

## ~ FUNDING YOUR TRUST ~

### **eStatePlan™ Electronic Funding Applications**

This material describes how to fund your trust using our revolutionary eStatePlan™ Funding Kit, which utilizes (i) *electronic* Asset Schedule Ledgers, (ii) *electronic* signature (ESIGN) technology, and (iii) the Master Signatory Guarantor certificate. The commonly used universally-recognized methods of funding a revocable living trust – which usually includes the process of formally retitling equity accounts and other assets – can be a time-consuming even aggravating experience. That has all changed for those who decide to take advantage of the unique eStatePlan™ applications using 21<sup>st</sup> century technology.

#### **THE QUICK-FUNDING METHOD™**

- As an eStatePlan client/user, you can identify ALL of your personal assets under electronic asset transfer ledgers, which are activated using electronic signatures (ESIGN). Both the asset-ledger-schedule funding design and ESIGN protocols are recognized (and recommended) under state and federal authority. *The asset-assignment method of funding a living trust is most specifically prescribed under Nevada law – per NRS 163.002 – which is the recommended body of law for establishing and administering (living) trusts regardless of what state one may currently reside in.* When all bundled together, those applications serve to provide an effective, convenient, and time-saving procedure for you to fully fund your eStatePlan living trust.
- With the eStatePlan ledger-entry method, the grantor/settlor/creator of a living trust may electronically list his/her assets on the trust's ancillary asset schedule. As a grantor-created asset list, Schedule "A" will be recognized as a contemporary ledger of assets transferred from the grantor to himself/herself as trustee of the trust (Uniform Trust Code, §401[2]). The following is the UTC Commissioners' published statement concerning that legally-binding trust funding principal: *"A declaration of trust can be funded merely by attaching a schedule listing the assets that are to be subject to the trust without (emphasis added) executing separate instruments of transfer."*

NOTE: *Informal* trust-funding methods that any grantor/settlor may utilize to fund his/her own revocable living trust (as described through this material) have been recognized as valid and legally enforceable by judicial authority in several states including California, North Dakota, Nebraska, and Kentucky. On the following two pages, posted for review are selected excerpts of five cases that ruled (and established) legal precedence in this matter. The earliest was in 1961 and the most recent is from 2012.

## ✓ APPELLATE COURT ➤ ESTATE OF HEGGSTAD (1993)

In the Estate of Heggstad case, a California Court of Appeals ruled that a separate, formal realty deed was not necessary to affect a transfer of realty property to a trust where the grantor was serving as trustee. The court stated: “*It is well established that if two specific requirements are met, real (and/or any other) property may be made part of a trust's assets without a separate deed transferring property to the trust. The first requirement is that the owner of real property is the settlor creating the trust with himself or herself (serving) as the trustee.*

*Second, because a conveyance of real property is at issue, the other requirement for transferring real property to a trust is compliance with the statute of frauds. (Where the trust property is real estate, the statute of frauds requires that the declaration of trust must be in writing [i.e., a legible document form executed by the grantor].)*

*Accordingly (under the statute of frauds), a written declaration of trust by the owner of real property, in which he names himself as trustee, is sufficient to create a trust in that property (without the use of a formal realty deed to transfer the property to the trust). (Estate of Heggstad [1993] 16 Cal.App.4th 943, 947-950.)*

## ✓ APPELLATE COURT ➤ KUCKER V. KUCKER (2011)

In the Kucker v. Kucker case, 192 CA 4<sup>th</sup>, 90, a California Court of Appeals reversed a lower probate court decision that had not recognized a transfer of stocks into a trust based (only) on the settlor’s “general assignment” document as being transferred to the trustee of her trust. The Appellate Court’s reversal agreed with the petitioner stating that: *a general assignment (by only a generic document) of all or substantially all of the settlor’s assets into one’s trust causes the stocks to be owned by the trustee.*”

The Kucker v. Kucker Court ruled that: “*There is no California authority invalidating a transfer of shares of stock to a trust (simply) because a general assignment of personal property did not identify the shares, nor should there be.*”

The court pointed out that the paramount rule for the interpretation of a trust that “*the intent of the grantor is supreme*” is an established legal principle (e.g., Estate of Cairns 188 Cal.App.4th 937; and Citizens Business Bank v. Carrano, 189 Cal.App.4th 1200).

## ✓ SUPREME COURT ➤ NICHOLS V. GOUGHNOUR (2012)

The informal funding-by-schedule principle was also confirmed by a North Dakota Supreme Court: “*The primary purpose in construing a (realty) deed is to ascertain and effectuate the grantor’s intent*” (regardless of the transfer form used). *Nichols v. Goughnour*, ND 178, 12, 820 N.W. Another ND Court decision affirmed: ... “*the purpose of a (generic) granting clause (i.e. property to be conveyed by an Asset Schedule, for example) is to define and designate the (real) estate conveyed and (as in warranty clause exceptions)... are not intended as a limitation on the nature of the interest conveyed by the granting clause.*”

