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## POINTS OF INTEREST

Kira S. Vincze - Estate Planning and Trust Administration Attorney  
Quality, Service and Caring

### You have a Trust.....Now What?

Many people create revocable living trusts in order to avoid Probate (the Court administration of an individual's estate) which is costly and can take years to administer. A living trust is also commonly used to take advantage of estate tax planning for a married couple, and to protect a deceased spouse's assets from being distributed to a new spouse or to persons other than his or her heirs. A living trust is often used to hold assets for minor children until they are responsible enough to receive an inheritance. Incentive trusts may be created within a living trust, and even protective trusts that shield assets from a beneficiary's spouse or creditors. A living trust can be used to direct gifts to other beneficiaries, including charities. Overall, a living trust is a very practical vehicle to use in order to accomplish estate planning goals.

There is a catch. A living trust will only accomplish the goals you have set if you properly fund it. What does it mean to "fund" my trust? It means you need to actually change the title of your assets to the name of your trust. For example, if a couple has a bank account that is in the name of John Smith and Mary Smith as joint tenants, that account has to be changed as follows: John Smith and Mary Smith, Co-Trustees of The John and Mary Smith Family Trust. The account with the trust name will be immediately available to the Trustee after both deaths of the trust holders, for purposes of paying John and Mary's liabilities and taxes. The account will ultimately be distributed in the manner directed in the trust. If the account is left in joint tenancy, the account will pass to Mary if John dies, but it will not be available for the estate tax planning that has been utilized in the living trust. Some of John's estate tax exemption may be wasted because this asset was inadvertently left out of the trust. If this was a \$500,000 CD, \$250,000 may be left out of John's tax exempt trust that otherwise could have been passed to John and Mary's children after Mary's death, estate tax free. If John and Mary die at the same time, the bank account will have to go through Probate, which will be time consuming and expensive.

Real property, time share ownership, bank accounts, brokerage accounts, business interests, other investments, large value personal property, e.g., a motor home, boat or plane, should all be re-titled so that they are owned by the living trust. If the assets are not held in the name of the trust they may have to go through a Probate in order to get to the trust to be distributed. A Probate is triggered in California when a deceased person has accumulated a total of \$100,000 of assets in his or her name (there is no designated

beneficiary or co-owner named on the asset). Even if John Smith has a living trust and a pour over will that states that all of his assets are to be distributed to his living trust, when he dies, if the assets that are not titled in the name of the trust do not have a value of \$100,000 or more, they will have to go through a Probate, or an alternative Court proceeding, in order to be distributed to the Trustee of the living trust.

This can be avoided by making a thorough list of all of your assets and making sure you have transferred them to the name of your living trust. My general recommendation to clients is that they start with their mail. As monthly statements come in, check to see that the name on the brokerage statement or bank statement is you as Trustee of your Trust. If it is not, call the bank or the brokerage company and let them know you have a living trust and need to transfer that account to your trust immediately. They can send you the forms they want you to fill out or you can send them the pages they request from your Trust in order to make the change to your accounts. Next, check off all of the assets on the list as you confirm that the title has been changed. When you purchase a new asset or change accounts to different banks or brokerage firms, start out by having the name of the trust on that asset. Lastly, keep the list with your trust documents so that a Trustee can work from the complete list upon your death.

Does your trust name show up on the property tax bill? If it does not, arrange with your estate planning attorney to have your property transferred into your trust. You might have refinanced your mortgage and your property was taken out of your trust to complete the loan. The property needs to be put back into the name of your trust.

Who is the beneficiary of your life insurance? Minors should never be named as beneficiaries of your life insurance. The same might apply to a 401(k) plan or IRA account. You should consult your estate planning attorney prior to changing an IRA or 401(k) beneficiary because there are unique income tax circumstances that occur when an IRA or retirement plan is distributed upon the owner's death.

Professionals, e.g., attorneys, doctors, dentists, CPAs and architects, have additional planning needs that should be carefully addressed with respect to their ownership of an interest in a professional corporation, partnership or a sole proprietorship. An interest in a professional business must be transferred differently than the other assets transferred to the trust. The Trustee provisions must also be prepared differently for the ownership of the professional business interest.

A living trust is only part of a complete estate plan. All of the assets in an individual's estate need to be reviewed, appropriately addressed in the living trust, or planned for accordingly outside of the trust. This ensures that the assets are passed on as the individual wishes, with the best estate and income tax positions, as well as ease of administration position.

When you are not sure what to do with an asset, do not guess or ignore it, ask your advisors. Your estate planning attorney and your accountant can answer your questions and assist you in coordinating your assets and your overall estate plan properly.