

WHAT TO DO WHEN YOU ARE THE TRUSTEE OF A REVOCABLE ("LIVING") TRUST

- **Prepare for the funeral or memorial service.** Check whether your loved one pre-planned or pre-paid his or her funeral, burial, or cremation. Ideally you should be made aware of any pre-planning prior to your loved one's passing, or at least know which funeral home he or she preferred. This information is usually not provided in a Will or a Trust, but in a separate writing left with the loved one's estate planning documents (if he or she has documents). The "legal stuff" can wait.
- **Gather Asset and Liability Information.** After the funeral or memorial service, if any, and after death certificates have been received (the funeral home assists with this service) you may wish to contact an attorney who practices in post death matters such as probate or trust administration, or with the attorney who drafted your loved one's estate planning documents, or an attorney with whom you have an existing relationship if their legal practice includes post-death administration. If you retain an attorney to assist you, take the following to the initial office appointment:
 - (1) Original Will and Trust (Despite what many people believe, it is rare that an individual's original Last Will and Testament is filed with the Court **prior** to death.) The Will that is used with a Revocable (also called "Living") Trust looks different than a "typical" Will in that it provides that all assets pass to the Trust upon death. This is called a "Pourover Will."
 - (2) Copy of Deed to the home or Satisfaction of Mortgage document
 - (3) One or more (original) certified death certificates
 - (4) A list of your loved one's assets owned at the time of death (bank or investment statements, life insurance contracts, stocks and/or bonds, etc.)
 - (5) Copy of the property tax bill for the year prior to the loved one's death
 - (6) Vehicle titles (boats, cars, motorcycles, trailers, etc.)
 - (7) Credit card information (unless you are the surviving spouse) and outstanding creditors
 - (8) A list of questions for the attorney

NOTE: If you were the agent for your loved one acting under a Power of Attorney (POA), that authority ends at the death of your loved one.
- **Trust Administration.** Trusts are designed to be administered without an attorney's involvement but sometimes complications arise. The Trust is the document, instead of a Will, to designate who receives the property in the Trust upon death of the creator of the Trust ("Grantor" or "Settlor"). When people establish Revocable Living Trusts ("RLT") a trust administration is still required in order to transfer assets from the deceased ("Decedent") person's name to the heirs or beneficiaries designated in the Trust. For a married couple, the trust continues to be managed by the spouse or, in the event of incapacity, the Successor Trustee designated in the RLT. At the survivor's death, the RLT must be administered with the goal of terminating the RLT once all the appropriate provisions of the

RLT have been complied with. **NOTE:** Although an RLT is designed to **avoid** probate, nonetheless a probate proceeding might be required if the Decedent owned more than \$50,000.00 in his or her sole name and did not designate those assets to pass directly to the

RLT by means of a beneficiary designation ("POD" payable on death for cash assets and bank accounts or "TOD" transfer on death for real estate and mutual/investment funds). You can usually tell from reviewing the Decedent's bank and financial statements whether he or she "funded" the RLT because the statements typically reflect the name of the RLT or indicate a beneficiary designation naming the RLT as beneficiary. Your loved one's bank and financial/investment advisor or company can advise whether these POD or TOD designations are on the assets designating the RLT as beneficiary. For real estate, if you cannot find a Transfer on Death Deed to your loved one's property or any other Deed conveying title to you or someone else, the Register of Deeds office at the County where the property is located can advise if a TOD or other Deed exists as a recorded document in their office. **NOTE: Financial institutions and investment companies usually tell inquiring Trustees that a probate is required in order to release information to them as they are not often informed that there are situations where a probate is NOT required. Their immediate response is to ask for "Letters of Appointment", a "Statement from the Court", or "Domiciliary Letters" before they will release information to you. In these instances you should provide them with a copy of the Trust, if required, or show them the portion of the RLT that designates you are the Trustee.** Assets never funded to the Trust may also pass directly to the Trust via a Marital Property Agreement, typically executed with the other documents at the time the estate planning was completed.

- **Filing the Original Will.** Even if no probate is required, surviving spouses or family members are required to file the **original** Will (if any) with the Register in Probate office in the county where the decedent resided for at least six months prior to his or her death. You should make a photocopy of the document prior to filing the original with the Probate office.
- **Income, Death and Inheritance Tax.** An individual income tax return (Form 1040) must be prepared for the year of death of your loved one presuming he or she meets the filing requirements. You should consult with a CPA or income tax return preparer. There is no inheritance tax in the State of Wisconsin, and currently no State death tax. If your estate is valued at less than \$5.25 million dollars (double that for spouses), no federal death tax exists. Trusts only require that income tax returns be filed if the Trust earns more than \$100.00 during its administration (prior to it being terminated).
- **Inventory.** As in a probate proceeding, the Trustee must comply with the Trust provisions and will find it wise to file an Inventory of the assets in the RLT at the decedent's death in the event beneficiaries inquire.
- **Notify Creditors and Utility Companies.** It is wise to contact the decedent's creditors to advise that you are in the process of managing and "winding-up-" the decedent's post-death matters and will attend to payment as soon as you have the ability to do so.
- **Forwarding Mail.** If you provide the Post Office a copy of the Trust indicating that you are the Trustee, you should be able to forward the decedent's mail to your address.
- **Pay Creditors and Required Trust Expenses.** The Trustee's job is akin to that of a Personal Representative ("Executor") in a probate administration. In general, the Trustee's job entails the following:

1. Take care of funeral arrangements.
2. Apply for a Federal Identification Number (FEIN), the form for which is an "SS-4" and is located on the www.irs.gov website (or an attorney or CPA can assist you).
3. Notify Creditors of the decedent's death and pay outstanding obligations.
4. Notify Life Insurance companies of the decedent's death (you will need Certified Death Certificates and the beneficiaries are required to complete Death Claim Forms).
5. Clean up a condo, home, or apartment and, in most cases, sell the property.
6. Transfer assets of the Trust into the Trust checking account (which must be created with the FEIN referred to above).
7. Identify retirement accounts. It is wise to seek income tax advice **prior to** making distributions.
8. Prepare an Inventory of the assets valued as of the date of death. Follow the Trust provisions whether a beneficiary is entitled to receive a copy.
9. Maintain accurate records of all deposits, withdrawals, and expenses and prepare an Accounting that lists all deposits to and withdrawals from the Trust estate. Make this available to beneficiaries requesting it, or according to the provisions of the Trust, which might require that all beneficiaries be provided a copy. Keep all receipts in the event the Accounting figures are challenged or questioned.
10. Pay yourself a Trustee's fee, **only if allowed in the Trust provisions**. (In a probate proceeding a Personal Representative is allowed to collect a statutory fee of 2% of the inventoried assets. In a Trust, compensation must be directly stated or it is not allowed.)
11. Consult a CPA to determine whether income tax returns must be prepared for the RLT.
12. Issue checks to the beneficiaries when you are certain you have complied with all of the Trust provisions. It is wise to prepare a basic "Receipt" for each beneficiary to sign acknowledging their receipt of payment, for return to you as Trustee.
13. Close the
14. In general, keep Trust Administration documents for a period of seven (7) years from the date of completion. Thereafter, they can be discarded.