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A Practical Guide to Funding Your Revocable Living Trust

These types of assets may be **retitled** into a revocable living trust:

1. Real estate (personal residence, rental property, oil/gas/mineral interests, etc.)
2. Bank and credit union cash accounts (checking, savings, etc.) *
3. Certificates of deposit
4. Regular investment accounts (taxed each year on interest, dividends, and gains) **
5. Individual stocks not held in a regular investment account
6. Savings bonds held in a TreasuryDirect account
7. Digital currency (crypto)
8. Small business ownership interests (LLC, corporation, partnerships) ***
9. Promissory notes
10. Tangible personal property, high-value motor vehicles, boats, airplanes ****

These types of assets are not retitled, but may name a revocable living trust as a **beneficiary**:

11. Life insurance
12. Retirement accounts (IRA, 401k, 403b, etc.) *****
13. Annuities
14. College savings plan accounts (529 plan, etc.)

* For a checking or savings account with an average daily balance below \$10,000, it may be appropriate to rely on a Pay-on-Death beneficiary designation instead.

** For a regular investment account of any size, it may be appropriate to rely on a Transfer-on-Death beneficiary designation instead; especially if the process to retitle is burdensome.

*** For a small business ownership interest, it may be unnecessary to retitle if the business has nominal assets and would likely cease operations upon the owner's death.

**** For a personal motor vehicle, it is unnecessary to retitle if the combined value of your paid-off motor vehicles registered in Arizona is less than \$200,000.

***** For retirement accounts, it is better to name individuals or charities as beneficiaries unless your intent is to restrict or protect inheritance. But when this is your intent, and the value of your retirement accounts is substantial, then you should name a trust as a primary or secondary beneficiary.

Introduction

A revocable living trust is a powerful estate planning tool, but its effectiveness depends on whether it is *funded* properly. An unfunded or partially funded trust may trigger an unexpected probate requirement and negate other potential estate planning objectives that a trust-based estate plan is designed to achieve. This guide will help you understand the funding process.

To fund your trust properly, you may need to draft and record new deeds for real estate, update account documentation at banks and credit unions, submit new account applications for regular investment accounts, amend LLC governing documents, and submit change-of-beneficiary forms for retirement accounts and life insurance. Some of these changes will qualify as do-it-yourself tasks, while others may call for the assistance of a lawyer, financial advisor, or insurance agent.

Trust Name

Whenever possible use this name format when referring to your trust:

[Trust Name] dated [Trust Date]

However, it is acceptable and common for financial institutions and title companies to edit the name of your trust to meet their own requirements. For all purposes concerning the identity of your trust or any assets titled in or payable to your trust, any description referring to the trust will be effective if it reasonably identifies the trust and indicates that the trust property is held in a fiduciary capacity.

Tax Identification Number

If you are serving as Trustee of your trust, you do not need to obtain a separate tax identification number for your trust or file a separate trust tax return. The Internal Revenue Service (IRS) prefers that you use your own Social Security number. Then you can report all the income generated by trust assets on your personal IRS form 1040. After your death, the trust becomes irrevocable for income tax purposes. At that point, the trust may divide into multiple subtrusts, and each one may be treated as its own taxable entity with its own tax reporting requirements.

How to Use a Certification of Trust

Your trust is accompanied by a Certification of Trust, which provides essential information from the trust document without disclosing confidential details about your assets or the names of your beneficiaries. You should provide it to any financial institution or title company that needs proof of your authority to act on behalf of the trust. However, many financial institutions have their own proprietary form to certify a trust document, which you may be asked to submit instead.

If a financial institution insists on reviewing the entire trust document, and you are amenable to comply, then do it. But if maintaining privacy of the trust document is important to you, then use one of these approaches:

- Plan A
Identify the specific provisions in your trust document the legal department wants to review and offer to provide copies of the relevant pages and nothing more.
- Plan B
Escalate the matter politely by calling attention to the Arizona statute on this topic (A.R.S. §14-11013) and threaten to choose a more cooperative financial institution.

Real Estate (personal residence, rental property, oil/gas/mineral interest, etc.)

