

Funding Your Trust

Why Transfer Assets to your Trust?

Recall, that the primary benefits of your living trust are to avoid time-consuming, expensive, and public court proceedings, such as a conservatorship of your estate in the event you become too incapacitated to handle things for yourself, and a formal probate of your estate after death that will require extra work, cost and delay in settling your estate and getting it to the beneficiaries you intend to receive it.

You will avoid these negative outcomes if you have a trust and only if that trust has assets. Most things you have not put into your trust can be added, both in the context of a conservatorship or a probate, but at fairly expensive and unnecessary cost to your estate.

Therefore, legal title to all of the assets you wish to have in your trust must be transferred. The trust functions fully only with those assets that are owned in the Trustee's name as Trustee of your trust. This form of ownership allows the trust to serve as a personal financial management arrangement that is independent of your capacity, the probate court, and the public view.

How Do I Make These Transfers?

Legal title is transferred in several ways, and the type of property often dictates how title must be handled.

Assets having title documents, real property being the most obvious, require a title change to transfer ownership to your Trustee. Most assets that do not have title documents can be transferred by an assignment or instruction stating that you intend them to be part of your trust.

The name on title indicates who owns the asset. There are several ways to indicate ownership by your trust. The most commonly used is the name of your Trustee, as Trustee of your trust, such as the following

George and Martha, Washington, Trustees
The George Washington Family Trust,
u/d 01/12/2007

The indicator “u/d” stands for “under declaration” or “under declaration of trust”. There are several variations on this you may see.

Let's review title transfers pertaining to certain specific types of property and some of the issues pertaining to the particular change of ownership.

Real Property. If you own any real property, such as your residence, I will have prepared a deed to transfer your interest in that property into the name of your Trustee, which we will execute after signing your estate plan documents. I will submit that deed for recording along with the appropriate notification form to the County Assessor to advise that this is not a reassessable change of ownership, and a statement to the Recorder that no Documentary Transfer Tax is due.

If you acquire other real property interests later on and wish to have those properties held in your trust, you may refer to the deed we prepared to transfer your residence as a template. Of course, I will assist you directly with these transfers as you may prefer.

NOTE: If your real property is subject to a trust deed, mortgage or other form of encumbrance, you should check to see if there is a “due on sale” clause in the loan instrument. As long as you remain as a beneficiary of your trust and “occupy” the property, this clause cannot be enforced. If you are not the occupant, you should obtain your lender's consent to the transfer of this real property into your living trust before recording the new deed. If you refinance, your lender will ask you to change title to your property into your own name, but you can transfer it back to the Trustee after the new loan has been settled and recorded.

Bank Accounts. Your bank, savings and loan, credit union, etc. will change the name on your accounts for you. They will ask to see a copy of your trust and they may retain a copy for their records, although they don't really need to do so. Try showing a copy of your trust and offering them an abbreviated version: the first page, signature page(s), and the pages

containing the trustee's powers. Alternatively you can certify the existence of your trust in a separate document under a provision of the Probate Code. The bank is relieved from liability if they will accept your certification.

Some banks will simply change the name on your account on their signature card and allow you the option of having new checks printed with that name. Other banks will tell you it is their "policy" to close the individual account and open a new account in the name of your trust. This is a matter of the bank's internal preferences, which you need to simply accept.

Securities. If you own shares of stock, bonds, treasury notes or other types of securities and hold the actual share certificates (i.e., your securities are not held in a brokerage account in so-called "street name"), you will have to change the name on each security certificate to effect transfer of these assets into your trust. You will be asked to provide an "Affidavit of Domicile" as required for all transfers under securities regulations, as well as copies of the relevant pages of your trust mentioned above. Your brokerage can help with this, or you may have to deal directly with the security issuer's transfer agent.

If your securities are held in a brokerage account in your name: you simply notify your broker that you have made a living trust and instruct him or her to change the name on your account, just as you will have done with your bank. Securities held in a brokerage account are held in the name of the brokerage (called "street name") so that all transactions with those securities can be handled easily and quickly without endorsing and presenting paper certificates. Again, you will be asked to supply copies of your trust document or a certification of the trust.

Business Entity Securities. Your ownership of a limited partnership interest is a "security" that will require transfer. If your interest is in a large partnership investment, it is likely that the partnership administrator will have specific documents for you to prepare and submit.

If you own an interest in an LLC, your interest may be treated as a security and require similar steps to transfer.

