

REVOCABLE LIVING TRUSTS

Submitted by J. Mark Fisher

IX. REVOCABLE LIVING TRUSTS

A. Traditional Estate Planning vs. Revocable Trust Planning:

IN GENERAL:

Traditional estate planning, to me, includes both the option to draft either a Will or a Revocable Living Trust. I have always offered both vehicles to my clients since I began limiting my practices to estate planning. Routinely, I will see articles titled something like, *Revocable Living Trusts, No Longer Just for the Rich*. These articles discuss everything from the cost of the Trust compared to a Will, the subsequent cost of a probate, to the similarities and differences of the two testamentary instruments. It generally concludes by arguing a cost benefit analysis that includes saving both time and money when administering a Revocable Living Trust rather than a Will. What this tells me, is that the Revocable Living Trust has become the norm in many cases and with many estate planning attorneys.

To truly contrast traditional estate planning and Revocable Living Trust planning, we need to define the terms. Traditional estate planning: I will submit to the notion that a traditional estate plan will consist of a client and a qualified professional, generally an attorney, sitting down and deciding where and to whom the client wants his assets to go, upon his death. This will include the drafting of a Will, deciding who is to get the assets titled in the client's name only at death and who will be the fiduciary in charge of carrying out the client's wishes. A traditional estate plan is not complete without a comprehensive review of all of the client's assets. Remember, the Will is only going to control an asset in the client's name only at death, it will NOT control: a joint bank account with rights of survivorship, or made POD or TOD; a piece of property owned as joint tenants with rights of survivorship; nor a life insurance policy, IRA, 401k, with a beneficiary designation. As part of the traditional estate plan, each of these assets must be reviewed and

continuously updated so the client's intentions are carried out, and we don't run into the case where an unintended beneficiary receives 50% of the client's assets at death because he forgot to update his life insurance beneficiary.

Note that in Florida, statutes are in place to curb an unintended beneficiary if it is the decedent's former spouse. In 1951, Florida enacted a statute automatically cutting divorced spouses out of each other's Wills (currently at *Fla. Stat. § 732.507(2)*). In 1989, Florida enacted a similar statute for Revocable Living Trusts (currently at *Fla. Stat. § 736.1105*). In addition, new *Fla. Stat. § 732.703* voids the designation of a former spouse as a beneficiary of an interest in an asset that will be transferred or paid upon the death of the decedent if: **[1]** The decedent's marriage was judicially dissolved or declared invalid before the decedent's death; and **[2]** The designation was made before the dissolution or order invalidating the marriage.

Revocable Living Trust Planning: We want to create a plan to distribute assets of the client to his named beneficiaries upon his death. Sound familiar? While the core principal is the same, the major difference is going to be procedural. A Trust document is going to be drafted essentially creating a separate legal entity. It will appoint a fiduciary to carry out the client's wishes, and it will also name beneficiaries to receive assets upon a certain point in the future, usually the client's death. Drafting the document is step one. A comprehensive review of the client's assets will also need to take place. (*See attached Asset Checklist*) The end goal is to make sure the client's assets are either titled to the Trust or made payable to the Trust upon death. (*See attached Trust Funding Instructions and Notices to Financial Institutions*).

Since the client generally appoints himself as Trustee during his life, there are provisions and instructions upon the client's incapacity. While a Power of Attorney will have similar authority, a successor Trustee assuming title to the assets of the Trust for the benefit of the client for the remainder of his life is a truly seamless transition. (*See attached Trustee Instructions*).

IRS TREATMENT:

IRS Treatment of a Revocable Living Trust: under *IRC* §678(a), a Grantor (Trustor) is treated as the owner of the Trust if someone can revoke, terminate, alter, amend, appoint, or modify the Trust and thereby re-vest title to the Trust property in the Grantor or the Grantor's spouse. (*See also IRC* §§ 674, 677).

SIMILARITIES:

There are similarities between the two planning techniques that are worth noting. Most plans involving Revocable Living Trusts also involve Wills with pour-over clauses. A Pour-Over Will generally serves as a safety-net, and if there was an asset in the client's name only at his death requiring administration, the Will directs the asset to the Trust. A pour-over clause is invalid unless the recipient Trust is evidenced by written instrument. (*See Sample Pour-Over Will*), (*See Fla. Stat.* § 732.513).

The other similarity is in the manner these documents are brought into existence, or executed, (signed). Testamentary aspects of the Revocable Living Trust are void unless the Trust is executed with the formalities of a Will. (*See Fla. Stat.* § 736.0403).

THE CO-TRUSTEE:

A Revocable Living Trust has important planning implications during the Trustor's lifetime. The majority of the conversation has to do with the transfer of assets at death, but just as important is the succession of title and care of the assets upon incapacity or disability. It is routine for a client to come in and inform the estate planner they have put one of their children on their account so they can help to pay bills. The caveat here, is the client has put their child on as a co-owner. As a co-owner, the child will: receive the money at death; has the right to withdraw the money during life; and subject that money to the child's creditors. To contrast, if we keep the accounts titled to the Trust, we can create the same level of convenience by adding a co-Trustee.

The co-Trustee will be a signor on the account to be able to act for the benefit of the Trustor, but the issues of joint ownership are not present.

