

REVOCABLE TRUST PRIMER

The following are some answers to common questions concerning transferring assets into your revocable living trusts. For the most part, the task is fairly simple and can be done without legal assistance, except for transfers of real estate. The process of transferring the assets, however, can be rather time consuming.

1. Why should I transfer property into my Revocable Trust?

There are several benefits to funding your trusts during life. First, if you should become disabled to the point where you can no longer manage your property, the successor trustee of your trust can step in and take over. (If you fail to transfer property into your trust prior to becoming disabled, however, the agent under your power of attorney may transfer property into your trust after your disability.) Second, the property in the trust will avoid the probate process at your death, which protects your privacy and typically saves time and money. Under New York law, only assets owned outright in excess of \$50,000 must go through probate. Depending on the county where you live, it can take 2-12 months to probate a Will. It is important to realize, however, that while putting property into your trust may save probate administration costs, it will not save income or death taxes for you. The trust plan may save taxes at and after your death, but those savings do not depend on having property in your trust before your death.

2. Do I lose control over my property if it is in my Revocable Trust?

As long as you are able and willing to manage your own business affairs, you do not lose control over property that you transfer into your trust. If you are married, you and your spouse are both named as the trustees of your own trust. If you are not married, you will be the sole trustee of your trust. You will have unlimited access to the trust assets during your lifetime just as you do now without a trust. Furthermore, even if you step down as trustee, you still have the unrestricted power to revoke the trust and get your property back. Of course, if you become legally incompetent pursuant to a court determination, you will lose the right to control your trust. However, in that event, you would also lose the right to control any property held in your sole name as well. Likewise, if under the provisions of the trust itself you are declared to be disabled, you would also lose the right to control your trust. However, the trust document names whom you want to succeed you as trustee. Whether you are determined to be disabled pursuant to a court hearing or to your trust document, you have the legal right to contest any attempt to declare you legally incompetent or disabled, as the case may be. One benefit of having a trust and executing a power of attorney for property is that a formal guardianship proceeding in court becomes unnecessary.

3. How should particular assets be titled?

Individual or joint checking and money market accounts (such as those used for everyday household expenses or with balances generally less than \$50,000)	Name a beneficiary to the account (called Transfer on Death [TOD]) or name a joint owner.
Money market, savings accounts, certificates of deposit (larger balances)	Designate one or both trusts as owner.
Stocks, bonds, mutual funds	Designate one or both trusts as owner. In connection with this process, consider moving any stocks or bonds you still have in certificate form to a brokerage or custody account.
Closely held business interests	Designate one or both trusts as owner.
Primary Residence	Can title as tenants-by-the-entireties. If you need to balance assets or are concerned about simultaneous death and avoidance of probate, you can designate one or both trusts as owner.
Other Real Estate	Designate one or both trusts as owner, especially if this is out-of-state real estate.
Personal belongings	Assign to both trusts.
Life Insurance	Change the primary beneficiary to the insured's trust. For large policies, consider use of an irrevocable life insurance trust which can avoid unnecessary state and federal estate taxes on the policy proceeds.
Retirement accounts, IRAs	Designate spouse as primary beneficiary. Designate the principal's trust as contingent beneficiary.

- (a) Different assets such as bank accounts, mutual funds, stocks and bonds have different forms and typically particular companies have their own versions of these forms. In general, you should have the title or registration of the property formally changed so that it reads like the following:

"John Smith and Linda Smith, as trustees of the John Smith Revocable Trust dated _____"; or

- (b) Transferring real estate into your trust requires a deed, and that must be prepared and recorded by an attorney. Note that title insurance and liability insurance should be notified of the Revocable Trust as an additional insured.
- (c) Life insurance, employee benefit plans and the like need not actually be transferred into the Revocable Trusts; you may simply have a Revocable Trust named as primary beneficiary or as contingent beneficiary (as set forth above). Retirement plans are not allowed under federal law to be owned by a trust. They can only be owned by an individual.

Some institutions have their own preferred wording for identifying the Revocable Trust, and in those cases you should follow their instructions. There is nothing magic about one form over another, as long as the Revocable Trust is correctly identified with the name of the trustee, the name of the trust and the date of the Revocable Trust.

