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Funding Your Living Trust

Please Read Carefully

The mere preparation and signing of your Living Trust does not, in and of itself, create a fully working plan. The trust must be *funded*. You created it, in part, because you wanted to avoid any “freeze” of your assets in the event of death or disability. Only by funding your Trust will you accomplish this.

On the following pages we will show you how to go about placing your various assets into your Trust. Some property—real estate and business interests in particular—will usually require further action on our part. If you would like, we will take care of placing such property into your Living Trust. (Additional charges will apply.) But making sure that your assets are placed into your Trust is *your* responsibility.

Again, if you have any questions, or require our assistance, please feel free to ask us. Similarly, should you encounter any problems with a financial institution—say, for example, that your banker or broker does not know quite what to do—please feel free to give that person our name. We will be happy to explain the procedure and requirements to them. There is no charge for this service.

Please note carefully: The following pages provide advice on which assets you may transfer yourself, which assets may (or will) require our additional assistance, and which assets should not be transferred. Read this section carefully before beginning your transfers. And do not transfer those items we advise against transferring—such as IRAs or other retirement accounts.

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Bank and Credit Union Accounts

Bank accounts (whether savings, checking or credit union) can be the easiest type of asset to transfer into your Living Trust. “Easy” means that you will not need our assistance except, perhaps, when your banker has never seen one of these before and does not know what to do. (If you encounter a problem at your bank, please feel free to call us with the name and telephone number of your bank representative. We will attempt to explain the procedure to him or her. There is no charge for this service.)

Below are two options you have when transferring bank assets into your Living Trust:

1. If you want to keep the Trust’s money in the same bank(s) where you currently have your accounts:

The easiest thing to do is to take a copy of your Living Trust to the bank and ask one of the branch officers to help you open a new account. He or she will furnish you with all of the necessary paperwork and will take care of opening your new account.

Do not be concerned if the bank asks you to open a “business” account. Many banks treat Trusts in the same manner as corporations. Such treatment will have no effect on your money. But please be sure to inquire as to whether there are any extra bank charges and whether they can be waived.

In opening your Trust account, please note the following:

a) If your trust is revocable, use your own Social Security number to open this account. If your trust is irrevocable, then we either have or will shortly file for a Taxpayer Identification Number (called a “TIN” or “EIN”) for your trust. This is the Trust’s Social Security number and should be used for all Trust business. (In some cases, a revocable trust may also have an EIN; in those cases, we—or your accountant—has likely already discussed this with you.)

b) The bank will require the signature of every Trustee. In this respect, your Living Trust account is similar to a joint account. Please make sure that all initial Trustees are present. (Successor Trustees are not necessary at this time.) If it is not possible to have all Trustees come to the bank, as in the case where your co-Trustee is a child who lives in another city, you can always mail the account papers and signature cards to that person. If the bank will not allow this, ask what their alternative is.

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c) Opening a trust account does not necessarily mean that you have to close your existing accounts, particularly if they are “working” accounts. A “working” account is the checking account or savings account into which you normally make your deposits (including “direct deposits” such as Social Security checks) and from which you transact most of your day-to-day business.

In other words, nothing says that you cannot have an account in your own name in addition to a Trust account. It’s just that the bulk of your assets should be in the Trust account so that there is no delay in the event of your death or incapacity.

Important point: Because one of the principal reasons for creating a Living Trust is to avoid probate, we recommend that the total of all assets held outside of your Trust be no more than \$30,000. The reason for this is that New York law contains a “simplified estate settlement” procedure for settling “small” estates. This procedure doesn’t require a lawyer, and is easy for your family to do. But it is limited to “estates” of \$30,000 or less.

We also recommend that any assets left out of your Trust be held “jointly” with someone else. This will facilitate access to those assets upon your disability or death. Alternatively, you can make them “in trust for” or “pay on death” or “transfer on death” accounts. This will avoid probate but will not give the other named person access during your lifetime if you are incapacitated. (But that’s what a power of attorney is for!)

2. If you want to transfer your current bank accounts into a Trust account established in a different bank:

You simply go to your bank(s), make out a withdrawal slip and have the bank issue a check to the name of your Living Trust. You then open a Trust account in a different bank and deposit the funds into that account.

As an alternative, you can deposit money into your existing checking account and write a personal check to the name of the Trust. Then deposit that check into your new account.

Important Note: We strongly urge you to carefully examine the first bank statement you receive after making your transfers. You should confirm that the name on the account has been changed to that of the Trust. If not, then follow up on the matter. This applies not only to bank accounts but to every type of account.

