

Maintaining My Revocable Trust

What Do I Need to Do Once I Have Signed My Trust?

As the name announces, your trust is revocable. You can modify it at any time. You can move it to another state, change the beneficiaries, or revoke it altogether if you should ever feel that its goals are no longer consistent with your family's needs. What you need to do to keep that trust in good working order also depends on your specific circumstances, but the following is a summary of those responsibilities.

1) **Review Your Asset Alignment Report.** Your Asset Alignment Report identifies all the assets disclosed to us on your Estate Planning Questionnaire. It also reflects our recommendations and suggested action for each of those assets. In some cases, the recommendation may be "NO IMMEDIATE CHANGE," because the current ownership (such as "joint with rights of survivorship" will accomplish probate avoidance at no cost. *However, the report will also indicate whether action must be taken later, such as an instruction that the surviving spouse will need to transfer an asset to his/her revocable trust after the death of the first spouse, because the asset will no longer be jointly owned.* Comments on the Asset Alignment Report are followed by a "To-Do" List on the last page. The left column identifies the work to be completed by SGB, and the right column identifies tasks that must be completed by you personally.

We recommend that you review the Asset Alignment every three years. If your asset review confirms that your financial picture has changed, or that there are now new assets that have not been planned for, it is time to schedule a meeting to review or update your plan.

2) **Review Your Choice of Fiduciaries.** A Fiduciary is a "trusted person" that you have designated to play an important role in your personal and financial affairs. Your Trust names one or more "back-up" Trustees to assist you in the event of incapacity, or to take over after your death. Are the people you selected still good choices? Do they have the time and experience necessary for the responsibilities you currently perform? If the choices you made when your trust was prepared are not the same choices you would make today, it is time to schedule a review of your plan.

3) **Review the Goals for Your Trust.** You have created a revocable living trust to accomplish one or more goals, depending on your priorities. You should periodically review whether those goals are still appropriate. For example, you might have initially designed your trust to protect young children who are not of an age to inherit and manage funds. Twenty years later there may be different concerns such as protecting a beneficiary's inheritance from a possible divorce or providing for a tax-free second transfer of assets from a child to a grandchild. Or you may have intended that your trust effectively manage estate tax exposure so that children pay less after your death – but the applicable tax limits have changed six times in ten years, so it is a good idea to make sure your plan still does what you think it does.

4) **Update Us with Any Big Life Changes.** We would like to check-in with you every three years. So please let us know if you move or get new contact information. If it's a big move, and you no longer reside in Connecticut, please let us know so that we can remove you from our check-in list, and perhaps advise you regarding what you should do to update your trust in your new state of residence. Of course, if you have any questions before your check-in, feel free to reach out to us at any time.

What Needs to Happen if I Become Incapacitated?

If you should become incapacitated, and are no longer able to manage your own finances, your trust designates one or more Successor Trustees.

Please be aware that a Trustee change requires some formality. We can prepare the paperwork necessary to accomplish this transition. If you are still capable of signing legal documents, you will sign a “*Resignation of Trustee.*” If you are not capable of signing a resignation, such as in the case of a stroke or severe dementia, your trust provides instructions regarding how this transition can take place without initiating any probate proceedings.

Your Successor Trustee(s) will need to provide properly executed documents evidencing any change of Trustee to all institutions holding trust assets. Please be prepared for some paperwork. Anytime a change is made to the persons with access to and control over your trust, financial institutions will want the new Trustee(s) to sign new forms and authorizations. Every institution holding trust accounts must be contacted for this purpose.

Finally, your trust also provides specific instructions regarding how the trust is to function during any period of incapacity. While you are living the trust’s primary function is to provide for you. If you regain capacity, you are still in charge. You can direct the Trustees to do what you want, and if you lose confidence in their abilities, you can make a Trustee change at any time.

What Needs to Happen After I Die?

Although your trust is designed to circumvent Probate Court supervision, having a trust does not mean there is nothing to do. There are still certain tasks that must be completed after a death. The attached diagram illustrates the steps to completed after a death. The timeline for completing these steps is within the Successor Trustees discretion, with a few exceptions:

1) Collect Information and Select a Legal Advisor. It is very important that new Successor Trustees understand the scope of their responsibilities and obtain appropriate advice before making any immediate decisions about claiming assets or transitioning accounts. We are happy to serve as that legal advisor, but there is absolutely no requirement that we do so. But your Successor Trustees should meet with someone to make sure that the understand the goals the trust was established to achieve before taking action. To prepare for that meeting, your Successor Trustees will want to make sure they have the most current version of the trust agreement, and the most current version of the Asset Alignment Report.

2) Obtain Legal Authority. As noted above, to assume legal authority for trust assets, your Successor Trustees will need to sign a formal acceptance of their new authority and responsibilities. This “*Acceptance of Successor Trustee,*” together with a Death Certificate, will be needed to transition control of trust assets to the new Trustees. Keep in mind that if the trust names more than one Successor Trustee, those Trustees will need to act together.

Your trust will also need a at least one new Taxpayer Identification Number (“TIN”), because your Social Security Number expires upon your death. (Depending upon the instructions of your trust, assets may be divided into separate shares, each with its own TIN. Your legal advisor will be able to offer guidance on whether more than one TIN will be required.)

