

## CHAPTER EIGHT

# Instructions to You as the Grantor and Trustee

During your lifetime you are the trustee. So you manage and control all trust assets. There is nothing you need to do as trustee that is too different from what you were doing before you had a trust. Operation of your trust is quite simple.

### TAXES

There are no separate tax numbers necessary for the trust while you are alive (see Employer Identification Number in the glossary). You file your taxes just as you always have in the past without reference to the trust. There is no trust tax return required unless, at the death of a grantor, the trustee is to take over and continue for the benefit of a trust beneficiary.

### BANKING

Once your bank and credit union accounts are either in the name of the trust or have a pay-on-death designation filed for them, you do nothing different from what you did before. Your checks do not have to have the name of the trust imprinted upon them, even though the account is in the name of the trust. You do not have to write the word “trustee” after your signature. See the section on accommodation signatures below if you want to give someone else the permission to use the account on your behalf.

## REAL ESTATE

The sale or mortgage of real estate operates in exactly the same fashion as before, except that if the deed to the trust has been recorded, the name of the seller is the trust and you sign as trustee. The buyer or his title company might require an affidavit from you stating that the trust is still in operation and that you have the authority to sell the property. Upon your death, the successor trustee can immediately assign the property of the trust to the heirs as you have instructed (after paying all your debts, taxes, and other expenses, of course). No probate court directives are necessary. The death certificate is normally recorded with the county deeds records.

## NEWLY ACQUIRED ASSETS

Don't forget as time goes by that you have a trust. If you buy new real estate, get a deed made to the trust for the new property. Do the same when opening new accounts or acquiring any new titled assets. These must be funded to the trust in order to keep them out of probate. The pour-over will, described previously, will guarantee that these new assets end up in the trust after the pour-over will is probated, but probate avoidance is a major benefit of your trust and it is up to you to see that the trust stays funded.

## CHANGING YOUR MIND

Trusts are easily changed. Much more easily, in fact, than wills. To change a will, you need to sign a codicil. This is a written amendment to the will prepared by an attorney that must be signed with the same statutory formality of the will itself, which may mean having two disinterested witnesses and in some cases a notary. Changing a trust in most states can be done merely by signing a dated, written statement explaining what you are changing. In some states, the trust amendment does not even have to be witnessed or notarized, though as a way of avoiding a fight over whether you actually signed the document or whether you were competent when you did it, I recommend having witnesses and notarizing.

The point is that the trust is revocable, which means it is changeable so long as you are mentally competent.

## REVOKING THE TRUST

Usually we do not want to revoke the trust since we want the benefits a trust

can provide. Amending it for changed circumstances usually works; however, there are situations where you may no longer want the trust.

## Death, Divorce, and Remarriage

The joint trust that you had with your ex-spouse will likely have to be revoked and redone as an individual trust. The reason is that you were both probably named as cotrustees during your lifetime and each other's trustee upon death or disability. The distribution plans of each of your assets are likely different than when you were married. The old trust must be "defunded" and the assets placed either in your individual names or the names of your new individual trusts. Don't forget to change beneficiary designations on accounts to the new trust name.

Defunding just means taking the assets out of the trust name. While you can sign a document that says the old trust is officially revoked, that is not necessary unless the trust is registered with a court. The trust ceases to exist for all intents and purposes when it has nothing left in its name and nothing is to pass to it on anyone's death.

If you were single when you made the trust and are now married, you will want to talk to your lawyer about how this affects the trust. In community property states (most of the western states plus Wisconsin), you may have to either make a new trust or have your new spouse sign off on your trust plan. A spouse may automatically accede to rights in your trust property by virtue of the marriage. In any event, you will probably want to amend the trust to provide for the new wife or husband. Typical provisions may include use or ownership of the marital home if you die first.

## Trust Purpose Is Gone

A trust set up for a particular purpose, such as a special-needs trust or an educational or spendthrift trust, has a certain life expectancy. When the trust purpose has been fulfilled, the terms of the trust determine the disposition of the remaining trust assets. When that happens, the trust expires. There are no papers to file or forms to fill out. There may be a final trust tax return, but that's it.

It may be that you lived longer than expected or some other circumstance caused you to use up your assets to the point where your estate at death falls below the probate threshold. In that case, you may just remove all assets from the trust. There is no need to cancel the trust, and there are no forms you need

to file. It just sits there empty until you either die or add assets to it.

In the event of a trust that is being supervised by a court, you will have to file a petition to close the trust and may have to have the approval of the court. Discuss this with your attorney if that comes up. I see few of these, but it could happen.