## ✓ SUPREME COURT ➤ CHEBATORIS V. MOYER (2008)

In *Chebatoris V. Moyer* 757 N.W.2d 212 / 276 Neb., a Nebraska Supreme court recognized in their finding that: “*The particular words of a conveyance (for assets to a trust) are unimportant if the intention of the parties can be determined. In construing instruments conveying property, equity concerns itself with the substance and not (emphasis added) the form of the transaction, and THE PARTICULAR FORM OR WORDS OF A CONVEYANCE ARE UNIMPORTANT IF THE INTENTION OF THE PARTIES CAN BE ASCERTAINED.*”

## ✓ APPELLATE COURT ➤ COMBS V. HOUNSHELL (1961)

A Kentucky Court of Appeals also expounded on the legal credence of the effectiveness of the general conveyance doctrine in a decision many years ago in *Combs v. Hounshell*, 347 S.W.2d 550, Ky. “*We have no hesitancy in abandoning this archaic and technical rule (referring to an old common law rule that a conveyance of realty interest is ineffective if it does not specify reservations and/or exceptions to the transfer). It is entirely inconsistent with the basic principle followed in the construction of deeds, which is to determine the intention of the grantor as gathered from the four corners of the (transferring) instrument.*”

**The legality of this established trust funding method has  
been customarily recognized for over 50 years!**

## ASSET-ASSIGNMENT LEDGER/SCHEDULE FUNDING

Although court decisions cannot create or remove legislation, courts are held as legal authority to interpret existing law and/or to apply a ruling precedence concerning non-published law. Therefore, the decisions of the above stated cases can be relied upon by all parties relative to the trust funding process including the grantor, trustee, account vendor, registrar of deeds, and the like. That is because *there is no law invalidating the process*.

The doctrine of asset assignability is also recognized by the federal government in numerous Private Letter Rulings and the Internal Revenue Code. An example is recorded in IRC §408(e)(4), which allows for the pledging of a retirement (IRA) account as security for a loan (see also CCA 2006-44020). It would hold then that an “Asset Ledger/Schedule” of property affixed and ascribed to a valid declaration of trust instrument can be all the more used to accomplish the same proven results as that of (only) a general assignment document.

The eStatePlan Trust Asset Schedule application clearly establishes the grantor’s intent. When properly filled out, there will be no uncertainty as to the legal application of the Schedule in the Funding Kit. For estate settlement purposes, account vendors/agents will be under established legal requirements to accept the validity of the event that assigned the assets to the trust.

The eStatePlan Trust Asset Schedule may also include personal real estate interests that, when identified appropriately, shows sufficient legal intent to affect the contemporaneous realty-interest assignment to the grantor/trustee of the trust. The assignment process will preclude the necessity of having to create and record formal realty deeds of transfer until *after* the decease of the grantor/trustee.

## eStatePlan E-SIGNATURE APPLICATIONS

The eStatePlan software provides convenient electronic signature dynamics designed for speed, effectiveness and safety. The applications are easy to use, will help simplify the trust-funding procedures, and are legally recognized. According to the "**Electronic Signatures in Global and National Commerce Act**" (ESIGN), the "Act" – a body of law enacted by Congress specifically referred to as "The Consumer Consent Provision" in CFR §101(c)(1)(C)(ii) of the "Act" – *"The effect of a recognized electronic signature shall be legally sufficient to acknowledge, authenticate, and validate the full intent of the one making it"* (paraphrased).

The Congressional ESIGN Act and the states' adoption of the "**Uniform Electronic Transactions Act**" (UETA) clearly affirm that "*a document or signature cannot be denied legal effect or enforceability solely because it is (only) in electronic form (UETA, Section 7).*" UETA also states that "*any law that requires a writing will be satisfied by an electronic record*" and "*any signature requirement in the law will be met if there is an electronic signature.*"

With concerning (associated) REAL ESTATE TRANSFERS, the UETA committee stated: "*...it is unnecessary to maintain (any)... barriers to electronic contracting (executing transactions concerning real estate). There are no (e.a.) unique characteristics relating to real property (to preclude an electronic transaction) as opposed to other business and commercial contracts.*" In other words, by posting a clear description of the intended-transfer-to-trust realty property on a Trust Asset Schedule – even though not on a realty deed format (and not even recorded) – the grantor creates SUFFICIENT VALIDITY with respect to the transfer of that property to his trust.

## eStatePlan FUNDING KIT DYNAMICS

- As the end-user creator of your trust, the eStatePlan Funding Kit dynamics are at your fingertip control through the password-protected Client Console and are fully compatible with the eStatePlan platform electronic signature applications.
- The Funding Kit's electronic Asset Ledger/Schedule can also be edited at any time by access through the password protected Client Console to add, remove, or edit any applicable asset information relative to what is deemed as "assigned" to the trust.
- The design of the Funding Kit also enables the user to enter the Trust Effective Date directly on the Trust Asset Ledger/Schedule. The Trust Effective Date can remain unchanged *even though* new entries may have subsequently been made on the Schedule.
- Not only can the (your) trust funding process be implemented through our proprietary ESIGN/EUTA-compliant technology, but it can also be confirmed by the "**MASTER SIGNATORY GUARANTOR**" (MSG) Certificate signature page verifying your ESIGN events. The MSG can be printed out and signed by you in front of a Notary Public, which you would upload to your MSG portal in the E-vault Center of your Client Console.