

Funding a Revocable Living Trust



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This publication is intended for general informational purposes only. It does not and is not intended to constitute legal, tax or investment advice. The reader should consult with an attorney, tax advisor, accountant and/or financial advisors to determine whether the information in this publication applies. Only an attorney can determine whether a revocable living trust is appropriate for a particular person and what assets should be funded into that trust.

Introduction

Once drafted and executed, a revocable living trust only maximizes its usefulness to avoid probate if it is fully and properly funded. “Funding” is the process of transferring the formal ownership of appropriate assets, using deeds, titles and other ownership records, from an individual to a living trust. The funding process is important, because a trust can only own, manage and transfer assets which are actually titled in the name of the trust. Therefore, proper funding is necessary to take full advantage of a trust’s benefits, such as avoidance of probate, privacy of financial affairs and management and control of assets in case of disability. It is the trustee’s responsibility to properly and fully fund a trust.

This brochure has been developed to provide you with some general guidance to quickly and simply fund your living trust. Most county recorders, financial institutions, brokers, investment firms and insurance companies are familiar with how to properly designate your trust as the owner of your assets. Many will even have proprietary forms you need to use to complete the transfer process. However, the information in this guide can assist you in understanding the process or if you encounter someone who is unfamiliar with the process of funding a trust.

Since each set of circumstances is unique, some information in this brochure may not apply to your individual situation. In addition to this guide, you should carefully review the written funding instructions provided by your attorney and the forms and information in the “Assignment and Transfer Documents” section of the Estate Plan Binder. Any specific questions regarding the funding of your trust should be addressed to your attorney. We hope you find this brochure to be an easy and useful tool in successfully funding your trust.

Transferring Bank Accounts

Often financial institutions will require proof of the existence of a trust before taking any action to transfer the title of an account. A copy of the Abstract of Trust Agreement (document name varies by state) will generally provide the necessary information to prove that your trust exists. You should take or mail a copy of the Abstract to each bank or financial institution with which you do business. (Note: some financial institutions will demand a copy of the entire trust agreement. Some banks and credit unions will not allow trusts to be account owners.) Notify them that you have established a living trust and that you want to transfer your account to your trust and that the owner on your account should reflect the name of the trust as shown on the Abstract. This step will likely require the signing of new signature cards on all deposit accounts, CDs, investment accounts and safety deposit boxes.

Once the financial institution has transferred your account to your trust, your monthly statement should come in the name of your trust. This will serve as verification that your account has been properly transferred to your trust. Typically, individuals prefer to keep their own names, rather than the trust's name, printed on their checks, which is permissible as long as the actual ownership of the account has been transferred to the trust. Changing the ownership of your accounts should not cause your account numbers to change, nor cause any premature withdrawal penalties from any CDs or other investments held by the financial institution. Your Social Security Number will still be used for tax reporting purposes for any account transferred to a revocable trust.

If you have a substantial number of E or HH savings bonds, it will be necessary for you to take those bonds with you to the bank in order to obtain your bank's assistance in transferring the title of the bonds. The bank will then send the bonds to the appropriate U.S. Treasury office, along with the appropriate form, for that office to reissue the bonds in the name of your trust. To transfer paper EE savings bonds to you trust, you can complete

Form FS 1851 and submit it to the U.S. Department of the Treasury, Bureau of Fiscal Services. Electronic EE savings bonds can be transferred online at TreasuryDirect.gov. Note, all EE bonds are reissued in electronic, not paper, form. The transfer of savings bonds titled in an individual's name to a living trust generally does not create any income tax liability. However, if someone other than you or your spouse is a co-owner of the bonds (or any other account or investment) being transferred to your trust, you should contact your tax advisor regarding any potential tax consequences of such a transfer. Legacy Assurance Plan cannot, and will not, act as your tax advisor.

Transferring Real Estate

Funding real property into a trust requires the preparation, signing and recording of a new deed. If applicable, your attorney prepared such a deed(s) and the deed(s) were included in your Estate Planning Binder. Depending on the state/county where the property is located, it may be necessary to file a property tax reporting form in addition to recording the deed. If needed, this form was included with the deed in your binder. If the property has a mortgage, you should contact your lender prior to recording the trust funding deed to determine if they require any additional information or forms. Transferring non-residential property to your trust without prior approval by the lender can cause the lender to “call” the loan, requiring its immediate payment in full.

Deeds are recorded by the county in which the real property is located. Before submitting your trust funding deed for recording (either in person or by mail), you should call the county office responsible for recording deeds and request the recording fee for each deed. (If you have deeds in more than one county, you need to call each county separately.) The filing fee is usually a per page amount. While it is generally best to personally deliver deeds for recording, you can mail the deed, along with required property tax form (if applicable) and recording fee check to the appropriate county office. You will likely need to provide a stamped self-addressed envelope for county office to return the recorded deed. If you have not received your recorded deed back within three weeks, you should call the county office to determine the status of your deed(s). You may also need to refile your applicable property tax exemptions (homestead and mortgage, for example) after the deed transferring your property to your trust is recorded. Your attorney should advise you if any exemptions need to be refiled.

Property Insurance



It is advisable to inform your home owner's and automobile insurance agent(s) that you have or will be transferring your home, car and other assets to your living trust. You should request a statement (preferably in writing) from your agent that your insurance will continue to cover all risk of loss, damage or other liability for home and other assets once they are transferred to your trust.

