. TRANSFER SOLE PROPRIETORSHIP BUSINESS TO THE TRUST

STEP 40. TRANSFER SOLE PROPRIETORSHIP BUSINESS TO THE TRUST

ASSIGN THE SOLE PROPRIETORSHIP BUSINESS

Assign the client's sole proprietorship business interest to the trustee by use of an assignment.

Sample Form: For an assignment of sole proprietorship form, see [Appendix K](#).

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Funding the Trust/STEP 41. CHANGE BENEFICIARY DESIGNATIONS OF LIFE INSURANCE, PENSION PLANS, AND IRAs

STEP 41. CHANGE BENEFICIARY DESIGNATIONS OF LIFE INSURANCE, PENSION PLANS, AND IRAs

NOTE

See [step 24](#), above, for discussion of disadvantages of naming trust as beneficiary of IRA or pension plan.

OBTAIN FORMS

Always obtain and use the change-of-beneficiary forms from:

Life Insurance

Client's insurance broker or the insurance company itself;

IRA

The financial institution administering the IRA; or

Company Retirement Plan

The plan administrators.

NOTE

Because of the complexities of designating the trust as beneficiary of an IRA or pension plan, the forms provided by the plan administrator may be inadequate. It may be necessary for the attorney to prepare the beneficiary designation form. Unfortunately, it is often difficult to persuade a plan administrator to accept a specially drafted beneficiary designation form.

OBTAIN CONSENT OF SPOUSE

To designate trust as primary beneficiary of an IRA or pension plan instead of the spouse, client will be required to obtain spouse's consent on the beneficiary designation form. See [Prob C §5020](#); IRC §417.

NOTE

Be aware of your possible conflict in advising the spouse to give up rights to an IRA or pension plan. See Cal Rules of Prof Cond 3-310.

REVIEW FORM

Determine whether the change form has suggestions or requirements for how you should word the beneficiary designations.

COMPLETE FORM

Community Property

If each spouse wants to control ultimate disposition of his or her community property interest in the proceeds:

- a. Designate trustee as beneficiary of insured or plan-participant spouse's community property interest; and
- b. Name the noninsured or nonparticipant surviving spouse as beneficiary of his or her own interest, *e.g.*, one-half community property interest.

Specify Which Trust

If client designates the trustee instead of the surviving spouse as primary beneficiary, client may consider specifically identifying which trust should receive the proceeds, *e.g.*, the trustee of the marital trust, survivor's trust, or bypass trust.

When Transferring Real Property Interest to the Trust

STEP 42. PREPARE GRANT DEED

REAL PROPERTY DEEDS

California real property can be transferred by either grant deed or quitclaim deed.

NOTE

A grant deed is usually the preferred method of transfer because of its implied covenants. See CC §§1092, 1113.

Practice Tip: Some title companies use a special form called "Trust Transfer Deed" for transfers to revocable trusts to indicate that this is not a transfer for consideration. A trust transfer deed includes all the warranties of a grant deed.

NOTE

A separate assignment procedure must be followed if the client purchased the home under the Cal-Vet program, because Cal-Vet holds legal title to the property. The attorney or client should contact the California Department of Veterans Affairs for further information.

INCLUDE ESSENTIAL ELEMENTS

The important elements of a deed are the:

- a. Grantor's name (see below);
- b. Grantee's name (see below);
- c. Legal description of the property, including Assessor's Parcel Number (see below);
- d. Grantor's signature (see below); and
- e. Acknowledgment.

Sample Form: See Appendix E for a sample form.

PREPARE FOR RECORDING

For recording purposes, make sure that:

- a. All signatures on the deed are acknowledged (notarized); and
- b. The assessor's parcel number appears prominently on the deed.

NOTE

Any person may record a trust certification that relates to an interest in real property in the office of the county recorder in any county where the real property is located, but it is not necessary to record a trust certification when recording a transfer of title of real property involving a trust. Prob C §18100.5(i).

USE CORRECT GRANTOR DESIGNATION

The grantor should read exactly as the grantee in the previous deed reads, to preserve the chain of title. CC §1096. If the grantor has changed his or her name, the deed must contain the grantor's former name. CC §1096.

Example 1: If Mary Fortune Smith was the grantee of the prior deed, type in this same name as grantor on the new deed, and her

signature must be Mary Fortune Smith, not Mary F. Smith.

Example 2: If Mary Fortune Smith was the grantee of the prior deed, but is now Mary Jones, type in the name of the grantor as "Mary Jones, formerly known as Mary Fortune Smith" or "Mary Jones, who took title as Mary Fortune Smith." She should sign the deed as Mary Jones, and below that line should be typed "Mary Jones, formerly known as Mary Fortune Smith."

Example 3: If a married person acquired property as separate property, the name of the grantor should read: "A, a married man/woman, who acquired title as his/her sole and separate property."

USE CORRECT GRANTEE DESIGNATION

Name the trustee as grantee, and include the method of holding title, *e.g.*, John Jones, Trustee of the Jones Family Trust dated __[date]__. See [step 27](#), above, for discussion of the correct use of the trustee title.

NOTE

Find out how clients normally sign their names. Frequently deeds are prepared using clients' full middle names, when they rarely sign with their full middle names. If the initial deed transferring the property to the client used some form of the client's legal name that he or she normally does not use, take the opportunity when preparing the new deed to use the client's preferred form of his or her name as grantee.

IF TRANSFERRING PARTIAL INTEREST

It is possible to transfer partial interests in real property to a trust, but take care:

- a. If there are multiple grantees in the previous deed and not all of those grantees are transferring their interests to the trust, be sure to accurately describe the percentage or fraction of ownership your client is transferring to the trust. Alternatively, simply use the phrase "all of his/her interest" in the property, especially if the exact ownership amount is unclear.
- b. If ownership on the previous deed is in joint tenancy, transfer to the trust will terminate the joint tenancy. If the joint tenancy is between husband and wife, consider transferring the property into the names of the spouses as community property before transferring the property into the name of the trust. See [step 16](#), above.

Further Research: For discussion of terminating the joint tenancy, see 12 Witkin, Summary, *Real Prop* §§54-84.

DESCRIPTION OF THE PROPERTY

It is very important that the legal description of the property be correct. An incorrect legal description can hold up the sale of a property and be costly to the client to correct.

NOTE

Although not required, it is helpful to put the address of the property on the face of the deed. For clients with multiple properties, this makes it much easier to determine which deed corresponds to which property.

IF PROPERTY IS OUT OF STATE

For transfers of out-of-state property:

- a. Follow the format of the prior deed; but
- b. To be safe, obtain the advice of an attorney or escrow service in the state where the property is located regarding both the form and the recording process; and
- c. Find out if there is an equivalent to the Preliminary Change of Ownership Report (PCOR). See [step 43](#), below, regarding PCOR for California property.

RECORDING THE DEED

The attorney is advised to record the deed and the PCOR for the client.

Required Recording Information

To be accepted for recording the deed must include:

- a. "Recording requested by," or its equivalent, and the name of the requesting person on the face of the deed (see Govt C §27320);
- b. A return name and address to enable the recorder to mail the recorded deed as required by Govt C §27321;
- c. The name and address where further tax statements should be mailed, which must appear at the bottom of the first page of the deed (Govt C §27321.5); and
- d. The amount of the documentary transfer tax due (Rev & T C §11911.1).

NOTE

Because the documentary transfer tax is imposed only if there is a purchase of property, no tax is due when a deed merely transfers title to a revocable trust. Immediately below the bottom line of the caption insert "No Documentary Transfer Tax Due—No Consideration" or "No Documentary Transfer Tax Due—Not Pursuant To Sale," or some similar statement.

Mailing the Deed for Recording

Unless there is a reason to rush to record the deed immediately, such as when death is imminent, the deed can be mailed to the recorder's office in the county in which the property is located. When mailing the deed for recording, include the following:

- a. The original deed;
- b. The PCOR (see step 43, below);
- c. A copy of the deed and PCOR for return to the office;
- d. A self-addressed stamped envelope;
- e. A check in an amount "Not to Exceed \$___" or in the amount specified on the county's website for recording fees; and

NOTE

If the legal description is a metes and bounds description, most counties also have an additional recording fee ("survey monument fee") that is collected at the time the deed is recorded.

- f. Instructions to send the recorded deed to the client and an endorsed-filed copy of the deed to the attorney's office.

NOTE

Have the original deed returned to the client, not to the attorney's office, because the assessor's office frequently sends the tax statements to the address listed for returning the recorded document.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Transferring Real Property Interest to the Trust/STEP 43. PREPARE A PRELIMINARY CHANGE OF OWNERSHIP REPORT FOR CALIFORNIA REAL PROPERTY

STEP 43. PREPARE A PRELIMINARY CHANGE OF OWNERSHIP REPORT FOR CALIFORNIA REAL PROPERTY

PURPOSE OF REPORT

You must complete a statement pertaining to the change in ownership to the trust, so that the assessor can decide whether the property should be reassessed under Proposition 13 (Cal Const art XIII A). Rev & T C §§60-69.5.

No Reassessment

Generally, merely transferring property to a trust when the underlying ownership remains the same is exempt from reassessment. Rev & T C §§60, 62(d); 18 Cal Code Regs §462.160(b). See Estate Plan, chap 15 for discussion of reassessment.

OBTAIN FORM

Obtain a form called the "Preliminary Change of Ownership Report" (PCOR) from local tax assessor or county recorder's office where the property is located. See Appendix F for sample; Decedent Estate Prac §§32.11-32.14.

NOTE

Each county has its own PCOR form, based on the generic Board of Equalization (BOE) form reproduced in Appendix F. These forms are usually available online at the county's website. Generally, the recorder's office will accept forms from other counties (with the county changed) rather than require the county's own form.

COMPLETE FORM

a. Complete top of form with:

- (1) Name of grantor (settlor), as on deed;
- (2) Name of grantee (trustee), as on deed;
- (3) Parcel number and location; and
- (4) Where client wants property tax bills to be sent.

b. In Part I: Check yes for box H.1.

c. Remainder of form: If you check yes, you do not need to complete the remainder of form.

HAVE FORM SIGNED

Form should be signed by the grantee, *i.e.*, the trustee.

FILE FORM

Submit PCOR at the time the deed is recorded. See step 42, above.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Transferring Real Property Interest to the Trust/STEP 44. REAPPLY FOR HOMEOWNER'S EXEMPTION

STEP 44. REAPPLY FOR HOMEOWNER'S EXEMPTION

HOMEOWNER'S EXEMPTION

The \$7000 homeowner's exemption is available when the settlor's personal residence is transferred to a revocable trust. See Cal Const art XIII, §3(k); Rev & T C §218.

REAPPLY FOR EXEMPTION

The trustees must reapply for the exemption after the property has been transferred to a revocable trust.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Transferring Real Property Interest to the Trust/STEP 45. NOTIFY LENDER AND INSURANCE CARRIER

STEP 45. NOTIFY LENDER AND INSURANCE CARRIER

NOTIFY LENDER

If the real property may be subject to a due-on-sale clause (see [step 25](#), above), notify the lender and obtain its consent to the transfer of the property to the living trust so that you do not inadvertently trigger the due-on-sale clause. See Garn-St. Germain Depository Institutions Act of 1982 (12 USC §1701j-3(d)(8)).

NOTE

Sometimes a lender may charge a small fee to consent to the transfer. Many practitioners do not apply for waivers from the lender, noting that historically lenders have not attempted to accelerate loans merely because of a transfer to a revocable trust.

NOTIFY INSURANCE CARRIER

It is important to notify the client's property insurance company of the transfer of the property to the trustee:

- a. Request that the insurance company name the trustees as additional insureds on the policy; and
- b. Be sure to transact all business with the insurance company *in writing*, and confirm any verbal communications *in writing*.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/When Transferring Real Property Interest to the Trust/STEP 46. TRANSFER LEASEHOLD INTEREST

STEP 46. TRANSFER LEASEHOLD INTEREST

COMPLY WITH RESTRICTIONS

Comply with any restrictions on assignment in the lease document.

NOTIFY LESSOR

Obtain the written permission of the lessor for the assignment.

PREPARE ASSIGNMENT OF LEASEHOLD INTERESTS

Prepare the assignment.

RECORD IF LEASE RECORDED

If the lease is recorded, record the assignment to the trust.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/If Omitted Asset Is Discovered After Initial Funding of the Trust/STEP 47. CONSIDER WHETHER TO TRANSFER THE OMITTED ASSET

If Omitted Asset Is Discovered After Initial Funding of the Trust

STEP 47. CONSIDER WHETHER TO TRANSFER THE OMITTED ASSET

WHEN ISSUE ARISES

Client fails to transfer assets to the trust because of:

- a. Mistake;
- b. Oversight;
- c. Confusion or misunderstanding regarding the trust; or
- d. New asset acquired outside of trust.

DETERMINE HOW TO TRANSFER

Review the method of transfer required, depending on whether the settlor:

- a. Is alive and has capacity (see steps concerning specific asset, above);
- b. Is alive but lacks capacity (see [steps 48-49](#), below); or
- c. Is deceased (see [step 51](#), below).

ANALYZE WHETHER TO TRANSFER

Conduct same analysis you did before to determine whether the asset should have been part of the trust. See [steps 17-26](#), above.

USE USUAL PROCEDURES

If your client still has the requisite capacity to execute funding documents, transfer the asset to the trust in accordance with the usual procedures. See [steps 32-46](#), above.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/If Omitted Asset Is Discovered After Initial Funding of the Trust/STEP 48. IF SETTLOR LACKS CAPACITY, BUT HAS A DURABLE POWER OF ATTORNEY, DETERMINE HOW TO TRANSFER THE ASSET

STEP 48. IF SETTLOR LACKS CAPACITY, BUT HAS A DURABLE POWER OF ATTORNEY, DETERMINE HOW TO TRANSFER THE ASSET

DETERMINE WHETHER CLIENT LACKS CAPACITY

If it appears that the client does not know what he or she is doing, *e.g.*, is confused about the nature of the documents, property, or family relations:

Review Statutes

Review statutory definitions of capacity, *e.g.*, Prob C §§6100-6100.5, 1801.

Review Other Authorities

Review other resources that might help you determine whether the client is capable of executing the documents, *e.g.*:

- a. California Conservatorship Practice §§1.8-1.14 (Cal CEB 2005), referred to throughout this Action Guide as Conserv Prac;
- b. Will Drafting §§2.8-2.21;
- c. Capacity and Undue Influence: Assessing, Challenging, and Defending (Cal CEB Action Guide February 2008), referred to throughout this Action Guide as Capacity; and
- d. California Elder Law Resources, Benefits, and Planning: An Advocate's Guide §§2.51-2.64 (Cal CEB 2003).

