

What does “funding” a living trust mean?

After you have signed your living trust document, the next step is to change titles and beneficiary designations from your individual name to the trustee of your trust. This is called funding your trust.

This is probably the most important part of having a living trust. If you have signed your documents but haven't changed titles and beneficiary designations, you've simply wasted your money. You may have a well-written trust with well-thought-out instructions, but until you transfer your assets to it, your trust doesn't control anything.

Once you transfer your assets to your trust, *you* no longer legally own them. With everything in the name of your trust, there is no need for probate when you die or court involvement if you become incapacitated. This is why most people want a living trust in the first place. Funding your trust is necessary so it will work the way you want.

Who will fund my trust?

Before your trust is finished, you should know how much of the funding process your attorney will do for you. Some attorneys will do all of it. They want their clients' trusts to be as effective as possible so they personally make sure everything is put into the trust properly.

But, usually, it is a combination of the attorney doing some and you doing some. Ideally, your attorney will review each asset with you, explain the process, and you will decide together who will be responsible for each one. Many attorneys will transfer your home to your trust for you at no additional cost. Some also have legal assistants who can put other assets in your trust for you at a lower hourly rate than if the attorney does it.

Depending on how much the attorney charges, how comfortable you are with the process and how much time you have, you may want to transfer many assets yourself.

Most attorneys have pre-written letters you can send to your bank, investment broker, insurance company and others that tell them how your assets should now be titled. At the least, your attorney should give you very specific instructions and the exact wording to use for titles and beneficiary designations.

The wording will usually include the name(s) of the trustee(s), the name of your trust and the date you sign the trust document. So it will be something like this:

“John Smith and Mary Smith, Trustees of the Smith Family Trust, dated January 1, 2022.”

How difficult is the funding process?

Most titles and beneficiary designations are not difficult to change. Some are changed by an Assignment. This is a short (usually one page) document your attorney will prepare that identifies the asset and states that you are transferring its ownership to your living trust.

Others will require written instructions from you, giving the institutions the exact wording to use on the titles and beneficiary designations. Usually the pre-written letters from your attorney will be all you need, but some institutions have their own forms that you will need to complete. Most changes can be handled by mail, fax or email. Some will require your signature to be notarized.

How long does this take?

While the process is not difficult, it could take some time depending on how many titles and beneficiary designations you have to change and how quickly the institutions respond.

If you decide to do most of the funding yourself, make it a priority and keep going until you are finished. Start with your assets that have the largest values, then work down to the smallest ones. Remind yourself why you are doing this, and look forward to the peace of mind you'll have when your living trust is complete.

Which assets should be in my trust?

The premise is that all of your assets should be in your trust although, as you will see, there are some exceptions. Your attorney will confirm which of *your* assets should be transferred to your trust. Here are some general categories:

■ **Home, Other Real Estate:** Depending on where the property is located, a correction deed, grant deed, warranty deed, assignment or quitclaim deed will be used to change the title to your trust. Your attorney will probably transfer your home for you. This is a good idea because a) it is often the most valuable asset people own and b) the legal description and titles must be exact. Out-of-state property should also be transferred to your trust to avoid a conservatorship and/or probate there.

Transferring your home to a living trust is not usually considered a sale because the trust is revocable, and so

will not disturb the current mortgage, insurance, property taxes, homestead exemption or capital gains tax exemption. You may need the lender's permission for other real estate. Also, if you want to refinance, your lender may require you to temporarily remove the property from your trust.

■ **Bank/Saving Accounts:** Your bank may want to open a new trust account with a new account number and new checks, but the checks can be printed with your name and address, and you can sign them with your usual signature. They will ask to see certain pages of your trust to verify its existence and the trustee's powers, but a shorter Certificate of Trust, prepared by your attorney, will satisfy this requirement without having to compromise the confidentiality of your trust. One benefit of having a trust account is that the amount of FDIC insurance is often more than on a regular account because it is based on the number of grantors and beneficiaries of the trust.

■ **Investment Accounts:** You will need to provide a letter of instruction (like the sample provided by your attorney) or complete the firm's form. Your signature may need to be guaranteed. They will also want to see the Certificate of Trust to verify the trust's existence and trustee's powers.