CONTESTING THE PLAN:

Both plans can be contested by a party with standing. The validity of the document will be attacked based on lack of capacity, fraud, duress, or undue influence. There is no drafting technique that can be used to prevent a party from hiring an attorney and contesting the document. In fact, a provision limiting a party to contest the document is per se invalid and unenforceable. (See Fla. Stat. §§ 732.517 and 736.1108).

COMMON PURPOSE OF REVOCABLE LIVING TRUST:

Generally, a testator creates a Revocable Living Trust to keep the administration of the assets outside of probate. In contrast, traditional estate planning, such as a Will, is your ticket to probate, and will govern the administration of the assets owned in the client's name only, at death.

EXAMPLE OF A TRUST PLAN NOT AVAILABLE TO A TRADITIONAL ESTATE PLAN:

“Elective Share Trust” means a Trust under which the surviving spouse is entitled for life to the use of the property or to all of the income payable at least as often as annually; the surviving spouse has the right under the terms of the Trust or state law to require the Trustee either to make the property productive or to convert it within a reasonable time; and, during the spouse's life, no person other than the spouse has the power to distribute income or principal to anyone other than the spouse.

By drafting this Trust, you can create the source on which an elective share is payable, eliminating ongoing litigation over which asset shall be used to satisfy the share. The following is the schedule on the factors determining what percentage of interest the spouse will have in the Elective Share Trust. The value of the spouse's interest is a percentage of the value of the principal

of the Trust, or Trust portion, on the applicable valuation date as follows (*see Fla. Stat. § 732.2095*):

1. One hundred percent if the Trust instrument includes both a qualifying invasion power and a qualifying power of appointment.
2. Eighty percent if the Trust instrument includes a qualifying invasion power but no qualifying power of appointment.
3. Fifty percent in all other cases.

(*See also Fla. Stat. § 732.2025*).

(*See also the Consumer Pamphlets from the Florida Bar: Do You Have A Will?; Probate in Florida; The Revocable Trust in Florida*).

B. Credit Shelter Trusts:

GENERAL DEFINITION:

A Credit Shelter Trust, also known as a Bypass or A/B Trust, is used to reduce or eliminate federal estate taxes. It is generally used by married couples with estates exceeding amounts exempt from federal estate tax. Upon the death of the first spouse, the Credit Shelter Trust establishes a separate, irrevocable Trust with the deceased spouse's share of the Trust's assets. The surviving spouse becomes the beneficiary of this Trust, with the children as beneficiaries of the remaining interest. This irrevocable Trust is funded to the extent of the first spouse's exemption, meaning the amount in the irrevocable Trust is not subject to estate taxes on the death of the first spouse. In effect, the Credit Shelter Trust takes full advantage of the first spouse's estate tax credit.

The new IRS regulations that became effective at the beginning of 2013, made the tax exemption an individual can die with, portable between a husband and wife. This new regulation has directly impacted the necessity to draft a Trust preserving an individual's credit for their spouse.

There are still practical reasons this type of planning is relevant. It will avoid the filing of a 706 estate tax return on the first spouse's death. The plan will also "lock" in the distribution of the Trust on at least half of the assets. This is relevant to some couples due to the fear the surviving

spouse will remarry and completely change the established plan. While the surviving spouse will be able to amend the Trust, the amendment will only affect the assets not titled to the deceased spouse's Trust.

C. Marital Deduction Trusts:

A Marital Deduction Trust is a Trust in which transfers of property between married partners are free of federal transfer tax. A Marital Deduction Trust can take one of two forms, either a life estate coupled with a general power of appointment given to the spouse or a Qualified Terminable Interest Property (QTIP) trust.

The effect of the Marital Deduction Trust is that it shields both spouse's assets and estates from federal estate taxes because when the first spouse dies, the assets indicated by the Trustor (the spouse who created the Trust) pass to the marital Trust free and clear of any and all federal estate taxes. Neither the Trustor-spouse nor the surviving spouse pay taxes on the property. Moreover, when the surviving spouse dies, the assets under the Trust are not included as part of her estate, thus her federal taxes are not as high as they would have been had there not been a Trust.

NEW IRC § 2056: A married individual can give an unlimited amount of assets, either by gift or bequest, to his or her spouse without any federal gift or estate taxes being imposed. This allows married couples to delay the payment of estate taxes at the passing of the first spouse because when the surviving spouse dies, all assets in the estate over the applicable exclusion amount will be included in the survivor's taxable estate. The unlimited marital deduction is available solely to surviving spouses who are citizens of the United States.

D. Qualified Terminable Interest Trusts (QTIPs)

The Q-TIP Election, commonly known as the Q-TIP Trust, is used primarily for spouses in a second marriage. Its primary purpose is to ensure that the new spouse is provided for financially and the children of the first marriage, if any, inherit the assets from the estate after the death of the new spouse.