NOTE

The capacity to execute a will, *i.e.*, testamentary capacity, may be different from that required to execute a trust or other contract. See Capacity; California Trust and Probate Litigation §§6.2-6.4 (Cal CEB 1999).

DETERMINE WHETHER DURABLE POWER OF ATTORNEY

Determine whether client executed a durable power of attorney.

NOTE

Client should have been advised to do this at the time the trust was executed (see step 29, above); it is too late for client to execute a durable power of attorney if he or she is already incapacitated.

DETERMINE WHETHER ATTORNEY-IN-FACT MAY EXECUTE

- a. Review the power of attorney to determine whether the attorney-in-fact has authority to transfer assets to the trust.
- b. If the property to be transferred is real property, the power of attorney must be acknowledged by a notary so that it can be recorded.

See step 29, above.

ANTICIPATE CHALLENGE TO ATTORNEY-IN-FACT

Transfer agents or title companies may challenge authority of the attorney-in-fact:

Review Terms

Refer agent to the terms of the power of attorney giving authority to transfer to any revocable trust or to the specific revocable trust.

Provide Affidavit

As conclusive evidence of the nonrevocation or nontermination of the durable power of attorney, provide the transfer agent with an affidavit from the attorney-in-fact, stating that at the time of executing the document(s) he or she did not have actual knowledge of the termination of the power of attorney by (Prob C §4305):

- a. Revocation; or

b. The principal's death.

ATTORNEY-IN-FACT MAKES TRANSFER

If the client executed a durable power of attorney that specifically authorizes such action, the attorney-in-fact can make the transfer.

NOTE

A competent spouse as an agent under a durable power of attorney can transfer real or personal property to the trust.

USE USUAL PROCEDURES

The attorney-in-fact transfers the asset to the trust in accordance with the usual procedures by signing relevant transferring documents as attorney-in-fact on behalf of the client. See [steps 32-46](#), above.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/If Omitted Asset Is Discovered After Initial Funding of the Trust/STEP 49. IF CLIENT LACKS CAPACITY AND ASSET IS COMMUNITY PROPERTY, DETERMINE WHETHER AND HOW TO TRANSFER ASSET

STEP 49. IF CLIENT LACKS CAPACITY AND ASSET IS COMMUNITY PROPERTY, DETERMINE WHETHER AND HOW TO TRANSFER ASSET

DETERMINE WHETHER SPOUSE IS COMPETENT

Determine whether the spouse is competent and may act on behalf of the settlor or the community.

NOTE

If the competent spouse is an agent under a durable power of attorney, proceed as in [step 48](#), above.

If Not Competent

If the spouse is not competent, you will have to proceed by special action, as explained in [step 50](#), below.

IF ASSET IS PERSONAL PROPERTY

If the asset to be transferred is community personal property, no special action should be necessary to transfer the asset to the trust:

Authority Survives

The competent spouse can manage and control the personal property held as community property regardless of the legal incapacity of the other spouse. [Fam C §1100](#); [Prob C §3051](#).

Spouse Transfers Assets

Because the competent spouse has authority to manage and control community property, he or she may transfer the community personal property to the revocable trust for the benefit of the incompetent spouse. For discussion of when to transfer an asset to the trust, see [step 17](#), above.

Anticipate Further Action

If the holder of the property, *e.g.*, financial institution, transfer agent, will not make the requested transfer, you will need to take special action to obtain authority for the transfer. See [step 50](#), below.

IF ASSET IS REAL PROPERTY

If the asset to be transferred is community real property, the competent spouse does not have the authority to transfer without the consent of the incompetent spouse ([Fam C §1102](#)):

- a. You will need to obtain special authority (see [step 50](#), below); or
- b. The attorney-in-fact under a durable power of attorney can transfer the real property. See [step 48](#), above.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/If Omitted Asset Is Discovered After Initial Funding of the Trust/STEP 50. TRANSFER BY SPECIAL ACTION IF ASSET IS SEPARATE PROPERTY, OR SPOUSE IS NOT COMPETENT OR LACKS AUTHORITY

STEP 50. TRANSFER BY SPECIAL ACTION IF ASSET IS SEPARATE PROPERTY, OR SPOUSE IS NOT COMPETENT OR LACKS AUTHORITY

WHEN ISSUE ARISES

You will have to seek special authority to transfer the asset to the trust if:

- a. The asset is separate property of the incapacitated settlor and there is no durable power of attorney; or
- b. The property is community property and:
 - (1) Settlor's spouse does not have authority to transfer the assets (see Fam C §1102); or
 - (2) Settlor's spouse is also incapacitated and there is no durable power of attorney.

CONSIDER SPECIAL ACTION TO TRANSFER ASSETS

To transfer the assets, consider:

Petition Under Prob C §3100

The competent spouse may obtain authority to transfer the asset under a petition under Prob C §§3100-3102. See below.

Conservatorship

If no other alternatives available, the transfer can be made by a conservator for the incompetent settlor. See Conservatorship, below.

SPOUSE MAY PETITION UNDER PROB C §§3100-3154

WHEN APPLIES

File a petition under Prob C §§3100-3154 requesting authority to make the transfer on behalf of the incompetent spouse if:

Community and Separate Property

- a. Transaction involves community real or personal property; transaction may also involve property in which a spouse has a separate property interest, if good cause is shown (Prob C §3100(a)-(b)).
- b. "Good cause" might be found when it is necessary to manage separate property on behalf of incapacitated spouse and to ensure its distribution at death in accordance with estate plan.

One Spouse Competent or Represented

Both of the following conditions are satisfied (Prob C §3101):

- a. One spouse is alleged to lack legal capacity for the transaction, whether or not that spouse has a conservator; and
- b. The other spouse has either:
 - (1) Legal capacity for the transaction; or
 - (2) A conservator.

WHO MAY FILE

At least one of the petitioners (Prob C §3111(b)):

- a. Must have legal capacity for the transaction; or
- b. Shall be a conservator for one of the spouses.

WHERE TO FILE

File the petition in the superior court of the county where a conservatorship proceeding of one of the spouses is pending. If no such proceeding is pending, then file in either (Prob C §3110):

- a. The county in which one or both spouses reside; or
- b. Any other county that may be in the best interests of the spouses.

INCLUDE IN PETITION

Petition must contain:

Factual Allegations

Specific factual information regarding the spouses and specified relatives, including (Prob C §3121):

- a. Name, age, residence of each spouse;
- b. A list of any adult relatives of each spouse within the second degree; and
- c. Names and addresses of persons identified in Prob C §2581 (persons entitled to notice of hearing in proceedings for substituted judgment by conservator) if proposed transfer will provide gifts or otherwise affect estate planning of incapacitated spouse.

Description of Transfer

- a. Terms and conditions of the proposed transaction, including names of the parties (Prob C §3121(i));
- b. Specific description of the property to be transferred (Prob C §3121(f)), *e.g.*, if real property, the legal description, including Assessor's Parcel Number; and
- c. Allegation that the property to be transferred is community and, if the proposed transaction involves separate property of an incapacitated spouse, an allegation of good cause to include the separate property in the transaction (Prob C §3121(g)).

Additional Allegations

All of the additional information regarding the spouses, including (Prob C §3122):

- a. An allegation that one of the spouses has a conservator, or facts establishing lack of legal capacity for the transaction;
- b. An allegation that the petitioning spouse has legal capacity for the proposed transaction or has a conservator;
- c. An allegation that each spouse either:
 - (1) Joins in or consents to the proposed transaction;
 - (2) Has a conservator; or
 - (3) Is substantially unable to manage his or her financial resources or to resist fraud or undue influence; and
- d. Facts showing that the authorization requested is for the advantage, benefit, or best interests of the spouses or their estates.

PREPARE PROPOSED ORDER

Prepare a proposed order:

- a. Authorizing the transfer; and
- b. Specifically describing the asset, including a legal description and Assessor's Parcel Number if real property.

OBTAIN CERTIFIED COPY OF ORDER

Obtain a certified copy of the order authorizing the transfer, to:

- a. Record, if real property; or
- b. Deliver to the financial institution, transfer agent, or other holder of the property.

CONSERVATORSHIP

WHEN TO CONSIDER

You will need to seek a conservatorship if there is no other method of transfer available, *e.g.*:

- a. No durable power of attorney; and
- b. Separate property of the incapacitated settlor.

WHAT TO DO

If you decide to seek appointment of a conservator, in the initial petition for appointment also request the authority to transfer the asset under Prob C §§2580-2586 (substituted judgment provisions).

NOTE

Be aware of possible conflicts of interest when representing both the conservator and conservatee. See Conserv Prac §§1.4-1.7.

Further Research: Conserv Prac, chaps 1-2, 5.

IF CLIENT HAS A CONSERVATOR

If the client already has a conservator:

- a. Ask the conservator to make the transfer if the conservator has specific authority to do so.
- b. If the conservator does not have specific authority to make the transfer, prepare and file an appropriate petition in the conservatorship proceeding under Prob C §§2580-2586 (substituted judgment provisions).

NOTE

You will probably not be able to represent the client *and* the conservator.

Further Research: See Conserv Prac §1.5.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/If Omitted Asset Is Discovered After Initial Funding of the Trust/STEP 51. IF OMITTED ASSET IS DISCOVERED AFTER SETTLOR'S DEATH, DETERMINE HOW TO TRANSFER THE ASSET

STEP 51. IF OMITTED ASSET IS DISCOVERED AFTER SETTLOR'S DEATH, DETERMINE HOW TO TRANSFER THE ASSET

IF TOTAL VALUE OF ESTATE DOES NOT EXCEED \$100,000

TRUSTEE CAN COLLECT WITHOUT PROBATE

The trustee can collect the property without a probate if the:

- a. Total value of assets in the decedent's estate as defined in [Prob C §13050](#) is under \$100,000; and
- b. Decedent left a pour-over will directing transfer of his or her property to the trust.

HOW TO COLLECT

Personal Property

If the asset is personal property, prepare affidavit for the trustee to collect the asset under [Prob C §13100](#).

Real Property

If the gross value of the decedent's real and personal property in California does not exceed \$100,000, the transfer of real property can be made by the summary procedure set forth in [Prob C §§13150-13157](#). See [Transferring Prop.](#)

IF TOTAL VALUE OF ALL CALIFORNIA REAL PROPERTY DOES NOT EXCEED \$20,000

If the gross value of all real property located in California does not exceed \$20,000, prepare affidavit for trustee under [Prob C §13200](#).

IF TOTAL VALUE OF ESTATE IS GREATER THAN \$100,000

COLLECT THROUGH PROBATE

Except for real property not exceeding \$20,000 in value (see above), if the total value of the assets defined in [Prob C §13050](#) is greater than \$100,000, property must go through probate before transfer to the revocable trust.

NOTE

If there is evidence that the settlor intended to transfer the asset, *e.g.*, asset is included on the property schedule attached to the declaration of trust, the trustee may be able to file a [Prob C §850](#) petition seeking a court order stating that listed property is a trust asset, despite the fact that the settlor did not formally transfer title or possession and irrespective of the value of the asset that is the subject of the [§850](#) petition. See *Estate of Heggstad* (1993) 16 CA4th 943, 951, 20 CR2d 433 (settlor is also trustee). See also *Estate of Powell* (2000) 83 CA4th 1434, 100 CR2d 501 (declaration by trustor who was not trustee).

Example: A global assignment (such as the one set forth in [Appendix I](#)) has been known to be sufficient proof of the settlor's intent to transfer assets into the trust to convince a judge that [Prob C §850](#) applies and to obtain an order transferring assets into the trust that are not specifically listed on the property schedule of the trust instrument.

Further Research: For a *Heggstad* petition ([Prob C §850\(a\)\(3\)](#)) to obtain an order that property listed on the trust schedule of assets that was not formally transferred to the trust is a trust asset, see [California Trust Administration §§15.39A-15.40B](#) (2d ed Cal CEB 2001).

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX A Personal Information for Estate Planning

APPENDIX A

Personal Information for Estate Planning

CONFIDENTIAL

1. CLIENT(S):

Name: _____ Date: _____
A.K.A.: _____ SSN: _____
Home Address: _____
Bus. Address: _____
Home Phone No.: (___) ___ - _____ Business Phone No.: (___) ___ - _____
E-mail: _____
Citizenship: U.S. () ; other: _____
Birthdate: _____ Birthplace: _____

* * *

Name: _____ SSN: _____
A.K.A.: _____
Home Address: _____
Bus. Address: _____
Home Phone No.: (___) ___ - _____ Business Phone No.: (___) ___ - _____
E-mail: _____
Citizenship: U.S. () ; other: _____
Birthdate: _____ Birthplace: _____

* * *

2. CHILDREN, OTHER BENEFICIARIES (Please include children of deceased children):

Name	Relationship	Address	Birthdate
_____	_____	_____	___/___/___
_____	_____	_____	___/___/___
_____	_____	_____	___/___/___
_____	_____	_____	___/___/___
_____	_____	_____	___/___/___
_____	_____	_____	___/___/___
_____	_____	_____	___/___/___

3. MARITAL STATUS:

Date and place of present marriage: _____

Date and place of prior marriage: _____

Any marital property (settlement) agreements? _____

* * *

4. PROFESSIONAL ADVISORS:

	Name	Address	Telephone
Other Atty.:	_____	_____	_____
Accountant:	_____	_____	_____
Securities Broker:	_____	_____	_____
Investment Counselor:	_____	_____	_____
Insurance Agent	_____	_____	_____

-life: _____
 -casualty: _____
 Personal Physician: _____
 Other: _____

5. ASSET INFORMATION:

\$ _____ REAL PROPERTY

<u>Address</u>	<u>Title</u> <u>SP CP JT*</u>	<u>Present Gross</u> <u>Value</u>	<u>Cost</u>	<u>Description</u> <u>of Property</u>
_____	[] [] []	\$ _____	\$ _____	_____

APN _____				

*Co-Owner(s): _____

_____	[] [] []	\$ _____	\$ _____	_____

APN _____				

*Co-Owner(s): _____

_____	[] [] []	\$ _____	\$ _____	_____

APN _____				

*Co-Owner(s): _____

\$ _____ STOCKS

<u>Number</u> <u>of Shares</u>	<u>Company</u>	<u>Title</u> <u>SP CP JT*</u>	<u>Present Value</u>
_____	_____	[] [] []	\$ _____
_____	_____	[] [] []	\$ _____
_____	_____	[] [] []	\$ _____
_____	_____	[] [] []	\$ _____
_____	_____	[] [] []	\$ _____
_____	_____	[] [] []	\$ _____
_____	_____	[] [] []	\$ _____

