

Abstract: This report examines how to successfully implement a revocable trust (living trust), often the keystone of an estate plan. Various methods of transferring assets to the trust are discussed, including limited liability companies and life insurance.

Have You Properly Funded Your Living Trust?

If a revocable trust (living trust) arrangement is the keystone of your estate plan, consider whether you have taken the necessary steps to implement all of the trust's attendant advantages. To enable your trustees to administer the living trust effectively if you become incapacitated, it should own your assets. This will also help avoid subjecting your assets to probate transfer proceedings when you die.

Transferring Assets To Your Living Trust

You may accomplish the transfer of your assets to your living trust with the assistance of an estate planning professional or other advisor, or you may do it yourself. In general, transferring bank accounts, certificates of deposit, brokerage accounts, mutual fund accounts and securities may require only a specific letter of direction and a certification of certain trust provisions. The transfer of the following assets to your trust requires additional documentation:

Tangible personal property — titled. To transfer automobiles, boats, airplanes and other items of personal property that require title registration, you need to obtain the necessary official documents to assign your interest to the living trust and pay the required fees. For example, you'll need to contact the Secretary of State to obtain the proper form to transfer your automobile title to the trust. Be sure to verify that your liability and property insurance coverage extends to the trust.

Tangible personal property — untitled. As with cash, the difficulty with transferring untitled tangible personal property is establishing that the living trust owns these items and they're not probate assets. Attach a general assignment of the tangible personal property — stating that assets are being transferred or assigned to the trust — to a specific listing (or photographs or videotape) of the items the assignment covers. With respect to works of art and larger antiques, you may also want to attach a label to the items identifying the living trust as the owner. In all events, your insurance policy

should reflect that the trust owns these items, and you should extend your coverage.

Real property. The first step in transferring real estate to the living trust is to prepare and record a property deed that conveys title to the trust. Whether a warranty, special warranty deed or quit claim deed is better depends on the circumstances. In addition, confirm that your title insurance policy extends to the trust. You may need to obtain a policy rider extending coverage for a new policy. Check property and casualty insurance policies to ensure that coverage continues; otherwise, obtain a new policy or policy rider. With respect to leased property, notify the lessee to pay rent to the trust in the future.

Limited liability company (LLC) and partnership interests. Review each LLC and partnership agreement to determine whether a transfer to your living trust is permitted and you've met the transfer requirements. Then prepare general assignments and consents and obtain the requisite signatures from those who must consent to the transfer. Determine whether you need to amend assumed name certificates, limited partnership certificates or LLC filings. In situations where the LLC or partnership interest has little or no value and transfer is difficult

because of extensive requirements, continuing to hold these interests individually may be better than transferring them to the living trust.

Proprietorship. Generally, an assignment or bill of sale of a proprietorship to the living trust — including all assets, names and other items of goodwill — will be sufficient. Determine whether the trust can own a proprietorship. If not, consider forming a partnership making your spouse a 1% or greater partner or forming a single-member LLC and then transferring interest to your living trust.

Life insurance. Typically, if life insurance is payable to a named beneficiary, the insurance proceeds will not be subject to probate procedures. But if your intent is to change beneficiary designations in the future and you become incapacitated before doing so, you'll have to make these changes under a guardianship or durable power of attorney arrangement. Accordingly, transfer life insurance ownership to your living trust so that a successor trustee may deal with the policies should you become incapacitated. You can obtain change of ownership forms from your insurance company. Also, if the insurance is currently payable to your estate, designate your living trust as the beneficiary.

Qualified benefit plan and individual retirement plan accounts. Payment of retirement plan account benefits requires special consideration and should be reviewed separately. Potential issues relate to the ability to change a designated beneficiary, naming the living trust as beneficiary, qualifying for the marital deduction and dealing with distributions from the plan during your lifetime should you become incapacitated.

Prepare for Success

Setting up a living trust and properly transferring your assets to it may seem complicated. However, the benefits of avoiding probate are well worth the effort. Remember to keep copies of what you mail to the trust, follow up after a reasonable time and ask for help when needed. We are here to answer your questions and assist you every step of the way in achieving your estate planning goals.