The general rule is that all property passing from one spouse to another will not be subject to any gift or estate taxes.⁴² This is known as the "unlimited marital deduction." Any amount of property or assets may be transferred from one spouse to another, either while the spouses are living or at the death of one spouse with no estate or gift tax consequences for the surviving spouse. In order for this transfer to be valid, it must be outright with no strings attached. The rights and property transferred to your spouse cannot be what is called a "terminable interest." Terminable interest means the interest will end or fail as a result of: (1) the passing of time, (2) the occurrence of an event or contingency, or (3) the failure of an event or contingency to occur. There are, however, a number of exceptions to the terminable interest rule, and these are critical to the use of Trusts for transfers to your spouse, including the A/B Trust.

The Q-TIP Trust Election is the most important exception to the rule denying a marital deduction for a property interest that may terminate. The advantage of the Q-TIP technique is that your estate can qualify for the estate tax marital deduction without your having to give complete control of the ultimate disposition of your assets to your spouse. The rules are as follows:

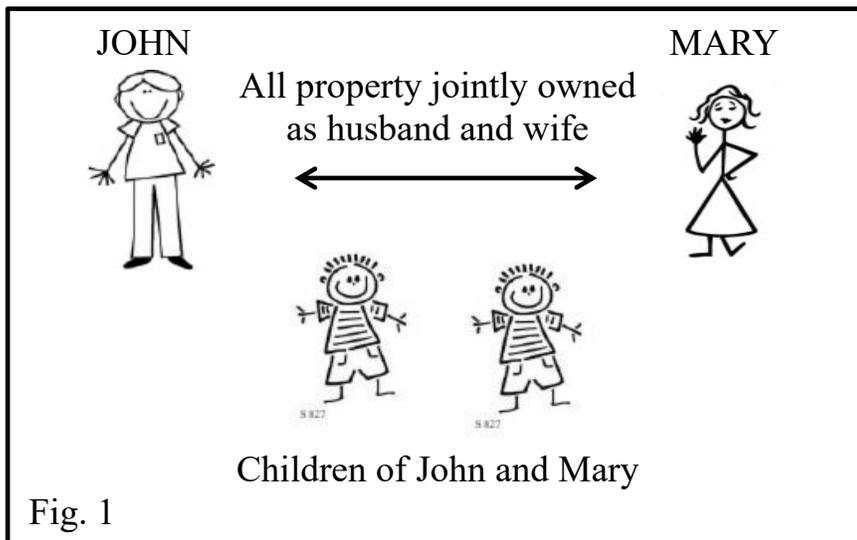
⁴² Florida Statute § 736.0505

- Your spouse is given a life-interest in particular property.
- Your spouse has a right to the income from that property payable at least annually.
- The property must pass from you.
- No person has a power to appoint any of the property to any person other than the surviving spouse.
- The necessary election is made by your executor to have the property qualified.

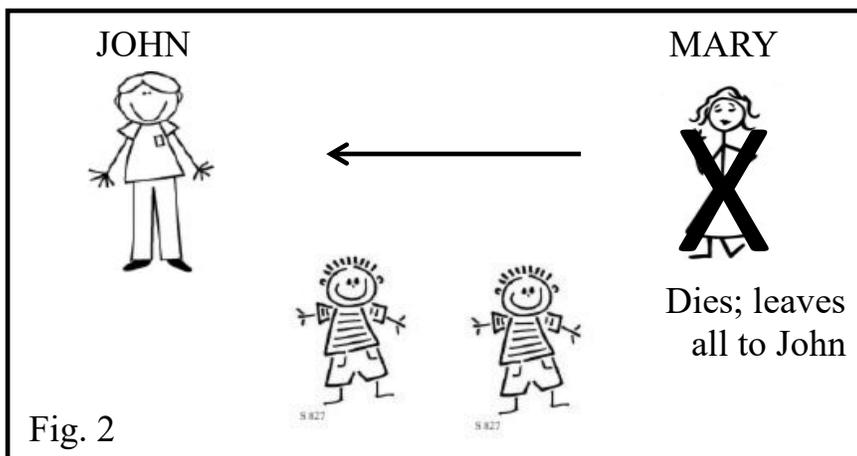
Upon the death of the surviving spouse, the entire value of the Q-TIP property is included in the surviving spouse's gross estate. The assets will be taxed at the top marginal tax brackets. If this is not a first marriage, the use of a Q-TIP Trust can help provide financially for a current spouse and ensure that your children from a previous marriage will be able to inherit assets.

This Trust is a primary estate planning tool for people in second marriages. It prevents the tragedy that occurs where unintended heirs inherit property and children of first marriages and other original family members are completely disinherited. This occurs because simple techniques for proper estate planning are not used. The following is an example of the wrong way to manage an estate:

