

### OAST & HOOK

Offices in  
Portsmouth and  
Virginia Beach, Virginia  
Tel: 757-399-7506  
Fax: 757-397-1267  
Web: www.oasthook.com



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Editor  
Sandra L. Smith  
Attorney at Law

## AVOIDING PROBLEMS WHEN FUNDING YOUR REVOCABLE TRUST

The revocable living trust has become a common estate planning tool to avoid the time and effort required by the probate process; however, the use of a revocable living trust requires you to retitle your assets, including bank and brokerage accounts, in the name of the trustee of your trust. The financial institution will request that you provide a taxpayer identification number ("TIN") for the new account.

You may experience problems when titling interest-bearing investment accounts (i.e., bank and brokerage accounts) in the name of the trustee of your trust, because of the financial institution's requirement to send a 1099-INT reporting the interest earned on the account and the necessity to properly match the TIN for the trust with the name of the taxpayer to whom the number belongs. The Internal Revenue Service (IRS) generally compares the first line of the taxpayer name on the 1099 with the reported TIN. If the name and number do not match, then the IRS sends a notice of incorrect TIN to the financial institution. The financial institution then must obtain the proper TIN or otherwise adjust the style of the account to avoid receiving future notices.

To comply with the IRS reporting requirements, many financial institutions have data processing systems which require that the TIN be matched with the name in the first field of the account style. Normally this is not a problem, but in some cases flexibility in styling the account may be necessary, so that the requirements of the financial institution and the concerns of the lawyer can both be addressed. Here are some examples of solutions to this titling problem:

(1) Assume that Jim Smith is the grantor and the initial trustee of the Jim Smith Revocable Living Trust. Since the trust is a grantor trust, it is proper to use Jim Smith's Social Security Number (SSN) as the TIN for the account.

As far as the financial institution is concerned, either of the following styles will result in proper matching of name and TIN, because Jim Smith's name is in the first field of the style of the account:

Jim Smith, Trustee of the  
Jim Smith Revocable Living Trust

or

Jim Smith Revocable Living Trust,  
Jim Smith, Trustee

(2) Assume the same facts, but that Jim Smith is now incapacitated and that his son, Bill Smith, is the successor trustee. Jim Smith's SSN should still be used as the TIN for the account, but if the account is styled as "Bill Smith, Trustee of the Jim Smith Revocable Living Trust," then Bill Smith's name will be matched with Jim Smith's SSN, and the IRS may notify the bank that there is a problem. In this case, the best style of the account, as far as the bank is concerned, is the following:

Jim Smith Revocable Living Trust,  
Bill Smith, Trustee

(3) Assume further that Jim Smith has now died, and that the trust will continue, with no change of name, for the benefit of Mary Smith. Assume further that Bill Smith is the trustee, and that it is not a grantor trust with respect to Bill Smith or Mary Smith. So the trust should now obtain a TIN and use that TIN for the account. In this case, the name of the trust must be matched with the trust's TIN. As far as the bank is concerned, the style of the account may have to be as follows:

Jim Smith Revocable Living Trust,  
Bill Smith, Trustee

The revocable living trust can be a valuable tool to reduce the effort and expense of the probate process; however, to use this tool effectively, you must correctly fund the trust. Oast & Hook frequently uses the revocable living trust as part of a client's estate plan, and Oast & Hook assists the client to properly title the client's assets in the revocable living trust.

### **Announcement**

Oast & Hook is pleased to announce that Sandra Smith has passed the Certified Elder Law Attorney (CELA) exam that is given by the National Elder Law Foundation.

### **Oast & Hook**

Oast & Hook is an elder law firm. We represent older persons, disabled persons, their families, and their advocates. The practice of elder law includes estate planning, investment and insurance advice, estate and trust administration, powers of attorney, advance medical directives, titling of assets and designations of

beneficiaries, guardianships, conservatorships, and public entitlements such as Medicaid, Medicare, Social Security, and SSI, disability planning, income tax planning and preparation, bill paying, account management and reporting, care management, and fiduciary services. We also handle litigation involving these issues, such as will contests and estate administration disputes. For more information about Oast & Hook, please visit our website at [www.oasthook.com](http://www.oasthook.com).

Oast & Hook is a Virginia member of the Special Needs Alliance, a nationwide network of disability attorneys. As members of this alliance, we assist personal injury attorneys in resolving their cases to enhance the judgments and awards of their disabled clients and to maintain the eligibility of these clients for SSI and Medicaid. We are experienced in protecting the public benefits of persons with special needs and in assisting with the management of their assets. For more information about the Special Needs Alliance, visit its website at [www.specialneedsalliance.com](http://www.specialneedsalliance.com).

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