

# REVOCABLE TRUST DOCUMENTATION

[Dated Material – January 1, 2012]

This is an explanation of the common documents involved in setting up a Revocable Trust (Living Trust). Special circumstances may exist for certain persons, or assets to be placed in the Trust, that would require special documentation not mentioned below.

## **1. TRUST AGREEMENT**

This is the basic document signed by the client (as Settlor and usually as Trustee). A Settlor is the person who establishes the Trust. The Trustee manages the Trust. Included in the document are provisions that the Trust is totally under the control of the Settlor and can therefore be amended or changed by the Settlor at any time; a listing of the initial assets being transferred to the Trust; identification of the trustees (including successor trustees if the original trustee is unable to act); a provision for the successor trustee to act if the original trustee becomes incapacitated (this will help to avoid a court conservatorship); use of the assets to take care of the Settlor and other named person; who gets the assets on the death of the Settlor; and if the estate may be subject to federal estate taxes, provisions are included to maximize tax savings through a Credit Shelter Trust for the surviving spouse. Since many trusts are set up by spouses who want to provide asset protection for the surviving spouse and for the children - then upon death of the surviving spouse assets can be continued in trust for children, or grandchildren, if the circumstances dictate.

In a common law state such as Colorado, usually a husband and wife each have their own Trust Agreement. In a community property state, such as Arizona, a husband and wife can have a joint trust.

## **2. WILL**

This is informally called a "pour-over Will" since the Will says that if there are any assets that are not in the trust (Settlor did not transfer everything during lifetime), then these assets are to go into the Trust. The Will also names the personal representative who will act if a probate is necessary to transfer assets into the Trust.

## **3. HEALTH CARE POWER OF ATTORNEY**

If we become incapacitated, from an accident or disease, an agent that we name in a Health Care Power of Attorney can go a long way to avoid a court controlled guardianship. This agent makes health care decisions when we cannot. It is best to make this effective immediately so the agent can act immediately if necessary.

## **4. HIPAA AUTHORIZATION AND RELEASE**

A federal law guarding privacy makes it more difficult for anyone other than you to obtain your medial records. This form gives your health care agent the authority to obtain your health care records.

## **5. LIVING WILL (Declaration as to Medical/Surgical Treatment)**

This documents is used while we are alive, but cannot tell others our desires because we are in a coma, or otherwise unable to communicate. If two doctors determine that there is no hope for survival or recovery, and that life support systems are keeping us alive, a Living Will directs that the life support systems be turned off. The Living Will can also direct that artificial nourishment be withdrawn.

Without these directions, the medical personnel would not know your desires, and thus may keep the machines going even if it means that assets would be unnecessarily spent on medical care - even though there is no chance for recovery (that is, terminal).

## **6. STATUTORY GENERAL DURABLE POWER OF ATTORNEY**

You, as principal, can appoint an agent to handle your financial affairs if you are incapacitated – if you are not able to take care of your own financial obligations.

These are sometimes referred to as "durable" powers of attorney. Durable means that it continues even though the principal is incapacitated. However, as with all powers of attorney, it terminates automatically upon the death of the principal.

The Trust has provisions similar to a Statutory General Durable Power of Attorney - to enable the successor trustee to take over if the Settlor becomes incapacitated. However, the Statutory General Durable Power of Attorney acts as a back-up document in case some assets are not placed into the trust prior to incapacity. This Power of Attorney can also be used in most situations for an agent to place assets into the pre-existing Trust if the Principal is still living but incapacitated.

## **7. CERTIFICATE OF TRUST**

Sometimes it is necessary to give proof of the Trust to financial institutions, or to record with the real estate records for property placed in the Trust. Because certain parts of the Trust are private (particularly the disposition of assets on the death of the Settlor), a Certificate of Trust is a verbatim copy of certain sections, but not all such as the provisions for disposition of assets, of the Trust Agreement.

## **8. NOMINEE AGREEMENT**

This is an agreement between the Settlor, as an individual, and Settlor, as Trustee of the Trust. It provides that even if some assets owned by the Settlor have not been transferred into the name of the Trust, that the Settlor owns those assets as "nominee" for the Trustee and are to be considered as part of the Trust. While it is not wise to rely on this Nominee Agreement to any extent, it can be handy to avoid a probate where a single asset (such as a bank account) was inadvertently left out of the trust.

## **9. TRUSTEE CERTIFICATION OF INVESTMENT POWERS**

Some financial institutions, including brokerages, often require a written statement from the trustee as to his/her powers to handle and make investments. This form takes care of that.

## **10. DIRECTIONS ON HOW TO PLACE TRUST NAME ON ASSETS**

This form will describe what to tell your Bank, brokerages, insurance agents, and others in order to transfer ownership of assets into the name of your Trust. You may be able to handle these matters on your own, or if you need assistance, we can help for an additional charge described below.

## **11. OTHER DOCUMENTS**

There may be other documents signed that are part of the estate planning process, such as Funeral and Burial Instructions and a form for Disposition of Personal Property.

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# **FUNDING THE TRUST**

These documents transfer ownership of your assets into the name of your Trust.

## **1. BILL OF SALE**

This is used to transfer certain personal property (furniture, clothing, jewelry, art or other collectibles, etc.) into the Trust. The Bill of Sale is not recorded but simply kept with the original Trust Agreement to show intent to transfer these assets into the trust.

## **2. DEEDS**

Deeds convey real estate into the Trust. Because of the special language required to be included in such deed, an attorney should handle this. There are normally additional documents, along with the deed, required by most states and counties.

If there is a mortgage on the property, and the property is Settlor's primary residence, there is normally no problem with "due on sale" clauses contained in almost all mortgages. However, the lender should be notified of the transfer into the Trust. For commercial properties, it may be necessary to obtain lender approval before the deed is recorded in order to avoid the "due-on-sale".

If real estate is located out-of-state, it is necessary to hire an attorney in that other state to assist in preparing the state-specific deed and other documents necessary to properly transfer the property into your Trust.

## **3. STATEMENT OF AUTHORITY**

Some states (such as Colorado) require that a Statement of Authority be recorded to "prove" the existence of the Trust in order to transfer Colorado real estate into and out of the Trust.

## **4. STOCK POWERS**

If you own stock in a corporation that is publicly traded on a stock exchange, it will be necessary to sign Stock Powers, where your signature is guaranteed by a Bank or Stock Broker. It is

usually preferable to own stock as “book shares” with the company, rather than having stock certificates issued.

**5. DIRECTION LETTERS**

These are letters prepared by us and signed by you addressed to your financial institutions directing them to set up your accounts in the name of your trust; or to a life insurance company, or retirement plan administrator, to name your Trust as beneficiary. To help us prepare these letters, you would provide us the necessary details, such as copies of monthly/quarterly statements, insurance policies, etc. Normally, you do not set up new accounts – rather, change the name on the account, and perhaps who is authorized to sign (trustee).

**6. OTHER TRANSFER PAPERS**

Other transfer papers may need to be prepared, depending on your assets. For example, if you are a partner in a partnership, an Assignment would be needed.

**7. COPIES**

After the documents are signed, we will give you the originals, and two copies of all of the papers (one set in a three ring binder).

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**MESSAGE:** This Information Sheet is intended to provide general information only. It is not intended to cover all of the legal issues that arise in each situation. It is suggested that none of the documents described above should be signed without first talking to an attorney who is knowledgeable about such matters. This material is dated and the enclosed information may change because of new laws, regulations, or other impacts.

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