Funding is the process of transferring assets into your Living Trust. Think of your Living Trust as an empty box or receptacle waiting to receive assets. It offers no protection from probate until title to your property is actually in the name of your Living Trust. In this section we will explain the way to change title to assets you already own and how to take title to new assets you purchase in the future.

Title to new assets preferably should be taken in the name of your Living Trust as written in Article One of your Trust document.

General Instructions on the Transfer of Existing Assets

The funding instructions that follow will help you determine the best methods for transferring different types of property into your Living Trust. The mechanics of getting particular pieces of property into your Trust vary from one asset to the next. As you deal with buying, selling and conveying your Living Trust assets, you may wish to accomplish many of the funding tasks yourself. However, it is important that your funding be accomplished in a precise and legally correct way.

Real Property

To transfer real property to your Living Trust, you may use a simple quitclaim deed or a warranty deed. Prepare the deed so that it transfers title from the way it is now to the name of your Living Trust under the formal title designation found in Article One. Care must be taken that the legal property description is entered exactly as it is on the current deed. Signatures must then be notarized according to state law.

After the deed is signed and notarized it should be recorded with the County Recorder where the property is located. For real property other than your home, before the new deed is recorded you should check with any financial institutions that hold a security interest in the property (i.e., trust deeds and mortgages). This will ensure that the transfer of the property does not trigger any acceleration clause in the loan. Most lenders agree that a transfer from you to your Living Trust is not a transfer or sale within the meaning of an acceleration clause, but getting the necessary approval is preferable to inviting a dispute. This approval should be received in writing to avoid future problems. If any complications arise, consult your attorney for guidance.

When you acquire a new piece of property simply instruct your escrow officer to title the property in the name of your Living Trust as indicated in Article One of your Trust document. If you are buying a property that will have a mortgage against it, you may find it easier to buy the property in your name, then move it into the Living Trust once escrow closes.

Our office can prepare Deeds for properties located within California for our clients. We can also contract with outside vendors to have out-of-state deeds prepared.

If you refinance a property and the bank requires that you take the property out of your trust, make sure that you prepare a new deed putting the property back into your trust upon the completion of the refinance process. If you must do this strategy, our office recommends preparing two deeds – the first taking the property out of the trust, and the second putting the property back in the Living Trust. You would then sign both deeds at the same time. Record only the first deed at this time and move forward with the refinance. Upon completing the refinance, record the second deed. The benefit of this strategy is that if something happens to you during the refinance process, the second deed is already pre-signed, and can be recorded. This protects against the property going through probate.

Bank Accounts

The change of legal title of an existing checking or savings account, or one that is created in the future, can be accomplished quite easily. Call your Bank/Financial Institution in advance to find out what they require to make the transfer. Your Certificate of Trust may be all that is needed. If so, please take a copy of your Certificate of Trust to the new accounts department of your bank and request that the accounts be set up in the name of your Living Trust. The Financial Institution may ask you to complete their form. We recommend bringing the Certificate of Trust from your Estate Planning Portfolio with you as it can be a great resource for completing the bank's form. If you have a question with regard to completing the bank's forms, please remember you may always contact our office. Once the account is titled in the name of your Trust, you will then sign new signature cards. Your checks need not change to indicate the Trust.

If you have a certificate of deposit (CD) with the bank or savings & loan, you may have to wait until the account matures before transferring it into the Trust; otherwise, interest penalties for early withdrawal may apply. Consult with your bank officer for the regulations on individual accounts. If there are no penalties you may want to transfer the asset to your Living Trust.

There are two circumstances where other factors are of greater importance than avoiding probate by having your accounts in your trust. The Social Security

Administration is required to pay benefits directly to the beneficiary, so it cannot make a payment to a trust. Thus, if someone has their Social Security payments direct deposited into an account held in the Trust, the Social Security Administration may terminate the direct deposit. To avoid that, you may leave the account that receives the Social Security payments out of the trust, but our office recommends that you set up with your financial institution a Transfer on Death (T.O.D.) or Payable on Death (P.O.D.) beneficiary on that account. This beneficiary may be your beneficiaries or you may list your Trust.

The second circumstance is if you pass away with all of your accounts held in the trust, your heirs may not be able to access your funds for the approximately 14 days it takes to obtain a death certificate. And if your heirs do not have enough funds of their own, or room on their credit cards to pay your funeral expenses, burial may have to wait until they receive the death certificate. In those circumstances you may want to leave a small pool of cash outside of the Trust and held jointly with a trusted loved one. We recommend limiting such pool of cash to approximately one month worth of expenses as that account could be subject to your loved one's creditors.

Safe Deposit Box

Your Safe Deposit Box with the bank should be in the name of your Living Trust. If anything happened to you, your successor Trustees could get access to the box, they do not need present access. If you do not title the Safe Deposit Box in the trust but instead add a trusted loved one's name to the box, please do not store valuables within it, as the contents of the Safe Deposit Box could be subject to your loved one's creditors.

