

Introduction

Living trusts are useful in estate planning. But it takes some effort to make certain that they are properly funded and maintained. If this is not done, a living trust fails to accomplish its purposes. This Guide provides information on funding and maintaining your living trust. Funding relates to placing assets in your trust. Maintaining your trust involves the day-to-day operation and administration of your trust.

Review Your Trust Periodically

After executing your trust, you should carefully review it to again make certain it reflects your wishes. It is important to periodically review your trust. Things might change ... and when they do, you want to make certain your trust is up-to-date. A revocable living trust may be changed but this must be done in writing.

Are trust changes needed?

- ✓ Family changes?
- ✓ Beneficiary changes?
- ✓ Tax law changes?

Changes usually may be made to a revocable living trust. However, this may vary under the terms of the trust or should some change in circumstances arise. Ordinarily, individual trusts and some joint trusts allow amendment by the creator of the trust or a surviving spouse. Where tax planning is incorporated in the trust (such as an exclusion or disclaimer trust), the prerogative to change some portions of the trust may be more limited. Also, unless a power of attorney specifically provides – and most don't – an agent may not change a trust should you become incompetent. These considerations make it all the more important to keep the provisions of your trust current.

Make Certain Your Assets are Held in the Trust

Fund the Trust

Make certain your trust is funded. This means that your assets are transferred to or held by the trust.

One of the key purposes of a trust is to avoid probate. Probate is a court proceeding providing for the legal recognition of one's will and the administration of an estate. Probate is not avoided unless assets are placed in the trust. Therefore, make certain your trust is funded. This means that your assets are titled in the trust. *This is critical.* Keep in mind that there may be some assets that are not owned by the trust (e.g., annuities and retirement plans) but most will be in the trust.

It is surprising how often people take the time and effort to write a trust, but then don't put anything into the trust. Although so-called "stand-by" trusts are useful in some cases, they do not avoid probate. Fund the trust.

When you originally executed your trust, you would ordinarily deed any real estate to the trust. Should you acquire other real estate, it may be transferred directly to the trust. Of course, other assets may be transferred to the trust in the future. Even if you do not decide to transfer everything at this time, you may do so at a later date.

You Have a Pour-Over Will

Property that is not transferred to the trust will fall under the provisions of your "pour-over" will. To avoid the need for utilizing this will, all of your titled assets of any material value, whether real property or personal property, should be transferred to the trust.

How Are Assets in the Trust Titled

Some variations exist in titling assets in a trust. What is important is that for internal purposes, the title clearly notes that the asset is held by the trust.

As an example, the most formal manner in titling assets where there is a single trustee is this:

Title Assets in the Trust

Make certain the title to assets clearly reflects that they are in the trust.

Example:

"Abraham Lincoln, Trustee, U.T.A. February 25, 1860."

"Abraham Lincoln, not individually, but as trustee under the Abraham Lincoln Trust Agreement dated February 25, 1860, and any amendments thereto."

And where there is a joint trust:

"Abraham Lincoln and Mary Todd Lincoln, not individually, but as trustees under the Abraham Lincoln and Mary Todd Lincoln Trust Agreement dated February 25, 1860, and any amendments thereto."

Less formal variations are in frequent use as well. For example, some stock registrars will simply state: *"Abraham Lincoln, Trustee, U.T.A. February 25, 1860, or Abraham Lincoln and*

Mary Todd Lincoln, Trustees, U.T.A. February 25, 1860." The U.T.A. stands for "*Under Trust Agreement.*" Some will add "F.B.O." which means "For the Benefit of," as in "Abraham Lincoln, Trustee, U.T.A., February 25, 1860, F.B.O. Abraham Lincoln." Despite its occasional use, this form is not recommended because the beneficiary will change and thereby causes some confusion.

Sometimes assets are titled without mention of the trustee. It might say: "Abraham Lincoln Trust Dated February 25, 1860." The best practice is to name the trustee specifically because a trust is actually a relationship; it is not an entity like a corporation. The trust has no existence separate and apart from the trustee. Nonetheless, because of the limited space for designating ownership in our electronic age, abbreviations are frequent and, so, the practice of simply naming the trust is becoming more common.

