

ESTATE PLANNING MANAGEMENT

**DETAILED
INSTRUCTIONS**

for

THE MAINTENANCE

and

MANAGEMENT

OF

YOUR ESTATE PLAN

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Managing Your Estate Plan

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Introduction

The tasks of actually dating, signing, transferring assets to, and maintaining your estate plan documents are each quite simple. However, to be accomplished correctly, they will require some time and attention to detail. The materials included here are intended to guide you through each step.

I am not trying to make you an expert, but I do want to give you enough information to competently do the necessary tasks to make your estate plan functional. If you want additional information about any of the steps contained here or about your estate plan in general, please ask your Trust Officer, who will be glad to explain anything you would like to know. In addition, Nolo Press publishes excellent estate planning materials which are easily obtained at any local bookstore or (shameless plug), call me..

Dating Your Estate Planning Documents

Each document must be signed and dated to be valid. Indeed, the date of the document becomes an integral part of the name of the trust. The date identifies the trust as a unique and specific document. Your trust, for example, might be known as:

"The Doe Family Trust dated January 1, 2008."

Since the actual date you will sign your individual documents is beyond our control, we have intentionally omitted any reference to a specific date in the actual documents. Instead, throughout the documents wherever a date is required you will find a blank line (i.e., _____). This permits you to sign and date your documents at your convenience.

Caution: You should fill in the actual date that your documents are signed. To eliminate any chance of error, we highly recommend that you date the documents as you sign them, not before, and certainly not after.

Typically, the following documents will need to be dated:

- Family Trust
- Exhibit A to the Trust
- Transfers of Assets to the Trust
- Advance Health Care Directive - Husband
- Advance Health Care Directive - Wife

Will - Husband
Will - Wife

Signing Your Estate Planning Documents

To legally put your estate plan in force, each document requires specific signatures. Some of the documents will even require notarization. To avoid any potential disputes about the authenticity of those documents, it is essential that the signatures be notarized by a Notary Public in your local area. While banks, savings and loans and credit unions will usually have a Notary Public available at little or no cost, sometimes it is easier to just visit your local independent mailbox/packaging vendor and pay for the notarizations . Sign only the original in front of the notary. Do not sign the copy.

The trust does not require notarization; it requires only the signatures of the trustors and trustees. Likewise the Exhibit A and the assignments to the Trust. The wills do not require notarization either. However, they do require two witnesses to sign each will. A spouse cannot be a witness. Wherever a witness is required, space for witnesses to sign has been provided. Document by document, signature(s) are required as indicated:

Document	Husband	Wife	Notary	Witnesses
Family Trust	X	X	Advisable but None Required	None Required
Exhibit A	X	X	None Required	None Required
Advance Health Care Directive	X	X	X	X 2 Required
Will - Husband	X	None	Not Required	X 2 Required
Will - Wife	None	X	Not Required	X 2 Required
Personal Letter of Direction	X	X	Not Required	None Required

Funding Your Living Trust

Overview

Your living trust cannot manage or transfer property to your heirs which it does not own. Only those assets lawfully transferred into your trust are “trust assets” that avoid probate. Depending on the state you live in and the value of the asset, **ANY ASSETS HELD OUTSIDE THE TRUST MAY REQUIRE PROBATE.** An essential step in making your trust effective is to transfer ownership (title) of your property into the name of the Trustee, to yourself as Trustee of the Trust.

For the purposes of transferring title into the name of your trust, there are two types of property:

- those without ownership (title) documents
- those with ownership (title) documents

Each of the two types of property is treated differently when it comes to transferring it to your living trust.

Property Without Ownership Documents

Many types of property do not have title documents, including all kinds of:

- cash and other cash type assets (gold, silver, coins)
- household possessions and furnishings
- clothing
- jewelry
- furs
- tools and firearms
- most equipment
- antiques
- electronic and computer equipment
- art works
- bearer bonds
- precious metals
- collectibles, etc.

You transfer these items to your trust simply by listing them on a trust Exhibit A and signing a transfer document (Assignment or Bill of Sale) for each asset. While it will help to have pictures and serial numbers (if the item bears such a number), there are no specific rules regarding how the property must be listed.

Caution: Be sure you give a detailed enough description to identify exactly what is transferred to the trust (i.e., account numbers, addresses, specific works of art, etc.). While some attorneys believe it is overkill, our office also has a policy to have you sign a separate assignment of each item listed on the Exhibit. We have learned through other people's sad experience that such attention to detail is certainly not overkill.