Stocks, Bonds, Mutual Funds and Brokerage Accounts

The transfer procedure for stocks, bonds, and other publicly traded interests can be difficult and time consuming. These problems can be reduced if you have a working relationship with a stockbroker who will agree to help you with the transfer. If a broker is not used, a letter for the particular stock should be sent to the transfer agent. An agent outside the state of New York should be located because of the substantial transfer tax imposed by that state. Sometimes a telephone call directly to the corporate office of the company may be helpful in eliminating the red tape of transfer. A waiting period of four to eight weeks is not uncommon in accomplishing the transfer. A copy of the Certificate of Trust should be sent along with your letter to the transfer agent for his or her records. This will demonstrate to him or her that your Living Trust is valid and exists under the laws of your state.

It is a much easier task for stocks you acquire in the future. You need only instruct your broker that title to the stocks should be taken in the name of your Living Trust.

However, the entire process can be simplified by holding the shares in a brokerage account rather than holding the individual certificates. If a brokerage account or "street name" is used, the local brokerage firm would simply open an account in the name of your Living Trust. All transactions could then be handled without assigning certificates or having to produce a copy of the Living Trust on each purchase or sale of shares.

Bearer Bond

Bearer Bonds generally have no names inscribed on them to indicate ownership. They are negotiated by any individual having possession of them. To place them in your Living Trust you should use a written assignment similar to the one described above.

U.S. Savings Bonds

The U.S. Treasury is no longer offering paper Savings Bonds are and all Bonds reissued to a Living Trust are issued as electronic bonds with Treasury Direct. Therefore, it is recommended to create an account in the name of your Living Trust with Treasury Direct (www.treasurydirect.gov). To transfer the U.S. Savings Bonds into your Trust, please complete Treasury Form PDF 1851, listing every bond. The form needs to be signed and dated with your signature guaranteed. A signature guarantee is obtainable at most financial institutions, including banks and brokerage firms. The completed and signed form should be sent along with the savings bonds to the Federal Reserve Bank that services your area.

Furniture and Personal Property

Even your furniture and household effects may be transferred to your Living Trust. Remember that all assets transferred to your Trust are outside the jurisdiction of the probate court. These items can be placed in your Trust by use of a written assignment.

We have included a General Assignment of Property as part of your estate planning documents.

Trust Deed or Mortgage

Trust deeds and mortgages are documents commonly associated with real estate loans. A trust deed or a mortgage is a document that gives a lender a security interest in someone else's real estate. You, as a lender, are entitled to foreclose on the property in the event payments on the loan are in default. The trust deed or mortgage can easily be assigned to your Living Trust by preparing an Assignment of Deed of Trust or Assignment of Mortgage, whichever applies. This assignment should be notarized and recorded in the same manner as a transfer of real estate.

Closely Held Partnership, Corporate and Limited Liability Company Interests

The transfer of closely held partnership, corporate and limited liability company interests can be a complicated and cumbersome affair, but normally it is not. The documents forming such entities tend to become more complicated as the number of participants increase. The documents typically provide for one of three methods outlined for transfer of an interest. First, the approval of the general partners or manager might be needed. Second, the approval of all participants might be required. Finally, no approval of any participant may be needed.

The best way to proceed in any of these three categories is to personally contact the general partners or managers for guidance. We have found that mailing instructions without first contacting the general partners merely causes confusion.

Once you have received directions, a simple transfer document should accomplish your goal of transferring the interest to your Trust.

Life Insurance

The determination of what to do with your life insurance policies is dependent on a number of factors. If you have an estate near the estate tax limit, the best course of action is likely to transfer your insurance policies to an Irrevocable Life Insurance Trust, (“ILIT”). If your estate is not taxable, it is often best to have the Trust to be the owner and/or primary beneficiary of your life insurance policy. Specific recommendations have been made in your CLIENT DISCLOSURES AND CONSENTS document.

CAUTION

Not All Assets Should Be Funded into Your Living Trust

The following list of assets should not be funded into your Living Trust:

(1) Retirement Accounts (IRA, 401k, 403b, 457 and similar pension plans)
(2) Annuities
(3) Most Automobiles
(4) International Assets

Changing the ownership of a Retirement Account into your Living Trust would result in an immediate taxable event. Changing the ownership of an Annuity may result in an immediate taxable event. For Retirement Accounts and Annuities, we recommend that you complete a beneficiary designation form. On the beneficiary designation form you may list a primary beneficiary and a secondary or contingent beneficiary. Failing to make the proper designations could have a substantial negative impact on your estate plan. Specific recommendations may have been made in your CLIENT DISCLOSURES AND CONSENTS document.

Changing the ownership of your household automobile(s) into your Trust is not required. However, if you have an individual automobile with a value that exceeds $100,000, a collectable automobile that increases in value over time, or a collection of automobiles that have a combined value that exceeds $150,000, then in those circumstances we would recommend retitling some or all of the automobile(s) into your Living Trust. For your household automobiles that are not retitled into your Living Trust, upon your death, the DMV provides a simple form to allow your successor(s) to take control of your vehicle with the submission of your death certificate, the household automobile would then be retitled into a beneficiary's name or sold.

Absent advice from legal counsel where such assets are situated, International Assets should not be moved into your Living Trust. Your Living Trust is set up to manage assets held within the United States. If you have or receive International Assets that you intend to leave in the foreign country, then our office recommends that you consult with an attorney in that foreign country to determine what will happen to the International Assets upon your death. If you engage in estate planning within the foreign country to control the distribution of the International Assets upon your death, please make sure that such foreign estate planning documents do not conflict with or revoke the estate planning documents that you have completed with our office.