Transferring Specific Assets

Transfer Information Form

To facilitate transferring assets, transfer information is provided with your trust. Copy and utilize the information in connection with any transfers.

You may inform your bank, broker, or others of your desire to transfer an asset to the trust and provide a copy of the transfer information. This provides all the information they should need.

There are a number of assets you may need to transfer to the trust. Following is some information regarding specific assets. This is for general information and you may or may not have all of these particular assets. If there are others not mentioned, you need to simply ask and we will advise how the asset may be placed in the trust.

Bank Accounts

Your bank accounts, savings accounts, and checking accounts should all be held in trust. In order to take care of this, contact your financial institutions and request that the transfer be made. *Be certain to inquire whether there would be any forfeiture of interest.* If so, you may want to wait to handle that transfer until such time as the transfer may be made without such forfeiture. Ordinarily, there is no forfeiture of interest.

You should realize that transferring your accounts to the trust does not mean that you must have the trust name printed on the checks. You may do so if you choose. However, you may retain your own name and address on the face of the check just as before. What is important is that the institution's internal records show that the account is held in the trust.

FDIC Insurance

The Federal Deposit Insurance Corporation or FDIC insures bank accounts, within certain limits. The standard limit per each account owner is \$250,000. This increase results in FDIC coverage limits seldom being an issue because most depositors will not put more than that amount in any single institution. Still, it is important to keep the coverage limits in mind. Don't put accounts at risk and be certain to check current limits.

Revocable living trusts are eligible for FDIC insurance. Determining coverage for living trust accounts can be complicated. Deposit insurance coverage for revocable trust accounts is based on each owner's trust relationship with each beneficiary. While the trust owner is the insured party, coverage is provided for the interests of each beneficiary in the account. The FDIC insures the interests of each beneficiary up to \$250,000 for each owner if all of the following requirements are met:

- The account title must indicate that the account is held pursuant to a trust relationship.
- The beneficiaries must be named or able to be determined from the trust document. The specific names and number of eligible beneficiaries must be determined.
- The beneficiaries 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. It is no longer necessary that they are family members.

If any of these requirements are not met, the entire amount in the account, or any portion of the account that does not qualify, would be added to the owner's other single accounts, if any, at the same bank and insured up to \$250,000. If the revocable trust account has more than one owner, the FDIC would insure each owner's share as his or her single account.

A simple rule to determine coverage is to multiply the number of persons creating the trust (usually one or two) times the number of direct beneficiaries times the FDIC insurance limit. This applies only where the beneficiaries are equal; more complicated rules apply if they are not. Contingent beneficiaries (e.g., children of a child who subsequently dies) are not considered. If, say, a couple has a trust and at death the trust passes to three children, the coverage would be $2 \times 3 \times \$250,000$, that is, \$1,500,000. If a single individual has a trust with, say, three beneficiaries, the coverage would be \$750,000. Where there are six or more beneficiaries and they are not equal, more complicated rules apply. The FDIC will confirm coverage if one wishes by calling the FDIC at 1-877-275-3342 (1-877-ASK-FDIC).

Despite the greater coverage available for trusts, it is usually advisable to limit accounts at any one institution to what would be the individual limits without regard to future beneficiaries. This means limiting account balances for each trust creator to \$250,000. The rules regarding coverage for trusts are not settled and have periodically changed. Why not avoid these issues! More importantly, should an institution close, most depositors feel a great deal of comfort by not having all accounts at a single institution.

Although the rules apply to revocable trusts, they also apply to revocable trusts that become irrevocable upon the death of a trust creator. Thus, irrevocable trusts that spring from a revocable trust are still covered by these rules.

Where the minimum per person FDIC limits are exceeded (currently \$250,000) at any one evaluation, it is advisable to provide the names of all current and contingent beneficiaries to the financial institution. Further, contact the FDIC to confirm or have the institution confirm coverage. This is important because the rules may change.