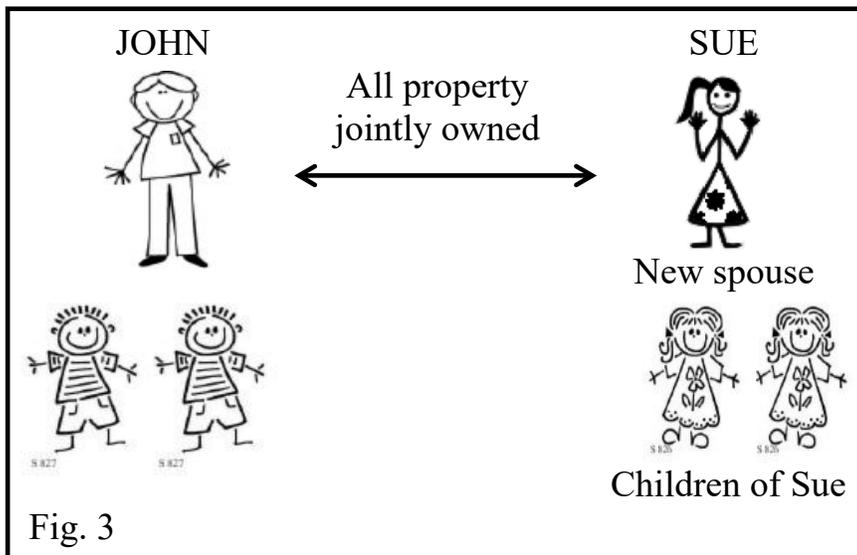
John and Mary are married for many years and have two children who are now over the age of eighteen years. John and Mary own all their property together as husband and wife. (Fig. 1).



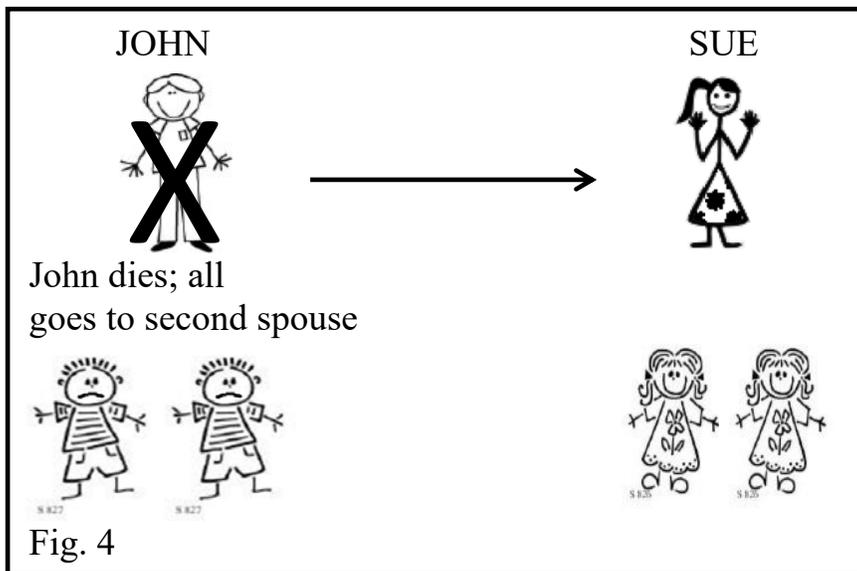
Mary is killed in a car accident and all jointly-owned property passes directly to the surviving spouse, John, with no probate and no inheritance taxes due. (Fig. 2.)



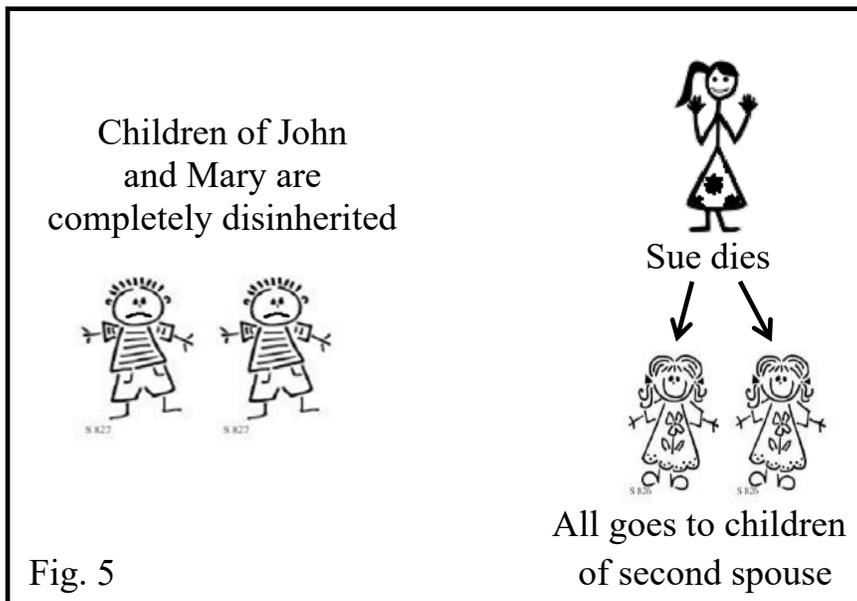
The surviving husband then meets and marries another woman. The new spouse, Sue, has children of her own. John, who owned all property jointly with his first wife prior to her death, then retitles his assets so that they now reflect the ownership of John and his new spouse, Sue, as husband and wife. (Fig. 3.)



John passes away leaving a Will which directs that everything shall go to his children. Unfortunately, all the assets in the estate are now owned jointly with his second spouse, Sue. These jointly-owned assets will pass directly to Sue, nullifying John's Will with regard to these assets, in effect disinheriting John's children. (Fig. 4.)



This lack of estate planning bars the original children from inheriting altogether and allows unintended heirs to inherit the entire estate property. (Fig 5.)



