

TOUPPER(FIELD(TrustName))

MEMORANDUM REGARDING FUNDING YOUR LIVING TRUST

THIS COMMUNICATION IS NOT INTENDED OR WRITTEN TO BE USED, AND IT CANNOT BE USED, FOR THE PURPOSE OF AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER ANY TAX LAWS.

This memorandum discusses **TOUPPER(FIELD(TrustName))** (the “Trust”; the actual agreement is referred to in this document as the “Trust Agreement”). Important steps must be completed for the Trust and Trust Agreement to be effective.

Generally

In order to obtain the benefits of probate avoidance, disability protection, and all of the other benefits that we have discussed, it is very important that the Trust be properly funded during your lifetime. To obtain maximum benefit from the Trust, you should transfer your property to the Trust as soon as possible. Note, though, you should not transfer *ownership* of any retirement accounts or annuities to the Trust, as these types of investments should remain outside the trust, otherwise unintended income tax consequences might result. Even though your retirement accounts and annuities will not be owned by the Trust, probate can still be avoided as long as the *beneficiaries* you designate are coordinated with your Trust.

All transfers of ownership must be accomplished by executing appropriate instruments of transfer to be effective for state law purposes. For example, real estate should be transferred to the Trust by a deed, bank accounts by changing the name on the accounts, and stock certificates that are not in “street name” by issuing a new certificate in the name of the Trust. I will be happy to assist you with the transfer of assets to the Trust, ***but I will not initiate such assistance unless you specifically request me to do so in writing.***

This memorandum is intended to assist you in understanding your Trust Agreement, but it is not all inclusive. I hope it is beneficial in highlighting some of the significant aspects of your Trust Agreement. If you have any questions regarding your Trust Agreement, please feel free to contact me.

How to Style Properties Owned by the Trust

Assets which are intended to be owned by the Trust can be styled a number of ways. All of the following options will adequately identify the trust. When possible, though, you should opt for a styling which contains as much information as possible. **IF(FIELD(TrusteeSettlors))**

“**FIELD(P)** and **FIELD(S)**, Co-Trustees of **FIELD(TrustName)** dated **FIELD(Date)**.”

“**FIELD(TrustName)**, as amended, by **FIELD(P)** and **FIELD(S)**, as initial Co-Trustees.”

“**FIELD(P)** and **FIELD(S)**, Co-Trustees of **FIELD(TrustName)** under Trust Agreement dated

FIELD(Date), and as may be amended.”ELSE

“FIELD(FIELD(Trustee1)), Trustee of FIELD(TrustName) dated FIELD(Date).”

“FIELD(TrustName), as amended, by FIELD(FIELD(Trustee1)), as initial Trustee.”

“FIELD(FIELD(Trustee1)), Trustee of FIELD(TrustName) under Trust Agreement dated FIELD(Date), and as may be amended.”ENDIF

Certification of Trust

When you transfer assets to your Trust and when the Trustee buys and sells various assets owned by the Trust, the people with whom you will be dealing will need verification that your trust actually exists and that the Trustee has the authority to act on behalf of the trust. If you do not want to provide an entire copy of the Trust Agreement, as you may not want other people to be able to read the provisions of your private trust document, you may instead use a copy of the Certification of Trust. If you are asked to submit a new Certification of Trust form, please let me know, and I will forward an unsigned Certification for you to sign at such time. The Certification of Trust enables you to avoid disclosing the particulars of your estate plan by disclosing only the information which is necessary. You may find that you will be using your Certification of Trust repeatedly over the years as trust assets are bought and sold in the name of your Trust. On the other hand, the Certification of Trust may not be accepted at all banks, brokerage houses, and other businesses, so you may be required to provide parts or all of the Trust Agreement when opening a new account or transferring property to the Trust.

Tax Considerations

While you are living, the Trust is designed to be a pass-through entity for income tax purposes. In other words, all income and expenses will be taxed directly to you as if the Trust did not exist. Therefore, you can use your social security number as the tax identification number of the Trust while you are alive, and you can report trust income on your individual or joint income tax return (Form 1040). No trust tax return (Form 1041) will need to be filed while you are living.