Real Estate

Real estate that you initially placed in your trust was transferred at the time you established the trust. Real estate acquired in the future may be transferred to the trust should you so desire. The deed for the property should clearly state that it is being conveyed to the trust.

Stocks, Bonds and Accounts

Stocks, bonds and brokerage accounts are handled similarly to bank accounts. Contact your broker or investment counselor to handle these transfers for you.

Some individuals prefer handling transfers themselves. It is usually best to write to the transfer agent for each stock and request instructions for transferring the shares before sending in your certificate. In doing so, the certificate numbers should be provided along with the transfer information. When the instructions are obtained, they should be followed as provided. If you have any problem, let me know.

Must Copies of the Trust Be Provided?

When transferring assets, some banks, brokers or institutions will want to see a copy of your trust. This is really not required. Under the law and the terms of most trusts, those dealing with the trustee may assume that the trust is in full force and effect, the trustee is authorized to act, and the trustee's act is in accordance with the provisions of the trust.

If a request is made for a copy of the trust, you may provide a copy if you wish. A frequent alternative is to simply provide the first page, the signature page and, if necessary, selected excerpts. This is the approach taken with the transfer information. It's reasonable to be certain a trust has really been established, but there is no reason the details need to be disclosed.

Despite the demand to see the entire trust, it is interesting how the need for a copy evaporates when you indicate that if a copy must be provided, you plan to move your account. The fact is a copy is not required.

Dividend Reinvestment Plans

Where shares are held in a dividend reinvestment plan, you should contact the plan administrator shown on one of the statements and request the form needed to transfer the plan shares into the trust. A form will be furnished for that purpose. It should be completed and returned to the plan administrator.

If shares are held individually and you also participate in the dividend reinvestment plan, you may wish to also inquire about depositing your individually held shares to the plan. This is normally permitted at a nominal charge, if any. This will conveniently allow transfer of the shares to the trust. If you eventually decide to remove them from the plan and have certificates issued, you can request this at any time.

You should recognize that shares held in a plan might be sold and removed. However, this does take time. If you will want to sell shares on short notice, it may not be advisable to have them in the plan.

Dividend reinvestments plans are increasingly less common. This is because brokerage firms now provide a similar service. The benefit of the brokerage firm is that there is a single account holding all investments.

Savings Bonds

Savings bonds may be transferred to a trust. However, paper bonds are no longer issued. Electronic registration is now required.

Where only a few bonds are owned, they are often cashed in rather than transferred to a trust. Where there is a living beneficiary (POD or pay on death) or a co-owner (jointly), the decision may be made to simply retain the paper bonds. A small estate procedure may be used to deal with a small amount of bonds. For most, though, it is advisable to transfer the bonds to one's trust.

Information regarding the conversion of bonds to electronic registration is available on the U.S. Department of the Treasury's website Treasury Direct. The site is: <http://www.treasurydirect.gov/tdhome.htm>. An electronic account must be established. Once this account is established, a conversion account may be opened. The accounts are linked to one's bank account which allows the purchase and redemption of bonds. The Treasury Direct website provides instructions. While not what many are accustomed to, it is doable! One nice benefit is that as bonds mature, they are immediately redeemed and funds may be electronically transferred to one's account.

The transfer of savings bonds held by you to a personal trust does not result in a requirement that income taxes be paid at this time on the tax-deferred increment on the bonds. This is because the trust being established is a grantor-type trust of which you are treated as the owner for income tax purposes. Be certain to check the appropriate box on the form stating that you will be treated as the owner of the trust for income tax purposes.

Safe Deposit Box

If you have a safe deposit box – which is sometimes advisable – you should place this in the name of your trust. This will make it much easier to deal with in the future. Your successor trustee will have immediate access to the box. Another option is to have a trusted co-owner –

typically a successor trustee – who would have access to the box. It is important to make certain that someone will have access to the box after death without being appointed as an estate representative. Confirm with the financial institution where the box is located that your successor trustee or co-owner will have immediate access to the box on your death.

