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COMMONLY ASKED QUESTIONS ON FUNDING REVOCABLE TRUSTS

Congratulations, you just signed your Will and your Revocable Trust. You set out clear directions on how your assets should pass at your death. Your heirs will be grateful. But there is more you can do to ease the burden of estate administration – ***you can fund your Revocable Trust while you are alive.*** Set out below are some of the common questions we have heard surrounding revocable trust funding, and our general answers.

WHO CAN FUND A REVOCABLE TRUST?

Anyone who has executed a Revocable Trust can transfer assets to it. Like with any trust, assets owned by the Revocable Trust will be held by the Trustees for the benefit of the beneficiary(ies). In the case of a Revocable Trust specifically, the Trustees are typically the trust creator (also known as the grantor or settlor) and sometimes the trust creator's spouse as well, and the beneficiary is the trust creator. Thus, when you transfer assets to your Revocable Trust, you will continue to have management control of the assets (either alone or with your spouse, in your capacities as Trustee) and continued use of the assets in your capacity as beneficiary.

WHAT CAN BE USED TO FUND A REVOCABLE TRUST?

Assets commonly moved during life into a Revocable Trust include, but are not limited to: tangible personal property, real property, stocks, bonds, business interests, bank accounts and brokerage accounts. See the corresponding section below on "How" to fund your Revocable Trust with these assets.

Assets that can be moved but are often left outside the Revocable Trust include automobiles and checking accounts:

- **Automobiles:** If you live in Connecticut, you may wish to leave your car outside your Revocable Trust. This is because the transfer of a car in Connecticut into a Revocable Trust may cause transfer tax. Instead, you can either leave it in joint names with your spouse, or identify a "payable on death" beneficiary on the registration form. Note that you will have to indicate this beneficiary each time you re-register the car. If you purchase a new car (and would have to pay sales tax on it anyway), you may wish to register the car in the name of your Revocable Trust. We recommend you consult with your auto insurer to make sure that registering the car in the name of the Trust will not result in an increase in your premiums. If you choose not to take any of these approaches, your heirs will be able to clear title to the car through an abbreviated probate procedure.

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■ **Checking Account:** You may wish to leave at least one checking account outside of the Revocable Trust, so that you will not have trouble writing checks on a trust account. Although there is no legal reason why you cannot write checks on a trust account, you may find it easier to write checks that do not have the title "Trustee" on them. You also may not wish to deal with the hassle of moving auto-debits or auto-credits into a new account. To avoid the need to probate a checking account, this account should be owned with your spouse as "Joint Tenants with Rights of Survivorship."

WHERE DOES FUNDING A REVOCABLE TRUST MATTER?

Although probate laws and procedures vary state-by-state, no matter where you live within the United States, funding a Revocable Trust can help avoid probate and probate fees. This is especially important for clients who own real or tangible property in multiple states. Such a situation would require a probate proceeding in the client's state of domicile as well as an ancillary probate proceeding in each other jurisdiction where property is located – that is multiple proceedings and multiple probate fees. While funding a Revocable Trust is important for all clients, you can see how important this is if you own real or tangible property outside of your home state.

WHEN SHOULD I FUND A REVOCABLE TRUST?

The best time to fund your Revocable Trust is now.

Individually owned assets outside your Revocable Trust will be added to your Revocable Trust at your death. This is because your Will directs your Executors to add such assets to your Revocable Trust. However, in order to enable your Executors to add the assets, a probate proceeding must be initiated, and the probate court must grant Letters Testamentary to your Executors, which they will use as evidence of their authority to collect and move assets. As explained in more detail below, the probate process can be onerous, it can be lengthy, and it can be expensive.

If you move those same assets to your Revocable Trust during life, the probate process can be avoided entirely. Therefore, what we recommend here is moving assets directly into the Revocable Trust during your life rather than waiting until death.

For assets held as joint tenants, we recommend severing the joint tenancy and adding a tenancy in common interest to each trust in order to avail each tenant with sufficient assets to allocate estate and/or GST tax exemption.

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COMMONLY ASKED QUESTIONS ON FUNDING REVOCABLE TRUSTS

WHY SHOULD I FUND A REVOCABLE TRUST?

Funding a Revocable Trust during life has several benefits, the most popular of which is to avoid probate, as mentioned above.

The probate process is different in each state, but, in each state, it takes time, money and effort. In New York, the proceeding is opened in the Surrogate's Court of the decedent's county, and it can take months before the Surrogate approves the probate petition and issues Letters Testamentary. In Connecticut, the Probate Court may move quicker to approve the probate petition, but the requirements to complete the probate process are much more onerous as they require the Executor to file an inventory, an accounting and an estate tax return, even if the estate is not subject to tax. In Florida, the process is similar as in Connecticut in that the Probate Courts are known to move quicker (at least as compared to various counties in New York), but additional requirements are required to comply with the probate process. In each state, probate will involve filing fees and notice to estate beneficiaries and intestate heirs, each of which has standing and access to information.

