

The Use of a Funded Revocable Trust for Lifetime Management of Assets

The revocable trust established as a part of your estate plan can serve as a very useful asset management vehicle during your lifetime. The benefits of funding a revocable trust during lifetime include:

- (a) To avoid probate and many of the attendant delays, costs and administrative hurdles which are often associated with probate;
- (b) To avoid public disclosure of the extent of the Donor's assets and his dispositive plan by avoiding the filing requirements of the probate registry;
- (c) To secure professional investment management for the assets placed in the trust; and
- (d) To provide for continuity of management of the assets and access to the assets in the event of the Donor's incapacity or incompetence.

A funded revocable trust is most useful for the management of investment assets such as marketable securities and the like. Special considerations apply to the use of a revocable trust to hold other assets such as closely held stock, partnership interests, and real estate.

The following discussion summarizes how to fund your trust and explains the tax consequences of doing so.

Funding the Trust

In order to fund a revocable trust, the Donor must take the following steps:

- (a) Register securities in the name of the trust, by executing "stock powers" and "bond powers." The registration will list the names and addresses of the Trustees, the name of the trust and the date it was signed. Alternatively, the Donor may arrange for professional custody of the securities through a bank or law firm trust department in which case they may be registered in an appropriate nominee for the trust. Such a custodial arrangement permits efficient and speedy sales and purchases of securities, as well as automated periodic account statements.
- (b) Deliver bearer bonds to the Trustees and obtain receipts.
- (c) Deliver cash to the Trustees for deposit into an interest-bearing account.

Tax Aspects of a "Funded" Trust

Because at any time the Donor can revoke the trust and take the assets back, the property in the trust is treated, for tax purposes, as if it were still owned by the Donor. Thus, there are no gift tax or estate tax consequences to funding a revocable trust. Nor are there any income tax advantages or disadvantages; income and capital gains are taxed to the Donor.

The tax reporting requirements of a funded revocable trust differ depending upon whether or not the Donor or the Donor's spouse is a Trustee of the trust. If neither the Donor nor his or her spouse is a Trustee, the Trustees must annually report trust income and expenses on a federal information return known as "Form 1041." The Donor must then include the trust's income and expenses on his own individual income tax return. If the Donor or his or her spouse is a Trustee of the trust, all items of trust income and expense are reported on the Donor's Federal personal income tax return (Form 1040). No income tax return need be filed for the trust. Massachusetts follows the Federal reporting requirements. In cases where the trust files a return, all the details need not be repeated in the Donor's Form 1040; only totals need be entered.

Management By Donor

If the Donor is a Trustee of the trust, the trust assets and the Donor's assets should not be commingled. Various custodial arrangements are available for the trust assets. For example, the Trustees may place the securities in a safe deposit box in their names or they may establish a custodial/agency account at a bank or trust company. For a fee, the bank will collect income and dividends, deliver and receive securities, collect and pay transaction costs, and provide periodic automated accounts of receipts, disbursements and securities transactions. These services are also available through the Trust Departments of a number of large Boston law firms, including Foley Hoag.

Alternatively, the Donor/Trustee may use an account at a brokerage house to hold the securities (normally without a custodial fee as it is expected that purchases and sales will be made through the broker). The brokerage account is in the name of the trust, but the securities are actually registered by the brokerage house in its "street name." The broker collects income and dividends and remits the funds periodically to the Trustees. The use of a brokerage account is most efficient in securities transactions since the broker will execute buy/sell orders without requiring the Trustees to prove their identity and authority to act each time. Securities held by brokers in such accounts are federally insured against loss up to a total value of \$500,000.

Management By Professional Trustees

If the Donor wishes to obtain professional management of the trust assets, this can be done by appointing as one of the Trustees a professional trustee such as a member of a law firm or a trust company. Arrangements will be made for: (a) custody of the trust assets; (b) notifying the Donor of investment changes; and (c) accounting to the Donor. Accounts are typically prepared by the custodian, but in some cases may be prepared by an accountant. Reports are made to the Donor periodically, on whatever schedule is desired — monthly, quarterly, semi-annually or annually.

Summary

A revocable trust can be more than a vehicle for the disposition of the Donor's assets after death; it can be an excellent tool for the lifetime management of property. Should you have any further questions about the establishment, funding or administration of a revocable trust, please do not hesitate to call on us. For those clients who wish to take advantage of Foley Hoag's Trust Department services, the firm will handle the management of a funded revocable trust during the Donor's lifetime and after his or her death, as long as one of the firm's attorneys is acting as a Trustee or co-Trustee. Further information regarding the trust administration services available at Foley Hoag is available upon request.