Motor Vehicles

Motor vehicles may be titled in the name of the trust. However, many individuals simply hold titles individually. On death, the title is transferred using a small estate procedure. When vehicles are changed, titling in the trust might be appropriate. It is important, however, to make certain that any insurance insures both the trust and the driver. Discuss coverage with your agent to make certain it is appropriate.

Another approach with automobiles is to make them “TOD” or “Transfer on Death” to the trust. Both Illinois and Missouri law permit this. In this way, an automobile may remain in an individual name to simplify insurance coverage but then pass to the trust on death. Another benefit in some states may be to avoid additional sales or other taxes when a vehicle is re-titled or traded. Before putting a vehicle in the name of the trust, make certain that you will receive credit for its value if traded by the trust.

Ask About Other Assets

If there are other assets to be transferred to the trust, they should be titled in the trust. It is usually best to ask the firm or institution with which you have the asset. They will provide instructions. And, of course, don't hesitate to ask.

Farm Program Participation

Use of a revocable living trust, in general, has no impact on participation in farm programs. For purposes of these programs, the U.S. Department of Agriculture disregards the trust and determines the true beneficiary or beneficiaries of the farm. However, there are a few things that should be noted.

First, in order to participate in farm programs, it will be necessary to furnish an entire copy of the trust. This is an unfortunate requirement, but the U.S. Department of Agriculture is insistent on this rule. Disclosure is required in order to determine participation limits. Farm Service Agency employees, of course, are expected to honor privacy.

Second, a farm owner (or couple) will ordinarily utilize a social security number. However, it may be necessary to have a separate trust number (or FEIN). That's not required by the Internal Revenue Service but is used, again, to determine participation limits. This usually is required only if the farm owner (or couple) has other farm operations (e.g., with others) for which a social security number is already being used. The Farm Service Agency should let you know if one is

required. If a separate number is required, be certain to sell crops relating to the farm using that number in order to be able to provide the Farm Service Agency proof of production if necessary.

Third, some farm programs (usually loan programs) do not permit participation by trusts. This is unusual. If this occurs and one wishes to participate, the real estate involved may be removed from the trust. Participation is then allowed.

Update Property, Motor Vehicle, and Liability Insurance

Where property, including real estate, tangible personal property, and motor vehicles, are held in your trust, be certain to update your insurance. Talk with your agent, let the agent know that you have established a trust, and be certain that coverage is appropriately written. In general, you

Notice to Agent Form

With your trust is a form that you may use to let your agent know you have established a trust.

will want to insure the trustee or trustees and any current beneficiary that occupy the property. If you are the trustee, you need to insure yourself as trustee and individually. While not common, some insurance companies may impose a separate charge because of the trust. Also, not all policy forms will cover homes held in trusts. The point is to make certain proper coverage is in place.

Be Careful Before Transferring or Changing Life Insurance, Annuities, and Retirement Plans

Special caution must be exercised before transferring or changing life insurance, annuities and retirement plans. Consult with your attorney *before* making transfers or changes.

Just how life insurance, annuities and retirement plans should be handled depends on the circumstances. But here are a few general rules:

- Where tax planning is not an issue, it is usually appropriate to name one's trust as beneficiary although many prefer naming one's spouse or other designated beneficiary. One problem with naming a beneficiary is that the beneficiary may survive the insured but not make a policy claim before his or her own death necessitating opening an estate for the beneficiary to make a claim. This is especially troublesome where the beneficiary is one's spouse who also has a trust aimed at avoiding probate. Therefore, it is often best to state in the trust where the benefit goes rather than rely on a beneficiary designation.
- Where there is tax planning involving a spouse, it again is usually best to name the trust as the beneficiary of life insurance. This is so the proceeds may be allocated as provided in the tax planning trust.
- Although life insurance is usually best made payable to the trust, it is possible to designate individual beneficiaries, such as a spouse as the primary beneficiary and

then children as alternate beneficiaries. Where this is done, it is important to address what happens if a beneficiary dies. Designations often provide in the fine print that if a beneficiary dies, the proceeds will be paid to the other surviving beneficiaries. Where a child is named, this means the benefit would go to one's other children. This is seldom the intent. Rather, the usual intent is that the proceeds would pass to the descendants of the deceased child. For this reason, it is usually best to name the trust directly.

