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Revocable Living Trust Memorandum

This memorandum is intended to present general information regarding the transfer of property to revocable living trusts. Brief information is also included regarding tax returns, probate, and certain post-death administration matters.

Name of Trust: The name in which the property should be titled is:

_____, as Trustee of The
_____ Trust U/T/A dated _____,
_____.

This is the basic form to be used for holding all properties in the trust. Some state statutes specifically authorize the titling of real and personal property in the name of the trust. However, it is common practice in many states to title property in the name of the trustee. Some institutions may require slightly different wording. The designation "U/T/A" means "under trust agreement" and "F/B/O", as commonly used on stocks and bonds, means "for and on behalf of." The following is additional information regarding certain specific types of assets:

Bank Accounts: Checking and savings accounts, certificates of deposit and other financial accounts can be coordinated with the living trust in one of several different manners. Such accounts can be held in the name of the trust as previously described. However, many clients prefer to maintain checking or other accounts in their names. In some states, a personal account

may be established as a P.O.D. (payable on death) account. A P.O.D. account generally is "an account payable on request to one person during his lifetime and on his death to one or more P.O.D. payees, or to one or more persons during their lifetimes and on the death of all of them to one or more P.O.D. payees." A "P.O.D." account is payable on death to the P.O.D. payee. If permitted by your state's laws, the trust should be the P.O.D. payee if you decide not to title the account in the name of the trust. Check with your bank or financial institutions as to whether a P.O.D. arrangement can be used.

Your financial accounts could also be established as joint accounts with a designated successor trustee as a joint party. Any such account, or a separate statement, should clearly state that the joint party is included in the capacity as successor trustee and that there is no intention to pass the proceeds of such account to the person in his or her individual capacity. After the death of both grantors, the joint party could transfer the account into the trust. Having joint parties such as an adult child, can be convenient in the event of extended travel or disability. Lastly, a joint account can be established to authorize an additional party or parties to have access to the account during lifetime, and such account could be payable on death (P.O.D.) to the trust.

Stocks and Bonds: Where securities are held by a brokerage firm in its street name, the name of your account should be changed to the name of the trust. Securities held in your name should be re-registered into the name of the trust. Bearer bonds need not be titled in the name of the trust but should be listed on the schedule of assets attached to the trust agreement.

Vehicles: Titled vehicles can either be held in the trust name or in joint names as previously described.

Life Insurance: There is generally no advantage to change ownership of life insurance policies to the trust because proceeds payable to a beneficiary, other than the insured's estate, are not subject to probate. The trust should be named as beneficiary.

Retirement Plans: The trust can also be named as the beneficiary of I.R.A.'s, Keogh plans, corporate pension and/or profit-sharing plans or other employee benefits. Where significant amounts are involved, tax consequences should be discussed in order to determine proper alternatives.

Notes and Contracts Receivable: Notes and contracts should be endorsed or assigned to the trust. Escrow holders may charge an assignment fee.

Partnership Interests: Partnership interests need to be assigned to the Trust. When limited partnership interests or units are transferred to the trust, an amended certificate of limited partnership may be filed with the Secretary of State of some states. When general partnership units are transferred, a new certificate of assumed business name may need to be recorded in the county.

Liability Insurance: Property, casualty and similar insurance coverage should be reviewed with your insurance agent, and the insurance company informed that the trust is the legal owner of the trust assets. The insurance company may need to add the Trust as a named insured on the policies.

Government Programs or Agencies: If the property that you are transferring to the trust is part of a government program or is under a contractual arrangement with government agencies, you may need to take some actions to ensure that the transfer to the trust will not cause any type of penalty or will not disqualify the property from participation in the program. For example, property that is receiving irrigation water under the Reclamation Reform Act and that is put in the trust may require that you promptly (within 30 days) notify the irrigation district and complete a trust ownership form to avoid a penalty.