Most small or family partnerships and LLCs have provisions in their operating agreements specifying what transfers can be made and how the transfer is to be documented. Similarly, a family-owned corporation is not likely to have a transfer agent to effect your change of ownership; normally, the corporate Secretary will have that responsibility.

Life Insurance, Retirement Plans, IRAs.

If you elect to name your trust either as the owner or as a beneficiary under your life insurance, retirement plan, IRA, annuity or other form of contract arrangement, the change in ownership or beneficiary designation can be effected simply by sending a notification to the policy issuer or plan administrator that you have assigned ownership rights or the beneficiary designation, as the case may be, to the Trustee of your living trust and ask them for the forms they require to change their records.

If you are assigning ownership of an insurance policy or plan, you also would instruct the issuer to render all future performance under the insurance contract to the Trustee.

The notice of the assignment should be sent by certified or registered mail, return receipt requested. Your notice should request the transfer and instruct the issuer to render all future performance under the agreement to the Trustee of your trust.

CAUTION: If you are naming your trust as beneficiary under an IRA, 401k or other type of retirement account, you should consult with your tax professional before doing so. These accounts hold income that has not been taxed and it is easy to make a mistake that will cause the immediate taxation of your entire account if your trust does not contain the provisions required by the IRS to be considered a "pass through" entity. There are other issues with integrating your retirement account with your trust that you should discuss thoroughly with your tax professional before doing anything.

Promissory Notes: If you have any notes payable to you (not debts that you owe to someone else), you may transfer ownership to your trust by a simple written assignment and notifying the borrower that you have assigned your interest in the note to the Trustee of your trust, and that all future payments are to be made in the Trustee's name. Send this notice by

certified or registered mail, return receipt requested, to serve as evidence that the borrower has been notified.

If the note is secured, such as a deed of trust against the borrower's real property, then you will have to assign that security interest to your Trustee as well. You should do that before sending the notice of assignment to the borrower.

Other Assets: Virtually any asset that can be owned can be placed in a trust. Any other item you own and wish to transfer into your trust which has some form of title document issued by a government agency (such as, a mobile home, car, truck, boat, etc.), the method of changing title usually is as simple as endorsing the ownership certificate and forwarding it with instructions to the registry of title document.

If the asset you wish to transfer into your trust has any other form of title document (such as, a lease, license, or other property right), use the notice of assignment procedure mentioned above.

Some assets may have fairly unique transfer requirements, for example: oil, gas and mineral interests (usually a lease or royalty contract), general and limited partnership interests, intangible rights (copyrights, patents, and other registered rights), and special business interests, such as professional practices. If you have any of these special assets, we should discuss whether to add them to your trust and how to do it.

If the asset you wish to add to your trust does not have a title document, you may effect the transfer by a simple written statement that you assign all your right, title and interest in the item(s) to the Trustee of your trust. The most common examples of untitled assets are your personal possessions, furniture, furnishings, jewelry, works of art, collections, etc.

Must I transfer everything? You may have specific plans for some of these items; for example, to make gifts of family heirlooms to certain family members. If so, it will be helpful to your successor Trustee (who may not be familiar with your estate) and your beneficiaries if you list these specific items separately in an exhibit to the assignment document. If you

mention this while we are preparing your trust, I will include them on the Schedule of Initial Funding we attach to your trust.

You may leave a certain assets in your own name for convenience, or any reason, without risking the need for a conservatorship or probate of those assets. For example, clients often prefer to retain their checking account in their own name, and prefer not to transfer ownership of their vehicles.

One risk in leaving assets out of your trust is that, should you become disabled or incapacitated at some time, your Trustee will not be able to take control of those assets without going through some court proceeding.

Your trust plan should include a durable power of attorney so that you are authorizing someone to act on your behalf to make these transfers at a time when you might not be capable of doing so yourself.

There is some danger in refraining or waiting to make most of the transfers reviewed in this memo. However, because of the particular formality for real estate and securities transfers, you will have an easier time doing so if you take care of those items yourself. Also, leaving the transfer of assets to your trust to an agent under a power of attorney may complicate and add to the cost of effecting the title change at a future time.

From the point of view of the probate laws, your estate representative (executor or Trustee) may transfer up to \$150,000 worth of assets to your trust without subjecting them to the formal court probate process. This is done by means of a specific declaration or affidavit that, if properly prepared, will let the person or entity involved off the hook for relying on it.

If we work together, I will be able to answer questions about transfer of your specific assets and will prepare the necessary transfer documentation, as you prefer.