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Spotlight:
Asset Management



How to fund your trust

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Avoiding probate is one of the primary benefits of having a revocable living trust; however, merely setting up a trust is insufficient. In general, the trust must be funded during your lifetime in order to avoid probate.

Probate is the process where the court oversees the distribution of the deceased person's assets in accordance with the person's will. It is desirable to avoid probate because the probate process can be lengthy (six months or more), costly (executor and legal fees) and an invasion of privacy (probate is a public process).

By following a few key steps and working closely with your attorney, your trust should provide your heirs with the assets you intended without the burdens of probate.

What is "funding" a trust?

A trust is "funded" when your assets are transferred to it. An asset can generally be transferred to a trust by changing the asset's title so it is clear that you are holding the asset as trustee of your trust. The general rule is that assets held in a

revocable living trust are not subject to probate.

Why is funding the trust important?

Your trust likely provides that upon your death (and the death of your spouse, if married), a designated third party (called the "successor trustee") is given the power to manage and distribute the assets in the trust in accordance with your instructions. If your assets have been funded into the trust, then the successor trustee can proceed to manage and distribute the assets without probate.

Who is responsible for funding a trust?

The attorney drafting your trust may assist with funding certain assets into a trust, but you are ultimately responsible for ensuring that your trust is properly funded and stays funded throughout your life.

Which assets should be funded in a trust?

Most clients intend for their trust to serve as a funnel through which all assets should pass. Below are some of the issues relating to funding your trust.

- Cash and nonqualified investment accounts

Cash accounts (including savings accounts and money market accounts) and nonqualified investment accounts should be funded into the trust. Banks and brokerages are accustomed to transferring their clients' accounts into revocable living trusts. Sometimes you will be asked for a copy of the trust (though the first page, signature page and trustee powers sections generally suffice).

If your bank account or investment account permits you to designate a beneficiary to whom the account should be distributed upon your death, you will likely be able to avoid probate by choosing a beneficiary. However, beneficiary designations should be carefully coordinated with your estate plan. By utilizing a beneficiary designation you will be circumventing your trust -- especially where the beneficiaries named in your trust differ from those listed on your account form or if your trust sets forth conditions to the

distribution to your beneficiaries (such as a child attaining a certain age).

If you hold stock directly in your own name, you should contact the issuer or transfer agent to arrange for the transfer of the stock to your trust.

Periodically check your account statements to verify the account remains funded in the trust.

- Real property

A residence is often the most valuable asset in a person's estate. Your residence should be funded into your trust. Investment property should also be funded into your trust. This is easily accomplished by filing a deed (with a properly completed Preliminary Change of Ownership form) in the jurisdiction where the property is located. Transfers to a revocable living trust are statutorily exempt from reassessment and transfer tax. A lender is generally prohibited from triggering a due-on-sale provision upon a transfer to a revocable living trust. If you own investment property through an entity, such as an LLC, you should own that entity in your trust.

Lenders sometimes ask clients to transfer property out of a revocable living trust while the property is being refinanced. Be sure to transfer it back into the trust upon the completion of the refinance.

- Life insurance

Life insurance ownership and beneficiary designations should be carefully coordinated. As with bank accounts and investment accounts, life insurance payouts will circumvent your trust unless the trust is the beneficiary. Discuss with your attorney whether your revocable living trust should be named the primary beneficiary or a "back up" beneficiary and whether the policy should be owned by the trust or otherwise.

- Qualified investment accounts (IRAs and 401(k)s)

Use great care (and consult with your accountant, financial planner or lawyer) when adjusting the title or beneficiary designation of your IRA and 401(k). To preserve the favorable tax treatment of these accounts, they should remain titled in your name individually. As with bank accounts and life insurance (discussed above), using a beneficiary designation will circumvent your trust. Generally, you should either list your trust as the beneficiary, or list your surviving spouse as the primary beneficiary and the trust as the "back up."

- Closely held business

Shares of closely held corporations, membership units of limited liability companies and partnership interests should be held in your trust. Transferring

ownership in a closely held business to your trust is accomplished by transferring your certificates (or other evidence of ownership) to the trust. You may also want to execute a stock power or transfer separate from certificate. Be sure this transfer is properly reflected in the company's books and records. Pay careful attention to how this transfer may affect any shareholders agreement, operating agreement or partnership agreement, and confirm the transfer is not prohibited by or inconsistent with the terms of such agreements.

- Vehicles

Most clients choose not to place their vehicles in their trusts because vehicles are frequently changed and the DMV has a procedure to facilitate the transfer of a vehicle without probate after the owner's death. If you desire to place your vehicle in your trust, the DMV can assist you with the transfer.

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