Encumbered Property: If any property subject to a lien or encumbrance is transferred to the trust, the pertinent documents should be reviewed to ensure a due on assignment or a due on transfer clause is not triggered. Consent may need to be obtained from the lienholder. If it is not currently encumbered but you anticipate placing a mortgage on the property or if it is currently encumbered and you intend to refinance the property, please note that some lenders may require the property to be taken out of the trust when the lien is put on the property because they do not want to loan money to the trust even though the Uniform Trustee's Powers Act allows a trustee to borrow money and to encumber the trust assets as security for the loan.

E.I.N. and Tax Returns: The trust does not receive a new employer identification number and does not file a fiduciary income tax return. The trust uses the Grantor's social security number are used and all items of income, deduction and credit are reported on the grantor's federal Form 1040, income tax return.

When the grantor is not the trustee, an employer identification number must be applied for and used. Form 1041 must then be filed, but income, deductions and credits are passed through to the grantor.

Real Property Tax Exemptions: In states that allow for property tax exemptions for homeowners of principal residences, most grantor trusts should continue to allow you to qualify for the homeowner's and related property tax exemptions. You may need to notify the County Assessor, provide them with a copy of your trust, and sign new exemption forms and/or affidavits to continue to qualify, however.

Excise Tax Exemption: Some states have excise taxes for transfers of real property, however, a transfer to a revocable living trust should be exempt from such tax.

Trust Registration: In some states there is a procedure for registering your trust with the court where the trust is to be administered. The registration is a simple procedure that generally is unnecessary unless some court proceeding needs to be brought regarding the trust. A trustee

who fails to register a trust may lose his or her right to compensation and can be surcharged if any beneficiary is injured by the failure to register the trust.

Probate Avoidance: Probate is only avoided by having all assets transferred to or properly coordinated with the trust. A single asset held outside the trust may necessitate probate. Newly acquired assets should be initially, or at least promptly, titled or coordinated with the trust.

Post-Death Matters: Even if probate is or can be completely avoided, there are certain matters that still must be taken care of following the death of the grantor. If the trust property is to be distributed out immediately without the sale of the trust assets, the trustee will need to convey the property from the trust to the beneficiaries or distributees. Transfer documents such as deeds may need to be prepared and recorded. The transfers should be made only after the debts of the grantor are fully paid. In any event, distributees should be made aware that transfers are at least theoretically subject to the rights of the creditors of the grantor for up to two years following the death of the grantor unless notice to creditors is given, in which case the time period may be shortened; to shorten the time period for creditors to make a claim, it may be necessary to open a probate proceeding in order to be able to rely on the probate code's notice to creditors provisions.

There are also tax considerations. Following the death of the grantor, the trust generally will become irrevocable, and if the trust has not previously obtained an employer identification number, the trustee will need to apply for one. Trust income earned during the period of administration of the trust will need to be reported on a fiduciary income tax return form 1041. When trust property is distributed to the trust beneficiaries, some of the trust income may be distributed out to them to be reported on their individual returns. The trustee would be well advised to consult with a tax return preparer who has experience preparing fiduciary tax returns.

Also, since there probably will be no personal representative of the estate appointed, the trustee will be responsible for having the final individual income tax return (Form 1040) for the grantor prepared. This final individual return will include income earned from the beginning of the tax year to the date of the grantor's death.

Following the death of a grantor, the property interests belonging to the deceased grantor and included in that grantor's estate (as defined for estate tax purposes) will receive, at least under current law, a new tax basis in the property equal to the property's fair market value on the date of death. A more detailed memorandum on this tax basis issue is available. Some funded trusts split into two or more new trusts on the date of death of one of the grantors. Generally, these trusts are set up for estate tax savings and are sometimes referred to as "AB" or "ABC" Trusts. If your particular trust is a trust that splits into other trusts at the date of death of one of the grantors, there will need to be allocations of assets to the new trusts, and each new trust may need to obtain a new tax identification number. Consultation with your accountant and attorney at this time would be advisable.