

FUNDING YOUR TRUST

You created a Trust – Congratulations!! Now what do you do???

Your Trust Agreement or document created the Trust, but it is empty until you put something in it. An empty Trust doesn't do anything because the terms of the trust will only apply to assets owned by the Trust. Think of your Trust like a bucket – if it is empty, it has no purpose. You need to get your assets into the bucket for it to work.

You have two options: 1) transfer ownership of assets to the Trust while you are living and let the Trustee manage them, or 2) have your assets move into the Trust after you have passed away.

To transfer ownership while you are living you need to actually re-title the accounts or assets so that it shows the Trust as the owner. To have the account or asset go into the Trust upon your death, the Trust should be listed as the beneficiary.

For Bank or Investment Accounts:

You can transfer ownership of the accounts while you are living by providing a copy of the Certification of Trust to your representative and instructing them to make the Trust the owner. Some institutions may require you to open a new account with a new account number and then close the old account.

If you do not wish to do that, then you need to ensure you have a beneficiary designation on your checking or savings account, investment account, CD or other bank account by adding a “Payable on Death (POD) beneficiary” to the Trust.

Your accounts will still be owned by you or you and your spouse, but the bank or investment company would have a POD naming your Trust as the beneficiary. Then your account looks something like this:

John Smith and Mary Smith WROS, POD Smith Family Trust

This means that John and Mary have a joint account. If one of them dies, the account is still the property of the survivor. When the second of John and Mary die, the account will be closed and the money given to the Smith Family Trust to be distributed according to the Trust document.

For Retirement Accounts, Annuities and Life Insurance Policies:

Retirement accounts are typically tax-deferred (income tax has not yet been paid), and transferring ownership to a Trust will cause you to have to pay all the tax. Instead, you should simply name the Trust as a beneficiary for these accounts.

If you are married, you should name your spouse as the primary beneficiary for tax reasons. Then name the Trust as the contingent beneficiary. If you are not married, the Trust should be your primary beneficiary. Your account representative can help you update your beneficiary designations.

Annuities and life insurance policies can have the trust as the primary beneficiary.

For Vehicles or anything with a Title through the BMV:

You can fill out the back of the Title to transfer ownership to your Trust. You, as the individual, are the “Seller” and the Trust – with the Trustee’s name – is the “Purchaser”. Then you have the Title office process the transaction and the new Title should reflect the Trust as the owner. The Trustee then has authority to sign on behalf of the Trust for any future sale.

If you do not actually re-title the vehicle, then you need to add the Trust as a “Transfer on Death” beneficiary. At the BMV Title Office, complete a form to add a “Transfer on Death (TOD) beneficiary.” You fill out the form naming your beneficiary and pay the \$16 fee. You will receive a new Title that reads:

Owner: John Smith
TOD: Smith Family Trust

If you do neither of these things, the Title will have to go through Probate and may not end up in the Trust as you intended.

For Real Estate

Typically, the Attorney who prepared your Trust will transfer real estate into the Trust by way of a Deed. The deed transfers the property from the individual owner(s) to the named Trustee of the Trust. The deed is recorded with the County so that it is part of the official property records. Once recorded, the Trustee is the person who can sign on behalf of the Trust to sell the property or get a mortgage loan.

Important Information

You need to know what should be in your Trust and what should not be in your Trust. That will depend on the purpose of the Trust, i.e. is it an asset protection trust or just a living trust to avoid probate.

It is up to you to make sure that all of your accounts are titled properly or have beneficiaries. Your attorney cannot do that for you – the bank will not talk to them. If you close one account and open another – be sure to update the ownership or beneficiary with the Trust information.

If you are not sure how something should be titled, call the Attorney and ask the question. Please do not just assume that everything will work out. Your Estate Plan is set up to work in a certain manner and you and your attorney have to communicate to make it all function the way you wish. Consider scheduling an appointment every so often just for a check up. Take your statements with you to review. Then you will have peace of mind about your plan.