WILLMS, S.C.

MEMORANDUM

TO: Clients and Friends of Willms, S.C.

FROM: Peter J. Smiley

DATE: October 11, 2016

RE: Funding Living Trusts

Introduction
A living trust is a flexible estate planning tool that provides an individual with several advantages in connection with the management, preservation and distribution of property. Revocable trusts, also called "living trusts," have become a popular way to simplify the management and investment of assets during life, as well as avoid the time and expense associated with court administered probate upon death.

A living trust is created by a written agreement entered into during life by the person establishing the trust (the "grantor"), between themselves and the person who will manage the trust (the "trustee"). As mentioned above, the person who establishes the trust (referred to as the "grantor" or "settlor") retains the right to amend or revoke the trust, and may add to or withdraw assets from the trust at any time. In addition, it is very common for the grantor to serve as the original trustee and for the trust agreement to name successor trustees if the grantor is unable to do so as a result of death or disability.

What is trust funding, and how is it done?
"Trust funding" refers to retitling assets from the grantor's name to the name of the trust. Different types of assets will require different procedures to transfer them into the trust. For example, financial assets such as bank accounts and brokerage accounts can typically be retitled in the name of the trust by providing the financial institution with a "Certificate of Trustee Authority" that confirms the existence of the trust and summarizes the key provisions of the Trust Agreement. By comparison, a deed is needed to transfer ownership to the trust. Some assets can be transferred to the trust after the grantor dies by designating the trust as the beneficiary or by directing the asset be "transferred on death" to the trust.

When should a trust be funded?
In most cases revocable trusts should be funded as soon as practical. Additionally, funding should be an ongoing process, with new probate assets transferred to the trust as they are acquired. It is also advisable to periodically confirm that your trust is properly funded.

Does anything change when the trust is funded?
The grantor of a revocable trust reserves the power to amend the trust agreement and may retain control over the assets if they act as the trustee. As a result, funding a living trust can have little or no impact on the grantor's use, enjoyment and control of the trust property during their lifetimes.

Why is it important to fund a revocable trust?
One of the most important reasons to fund a living trust is that assets transferred to the trust will avoid probate when the grantor of the trust dies. Assets transferred to a trust prior to the grantor's death are no longer held in the name of the deceased person, meaning those assets are not required to pass through probate. Instead, these assets can be distributed by the trustees in accordance with the trust agreement, and thereby avoid the costs and delay that can result from probate.

In addition, assets transferred to the trust can be managed by the trustee for the benefit of the grantor if the grantor becomes unable to manage those assets themselves due to a disability. We believe in most cases it is preferable for a trustee to manage a disabled persons assets, rather than an agent named in a durable power of attorney.

Should retirement accounts or IRA be transferred to a trust?
Retirement accounts must be owned by an individual and therefore cannot be transferred to a living trust while the grantor is living. However, it is possible to avoid probate on retirement accounts and IRAs by naming beneficiaries to receive amounts that remain in those accounts after the account owner dies. Similarly it may not be necessary to transfer ownership of life insurance policies and annuity contracts to avoid probate because they too can be distributed to designated beneficiaries.

Whether a trust should be designated as a beneficiary of a retirement account involves a number of very technical considerations. For example, if the trust is not drafted properly, naming the trust as beneficiary can cause the account to have to be paid out more quickly after the account owner dies, thereby accelerating the recognition of income taxes on the account balance. Therefore it is very important that you consult with us before naming a trust as a beneficiary of a qualified retirement account or IRA.

Conclusion
In order for a living trust to function properly it is necessary that the trust be funded while the grantor is living. By funding your trust you will ensure the Trustee you have selected will be able to manage the trust assets for your benefit during your lifetime, and allow the Trustee to distribute your assets as directed in the trust instrument without the need for probate. Please let us know if you would like our assistance with the funding of your living trust.

End of Memo

Information contained in this memorandum is not a substitute for professional estate planning advice nor should any information provided in this memorandum be construed as legal advice. Therefore, none of the information being provided should be relied on without seeking the advice of legal counsel or other professionals regarding the tax and non-tax consequences associated with the same.