3) Collect and Inventory Trust Assets. All trust assets need to be re-titled to the new Trustees and new TIN. This transition is important for several reasons. First, you want trust income (like interest and dividends) to be reported on the appropriate 1099s. If accounts are not transitioned, 1099s will continue to be issued to the decedent, and the decedent’s tax reporting obligations cease at death. Second, and perhaps more important, the Successor Trustees needs to have control over trust assets. If accounts are not transitioned, the Successor Trustees will have no authority to make changes, make withdrawals, or make any investment decisions.

4) Identify and Assign Responsibility for Tax Matters. There will be a number of important tax returns that will be required after your death. Your Successor Trustees will want to make sure that all tax deadlines are clarified and retain appropriate support for the preparation of those returns.

- **Connecticut Estate Tax Return.** *Whether or not probate is necessary, Connecticut law requires the filing of an Estate Tax Return for every Connecticut resident, and even for non-residents owning Connecticut real estate (regardless of whether owned in a trust, or pass through entity like an LLC). The return must be filed even if no taxes are owed. Your Successor Trustees should seek out an experienced professional to prepare this return. Even though there may be no possibility of estate tax, the manner in which assets are reported may have ongoing income tax consequences for beneficiaries.*
- **Ancillary Estate Tax Return(s).** Also be aware that if you own any real estate outside of Connecticut at the time of your death, *additional State Estate Tax Returns may be required.* This is particularly true throughout the northeast, as several nearby states also still impose an estate tax. Don't assume that if the value of the property within the state is below the applicable limit that no return is required. Some states require a full and complete return regardless of the value of the local property.
- **Federal Estate Tax Return.** Federal law currently sets a very high asset limit, below which a Federal Estate Tax Return is not required. However, if assets exceed the federal limit, a Federal Return will be required. In some instances, there may be good reason to want to file a Federal Estate Tax Return, such as for portability of unused exemption, or to report basis for capital gains tax purposes. *It is extremely important that all tax obligations arising after your death be thoroughly reviewed and understood.*
- **One or more Personal Income Tax Returns.** *Someone* (a surviving spouse or your Successor Trustees) will need to make arrangements to have your final personal income tax return(s) prepared and filed. (This is usually a Form 1040.) If you die in the first few months of the calendar year, this could mean filing *two* additional income tax returns: one for the *year preceding your death* if not yet filed; and one for the *portion of the year of your death* that you were living. We recommend that the Successor Trustees retain the services of the same tax preparer who handled your personal returns during your lifetime for consistency and efficiency.
- **One or more Trust Income Tax Returns.** After your death, your trust will need to start filing its own income tax return. (This will be a Form 1041. We strongly recommend using the services of a capable accountant or tax advisor to prepare these returns. A 1041 is similar to, but not the same as, a Form 1040, and it will be important to make sure it is prepared correctly.

5) Pay your remaining bills and expenses. Once your trust accounts have been re-registered to the new Trustees and new TIN, your trust provides the best source of funds to pay the expenses associated with your death. This should relieve beneficiaries of the burden of paying expenses from their own funds. If a beneficiary pays any expense associated with your death from personal funds, your trust authorizes reimbursement as soon as practicable. ***Importantly, many expenses that might not be tax deductible if paid from personal funds may be deductible if paid from the trust.*** Good records are crucial, and your Trustees will need to keep copies of any bills or invoices together with proof of payment. Complete and accurate documentation will be required for tax purpose.

6) Plan for Distributions and Seek Approval of Beneficiaries. How and to whom property will be distributed after your death will depend on your instructions. You may have instructed that your trust be closed after your death, or you may have instructed that your trust continue to shelter certain assets from

additional tax at the time of your spouse's death, or even for the lives of children or other designated beneficiaries. We strongly encourage that your Trustees seek professional advice before commencing the distribution process.

Your trust also instructs that beneficiaries are to be provided with good information regarding trust assets, so that they can play a meaningful role in the distribution process. This typically takes the form of an "accounting" which describes all trust assets (and the income they generate), trust expenses and the proposed distribution. Beneficiaries can then "sign off" on the proposed distributions, confirming for the Trustees that there is no potential challenge to the proposed plan for distribution.

7) **Trust Closure and Transition to New Ownership.** When the steps above have been completed, your trust (as it has existed up to this point) will close. What happens next depends upon the instructions contained within your trust agreement.

- If your trust was created for probate avoidance only, then its closure is really "the end." Assets will be distributed to the new beneficiaries. The trust's final income tax return will tell the IRS who received them.
- If your trust was created for tax planning reasons, it is likely that your trust will continue until either the death of your spouse, or even for the lives of children or other designated beneficiaries. In these cases, your single trust may split apart into several new trusts. Those new trusts may name the same Trustees or perhaps you gave permission for your beneficiaries to name their own Trustees. In these cases, "closure" refers to the process of closing the single entity that was created during your lifetime and transitioning to the new entities to be set up after your death.

These Instructions Cannot Take the Place of Actual Legal Advice.

Please understand that these instructions are intended to provide you and your loved ones with a general overview of how trusts are administered. They are not "one size fits all" and they might even raise many more questions than they answer. Creating a trust is one step in a lifetime process. It can achieve many goals. But the paper itself is not "magic" and it does not make the realities of transitioning assets from one person to others any less complicated. There are important legal, financial and tax implications to consider. If you have any questions regarding your trust or how it should be managed, please let us know. We are to help if you need us.

TRUST ADMINISTRATION PROCESS