5. How should I divide assets between my spouse and me?

In 2023, you each can shelter \$12,920,000 (minus lifetime gifts) from federal estate tax. This exemption is "portable", meaning that any unused exemption can pass to the surviving spouse and be doubled to \$25,840,000. It is difficult to predict what will happen, but, this amount presently is scheduled to be reduced to \$6,000,000 per person in 2026. The New York limit is only \$6,580,000 per person and is not portable. In order to take maximum advantage of the New York estate tax exemption, we recommend that you divide your assets evenly between your two Revocable Trusts, or that each of you them to hold at least \$6,580,000 in your Revocable Trust names. Options for dividing the assets are as follows:

- (a) Joint Tenancy. In general, you should not hold property in joint tenancy with your spouse. This is because joint tenancy property does not pass according to your estate plan but rather passes by law to the surviving joint tenant. If a substantial part of your property passes according to law rather than through your estate plan, it is possible that the tax and other planning objectives that you sought to achieve with your estate plan will not be accomplished. Accordingly, in general, each of you should hold property in your Revocable Trust's name. However, joint tenancy property will avoid probate at the first death, so as long as there are sufficient other assets to fund each Revocable Trust there is no harm in leaving your primary residence and basic checking account in joint-tenancy unless you want to make sure that the property avoids probate in the unlikely event of simultaneous deaths.

- (b) Separate Ownership or Tenancy In Common. Maintaining multiple separate accounts may be impractical from the standpoint of managing the flow of statements and other paperwork through your household. An ideal form of ownership for stock accounts or mutual funds is to have Revocable Trusts own the account together as tenants-in-common. This means that each trust owns an undivided one-half of the account, and each trust controls how that one-half will be allocated or distributed at the grantor's death. Unfortunately, many financial institutions do not offer this alternative. If not, an alternative is to have a roughly equal amount of marketable securities owned by each Revocable Trust.

6. **After I transfer property into my Revocable Trust, are there any special procedures I should follow?**

Yes, here are the most common:

- (a) Tax Identification Number. Continue to use your own Social Security Number for all property in your trust. As you know, banks, mutual funds, stock brokers, companies in which you own stock and the like all require you to sign a W-9 form on which you certify your "taxpayer identification number". You have been using your Social Security Number, and should continue to do so. You may be asked to sign a new W-9 form because the property is now in the name of the Revocable Trust; but still put down the same Social Security Number (unless the property was previously owned by you and another person jointly and you were using that other joint owner's Social Security Number). At your death, your Revocable Trust will have to apply for a separate taxpayer identification number from the IRS.
- (b) Buying/Selling Property. When you buy property for the Revocable Trust or sell property in the Revocable Trust you should always remember to describe the Revocable Trust as the owner of the property and to sign documents required for those transactions with your usual signature followed by the phrase "as trustee of the John Smith Revocable Trust".
- (c) Tax Returns. No income tax returns are required for the trust during your life. Just continue to report income from trust property - interest, dividends and the like - in your own income tax returns as you have done in the past. You are not required to mention the Revocable Trust at all.
- (d) Insurance. Once any assets covered by property or casualty insurance (i.e., real estate, collections or other tangible personal property) have been transferred into the Revocable Trust, it is extremely important to notify the appropriate insurance companies of such transfer. You should continue to be named as an insured on the policies, but the Revocable Trust should be named as an additional insured.
- (e) Providing Copies of Your Trust to Third Parties. Some banks and companies with whom the Revocable Trust does business will ask to have a copy of the Revocable Trust document, and you must give it to them

- (f) Special Forms. Some organizations and agents - stock brokers in particular - will require you to sign their special forms that certify various facts about the Revocable Trust.

- (g) Tax Basis. Property transferred into the Revocable Trust continues to have the same tax cost basis as before. If you sell the property while it is in the Revocable Trust, you will report any gain or loss on Schedule D of your Federal Income Tax Return just as if there were no Revocable Trust at all.

- (h) Passwords and Electronic Information. If you maintain any financial or personal records online, including electronic statements and automatic bill-pay, it is essential that you keep a list of (i) the internet site addresses, (ii) your account numbers, and (iii) your passwords and other identifying information that will give your successors in interest access to those accounts in the event that something happens to you.