

ROBERT M. LUSK

ATTORNEY AT LAW

Water Tower Building
5331 S.W. Macadam Avenue, Suite 350
Portland, OR 97239
(503) 595-5376
Fax: (503) 768-9130
Robert@robertmlusk.com

Revocable Trust Information Letter

Dear Client:

In our recent office meeting we discussed the advisability of a revocable trust as the primary vehicle for your estate planning. I do not consider a revocable trust to be the ideal vehicle for all estate planning purposes in Oregon but for many people it is appropriate. I do believe it would be a good choice for you. Oregon's probate structure and the costs associated with probate, while not insubstantial, are not as great as in some states. As a general matter, the costs of a trust are "up front" with the benefits coming at and after death with probate avoidance. If a will is used instead of a trust, the initial cost of preparing a will is much less, but the estate is subject to the court costs and attorney fees in the event a probate is needed. I would be happy to discuss further with you the costs of either a will or a trust and any other questions that you may have. I hope the remainder of this letter, (which admittedly is a form letter) is informative and helpful. I am also enclosing the confidential family estate planner that should help you prepare the information we need to prepare your estate planning documents.

The following is a brief explanation of a revocable (or "Living") trust, some advantageous features of trusts, and what specifically is involved in creating and funding it. Also included is a review and description of other estate planning documents.

What is a Trust?

Basically, a trust is an agreement for the benefit of one or more persons (the "beneficiary") whereby the person establishing the trust ("settlor", grantor" or "trustor") transfers money and/or property to another person ("trustee") who will use the money and property to carry out the obligations and duties created in the trust agreement. The trustee hold legal title to the trust property as a fiduciary, meaning subject to a special relationship which imposes duties to act for the benefit of the beneficiary. The trustor, trustee, and beneficiary can be the same person. Because the trustee (not the trustor) has legal title to the property, the death of the trustor does not necessitate a probate. Rather, the agreement states what happens to the trust property if the trustor dies and it also designates a successor trustee if the trustor was serving as trustee at the time of death. Further, by making provision for the incapacity of the trustor and/or

beneficiary and for the appointment of a successor trustee in the event of incapacity, the trust allows the individual to plan for his or her elder care needs without the necessity of a court appointed guardian or conservator. The trust agreement should work in conjunction with other estate documents such as an Advance Directive for Health Care to insure that the individual's desires for his or her care remain self-directed to the greatest extent possible. As a further safeguard to insure the trust effectively disposes of the individual's estate, a "pour-over" will is executed to provide that anything left out of the trust is paid into the trust and disposed of with the rest of the individual's property in the manner provided in the trust agreement. Often a small estate affidavit is sufficient to administer such property. Sometimes there are reasons to leave assets out of the trust. I will be happy to review the advisability of retaining ownership of any such assets in your name alone, putting them in joint names with another individual, or transferring them to the trustee of your revocable trust.

Funding the Trust

The key to a trust is the separation between the legal title (held by the trustee) and the beneficial ownership of the property. The benefits of a revocable living trust (privacy, avoidance of probate, and protection against future incapacity being the three primary ones) will be realized only with respect to the assets you transfer into the trust. Therefore, it is crucial to properly "fund" the trust initially. "Funding the trust" simply means transferring your current assets from your individual name to the trustee. It is equally important to make sure that any later-acquired assets are also transferred to the trustee. You may transfer additional assets to the trust at any time after the initial transfer, either by purchasing and/or registering those assets in the name of the trustee or by delivering them to the trustee with appropriate instruments of transfer for reregistration in the name of the trustee (or other transfer documents if the asset is of a nonregistered type).

Legal title (recorded ownership) of any assets on which you desire to avoid probate at your death, and that are therefore to be owned by the trustee of your revocable trust, *must be transferred to the Trustee*, either upon creation of the trust or some time thereafter, during your lifetime. Once an asset has been transferred to the trustee of your revocable trust, all transactions regarding that property must be handled by the trustee, not by you as an individual. You may, as the trustor, retain the right to remove assets from the trust or even revoke the entire trust at any time up to your death.

You may withdraw property from the trust at any time but only in compliance with the provisions of the trust. We would be happy to help you in documenting any withdrawal of trust property you desire to make. In addition, of course, the trust can be amended in any way you desire or can be revoked in its entirety; again, in either instance, only by complying with the procedural requirement specified in your revocable trust. We can help you to comply with those requirements if you desire us to do so. In most situations, the trust becomes irrevocable after your death; hence the successor trustee cannot alter your directions as to how to distribute your property.

The process of funding a trust involves the following steps:

1. Designation of Trustee. In general, all assets that are transferred into the trust should be reregistered in the name of the trustee(s). We recommend that you register the assets in a form such as "John A. Doe and Mary R. Doe, trustees of the John A. and Mary R. Doe Trust under agreement dated August 16, 1998, including all amendments thereto, and their successor trustees." The transfer agent, bank, broker, or title company you are dealing with may have similar language that they prefer. There are no hard and fast rules in this area, but if you have any questions, you should let us know.