Real Estate

Deeds are required to convey interests in real estate to your Trust. In the future, should you acquire any additional real estate, you should title such real estate in the name of your Trust. You should obtain the assistance of an out-of-state attorney to transfer any non-Texas real estate into the Trust.

Importantly, the transfer of your homestead to your Trust will not result in the loss of your homestead exemption for property tax purposes. If you receive a notice from your county appraiser that your homestead exemption has been denied, you will need to present the appraisal office with a copy of the page from your Trust Agreement which contains the

Section entitled “**Homestead in Trust Estate.**” The language contained in this section recites the necessary language needed to secure the homestead exemption.

Casualty and Property Insurance

With regard to casualty and property insurance, you should consult with your insurance agent to make certain that transferring your personal property into your Trust will not result in a business rating on your insurance policy causing an increase in your insurance premium. Also, you should ask your agent if your policies need to be amended to include and cover your Trust and all of its property. Sometimes this can be accomplished by adding your Trust as an additional insured to your policy, and for automobiles owned by the Trust, listing you as an insured driver.

Life Insurance Policies

The proper beneficiary designation to life insurance policies should be as follows:

The **Primary Beneficiary** should be “**IF(FIELD(TrusteeSettlors))FIELD(P) and FIELD(S), Co-Trustees, or said Trustees’ELSE FIELD(FIELD(Trustee1)), Trustee, or said Trustee’sENDIF successor in interest, pursuant to FIELD(TrustName) dated FIELD(Date).**” The **Successor Beneficiary** should be “The Estate of **FIELD(P)**”**IFNOTBLANK(S)** or “The Estate of **FIELD(S),**” respectively.**ELSE .ENDIF**

Mortgaged Property

With regard to any mortgaged property, Federal law generally prohibits your lender or the holder of the mortgage from enforcing a “due on sale” clause with regard to most residential real properties. Only residential properties that contain six or more dwelling units, as well as all commercial properties, are subject to having notes accelerated by the lender. Even though your home and other residences may fall under this exception, you should still inform your lender or lenders that you have transferred your property to your Trust so that they may change their records accordingly. If you have mortgaged, pledged or allowed a lien to be placed upon any real estate other than your home and any other residences that fall under the foregoing exception, you should first obtain the written permission of your lender or lenders prior to transferring such real property into your Trust. Permission for this type of transfer is regularly given, so you should have no problems with your lenders.

Vehicles

Automobiles, recreational vehicles and boats (referred to in this paragraph as “vehicles”) often can be transferred at death by completing an affidavit from your heirs, without a probate proceeding. Relying on the affidavit, though, requires the signature of all of your “heirs.” Also, and importantly, your “heirs” under Texas law may not be the same people who are listed as beneficiaries under your Trust. If your Will is probated, the executor of your

estate would also have the power to sell your vehicles. But one of the purposes of your Trust is to avoid probate. Therefore, you may want to transfer the vehicles you own now as well as all vehicles you may acquire in the future to your Trust. If you do transfer one or more of your vehicles to your Trust, you should first contact your insurance agent so that your insurance carrier can be notified that such vehicle or vehicles have been transferred to your Trust. If transferring your vehicles to your Trust will increase your insurance rates, you may want to switch insurance companies or, alternatively, keep your vehicles out of your Trust during your lifetime, and simply let your heirs rely on the affidavit to transfer your vehicles following your death.

Stocks and Bonds Not in “Street Name”

Most often, stocks and bonds are held in “Street Name” accounts, meaning the brokerage firm holds the securities in its “street name” so it is easier for you to trade. By changing the name on the account, you automatically change the beneficial ownership of all the securities in that account. However, many people hold the actual stock or bond certificates, and in such a case, it will be necessary to place the securities into a brokerage account in the name of your Trust or to re-register the securities so that they are in the name of your Trust.

