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TRANSFERRING ASSETS TO A REVOCABLE TRUST
By Randy Spiro

Some revocable trusts contain an Exhibit A stating that the assets listed on the Exhibit A are part of the Trust. In many cases, the Exhibit A only lists a token sum such as $100. In some states, a living trust is not valid unless some asset has been transferred to it and the custom of listing a token sum on the Exhibit seeks to show that something has been transferred to the Trust at its execution.

Exhibit A may be used by some practitioners to list each specific asset owned by the Creator of the Trust at the time it was signed. Some states allow the Successor Trustee on the Creator's death to petition the court and ask for an order that the inclusion of specific assets on Exhibit A effectively caused them to be owned by the Trust. The Successor Trustee would then take that order to banks, brokers, title companies and other transfer agents to show them that probate should not be required for that asset.

One problem that filling out Exhibit A presents is that it may cause the Creator of the Trust to believe that he or she does not need to transfer assets to the Trust in the traditional way. Real estate is transferred by deed. Bank or brokerage accounts are transferred by filling out and returning to the bank or broker relevant forms that they have for this purpose. Partnership interests are transferred by assignment which the partnership is given and acknowledges and where applicable by obtaining the written consent of other partners. Life insurance is integrated by change of ownership and beneficiary forms. IRAs and retirement plans cannot be transferred but change of beneficiary forms can be obtained, filled out and returned to the relevant custodian or administrator.

For some assets there is no one to file papers with to show the transfer. Jewelry or paintings, for example, can be assigned to the trust, but the assignment does not need to be filed with anyone. If these items are later sold, the assignment can be shown to the potential buyer to prove that the Sucessor Trustee (after the Creator's death) has good title to the assets.

A bad mindset is one that says “I will transfer assets to my trust later.” Later, typically, means never and never can mean the assets will be probated even though the purpose of the Trust was to avoid probate. At the time the Trust was signed, the Creator should have signed a pour-over Will, which will be probated when assets are left out of the Trust and which will cause the assets left out of the trust to be distributed to the Trust by Court Order at the end of the probate.

Even worse, some of the assets left out of the Trust may be held in joint tenancy with a third person or may have a third person as beneficiary. That third person may no longer be the beneficiary under the Trust, but by the Creator’s failure to transfer the asset to his Trust, that third person may succeed to the asset at the Creator’s death.