- Annuities are more complicated than life insurance. This is because there will usually be income tax liability built in. These may be handled similarly to life insurance, but it is important to first determine whether income taxes may be deferred by the beneficiary. This often is the case with a spouse who may be entitled to assume the annuity and continue to defer taxes. This requires that the spouse be named the beneficiary. If, instead, the annuity may not be assumed and it will need to be claimed after death, it is usually best to name the trust as the beneficiary to ensure the benefits will pass as you desire. Again, explore the available options on death before making a decision.
- Retirement plans are more complicated still. Key with regard to retirement plans is taking full advantage of deferral or stretching out of taxes. A spouse often may rollover plan benefits and, for this reason it is best to name one's spouse as beneficiary. Individual beneficiaries other than a spouse have the option to annuitize the benefits based on the beneficiary's life expectancy beginning one year after the death. Annuitization allows deferral of taxes. For that reason, it's usually best to name individuals absent tax planning or other special issues.
- Although naming individual beneficiaries usually makes sense, trusts may be used. This might be the case where tax planning or contingent tax planning is involved. Trusts allow for deferral but this is only where identifiable individuals are the trust beneficiaries. Special care is required to draft trusts that will be beneficiaries of retirement plans. Making one's trust the beneficiary also may be appropriate where the retirement plan is relatively small and the beneficiaries would be unlikely to annuitize it.

A beneficiary designation is one thing – which is what has been discussed – and ownership is another. Having life insurance owned by the trust, especially where the trust is the beneficiary, frequently makes sense. Accordingly, it may be appropriate to have the trust be both the beneficiary and the owner. This is *never* the case for annuities or retirement plans. This is because transferring ownership (rather than simply changing beneficiaries) will result in acceleration of income taxes. If one transfers the ownership of an annuity or retirement plan, taxes must be paid when the transfer is made. Accordingly, do not change the *ownership* of annuities or retirement plans.

Keep in mind that these are general rules. Each circumstance varies. Check out the consequences of any transfer or change *before* deciding whether this is the correct thing to do.

Care must be exercised in planning for life insurance, annuities, and retirement plans. Discuss with your attorney any beneficiary designations to consider the advantages and disadvantages of any designation to determine what would be most appropriate.

Designating the Trust as Beneficiary; Special Designations

It has already been mentioned that care must be taken when designating the trust as a beneficiary. This caution applies as well to listing a trust as the payable on death (POD) or transfer on death (TOD) beneficiary. There are times, however, when a trust will be designated.

As discussed with titling assets, variations will exist. The important thing is to make clear that the trust is the beneficiary. Because a trust is really a relationship (and not an entity) and the initial trustee is usually then deceased, the best way to designate a trust as beneficiary is: “The then serving trustee of the Abraham Lincoln and Mary Todd Lincoln Trust Agreement dated February 25, 1860”. Again, remember, variations may be used.

In some circumstances a sub-trust or special trust within one’s trust will be the beneficiary. If this is the case, be certain to properly name the sub-trust or special trust. A frequent situation when this is required is when the benefits from a retirement plan are to pass to the sub-trust or special trust. A sub-trust or special trust may be used for estate tax planning, for benefiting younger beneficiaries, or for other reasons. While the retirement plan custodian or administrator may have special rules to follow, typically the beneficiary will be something like: “The then serving trustee of the Abraham Lincoln Trust dated February 25, 1860, FBO [meaning “for the benefit of”] Mary Todd Lincoln.” The trust will usually suggest how the beneficiary should be named.

Some Assets May Not Be in the Trust

Most assets will be transferred to and titled in your trust. But there may be exceptions. As earlier discussed, annuities and retirement plans will ordinarily not be in the trust even if the trust is named the beneficiary. Other assets may be kept out of the trust as well.

