

## Motor Vehicle Transfers to Maryland Revocable Living Trusts

A question often arises when funding a new or existing revocable living trust (“living trust”) whether the trustmaker should retitle his or her motor vehicles to the trust. Two recently enacted Maryland laws have added clarity to this issue but no definitive answer.

Chapter 663 of the 2017 Laws of Maryland as of July 1, 2017 makes it clear that a trustmaker may retitle his or her motor vehicle to a living trust without having to worry that a Maryland 6% excise tax or certificate of title fee will be due when the trustmaker transfers the vehicle to the Trustee or when the Trustee subsequently transfers the vehicle to certain family members of the trustmaker (*e.g.*, upon the death or disability of the trustmaker). Chapter 684 of the 2017 Laws of Maryland will not be effective until October 1, 2017, but on and after that date, a vehicle owner may avoid probate for the vehicle after his death by registering the vehicle with a designated transfer-on-death beneficiary.

### **Why transfer a motor vehicle to a living trust?**

As with most of a trustmaker’s non-qualified plan property, the funding issue boils down the costs and benefits of creating a living trust in the first place. Among their principal virtues are the facts that living trusts avoid post-mortem probate for assets owned by the Trustee at the decedent trustmaker’s death and that they provide one of the best vehicles for managing pre-mortem assets during the trustmaker’s incapacity. With regard to funding motor vehicles, the

question becomes whether these benefits are worth the costs of the retitling, especially when the inherent aging process of vehicles may make it unlikely that a particular vehicle will continue to be owned by the trust when the trustmaker dies or becomes incapacitated. In addition, even if individual ownership of the vehicle is retained by the owner at death, the value of his or her probate estate may be less than the \$50,000 jurisdictional limit for expedited small probate estates.

Heretofore, a principal cost of transferring a vehicle to a Trustee was the potentially steep cost of ultimate transfer to a family member after death or the disabling event. Since transfers from the probate process were already exempt from such transfer taxes and fees, this author suggested the legislation that became Chapter 663 for the benefit of client trustmakers owning expensive “family heirloom” classic vehicles. As a result of Chapter 663, that steep cost should no longer be an impediment to transferring a vehicle to a living trust. However, what complicates the analysis is that Chapter 684 will now provide an alternative, relatively easy, and inexpensive means to avoiding probate inclusion for a vehicle intended to be transferred after the death of its owner.

### **Arguments Against Transferring Vehicles to a Living Trust**

If probate avoidance and incapacity management remain desirable reasons to place a vehicle in trust, what are the arguments that deciding not to do so makes more sense? Two of these arguments can be dismissed at the outset:

First, although some argue that placing a vehicle in trust opens up other trust assets to claims by creditors injured by operation of the vehicle, in point of fact a living trust provides no immunity for the claims of such creditors even if the vehicle is not placed in trust. Section 14.5-508(a)(1) and (5) of the Maryland Trust Act make it clear that, in Maryland,

*“During the lifetime of the settlor, the property of a revocable trust is subject to claims of the creditors of the settlor; ... and [a]fter the death of a settlor, and subject to [certain statutory provisions providing for a shortened post-mortem limitations period for such claims and the right of the settlor to direct the source from which liabilities are to be paid] the property of a trust that was revocable at the death of the settlor is subject to claims of the creditors of the settlor.”*

Second, some commentators argue that placing a vehicle in trust makes it more difficult to obtain casualty and liability insurance for the vehicle. That has not been the experience of this writer. Federal law provides that moving a vehicle to a trust does not affect the insurance on that vehicle, and this writer has found that insurers will readily add a trust as an additional insured on the policy of the transferring trustmaker without additional cost. (Adding the trust as an additional insured is important because, after transfer, the insurable interest for casualty and negligent entrustment is now held by the trust.)

In some states, transferring a motor vehicle to a living trust involves payment of a sales tax or transfer fee. Chapter 663 now makes it clear that as of July 1, 2017, those are not applicable in Maryland. However, minimal (less than \$30) re-registration fees do still exist here.

In addition, some states require new vehicle safety inspections when transferring a vehicle to a trust. The excellent Maryland Motor Vehicle Administration (“MVA”) website article on TITLING – PLACING A VEHICLE INTO A TRUST found at [www.mva.maryland.gov/about-mva/info/27300/27300-44T.htm](http://www.mva.maryland.gov/about-mva/info/27300/27300-44T.htm) makes it clear however that transferring a Maryland titled vehicle into a trust in which the current owner of the vehicle is the primary beneficiary of the trust requires no such new safety inspection.

If the existing title to the vehicle reflects a lien for money borrowed to buy the vehicle, the MVA will require a trustmaker requesting transfer to supply a statement from the lien holder on the lien holder’s stationery authorizing the lien to be transferred to the new trustee title. Lien holders may not be cooperative in supplying such statements, so this may be one insurmountable impediment to transferring a vehicle to trust.

Absent such a lien with a difficult lien holder, the real arguments against placing the vehicle in trust are (1) the available alternatives to the benefits of doing so and (2) the potential likelihood that the vehicle may no longer remain in the trust when incapacity or death occurs. Argument (2) will always involve depreciation rate and actuarial guesses. As to argument (1), Chapter 684 will

make it relatively easy to use a transfer-on-death beneficiary designation to avoid probate (albeit with the payment of a re-registration fee), but this alternative fails to provide management in the event of incapacity. However, if a vehicle owner is willing to give this management authority to a surrogate in a power of attorney, the MVA has readily available procedures for using that power of attorney when incapacity occurs.

### **Conclusion**

Whether to fund motor vehicles into living trusts has always been a difficult decision. Because Chapter 663 of the 2017 Laws of Maryland relieves most worries about potential down-the-road excise taxes and certificate of title fees, we now encourage our clients to take the guessing out of the equation by transferring their motor vehicles to their new living trusts. If nothing else, doing so avoids potential probate hassles with regard to the vehicles. We recognize however that this is still a close cost-to-value judgment and that many clients will decide to act alternatively. If they do, Chapter 684 will provide clients another means by which to avoid probate inclusion if and when that becomes more important.