Including the Q-TIP election as an estate planning tool will allow John, in this example, to provide financially for his new spouse without unintentionally disinheriting his children. The Q-TIP Trust will be funded with assets John designates to be placed into the Trust. These funds will be managed by a Trustee and all the income will pass annually to John's new spouse. She will have the right to invade the principal of the Trust if she needs it for emergency medical reasons. Any assets remaining in the Trust after Sue passes away will then be distributed directly to John's children and will not pass to Sue's estate or her children.

Using the Q-TIP election allows the twin goals of providing financially for a new spouse and satisfying the natural desire to provide for your children. The new spouse is cared for and John's children receive the estate assets at some point in the future instead of being left out.

E. Drafting Tips and Samples

Joint Representation Agreement for Couples. When representing a married couple in their joint Trust, include a Joint Representation Agreement in their documents. In essence, it will state that your firm represents the two of them together, not separately, and that confidentiality applies

to you as a group. In other words, husband cannot ask you to change his testamentary disposition of property and keep this information from his wife. Having the agreement in your file will prevent and protect you from any misunderstanding a client may have about their attorney-client confidentiality privilege. See Sample Consent Letter.

Deeds. Upon creating a Living Revocable Trust, the Trustors' initial task is funding their Trust. As discussed previously, different types of assets require different methods for retitling the asset to the Trust. Include a checklist for your clients to ensure they do not forget an asset. Also, you can provide forms they can fill out and provide their bank, broker, etc., for retitling assets. See Sample Checklist, attached.

If you are preparing deeds transferring real property into the Trust for your clients, ensure you are preparing deeds in conformity with the state requirements, Alabama deeds require the following "General Acknowledgement" rather than a general notary block:

STATE OF _____
COUNTY OF _____

General Acknowledgment

I, _____, a Notary Public in and for said County, in said State, hereby certify that John Doe, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this date, that, being informed of the contents of the conveyance they executed the same voluntarily on the day the same bears date. Given under my hand and official seal on _____.

Notary Public Signature and Seal

Simultaneous Death and Survival. Every Will and Trust should have a survival clause providing for distribution if all of the beneficiaries predeceases the testator. While it seems unlikely, it is not far-fetched for a close family to travel together and all be killed in a car accident together.

If both Trustors should die under circumstances which render it doubtful as to which Trustor died first, it shall be conclusively presumed that the Husband survived the Wife. If any non-Trustor beneficiary and a Trustor should die under circumstances which would render it

doubtful as to which died first, the Trustor or the non-Trustor beneficiary, it shall be conclusively presumed that said non-Trustor beneficiary predeceased such Trustor.

In all other cases, a non-Trustor beneficiary shall not be deemed to have survived the Trustors or another person if he or she dies within sixty (60) days of the Trustors' death or of the death of such other person.

Ask about the Four Generations. When meeting with a typical client, leaving everything to their children per stirpes, ask about the clients' parents, the clients' children, and grandchildren. Ask questions about whether anyone has special needs, medical issues (bipolar disorder), drug abuse, tax liens, or bad marriages. These are all things to consider before leaving a large estate to someone.

Minor Children. A client with minor children will have more issues to consider in their estate planning. For example, who will be the guardian if both parents are gone? Who will take care of the money, how can it be used, and at what age can the child receive their share? Another issue is The Florida Homestead Law. The Florida Constitution places restrictions on devising the homestead – one simply cannot do it if survived by a minor child. Therefore, typically you would not transfer a client's homestead into their Trust if he/she has minor children.

F. Common Mistakes to Avoid

Not funding the Trust. A Trustor who has a complicated distribution scheme but leaves certain assets titled jointly to himself and one child, probably the successor Trustee, has in effect, left that asset outright to the one child. The asset could be of great value, creating an unintended unequal distribution of assets. A similar mistake of Trustors having this effect include not changing the life insurance beneficiary to the Trust.

Not having a Pour-Over Will. If as Trustor leaves an asset out of the Trust, whether on purpose or on accident, and that asset is subject to probate, the Will controls it. If a Trustor

has an outdated Will from years prior to creating a Trust, but did not execute a new Will leaving everything to the Trust, the older Will controls the probate and the asset will not make it to the Trust.

Having a Will with different terms. Not drafting a Pour-Over Will may keep an outdated Will in effect, which may have different terms and different beneficiaries. Any asset left out of the Trust will have a different distribution scheme than the Trust.

Not communicating with Trustees. A Trustor should at least inform the successor Trustee of the location of the Trust agreement. The Trustor should also leave a list of his assets so the successor Trustee can find them.

Not planning for beneficiaries with special needs. A beneficiary with a disability or other special need who relies on social programs, such as Medicaid or SSI, can become unqualified for programs when he inherits substantial assets. It is important to question your clients and identify any of these potential special needs and draft language to protect them from disqualifying from the programs they may rely on.

Not using full legal names. Many people go by names that are not their legal names. Make sure you ask. Also, oftentimes clients forget to tell you they are a “Jr.” or a “III.” Also, if your client has gone by different names, account for it. Some clients may have a slight difference on their social security card, state ID, which may be different from how he holds title to certain assets. You can cover all names with a simple “AKA paragraph,” stating that the Trustor is, or has been known by certain other names.

