

HOW TO FUND YOUR LIVING TRUST

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A revocable living trust is one of the principal estate planning methods. While everyone should have a will, there are many benefits of a revocable living trust. For individuals who have moderate or larger estates, the revocable living trust can receive and own your property. For that reason, a revocable living trust is a good centralized method for managing your property.

If you as a senior person are unable or unwilling to manage your assets, the individual you've selected as successor trustee will take over and manage property for you. Not only does this protect you, the property will eventually pass to your heirs and bypass probate. The probate savings could be many tens of thousands of dollars.

A primary benefit of the living trust is that it avoids a conservatorship. If you have only a will, own substantial assets, and become unable to manage your property, it may be necessary to conduct an expensive and lengthy court process to appoint a conservator of your assets.

For example, comedian Groucho Marx had a will. But in his mid-eighties, he no longer was competent to manage his property. There was a major court battle between his family members and a long-time companion over who should be appointed conservator of both him and his property. The court battles consumed large sums of money and led to a very awkward and humiliating spectacle that was bewildering to Groucho Marx.

If Groucho Marx had created a living trust and transferred his property to that trust, then his selected successor trustee could have managed his property during his senior years.

FUNDED OR UNFUNDED LIVING TRUST?

It is possible to create a living trust that is unfunded during life. Together with the living trust, you would then sign a pour-over will. The assets that you possess at death would go through the probate process. However, the pour-over will may transfer those properties to the living trust. This property is then used according to your trust provisions to benefit your selected heirs.

The disadvantage of the unfunded trust is that you do not avoid probate. Your estate will pay the full probate costs. In addition, you give up the potential protection of a successor trustee during life. It is only if your assets are transferred to the trust that a successor trustee can then manage them for your benefit. The unfunded living trust, therefore, could lead to a conservatorship, as was the case with Groucho Marx.

FUNDED LIVING TRUST

There are several different types of assets that will be transferred to a living trust. You will need to work with your attorney and other advisors to make certain that your property is correctly placed into the trust.

Title to your property is determined by state law. You will need to comply with the appropriate agreements or documents to make sure that title is held by the trustee. In most cases, you will serve as the initial trustee of the revocable living trust. Therefore, real property and other assets will be transferred from you as an individual to you as trustee of the trust.

Real estate is often the principal asset that is transferred to the trust. This is normally accomplished through a warranty deed or grant deed, depending upon your state. The property is transferred directly from you as an individual to you as trustee. Deeds are notarized and then recorded at the county registrar of deeds.

There are considerations that you should discuss with your attorney before transferring your home or other real property into your trust through a deed. There may be a reassessment or increase in the property tax, or there may be transfer taxes when deeds are recorded. In most states, the popular living trust has been protected from an increase in property taxes. However, you should check with your attorney.

GUIDELINES FOR LIVING TRUST PROPERTY TRANSFERS

1. Your Home: Even though your home is transferred to a living trust, you still qualify to deduct the mortgage interest paid on the home. If you later sell the home and have made it your principal residence for two of the past five years, you will be able to exclude \$250,000 for a single person or \$500,000 of capital gain for a married couple. In addition, most states permit you to live in the home and qualify for a homestead exemption reduction in your property tax, even though the home is now titled under the living trust.

2. Securities: Public stocks and bonds can be transferred directly to the trust. You may hold title to the bonds in trust or you may create a trust securities account that holds stocks and bonds.

3. Safe Deposit Box: If you have a safe deposit box, that can be taken out in the name of the trust. However, some institutions that maintain safe deposit boxes require a certified copy of the trust to be kept on file. Another option may be to give your successor trustee signing authority on your safe deposit box.

4. Real Estate: If you own real estate in your home state or other states, it should be transferred to the trust. If you pass away with real estate owned in your individual name in another state, it will require a rather expensive probate proceeding in that state to transfer the real estate. However, if it is transferred to your revocable trust, then you avoid that foreign state probate proceeding and cost.

When your home or other real estate is transferred to the trust, there may be a requirement to send a copy of the trust to your lender. Most title companies and lenders will accept a short "affidavit of trust" that can be prepared by your attorney. This indicates that the trust is a qualified living trust and the trustees have the power to transfer real estate.

5. Tangible Personal Property: A common question is whether tangible personal property should be included in the trust. It is possible to transfer your cars, boats, recreational vehicles or art and other collections to the trust. However, many individuals choose to retain personal ownership of tangible personal property. This is frequently the case because you may periodically buy or sell vehicles or other tangible personal items. By not transferring tangible personal property to the trust, it simplifies lifetime transfer of those items. However, if there is extremely valuable tangible personal property that would be subject to substantial probate cost through your will, then it may be appropriate to transfer that property to the trust.

What if you would like to sell trust property? It is entirely possible to transfer property from the trust to a new person. The trustee may simply deed the property directly to an individual.

In some circumstances, your attorney may think that it is better for title insurance purposes for you to sign two deeds. One deed is from you as trustee to you as an individual. The second deed would be from you as an individual to the new buyer. There may be a modest transfer tax cost for both deeds, but this is an acceptable strategy for simplifying the transfer of real property.