Money Market Accounts

Money market funds can be handled in exactly the same way as bank accounts because they are nothing more than glorified (higher yielding) savings accounts.

Certificates of Deposit

Transferring certificates of deposit (CDs) are a little bit trickier. Each bank has its own rules for the transfer of CDs prior to maturity.

1. If the CD is about to mature it should not be rolled over but, instead, should be cashed in and a check issued to the name of the Trust. The Trust may then invest the money in a new CD.
2. If a CD has a while to go before maturity, we recommend that you consult with the bank manager to determine whether or not the account may be transferred without any penalty. Many banks will permit a change of name without charge so long as the actual funds are not withdrawn. In such a case, it is a simple matter to furnish the bank with a copy of your Trust and request that your banker make the necessary change. Remember: The Social Security number does not change when you are transferring an asset from your name into a Revocable Trust. Irrevocable trusts may pose a bit more of a challenge because the taxpayer identification number (EIN) will be different than your Social Security number.

Again, when dealing with banks, it is always best to consult with the branch personnel prior to taking any action. The vast majority of bank officers are helpful. If you encounter a problem, please call us.

A final note about banks, generally:

Some banks are more customer responsive than others. We have seen banks attempt to charge for reviewing your Living Trust, for transferring certificates of deposit, and even for maintaining a trust account. (If you ask, they may waive such charges.)

If your bank gives you a hard time, however, imagine what might happen if you did not have a Trust and your family tried to get your assets upon death or disability! As a consumer, you should choose a “friendly” bank. We recommend that you use this opportunity to assess just how much your bank really wants your business.

Stocks, Bonds & Mutual Funds

The transfer of stocks and bonds will depend upon whether you have the actual certificates or whether they are on deposit with your broker or held electronically by a transfer agent.

1. If all of your securities are held in a brokerage account:

The procedure in this case is very much like dealing with banks. It should be a simple matter of contacting your broker, furnishing him or her with a copy of your Living Trust, if requested, and following the broker's instructions. He or she will usually open a new account for you (or change the name on your existing account) and will handle the transfer of all your assets.

And, again, remember: The Social Security number you use on the new account is your own except if your trust is irrevocable or there is a reason not to.

2. If you have the physical stock or bond certificates:

If you have the actual certificates, it will be necessary for you to do one of two things:

- a) You may deliver all of the certificates to a broker with instructions that the broker open an account in the name of your Living Trust. Most likely, you will first have to open an account in your name, deposit the shares into that account, and then transfer the shares from your account into the Trust account. The reason for this has to do with Federal anti-money laundering rules enacted after the 9/11 attack.
- b) As an alternative, you can take each of the stock certificates to a commercial bank, trust company or brokerage firm and have your signature "guaranteed" on the reverse side. Then you may either bring the certificates back to us and our office will take care of the transfer (please note: there is a charge for this service) or you may contact each security's transfer agent directly and arrange for your own transfer.

We recommend—for many reasons—that your securities be deposited with a broker. To mention just a few: they will not get lost, they can be sold more quickly, they are all in one centralized location, and your successor trustee will not have to contact numerous transfer agents in the event of your death or disability.

3. If your stock is held by a transfer agent:

If you have no actual certificates and the proof of your stock ownership comes to you in the form of a quarterly statement from a transfer agent (ComputerShare being one of the most frequently encountered), then you will need to follow the transfer agent's directions to transfer your stock. That may include a letter of instruction with your signature guaranteed, as in the case of certificated stocks. It is best to check the website for your particular stock—it should be on one of the quarterly statements—and then follow the links. If you have any problems, it is best to call the telephone number listed on your quarterly statement to ask for help.

4. If you own mutual funds not held by a broker:

Transferring mutual funds is similar to dealing with brokerage accounts. If you have a stockbroker, he or she may be able to handle the transfer of many, if not all, of your mutual funds, particularly if your funds are already a part of your existing brokerage account. (But first check if there is a fee.)

If your broker cannot handle the transfer, the best way to proceed is to check online to see if forms are available—most companies now provide such transfer forms on their websites—or call the shareholder or customer services department of the fund directly and request the necessary paperwork and instructions.

You will find that most mutual fund companies have fairly simple procedures for transferring your account into a Living Trust.

Tip: Most mutual funds and even brokerage firms have one transfer form for use by an individual, by joint tenants, by estates, by custodians for minors or by trusts. Naturally, you should complete only those sections of the transfer form which pertain to trusts.