Property with Ownership Documents

After your trust document has been properly signed, it is vital that you formally register ownership of all items that you intend to manage with the trust which have ownership documents (title papers) into the name of your trust.

The types of property owned by your trust which must have title documents - registered in the name of your trust include:

- Real estate, including condominiums and cooperatives
 - Stock and bond accounts
 - Mutual funds
 - U.S. Government Securities
 - Bank accounts
 - Limited partnerships
 - Business interests
 - Vehicles, etc.
- Individual stocks and bonds

You must register property in the name of your trust **promptly**. The new document of title must show that the Trustee of your trust, in trust, is the legal owner of the property, not you, the trustor. If the trust is not the legal owner of the property, the successor trustee has no legal authority to transfer that property to your beneficiaries, unless it arrives in the trust through the probate process.

That is the safeguard built into your estate plan: If title to property remains in your name (you fail to register it in the trust), that property will pass at your death to your trust under the terms of your back-up (pour over) will. However, that asset will be subject to all the expense and delay of probate - the very things you are trying to avoid.

Real Estate

To transfer title of a piece of real estate to your living trust, prepare and sign a deed listing the trustee as the new owner of the property, as trustee. (John Jones, as Trustee of the Jones Family Trust Dated January 1, 2008) Then have that deed notarized and recorded. This is not difficult, although it does involve some leg work.

Locate your existing deed.

Purchase a blank Quit-Claim or Grant (or Warranty) Deed form (either will do) at an office supply store in the state where the property is located.

Deed the property from yourself to the trustee of your living trust, in trust, by recording the new deed with your local county recorder's office. Be sure to use exactly the same form of your name for yourself on the new deed that you see on the old one.

A Quit-Claim deed is a simple deed form, where you transfer whatever ownership you have in real estate, without making any promises or guarantees of ownership. Since you are transferring your property from yourself to yourself as trustee of your living trust, you're not worried about guarantees and warranties, so the Quit Claim form of deed will work very well.

Stocks and Bonds Held By a Broker

To register stocks, bonds, money market accounts or mutual fund accounts in the name of your trust, ask your broker or money fund officer what is required. Usually, they require a signed copy of the Certification of Trust for their files, and a letter instructing them to register the account in the name of the Trustee, in trust. They should then confirm in writing to you that this has been done.

Individual Stocks and Bonds Held Personally

If you have personal possession of stock certificates or bonds (most people do not), you must have new certificates issued, listing your Trustee, in trust, as owner. Your broker may be willing to do this for you. If your broker won't help, get another broker who will, or deal directly with the "transfer Agent" of the corporation. Your broker (or the corporation) can tell you who this is.

Mutual Funds Not Held By Broker

For mutual funds not in your brokerage account, send a letter of instruction (or form which they provide) and a copy of the Certification of Trust directly to the fund.

T-Bills

To register T-Bills and other government corporate and U.S. bonds, notes, bills and securities in the name of the trust, contact the appropriate government office directly or have your broker do it for you.

Bank Accounts

Title to bank accounts can be readily transferred to your trust's name simply by completing the appropriate bank form (signature card).

Corporations, Limited Partnerships and Limited Liability Companies

To register a corporation, limited partnership or LLC interest in the name of your trust, contact the corporate transfer agent or attorney, the general partner or managing member and see what documentation is needed, then complete the forms and send them back to the General Partner.

Your Business

If you plan to transfer your interest in a business to your living trust, you should discuss and review your trust with an expert. This will usually include transferring a stock interest, a partnership interest or a Fictitious Business Name into the name of the trustee, in trust.

Vehicles

You will need to contact the state Department of Motor Vehicles and see what form they require to accomplish registering. Since California allows the transfer of \$60,000 of personal property (including motor vehicle) to your heirs without probate, it may be wise not to transfer the automobiles into the trust unless they are collector's items.

Generally Accepted Wording

Although there are a variety of methods by which you can effectively transfer title, we suggest that the following wording be used whenever possible:

"John Doe and Jane Doe, as Trustees of the Doe Family Trust Dated January 1, 2008."

However, if a particular institution prefers a different yet similar method there should be no problem. For example, some banks and transfer agents use various abbreviations such as U/A in place of "under agreement," or FBO in place of "for the benefit of," or "UDT' in place of "Under Declaration of Trust." There is no uniform rule for titling in a trust. As long as your name(s) as trustee(s) appear along with the name and date of the trust, it is sufficient.