2. Real Property. Real property is transferred to your revocable living trust by means of a deed. Before transferring real property to the trust, you should get the written consent of any lender who has loaned you money secured by the real property you will be transferring to the trust. This is particularly important if you have a favorable low-interest loan because the lender may allege that the transfer of the property to your trust will trigger the "due on sale" provision of the promissory note and deed of trust. Many lenders will charge a minimal fee for changing their records to indicate that the property is in a trust.

After the deed transferring the property to the trust has been recorded you should do the following.

- a. Notify the insurance company that insures the property that the property has been transferred to a revocable living trust. The trustee(s) should be shown as an additional insured on the policy.
- b. Obtain an endorsement adding the trustee as an additional insured party (particularly if the trustee is someone other than you) under your policy of title insurance. Such endorsements are generally either free or very inexpensive (e.g., \$50). You should check with the title company to determine whether an endorsement is required.

3. Publicly Traded Securities. If you own stocks, bonds, and money market accounts with a brokerage firm and those assets are held by the broker in a brokerage account, then you need only instruct the broker to change the name of the account into the name of the trust as described above.

Publicly traded stocks not held in a brokerage account must be sent to the transfer agent in order to be reregistered in the name of the trustee(s). Your stockbroker can handle the mechanics of reregistration, although this can be quite cumbersome if you have many certificates, and a relatively small charge may be involved. If you decide to handle the transfers without using your broker, you should contact the transfer agent for each stock in order to find out the correct procedure. It is advisable to send the certificates to the transfer agent by registered mail, return receipt requested. You will need to endorse the certificates or, preferably, sign

separate stock powers that are mailed to the transfer agent by a separate envelope. In either case, your signature must be "guaranteed" by your broker or a bank officer.

If securities of the same issue with different income tax basis or acquisition dates are consolidated into a single certificate, it is more difficult at the time of a sale to identify which shares are sold for purposes of determining the amount of capital gain or loss. Under IRS regulations, sales are charged against the shares with the earliest acquisition dates unless you identify the shares that are to be sold when you instruct your broker to sell. Accordingly, if you consolidate your holdings into a single certificate, you should keep a record of the original acquisition dates and income tax basis of such shares.

If you have unregistered bonds, we will transfer those assets to your trust by means of an assignment that we will prepare for you.

The broker or transfer agent may ask you for a tax identification number of the trust. Your trust is not the type of trust that requires a tax identification number, so you should instruct the broker to use your own Social Security number.

Before transferring an account into the name of a trustee, most financial institutions will ask to have a photocopy of the trust agreement. The purpose of this is to verify the existence of the trust, the identity of the trustee(s), and the power of the trustee(s) to open the account. Although the institutions will request a photocopy of the entire trust agreement, a photocopy of the certification of trust should suffice.

4. Bank Accounts. Any bank accounts, certificates of deposit, and the like that you desire to transfer to the trust can be transferred merely by your execution of new signature cards for the various accounts. Banks, savings and loan associations, and other financial institutions each have their own forms of signature cards that should be completed in order to transfer accounts to the trustee(s) of a living trust. The name of the account should be as described above. The printed checks need not include the date of the trust agreement, but they should identify the individual as trustee, e.g., "Mary R. Doe, Trustee." If the institution asks for a tax identification number or a copy of the Trust Agreement, you should give them the same response we recommended with respect to the security broker.

5. Public Partnership. Any publicly traded partnership interests you own can be transferred to the trust by means of an assignment that we will prepare for you. Before making such an assignment, we will want to review the partnership agreement to make sure that there are no prohibitions against assigning partnership interests to a revocable living trust. Such a prohibition is extremely rare. Once an assignment of a partnership interest has been made, you should notify the partnership so that the partnership records can be modified in order to reflect the fact that your interests are now held in a revocable living trust.

6. Closely Held Businesses. Stock in closely held corporations should be transferred on the books of the corporation by the corporate secretary, and new shares reflecting the trustee (s) as owner should be issued. In the case of closely held partnerships, interests are transferred in accordance with the terms of the partnership agreement. With limited partnership interests, this may require the preparation and filing with the Secretary of State of a new certificate of limited partnership. The articles of incorporation, partnership agreement, or a separate buy-sell agreement may prohibit the transfer of an interest to a revocable trust or require the consent of certain persons prior to any such transfer. If so, it will be necessary to amend the restrictive provisions or obtain such consent. We can advise you as to what action is required if you will furnish us with a copy of the applicable document.

7. Promissory Notes. Any promissory notes that you own will be transferred to the revocable living trust by means of an assignment that we will prepare. We will need a copy of each note in order to prepare such an assignment. If notes are secured by deeds of trust, then we will also prepare and record assignments of the deeds of trust. In order to do this, we will need copies of existing deeds of trust. In addition, you should advise the obligor under the note, in writing, that future payments should be made to the trustee(s).