Savings Bonds

The first step is to complete Treasury Department Form PD F 1851, *Request To Reissue United States Savings Bonds To A Personal Trust*. This form can be obtained on the internet at the following website: <https://www.treasurydirect.gov/forms/savi1851.pdf>. You must then mail the form, the original bond certificates, and a copy of your Certification of Trust to the nearest Savings Bond Processing Site listed on page four of the form. Importantly, you should make a copy of all of the documents before you mail them. As a further precaution, you should send the package via registered and insured mail. If the Federal Reserve needs additional information to complete the transfer, they will notify you directly. If you have not heard back from the Federal Reserve within six weeks, you should follow up with another letter.

Closely Held Corporation Stock

If you own an interest in a closely held corporation (generally, a corporation that is not publicly traded), then it will be necessary to sign a Stock Assignment form and issue a new certificate in the name of your Trust. Often, the assignment language is found on the back side of the stock certificates. Once that step has been completed, the certificate should be canceled and attached to the stub in the corporation’s stock record book, and a new certificate should be issued in the name of the trust. If you presently hold multiple stock certificates, all of those certificates can be combined into a single new certificate; however, if you have a different cost basis in the shares represented by multiple certificates, you may prefer to continue to have multiple certificates. If you want me to assist with any such transfer, please provide me with your corporate record book and the relevant stock

certificates.

It may be the case that a buy-sell agreement is in place restricting the transfer of shares of stock you own in a closely held corporation. Most of the time, a buy-sell agreement will permit the transfer of closely held stock to a trust established for the benefit of the shareholder making the transfer. Even so, you will want to determine if a transfer to your Trust is permitted. If the buy-sell agreement does not permit any such transfer, then it will be necessary to amend the agreement or obtain the consent of the other shareholders.

If a closely held corporation in which you are a shareholder has elected to be treated as an “S” corporation, the transfer of your shares to your Trust will not affect that election since your Trust is a “grantor trust” for income tax purposes. You will still be treated as the direct owner of the shares even if ownership is transferred to your Trust.

Partnership Interests or LLC Interests

Each partnership has its own rules.. If you are a partner in a limited partnership, you will need to contact the general partner, and subject to the limited partnership’s rules, you should be able to retitle your partnership interest to the name of the Trust. It may be necessary to obtain the approval of some or all of the partners in the partnership before you are permitted to assign your interest to the Trust. The limited partnership may be able to provide you with the proper assignment form, but if they are not able to do so, please contact me. Upon receipt of a copy of the agreement of limited partnership, I can prepare an assignment form for you. If you are a partner in a general partnership or limited liability company, you should contact the partner or member who manages the company and request that your interest be transferred to your Trust. Just as with an interest in a limited partnership, it may be necessary to obtain the approval of some or all of the other partners or members before you are permitted to assign your interest to the Trust. The general partnership or LLC may be able to provide you with the proper assignment form, but if they are not able to do so, please contact me. Upon receipt of a copy of the entity’s agreement, I can prepare an assignment form for you.

Note, however, if you own a publicly traded partnership interest, you should be sure to determine what the cost will be to transfer your interest to the Trust. There are sometimes substantial fees that can be charged, and you may decide not to transfer that interest to your trust.

Bank, Savings and Other Accounts

With the exception of the primary household account, the proper styling for your cash and investment accounts should be “**IF(FIELD(TrusteeSettlors))FIELD(P) and FIELD(S), Co-TrusteesELSE FIELD(FIELD(Trustee1)), TrusteeENDIF ofFIELD(TrustName) dated FIELD(Date).**”**IFNOTBLANK(S)** Your household account, simply for your convenience in taking care of the day to day responsibilities of your household should be styled as “Community

Property” or even “Joint Tenants with Right of Survivorship,” whichever you prefer.**ENDIF**

