

# PLEASE READ THIS DISCLAIMER BEFORE UTILIZING ANY PROVIDED FORMS

## DISCLAIMER

We provide certain forms as a courtesy and service to our clients and we believe most people know what they are doing and accept responsibility for the consequences. However, the lawsuit-happy age in which we live forces us to make the following statement. YOU HAVE NOT ENGAGED THIS LAW OFFICE TO COUNSEL OR ADVISE YOU IN REVOKING YOUR TRUST. Whichever form you use any such decisions are yours and yours alone and not at the advice or urging of our law office. We simply make the form available as a courtesy. At the same time we must advise you to seek competent legal advice before using such forms. Use of any form is at your own risk. We will not counsel you as to the scope, potential variations, dangers, limitations, or wisdom of utilizing such forms. Utilizing this form or revoking your trust is not at the urging or counsel of this law office nor have you engaged us in any way to counsel you on this issue. Any such action is taken entirely on your own and at your own risk. Be sure to also read, understand, and follow the revocation requirements detailed in the revocation clause of your trust

### **Make a Copy of the Form.**

Do not write on the original form that we provide to you. Instead, make a copy of the form before utilizing it and fill out the copy. That way if you make a mistake you can start over again.

**Revoking a Trust Also Entails Re-Titling Assets Back to Individual Name(s):** Even though you may sign a document that legally revokes a trust it is likely that many assets remain titled in the name of the trust (real estate, bank accounts, etc.) That is why proper administration also makes it vitally important to re-title and transfer all assets out of your living trust into the appropriate individual names or name of each respective spouse properly reflecting each spouse's respective community and/or separate property interests as is appropriate by law and/or mutual agreement. Failure to do so will cause complications and other problems.

**Mutually Revoking Your Married Trust Generally Satisfies Notice Requirements to Your Co-Trustee Spouse:** As part of the revocation process you generally also need to serve notice that you have revoked the trust to the spouse with whom you established the trust. Though it is legal to unilaterally revoke your portion of a married trust (unilateral married trust revocation) if both spouses sign the mutual revocation form and see the mutually executed copy notice is hard to deny. For this reason you may want to consider mutually revoking your trust using the mutual married revocation form. Note that it is legal to separately sign and notarize the mutual form. That is, each of you can sign with a separate notary at different times.

**Mutual Cooperation in Winding Down a Married Trust May Well Be In Both Spouse's Interest:** We realize that spousal cooperation and communication in the midst of a divorce, separation or disagreement can sometimes be very difficult and emotional (often involving lawyers with heavily contested issues).

Although each spouse should always seek competent, separate legal counsel and advice, within that context it is also important to understand that, from an estate planning perspective, strong mutual cooperation may well be in the best interests of both spouses.

# **Some Estate Planning Advantages Of The Mutual Cooperation Between Divorcing Spouses**

**Mutual Revocation Usually Satisfies Notice Requirements:** First, signing a mutual revocation document generally satisfies required notice to each spouse (see “Mutual Married Trust Revocation”).

**Cooperation Facilitates Asset Re-Titling:** Second, the mutual agreement and signatures of both spouses will easily facilitate re-titling of assets into the appropriate individual names or name of each respective spouse properly reflecting each spouse’s respective community and/or separate property interests as is appropriate by law and/or mutual agreement. The alternative to this is a court order. (You can do your own estimates to the legal costs involved.)

**Cooperation Can Allow For Functioning Estate Plan Until Divorce:** Finally, cooperation allows for the potential to possibly modify your trust to deal with interim flux period between permanent separation and the final divorce decree.

**You Are Still Legally Married Until The Final Divorce Decree:** To expand on this it is important to understand that, even though you separate and file for divorce, you are generally still legally married to each other until the judge signs the final dissolution papers.

With that in mind, let’s say for example that you revoke your trust contemporaneously with or sometimes after you begin the divorce process (as is often the advice of many attorneys).

**Revoking a Trust Could Mean Your Spouse Will Automatically Inherit Your Estate.** The first consequence of revoking your trust is that you are left without an estate plan. If you happen to die without an estate plan the consequences are this: Your estate will go through probate and be distributed according to the laws of intestate succession. Who might you guess is usually first in line to inherit according to the laws of intestate succession? That’s right – your spouse.

