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[Settlor 1 First and Last Name]
[Settlor 2 First and Last Name]
[Home Address]

Re: Your Revocable Trust

Dear [Settlor 1 First and Last Name] and [Settlor 2 First and Last Name]:

The primary purpose of a trust is to avoid having to probate property that you own and thereby save a lot of time and money. Real estate, and other trust property, may be sold by the trustee directly without any further action. Title and escrow companies are very familiar with the trust process. This letter will summarize how the trust works, and also will point out some issues to consider.

1. Trust Titles. The trust is created by you and your spouse as the “settlor” and the initial “trustees”. As trustees, you hold the trust estate in trust for the benefit of the “beneficiaries”. During your lifetime you and your spouse are the beneficiaries. You have chosen the formal name of the trust to be **The [Trust Name], dated [Trust Date]**.
2. Successor Trustees. You and your spouse are the trustees during your lifetimes. When one spouse passes away, the surviving spouse is the sole trustee. After the surviving spouse passes away, the “successor trustee(s)” are in charge of administering the trust and either selling the assets and giving the proceeds to the beneficiaries or transferring the assets to the beneficiaries outright. You will need to choose at least one successor trustee and it is a good idea to name at least one or two backups. You can update this information from, time to time.
3. Revocability and Taxes. The trust may be revoked at any time by the settlors, and assets may be moved in and out of the trust at your discretion. Because the trust is revocable, you are not really transferring any assets or to put it another way you are transferring the assets to yourself. Hence, there are no taxes of any kind to worry about associated with the creation of the trust. You do not have to file a tax return or get a tax identification number. Real estate may be transferred to the trust without causing any transfer taxes, revaluation of property taxes, or even issues with your mortgage.

4. Types of Properties. California law defines property for married couples with respect to ownership. There is “separate property” which is any property acquired by one spouse prior to marriage (see the attached definition), or acquired during marriage but belongs to one spouse for reasons reaching outside the marriage such as an inheritance or a gift from a relative. It is owned 100% by that spouse. Separate property is treated differently than “community property” which is property and income acquired during the marriage. All community property is owned equally (50-50) by each spouse. Typically, clients have no separate property that they want to report. **If there is any separate property, please let me know.** Separate property is contributed to the trust, but the spouse that owns the property controls it individually, not jointly as is the case with community property. The last type of property is “quasi-community property” that is property acquired in a state without community property laws but would be community property had it been acquired in California. It is treated as community property.
5. Trust Usage. A trust is not a legal entity, and as such, it does not enter into agreements or own property. Rather, you, as trustee, acquire property that you want to make part of the trust in your own name but “as trustee.” The assets are “subject to” the trust, but are not owned by the trust. During the lifetime of both spouses, the spouses hold and use the trust assets for themselves, not their heirs, or to put it another way, during your lifetimes you are the beneficiaries, not your heirs. It is only upon death that assets are held and distributed to your heirs.
6. How Trusts Work / Death if First Spouse. Once your property is placed in the trust, you can use and liquidate assets as you wish. For separate property, the owner of it has full power. For community property, each spouse controls 50% of it. In most cases when the first spouse dies, all the estate property goes to the surviving spouse. When the second spouse dies, the property goes to your heirs that you designate as the beneficiaries in your trust. However, either spouse may give some or all of their separate property and up to 50% of their share of the community property to whoever you wish at the time of their death.

Example 1: Husband has remarried and wants his 50% of community property assets or at least all of his separate property to go to his grown children when he dies rather than having it all going to his wife who is only the step mother to the grown children.

Example 2: Wife is worried that if she dies prematurely, she does not want her assets going to her husband’s spouse if he remarries. So, she provides that her 50% of the community property should go to her children at that time.

Caution should be taken, however, to provide for a bequest of assets to someone other than the surviving spouse because it can create hardships and be technically difficult to implement. For example, for the spouse that dies first, is it the case she really wants the husband to have to sell the family home so that her 50% share of the equity can be given to the children? On the other hand, it is easy to liquidate a particular financial account or sell an investment property and give the children that 50% share without causing unnecessary hardship.

7. Trust Assets/ Titling. When acquiring assets to be placed in the trust, you will sign your own name as usual but add the title “as trustee.” Assets can be transferred to the trust directly, such as real estate by using a deed, or by assignment form for financial accounts that the financial institution would provide you. Personal property does not need to be titled to the trust after we create it. We use a General Assignment form when we create your trust to place all your personal property into the trust (whether owned now or in the future). The trust describes these assets in general terms, such as all furniture and fixtures, all jewelry, all businesses and all investments.