Naming a Trustee not qualified to serve. Do not forget to have your clients confirm whether their named Successor Trustees have a felony conviction.

Naming two people to serve together. No matter how well two siblings get along, they are going to argue when having to make important decisions together, and this can be even worse if you have a child and new spouse serve together.

Having one child in charge of another. A Trustor may have one responsible child and one irresponsible child, and want to stretch out inheritance payments for the irresponsible one. It is better for an aunt, uncle, or family friend to be Trustee for the irresponsible child's share, rather than the sibling who is receiving their share all at once.

IX. REVOCABLE LIVING TRUSTS

Schedule of Attachments

1. Sample Asset Checklist
2. Trust Funding Instructions
3. Funding, Bank & Broker Notices
4. Trustee Instructions
5. Pour-Over Will
6. Fla. Bar Consumer Pamphlet- Do You Have a will
7. Fla. Bar Consumer Pamphlet-Probate in Florida
8. Fla. Bar Consumer Pamphlet-The Revocable Trust in Florida
9. Sample Consent Letter

CHECKLIST FOR TRANSFERRING CERTAIN ITEMS INTO THE TRUST

1. BANK ACCOUNTS:

CHECKING:

All bank accounts currently owned jointly or individually should be transferred into the Trust. Take your Certificate of Trust and the Bank Notification to your bank and they will change your signature cards. The checks you currently use will not change.

SAVINGS ACCOUNTS:

All savings accounts held jointly or individually should be changed into the name of the Trust.

CDs:

All CDs held jointly or individually should be changed into the name of the Trust.

MONEY MARKET:

All money market accounts held jointly or individually should be changed into the name of the Trust.

2. STOCK BROKERAGE ACCOUNTS AND STOCK CERTIFICATES:

BROKERAGE ACCOUNTS:

All Brokerage Accounts currently held jointly or individually should be transferred into the name of the Trust. Use the Broker Notification found in Section 14 of your Trust book along with the Certificate of Trust, and present these documents to your Broker. He/she will change the account title into the name of the Trust.

STOCK CERTIFICATES:

If you hold the Stock Certificate, you will need to contact the transfer agent where you purchased the certificate and request they send you the form(s) that they require to reissue the stock certificate in the name of the Trust.

3. LIFE INSURANCE:

Depending on the type of Trust, financial position and other circumstances, (Mark Fisher will evaluate these circumstances with you), life insurance should typically be payable first to your spouse, then to the Trustees of your Living Revocable Trust. (Example: First beneficiary: **LESLIE O. SAMPLE**; Second beneficiary: **LESTER O. SAMPLE and LESLIE O. SAMPLE, TRUSTEES OF THE SAMPLE LIVING TRUST DATED DECEMBER 9, 2014**).

4. ANNUITIES:

Annuities should be payable first to your spouse, then to the Trustees of your Living Revocable Trust upon death of the annuitant. Most annuities have a designated beneficiary so that annuities will not go through Probate. (Example: First beneficiary: **LESLIE O. SAMPLE**; Second beneficiary: **LESTER O. SAMPLE and LESLIE O. SAMPLE, TRUSTEES OF THE SAMPLE LIVING TRUST DATED DECEMBER 9, 2014**).

5. TAX DEFERRED ANNUITIES, IRAs, 401K and other TAX DEFERRED INSTRUMENTS:

If the investment is a tax deferred investment where you have never paid taxes on the money placed in the investment such as an IRA or 401K Plan then these investments shall not be retitled to the name of the Trust. The first beneficiary listed for these investments should be the spouse. The contingent or back-up beneficiary should be changed to reflect the Trust. (Example: First beneficiary: **LESLIE O. SAMPLE**; Second beneficiary: **LESTER O. SAMPLE and LESLIE O. SAMPLE, TRUSTEES OF THE SAMPLE LIVING TRUST DATED DECEMBER 9, 2014**).

6. REAL ESTATE:

All real estate deeds (photo copy) should be given to J. Mark Fisher in order for him to create new deeds which transfer the property from yourselves individually to yourselves as Trustees of the Trust. These deeds will be signed by you at the same time you execute your Trust documents and then will be recorded in the various counties or states where the property is located. After a period of time, usually between 4 to 6 weeks for Florida Deeds, the original deeds will have been recorded in the respective counties and will be sent back to you for placement in Section 15 of your Trust Book. We record deeds in the state of Florida and Alabama only. The client is responsible for recording deeds to property in all other states. We pay ordinary recording fees in Florida and the client is responsible for recording fees in all other states, including the Alabama deed tax of \$1 per \$1,000 on value of property conveyed.

7. PERSONAL PROPERTY:

Section 4 of your Trust Book contains Schedule A. Schedule A reflects all the property transferred to your Trust. The last page in Section 4 contains a statement that says "All personal property held by us (including but not limited to all personal items, jewelry and household furnishings) is transferred to our Trust". This statement is signed by you at the time you execute the Trust documents, and it effectively transfers all of your personal property to your Trust without the necessity of identifying each separate item of personal property.

8. U.S. SAVING BONDS:

There is a particular form (PD F 1851) which can be obtained from the Office of J. Mark Fisher or found online at www.treasurydirect.gov/forms/sav1851.pdf. The form requests that the U.S. Government reissue the bond in the name of your Trust. Once the bond has been reissued, it will reflect that the bond is owned by husband and wife as Trustees of the Living Revocable Trust.