■ **Businesses:** Most business interests—including sole proprietorships, closely-held corporations, subchapter S corporations, family limited partnerships, limited liability companies, general partnership interests, copyrights, patents, royalties, and oil and gas interests—can be transferred to your living trust. Be sure to discuss these early on with your attorney so that all proper procedures are followed and unintended consequences are avoided.

■ **Personal Untitled Property:** Furniture, artwork, clothing, jewelry, cameras, sporting equipment, books and other similar belongings that do not have formal titles will be transferred to your trust by an Assignment.

What about life insurance policies?

Naming your trust as beneficiary will give you maximum control over the proceeds. It will prevent court involvement if a loved one is incapacitated, dies before or at the same time as you, is a minor or has special needs. The money can stay in your trust until you want each beneficiary to receive it and, while in the trust, it will be protected from their creditors, predators, ex-spouses, new spouses and irresponsible spending.

Your trust can also be owner of your policies. This would

give you more control and allow your successor trustee to access cash value if needed at your incapacity. If your estate would be subject to federal and/or state estate taxes, your attorney may suggest an irrevocable life insurance trust.

Are there any assets that should not be in my trust or require special attention?

Yes. Several common ones are listed below. Special rules also apply to stock options, professional corporations and 1244 stock. Your attorney will advise you on these.

■ **IRAs and Other Tax-Deferred Plans:** Starting in 2020, most beneficiaries must withdraw the full amount of an inherited tax-deferred account within ten years of the owner's death, eliminating the ability to stretch out tax-deferred growth over a beneficiary's life expectancy. Exceptions include: 1) your spouse, who can roll your account into his/her own IRA and name a new beneficiary, who will be subject to the ten-year rule when your spouse dies; 2) a chronically ill or disabled beneficiary who meets stringent requirements; 3) someone who is not more than ten years younger than you; and 4) your minor child, for whom the ten-year clock begins at age of majority.

If you are not married or the spousal rollover option is not desired, naming a trust as beneficiary instead of an individual will give you more control over who will receive this money and when. Tax-deferred growth can continue for the full ten years after your death, and your hard-earned savings will be protected from a beneficiary's creditors and/or irresponsible spending. A trustee is also important for a special needs beneficiary. Your attorney will be able to explain your options and advise you.

■ **Guns:** Many Americans own guns for hunting, target shooting and self-defense. Some families also have heirloom guns that they would like to keep in the family. Unlike other assets, firearms possession and transfers between persons are heavily regulated by Federal, state and local firearms laws, which present unique estate planning challenges. A separate gun trust may be required.

■ **Autos, Boats, Other Vehicles:** If the value of these is within the amount your state allows to transfer without probate, your attorney may advise you to leave them out of your trust for asset protection. For example, if you are at fault in a car accident and the injured party sees that your car is owned by a trust, he may think you have "deep pockets" and be more inclined to sue you. Vehicles with high values or collectibles may be an exception.

Funding Your Living Trust

Assets You Probably Want in Your Living Trust

- Home, other real estate (including out-of-state)
- Checking/saving accounts, safe deposit boxes
- Investments
- Notes payable (money owed to you)
- Life insurance (or use irrevocable trust)
- Business interests, oil and gas interests
- Personal untitled property

Assets You May Not Want in Your Living Trust

- IRAs and other tax-deferred accounts
- Guns, autos and other vehicles
- Incentive stock options, Section 1244 stock
- Professional corporations

What if I need to buy or sell assets?

As trustee, you can buy and sell assets as you did before. Just be sure to title new assets in the name of your trust.

What if I forget an asset?

If you are incapacitated, your successor trustee will be able to transfer a forgotten asset into your trust. If it is discovered after you die, the Pour Over Will your attorney prepares will be used to transfer it to your trust, but the asset will probably have to go through probate first. These safety nets should not take the place of making every effort to fully fund your trust while you are able.

Do I need to use an attorney?

For the best results, yes. You've worked hard all your life to build your estate. Having professional legal assistance as you fund your living trust will give you peace of mind, knowing your trust will work the way you want to protect your assets and those you love.

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Understanding FUNDING YOUR LIVING TRUST

WHY AND HOW TO TRANSFER
ASSETS TO YOUR LIVING TRUST

Your information here

Name
Title

Firm/Company Name

Street Address

City, State, Zip

Phone: 123-456-7890

Email address

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