Help with completing forms

To help you complete most brokerage and mutual fund new account and transfer forms, please review the steps outlined below. Although it is impossible to print samples of every company's transfer forms, most will request information along the following lines:

1. If the form requests the **names of the trustees**, list them all.
2. The **name of your trust** will most likely be requested. You will find it at Section 1 of your Trust. Generally, we refer to revocable trusts prepared by our firm as "Asset Management Trusts" or "Family Trusts." Therefore, if your last name is Smith, the

name of your trust will likely be “Smith Asset Management Trust” or “Smith Family Trust.”

3. Some forms ask who the trust is “**for the benefit of.**” Give your name(s).
4. The **date** of the trust is the date you executed it. It is found at the top of page one of your Living Trust.
5. The **taxpayer identification number (also abbreviated as “TIN” or “EIN”)** of your revocable trust is *your* social security number unless you requested or required a separate EIN. For an irrevocable trust, it most likely will be the EIN that we or your accountant obtained.
6. The **trustee’s address** is your own address if you are the trustee, or that of your trustee if you are not acting in this capacity.
7. Many mutual funds will also ask you to note (usually by checking a box) how you wish to **fund** your trust. Check the box that indicates that you wish to transfer your existing account.
8. In addition, do not forget to write down your **existing account number**. The brokerage or mutual fund will then transfer your existing account into your new Trust account.
9. Most funds will also ask you how you want to receive **distributions**. There are usually two choices for each category.

Capital Gains

1. May be reinvested as additional shares.
2. May be distributed to you by check.

Dividends

1. May be reinvested as additional shares.
2. May be distributed to you by check.

Choose the appropriate box or boxes, depending upon what you want.

Note: Some mutual funds reinvest both capital gains and dividends unless you indicate otherwise. Others pay them out to you unless you indicate otherwise. Read the form carefully. If you have any questions, call us.

10. Check any other option boxes that apply. For instance, indicate whether you want payments sent to you by check or direct deposited, whether you want a debit card (if offered by the fund), etc. Every fund offers different optional “benefits.” Choose those that you want.

11. **Sign** the form in all spots indicated. You may have to sign twice—as current owner and as trustee/recipient. Do not forget this important step.

12. Be sure to determine the other requirements of your fund before sending your forms back. Some of the additional requirements and documentation we have seen are:

- That your signature(s) be “guaranteed.”
- That you include a copy of the trust, or just the first and last (signature) pages.
- That you include a Trustee Certification of Investment Powers (usually supplied by the fund itself) or copies of the Trustee’s powers pages indicating that the Trustee can own mutual funds.

You should now be ready to send your completed form to the fund.

Note: We strongly advise that you review your next monthly or quarterly statement from the brokerage account or mutual fund to confirm that the account name has been changed from yours to that of your trust. If not, follow up on the matter.

U.S. Savings Bonds

Savings bonds may be transferred by sending them in with a request that the name be changed. They need not be cashed in. Please note, however, that the Treasury Department is not issuing paper replacements naming Trusts as the owner; you will receive confirmation that your bonds are held in electronic form by the Treasury.

The easiest way to begin the process is online. As of this writing, the web page is:

https://www.treasurydirect.gov/indiv/planning/plan_estate_trustform_reissue.htm

You will need to fill out Form FS 1851. A copy is downloadable at the website or may be ordered as a hard copy.

Note: Now would also be a good opportunity to review your old bonds. Some clients have shown us bonds that are over 30 years old. Unfortunately, they are no longer earning interest. You might wish to check the following web page to determine the interest-earning status of your bond:

https://www.treasurydirect.gov/indiv/research/securities/res_securities_stoppedearninginterest.htm

U.S. Treasury Notes, Bills and Bonds

Most people who own Treasury instruments have them held either in a brokerage account or in a “Treasury Direct” account.

If held in a brokerage account, your broker should be able to transfer them for you.

If held in a Treasury Direct account, you will have to open an account online. One way to do this is to follow the on-line instructions found below for an individual account, but when you get to the instruction numbered 7 about opening an account in an individual name, change that to “trust.” (This number was correct when we prepared these instructions; we cannot guarantee that the Treasury’s numbering has not changed since then.)

<https://www.treasurydirect.gov/instit/savbond/otc/HowtoopenanaccountinTreasuryDirecttipsheet.pdf>

Note: The Treasury requires you to have a bank account, so you should transfer Treasury instruments only after you have opened one for the Trust.