Remember you are still legally married to each other until the judge finalizes the divorce and it is your spouse that will most likely inherit all (community property) or a good portion (separate property) of your estate if you die without an estate plan. To say the least, this usually does not reflect the intent of most divorcing spouses. So -- what to do?

**Many Commonly Revoke Their Trust but Fail To Execute New Estate Plans (Meaning the Spouse Stands to Inherit):** The general theory is that each spouse should immediately execute a new estate plan contemporaneously with any trust revocation. Though that may in fact be the ideal scenario it comes with its own problem set and more importantly it often never happens.

As to establishing separate living trusts as your new estate plan, though theoretically possible, there are many considerations that usually make it an impractical notion until the divorce is final. Among them is the fact that any final resolution of respective asset split and property ownership does not occur until the final decree (which leaves ownership in the disputed grey area where both spouses are still co-owners until signed agreement or court decree). This can make funding a new trust quite impractical during such time (with unfunded assets potentially being subject to probate).

This impracticality tends to limit each spouse to executing a new Will (but even that must be done carefully). Not only does disinheriting a spouse require proper documentation there are often other matters that need careful consideration and discussion.

Fact is, in the end, many spouses (at the advice of their family law attorneys) dutifully revoke their trust and yet never get around to executing a new estate plan. The problem and danger with this is that it means intestacy law will govern in the meantime. Further, even if you do happen to contemporaneously execute a new Will this is not the best of alternatives if you wish to keep your estate out of a potential probate.

**Cooperating and Mutually Amending Your Trust Could Be The Best Alternative:** While the idea of mutually amending your trust with a divorcing spouse may seem a bit awkward it may in fact potentially be the best interim alternative and a far less awkward notion than the prospect of your divorcing spouse inheriting part or all of your estate.

Generally, the idea is to mutually modify the trust to change beneficiary designations from your spouse to the beneficiaries you now wish to inherit (in light of the divorce). For most couples this means simply changing the beneficiary from your spouse to your children if you die. (Some couples also want to change to an independent trustee as the successor trustee instead of the surviving spouse.)

Simply put, this strategy can often simultaneously accomplish most of your estate planning goals until your divorce is final. If you die during the divorce process it will generally keep your estate out of probate, protect your children, allow your estate to be distributed according to each of your new wishes (until the divorce is final), and will function to hold the combined assets until division and ownership is fully resolved. In fact, one is hard pressed to think of any other alternative that will simultaneously meet all of these and other goals.

**You Do Not Need To Sign Together:** As a final note you should be aware that you only need to agree to what you want to do with the trust to implement this alternative. Yes, you both need to agree and sign but it should be emphasized that you do not have to sign together at the same time. In fact you can even work through your attorneys to iron this out and complete this matter. The choice is yours.

**Once the divorce is final however, you both need to immediately execute a new estate plan** and generally this should be a living trust if you want to avoid probate.

## Warning:

This particular document unilaterally revokes your portion of a married living trust but it is also essential that you serve notice of this revocation on the spouse / co-trustee. Proper administration also makes it vitally important to re-title and transfer all assets out of your living trust into the appropriate individual names or name of each respective spouse properly reflecting each spouse's respective community and/or separate property interests as is appropriate by law, court order and/or mutual agreement. Failure to do so will cause problems. It is understood that execution of this document is done without advice from any attorney or legal counsel and that you have read, agreed to, and understand the accompanying disclaimer. If you have not seen, read or do not agree to the conditions of the disclaimer you are hereby instructed not to sign or utilize this form in any way. Revoking Your Trust Leaves You Without An Estate Plan. If you pass away without an estate plan your estate will be subject to probate and distributed according to the intestacy laws of the state which may or may not correspond to your wishes. Thus it is highly advisable to seek legal advice and execute a new estate plan.

# TRUST REVOCATION

\_\_\_\_\_ being

(Fill in name of Husband & Wife on above line)

the settlors, trustors, and trustees of:

the \_\_\_\_\_

(Fill in name & date of trust on the above line (i.e The Smith Trust created January 1, 1999))

**hereby immediately and completely  
revoke said trust in its entirety.**

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Husband

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Wife

State of \_\_\_\_\_

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_ (notary public), personally appeared

\_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct. Witness my hand and official seal.

\_\_\_\_\_  
Signature of Notary