*Co-Owner(s): _____

\$ _____ BONDS

<u>Value</u>	<u>Description</u>	<u>Title</u> <u>SP CP JT*</u>	<u>Yield</u>	<u>Maturity</u> <u>Date</u>
\$ _____	_____	[] [] []	____%	____/____/____
\$ _____	_____	[] [] []	____%	____/____/____
\$ _____	_____	[] [] []	____%	____/____/____
\$ _____	_____	[] [] []	____%	____/____/____
\$ _____	_____	[] [] []	____%	____/____/____

*Co-Owner(s): _____

\$ _____ CASH

<u>Account</u> <u>Number</u>	<u>Type</u> <u>C/A</u>	<u>S/A</u>	<u>Bank</u>	<u>Balance</u>	<u>Name(s) on Account</u>
_____	[]	[]	_____	\$ _____	_____

(name)

(address)

_____ [] [] _____ \$ _____

(name)

(address)

_____ [] [] _____ \$ _____

(name)

(address)

_____ [] [] _____ \$ _____

(name)

(address)

_____ [] [] _____ \$ _____

(name)

(address)

_____ [] [] _____ \$ _____

(name)

(address)

\$ _____ PROMISSORY NOTES

<u>Balance Due</u>	<u>Debtor</u>	<u>Date Due</u>	<u>Face Amount</u>	<u>Date Signed</u>
\$ _____	_____	___/___/___	\$ _____	___/___/___
\$ _____	_____	___/___/___	\$ _____	___/___/___
\$ _____	_____	___/___/___	\$ _____	___/___/___
\$ _____	_____	___/___/___	\$ _____	___/___/___

\$ _____ LIFE INSURANCE

<u>Policy Number</u>	<u>Insurance Company</u>	<u>Life Insured</u>	<u>Beneficiary</u>	<u>Face Value</u>
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____
_____	_____	_____	_____	\$ _____

\$ _____ TANGIBLE PERSONAL PROPERTY (including vehicles)

<u>Description</u>	<u>Present Value</u>
Furniture and furnishings	\$ _____
Personal effects	\$ _____

\$ _____
\$ _____

\$ _____ EMPLOYEE BENEFITS (deferred compensation)

Type of Plan: _____

Value: \$ _____

Beneficiary: _____

Payment: *Lump sum* [] *Annuity* []

Comments: _____

\$ _____ IRAs

<u>Bank/Brokerage Firm</u>	<u>Account No.</u>	<u>Description</u>	<u>Value</u>
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____

\$ _____ PARTNERSHIPS

dba: _____

Value: \$ _____ [] *community property* [] *separate property*

Address: _____

General Partner(s): _____

Partnership Agreement: [] *Yes* [] *No* No. of units / % _____

* * *

dba: _____

Value: \$ _____ [] *community property* [] *separate property*

Address: _____

General Partner(s): _____

Partnership Agreement: [] *Yes* [] *No* No. of units / % _____

\$ _____ ACTIVE BUSINESS/PROFESSION

dba: _____

Value: \$ _____ [] *community property* [] *separate property*

Address: _____

Type (*corporation, partnership, sole proprietorship, other*): _____

Articles, Bylaws, Partnership Agreement: [] *Yes** [] *No*

*Please specify: _____

6. LIABILITIES:

	<u>Title Creditor's Balance</u>	<u>CP</u>	<u>SP</u>	<u>Insurance</u>
Home Loan	\$ _____	[]	[]	[]
Secured Real Property Loans	\$ _____	[]	[]	[]
Secured Personal Property Loans	\$ _____	[]	[]	[]
Loans on Insurance Policies	\$ _____	[]	[]	[]
Unsecured Promissory Note	\$ _____	[]	[]	[]
General Obligations	\$ _____	[]	[]	[]
Other	\$ _____	[]	[]	[]
Total	\$ _____	[]	[]	[]

7. LIFETIME GIFTS MADE:

<u>Amount</u>	<u>Interest Given</u>	<u>Date</u>	<u>Beneficiary</u>
\$ _____	_____	___/___/___	_____
\$ _____	_____	___/___/___	_____
\$ _____	_____	___/___/___	_____
\$ _____	_____	___/___/___	_____
\$ _____	_____	___/___/___	_____

(total)

8. ADDITIONAL INFORMATION/COMMENTS:

(1) Are you the beneficiary of a trust

– established by you?

– established by someone other than you?

Copy attached? [] *Yes* [] *No*

(2) To your knowledge, do you hold the power to appoint assets presently subject to a trust?

(3) Are you the trustee of a trust for someone else?

(4) Other: _____

ESTATE PLAN

Client: _____ Date: _____

I. Revocable Trust Agreement? *Yes* [] *No* []

II. Executors (in order of preference):

	<u>Name</u>	<u>Relationship</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____

III. Trustees (in order of preference):

	<u>Name</u>	<u>Relationship</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____

IV. Specific Bequests:

V. Residue:

VI. Other Trust Provisions:

VII. Guardians (in order of preference):

	<u>Name</u>	<u>Relationship</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____

NOTES: _____

APPENDIX C
Certificate of Trust

TRUSTEE'S CERTIFICATION OF TRUST

__ [I/We] __, the undersigned, declare:

(1) That __ [I am/We are] __ the current trustee(s) of the trust established by __ [name(s) of settlor(s)] __, on __ [date] __.

(2) The attached copies of selected pages of the trust are true and correct copies of the original pages of the trust document that list the identity of the trustees, define the signature authority of the trustees, and list the powers of the trustees.

[Add one of the following alternatives]

[Alternative 1: Unmarried settlor who is also the trustee]

(3) The taxpayer identification number of this trust is __ [settlor's Social Security number] __.

[Alternative 2: Married settlors who are also the trustees]

(3) The taxpayer identification number of this trust is __ [Social Security number of first spouse] __ or __ [Social Security number of second spouse] __.

[Alternative 3: Trustee is other than settlor(s)]

(3) The taxpayer identification number of this trust is __ [federal identification number obtained from IRS] __.

[Continue]

(4) Title to assets of this trust should be stated as " __ [name] __ __ [and name] __, trustee(s) of the __ [name of trust] __, dated __ [date] __."

[If appropriate, add]

(5) __ [The trustee may take any action on behalf of the trust/Either trustee acting alone may take any action on behalf of the trust, except that the sale or encumbrance of real property requires the signature of both trustees.] __

[Continue]

[Add one of the following alternatives]

[Alternative 1: Unmarried settlor]

(6) This trust may be revoked by the settlor at any time.

[Alternative 2: Married settlors]

(6) Each settlor has the power to revoke the trust as to any community property and his or her separate property.

[Continue]

(7) The trust has not been revoked, modified, or amended in any manner that would cause the representations contained in this certification to be incorrect.

(8) This certification is being signed by all currently acting trustees of the trust.

(9) This certification is made under California Probate Code §18100.5. Any transaction entered into by a person acting in reliance on this certification shall be enforceable against the trust assets.

(10) Liability of Persons Refusing to Accept Certification: Probate Code §18100.5(h) provides that any person refusing to accept

this certification shall be liable for damages, including attorney fees, if the court determines that the person acted in bad faith.

__ [I/We] __ declare under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct.

[Use two signature blocks if cotrustees]

Date: _____

__ [Signature] __

__ [Typed name] __

Trustee of __ [Name of trust] __

u/t/d __ [date] __

Acknowledgment

State of California)

)

)

County of __ [name of county] __)

)

On __ [date] __ before me, __ [name and title of officer] __, personally appeared __ [name(s)] __, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal:

__ [Signature of officer] __

[Officer's Seal]

Comment: For discussion of trust certificate, see step 30, above.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX D Trustee Certification of Investment Powers

APPENDIX D
Trustee Certification of Investment Powers



TRUSTEE CERTIFICATION OF INVESTMENT POWERS

(to be completed by trustees)

TO:

ACCOUNT # _____

TRUST INFORMATION

In consideration of your opening and/or maintaining one or more accounts for the Trust named below, we the undersigned below, Trustees*, certify as follows:

1. The full title of the Trust to which this Certificate applies is:

Example: John Jones and Sam Smith Trustees for the benefit of Mary Jones.

2. The date of the Trust is: _____

3. The date of the latest Trust Amendment is: _____

4. There are no Trustees of the Trust other than the undersigned.

5. The names of the successor trustees, if any, are: _____

6. The Grantors of the Trust are: _____

AUTHORIZED INDIVIDUALS

7. You are authorized to accept orders and other instructions from those individuals or entities listed below, pursuant to the terms of the Trust and applicable law, including check-signing and withdrawal privileges, unless their authority is expressly limited on this certification.

Name (please print): _____ Relationship to Trust (if other than Trustee, must also submit DWR trading authorization): _____

INVESTMENTS PERMITTED

8. We certify that we have the power under the Trust Agreement and applicable law to enter into transactions, both purchases and sales, of the types specified below (check types of investments which are permitted):

BASIC TRANSACTIONS:

- A. U.S. Government Securities
- B. U.S. Agency Securities
- C. Municipal Securities
- D. Corporate Bonds
- E. Corporate Stocks
- F. Mutual Funds
- G. Unit Investment Trusts
- H. Annuities
- I. Limited Partnerships
- J. All of the Above

AGGRESSIVE TRANSACTIONS:

- K. Margin Buying
- L. Covered Option Writing
- M. Buying Options
- N. Uncovered Option Writing
- O. Spreads/Straddles on Options
- P. Short Sales of Securities other than Options
- Q. Futures/Commodities
- R. Other _____ (specify)

9. We acknowledge receiving and reviewing all pertinent account documentation and agreements.

10. We, the Trustees, jointly and severally indemnify you and hold you harmless from any liability for effecting transactions of the types specified under Item No. 8 above, if you act pursuant to instructions given by any of the Authorized Individuals listed under Item No. 7 above.

11. We agree to inform you in writing of any amendment to the Trust, any change in the composition of the Trustees, or any other event which could materially alter the Certifications made above. You may rely on the continued validity of this Certification indefinitely absent actual receipt of such notice.

TRUSTEES

12. We hereby certify that the undersigned are all of the Trustees:

TRUSTEE NAMES (Print)

SIGNATURES

ADDRESSES

(ALL TRUSTEES MUST SIGN. ATTACH EXTRA PAGE IF NECESSARY.)

Accepted by _____, By: _____ (Branch Manager)

*SHOULD ONLY ONE PERSON EXECUTE THIS AGREEMENT, IT SHALL CONSTITUTE A REPRESENTATION THAT THE SIGNER IS THE SOLE TRUSTEE. WHERE APPLICABLE, PLURAL REFERENCES IN THIS CERTIFICATION SHALL BE DEEMED SINGULAR.

APPENDIX E
Grant Deed

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

__ [Name and address] __

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

Documentary Transfer Tax: none. TRANSFER NOT PURSUANT TO SALE. THIS CONVEYANCE IS EXCLUDED AS A CHANGE IN OWNERSHIP BECAUSE THE GRANTOR IS THE PRESENT BENEFICIARY OF THE GRANTEE REVOCABLE TRUST.

Signature of Declarants: _____

For no value, __ [name] __ grants to __ [name] __, trustee of the __ [name of trust] __ Trust dated __ [date] __, (__ [name] __, grantor/settlor) all that certain real property situated in the City of __ [name] __, County of __ [name] __, State of California, more particularly described as follows:

[The following sentence should be done in boldface]

SEE LEGAL DESCRIPTION ATTACHED TO THIS DEED AS EXHIBIT A AND INCORPORATED BY THIS REFERENCE.

Commonly known as:

__ [address] __

A.P.N.:

The __ [name of trust] __ Trust

Date: _____
__ [Typed name] __, Trustee

BY: __ [Signature] __

MAIL TAX STATEMENTS TO:

__ [insert address] __

State of California)

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX F Preliminary Change of Ownership Report

APPENDIX F
Preliminary Change of Ownership Report



PRELIMINARY CHANGE OF OWNERSHIP REPORT

FOR RECORDER'S USE ONLY

[To be completed by transferee (buyer) prior to transfer of subject property in accordance with section 480.3 of the Revenue and Taxation Code.] A Preliminary Change of Ownership Report must be filed with each conveyance in the County Recorder's office for the county where the property is located; this particular form may be used in all 58 counties of California.

THIS REPORT IS NOT A PUBLIC DOCUMENT

SELLER/TRANSFEROR: _____

BUYER/TRANSFeree: _____

ASSESSOR'S PARCEL NUMBER(S) _____

PROPERTY ADDRESS OR LOCATION: _____

MAIL TAX INFORMATION TO: Name _____ Address _____

NOTICE: A lien for property taxes applies to your property on January 1 of each year for the taxes owing in the following fiscal year, July 1 through June 30. One-half of these taxes is due November 1, and one-half is due February 1. The first installment becomes delinquent on December 10, and the second installment becomes delinquent on April 10. One tax bill is mailed before November 1 to the owner of record. **You may be responsible for the current or upcoming property taxes even if you do not receive the tax bill.**

The property which you acquired may be subject to a supplemental assessment in an amount to be determined by the _____ Assessor. For further information on your supplemental roll obligation, please call the _____ Assessor at _____.

PART I: TRANSFER INFORMATION (please answer all questions)

- | | | |
|--------------------------|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| YES | NO | |
| <input type="checkbox"/> | <input type="checkbox"/> | A. Is this transfer solely between husband and wife (addition of a spouse, death of a spouse, divorce settlement, etc.)? |
| <input type="checkbox"/> | <input type="checkbox"/> | B. Is this transaction only a correction of the name(s) of the person(s) holding title to the property (for example, a name change upon marriage)? Please explain _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | C. Is this document recorded to create, terminate, or reconvey a lender's interest in the property? |
| <input type="checkbox"/> | <input type="checkbox"/> | D. Is this transaction recorded only as a requirement for financing purposes or to create, terminate, or reconvey a security interest (e.g., cosigner)? Please explain _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | E. Is this document recorded to substitute a trustee of a trust, mortgage, or other similar document? |
| <input type="checkbox"/> | <input type="checkbox"/> | F. Did this transfer result in the creation of a joint tenancy in which the seller (transferor) remains as one of the joint tenants? |
| <input type="checkbox"/> | <input type="checkbox"/> | G. Does this transfer return property to the person who created the joint tenancy (original transferor)? |
| <input type="checkbox"/> | <input type="checkbox"/> | H. Is this a transfer of property: |
| <input type="checkbox"/> | <input type="checkbox"/> | 1. to a revocable trust that may be revoked by the transferor and is for the benefit of the <input type="checkbox"/> transferor <input type="checkbox"/> transferor's spouse? |
| <input type="checkbox"/> | <input type="checkbox"/> | 2. to a trust that may be revoked by the Creator/Grantor who is also a joint tenant, and which names the other joint tenant(s) as beneficiaries when the Creator/Grantor dies? |
| <input type="checkbox"/> | <input type="checkbox"/> | 3. to an irrevocable trust for the benefit of the <input type="checkbox"/> Creator/Grantor and/or <input type="checkbox"/> Grantor's spouse? |
| <input type="checkbox"/> | <input type="checkbox"/> | 4. to an irrevocable trust from which the property reverts to the Creator/Grantor within 12 years? |
| <input type="checkbox"/> | <input type="checkbox"/> | I. If this property is subject to a lease, is the remaining lease term 35 years or more including written options? |
| <input type="checkbox"/> | <input type="checkbox"/> | *J. Is this a transfer between <input type="checkbox"/> parent(s) and child(ren)? <input type="checkbox"/> or from grandparent(s) to grandchild(ren)? |
| <input type="checkbox"/> | <input type="checkbox"/> | *K. Is this transaction to replace a principal residence by a person 55 years of age or older?
Within the same county? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> | <input type="checkbox"/> | *L. Is this transaction to replace a principal residence by a person who is severely disabled as defined by Revenue and Taxation Code section 69.5? Within the same county? <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> | <input type="checkbox"/> | M. Is this transfer solely between domestic partners currently registered with the California Secretary of State? |

*If you checked yes to J, K or L, you may qualify for a property tax reassessment exclusion, which may result in lower taxes on your property. **If you do not file a claim, your property will be reassessed.**

Please provide any other information that will help the Assessor to understand the nature of the transfer.