Retitling real estate is one of the most important steps in funding your trust because real estate is the most common asset that triggers probate when left outside the trust.

The retitling process requires preparing, executing, and recording a new deed for each property. Upon creation of your trust, your agreed-upon fixed fee arrangement may include the preparation of a new deed to retitle your primary residence into your trust. More Arizona real estate properties may be retitled into your trust for an additional fee. For any real estate located outside Arizona, you should plan to hire a nationwide deed-preparation company that works directly with consumers. Many clients choose companies with a strong online presence, such as DeedClaim.com or SmartDeeds.com. Others call upon a local law firm or title company with an office in the same county as the property. For a reasonable fee they will prepare the appropriate deed and submit it for recording. You are free to select any company, law firm, or title company you prefer, and you will work with them independently.

When you retitle property into your trust, it is recommended that you inform your homeowners insurance company so the trust can be added as an additional insured to your policy. This process is known as endorsement. Also, if you retitle an investment property into your trust, and you are still paying the mortgage loan, you are supposed to request permission from your mortgage lender prior to recording the new deed. Failing to do so may, in theory, trigger the due-on-sale clause. But this is rarely a matter of concern if you stay current with the monthly mortgage payments, so most people do not even bother contacting the lender. If you are concerned about this issue, a safer approach is to record a Beneficiary Deed—which leaves the property titled in your name until your death—instead of retitling the property.

Also, if you have negative equity in the property or intend to refinance a mortgage loan, then consider using a Beneficiary Deed as an alternative to the usual process of retitling. The Beneficiary Deed would name your trust as the beneficiary upon your death but does not change the ownership until then. This technique simplifies a short sale transaction or mortgage refinance.

If you possess an oil/gas/mineral type real estate interest, you should first determine whether you own or lease the interest. If you are an owner, you will need to record a new deed in the same county that your current deed was recorded. If you are a lessee, you will need to assign your interest to the trust using a written assignment—with a form usually available from the leasing company. Either case, the transfer document should be submitted to the oil/gas/mineral interest administrative office so that it can update its records. In some cases, the administrative office will have additional forms for you to complete, and likely, documentation fees to pay.

Bank and Credit Union Cash Accounts (checking, savings, etc.)

You should complete and sign whatever documentation a financial institution requires to retitle any sizeable bank or credit union cash accounts to your trust. Although still recommended, it is not essential to retitle a personal checking account used primarily for day-to-day household expenses (for example, accounts with daily balance never exceeding \$10,000).

If your trust names an additional co-Trustee (such as one of your children), be sure to alert the financial institution to this fact.

You should retitle existing accounts and not transfer funds to new accounts unless your financial institution has a policy requiring new accounts. Although there are some notable exceptions (for example, Chase Bank), most major banks and many smaller banks and credit unions will permit

retitling of existing accounts when (1) the Trustor and existing account owner are the same person, and (2) the trust uses the Social Security number of the Trustor as its tax identification number. If your banker says a new account is required, I suggest you have your banker verify this with management before proceeding. This is an uncommon policy, unless you are attempting to retitle an individual account into a joint trust with co-Trustees. Then a new account would be expected. However, if a new account is required—and you do not want to bother with updating direct deposit or auto-debit settings—then use the alternate approach of naming the trust as the Pay-on-Death beneficiary.

There is no reason to have the name of your trust on your printed checks. If you retitle an existing checking account, you should be able to continue using the same checkbook without any changes to the wording on each check.

Your estate plan includes a memorandum, “Memo to Banks & Credit Unions Regarding Retitling of Personal Cash Accounts into Revocable Living Trust,” which I suggest you share with your banker when attempting to retitle accounts into trust.

Certificates of Deposit

Before you retitle a certificate of deposit (“CD”), consult with a banker to make sure that the financial institution does not consider the change in account name to be an “early withdrawal” that incurs a penalty. Generally, this should not be a problem because your Social Security number and the trust’s tax identification number are the same. If a penalty would apply, then consider waiting to retitle the CD until its scheduled maturity date.