8. Tangible Personal Property. If motor vehicles, boats, or airplanes are to be transferred to the revocable living trust, this can be accomplished by writing to the agency responsible for the registration of such items and requesting the forms necessary to transfer ownership. Any other tangible personal property to be transferred to the trust will be transferred by means of an assignment, which we will prepare for you.

9. Life Insurance. A life insurance policy is transferred to your revocable living trust by means of a form known as an "Assignment of Ownership." The form can be obtained from your insurance agent or directly from the insurance company. Policies assigned to the trust should be registered in the name of the trustee(s) in the manner described earlier in this memorandum. At the same time, you should obtain from the agent or insurance company a "Beneficiary Designation" form for each policy so that a new beneficiary can also be named. This form is often part of the Assignment of Ownership form. The beneficiary designation can be tricky, so we suggest that you consult with us on the appropriate language to use.

10. Retirement Benefits. You cannot assign interests in retirement plans, Keogh plans, or IRAs to your trust. However, you can name the trust as the beneficiary of these various accounts. Again, we suggest that you consult with us before you do this.

11. Later-Acquired Assets. Assets that are acquired subsequent to the creation of the living trust should be acquired in the manner described at the beginning of this memorandum. It is a good idea to periodically review the status of all of your assets to ensure that all trust assets have been properly registered in the name of the trustee(s).

Taxes

Although I try to avoid counseling clients on tax matters, there are some frequently asked questions about how a revocable trust is taxed. *(The following answers are general at best and are based upon my understanding of current tax laws. You should confer with your CPA or tax advisor for a more detailed answer.)*

1. What happens to my tax returns?

Because the revocable trust is revocable by you, you will be treated as the owner of the trust for income tax purposes. Accordingly, you will continue to report all items of trust income, deductions, and credits as if you had received or paid them directly--*the trust will be ignored for income tax purposes.*

2. Do I need a new taxpayer identification number?

If you are a trustee or co-trustee, the trust will not have its own taxpayer identification number--instead, it will use your Social Security number--and no tax return will need to be filed for the trust. If you are not a trustee or co-trustee, the trust will have its own identifying number and will be required to file its own tax return, but again all trust income and deductions will be reported by you.

3. Do I have to pay capital gains or transfer taxes when I transfer property into the trust?

Most funding transfers are made from you to yourself as trustee and are not subject to taxation as they are not being done for any monetary consideration and no proceeds are realized. This area can be complicated and particular questions directed to your tax advisor.

Other Estate Planning Documents.

1. Durable Power of Attorney

A power of attorney may be executed as part of the estate plan to allow emergency action if needed. In this document, you would appoint someone to serve as your agent to take care of the necessary financial, banking, tax, legal, and other matters, in the event that you are unable to do so. The power of attorney is designed to be a durable power of attorney under Oregon law, which means that it will remain effective even though the principal may become incompetent or incapacitated. The Power of Attorney provides for a successor if your agent is unable or unwilling to serve. It does not, however, survive death of the principal. The power of attorney must be in the physical possession of the agent.

2. Letter of Understanding

Because the Power of Attorney is such a powerful document and is potentially subject to misuse, I usually advise clients to leave the original with someone other than the agent and to sign a Letter of Understanding that gives instructions as to when and under what circumstances the power of attorney is to be delivered to the agent.

3. Will

The will discussed above, the pour-over will, is an essential companion to a revocable trust. It is designed to back up the trust by insuring that all of the property is disposed of in the manner provided in the trust. The will is the primary estate-planning vehicle in those situations where a trust is not employed. In these situations, the will disposes of all of the property of the testator (the person signing the will) that is subject to probate. Property not subject to probate are co-owned property with rights of survivorship, life insurance, or financial investments that pay on death. A will can provide for the establishment of trusts that come into existence after the death of the testator (testamentary trusts). Unlike the trust, a will does not take effect until the death of the testator and changing the will requires the same formalities as executing the will, including two witnesses.

4. Oregon Advance Directive for Healthcare Decisions

The Oregon Advance Directive replaces the old Health Care Power of Attorney and Living Will. Simply stated, the advance directive orders your health care and end of life decisions and provides for the appointment of someone to make those decisions if you are not able to do so yourself. Although advance directives are frequently executed in conjunction with the execution of a will or establishment of a revocable trust, the advance directive deals directly with medical care rather than property issues. It is advisable to execute an advance directive whether or not you intend to execute a will or revocable trust. The related Physician's Orders for Life Sustaining Treatment ("POLST") can also be considered when preparing advance directive.

If you decide you'd like to proceed with a Revocable Living Trust, please complete and return the enclosed confidential information sheet. We can then set up an appointment at my office where I can answer any questions and go over more estate planning details. Thank you.