If the conveying document constitutes an exclusion from a change in ownership as defined in section 62 of the Revenue and Taxation Code for any reason other than those listed above, set forth the specific exclusions claimed: _____

Please answer all questions in each section. If a question does not apply, indicate with "N/A." Sign and date at bottom of second page.

PART II: OTHER TRANSFER INFORMATION

- A. Date of transfer if other than recording date _____
- B. Type of transfer (please check appropriate box):
- Purchase Foreclosure Gift Trade or Exchange Merger, Stock, or Partnership Acquisition
- Contract of Sale — Date of Contract _____
- Inheritance — Date of Death _____ Other (please explain): _____
- Creation of Lease Assignment of a Lease Termination of a Lease Sale/Leaseback
- Date lease began _____
- Original term in years (including written options) _____
- Remaining term in years (including written options) _____
- Monthly Payment _____ Remaining Term _____
- C. Was only a partial interest in the property transferred? Yes No
- If yes, indicate the percentage transferred _____ %.

Please write Assessor's Parcel Number(s): _____

Please answer, to the best of your knowledge, all applicable questions, then sign and date. If a question does not apply, indicate with "N/A."

PART III: PURCHASE PRICE AND TERMS OF SALE

A. CASH DOWN PAYMENT OR value of trade or exchange (excluding closing costs) Amount \$
B. FIRST DEED OF TRUST @ % interest for years. Pymts./Mo. = \$ (Prin. & Int. only) Amount \$
C. SECOND DEED OF TRUST @ % interest for years. Pymts./Mo. = \$ (Prin. & Int. only) Amount \$
D. OTHER FINANCING: Is other financing involved not covered in (b) or (c) above? Yes No Amount \$
E. WAS AN IMPROVEMENT BOND ASSUMED BY THE BUYER? Yes No Outstanding Balance: Amount \$
F. TOTAL PURCHASE PRICE (or acquisition price, if traded or exchanged, include real estate commission if paid) TOTAL ITEMS A THROUGH E \$
G. PROPERTY PURCHASED Through a broker Direct from seller From a family member Other (please explain):

PART IV: PROPERTY INFORMATION

A. TYPE OF PROPERTY TRANSFERRED: Single-family residence Multiple-family residence Commercial/Industrial Other
B. IS THIS PROPERTY INTENDED AS YOUR PRINCIPAL RESIDENCE? Yes No
C. IS PERSONAL/BUSINESS PROPERTY INCLUDED IN PURCHASE PRICE (i.e., furniture, farm equipment, machinery, etc.)
D. IS A MANUFACTURED HOME INCLUDED IN PURCHASE PRICE? Yes No
E. DOES THE PROPERTY PRODUCE INCOME? Yes No
F. WHAT WAS THE CONDITION OF THE PROPERTY AT THE TIME OF SALE? Good Average Fair Poor

CERTIFICATION

OWNERSHIP TYPE () Proprietorship Partnership Corporation Other
I certify that the foregoing is true, correct and complete to the best of my knowledge and belief. This declaration is binding on each and every co-owner and/or partner.
NAME OF NEW OWNER/CORPORATE OFFICER TITLE
SIGNATURE OF NEW OWNER/CORPORATE OFFICER DATE
NAME OF ENTITY (typed or printed) FEDERAL EMPLOYER ID NUMBER
ADDRESS (typed or printed) PHONE NUMBER (8 a.m. - 5 p.m.) E-MAIL ADDRESS (optional)

(Note: The Assessor may contact you for additional information.) If a document evidencing a change of ownership is presented to the recorder for recordation without the concurrent filing of a preliminary change of ownership report, the recorder may charge an additional recording fee of twenty dollars (\$20).

APPENDIX G
Sample Letter to Client

__ [Date] __

__ [Name of settlor trustees] __

__ [Address] __

Re: __ [Name of trust] __

Memorandum: Transferring Assets to Your Trust

Dear __ [Name of settlor trustees] __:

I enjoyed meeting with you this morning to execute the documents for your estate plan. I am enclosing the following items for your records:

1. Original and a conformed copy of the __ [name of trust] __ Trust;
2. A copy of the grant deed for transferring your residence to your trust and the Preliminary Change of Ownership Report, which prevents reassessment;
3. A copy of certification of trust;
4. The "pour-over" wills of each of you with the original and conformed copies of them; and
5. A copy of each change of beneficiary designation form you executed.

The principal objectives of the __ [name of trust] __ ("the trust"), a revocable trust, are to provide continuity of management of your assets during your life in case of incapacity and to avoid probate at your death. To accomplish these objectives, there are certain formalities that you must maintain with respect to the trust.

1. *Amendment.* These documents are executed with certain formalities and may be changed or revoked only through similar procedures. A note in the margin of your documents, or a striking out of words, even next to your signature, may not be effective. I cannot overemphasize the need to follow the proper steps for amendment. For example, acknowledgment of your signature on an amendment by a notary public is required by law.

2. *Keeping the trust funded.* Although executing the trust documents provides you with an orderly disposition of your estate, you will not avoid probate unless and until the trust obtains legal title to your property. This procedure is called "funding" the trust and requires transferring title to you as trustees:

(a) Documents of title must be executed to fund the trust. For example, you will need new signature cards for the trust bank accounts. Other assets must also be retitled. Title to assets you acquire in the future should be put in the trust's name. If you take title to property in your own name at any time without reference to the trust, that asset will not be a trust asset.

(b) To subject an asset to the terms of the trust, you must transfer title to yourselves as trustees. In general, title on all trust assets should be held in the following way: "John Doe and Jane Doe, trustees of the John and Jane Doe Trust dated January 15, 2005." In some situations, you may have to abbreviate the trust designation, *e.g.*, "John & Jane Doe, trustees, Doe Trust, 1/15/2005."

(c) For your separate property to retain its character, it must be segregated and designated as such. If either of you receives an inheritance in __ [his/her/his or her] __ name only, this property will be separate, rather than community, property. The property should be transferred to both trustees as described above, but the designation should specify that it is "separate property of __ [name of spouse or partner] __" unless the inheriting __ [spouse/partner] __ wishes to change the character of the property from separate to community. Making this change may have important income and estate tax consequences and will affect the division of property in the event you should dissolve the __ [marriage/partnership] __. Legal advice is advisable before any such changes are made.

(d) When you transfer insured property (houses, cars, mobilehomes, etc.) to the trust, you should notify the insurance company

(or agent) of the transfer and request that the trustee of the trust be added as an additional insured. This applies to both casualty and liability insurance.

This memorandum explains ways of accomplishing many common transfers. It is not intended to provide a comprehensive explanation of everything one needs to know about transferring property and it is not intended to encourage you to perform complex legal transactions without further consultation, particularly if you have limited business experience.

This memorandum is based on California law. If you own real estate outside of California, or have automobiles, boats, or other property registered with government agencies of other states, you need to consult me.

3. *Change of beneficiary forms.* I am enclosing copies of the executed change of beneficiary and consent forms. I will be sending the original executed forms to the insurance companies to make the necessary changes of beneficiary. These changes will not be effective until the companies have received and acknowledged them. The proceeds from insurance policies and retirement plans may go into the trust so that they will be directed by a trustee according to the estate plan. An outright payment of proceeds will circumvent the plan described in the trust document.

4. *Real property.* You, as settlor, have transferred your residence and other real property to yourself as trustee of the trust. This office will be responsible for recording the deed(s) with the county recorder and submitting the Preliminary Change of Ownership Report to the recorder's office with the deed(s) for transmittal to the assessor's office. The original recorded deed will be returned to you directly from the recorder's office.

The homeowner's exemption for your residence may need to be reestablished after the deed has been recorded. If so, you should receive a notice in the mail in a few months (or early in the next year in some counties) advising you that the exemption needs to be reestablished and giving you further instructions. It is your responsibility to check your next property tax bill to be sure you are still receiving the homeowner's exemption.

Note: If you refinance (or otherwise borrow against) real property that is held in the trust, the lender may require that you transfer the property back to yourself as an individual before you execute the deed of trust that gives the lender a security interest in your property. If this happens, you should ask the title company to prepare a deed transferring title back to you as trustee of the trust as soon as refinancing is complete. Otherwise, a probate will probably be necessary if you die owning the property in your individual name. If the title company will not prepare this deed for you, please contact me or another attorney to prepare and record the necessary deed.

Note: If you transfer property *other than your residence and/or a vacation home that you personally occupy*, there is at least a theoretical possibility that the transfer will trigger the "due-on-sale" clause in any mortgage or other loan on the property. Estate planning attorneys have been concerned about this problem for many years, but so far no one has publicly reported an instance of a lender trying to enforce a due-on-sale clause in this situation. This possibility raises the question of whether you should obtain the lender's permission before making the transfer or whether such an action would be an unnecessary expense. If you own commercial real estate you should consult with me further on this point — particularly if you have a very large loan with an exceptionally low interest rate that is substantially lower than current market rates.

You should notify your insurance company (and/or insurance broker) of the transfer to the trust and request that the trustee of the trust be added as an additional insured on any policies, including your homeowner's insurance.

If you purchase other real property in California in the future, you should instruct that title company that you wish to take title in the following form: " __[name]__ , Trustee of the __[name of trust]__ Trust dated __[date]__ ."

[If applicable, add the following option]

[Option: Rental real property transferred to trust]

You should request that the tenants of any rental property transferred to the trust make rent payments to the trustee in the following form: " __[name]__ , Trustee of the __[name of trust]__ Trust dated __[date]__ ."

[Continue]

5. *Bank Accounts, Brokerage or Mutual Fund Accounts, Certificate of Deposit Accounts, Dividend Reinvestment Accounts, and Safe Deposit Box.*

You should change title to your bank accounts, brokerage or mutual fund accounts, separate certificate of deposit accounts, dividend reinvestment accounts (DRIPs), other financial institution accounts, and safe deposit box to your name as trustee. Usually the financial institution will not change the name on an existing account, but will require you to open a new account in your name as trustee of the trust. (Note that this can require changes to existing automatic deposit or withdrawal arrangements.) The financial institution will also want you to provide a copy of the trust or a "certification of trust" (which proves that the trust has been validly executed and the trustee has the requisite powers to conduct trust business with the institution). In some

making the transfer.

11. *Tax returns.* The regulations under the Internal Revenue Code provide that grantor trusts of which the grantor (settlor) is a beneficiary need not file separate tax returns. Because you are the owners of all property in the trust, you will continue to report __ *[all trust income on your joint return/one-half of all trust income on each of your individual returns]* __ as though it were your own. You may give your own Social Security numbers when opening accounts in the name of the trust. When a death occurs, a portion of the trust will become irrevocable. At that time, one or more new entities come into existence. A taxpayer identification number must be obtained for each new entity that is irrevocable and a separate return filed for each such entity.

12. *Joint tenancy.* Except for your automobile and perhaps a small household checking account, you should not hold any assets as joint tenants. An asset held in joint tenancy will not be subject to the terms of the trust, may frustrate your intentions, and could have adverse income and estate tax consequences.

13. *Title to Property Acquired in the Future.* You should take title to any assets you acquire in the future in the trustee's name (rather than in your individual name) as follows: " __ *[name]* __, Trustee of the __ *[name of trust]* __ Trust dated __ *[date]* __."

14. *Do Not Change Title to Certain Types of Property.* Note that you should *not* change title to Individual Retirement Accounts, other qualified pension and retirement plans, or ownership of life insurance policies. The disposition of these assets should be directed by beneficiary designation.

IMPORTANT REMINDER: If you do not complete the transfers of your assets to the trust in a timely manner, court involvement in managing or transferring your assets may be required on your incapacity or death, and your estate planning objectives may not be achieved.

[Add one of the following alternatives]

[Alternative 1: Ongoing representation]

Please do not hesitate to contact us for assistance or with any questions about the funding or administration of the trust.

[Alternative 2: Time limit for further services]

Please do not hesitate to contact me for assistance or with any questions about the funding of the trust. If I have not heard from you within __ *[e.g., 30/60 days]* __ of the date of this letter, I will conclude that you no longer need my assistance and I will close the file. Any additional work after that date will require a new contract and will be billed separately.

Sincerely,

__ *[Signature]* __

This form can be modified to reflect the actual allocation of responsibility between client and attorney. It can also be modified to advise the client to return periodically to execute a general assignment of all or substantially all of their assets to the trust so that a *Heggstad* petition (Prob C §850(a)(3)) can be used to capture any later-acquired items not titled in the name of the trust. See Revocable Trusts, chap 5, for discussion of the form of title in which trust property will be held. For rules for obtaining a TIN, see Treas Reg §301.6109-1(a)(2); see also Treas Reg §1.671-4(b).

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX H Assignment of Tangible Personal Property

APPENDIX H

Assignment of Tangible Personal Property

ASSIGNMENT OF TANGIBLE PERSONAL PROPERTY

Name of trust: _____

Settlor(s) of trust: _____

Trustee(s) at date of transfer: _____

Date trust was created: _____

FOR VALUE RECEIVED, but without monetary consideration, __[name]__ and __[name]__ ("Settlers") assign and transfer to __[name]__ and __[name]__, Trustees of the __[name of trust]__ Trust dated __[date]__ ("Trustees") all of the Settlers' right, title, and interest in all our tangible personal property. The term "tangible personal property" refers to such items as:

1. All items of personal and household use and ornament now owned or later acquired, including furniture, furnishings, silverware, pictures, paintings, works of art, china, clothing, jewelry, sporting equipment, books, collections of tangible personal property, and other tangible personal property normally kept at the Settlers' residence or elsewhere.
2. All insurance policies covering those articles and any proceeds of these policies.
3. The term "tangible personal property" excludes cash and other items of intangible personal property, if represented by tangible documentation of ownership, and excludes tangible personal property used by either Settlor in a trade, business, or profession; gold bars; bars of other metals; and any other tangible property of an investment nature (such as art objects and collections of tangible personal property).

