



## ADMINISTERING YOUR REVOCABLE TRUST

A Private Clients Group White Paper

This Memorandum is intended as a general guide for you to use in administering your Revocable Trust (also known as a “Living Trust”) and deciding whether you wish to transfer assets to (or “fund”) your Revocable Trust during your lifetime. This Memorandum also provides guidance for making the title transfers that are necessary if you do wish to fund your Trust during your life.

### IDENTIFICATION OF YOUR REVOCABLE TRUST

Most likely your Trust has a fairly formal legal title which includes the name of the Trustee or Trustees, the name of the Trust (usually your own name) and the date on which the Trust was signed. It might look something like this:

“John L. Jones and Mary A. Jones, Trustees of the John L. Jones Revocable Trust Under Agreement Dated January 1, 2013.”

When referring to your Trust, almost any variation on this name is appropriate, particularly if your Revocable Trust itself includes a statement that the trust may be known by a simpler name, such as “The John L. Jones 2013 Revocable Trust.” Be sure, however, that when identifying the Trust you include at least the Trustee’s name, the word “Trustee,” and the date of the trust, such as “John Jones, Trustee under agreement dated 01/01/2013.”

### TAXPAYER IDENTIFICATION NUMBER

When transferring assets into your Revocable Trust or opening bank or investment accounts for the trust, you may be asked for the Trust’s “taxpayer identification number.” If you are a Trustee or a co-Trustee of your Revocable Trust, the tax identification number generally will be your Social Security Number. If you are not a Trustee or a co-Trustee, your Cummings & Lockwood estate planning attorney or paralegal can obtain a tax identification number for your trust on your behalf.

### INCOME TAX RETURNS FOR YOUR REVOCABLE TRUST

Your Revocable Trust is not a separate taxpayer. Rather, all items of income earned by the trust and all corresponding deductions are reportable on your personal income tax returns, as if the assets were held in your individual name.

However, even though the Revocable Trust does not pay separate income taxes, it may still be required to file its own tax return. In general, the necessity of filing a tax return for the trust hinges on whether the trust has its own tax identification number (see the preceding section of this memorandum). The general rules are as follows:

- If the Trust’s tax identification number is the same as your Social Security Number (as is the case if you are a Trustee or co-Trustee of the trust) all trust investment activity will be reported directly under your Social Security number and no separate income tax return is required for the Trust.
- Conversely, if the Trust has its own taxpayer identification number, a separate federal income tax return will have to be filed for the Trust, even though you will remain liable for any tax ultimately due.

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Whether or not the trust has its own taxpayer identification number, there is no need to file an income tax return in any year in which the trust does not generate income. Accordingly, if you decide not to fund your Trust during your lifetime, no trust income tax returns will be required.

## DECIDING TO FUND YOUR REVOCABLE TRUST

You have most likely established your Revocable Trust with at least one of these objectives in mind:

- To avoid probate court supervision of property that you wish to have managed in trust after your death.
- To avoid probate court supervision of your property in the event of your disability or incompetency.
- To avoid probate court supervision of your property at the time of your death and to expedite the settlement of your estate, including avoiding the need for “ancillary probate” of any out-of-state real property.

The importance of transferring property to your Revocable Trust during your lifetime depends on which of these objectives you are seeking to achieve.

If your objective in establishing a Revocable Trust is solely to avoid probate court supervision of trusts you establish for your family after your death, then there is no need to transfer title to your property into the name of the trust while you are alive. You may continue to own all of your property in your own name, unless for tax or other reasons your Cummings & Lockwood attorney has suggested that rearrangements of title be made as between yourself, your spouse, your children or other forms of trusts.

On the contrary, if your objective in establishing a Revocable Trust is to avoid probate court supervision of your property in the event of your disability or incapacity, you may wish to fund your Revocable Trust during your life in order to provide for the uninterrupted management of your property.

Similarly, if your objective is to “avoid probate” of your property at the time of your death, you will be successful only if and to the extent that your property is transferred into the name of the Trustee of your Revocable Trust before your death.[1]

Please keep in mind that the decision to avoid probate court supervision is not one to be made without the benefit of experienced legal counsel. In certain family circumstances you may wish the settlement of your estate to be governed by the more rigid processes and procedural safeguards of the probate system. In other cases, the most efficient route is to streamline estate settlement by funding your Revocable Trust during your lifetime to the greatest extent practicable, thus avoiding many aspects of probate.

If you do elect to fund your Revocable Trust, you will not need legal help for most of the transfers, if you are willing to put in the time and effort required. To the extent you do not wish to undertake this effort, you may wish to retain Cummings & Lockwood to take care of these matters for you.