9. PROMISSORY NOTES or MORTGAGES OWED TO YOU:

All promissory notes payable to you and your spouse, or mortgages payable to you and your spouse, shall be assigned from the two of you individually to the two of you as Trustees of your Trust. If you are a single person, you will assign the promissory note or mortgage from yourself individually to yourself as Trustee of your Trust. J. Mark Fisher prepares the assignments for you that will be executed at the time the Trust documents are signed.

10. AUTOMOBILES, BOATS, and other VEHICLES:

It is generally recommended that the automobile not be placed in the Trust at the time the Trust documents are signed. If the automobile or boat in question is extremely valuable and owned free and clear, then it should be placed in the Trust. The process of placing a motor vehicle in the Trust requires that the husband and wife go to the Division of Motor Vehicles, request that a new title be issued in the following manner: Husband and wife individually transfer the ownership to husband and wife individually and husband and wife as Trustees of their Living Trust.

As a small form of asset protection, the title to cars should not be held jointly between husband and wife. The husband's car should be titled in his name and the wife's car should be titled in her name. If either is involved in a major accident with hundreds of thousands of dollars in damages, then only the driver (husband or wife) will be held responsible. This may serve to protect at least 1/2 if not all of the assets in the estate.

FUNDING INSTRUCTIONS

These funding instructions are written to assist you in funding and administering your Revocable Living Trust.

YOU MUST FUND YOUR TRUST TO AVOID PROBATE!

WARNING: To avoid probate, your Living Trust must be funded, i.e., the title of your property retitled to the name of your Living Trust. If the Trust is not funded, then it, just like a Will, will not avoid probate. Transferring property and assets into your Living Trust is the process of funding the Trust. Also, as owner and Trustee of your Living Trust, you will ALWAYS retain total control and flexibility over your property and assets.

WHAT DOES IT MEAN TO FUND A TRUST?

Funding a Revocable Living Trust is the process of transferring your assets to the Trust. Like a container, your Living Revocable Trust holds your assets.

When you have completely funded your Living Revocable Trust, you as Trustee own your property. Of course, you are the owner, Trustee and beneficiary, so you still control all of your assets, just as you do now.

The process of funding is fairly easy; however, it is an ongoing process. As you acquire new property, such as stocks, bonds, mutual funds or real property, you must place that property into your Trust by titling it in your name, as Trustee of your Trust.

HOW DO I TRANSFER PROPERTY TO TRUST?

Since you signed your Trust in the presence of two witnesses and a notary, you have created a Living Revocable Trust.

You can express your intent to transfer your tangible assets to your Trust by signing the form in Section 4 of your Trust package.

Some assets have titles recorded with the county or state. For example, real estate is called real property, and you probably have recorded a deed listing you or you and your spouse as owners.

To transfer these assets to your Trust, you simply record a new quit-claim deed or warranty deed, with the county where the property is located. List yourselves as Trustees of the Revocable Living Trust dated August 26, 2014, as the Grantee.

The county government may charge a modest filing fee (typically \$20.00 in most counties in Florida), but a transfer of your real property to your Revocable Living Trust will **not** trigger any reappraisal of your property for taxes or incur any taxation as a result.

SEPARATE PROPERTY AND MARITAL PROPERTY

In funding your Trust, you will become the "Trustee" of your property, or, if you and your spouse own marital property, or co-owned property, you and your spouse will both become "Trustees" of such property.

In either case, title to your property must be transferred to your Trust as "John Doe, Trustee" or "John and Jane Doe, Trustees." Separate property should be titled "Separate Property of Jane Doe, Jane Doe, Trustee."

By transferring property to your Living Revocable Trust, you do not give up any control over your property. You may still sell your property or use it as collateral for a loan.

ASSETS WITH A BENEFICIARY

Generally, your spouse should be the first beneficiary of all life insurance policies, IRAs, Keogh, Pension Plans, Annuities and other tax deferred assets. The second beneficiary or contingent beneficiary should be your Trust. Contingent beneficiaries would be the recipients of the insurance upon the simultaneous death of both the husband and the wife. In every instance, the named beneficiary in these instruments takes precedence over any Will or Trust and avoids probate. *If you have a large estate (over \$5 million) and a large insurance policy, consult your estate planning attorney about ownership and beneficiary designations.

1. The beneficiary designation for Whole Life and Universal Life Policies should be changed so that the spouse is the first beneficiary and the Trust is the contingent beneficiary.

2. The beneficiary designation for IRAs, Keogh, Pension Plans, Annuities and other tax deferred assets should be changed so that the spouse is the first beneficiary and the Trust is the contingent beneficiary or second beneficiary. To transfer such assets (IRAs, Keogh Plans, 401K Plans, Life Insurance, etc.), simply request transfer forms from the appropriate institution. Usually the insurance company (or other institution) will send you one of their own forms to be signed and witnessed (i.e. notarized). Not every company will handle it in the same manner.

Caution: Sometimes personnel in financial institutions are not as knowledgeable as you might expect. Make it understood to the institution that you are not transferring ownership, only the beneficial interest.