You must change the name on each bank, brokerage, money market, credit union, or mutual fund account (referred to in this Section as an “account” or as “accounts”) that you wish to be owned by the Trust. New account cards should be completed at each financial institution changing the current owner of the existing accounts to the Trust. With regard to accounts which have checking privileges, it may be possible to retain your existing checks which list your name on the face of the check, provided the ownership of the account is properly changed. I recommend that you check your account statements from the various institutions to verify that they reflect your Trust as the proper owner. The following is a summary of the steps you must take to transfer ownership of accounts to your Trust:

Local Institutions:

1. Talk to a person at the New Accounts desk (or your private banker).
2. Ask to have the title on your account(s) changed to the name of your Trust. If your Trust names more than one trustee, you should point out that any one Trustee may transact business on behalf of the trust alone, and therefore, the signature cards should only require one signature for bank transactions. If the bank permits it, ask to keep the same account numbers on your account(s). Also, request that your checks remain printed as they are and not in the name of your Trust. Having the name of the Trust on your checks will not cause you any difficulties, but it will mean that persons or businesses to whom you write checks will know you have a trust.
3. The bank may want a copy of your Trust Agreement. If so, tell them you would prefer instead to give them a copy of your Certification of Trust which shows the proper name for the account and that the Trustees have authority to open this type of account in the name of your Trust. The bank may not accept the Certification of Trust, but may instead require a copy of the Trust Agreement. You should then ask them to accept only the first page and the last two pages, as the other pages are of a personal nature. If they still insist on having a copy of the entire Trust Agreement, you can either provide it to them or find a different bank which does not have a similar requirement.
4. Sign the new signature cards. (You should not have to use the word “Trustee” as part of your signature.)

Out-of-Town Institutions:

1. If you have a bank account at a financial institution out of town, send them a Memorandum Requesting Transfer of Account to Your Trust along with a copy of the Certification of Trust. Note though, some institutions may not accept the Certification of Trust and may want a copy of your entire Trust Agreement. If you

- are asked to provide a copy of the entire Trust Agreement, ask them if they will accept only the first page and the last two pages, as the other pages are of a personal nature. If they still insist on having a copy of the entire Trust Agreement, you can either provide it to them or find a different bank which does not have a similar requirement.
2. When you receive the new signature card in the mail, make sure the Trust is properly listed as the owner, and sign it and send it back to the institution. (You should not have to use the word “Trustee” as part of your signature.)
 3. If you have a brokerage account which is held by a firm whose offices are out of town, you should call your broker’s toll free number to find out exactly what steps you must take. It will likely be necessary to have your signature guaranteed and that can be accomplished at the offices of most major brokerage firms or at certain commercial banks or trust companies. Call your local bank or brokerage firm to see if they provide this service. It is best to have a “Medallion” guarantee instead of a regular guaranteed signature. The brokerage firm will tell you what other forms will be needed in addition to the signature guarantee.

What if the Bank or Credit Union Will Not Allow Trust Accounts?

Some banks and credit unions do not allow their customers to open Trust accounts. Often the problem is that the person you are talking to does not realize the bank really does allow you to have a trust account, so the solution may be as simple as talking to another more senior person at the bank. If it turns out that you are definitely not able to have a trust account, you can either open your account at a bank which does offer trust accounts, or you can set the account up as a Joint Tenants With Rights of Survivorship account or as a Payable on Death account so that the account will pass directly to the surviving joint tenant or to the named beneficiary without having to go through probate. Of course, if an account does pas.s directly to a person, it is possible that the planning contained within your Trust may be nullified or disrupted.

Certificates of Deposit:

Most, but not all, financial institutions will change the certificate owner to a Trust without a penalty. If your financial institution will impose a penalty, you may want to wait until the certificate of deposit matures before changing it to your Trust. In addition, you should check with each of your financial institutions to make certain that all of your certificates of deposits have been properly styled in the name of your trust in a manner that will qualify for FDIC insurance coverage.