This property shall be held, managed, and distributed according to the Trust's terms as they exist as of this date of assignment or as they are amended in the future.

Date signed: _____, at _____, California

_____ [Signature] _____
Settlor
__ [Typed name] __

_____ [Signature] _____
Settlor
__ [Typed name] __

The Trustee accepts this assignment and agrees as above.

Date signed: _____, at _____, California

_____ [Signature] _____
Trustee
__ [Typed name] __

See step 33, above.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX I General Assignment of Property to Trust

APPENDIX I

General Assignment of Property to Trust

ASSIGNMENT OF PROPERTY TO TRUST

__ *[Name of settlor]* __, (hereafter "Settlor"), assigns and transfers to __ *[name of trustee]* __ (hereafter "Trustee") of the __ *[name of trust]* __ dated __ *[date]* __, all of Settlor's right, title, and interest in and to all of the property owned by Settlor that would otherwise be subject to probate on the death of Settlor, to be held, administered, and distributed according to the terms of the trust. This property includes Settlor's residence; other real property; all stocks, bonds, mutual funds, and other financial investments; cash; business interests; and tangible personal property. The term "tangible personal property" includes such items as furniture, furnishings, silverware, paintings, works of art, china, clothing, jewelry, sporting equipment, automobiles, books, collections of tangible personal property, and other tangible personal property normally kept at the settlor's residence or elsewhere. The term "tangible personal property" also includes any insurance policies on this tangible personal property and any proceeds of these policies.

[If appropriate, add]

Despite the foregoing paragraph, the trust property does not include any of the following property: __ *[Specify]* __.

[Continue]

Date signed: _____, at _____, California

__ *[Signature]* __

Settlor

__ *[Typed name]* __

Acknowledgment

State of __ *[name]* __)

) ss.

County of __ *[name]* __)

_____)

On __ *[date]* __ before me, __ *[name and title of officer]* __, personally appeared __ *[name(s)]* __, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

__ *[Signature]* __

[Seal]

Because the assignment does not apply to nonprobate property, counsel should ascertain whether the client has taken title to any property in a manner that would cause it to be excluded from the assignment, so that all property the client intends to transfer to the trust is included.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX J Sample Letter to Financial Institution

APPENDIX J

Sample Letter to Financial Institution

__ [Date] __

__ [Name of financial institution] __

__ [Address] __

Re: Account No. _____

John Doe and Jane Doe

Dear _____:

The undersigned are holders of the above-referenced money market account. We have recently created a Revocable Inter Vivos Trust for our benefit. Among the assets to be transferred into the trust is the above-referenced money market account.

Please change title on the account to read as follows:

JOHN DOE and JANE DOE, Trustees of the
DOE FAMILY TRUST
dated January 15, 2005

The Social Security number and mailing address on the account will remain unchanged.

Very truly yours,

__ [Signature] __

John Doe

__ [Signature] __

Jane Doe

See step 34, above.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX K Sample Assignment of Sole Proprietorship

APPENDIX K

Sample Assignment of Sole Proprietorship

ASSIGNMENT OF BUSINESS

This instrument is effective January 15, 2005, by and between JOHN DOE and JANE DOE (hereinafter called "Settlors") and JOHN DOE and JANE DOE, trustees of the Doe Family Trust executed January 15, 2005 (hereinafter called "Trustees").

Settlors assign and transfer to Trustees all their right, title, and interest to the following assets of the business known as "Doe Glass Company," located at 987 Laurel Street, San Carlos, California, hereinafter referred to as "the business":

All of the stock in trade and merchandise of the business; all of the furniture, fixtures, equipment, and other tangible assets of the business; and all of the trade, goodwill, business name, and other intangible assets of the business, including the accounts receivable of the business.

Date signed: _____, at _____, California

By: _____

JANE DOE, Settlor and Trustee

By: _____

JOHN DOE, Settlor and Trustee

See step 40, above.

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APPENDIX L
Sample Stock Power

STOCK POWER

For value received, the undersigned does hereby sell, assign, and transfer to:

JOHN DOE and JANE DOE, Trustees of the Doe Family Trust under document dated January 15, 2005,

100 Shares of Pacific Gas and Electric Company

represented by the following:

100 Shares on Certificate Number QSA90876

The undersigned does hereby irrevocably constitute and appoint __[*name*]__, attorney, to transfer said certificate on the books of said Company, with full power of substitution in the premises.

Date: _____
John Doe

__[*Signature*]__

Date: _____
Jane Doe

__[*Signature*]__

Signatures of

John Doe and

Jane Doe guaranteed by: _____

See step 35, above.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX M Sample Letter to Payor re Payment on Promissory Note

APPENDIX M

Sample Letter to Payor re Payment on Promissory Note

January 15, 2005

Mr. and Mrs. John Smith

1234 Maple Street

Oakland, CA

Re: Note payments

Dear Mr. and Mrs. Smith:

Enclosed is a copy of the assignment of your note dated __[*date*]__, to our revocable trust, the Doe Family Trust dated January 15, 2005. Please make all future payments on the note as follows:

"John Doe and Jane Doe, Trustees"

Our address remains the same. Thank you.

Very truly yours,

__[*Signature*]__

John Doe

See step 36, above.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX N Certificate of Limited Partnership (Secretary of State Form LP-1)

APPENDIX N
Certificate of Limited Partnership (Secretary of State Form LP-1)





State of California Secretary of State

LP-1

File # _____

CERTIFICATE OF LIMITED PARTNERSHIP

A \$70.00 filing fee must accompany this form.

IMPORTANT - Read instructions before completing this form.

This Space For Filing Use Only

ENTITY NAME (End the name with the words "Limited Partnership" or the abbreviation "LP" or "L.P.")

1. NAME OF LIMITED PARTNERSHIP

INITIAL DESIGNATED OFFICE ADDRESS (Do not abbreviate the name of the city.)

2. ADDRESS OF INITIAL DESIGNATED OFFICE IN CALIFORNIA CITY STATE ZIP CODE CA

INITIAL AGENT FOR SERVICE OF PROCESS (If the initial agent is an individual, the agent must reside in California and both Items 3 and 4 must be completed. If the initial agent is a corporation, the agent must have on file with the California Secretary of State a certificate pursuant to Corporations Code section 1505 and Item 3 must be completed (leave Item 4 blank).)

3. NAME OF INITIAL AGENT FOR SERVICE OF PROCESS

4. IF AN INDIVIDUAL, ADDRESS OF INITIAL AGENT FOR SERVICE OF PROCESS IN CA CITY STATE ZIP CODE CA

GENERAL PARTNERS (Enter the names and addresses of all the general partners. Attach additional pages, if necessary.)

5a. NAME ADDRESS CITY STATE ZIP CODE

5b. NAME ADDRESS CITY STATE ZIP CODE

ADDITIONAL INFORMATION

6. ADDITIONAL INFORMATION SET FORTH ON THE ATTACHED PAGES, IF ANY, IS INCORPORATED HEREIN BY THIS REFERENCE AND MADE A PART OF THIS CERTIFICATE.

EXECUTION (This certificate must be signed by all of the general partners. If additional signature space is necessary, the signatures may be made on an attachment to this certificate.)

7. I DECLARE I AM THE PERSON WHO EXECUTED THIS INSTRUMENT, WHICH EXECUTION IS MY ACT AND DEED.

DATE

SIGNATURE OF GENERAL PARTNER

TYPE OR PRINT NAME OF GENERAL PARTNER

SIGNATURE OF GENERAL PARTNER

TYPE OR PRINT NAME OF GENERAL PARTNER

INSTRUCTIONS FOR COMPLETING THE CERTIFICATE OF LIMITED PARTNERSHIP (FORM LP-1)

For easier completion, this form is available on the Secretary of State's website at <http://www.sos.ca.gov/business/> and can be viewed, filled in and printed from your computer. The completed form along with the applicable fees can be mailed to Secretary of State, Document Filing Support Unit, P.O. Box 944225, Sacramento, CA 94244-2250 or delivered in person to the Sacramento office, 1500 11th Street, 3rd Floor, Sacramento, CA 95814. If you are not completing this form online, please type or legibly print in black or blue ink. This form is filed only in the Sacramento office.

LEGAL AUTHORITY: Statutory filing requirements are found in California Corporations Code section 15902.01. All statutory references are to the California Corporations Code, unless otherwise stated. **Note:** Signing Form LP-1 constitutes an affirmation under penalty of perjury that the facts stated in the certificate are true. (Section 15902.08(b).)

FEES: The fee for filing Form LP-1 is \$70.00. There is an additional \$15.00 special handling fee for processing a document delivered in person to the Sacramento office. The special handling fee must be remitted separately for each submittal and will be retained whether the document is filed or rejected. The preclearance and/or expedited filing of a document *within a guaranteed time frame* can be requested for an additional fee (in lieu of the special handling fee). Please refer to the Secretary of State's website at <http://www.sos.ca.gov/business/precexp.htm> for detailed information regarding preclearance and expedited filing services. The special handling fee or preclearance and expedited filing services are not applicable to documents submitted by mail. Check(s) should be made payable to the Secretary of State.

COPIES: The Secretary of State will certify two copies of the filed document(s) without charge, provided that the copies are submitted to the Secretary of State with the document(s) to be filed. Any additional copies submitted will be certified upon request and payment of the \$8.00 per copy certification fee.

MINIMUM TAX REQUIREMENT: Filing this document shall obligate most limited partnerships to pay an annual minimum tax of \$800.00 to the Franchise Tax Board pursuant to California Revenue and Taxation Code section 17935.

Complete the Certificate of Limited Partnership (Form LP-1) as follows:

Item 1. Enter the name of the limited partnership. The name must end with the words "Limited Partnership," or the abbreviation "LP" or "L.P." and may not contain the words "bank," "insurance," "trust," "trustee," "incorporated," "inc.," "corporation," or "corp." (Section 15901.08.)

Item 2. Enter the address, including the zip code, of the initial designated office in California. Please do not abbreviate the name of the city. The "designated office" address may, but need not, be the place of the limited partnership's activity in California. (Sections 15901.02(e) and 15901.14.)

Items 3 & 4. Enter the name of the initial agent for service of process in California. An agent is an individual, whether or not affiliated with the limited partnership, who resides in California or a corporation designated to accept service of process if the limited partnership is sued. The agent should agree to accept service of process on behalf of the limited partnership prior to designation. If a corporation is designated as agent, that corporation must have previously filed with the Secretary of State, a certificate pursuant to Corporations Code section 1505. **Note: A limited partnership cannot act as its own agent** and no domestic or foreign corporation may file pursuant to Section 1505 unless the corporation is currently authorized to engage in business in California and is in good standing on the records of the Secretary of State.

If an individual is designated as the initial agent, complete Items 3 and 4. If a corporation is designated as the initial agent, complete only Item 3 and proceed to Item 5 (do not complete Item 4).

Items 5a - 5b. Enter the name and address of each general partner. Please do not abbreviate the name of the city. The limited partnership must have one or more general partners. (Section 15901.02(q).) If there are more than two general partners, please attach additional pages. **Note:** If a general partner is a trust, both the name of the trust (including the date of the trust, if applicable) and the trustee should be listed. Example: Mary Todd, trustee of the Lincoln Family Trust U/T/A 5-1-94.

Item 6. Attach any other information to be included in Form LP-1 (e.g., the number of general partners' signatures required for filing merger or conversion documents with the California Secretary of State, if less than all) provided that the information is not inconsistent with law.

Item 7. Form LP-1 must be signed by all of the general partners. (Section 15902.04.) If additional signature space is necessary, the signatures may be made on an attachment to Form LP-1.

- If Form LP-1 is signed by any person other than the general partner(s), the signature must be followed by the words "signature pursuant to Section _____" identifying the appropriate statutory authority. (Section 15902.05.)
- If Form LP-1 is signed by an attorney-in-fact, the signature should be followed by the words "Attorney-in-fact for (name of the partner)." (Section 15902.04.)
- If a trust is designated as a general partner, Form LP-1 should be signed by a trustee as follows: _____ trustee for _____ trust (including the date of the trust, if applicable). Example: Mary Todd, trustee of the Lincoln Family Trust (U/T/A 5-1-94).

Any attachments to Form LP-1 are incorporated by reference and made part of Form LP-1. All attachments should be 8 1/2" x 11", one-sided and legible.



Secretary of State
Business Programs Division

1500 11th Street, 3rd Floor
Sacramento, CA 94244-2300

Business Entities
(916) 657-5448

LIMITED PARTNERSHIPS

California Tax Information

Registration of a limited partnership with the California Secretary of State will obligate a limited partnership to pay to the Franchise Tax Board an annual minimum tax of \$800.00. The tax is required to be paid for the taxable year of registration and each taxable year, or part thereof, until a Certificate of Cancellation is filed with the California Secretary of State. (Rev. and Tax. Code § 17935.)

A limited partnership is not subject to the taxes imposed by Revenue and Taxation Code section 17935 if the limited partnership did no business in California during the taxable year and the taxable year was 15 days or less. (Rev. and Tax. Code § 17936.)

For further information, please contact the Franchise Tax Board at:

From within the United States (toll free)	(800) 852-5711
From outside the United States (not toll free)	(916) 845-6500
Automated Toll Free Phone Service	(800) 338-0505

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX O Amendment to Certificate of Limited Partnership (Secretary of State Form LP-2)

APPENDIX O

Amendment to Certificate of Limited Partnership (Secretary of State Form LP-2)





LP-2

State of California Secretary of State

AMENDMENT TO CERTIFICATE OF LIMITED PARTNERSHIP

A \$30.00 filing fee must accompany this form.

IMPORTANT – Read instructions before completing this form.

This Space For Filing Use Only

FILE NUMBER

ENTITY NAME (Enter the exact name of the limited partnership.)

1. SECRETARY OF STATE FILE NUMBER

2. NAME OF LIMITED PARTNERSHIP

3. CHECK HERE IF THE LIMITED PARTNERSHIP WAS FORMED PRIOR TO JANUARY 1, 2008 AND HAS ELECTED TO BE GOVERNED BY THE UNIFORM LIMITED PARTNERSHIP ACT OF 2008.

ITEMS 4 THROUGH 14: Complete ONLY the items to be amended or added by this filing. Attach additional pages, if necessary. Any other matters to be included may be made on an attachment to this certificate. Any attachments are incorporated herein by this reference and made part of this certificate.