EXAMPLE

How to change names on Deeds, Titles, Accounts, Etc.

Before the Trust, they were probably titled as:

LESTER O. SAMPLE and LESLIE O. SAMPLE
Tenants in Common or Joint Tenants

To fund the Trust, change names on Deeds and Titles to:

**LESTER O. SAMPLE and LESLIE O. SAMPLE,
TRUSTEES OF THE SAMPLE LIVING TRUST
DATED DECEMBER 9, 2014**

STOCK CERTIFICATES

Changing the title on your stock certificates is all that is required to transfer stock to your Revocable Living Trust. If your stock is held by a brokerage firm, contact the firm to have your brokerage account changed to reflect your status as Trustee of your Living Revocable Trust. Each certificate does not need to be changed when you have a brokerage account. S corporations (close corporations), family farming corporations and professional corporations normally require special language in the Trust to hold that stock.

AUTOMOBILES

Most people do not own automobiles of sufficient value to require transfer to a Trust. However, when a very expensive RV or classic car is purchased, list the vehicle owner as you and your spouse as Trustees for your Living Revocable Trust.

OTHER PERSONAL PROPERTY

Much of what you own does not have any title or certificate of ownership to be registered with a government agency. Household belongings, jewelry, and other such property can be transferred to your Trust by listing it on your "Schedule of Trust Assets" (Section 4).

TAX RETURNS

Since your Trust is revocable and you are its Trustee, no special tax returns are required. Your annual 1040 Federal Income Tax Return is filed normally each year in April. See Treasury Regulations [Regs. Sec. 1.671-3(a)(1)].

Also, remember that transferring your property to a Living Revocable Trust, of which you are Trustee, is not a taxable event. It does not trigger any reappraisals for property taxes in states, including Florida, which require taxes to be paid on property.

BANK AND SAVINGS ACCOUNTS

1. A letter or visit to your bank, savings bank, or savings and loan may include a request to have your accounts changed to reflect your Living Revocable Trust ownership. Banks are familiar with Trusts; however, be sure to inform your bank that your Trust is "revocable," with you as Trustee (See forms in Section 14 or attached to the Certificate of Trust).

2. If a Trust I.D. number is requested, use either the husband or wife's social security number.

3. FDIC Rule - Coverage for each account owner with combined revocable Trust deposit balances of \$1.25 million or less would be determined by multiplying the number of different beneficiaries by \$250,000. Other highlights are as follows:

a. The concept of “qualifying” beneficiaries based on certain family relationships has been eliminated. A beneficiary must be a person, charity or another non-profit organization (as recognized by the Internal Revenue Service). All other beneficiaries are not eligible for separate coverage as revocable Trust deposits.

b. The beneficiary must become entitled to his or her interest in the Trust when the last owner dies - coverage would be based on the beneficiaries who meet this requirement at the time the bank fails. Example: A living Trust names the owners’ two children as beneficiaries but states that each beneficiary’s share will pass to the beneficiary’s children if the beneficiary dies before the owner. Assuming both children are alive at the time the bank fails, only the children - not the grandchildren - would be beneficiaries for insurance purposes. (That’s because the grandchildren are not entitled to any Trust assets while their parent is alive.) Coverage up to \$1,000,000 (\$250,000 per beneficiary, per owner) would be available on the Trust’s deposit accounts.

c. The account title at the bank must indicate that the account is held by a Trust. This rule can be met by using “Living Trust”, “Family Trust”, or similar terms in the account title.

d. These rules are subject to change by the FDIC. The above is an example of how the FDIC rules work. Please review the FDIC website www.fdic.gov for more specific details and possible changes. Credit union accounts are federally insured by the National Credit Union Association (NCUA) in the same manner as bank accounts under the FDIC rules. More information can be obtained from their website at www.ncua.gov.

SAFETY DEPOSIT BOXES

To transfer your safety deposit box into your Living Trust, show the bank representative your Certificate of Trust and have him/her rewrite your file card in the name of your Living Trust. As a practical matter, you should add your Successor Trustee as an owner of the safety deposit box at the time the account is retitled.

MINUTES OF TRUST

In each Living Revocable Trust, a schedule called "Minutes of Trust" is included. The minutes section of your Trust package is used to provide specific instructions to the Successor Trustees, those individuals you included in your Trust to manage your Trust and distribute your assets following your death.

The "minutes" can be used to leave personal instructions to the Trustee. These instructions are not binding, but are merely guidance. For example, you might state in the minutes that your son, who is identified in the Trust to receive 20% of the Trust assets, be given certain assets of yours as part of his 20%. Your successor has a specific direction, signed by you, on how you would like your assets allocated.

SUMMARY

Execute the Documents - Sign the Trust, Pour-Over Will and the Durable Family Power of Attorney. Have the proper witnesses and a notary public acknowledge the execution of the documents.

Fund the Trust - Transfer assets, i.e., real property, bank accounts, stocks and personal property, to the Trust. **An unfunded Trust will NOT avoid probate!** Use warranty or quit claim deeds to transfer real property to your Trust, and record the deeds in the county where the property is located. List your personal property in "Schedule A" of the Trust. (Section 4).