What other assets may be kept out of the trust?

- Motor vehicles are not always placed in a trust. The reason for this is to avoid problems with insurance. Motor vehicles, of course, may be placed in the trust. If they are, be certain that the insurance specifically covers the trustees and any regular drivers for all coverages.
- Subchapter S stock can be held in trust only where special requirements are met. Therefore, don’t place this type of stock in a trust without making certain there will not be any adverse income tax consequences.
- Professional corporation stock may not be held in trust.

- Some special investments may not be able to be held in the trust. These are few. Investment limitations may apply. The form of investment, such as a limited partnership, may restrict ownership.
- Although rare, trusts may be prohibited from participating in some programs. A few farm programs prohibit trust participation. If there is such a program, the asset, such as a farm, may be removed from the trust while involved in the program.
- Some other assets may well not be appropriate trust assets. The point is that caution should be used before placing any assets in trust other than customary assets.
- As earlier discussed, the ownership of annuities and retirements plans should not be transferred to the trust.

Assets not in the trust may be held in some manner so as to avoid estate administration. For example, insurance may designate the trust or others as beneficiaries. Vehicles may be held jointly.

Keep in mind that it may be appropriate to place some of these assets in the trust. Just be certain to carefully evaluate the circumstances and seek advice first.

Joint Checking Account

Many couples have a joint checking account. Individuals also might have a joint account with a child or children. There is no reason that a joint checking account could not or should not be continued even where trusts are established if desired. This assumes that the account is not a major account and it is clearly understood that the account passes to the surviving joint tenant or joint tenants.

A checking account can sometimes facilitate handling incidental checks upon the death of one spouse or the other even when there is a trust. For this reason, we generally encourage retaining a joint checking account while both spouses are alive. Upon the death of one spouse, we then recommend that the account be closed and transferred into the trust. Again, though, it may be appropriate for some individuals to retain an account with a child or children, if any. Where there is no spouse or child, it will usually be best to hold the account in the trust.

Another option which is available whether a joint or individual account is involved is to keep the account, but provide a P.O.D. (payable on death) or T.O.D. (transfer on death) designation to the trust. In this way, on the death of the account owner or owners, the account will pass to the trust.

Delegating Trustee Authority

Most individuals who have established trusts have also executed powers of attorney. Powers of attorney are briefly discussed later. A power of attorney delegates a person's individual authority. It does not give the authority one has as a trustee. To deal with this, it is usually advisable to execute a separate delegation of authority regarding the trust. This can give authority to someone to sign checks and handle routine matters if the trustee is temporarily unable to do so. Should the trustee become unwilling or unable to serve on an ongoing basis, of course, the successor trustee would then act.

Intended POD or TOD Assets or Accounts and Beneficiary Designations

Caution!

Keep in mind that ordinarily you will not use POD or TOD designations. Most assets will be in the trust.

Payable on death (POD) or transfer on death (TOD) assets or accounts, as well as beneficiary designations, may be intended. If this is the case, the assets involved should not be placed in the trust or the trust made the beneficiary. Keep in mind, of course, that neither your trust nor your will affect the disposition of that asset. The asset will pass as you have directed by your POD, TOD or beneficiary designation.

Designations should be periodically reviewed to make certain they are up to date and remain consistent with your wishes. If there is a change in circumstances, it may then be appropriate to transfer the asset to the trust or name the trust as beneficiary.

When assets are placed in the trust, any POD or TOD designations should be removed. If not removed, the disposition of the asset or account on death would conflict with the trust.

Trust as POD or TOD Beneficiary

It is ordinarily best to change the title to assets to the trust. With the greater clarity in the law relating to POD or TOD beneficiary designations, however, it might be appropriate in some situations to keep an asset in one's individual name and then designate the trust as the beneficiary. This technique is not common, but is becoming more popular. Where time does not allow setting up a new account or there are reasons to keep the asset individually titled, it may be considered. Before using this approach, make certain that the asset issuer (e.g., bank or broker) will pay over the asset on death to the trustee of the trust. A trust designated as a beneficiary should be listed in the same way as if a beneficiary of insurance or the like as earlier discussed.

