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Estate Planning Essentials

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SPECIAL TRUST FUNDING ISSUE

Funding Your Revocable Trust

A major purpose of using a revocable trust as the main instrument in your estate plan is to avoid probate on the trust assets at your death. In order to avoid probate, it is critically important that assets be owned by the trustee of the revocable trust and not by you individually. Although your pour-over will provides that assets held in your individual name at your death will be added to the trust assets and distributed as provided in your trust, those assets will be subject to probate before they are added to the trust. To avoid that result, assets you intend to place in the trust should be titled in the name of the trustee, for example:

*MARY DOE and JOHN DOE, Trustees of
the John Doe Revocable Trust, dated
_____, 2007.*

You should carefully and continually review the assets held in your own name (both assets that you now own and any that you acquire later) to be certain that this is consistent with your desire to avoid probate. We will be glad to discuss the advisability of retaining ownership of various assets in your name alone, holding assets in joint names with another person, or transferring assets to the trustee of your revocable trust. Generally speaking, unless there are compelling reasons to do otherwise, we do not recommend that your residence, or tangible personal property (jewelry, automobiles, etc.) be transferred to the trust. Please feel free to call us to discuss whether our general recommendation applies to your particular situation.

On the following pages, we offer some general guidance on transferring specific types of assets to your trust. These comments are general in nature, and we suggest that you consult us before funding your trust if you have questions. **(continues on Page 2)**

You can't take it with you

Don't procrastinate with estate planning. Without any estate plan in place, state law dictates how property, personal items, and assets are divided, with no regard to your wishes. Family conflicts and legal problems often result, tying up the estate and slowing down the distribution of assets. Additional administrative expenses and taxes, which must be deducted from the estate, reduce its overall value.

Estate Planning goes far beyond document drafting and tax strategies. Decisions may be needed concerning the care for minor children and incapacitated or infirm parents, the funding of a child's college education, gifts to charity, or the use of major assets such as real estate.

The Estate Planning Professionals at Shapiro, Blasi, Wasserman & Gora, P.A., can provide guidance to you in creating your Personal Estate Plan to help meet your goals and desires so that your legacy will be protected and remembered throughout the generations.

1**Accounts or Certificates
Issued by a Bank or
Other Savings Institution.**

The name on the account or certificate must be changed to reflect its ownership by the trustee, and a new passbook or certificate must be issued in the name of the trustee. Be careful to confirm with the financial institution before transferring a savings certificate that there will be no penalty for early withdrawal.

2**Brokerage Accounts**

If you own stocks, bonds, or other securities through a brokerage account, and if the certificates for those assets are not issued in your name but are held instead in a street name or in the brokerage firm's name, the brokerage firm's records must be changed to indicate that the trustee owns the account and not you individually.

3**Corporate Stocks (issued by
Publicly or Privately-held Corporations)
or Mutual Funds**

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

4**Registered Bonds
or Debentures**

(issued by Publicly or Privately Held Corporations, the U.S. Government, an Agency, any State, or Subdivision thereof). These securities must also be registered in the name of the trustee and new bonds or debentures reissued. As with stock certificates discussed in paragraph 3, if bonds or debentures are held in a brokerage account, title to the account must be changed.

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

These securities, typically issued by the United States government, an agency, a state, or a municipality, generally cannot be registered in the name of the trustee, so that there must be some other evidence that these securities have been transferred. This can be done by executing and delivering to the trustee a transfer document listing the bearer securities being transferred, which document will be retained by the trustee with the permanent records of the trust. We can prepare for you

any documents necessary to accomplish the transfer. It would be helpful to keep bearer securities in a safe deposit box in the name of the trustee with a duplicate copy of the transfer document attached.

6.

Tangible Investment Assets (such as Gold Bullion, Silver Coins, Art Objects, etc.)

Because there is no proof of registration or ownership of these assets, their transfer to the trust should be handled in a manner similar to that described in paragraph 4 for bearer securities. Any new investments of this type should be purchased directly in the name of the trustee with the confirmation or other purchase slip retained with the instrument or investment to prove the trustee's ownership.

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Partnership Interests (whether in a General Partnership or Limited partnership)

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

8

Interests in Real Property (Personal Residence or Investment Real Estate)

Legal title must be transferred to the trustee by means of an executed, notarized, and recorded deed, usually a special warranty deed. Be

careful to determine whether any existing mortgage or deed of trust secured by the transferred real estate will be affected by the proposed transfer and whether the proposed transfer will trigger any "due on sale" clause in the mortgage or deed of trust. It is important to comply carefully with the requirements of the law of the state where the property is located. A land trust deed under Section 689.071, Florida Statutes may be advisable. You should consult with us before deeding any real property (especially a residence in Florida) into the trust. We do **not** recommend transferring your primary Florida residence into the trust while both husband and wife are living.

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Life Insurance Policies, Annuities, and Retirement Plan Benefits

Ownership of these assets is generally not transferred to a revocable trust, but the death benefits can be made payable to the trustee, if desired, for distribution under the terms of the trust. Although life insurance policies generally pass outside of probate, ownership can be transferred to the trust to give the trustee more control over the policies in case you become disabled. **Ownership of IRAs should not be transferred to the trust.** Change-of-beneficiary forms from the insurance company or the administrator of the retirement plan must be completed and recorded with the insurer or the plan trustee to name the trustee of your trust as the beneficiary of any accounts. Some annuities do not permit transfers, and others have negative tax consequences if put into the trust, so caution is advised.



Once an asset has been transferred to the trustee of your revocable trust, all transactions regarding that property must be handled by the trustee, rather than by you individually (even if you are the trustee of the trust). For example, after corporate stock has been transferred to the trustee, it is the trustee who has the power to sell, mortgage, or assign those shares of stock or to vote them at a shareholders' meeting. Any document evidencing the transfer of assets must be signed by the trustee.

Additional assets may be transferred to the trust either by registering them in the name of the trustee, by delivering them to the trustee with appropriate documents to re-register the assets in the name of the trustee, or with other transfer documents if the asset is of the nonregistered type. Withdrawals of property from the trust must comply with the provisions of the trust agreement. We can prepare documents for you to accomplish such withdrawal. The trust can be amended, of course, or revoked in its entirety, but any amendment or revocation must comply with the procedural requirements of the trust agreement.

A separate Federal income tax return for a revocable trust is not required as the income is reported on the Grantor's Form 1040. If the grantor is also the trustee or a co-trustee, a federal tax identification number for the trust is also not necessary, and all income is reported using the grantor's social security number (which becomes the trust's taxpayer identification number). If the grantor is not a trustee, the grantor's social security number can still be used but the trustee must meet certain other requirements in that case. After the grantor's death, a federal tax identification number must be obtained for the trust.

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

ESTATE PLANNING ESSENTIALS is designed to provide information on topics of general interest to our clients. It is not to be construed as tax or legal advice. Although the information has been gathered from sources believed to be reliable, individual situations can vary; therefore, the information should be relied upon only when coordinated with individual professional advice.

Seth Marmor is Board Certified by The Florida Bar in the areas of **Wills, Trusts & Estate and in **Elder Law**. To ask Mr. Marmor a question, click on the e-mail link below:*

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