## MECHANICS OF FUNDING YOUR REVOCABLE TRUST

Some of the general requirements for transferring common types of property to your Revocable Trust are discussed below. It is unfortunate but true that there is no uniformity among the various banks, brokers and other institutions as to how title to property is properly transferred to a Revocable Trust. Until the time comes when there is such uniformity, each institution you deal with is apt to have its own requirements. You will save yourself a great deal of time and trouble if the very first step in your program for transferring assets is to call the institutions involved and find out what they each require.

Most of our clients are able to retitle nearly all of their assets without any legal assistance. However, if you require any help with the asset transfer process, feel free to call your estate planning attorney at Cummings & Lockwood (or the paralegal who is assigned to help you) and ask for his or her assistance.

### 1. Brokerage accounts and bank custody accounts

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You probably will find that brokerage firms and banks, in particular, and often other organizations, will ask to have another set of contracts or agreements signed by the Trustees of your Revocable Trust. Presumably they will be substantially the same as the contracts or agreements you signed previously in your individual capacity.

## **2. Registered stocks and bonds**

To transfer stocks or bonds owned in your personal name (i.e., assets that are not registered through your bank or brokerage firm), your broker may ask you to endorse the back of the stock or bond certificate, or to supply what is known as a stock or bond "power" authorizing the transfer agent for the company involved to make the transfer on its books. Occasionally, you may be asked to provide a formal Letter of Instruction requesting the transfer which must be signed by you and guaranteed by an authorized official.

## **3. Unregistered (bearer) bonds**

To transfer bonds which are not registered in your name (i.e., bearer bonds) to your Revocable Trust, we suggest that you open a safe deposit box in the name of the Revocable Trust and place the bonds in the safe deposit box inside an envelope which is marked with the Trust's name.

## **4. Real estate**

You will need to retain the services of an attorney to change title to real estate. Cummings & Lockwood would be glad to help, or you can contact the attorney who handled the original closing for you. To transfer real property, you will be asked to sign new deeds transferring title from yourself to your Revocable Trust. Those deeds then will be recorded on the Land Records in the town where the property is located.

Before transferring real estate into your Revocable Trust it is crucial that you consider any impact such transfer may have on your homeowners' and title insurance. In addition, if there is any indebtedness on the property, it is advisable to obtain the written consent of the lending institution prior to completing the transfer. Please contact us if you have any questions in this regard.

## **5. Closely-held stock**

Stock you own in a closely-held company must be transferred on the books of the company, assuming there is no restriction on transferring the stock. This is usually accomplished by writing a letter to the Secretary of the company and endorsing your stock to your Revocable Trust.

## **6. Partnerships**

If you wish to transfer an interest in a partnership (such as a real estate, oil and gas, or other partnership), you should contact the Managing Partner of the partnership (or the financial advisor or brokerage firm which introduced you to the partnership) and ask for their particular requirements. Some of these partnerships are publicly traded; others are private. Some partnership agreements require that the consent of other partners be obtained before transferring the property to a Revocable Trust; others do not.

## **7. Limited Liability Companies**

If you wish to transfer an interest in Limited Liability Company ("LLC") you should contact the Manager of the LLC (or the financial advisor or brokerage firm which introduced you to the LLC) and ask for their particular requirements. Some LLC operating agreements require that the consent of other members be obtained before transferring the property to a Revocable Trust; others do not.

## **8. Bank accounts**

To transfer a bank account to a Revocable Trust, call your bank officer for instructions. Usually all that will be required is for you to open a new account in the Trust's name and have the Trustee(s) sign a new signature card. You should be aware that transferring a Certificate of Deposit to a Revocable Trust prior to its maturity may result in a forfeiture of interest.

## 9. Motor vehicles and boats

Most clients seeking to fund their Revocable Trust do not bother to transfer title to their motor vehicles and boats to their Revocable Trust, partly because of the time and difficulties involved in dealing with the Department of Motor Vehicles and partly because of the reasonably quick changeover of such properties as one buys and sells them. However, in the case of an antique car of considerable value, or a very substantial boat, it might be worth the effort. If you decide to transfer such property, you will need to contact the Department of Motor Vehicles or other appropriate state or federal agency to find out the transfer requirements. These requirements differ from location to location and time to time, and you should be prepared to receive conflicting advice.

## 10. Contents of your home

In most cases, it will not be practical to transfer the ever-changing contents of your home (furniture, furnishings and so on) into your Revocable Trust. From a legal standpoint, it is uncertain whether a transfer of the contents you now own will be effective with respect to furniture and furnishings you acquire later. Nevertheless, some of our clients who are extremely concerned about avoiding probate have taken the step of assigning their “tangible personal property” to their Revocable Trust, following the format shown on Exhibit A to this Memorandum. In general, we consider it appropriate to sign such an assignment, so long as you recognize that it could lead to disputes later on as to who owns the property, what types of property are included on the assignment, when ownership is to be determined and similar issues. To minimize such disputes, if you own valuable tangible personal property such as artwork which you wish to transfer to your Revocable Trust, we suggest you sign a separate assignment form fully describing such property.

