



## “Funding” Your Trust

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**T**he process of “funding” a trust involves transferring title and ownership of your property into the name of the trustee of your trust. It also involves changing designated beneficiaries on insurance policies, annuities, and retirement plans to the trustee of your trust, when appropriate. See below, however, for some reasons why you may need to get professional advice before you transfer title or change any beneficiary designations.



### **Why should you go through the process of funding your trust?**

There are numerous benefits from ensuring title to your property is in the name of your trustee, and some of the benefits may depend upon state law, as well as your specific circumstances. Therefore, the rest of this chapter will provide general guidance, but you should confirm the effect of any funding action with qualified counsel before you undertake it. Also, trusts can be funded while you are alive and after your death, but for the purposes of this chapter, we will only address the funding of your trust while you are alive. The mechanics, however, are the same.

Fundamental to the concept of using trusts is that all rules and issues for the management and transfer of your property are included within the terms of the trust document. No court action is normally required to implement your wishes for handling your property when you are not able to do so.

So some of the advantages of a properly funded trust are:

- Avoidance of living probate (guardianship or conservatorship) and death probate.
- Minimizing the delays and hassles of managing and transferring property in a living or death probate action.
- The costs of administering your trust assets are far less than the costs of going through living or death probate.
- If you have property located in several states, you will not need to open up separate probate actions to handle the transfer of your property upon your death.
- Compared to property held in joint title, you can control how ownership of your property will pass even after your death through your trust.

- In many states, it is not clear what property rights domestic partners have and property in a trust can provide certainty rather than uncertainty.

You should remember that even if you fail to completely fund your trust, a good estate plan will include a pour over will which will serve to get any unfunded property into your trust after your death. However, normally a probate action will be required, so you would not be able to benefit from many of the valuable advantages you would otherwise have if you had funded your trust while you were alive. Also, if you leave your property in joint ownership, have a payable-on-death or transfer-on-death designation, or have a beneficiary designation, it keeps the property out of your trust, and the property does not pass title through your probate estate so the pour over will is not effective as to that property.

**How do you fund your trust?** The method of funding your trust varies depending on the type of property.

- Real estate is transferred by a deed (or other appropriate method of transferring real estate in your state).
- Stocks and bonds held in your name are transferred by reissuing the certificates in the name of your trustee.
- Investment accounts and bank accounts are transferred by having your stockbroker or banker change ownership on the accounts to your trustee. (Sometimes this might require opening a new account and sometimes it only requires new signature cards.)
- Ownership and interests in private companies, partnerships, and limited liability companies may require an assignment or stock power and reissuing ownership certificates in the name of the trustee.
- Personal property is transferred by a bill of sale or other assignment document to your trustee.
- Notes, mortgages, and other receivables due you will generally be transferred by assignment.
- IRAs, retirement plans, annuities, and life insurance generally will not have ownership transferred to your trust due to potential tax implications, and must be evaluated on a case-by-case basis with the advice of qualified counsel.
- Inheritances, gifts, or lawsuit judgments not yet received can generally be transferred by assignment to your trustee.

An example of the proper titling language to use is (you should change this to match your particular trust description) is as follows. The bracketed language is desirable to create a more complete description.

*John Smith as trustee [ , or his successor in trust,] of the John Smith Revocable Living Trust dated 1/1/2001 [and any and all amendments and restatements thereof]*

If there are co-trustees, you would add the name of the additional co-trustee as well.

**Why do they talk about “balancing” your estate and what does that have to do with funding your trusts?** The technical reasons behind “balancing” your estate are beyond the scope of this chapter. However, the basic concept is that generally the value of a married couple’s total estate should be split equally, or balanced, between each person’s living trust. If you are advised to prepare and use a joint trust, the question of balancing may not come up initially, and instead may become an issue for the survivor after the death of the first spouse.

The goal behind balancing is to ensure there are enough assets allocable to the estate of each of the spouses to take advantage of the available federal estate tax exemption on the death of the first spouse. You should review other chapters of this book to understand the concept of the available federal estate tax exemption.

Sometimes it can be difficult to balance an estate because of certain ownership restrictions on an asset. For example, professional practices may not be able to be owned by a non-licensed professional. Also certain stock options and other contract rights governed by plans and documents may prohibit the transfer of an asset even among spouses.