ENTITY NAME AS AMENDED (End the name with the words "Limited Partnership" or the abbreviation "L.P.")

4. NAME OF LIMITED PARTNERSHIP

PRINCIPAL EXECUTIVE OFFICE ADDRESS or DESIGNATED OFFICE ADDRESS IN CALIFORNIA

5. ADDRESS CITY STATE ZIP CODE

AGENT FOR SERVICE OF PROCESS (If the agent is an individual, complete both Items 6 and 7. If the agent is a corporation, complete Item 6 and leave Item 7 blank.)

6. NAME OF AGENT FOR SERVICE OF PROCESS

7. IF AN INDIVIDUAL, ADDRESS OF AGENT FOR SERVICE OF PROCESS IN CALIFORNIA CITY STATE ZIP CODE
CA

GENERAL PARTNER INFORMATION (NEW PARTNER, ADDRESS CHANGE, NAME CHANGE, and/or DISSOCIATION)

8. New Partner NAME ADDRESS CITY STATE ZIP CODE

9. Address Change NAME ADDRESS CITY STATE ZIP CODE

10. Name Change FROM:
TO:

11. General Partner Cessation/Dissociation
NAME:

DISSOLUTION (Item 12 may be checked if the limited partnership is governed by the Uniform Limited Partnership Act of 2008 and has dissolved.)

12. THE LIMITED PARTNERSHIP IS DISSOLVED.

AUTHORIZED PERSON (Enter the name and address of the person authorized to wind up the affairs of the limited partnership, and if the dissolved limited partnership is governed by the Uniform Limited Partnership Act of 2008, check the box in Item 14 to indicate there are no general partners.)

13. NAME ADDRESS CITY STATE ZIP CODE

14. THE LIMITED PARTNERSHIP DOES NOT HAVE A GENERAL PARTNER.

EXECUTION (This certificate must be signed by all of the general partners unless otherwise provided by law. If additional signature space is necessary, the signatures may be made on an attachment to this certificate.)

15. I DECLARE I AM THE PERSON WHO EXECUTED THIS INSTRUMENT, WHICH EXECUTION IS MY ACT AND DEED.

DATE

SIGNATURE OF GENERAL PARTNER

TYPE OR PRINT NAME OF GENERAL PARTNER

SIGNATURE OF GENERAL PARTNER

TYPE OR PRINT NAME OF GENERAL PARTNER

INSTRUCTIONS FOR COMPLETING THE AMENDMENT TO CERTIFICATE OF LIMITED PARTNERSHIP (FORM LP-2)

For easier completion, this form is available on the Secretary of State's website at <http://www.sos.ca.gov/business/> and can be viewed, filled in and printed from your computer. The completed form along with the applicable fees can be mailed to Secretary of State, Document Filing Support Unit, P.O. Box 944225, Sacramento, CA 94244-2250 or delivered in person to the Sacramento office, 1500 11th Street, 3rd Floor, Sacramento, CA 95814. If you are not completing this form online, please type or legibly print in black or blue ink. This form is filed only in the Sacramento office.

LEGAL AUTHORITY: Statutory filing requirements are found in California Corporations Code section 15622 or 15902.02. All statutory references are to the California Corporations Code, unless otherwise stated. **Note:** For limited partnerships subject to the Uniform Limited Partnership Act of 2008 (Act of 2008), signing Form LP-2 constitutes an affirmation under penalty of perjury that the facts stated in the certificate are true. (Section 15902.08(b).)

ACT OF 2008: A domestic (California) limited partnership is subject to the Act of 2008 (1) if it was formed on or after January 1, 2008; or (2) if it was formed prior to January 1, 2008, and has elected to be governed by the Act of 2008. Effective January 1, 2010, all California limited partnerships will be subject to the Act of 2008 commencing with Section 15900.

FEES: The fee for filing Form LP-2 is \$30.00. There is an additional \$15.00 special handling fee for processing a document delivered in person to the Sacramento office. The special handling fee must be remitted separately for each submittal and will be retained whether the document is filed or rejected. The preclearance and/or expedited filing of a document *within a guaranteed time frame* can be requested for an additional fee (in lieu of the special handling fee). Please refer to the Secretary of State's website at <http://www.sos.ca.gov/business/precexp.htm> for detailed information regarding preclearance and expedited filing services. The special handling fee or preclearance and expedited filing services are not applicable to documents submitted by mail. Check(s) should be made payable to the Secretary of State.

COPIES: The Secretary of State will certify two copies of the filed document(s) without charge, provided that the copies are submitted to the Secretary of State with the document(s) to be filed. Any additional copies submitted will be certified upon request and payment of the \$8.00 per copy certification fee.

Complete the Amendment to Certificate of Limited Partnership (Form LP-2) as follows:

- Item 1.** Enter the file number issued to the limited partnership by the California Secretary of State.
- Item 2.** Enter the name of the limited partnership exactly as it is of record with the California Secretary of State.
- Item 3.** Check the box if the limited partnership was formed prior to January 1, 2008 and has elected to be governed by the Act of 2008.
- Items 4 - 14.** Complete ONLY the items to be amended or added by this filing. Attach additional pages, if necessary. Any other matters to be included (e.g., to the extent permitted by law, an amendment to the number of general partners' signatures required to file a particular document with the California Secretary of State) may be made on an attachment to Form LP-2, provided that the information is not inconsistent with law. Any attachments are incorporated by reference and made part of Form LP-2.
 - Item 4.** Enter the name of the limited partnership, as amended. The name must end with the words "Limited Partnership," or the abbreviation "L.P." and may not contain the words "bank," "insurance," "trust," "trustee," "incorporated," "inc.," "corporation," or "corp." Note: If the limited partnership is subject to the Act of 2008, the name may also end with the abbreviation "LP". (Section 15612 or 15901.08.)
 - Item 5.** Enter the principal executive office address, or if the limited partnership is subject to the Act of 2008, enter the designated office address **in California**. The "designated office" may, but need not, be the place of the limited partnership's activity in California. (Sections 15621, 15902.01, 15901.02(e) and 15901.14.) Please do not abbreviate the name of the city.
 - Items 6 & 7.** If designating an individual as the agent for service of process, complete Items 6 and 7. If designating a corporation as the agent for service of process, complete only Item 6 and proceed to Item 8 (do not complete Item 7). If a corporation is designated as agent, that corporation must have previously filed with the California Secretary of State a certificate pursuant to Corporations Code section 1505. The agent should agree to accept service of process on behalf of the limited partnership prior to designation. Note: **A limited partnership cannot act as its own agent** and no domestic or foreign corporation may file pursuant to Section 1505 unless the corporation is currently authorized to engage in business in California and is in good standing on the records of the California Secretary of State.

- Item 8.** Enter the name and address of each new general partner. Please do not abbreviate the name of the city. If there is more than one new general partner, attach additional pages. Note: If a general partner is a trust, both the name of the trust (including the date of the trust, if applicable) and the trustee should be listed. Example: Mary Todd, trustee of the Lincoln Family Trust U/T/A 5-1-94.
- Item 9.** Enter the name and address of each general partner whose address has changed. Please do not abbreviate the name of the city. If more than one general partner has changed their address, attach additional pages.
- Item 10.** Enter the previous and current name of each general partner whose name has changed. If more than one general partner has changed their name, attach additional pages.
- Item 11.** Enter the name of each general partner that has dissociated. If more than one general partner has dissociated, attach additional pages.
- Item 12.** This box may be checked if the limited partnership is subject to the Act of 2008 and has dissolved. If the limited partnership was formed before January 1, 2008 and has not elected to be governed by the Act of 2008, the limited partnership must instead file a Certificate of Dissolution (Form LP-3) pursuant to Section 15623. Note: To cancel the limited partnership, the limited partnership must also file a Certificate of Cancellation (Form LP-4/7). Form LP-3 and Form LP-4/7 are available on the Secretary of State's website at <http://www.sos.ca.gov/business/>.
- Items 13 & 14.** Enter the name and address of the person(s) authorized to wind up the affairs of the limited partnership, and if the dissolved limited partnership is governed by the Act of 2008, check the box in Item 14 to indicate there are no remaining general partners. (Section 15908.03.)

Item 15. Form LP-2 must be signed by all general partners or a lesser number as provided in the Certificate of Limited Partnership, or if the limited partnership is subject to the Act of 2008, by at least one general partner. (Section 15624 or 15902.04.)

- Form LP-2 must be signed by each general partner designated in Item 8 as a new partner. (Section 15624 or 15902.04.)
- If the limited partnership is subject to the Act of 2008, any general partner whose name has been withdrawn (Item 11) must sign Form LP-2 unless that person has filed a Certificate of Dissociation (Form LP-101) with the California Secretary of State. (Section 15902.04.) Form LP-101 is available on the Secretary of State's website at http://www.sos.ca.gov/business/bpd_forms.htm.
- If the limited partnership is dissolved and a person other than a general partner has been appointed to wind up the affairs of the limited partnership (Item 13), Form LP-2 must be signed by that person. (Section 15624 or 15902.04.)
- If Form LP-2 is filed by any person other than the general partner(s), the signature must be followed by the words "signature pursuant to Section _____" identifying the appropriate statutory authority. (Section 15625(c) or 15902.05.)
- If Form LP-2 is signed by an attorney-in-fact, the signature should be followed by the words "Attorney-in-fact for (name of the partner)." (Section 15624 or 15902.04.)
- If an association is designated as a general partner, the person who signs for the association should state the **exact** name of the association, his/her name and position/title.
- If a trust is designated as a general partner, Form LP-2 should be signed by a trustee as follows: _____ trustee for _____ trust (including the date of the trust, if applicable). Example: Mary Todd, trustee of the Lincoln Family Trust (U/T/A 5-1-94).

Any attachments to Form LP-2 are incorporated by reference and made part of Form LP-2. All attachments should be 8 ½" x 11", one-sided and legible.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX Q Letter to Copyright Office

APPENDIX Q
Letter to Copyright Office

__[Date]__

Library of Congress

Copyright Office

Documents Recordation Section, LM-462

101 Independence Avenue, S.E.

Washington, D.C. 20559-6000

Re: __[Name of trust]__

__[Copyright number]__

Dear Sir/Madam:

This firm represents __[name]__, who has created the __[name of trust]__ for __[his/her]__ benefit.

Among the assets to be transferred to the trust is the above-numbered copyright for __[describe artistic or literary work]__.
Enclosed is an assignment of the copyright, which has been executed by __[name]__.

Please microfilm the assignment and return the original to this office in the self-addressed, stamped envelope.

Please acknowledge receipt of the enclosed assignment by stamping and dating the enclosed copy of this letter. Thank you.

See step 37, above.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX R Document Cover Sheet, United States Copyright Office

APPENDIX R
Document Cover Sheet, United States Copyright Office





Document Cover Sheet

UNITED STATES COPYRIGHT OFFICE

Copyright Office fees are subject to change. For current fees check the Copyright Office website at www.copyright.gov, write to the Copyright Office, or call (202) 707-3000.

For Recordation of Documents

Volume _____ Document _____

Volume _____ Document _____

Date of recordation M _____ D _____ Y _____
(ASSIGNED BY THE COPYRIGHT OFFICE)

Funds received _____

DO NOT WRITE ABOVE THIS LINE - SEE INSTRUCTIONS ON REVERSE

To the Register of Copyrights: Please record the accompanying original document or properly certified copy thereof.

1 First party name given in the document _____
(IMPORTANT: Please read instruction for this and other spaces.)

2 First title given in the document _____

3 Total number of titles in the document _____

4 Amount of fee calculated _____

5 Fee enclosed Check Money order
 Fee authorized to be charged to Copyright Office deposit account

Deposit account number _____

Deposit account name _____

6 Completeness of document Document is complete by its own terms Document is not complete. Record "as is."

IMPORTANT NOTE: A request to record a document "as is" under 37 CFR §201.4(c)(2) is an assertion that: (a) the attachment is completely unavailable for recordation; (b) the attachment is not essential to the identification of the subject matter of the document; and (c) it would be impossible or wholly impracticable to have the parties to the document sign or initial a deletion of the reference to the attachment.

7 Certification of Photocopied Document Complete this certification if a photocopy of the original signed document is substituted for a document bearing the actual original signature.

NOTE: This space may not be used for documents that require an official certification.

I declare under penalty of perjury that the accompanying document is a true and correct copy of the original document.

Signature _____ Date _____

Duly authorized agent of _____

8 Return to: Name _____

Number/street _____ Apt/suite _____

City _____ State _____ Zip _____

Phone number _____ Fax number _____

Email _____

SEND TO: Library of Congress, Copyright Office, Documents Recordation Section, 101 Independence Avenue SE, Washington, DC 20559-6000

INCLUDE ALL THESE TOGETHER: (1) Two copies of this form; (2) payment from a deposit account or by check/money order payable to Register of Copyrights; and (3) your document.

Document Cover Sheet • Basic Information

Read all of the instructions below before completing this form. Use of the Document Cover Sheet is optional but encouraged.

When to use this form Use the Document Cover Sheet when you are submitting a document for recordation in the U.S. Copyright Office.

Mailing requirements It is important to send the original cover sheet and one copy of the cover sheet for each document that is being submitted for recordation. The two copies of the Document Cover Sheet, the document, and the fee must be sent together in the same envelope or package. The Copyright Office cannot process them unless they are received together. Send to: *Library of Congress, Copyright Office, Documents Recordation Section, 101 Independence Avenue SE, Washington, DC 20559-6000*

Cover sheets should be typed or printed and should contain the information requested so that the Copyright Office can process the document and return it. Be sure to complete space 8 so that the recorded document can be returned. The Copyright Office will process the document based on the information in the document or an attachment that is part of the document. Information for indexing will not be taken from the Document Cover Sheet or attachments that were *not* part of the document when it was executed (signed). To be recorded, the document must satisfy the recordation requirements of the copyright law and Copyright Office regulations.

The person submitting a document with a cover sheet is solely responsible for verifying the correctness of the cover sheet and the sufficiency of the document. Recording a document submitted with or without a cover sheet does not constitute a determination by the Copyright Office of the document's validity or effect. Only a court may make such a determination.

When a Document Cover Sheet is submitted, it will be imaged with the document as part of the public record.

PRIVACY ACT ADVISORY STATEMENT (*Required by the Privacy Act of 1974 (P.L. 93-579)*): The authority for requesting this information is title 17 USC, sec. 205. Furnishing the requested information is voluntary. But if the information is not provided, it may be necessary to delay recordation.

The principal uses of the requested information are the establishment and maintenance of a public record and the evaluation for compliance with the recordation requirements of section 205 of the copyright code. Other routine uses include public inspection and copying, preparation of public indexes, preparation of public catalogs of copyright recordations, and preparation of search reports upon request.