Once you have opened an account, you may transfer your existing account using Form FS 5511--Transfer Request Form. That form is available on the Treasury website or you can simply google the term and a PDF version should appear in the search results.

Note: Are you surprised that while all of the previous assets could be transferred with a minimum of hassle, trying to navigate the government’s requirements is daunting? Never fear...if you need help, call us.

Real Estate

Generally

The transfer of real estate into your Living Trust will normally be handled by our office. We have already told you what documentation we require in order to complete the transfer.

We will forward your recorded deeds to you after they are returned to us by the county registrar’s office. This can take from a few weeks to a few months depending upon the State and county where they must be recorded.

Please note, however, that your real estate is considered to be a part of the Trust when you sign your deed. Some people believe that the transfer is not effective until the deed is recorded. This is not true. The transfer is effective *immediately* upon your signing the deed and delivering it to us for recording.

Out-of-State Real Estate

Out-of-state real estate is treated the same as New York property with a few exceptions. The procedure for recording the deed may be different, but you need not concern yourself with this if we will be handling the transfer on your behalf.

Homeowner's Insurance

When you transfer real estate, you should also notify your homeowner's insurance company of the change. This step is designed to place your insurance company on notice that you have transferred your property into a trust. Because the procedure will vary from insurer to insurer, the best way to do this is to call your agent and ask what information and documentation is needed.

Note: We have experienced several instances where insurance companies refused to transfer the policy to a trust. In our opinion this is absurd. But we have been advised by several insurance agents—off the record—that the reason for this is that some companies do not want to write any homeowner's insurance (too many claims, too little profit) and are using any excuse to cancel policies.

We are of the opinion that you are better off finding a new insurance company in this case. Imagine the problems that such a company will give you if you do have to file a claim—whether or not your property is in your trust.

In any event, should you have a problem with your insurer, please let us know and we will attempt to resolve it for you. We have had much success in this regard.

Mortgaged Property

If your property still has a mortgage on it, please bring this to our attention. Some mortgages, particularly those taken out in the past twenty years, may contain what is known as a “due on transfer” clause. This clause permits the lender to accelerate the loan (call it in) if the property is transferred. The law does not permit lenders to call in a loan for a transfer into a revocable trust, but irrevocable trusts and/or reverse mortgages present different issues.

Also, if you are transferring commercial or rental property, you are advised to check with your lender first, before transferring them into the trust. Again, there should be no problem, but it does not hurt to confirm this.

Condominiums

Condominiums are handled the same way as other real estate. We will be happy to prepare the necessary documents for you.

Cooperative Apartments and Timeshares

Unfortunately, there are as many different rules and procedures as there are cooperatives and timeshares. In fact, at times we have wondered who it was who coined the term “cooperative,” because the people who manage them are often anything but.

The transfer of cooperative shares can be simple, or it can be difficult. It can also be impossible. This depends largely upon the Board of Directors of your co-op. We will work together to accomplish your goal, however, and will deal with problems as they arise.

Note: In many cases the cooperative’s Board of Directors is unwilling to permit the transfer of shares, even to a revocable trust and even though you intend to remain in occupancy. There is little that can be done here except to issue a “warning” letter in which we advise that the co-op may be held liable for any damages suffered by you as a result of their refusal to permit the transfer.

In some cases, we may recommend that your cooperative unit be “stripped” of its equity—that is, we will prepare a lien on your shares in favor of your Living Trust. This procedure works very much the same way as a bank lien does when you have financed your purchase, and is usually required only in cases of irrevocable trusts, where the goal is to avoid other types of liens.

If your co-op is uncooperative, you may not be able to place your co-op into the trust.

Additional note: The coop’s attorney handles the transfer of coop shares; generally, you will not need our services for this.

The transfer of vacation timeshares may also pose some difficulty. Each timeshare is different, and we will work together with you to do our best to transfer your interest into your Living Trust.

Please note, however, that in the case of cooperative apartments or timeshares, there may be additional charges for our services depending upon the level of aggravation posed by the people who run the organizations. If necessary, we will discuss these charges with you in advance.

Annuities and Life Insurance Policies

The company which issued the life insurance or annuity will have its own forms for transferring these assets. Please contact your agent or the company and explain that you wish to change the owner of your policy to your revocable Living Trust. Have the appropriate paperwork sent to you.

Please note that annuities and life insurance policies have certain terminology of which you should be aware:

In both life insurance policies and annuities, the person who has the right to transfer the policy (usually, but not always, the person who bought it) is called the “*owner*.”