Retirement Accounts, (401(k), IRA, etc.) and Annuities

The proper beneficiary designation for your IRA, retirement, and annuity accounts should be as follows:

The **Primary Beneficiary** should be **IFNOTBLANK(S)** your spouse (**FIELD(S)** [for husband] or **FIELD(P)** [for wife] respectively), and the **Contingent or Alternate Beneficiary** should be **ENDIF** “**IF(FIELD(TrusteeSettlors))FIELD(P)** and **FIELD(S)**, Co-Trustees, or said Trustees’**ELSE FIELD(FIELD(Trustee1))**, Trustee, or said Trustee’s**ENDIF** successor in interest, pursuant to **FIELD(TrustName)**, dated **FIELD(Date)**.”**IFNOTBLANK(C1)** (**Or, once your children turn 18, to them individually. The law is changing rapidly in this area but naming adult children as beneficiaries of IRA’s is ordinarily the most effective income tax deferral technique. Check with me or with another qualified tax advisor as these dates occur to discuss the appropriate beneficiary designation.**)**ENDIF**

I AM NOT RESPONSIBLE FOR CHANGES IN LAW OR YOUR CIRCUMSTANCES REGARDING BENEFICIARY DESIGNATIONS OF IRA’S, 401(k)’s, OR ANY OTHER RETIREMENT PLAN. YOUR ESTATE PLAN NEEDS TO BE REVISITED AT LEAST EVERY FIVE (5) YEARS OR SOONER IF YOUR CIRCUMSTANCES CHANGE.

Leases

You may own rental properties which you will transfer to your Trust. In such a case, you should explain to your tenant .that you have assigned the property to a trust and that all future payments should be made to the trust. You may even want to amend your lease agreement with the tenant. (Of course, all future leases should reflect the Trust as the landlord.) There is no need to send any portion of your trust document to the lessee. If the next rent payment you receive is made out to your Trust, you will know your tenant has received your letter and understands what needed to be done. If the next rent payment is made out to you personally, you should contact the tenant one more time and ask that future payments be made out to the trust. Note, there is no real problem if the tenant continues to make payments to you personally. Rent checks received by you personally can be deposited into a Trust checking account.

Mineral Interests

If you own any mineral interests, the record titleholder of such interests (e.g., royalty interests, working interests) needs to be changed to your Trust. I recommend that you assign your mineral interests into your Trust and obtain transfer orders and/or division orders from the purchasers of the production. The assignments should be filed in the counties where the properties are located and the division orders should be signed and sent to the oil

companies. However, this task exceeds the scope of our initial engagement. I recommend that you consult with an oil and gas attorney to ensure that such assignments are properly made. Depending upon the location of the mineral interests, I may be able to recommend an attorney to you.

Promissory Notes

If you already have existing promissory notes which are payable to you personally, they should be endorsed or assigned to your Trust, and the party making the payments should be notified of the assignment with the request that future payments be made to the Trust. If there are any real property liens securing the payments of these notes, the liens should also be assigned to your Trust, and evidence of such assignment should be filed of record in the county in which the property is located. In the future, if you should loan money to anyone, or if you sell property and the borrower or buyer gives you a promissory note for the purchase price, have that person make your Trust the "payee." There is no need to send any portion of your trust document to the payee. If the next payment you receive is made out to your Trust, you will know the payee has received your letter and understands what needed to be done. If the next payment is made out to you personally, you should contact the payee one more time and ask that future payments be made out to the trust. Note, there is no real problem if the payee continues to make payments to you personally. Checks received by you personally can be deposited into one of your Trust accounts.

Safe Deposit Box

If you maintain a safe deposit box, you may want to change the registration to your Trust. Doing so may avoid a probate proceeding following death which would otherwise be required to open the box if no alternate person is named.

Club Memberships

Each private club will have its own rules regarding the transfer of a membership to a Trust. Some clubs have their own forms to accomplish the transfer, while other clubs do not allow a Trust to own a membership interest (although they may have a transfer on death agreement which accomplishes the transfer of any value to your Trust upon death). You should contact your club's membership director to find out what steps must be taken to transfer your membership to your Trust.