**What records do you have to keep for the funding of your trust?** For several reasons, it may be necessary to document and prove that your assets are funded into your trust. Therefore, you need to keep all written documentation of your requests to fund your assets into your trust, as well as all confirmations that that funding has been completed. This may consist of bank and investment account statements, written beneficiary designation forms, copies of deeds and assignments, copies of title certificates, and copies of correspondence.

**Why you may or may not be able to handle your own funding and what might go wrong?** Changing titles on accounts and changing beneficiaries may sound like activities that do not require professional assistance. But there are several issues that may affect how title can be transferred or even if it should be transferred. Some of these issues may be tax-related and some may depend on your particular state law, and some may even depend on the preferred strategies recommended by your professional advisors.

Some of these issues include:

- **Your residence.** Although generally you should deed your residence to the trustee of your trust, legal professionals may differ in their advice to you. Some of this may depend on state law issues, some may depend on asset protection availability, and some may depend on local, state, federal, property, and capital gain tax issues.

- **Business interests.** Any business entities you have elected to have taxed under Subchapter S of the Internal Revenue Code (S Corporations and certain limited liability companies) have certain limitations on owners. You may need to determine whether ownership by your trustee complies with those limitations. Also, shareholder, operating, or partnership agreements which govern the ownership of business interests may have limitations on transfers with which you will need to comply.
- **IRAs and retirement plans.** Changing ownership of IRAs and retirement plans could trigger negative tax effects and early distribution penalties. That is why you typically only want to change the beneficiaries rather than ownership.
- **Community property.** The rules applicable to community property may require property agreements or other documentation to appropriately establish the proper funding of your trust.
- **Using the correct forms.** Sometimes an institution will not recognize a transfer or beneficiary change request unless it is on an approved form. Therefore, it is important to not only use the correct form, but to also obtain confirmation that the change has been accepted.
- **Real property.** It is important that the transfer of title to your trustee does not trigger any due on sale clause on any mortgage on your property, or avoid or reduce any insurance coverage. Therefore, it may be appropriate to obtain the consent of your lender before initiating the transfer. Also, you may need to determine whether your insurance company might re-rate your policy due to ownership by the trustee. Finally, you may need to obtain an endorsement to your title insurance to make sure adequate coverage is continued after the transfer.
- **Certificates of deposit.** You should make sure that retitling a certificate of deposit does not trigger an early withdrawal penalty.
- **Stock options and other assets governed by a plan.** These types of assets are governed by a written third-party plan and may also have tax and legal issues associated with the transfer. You will need to consult with your CPA and the plan administrator to determine the process and ramifications of transferring title to a trustee. Also, some stock is governed by transfer rules that may prohibit any transfer or may subject it to requirements such as obtaining an attorney opinion letter.
- **Annuities and life insurance.** You should consult with your financial and insurance advisors to determine the effect of any transfer of ownership of annuities and life insurance policies, which may include income tax and capital gain issues, as well as an alteration of payout options due to title being held by a trustee. As previously stated, funding this type of asset is usually implemented by changing beneficiary forms rather than by changing ownership.

- **Contract rights, leases, obligations.** Contract rights may have terms and conditions which restrict or prohibit any transfer and you may need to obtain consents before you can assign those rights.
- **Direct deposits.** If an account into which direct deposits, withdrawals, or other transfers are made, is closed out or the ownership is transferred, you may need to reestablish the transferor relationship with the new or retitled account.
- **Insured bank and investment accounts.** In order to maintain the maximum FDIC or other insurance available on your bank and investment accounts, you should review the structure of the accounts set up in the name of the trustee with your banker or financial advisor.

## TIMING OF FUNDING AND FINAL THOUGHTS

You should expect the complications and communications involved in funding your trust will result in a *process* of funding rather than an *event*. Depending on the complexity of the asset transfers and the various companies and bureaucracies that may be involved in the transfers, several attempts and letters of direction may be necessary in order to complete the transfer of an asset to your trustee. Many times the delays result in you putting the completion of funding on the back-burner. As you can see from the advantages listed at the beginning of this chapter, incomplete funding can result in extensive additional costs and delays in the management and transfer of your property during any disability and after death.

Treating funding as a process means you and/or your professional advisors will review your asset holdings and titling on a monthly, quarterly, or annual basis. Every time an asset is acquired, you need to revisit the funding process, and of course, you should always obtain competent professional advice to make sure you are completing the process properly.

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