Note on Financial Assets. Remember, I do not title your financial assets to the trust. If I did I would charge you for the time, and all I would do is call your financial institution/account holder and tell them you want to transfer that account to the trust. They would provide me their form to do that. I would fill it out and then also send them a copy of the Trust Agreement if they request it, or the Certificate of Trust which they often ask for in lieu of sending the whole trust agreement. So, it’s better for you to do it to preserve the privacy of your financial information.

Here are some specific assets classes for you to specifically ensure you properly title to the trust:

- a. **Real Estate.** The main point of having a trust is to place real property into it so it can later be sold without probate. A deed is used to transfer the property to the trust.
- b. **Life insurance policies.** These are self-executing contracts that do not necessarily need to be placed in the trust because the contract already provides for the beneficiaries to get the proceeds. You may still want to change the policy to state the trust to be the beneficiary so that the money is then distributed according to the terms of the trust agreement, which may include gifts to charities or other relatives.
- c. **Tax Deferred 401(k)’s IRAs and other retirement accounts.** These financial assets SHOULD NOT be placed in the trust for tax reasons.

There is simply better tax treatment if these accounts same in your name as an individual. Your account representative should be familiar with the differences. In short, your beneficiaries get to continue the tax-free nature of the account for a certain period of time in a more favorable way if it is not titled to the trust.

- d. **Other Investment Accounts.** Any investment such as ownership of stocks, mutual funds and other investments should be placed in the trust and you will need to contact the company to make that titling change. Just tell them you have a revocable trust and want to change your account to it. They have their own form. I could do it for you for an extra charge, but it's an easy process and these financial institutions are very familiar.

- **Do I need to Transfer my Financial Accounts to the Trust?**

- Most financial accounts have you designate a “payable upon death” beneficiary at the time you open it. If that is the case then the financial institution will pay out the funds to your heirs anyway without probate. But it's a “best practice” to change the account over to the trust so that all those funds are paid to the trust and get distributed according to the trust agreement in a more organized fashion.

- e. **Bank accounts.** To transfer your bank accounts over to the trust, simply call customer service for your bank or just go to your local branch with your trust book. For practical reasons, many people choose to keep the checking accounts in their own personal name (not the trust) because they do not keep much money in it, but as you grow older it's a good practice to transfer it over. Be sure to transfer over any sizeable savings accounts into the trust. If you do transfer it over the only difference is that you sign you name and then write “as trustee” after your signature when writing checks. You do not have to write the whole name of the trust next to your name, just “as trustee”.
- f. **Vehicles.** It is very cumbersome to place vehicles into the trust. Having registration and insurance in the trust's name could be confusing to lenders and insurance companies. The DMV has forms to change title upon death of an individual as well. They can be accessed by searching “Complete a Transfer Without Probate Checklist” at the DMV website.

- 8. Estate Taxes. Revocable trusts are generally not used to avoid estate tax. Irrevocable trust can achieve some limited results. This revocable trust, however, does provide opportunities for reducing and/or postponing taxes that might be imposed as a result of the settlors' deaths including a “Disclaimer Trust” and the “Marital Deduction Survivor's Trust”.

9. Pour Over Wills. A Will is included in your package but remember that it is only for backup purposes. If the trust agreement is lost or becomes defective due to changes in the law, you still have the Will that provides for the same instructions as the trust and names the same successor trustees to be the executors. Even if the trust is not lost or defective, if there are any assets that were somehow not placed in the trust, the Will provides that any such assets should be given to the trust, and thereby they still become part of the trust.

It is advisable to review the trust from time to time to make sure it is up-to-date. Remember, all real property you purchase and financial assets such as mutual funds need to be titled to the trust. Otherwise they will have to be probated. Fortunately, California has a law for small estates that allows the transfer of personal property worth less than \$150,000 without a probate. However, real property is not included in this statute so remember to transfer any future real estate that you purchase to the trust.

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Sincerely,

Tony Bayard de Volo

California Law - What is "Separate Property?"

Separate property is any of the following:

- Property a party owned before marriage.
- Property a party acquired during the marriage by gift or inheritance.
- Income from either of the above.
- Property acquired explicitly as separate property during the marriage by agreement.
- Post-separation earnings, gains, or winnings.
- Property acquired by a woman before 1975 by "an instrument in writing" is presumed separate.

Sections 770, 771, 803.