NOTE: No other advisory statement will be given in connection with this application. Please keep this statement and refer to it if we communicate with you regarding this cover sheet.

Space-by-Space Instructions

Space 1: First party given in the document This information is only used to connect the Document Cover Sheet and the document if they become separated. No information is entered in the catalog record from this space.

Space 2: First title given in the document This information is only used to connect the Document Cover Sheet and the document if they become separated. No information is entered in the catalog record from this space.

Space 3: Total number of titles in the document The total number of titles (including a.k.a. and other variant titles of a work) determines the recordation fee. In the case of multiple title documents, titles that are repeated in documents are counted as a single title, except where the document lists different issues, volumes, episode numbers, etc. following each title. Each such entry is regarded as a separate title and will be indexed separately and counted separately when computing the fee for recording the document. The Copyright Office verifies title counts.

Space 4: Amount of fee calculated There is a basic fee for recording a document containing one title. There is an additional charge for each group of up to 10 additional titles. "Alternative" titles, "formerly-known-as" titles, and "also-known-as" titles are considered to be extra titles. Titles are counted by groups. If there are fewer than 10 titles in a group, the fee for a group still applies. Copyright Office fees are subject to change. For current fees, check the Copyright Office website at www.copyright.gov, write the Copyright Office, or call (202) 707-3000. Please remember that the fee is based on the number of titles in a document, not the number of works.

Space 5: Fee enclosed Check the appropriate box. If a Copyright Office deposit account is to be charged, give the Copyright Office

deposit account number and name. The Office only accepts domestic money orders and checks payable through a U.S. bank with American Bankers Association routing numbers. International and postal money orders are not accepted.

Space 6: Completeness of document Check the appropriate box. Please read the "Important note" if checking "Record 'as is.'" All documents recorded under §205 of the Copyright Act must be complete by their own terms to be recorded. Notices of termination recorded under §203, §304(c), and §304(d) must be complete and exact duplicates of the notices as served. Please refer to Copyright Office regulations in Chapter 37 CFR §201.4 and §201.10 and Circular 12, *Recordation of Transfers and Other Documents*, for more information.

Space 7: Certification of photocopied documents Complete this section only if submitting a photocopied document in lieu of a document bearing the actual original signature. If a photocopy of the original signed document is submitted, it must be accompanied by a sworn certification. A sworn certification signed by at least one of the parties to the document or that party's authorized representative (who is identified as such at space 7) will satisfy that requirement. The date entered in the date field should be the date you sign the Document Cover Sheet. Copies of documents on file in a federal, state, or local government office must be accompanied by an original official certification.

Space 8: Return to Give the name and address of the person to whom the recorded document should be returned. The Copyright Office does not maintain paper files of recorded documents. The documents are imaged and returned to the person or firm designated in this space. Please include telephone number, fax number, and email address in case we need to contact you.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX S Request to Reissue United States Savings Bonds to a Personal Trust

APPENDIX S

Request to Reissue United States Savings Bonds to a Personal Trust



For official use only:

Customer Name

Customer No.

PDF 1851 E
Department of the Treasury
Bureau of the Public Debt
(Revised March 2008)

OMB No. 1535-0009

REQUEST TO REISSUE UNITED STATES SAVINGS BONDS TO A PERSONAL TRUST

Visit us on the Web at www.treasurydirect.gov

IMPORTANT: Follow instructions in filling out this form. You should be aware that the making of any false, fictitious, or fraudulent claim or statement to the United States is a crime that is punishable by fine and/or imprisonment.

PRINT IN INK OR TYPE ALL INFORMATION

1. DESCRIPTION OF BONDS

I/We request reissue of the bonds described below, in the amount of \$ _____ (face amount).

ISSUE DATE	FACE AMOUNT	BOND NUMBER	REGISTRATION (Provide complete Social Security number [for example, 123-45-6789] and names, including middle names or initials, on the bonds)

(If more space is needed, use a continuation sheet and attach it to this form.)

2. TRUST INFORMATION

- Taxpayer identification number assigned to the trust: _____
- Grantor's name: * _____
- Trustee's name: * _____
- Date the trust was created: _____
- Name(s) of Beneficiary(ies), if an FBO trust: _____

* If more than one grantor or trustee, list all.

3. NEW BOND INSCRIPTION

TAXPAYER IDENTIFYING NUMBER: _____ OR _____
(Social Security Number assigned to trust) (Employer Identification Number assigned to trust)

REGISTRATION:

ADDRESS:

(Number and Street, Rural Route, or PO Box) (City) (State) (ZIP Code)

Delivery Instructions (if different from that shown above):

(Name of Individual or Institution)

(Number and Street, Rural Route, or PO Box) (City) (State) (ZIP Code)

4. TAX LIABILITY NOTICE (Carefully read before completing Item 5.)

Upon the reissuance of savings bonds and/or notes to a trust, you must include in your gross income any accumulated interest on the bonds, including any tax-deferred increment noted on Series HH/H bonds, if you have not already reported it, unless, under the grantor trust provisions of the Internal Revenue Code, you are treated as the owner of the portion of the trust represented by any tax-deferred accumulated interest on the reissued bonds. If you are treated as the owner of that portion, the accumulated interest continues to be your income rather than that of the trust, and therefore, you may continue to defer reporting the interest earned each year. You must include the total accumulated interest in your gross income when the bonds are disposed of or finally mature, whichever is earlier. These rules apply when bonds being reissued are Series I bonds, Series EE or E bonds, or Series HH or H bonds that you have received in exchange for Series EE or E bonds or savings notes if you are the owner of the portion of the trust represented by the tax-deferred accumulated interest.

Generally, you will be treated as the owner of a trust that you have created to the extent that you retain certain powers over or interests in the trust. For example, you will be treated as the owner of the portion of the trust represented by any tax-deferred accumulated interest on the reissued bonds under the following circumstances:

- (1) You will be treated as the owner of a trust to the extent that you have an unconditional power to revest in yourself title to the trust assets. Thus, if you can, at your discretion, revoke all or part of the trust so that the bonds will be returned to you, you will be treated as the owner of the portion of the trust represented by any accumulated interest on the bonds.
- (2) If the trust instrument provides that the reissued bonds or the proceeds from the redemption or disposition of those bonds must be distributed to you or your spouse, or held or accumulated for future distribution to you or your spouse, you will be treated as the owner of the portion of the trust represented by any accumulated interest on the bonds. You will be treated as the owner in this circumstance irrespective of the terms of the trust.
- (3) You will be treated as the owner of a trust to the extent that you retain a power to control the beneficial enjoyment of property transferred to a trust. Thus, if you retain, under the terms of the trust instrument, an immediately exercisable power to determine, in your sole discretion, who will receive the bonds or the proceeds from the redemption or disposition of the bonds, then you will be treated as the owner of the portion of the trust represented by any accumulated interest.

The examples outlined above are illustrative only and they are not intended to cover all possible situations in which you could be treated as the owner of a trust or a portion of a trust. Furthermore, events can occur, such as the renunciation of a retained power or interest, which would cause you to cease being treated as the owner of a trust. If you are not sure whether you will be treated as the owner of a trust, you may request a letter ruling from the Internal Revenue Service. A request for a letter ruling should be sent to: **Internal Revenue Service, ATTN: CC: DOM: CORP: T, PO Box 7604, Ben Franklin Station, Washington, DC 20044.**

If you have any questions concerning the information to be submitted in connection with a letter ruling request, you may call (202) 622-7560.

5. TAX LIABILITY STATEMENT (This section must be completed.)

You must check box a. or b. (See "TAX LIABILITY NOTICE" above.)

"Interest" includes tax-deferred interest represented by tax legends on HH/H bonds as well as interest earned on EE/E or I bonds from the issue date until the date of reissue.

This statement will also apply to all future transactions requested by the same owner(s) or person(s) entitled to the same trust.

You must mark box a. or b. to indicate if you are the owner of the portion of the trust represented.

For Federal income tax purposes:

- a. I certify that I will be treated as owner of the portion of the trust represented by the tax-deferred accumulated interest on the bonds being reissued. *If this box is marked, the interest will be tax-deferred (interest will not be reported to the Internal Revenue Service as a result of the reissue).*
- b. I certify that I will not be treated as owner of the portion of the trust represented by the tax-deferred accumulated interest on the bonds being reissued. *If this box is marked, interest will be reported to the Internal Revenue Service for the taxable year in which the bonds were reissued to the trust. A 1099-INT will be generated for the social security number specified.*

If b. is checked and the bonds are in coownership form (e.g., "John Smith OR Jane Smith"), complete the following:

(Name of principal coowner)

(Social Security Number)

is the principal coowner of any bonds registered in coownership form submitted. He/She is responsible for any tax liability resulting from the reissue transaction requested. (A principal coowner is a coowner who (1) purchased the bonds with his/her own funds or (2) received them as a gift, inheritance or legacy, or as a result of judicial proceedings, and has them reissued in coownership form, provided he/she has received no contribution in money or money's worth for designating the other person as coowner on the bonds.)

The interest will be reported to the Internal Revenue Service, and a 1099-INT will be generated for the social security number specified above.

6. SIGNATURES

Under penalty of perjury, I, the undersigned grantor (creator) of the trust, certify that the above taxpayer identification number assigned to the trust is correct. If Series HH/H bonds are involved, I certify that I am not subject to backup withholding either (i) because I have not been notified that I am subject to backup withholding (as a result of a failure to report all interest or dividends), or (ii) because I have been notified by the Internal Revenue Service that I am no longer subject to backup withholding. I further certify that the trust estate is not subject to backup withholding for one of the preceding reasons. If the trust was created by some person other than the owner or coowners, the trustee must furnish an IRS Form W-9. (See "ADDITIONAL REQUIREMENTS FOR REISSUE OF SERIES HH/H BONDS" in the instructions.)

You must wait until you are in the presence of a certifying officer to sign this form.

Sign Here: => _____ (Signature of Owner or Principal Coowner) _____ (Print Name)

Home Address: _____ (Number and Street or Rural Route) _____ (Social Security Number)
_____ (City) (State) (ZIP Code) _____ (Daytime Telephone Number)

Sign Here: => _____ (Signature of Coowner or Beneficiary) _____ (Print Name)

Home Address: _____ (Number and Street or Rural Route) _____ (Social Security Number)
_____ (City) (State) (ZIP Code) _____ (Daytime Telephone Number)

Certifying Officer - You must complete the certification and affix your stamp or seal.

I CERTIFY that _____, whose identity is known or was proven to me, personally appeared before me this _____ day of _____, (Month) (Year), at _____ (City) (State), and signed this form.

(OFFICIAL STAMP OR SEAL)

(Signature and title of certifying officer)

(Street address)

(City) (State) (ZIP Code)

I CERTIFY that _____, whose identity is known or was proven to me, personally appeared before me this _____ day of _____, (Month) (Year), at _____ (City) (State), and signed this form.

(OFFICIAL STAMP OR SEAL)

(Signature and title of certifying officer)

(Street address)

(City) (State) (ZIP Code)

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

The collection of the information you are requested to provide on this form is authorized by 31 U.S.C. CH. 31 relating to the public debt of the United States. The furnishing of a social security number, if requested, is also required by Section 6109 of the Internal Revenue Code (26 U.S.C. 6109). The purpose of requesting the information is to enable the Bureau of the Public Debt and its agents to issue securities, process transactions, make payments, identify owners and their accounts, and provide reports to the Internal Revenue Service. Information concerning securities holdings and transactions is considered confidential under Treasury regulations (31 CFR, Part 323) and the Privacy Act. We estimate it will take you about 15 minutes to complete this form. However, you are not required to provide information requested unless a valid OMB control number is displayed on the form. Any comments or suggestions regarding this form should be sent to the Bureau of the Public Debt, Forms Management Officer, Parkersburg, WV 26106-1328. DO NOT SEND completed form to the above address; send to correct address shown in "WHERE TO SEND" in the instructions.

INSTRUCTIONS

USE OF FORM – Complete this form to reissue United States Savings Bonds to a personal trust created by:

- a. The owner, both coowners, or either coowner.
- b. Some other person, provided a person named in a. is a beneficiary of the trust.
- c. For Series EE/E bonds or Series HH/H bonds, some other person, provided a beneficiary of the trust is related to a person named in a. by blood (including legal adoption) or marriage.

"Personal trust" as used in this form is a trust established by natural persons in their own right for the benefit of themselves or other natural persons in whole or in part, and common trust funds comprised in whole or in part of such estates. A bank, trust company, or other financial institution, appointed as trustee of a personal trust, should submit PD F 1455 with this form if the bonds are to be reissued in its name as trustee of its common trust fund.

This form should not be completed by a person under any legal disability, except for a minor of sufficient competency to sign the request and to understand the nature of the transaction.

COMPLETION OF FORM – Print clearly in ink or type all information requested. *If more space is needed for any item, use a plain sheet of paper and attach it to this form.*

ITEM 1. DESCRIPTION OF BONDS – Fill in the total face amount of the bonds for which reissue is being requested. Fully describe the bonds in their present form of registration.

ITEM 2. TRUST INFORMATION – Provide the taxpayer identification number assigned to the trust, the name of the grantor, the name of the trustee, the date the trust was created, and the name of any beneficiary of the trust (if the trust is an FBO trust). If more than one grantor or trustee, list all. This information will be used to ensure that the new bond inscription contains all appropriate information required by the governing regulations.

ITEM 3. NEW BOND INSCRIPTION

- ✓ Provide the Social Security Number or Employer Identification Number assigned to the trust.
- ✓ Show the name of the trustee, the name of the grantor, and the date the trust was created. If more than one trustee or grantor, list all. Show the name of any beneficiary(ies) of the trust (if the trust is an FBO trust). (Sample Registrations: "Tenth National Bank, trustee under agreement with Paul E. White, dated 2/1/02"; "Carl A. Black and Henry B. Green, trustees under agreement with Paul E. White, dated 2/1/02"; or "Paul E. White, trustee under declaration of trust dated 2/1/02 FBO Henry B. Green.")
- ✓ Show the mailing address for the trust. The bonds will be delivered to this address unless you provide different mailing instructions under "Delivery Instructions."
- ✓ Insert delivery instructions, if you don't want the bonds mailed to the address shown for the trust. Provide the name and address of the person or institution you want to receive them.

ITEM 4. TAX LIABILITY NOTICE – Carefully read this section before completing Item 5.