Transferring Securities

Each securities firm utilizes its own forms for transferring securities accounts (which may include stocks, mutual funds, bonds, etc.) into a trust. Therefore, your first step in the transfer process for your securities account(s) would be to call the appropriate firm or broker and request their specific procedures and forms. Each company will require you to complete its internal paperwork and provide them with a copy of your Abstract of Trust Agreement. As with your bank account statements, once properly transferred, your future securities account statements should show your living trust as owner of your securities account. Please note that only non-retirement securities accounts should be funded into your trust. (See below.)

If your securities are not held in a brokerage account, you will need to contact the appropriate transfer agent for that specific stock, bond or other security to obtain instructions and forms to have the owner of those securities changed, including the process for obtaining new certificates issued in the trust's name.

Transferring Personal Property

If you hold title to an automobile, motorcycle, mobile home or other titled vehicle, it may be advisable for you to transfer the title to your trust. (Note, you generally cannot transfer the title to a vehicle until any loan has been paid in full.) As laws and procedures vary by state, your attorney will advise you if he or she recommends transferring the title of your vehicles to your trust. The transfer of an automobile, motorcycle, mobile home or other vehicle may be done by taking a copy of your Abstract of Trust and current vehicle title to the Department of Motor Vehicles. (Office name and process will vary by state.) You will also need the odometer reading, if applicable. Advise the clerk that you wish to transfer the title of your vehicle to your trust and he or she will provide you with the necessary forms. Generally, there will be no sales tax on the transfer, but there will be a title transfer fee. Some states limit the number of characters on a vehicle title, so you may need to abbreviate the name of your trust.

The “Assignments and Transfer Documents” section of your Estate Planning binder contains forms for your use in transferring or assigning other personal property items to your trust, such as furniture, household goods, jewellery, collections, memorabilia, antiques and other items. Remember that the failure to transfer personal property such as automobiles and household items to your trust may result in those assets being subject to probate, so you should be careful not to overlook this step in funding your trust. Your attorney will provide you with instructions regarding what personal property should be funded into your trust.

Retirement Accounts

Because of the tax implications, the handling of retirement accounts must be done with absolute accuracy and with the assistance of your tax advisor or attorney. Qualified retirement accounts such as IRAs, 401(k)s, Keogh Plans, Simple Employee Pension Plans (SEPs), Defined Benefit Plans and HR-10 Plans should NOT be transferred to, or owned by, your trust under ANY circumstances. However, the trust funding process is a good opportunity to review and update your retirement plan beneficiaries.

Generally, you will designate one or more individuals as the beneficiaries of your retirement accounts, not your trust. In very limited circumstances, such as if your beneficiaries are minors, you can designate your living trust as the beneficiary of your qualified accounts. You should consult with your tax advisor or attorney about whether to name your trust as a beneficiary of a qualified retirement account prior to making a change. The law requires that your spouse consent to the change of the beneficiary of your qualified accounts. Generally, if you are married, your spouse should be named primary beneficiary with your children or other beneficiaries being named as secondary beneficiaries. If you are single or widowed, you should name the appropriate individuals as your primary and second beneficiaries. Under no circumstances should the ownership of a qualified account be transferred to a living trust.

Insurance and Annuity Policies

Life insurance and annuity death benefits which are payable to an individual (rather than your estate) avoid probate without using your trust. The ownership of life insurance and annuity policies should not be transferred to your trust. However, there are very limited circumstances in which you may want to name your trust as the primary or secondary beneficiary for such policies. In any event, the trust funding process provides an opportunity to review and update your life insurance and annuity beneficiary designations.

For example, if you are a single parent with minor children, and your living trust provides for the distribution of trust assets to those children after they reach the age of majority, naming your trust as primary beneficiary will assure that the insurance or annuity benefits will be held in trust for your children until they are adults. If you are married with minor children, naming your trust as the secondary beneficiary, with your spouse as primary, will assure that benefits are held in trust if spouse predeceases you or if you die in a common accident.

You should be aware that assets left outright to minor children (including insurance and annuity policy proceeds) will usually need to be held in a court supervised guardianship account unless a trust holds the assets. Also, certain state laws provide that a child is entitled to his or her share of the guardianship account property when they turn 18 or 21 depending on state, where your trust can provide for a later or periodic distribution. Your insurance company or agent will provide you with the forms to designate beneficiaries for your life insurance and annuity policies. You should consult your financial advisor and attorney regarding the best way to designate your insurance policies if your beneficiaries include minor children.

Final Reminders

If you had a will prior to executing your new estate plan, you should physically destroy your prior will, along with any copies your attorney, relatives or friends may have, once execution of the new documents is completed. You should follow the same procedure for any prior powers of attorney as well. This will avoid any confusion as to your intentions.

You should not make any handwritten changes to your will or trust since that may impact the enforceability of those documents. If you need to have any changes made to your estate planning documents, you need to contact an attorney to draft the appropriate amendments or replacement documents. Any replacement documents will need to be formally executed to be effective.

Please keep all transfer documents (deeds, copies of beneficiary designations, car titles, etc) with your estate planning documents in a safe, fire- and flood-proof location. You should also provide your attorney, family members or trusted friend with the location of those records and documents.

As you purchase or come into possession of new or additional assets, you should take the steps necessary to transfer the title to these assets to your trust.

Finally, you should review your estate plan, and its funding status on an annual basis.

Conclusion

We hope you find this brochure helpful in the process of funding your trust. You should take pride in having a complete and properly funded trust.



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