For those assets that require a beneficiary designation, we suggest that the following wording be used:

"The beneficiary is hereby revocably changed so that any proceeds becoming payable by reason of the insured's death will be paid in a lump sum to:

John Doe and Jane Doe, or their successors in trust, as Trustees of the Doe Family Trust dated January 1, 2008, in trust.

If said trust agreement shall not be in effect, then to the Insured's spouse, or if the Insured's spouse is not living, then share and share alike to the living, lawful children of Insured, and if there shall be no lawful child of Insured living, to Insured's executors or administrators."

Copying, Storing, Adding and/or Deleting, Amending and Revoking your Estate Plan Documents

Copying

In addition to the original documents, we have provided you one complete copy of each document you created.

Caution: You will notice that each page is permanently marked "copy" and as such **should not be signed**. This is intended to eliminate the problems that could potentially arise if there is more than one original and to make future amendments to the document much easier.

When you begin to transfer ownership of your assets from yourselves to yourselves as Trustees of your Family Trust (which is called **funding** your trust), some of the organizations you currently have financial dealings with will require a photocopy of the signed original trust document. (A photocopy of the Certification of Trust should be sufficient). A photocopy of the signed original does not create a new original.

Storing

Since you have only one original, keeping the original set of documents in a safe place is essential. Appropriate places would include:

- * Safe Deposit Box - jointly owned with Successor Trustee
- * Fire Proof Metal Box
- * Fire Proof File Cabinet
- * Fire Proof Home Safe

Often, if you name a bank or other institution as your ultimate Successor Trustee, they will "store" your original document at no cost. The trade may not be worth it.

Caution: Remember - wherever you decide to store your documents, be sure your Successor Trustee knows and has easy access to the location upon your demise or incapacitation.

Adding or Deleting Property to the Trust

The addition or deletion of property from your trust does not require an amendment. The trust documents you have already created automatically provide for this. It specifically gives you the right to add property as follows:

- List it on the appropriate schedule
- Transfer or take title of the asset in your trust's name

To facilitate this process, we have provided you with instructions on how to take title. (See above.)

Amending the Trust

Life is constantly changing. Your trust is "living" in the real sense that it can be changed as your needs, desires, and concerns change. A simple document called an amendment is all that is required. We have provided you with some

simple forms to amend the document for changes to the following provisions of the trust, including: Beneficiaries, Guardians, Successor Trustees. All other changes require such wholesale revisions that an entirely new trust document will probably be required. However, these types of wholesale revisions occur very seldom.

Caution: All amendments require both spouses' signatures.

Revoking the Trust

The trust can be terminated by revoking the trust in its entirety. This is accomplished exactly like an amendment; both spouses sign the revocation, **then keep the trust and revocation so that your administrators will know it has been revoked.**

Once your trust is formally revoked it ceases to exist and thereby has no jurisdiction over any of your assets.

Advance Health Care Directive

The old "Health Care Durable Power of Attorney", "Instructions to Physician" and "Living Will" documents have recently been changed so that they are now included in a statutory document called an Advance Health Care Directive. It still fills the same purpose, which is to let your health providers know your desires and tell them whom to deal with if you can't speak for yourself.

Unfortunately, not all states have adopted the statutes permitting the use of such documents. However, only three jurisdictions refuse to honor your wishes as stated in such a document, so even if your state does not recognize the document formally, it will still be effective, except in Illinois, Louisiana, and Washington D.C.

The Directives contained in your estate plan portfolio from this office only become effective upon your incapacity, which is defined. The Directive gives broad powers to whomever you name as your "Agent." So, name someone you trust.

Caution: Because of the critical and personal nature of the powers extended, this document should be reviewed each year to be sure it says what you want it to say.

In order to validate your Advance Health Care Directive you must:

1. Sign the document in front of a Notary Public and have it notarized.

2. Store the original with your other estate planning documents in a safe place accessible to your Agent.
3. Place a copy in your medical records with your regular family physician.

Preparing a Personal Letter of Direction

The last item in your estate plan is the preparation of a "Letter of Direction." This is a personal letter providing information and instructions necessary to handle your personal affairs consistent with your desires (the important details, especially those outlining the distributions of your personal property which are not included in your Trust or Will.)

Your Letter of Direction is a means to provide more detailed information to your Trustee and family. A letter of direction performs three basic functions:

- * Outlines the detailed distribution of your personal property
- * Identifies the location of all important papers
- * Expresses certain other personal desires

Realize that a Letter of Direction is not a substitute for a Trust or Will. Your Trust directs your Trustee to distribute your property and personal effects in a certain fashion; your letter of direction fills in the details and provides the Trustee with information he will need to fulfill your desires.