## 11. Insurance policies on your life

As a broad general rule, there are greater tax advantages to placing insurance policies in a separate form of trust known as an Irrevocable Life Insurance Trust than in a Revocable Trust. However, even if you elect not to place the insurance policies in an Irrevocable Life Insurance Trust, the insurance proceeds will still avoid probate (but not death taxes) as long as they are payable to a named beneficiary. Therefore, it is only advisable to name your Revocable Trust as the beneficiary of your life insurance if you wish to add the proceeds to trusts established for your family under your Revocable Trust which will continue after your death. It would be very rare to name your Revocable Trust as owner of the policies, as this lacks the tax advantages of establishing an irrevocable insurance trust. If you do decide to designate your Revocable Trust as beneficiary of your life insurance, you should contact the insurance company and request a change of beneficiary form for the policy.

## 12. Pension plans and IRAs

In some cases, it may be desirable to designate a Revocable Trust as the beneficiary of an IRA or pension plan, particularly if you would like the proceeds to be added to trusts established for family members under your Revocable Trust which will continue after your death. However, since there can be significant adverse tax consequences resulting from making such a designation, particularly if you are married, it is important to consult your estate planning attorney at Cummings & Lockwood prior to doing so. If, after consulting your attorney, you decide to designate your Revocable Trust as beneficiary, you should obtain beneficiary designation forms from the plan administrator or bank. For some pension plans, a married person must obtain the written consent of his or her spouse in order to designate a Revocable Trust as the primary beneficiary of the plan.

## REQUESTING CONFIRMATION OF TRANSFERS

Within a few weeks of transferring property to your Revocable Trust, you should contact the appropriate institutions and request written confirmation that the transfers have been completed. Where appropriate, you should request the new documents of title (i.e., newly issued stock or bond certificates, deeds, etc.) and forward them to the Trustee(s) of your Revocable Trust.

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## TRANSFERRING INSURANCE COVERAGE

As noted above, if you transfer certain types of property to your Revocable Trust, such as your home, household furniture and furnishings, or your automobiles, there are probably insurance policies associated with this property. Prior to making such transfers, you should call your insurance agent and ask whether your policies will need to be rewritten in the event of transfer.

## MODIFICATIONS TO YOUR TRUST

While your Revocable Trust can be modified by you at any time, changes to your trust must meet formal legal requirements. Accordingly, you should contact Cummings & Lockwood if you desire to amend your Trust in any way.

Revised June 2013

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This document is intended to convey to you the principal characteristics involved with Administering Your Revocable Trust as they apply to common situations. For this reason we have deliberately simplified technical aspects of the law in the interest of clear communication. Under no circumstances should you or your other advisors rely solely on the contents of this document for technical advice nor should you reach any decisions with respect to this topic without further discussion and consultation with a Cummings & Lockwood attorney.

In accordance with IRS Circular 230, we are required to disclose that: (i) this memorandum was not intended or written by us to be used, and it cannot be used by any taxpayer, for the purpose of avoiding penalties that may be imposed on the taxpayer; (ii) this memorandum was written to support the promotion or marketing of the transaction(s) or matter(s) addressed by the memorandum; and (iii) each taxpayer should seek advice on his or her particular circumstances from an independent tax advisor.

### EXHIBIT A

#### ASSIGNMENT OF TANGIBLE PERSONAL PROPERTY

I, JOHN L. JONES, individually, hereby assign any interest I may have in all of my tangible personal property to myself and my wife, MARY A. JONES, as Trustees (or any Successors in Trust) of the John L. Jones Revocable Trust under Agreement dated January 1, 2013.

\_\_\_\_\_  
John L. Jones  
Individually and as Trustee

\_\_\_\_\_  
Mary A. Jones  
Trustee

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Address

# CUMMINGS & LOCKWOOD LLC

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2013, before me, the undersigned, personally appeared JOHN L. JONES and MARY A. JONES, c who are personally known to me or c who have produced a driver's license as identification or c who have produced \_\_\_\_\_ as identification, and acknowledged before me that they executed the same as their free act and deed in their capacity therein stated, that by their signatures on the instrument, the individuals, or the person upon behalf of whom the individuals acted, executed the instrument for the purposes therein contained, and that such individuals made such appearance before the undersigned.

\_\_\_\_\_  
Notary Public

[1] While "avoiding probate" generally does result in a modest reduction in estate settlement costs, it does not result in any reduction of death taxes.