The person who will receive the proceeds upon death is called the “*beneficiary*” or “*primary beneficiary*.” The person(s) who will receive the proceeds in the event that the primary beneficiary predeceases the insured is called the “*contingent beneficiary*.”

The “measuring life” (i.e., who must die in order for the policy to pay the beneficiary) is called the “*insured*” in life insurance policies and the “*annuitant*” in annuities.

When transferring these policies to your trust, you should be aware of the following: You will be changing the *owner* of the policy from yourself to the trust.

Note: The “annuitant” or “insured” will never change.

Many people list their spouse as primary beneficiary and their children (or others) as contingent beneficiary. Please use this opportunity to examine your policy to determine whether this is still what you want. It may not be.

For instance, if your Trust provides that money will continue to be held in trust after your death (for young or irresponsible children), we advise you to change the policy or annuity to make your Living Trust the beneficiary or contingent beneficiary as may be appropriate.

Similarly, if your Living Trust includes tax planning (for example: a Credit Shelter Trust), then you should also change the beneficiary to your Living Trust. This will assure that there is sufficient money in the trust with which to fund your Credit Shelter Trust.

Important note: The transfer of annuity contracts has tax consequence—particularly when the owner is changed—and in many cases it may not pay to do so. Before placing annuities into a trust, please discuss the specifics with your attorney.

Safe Deposit Boxes

It is a good idea to transfer your safe deposit boxes into the name of the Trust if your bank will permit this. The procedure is pretty much the same as that for changing a bank account—ask the bank for the appropriate forms and fill them out.

Promissory Notes, Mortgages and Other Contractual Rights

There may be occasions when someone owes you money and is obligated to pay it over an extended period of time.

For example, if you sold real estate on which you took back a mortgage, an “Assignment of Mortgage” form must be prepared and recorded in the county clerk’s office.

Similarly, if you sold a business or some other property and are being paid in installments, or if you loaned someone money which is being paid back in installments, these “promissory notes” will need to be assigned to your Living Trust.

If any of these is the case, please tell us. We will be happy to prepare the necessary documents.

Business Property Including: General Partnerships and Limited Partnerships C-Corporations and S-Corporations Sole Proprietorships

If you own any of the above business properties, you should discuss with us their transfer into your Trust. There may be restrictions on the transfer of these types of property, or doing so incorrectly may have adverse tax consequences.

There will be additional fees, depending upon the type and extent of the work we must do to transfer these properties into your Living Trust. We strongly suggest that you *not* undertake to transfer these types of property yourself.

Personal Property

It is normally not necessary to transfer your household goods into the Trust. You may also find it unnecessary to transfer items such as jewelry, art, antiques or collectibles unless they are valuable, and you wish to leave specific items to specific people when you die, or if you anticipate a family fight. In these cases, we can prepare documents to transfer your personal property into the Trust and make clear who gets them when you die.

Automobiles and Other Vehicles

If you own an automobile, it is not usually necessary to transfer it into your Living Trust. In fact, such a transfer may complicate your ability to obtain liability insurance for the vehicle. Upon your death, automobiles are often easily transferable by your survivors. The Department of Motor Vehicles can furnish the appropriate forms. In the event of your disability, your attorney-in-fact (power of attorney) can dispose of the vehicle.

If you own a boat or an airplane or other “adult toy,” and want to transfer it into the Trust, the first thing you must do is to check with your liability insurer (and we do hope that these items *are* insured) about your ability to obtain insurance if the item is in a trust. If you get the go-ahead from your agent, we will assist you with the transfer into your Trust.

Retirement Accounts

We do not suggest that you fund your Living Trust with deferred income retirement accounts such as Individual Retirement Accounts (IRAs), Keogh Accounts, SEP-IRAs, 401(k)s, profit-sharing plans, or any other type.

The reason for this is that when you “transfer” these types of assets into a Living Trust, you must do so by withdrawing the funds from the deferred account and transferring them into a non-deferred account. This means that you will pay income tax on the amount withdrawn.

Do not fund your Trust with these types of assets without first speaking with your attorney. We cannot stress this enough.

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We hope that this material will make it easier for you to fund your Living Trust. Please note, however, that it is inherent upon you to assure either that the assets have been transferred correctly or that you have called us for assistance. Obviously, there is no way that we can monitor all of your transactions unless you ask questions. Again, we urge you to do so. To help you, however, on the following pages you will find a checklist for keeping track of transfers.