Caution: While a letter of direction offers desired flexibility in specifying individual desires, it does not have the legal force of a Trust or Will, so you need to choose a Trustee who will honor your personal desires consistent with the terms of your Letter of Direction.

The Letter of Direction will be opened and read immediately after your death for personalized instructions and information (e.g., details on your desired distribution of personal property, funeral preferences, location of assets, etc.). Most importantly, you can revise and amend your Letter of Direction without undergoing the formalities necessary in the execution of a Trust or Will. The letter should be signed and dated and re-dated whenever you change it.

Though the trust document you have created specifically references the detailed distribution instructions of your personal property as outlined in your Letter of Direction, your Letter of Direction may contain the following additional

information:

- * Location of your important papers (especially your Trust documentation)
- * Names of people to call first in the event of death
- * A listing of additional assets
- * Location of current income tax data and previous years' tax returns
- * A listing of all insurance policies and where they can be found
- * Social Security data
- * Relatives and friends to inform regarding funeral plans
- * How and where you want your children educated
- * Location of the safe deposit box
- * A list of all credit cards
- * All information and documents involving your personal residence
- * Data on all loans and a list of all investments (e.g., stocks and bonds)
- * Information concerning any other benefits due survivors

Caution: The trust document specifically relies on your Letter of Direction to spell out any special desires you have regarding the distribution of your personal property. For example, if you want one specific child to have certain jewelry items, include that fact in your Letter of Direction.

Finally, your Letter of Direction can add further evidence of your intent to your Directive to Physician document.

Checklist For Your Personal Affairs

A basic premise of estate planning is that one cannot be too thorough. Even the most diligent estate planners overlook certain items. Consequently, the following is a checklist of items one should locate or have available in a secure and central location at all times:

1. Birth Certificates;
2. Marriage Certificates;
3. Death Certificates;
4. Adoption Certificates;
5. Veteran's Discharge Certificate;
6. Divorce Documentation;
7. Legal Documentation Regarding Name Changes;
8. Nationalization Papers;
9. Passports;

10. Social Security Cards;
11. Driver's Licenses;
12. List of all credit cards and account numbers;
13. Automobile Registration Certificates;
14. Location of safe deposit boxes and keys;
15. Location of safes and combinations;
16. Photographs of all household furniture, jewelry and other personal property (to be kept apart from personal residence in case of fire);
17. Indication of principal place of residence - if more than one residence, indication of where you vote and prefer to be a resident;
18. Indication as to whether any of your immediate relatives are handicapped or incompetent;
19. Other family information such as the state of health of its members, whether there are marital difficulties or family feuds;
20. Listing of the full names, addresses, telephone numbers of non-family members you intend to make beneficiaries of your estate;
21. If you are the beneficiary of a trust or have created a trust, provide all particulars and documents evidencing such;
22. If you have a right to exercise a power of appointment, provide all particulars;
23. Life insurance policies;
24. Fire insurance policies;
25. Disability insurance policies;
26. Major medical insurance policies;
27. Automobile, boat and plane insurance;
28. Name and address of your employer;
29. Details of employment contract, stock purchase plan and other employee benefits;
30. Listing of any union memberships and benefits;
31. Whether you are entitled to a pension, profit sharing or other retirement or death benefit;
32. Name, address, and telephone number of anyone you have given a power of attorney;
33. Country club, Yacht club and other memberships;
34. Fraternal and trade societies with benefits provided;
35. Funeral arrangements you prefer and any preparations you feel might need to be made;
36. Disposition of your business interest at death; and
37. Listing of names of people to whom you are indebted and the terms under which you are supposed to repay.

Post Mortem Considerations

Upon your demise, your heirs are responsible for completing specific tax returns. (i.e., Federal Estate Tax, Fiduciary Income Tax, Gift Tax and Final Personal Income Tax Returns). To assist your family and advisors in their efforts to comply with your estate planning goals and objectives, tax returns should be assembled in an orderly manner including, but not limited to, the following:

Tax Return Documents:

1. Last 4 years Federal Income Tax Returns;
2. Last 4 years State Income Tax Returns;
3. Copies of Internal Revenue Service Audit Documentation;
4. Copies of State Tax Board Audit Documentation;
5. Copies of Federal Gift Tax Returns;
6. Copies of State Gift Tax Returns;
7. Copies of Federal Fiduciary Returns; and
8. Copies of State Fiduciary Returns.

Conclusion

I hope this little review will help you manage your estate plan. Let us know if we can help.

Jay W. Henderson

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