In addition to avoiding probate (if the Revocable Trust is fully funded) or simplifying probate (if the Revocable Trust is partially funded), a funded Revocable Trust can:

- **Serve as a vehicle for the management of your assets in the event you become incapacitated.** If assets are held by the Revocable Trust, the designated Trustee (or successor Trustee) will manage the assets on your behalf dispensing with the need to have a guardian or custodian appointed.
- **Avoid the need for "ancillary probate" in the jurisdiction where out-of-state real or personal property is located.** A probate proceeding must be initiated in each state where property is situated. If that state is not the state of your domicile, the process is referred to as "ancillary probate." It could be a simpler version of the typical probate process, but it will require filings and fees. If that same property were held in the Revocable Trust, there would be no need to probate and the ancillary probate **can be avoided**.
- **Avoid a public record of your estate administration.** Your Revocable Trust is not made public upon your death. In many states, your Will, on the other hand, is a publicly available document and the provisions of your Will, as well as the specific assets you own at your death, become part of the public record.

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HOW DO I FUND A REVOCABLE TRUST?

Any property transferred to the Revocable Trust should be changed to the names of the Trustees, as Trustees of your trust. For example: "JOHN DOE and JANE DOE, as Trustees of the JOHN DOE REVOCABLE TRUST dated JANUARY 1, 2024." The "how" depends on the type of asset and the legal process necessary to effectuate a transfer of it. Below is a list of the commonly moved assets and the general process for moving them:

- **Tangible Personal Property:** You may sign a form during your lifetime by which you assign tangible personal property to your trust, then for all intents and purposes, your personal property, including all furnishings, jewelry and personal effects, should be considered held in your Revocable Trust. The form may purport to assign after acquired property, however, we cannot be absolutely certain that the assignment will be valid for property you acquire after you sign the form. Accordingly, we recommend that you sign a new form each year. In addition, before you assign your property, please consult with your property and casualty insurer to make sure that the assignment to your Trust will not affect your coverage.
- **Real Property:** You will need the help of a lawyer to prepare a deed to transfer any real property, wherever located, into your Revocable Trust. You should also notify your title insurance company to obtain an endorsement for your title insurance policy. There is usually a small fee for the endorsement.
- **Stocks and Bonds:** If your stocks are publicly held, contact your broker and explain that you wish to change ownership of your account and/or individual stocks to your Revocable Trust. Give the name of your Trust and the Trustees as listed above. Be sure that the broker understands that this is a Revocable Trust, and accordingly, the tax I.D. number of the trust is your social security number. If your stocks are registered with ComputerShare, you can request transfer paperwork to execute the change of ownership.
- **Business Interests:** If your business interest is an investment in a limited partnership or limited liability company, contact the general partner or the manager and give him or her the information about your Revocable Trust. If your business interest is closely held stock, or a family or general partnership interest, we can assist you with the transfer, which should be properly reflected in the corporate minute book and/or partnership records.

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This publication is a summary of legal principles. Nothing in this article constitutes legal advice, which can only be obtained as a result of a personal consultation with an attorney. The information published here is believed accurate at the time of publication, but is subject to change and does not purport to be a complete statement of all relevant issues.

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- **Bank Accounts or Brokerage Accounts:** Contact your bank and explain that you wish to change ownership of your account to your Revocable Trust. Give them the name of your Trust and the Trustees, as listed above. As mentioned above, the tax I.D. number of the Trust is your social security number. Although all Trustees should sign the signature card when opening up a bank account, we suggest that you instruct the bank that only one Trustee needs to authorize any transaction. This will ensure you the greatest flexibility in the management of your assets. *Note: some banks will permit the title on your existing account to be changed to the Revocable Trust while other banks will require a new account to be opened for the Revocable Trust and the assets to be wired or otherwise transferred to it.*

The importance of funding your Revocable Trust during your lifetime can not be overstated. Many people feel a sense of relief after they sign their estate plan, which is great – it is a big accomplishment – however, many also believe their estate planning work is now done. For the important reasons stated above, funding your Revocable Trust should be a natural next step.

Even after funding your Revocable Trust, it is not “set it and forget it.” In fact, you should plan on reviewing your estate plan every 3-5 years, or sooner if there are changes in your family or financial situation (to learn more about reasons for updating your estate plan, click [here](#)). Periodic reviews are also a great opportunity to take stock (pun intended) of the ownership of your assets and make sure any newly acquired assets since you last signed your plan are properly titled.

If you would like to discuss the information provided in this publication and ask any questions on this or other estate planning topics, please reach out to your Wiggin and Dana attorney.