ITEM 5. TAX LIABILITY STATEMENT – After reading the TAX LIABILITY NOTICE in Item 4, you must mark box a. or b. in Item 5. Mark box a. if you will be treated as the owner of the portion of the trust represented by the tax-deferred accumulated interest on the bonds being reissued. Mark box b. if you will NOT be treated as owner of the portion of the trust represented by the tax-deferred accumulated interest on the bonds being reissued. "Interest" includes tax-deferred interest represented by tax legends on HH/H bonds, as well as interest earned on EE/E or I bonds from the issue date until the date of reissue.

ITEM 6. SIGNATURES – The completed form must be signed by the owner or both coowners. If the securities are Series E or H bonds, any beneficiary (POD) named on the securities must also sign the form. **If any person whose signature is required is deceased, submit proof of his/her death, in the form of a certified copy of the death certificate.**

Each person whose signature is required must sign the form in ink, print his/her name, and provide his/her home address, social security number, and daytime telephone number. Each signature must be certified (see **CERTIFICATION** below).

CERTIFICATION – Each person whose signature is required must appear before and establish identification to the satisfaction of an authorized certifying officer. The signatures to the form must be signed in the officer's presence. The certifying officer must affix the seal or stamp, which is used when certifying requests for payment. Authorized certifying officers are available at financial institutions, including credit unions, in the United States. For a list of such officers, see Department of the Treasury Circulars, No 530, and Public Debt Series, Nos. 3-80 and 2-98.

ADDITIONAL REQUIREMENTS FOR REISSUE OF SERIES HH/H BONDS:

- If a grantor (creator) of the trust who signs this form has been notified by the Internal Revenue Service (IRS) that he or she is subject to backup withholding or if the IRS has notified appropriate persons that the trust estate is subject to backup withholding, the applicable statements immediately above the signature line to the effect that the owner, principal coowner, or trust is not subject to backup withholding should be crossed out. If the trust was created by some person other than the owner or coowners, the trustee must complete an IRS Form W-9 and submit it with this request for reissue. Forms W-9 are available at financial institutions in the United States and Internal Revenue Offices. These forms can also be found on the IRS website at the address www.irs.gov.
- The furnishing of Direct Deposit information is a condition of reissue of Series HH bonds bearing issue dates of October 1989 and thereafter. A Direct Deposit form, PD F 5396 or SF 1199A, must be completed for Series HH bonds dated October 1989 and thereafter which are submitted for reissue. The Direct Deposit form must be completed by a trustee providing the appropriate information for direct deposit of the semiannual interest payments. Forms SF 1199A are available at financial institutions in the United States. PD F 5396 is available for download on the Internet using the "forms" link at the address www.treasurydirect.gov. The financial institution designated to receive the payment can assist in the completion of the Direct Deposit form.

ADDITIONAL EVIDENCE – We reserve the right in any particular case to require the submission of additional evidence.

WHERE TO SEND – Send the PD F 1851 and the bonds, as well as any other appropriate forms and evidence, to the Department of the Treasury, Bureau of the Public Debt, PO Box 7012, Parkersburg, WV 26106-7012.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX U Consent to Assignment of Partnership Interest

APPENDIX U

Consent to Assignment of Partnership Interest

CONSENT TO ASSIGNMENT OF PARTNERSHIP INTEREST

The undersigned general partner of the partnership waives the provision of sections __[number]__ through __[number]__ of the partnership agreement, __[declines on behalf of the partnership and __[himself/herself]__ to acquire the assignors' interest in the partnership,]__ consents to the foregoing, and approves the admission of the __[name of trust]__ to the partnership as a substituted __[limited]__ partner, subject to all terms and conditions of the partnership agreement.

Executed at __[name of city]__, California, on __[date]__.

__[Signature of partner]__

__[Typed name]__
General Partner

See step 38, above.

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX W Recordation Form Cover Sheet Patents Only (Department of Commerce Form PTO-1595)

APPENDIX W

Recordation Form Cover Sheet—Patents Only (Department of Commerce Form PTO-1595)



**RECORDATION FORM COVER SHEET
 PATENTS ONLY**

To the Director of the U.S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies) Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input type="checkbox"/> No	2. Name and address of receiving party(ies) Name: _____ Internal Address: _____ Street Address: _____ City: _____ State: _____ Country: _____ Zip: _____ Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input type="checkbox"/> No
3. Nature of conveyance/Execution Date(s): Execution Date(s) _____ <input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Joint Research Agreement <input type="checkbox"/> Government Interest Assignment <input type="checkbox"/> Executive Order 9424, Confirmatory License <input type="checkbox"/> Other _____	4. Application or patent number(s): <input type="checkbox"/> This document is being filed together with a new application. A. Patent Application No.(s) _____ B. Patent No.(s) _____ Additional numbers attached? <input type="checkbox"/> Yes <input type="checkbox"/> No
5. Name and address to whom correspondence concerning document should be mailed: Name: _____ Internal Address: _____ Street Address: _____ City: _____ State: _____ Zip: _____ Phone Number: _____ Fax Number: _____ Email Address: _____	6. Total number of applications and patents involved: _____ 7. Total fee (37 CFR 1.21(h) & 3.41) \$ _____ <input type="checkbox"/> Authorized to be charged to deposit account <input type="checkbox"/> Enclosed <input type="checkbox"/> None required (government interest not affecting title)
8. Payment Information Deposit Account Number _____ Authorized User Name _____	
9. Signature: _____ <div style="display: flex; justify-content: space-between; width: 100%;"> Signature Date </div> _____ <div style="display: flex; justify-content: space-between; width: 100%;"> Name of Person Signing Total number of pages including cover sheet, attachments, and documents: <input style="width: 50px;" type="text"/> </div>	

Guidelines for Completing Patents Cover Sheets (PTO-1595)

Cover Sheet information must be submitted with each document to be recorded. If the document to be recorded concerns both patents and trademarks separate patent and trademark cover sheets, including any attached pages for continuing information, must accompany the document. All pages of the cover sheet should be numbered consecutively, for example, if both a patent and trademark cover sheet is used, and information is continued on one additional page for both patents and trademarks, the pages of the cover sheet would be numbered from 1 to 4.

Item 1. Name of Conveying Party(ies).

Enter the full name of the party(ies) conveying the interest. If there is insufficient space, enter a check mark in the "Yes" box to indicate that additional information is attached. The name of the additional conveying party(ies) should be placed on an attached page clearly identified as a continuation of the information Item 1. Enter a check mark in the "No" box, if no information is contained on an attached page. If the document to be recorded is a joint research agreement, enter the name(s) of the party(ies) other than the owner of the patent or patent application as the conveying party(ies).

Item 2. Name and Address of Receiving Party(ies).

Enter the name and full address of the first party receiving the interest. If there is more than one party receiving the interest, enter a check mark in the "Yes" box to indicate that additional information is attached. Enter a check mark in the "No" box, if no information is contained on an attached page. If the document to be recorded is a joint research agreement, enter the name(s) of the patent or patent application owner(s) as the receiving party.

Item 3. Nature of Conveyance/Execution Date(s).

Enter the execution date(s) of the document. It is preferable to use the name of the month, or an abbreviation of that name, in order that confusion over dates is minimized. Place a check mark in the appropriate box describing the nature of the conveying document. If the "Other" box is checked, specify the nature of the conveyance.

Item 4. Application Number(s) or Patent Number(s).

Indicate the application number(s), and/or patent number(s) against which the document is to be recorded. National application numbers must include both the series code and a six-digit number (e.g., 07/123,456), and international application numbers must be complete (e.g., PCT/US91/12345).

Enter a check mark in the appropriate box: "Yes" or "No" if additional numbers appear on attached pages. Be sure to identify numbers included on attached pages as the continuation of Item 4. Also enter a check mark if this Assignment is being filed with a new application.

Item 5. Name and Address of Party to whom correspondence concerning the document should be mailed.

Enter the name and full address of the party to whom correspondence is to be mailed.

Item 6. Total Applications and Patents Involved.

Enter the total number of applications and patents identified for recordation. Be sure to include all applications and patents identified on the cover sheet and on additional pages.

Block 7. Total Fee Enclosed.

Enter the total fee enclosed or authorized to be charged. A fee is required for each application and patent against which the document is recorded.

Item 8. Payment Information.

Enter the deposit account number and authorized user name to authorize charges.

Item 9. Signature.

Enter the name of the person submitting the document. The submitter must sign and date the cover sheet. Enter the total number of pages including the cover sheet, attachments, and document.

This collection of information is required by 35 USC 261 and 262 and 15 USC 1057 and 1060. The information is used by the public to submit (and by the USPTO to process) patent and trademark assignment requests. After the USPTO records the information, the records for patent and trademarks, assignments, and other associated documents can be inspected by the public. To view documents recorded under secrecy orders or documents recorded due to the interest of the federal government, a written authorization must be submitted. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the form to the USPTO. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Manager of the Assignment Division, USPTO, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX Y Recordation Form Cover Sheet Trademarks Only (Department of Commerce Form PTO-1594)

APPENDIX Y

Recordation Form Cover Sheet—Trademarks Only (Department of Commerce Form PTO-1594)



RECORDATION FORM COVER SHEET TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies):

- Individual(s) Association
 General Partnership Limited Partnership
 Corporation- State: _____
 Other _____

Citizenship (see guidelines) _____

Additional names of conveying parties attached? Yes No

3. Nature of conveyance)/Execution Date(s) :

Execution Date(s) _____

- Assignment Merger
 Security Agreement Change of Name
 Other _____

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: _____

Internal Address: _____

Street Address: _____

City: _____

State: _____

Country: _____ Zip: _____

Association Citizenship _____

General Partnership Citizenship _____

Limited Partnership Citizenship _____

Corporation Citizenship _____

Other _____ Citizenship _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

5. Name & address of party to whom correspondence concerning document should be mailed:

Name: _____

Internal Address: _____

Street Address: _____

City: _____

State: _____ Zip: _____

Phone Number: _____

Fax Number: _____

Email Address: _____

6. Total number of applications and registrations involved:

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$

- Authorized to be charged to deposit account
 Enclosed

8. Payment Information:

Deposit Account Number _____

Authorized User Name _____

9. Signature:

_____ Signature

_____ Date

Name of Person Signing

Total number of pages including cover sheet, attachments, and document:

Guidelines for Completing Trademarks Cover Sheets (PTO-1594)

Cover Sheet information must be submitted with each document to be recorded. If the document to be recorded concerns both patents and trademarks, separate patent and trademark cover sheets, including any attached pages for continuing information, must accompany the document. All pages of the cover sheet should be numbered consecutively for example, if both a patent and trademark cover sheet is used, and information is continued on one additional page for both patents and trademarks, the pages of the cover sheet would be numbered from 1 to 4.

Item 1. Name of Conveying Party(ies).

Enter the full name of the party(ies) conveying the interest. If there is more than one conveying party, enter a check mark in the "Yes" box to indicate that additional information is attached. The name of the second and any subsequent conveying party(ies) should be placed on an attached page clearly identified as a continuation of the information in Item 1. Enter a check mark in the "No" box, if no information is contained on an attached page.

Item 2. Name and Address of Receiving Party(ies).

Enter the name and full address of the first party receiving the interest. If there is more than one party receiving the interest, enter a check mark in the "Yes" box to indicate that additional information is attached. If the receiving party is an individual, check the "other" box, place the word "individual" in the following line, and enter the citizenship of the receiving individual. If the receiving party is a legal entity, designate the legal entity of the receiving party by checking the appropriate box. If the receiving party has more than one citizenship, then the citizenship of **each** partner should be specified on an additional sheet, and "See additional sheet" should be written on the line for citizenship. A corporation must set forth the state, if applicable, or country of incorporation. An association must set forth the state, if applicable, or country under which they are organized. If the receiving party is not domiciled in the United States, a designation of domestic representative is encouraged. Place a check mark in the appropriate box to indicate whether or not a designation of domestic representative is attached. Enter a check mark in the "No" box if no information is contained on an attached page.

Item 3. Nature of Conveyance/Execution Date(s).

Enter the execution date(s) of the document. It is preferable to use the name of the month, or an abbreviation of that name, to minimize confusion over dates. In addition, place a check mark in the appropriate box describing the nature of the conveying document. If the "Other" box is checked, specify the nature of the conveyance. The "Other" box should be checked if the conveying/receiving party is correcting a previously filed document.

Item 4. Application Number(s) or Registration Number(s).

Indicate the application number(s) including series code and serial number, and/or registration number(s) against which the document is to be recorded. The identification of the trademark should be provided for all properties to avoid recordation against the wrong property. A filing date should be provided only when the application or registration number is unknown. Enter a check mark in the appropriate box: "Yes" or "No" if additional numbers appear on attached pages. Be sure to identify numbers included on attached pages as the continuation of Item 4.

Item 5. Name and Address of Party to whom correspondence concerning document should be mailed.

Enter the name and full address of the party to whom correspondence is to be mailed.

Item 6. Total Applications and Trademarks Involved.

Enter the total number of applications and trademarks identified for recordation. Be sure to include all applications and registrations identified on the cover sheet and on additional pages.

Block 7. Total Fee Enclosed.

Enter the total fee enclosed or authorized to be charged. A fee is required for each application and registration against which the document is recorded.

Item 8. Payment Information.

Enter the deposit account number and authorized user name to authorize charges.

Item 9. Signature.

Enter the name of the person submitting the document. The submitter must sign and date the cover sheet. Enter the total number of pages including the cover sheet, attachments, and document.

This collection of information is required by 35 USC 261 and 262 and 15 USC 1057 and 1060. The information is used by the public to submit (and by the USPTO to process) patent and trademark assignment requests. After the USPTO records the information, the records for patent and trademarks, assignments, and other associated documents can be inspected by the public. To view documents recorded under secrecy orders or documents recorded due to the interest of the federal government, a written authorization must be submitted. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the form to the USPTO. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Manager of the Assignment Division, Crystal Gateway 4, Room 310, 1213 Jefferson Davis Highway, Arlington, VA 22202. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450.

Source: Estate Planning/Funding a Revocable Trust (Action Guide)/Appendixes/APPENDIX AA Consent to Assignment of LLC Membership Interest

APPENDIX AA

Consent to Assignment of LLC Membership Interest

CONSENT TO ASSIGNMENT OF LLC MEMBERSHIP INTEREST

The undersigned manager of the company waives the provision of sections __[number]__ through __[number]__ of the operating agreement, __[declines on behalf of the company and __[himself/herself]__ to acquire the assignors' membership interest in the company,]__ consents to the foregoing, and approves the admission of the __[name of trust]__ to the company as a substituted member, subject to all terms and conditions of the operating agreement.

Executed at __[name of city]__, California, on __[date]__.

__[Signature of manager]__

__[Typed name]__
Manager

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Source: Estate Planning/Funding a Revocable Trust (Action Guide)/TABLE OF STATUTES, REGULATIONS, AND RULES

TABLE OF STATUTES, REGULATIONS, AND RULES

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