Trust Operation and Administration

For the most part, little change will result in your financial and other dealings as a result of the trust. At most, documents will be signed as trustee.

Here are some key points you should keep in mind with regard to the trust:

Tax Identification Number

A new tax identification is not required for a revocable living trust. *See* IRS Regulations §301.6109-1(a)(2). This would apply so long as either or both of you are trustees and a joint income tax return is filed. *See* Internal Revenue Code Regulation §1.671-4(b)(2).

- **Title:** Remember – and this is important – assets should be held in the name of the trust.
- **Income Taxes:** You will continue to file and pay your income taxes in exactly the same way as you did before the trust was established. Your social security number or numbers would continue to be used. If you file jointly, joint returns may continue to be filed. At such time as neither of you is a trustee, it may be necessary to obtain a new identification number for the trust and file a separate income tax return unless certain requirements are met. Tax filing simplification even makes this unnecessary under some circumstances until a death occurs.
- **Transactions:** You may engage in transactions with regard to the trust assets very conveniently. The only thing that will be different is that when documents are signed, you will be doing so as a trustee rather than individually. Where you do engage in transactions involving trust assets, be certain to do so as a trustee. Also, make certain that any assets received are paid to the trust.
- **Multiple Trustees:** If there are multiple trustees, they may delegate some authority to one trustee. Check writing and brokerage account management are frequent examples. This should be documented.
- **Tangible Personal Property:** A trust often provides that you may give instructions on the distribution of tangible personal property. If this is the case, be certain to keep these instructions with your trust documents.
- **Withdrawals:** You may make withdrawals from the trust as the trust provides. Where extraordinary principal withdrawals are made, it is advisable to document this.
- **Changes to Trust:** Changes to the trust may be made at any time in writing consistent with the terms of the trust.

- **Updated List of Assets:** A frequent question regarding a trust is whether it must be amended as assets are added, deleted or changed. The trust need not be amended. Changes in assets are anticipated by the trust itself. Although an updated list may be prepared, it is not required.

Other Estate Planning Documents

Powers of Attorney

Your trust packet may include your power of attorney. A power of attorney designates an agent to act for you. This authority continues even if you should become disabled.

Powers of attorney are quite simple to use. A photocopy of the power of attorney should be provided to the financial institution or other person with whom you would be dealing. You should retain the original, providing only a photocopy. When documents would need to be signed, you clarify that you are doing so as the attorney in fact or agent for the person.

Here's how to sign as an agent:

Abraham Lincoln

By: *Mary Todd Lincoln*

His Attorney in Fact

Although the authority of the agent is broad, it should be emphasized that an agent has a duty to use due care to act for the benefit of the principal. An agent may be liable for negligence, but is not liable due to a mere error in judgment. Also, an agent is expected to follow the estate plan or trust of the person granting the power of attorney.

Living Will or Advanced Directive

Your trust packet also may include any living will or advanced directive. This confirms one's wishes that no extraordinary or heroic measures are to be taken to extend one's life if death is imminent and inevitable. It is advisable to make certain that your family is aware of your wishes in this regard. You may wish to have a copy of this placed in your medical records.

Questions

If you have questions, call. We are here to help you make successful use of your trust.

The Schmiedeskamp Estate Planning and Administration Group

The Schmiedeskamp, Robertson, Neu & Mitchell LLP Estate Planning and Administration Group works with families and individuals from all walks of life, along with individual and corporate executors, trustees, and fiduciaries, as well as public and private charities. The Group provides estate planning and administration services from the simple to the complex. Services relate to wills, trusts, beneficiary arrangements, and other estate planning techniques and approaches. We advise our clients regarding the effective and efficient transfer of wealth and

succession planning. We work closely with our client's accountant, financial, insurance, and other advisors. For more information about the Estate Planning and Administration Group and all our lawyers, please visit www.srnm.com.

Please note that this discussion provides general information.
It is not intended to provide specific or personal legal advice.

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