Regular Investment Accounts (taxed each year on interest, dividends, and gains)

If you hold publicly traded securities (stocks, bonds, mutual funds, EFTs, REITs) that are already in a regular investment account, you should reach out to the account custodian and initiate the process of retitling the account into your trust. The procedure for doing so is roughly the same as the procedure for retitling a bank or credit union cash account. The company may require a new account application (to satisfy arcane federal regulations) and ask you to submit a Certification of Trust. Also, a new account number may be necessary due to federal securities law.

If you have a financial advisor assisting you with management of your regular investment account, then reach out to the financial advisor directly to initiate the retitling process. The advisor’s team will usually handle the retitling process for you.

If you find the retitling process unduly burdensome, a simpler alternative is to name your trust as Transfer-on-Death beneficiary. This method will achieve probate avoidance after death, which may be your primary objective. However, you should strive to retitle regular investment accounts whenever possible as this approach is better if you become incapacitated for an extended duration.

Individual Stocks Not Held in a Regular Investment Account

If you own any individual stocks outside a regular investment account—such as shares held directly with a transfer agent (like Computershare) or old paper stock certificates—those assets should also be retitled into your trust. This is done either by working directly with the transfer agent to retitle the shares into your trust or by transferring the shares into a regular investment account with an account custodian (like Fidelity, Schwab, or Vanguard).

Savings Bonds Held in a TreasuryDirect Account

If you hold U.S. savings bonds in a TreasuryDirect account, you will need to update their registration, so the bonds are titled in the name of your trust. TreasuryDirect requires you to open a new account for the trust and then re-issue each bond under the new trust registration. This process is fully online and can take some time.

Digital Currency (crypto)

If you own a substantial amount of digital currency using an exchange, then you can retitle these assets into a new account owned by your living trust. Some exchanges may require you to open a business account.

However, if you hold digital currency using cold storage, then your focus should be on making sure your successor trustee or beneficiary will have access to the wallets, devices, and private access keys that you use now. Because digital currency assets are uniquely vulnerable to being lost forever, careful documentation and periodic review are critical.

Small Business Ownership Interests (LLC, corporation, partnership)

If you own all or a portion of a small business, and the business would likely continue operations after your death, then you should retitle your ownership interest into the trust. This task is usually completed by written assignment and is not difficult unless the bylaws or operating agreement of the company add additional requirements.

If your business is an Arizona limited liability company, you will file an amendment to the Articles of Organization with the Arizona Corporation Commission. The amendment form is freely available on its website and is something you should be able to find, complete, and file on your own. The filing fee is currently \$25. On the amendment form, choose “manager-managed” for the management structure. Name yourself as the manager (or both of you, if married, and both of you are involved in the management of the business) and your trust as the member.

If your business is an Arizona corporation, someone should prepare meeting minutes for the board of directors and shareholders to sign that expressly approves the re-issuance of shares from your individual name to your trust.

If your business is an Arizona partnership, you may need to file an amendment of the partnership records with the Arizona Secretary of State.

If your business is a sole proprietorship, a written assignment that identifies the business is enough.

Promissory Notes

If you have loaned money to someone and the loan is documented by a promissory note, your interest as lender should be assigned to your trust. This is accomplished using a brief written assignment, and you should notify the borrower, so they know future payments belong to the trust.

Tangible Personal Property, High-Value Motor Vehicles, Boats, Airplanes

Tangible personal property includes household furnishings, appliances and fixtures, artwork, motor vehicles, musical instruments, clothing and jewelry, books, sporting goods, firearms, and other hobby items. Except for titled motor vehicles and federally regulated NFA firearms, all of your tangible personal property is transferred to your trust automatically through the written

declaration contained in your trust document. No additional steps are required for untitled personal property.

Your personal motor vehicles may be retitled into your trust by applying for a transfer of title and registration at the motor vehicle department, but most people choose not to. Holding a vehicle in trust can create the appearance of “deep pockets” in the event of an accident, and beneficiaries can usually transfer vehicles after death using a simple affidavit available from the motor vehicle department. However, if the combined equity in your paid-off motor vehicles exceeds \$200,000—the threshold under Arizona law that triggers probate—it becomes important to retitle those vehicles into your trust.

If you still owe money on an auto loan, the lender will not allow you to retitle the vehicle into a trust, so there is no need to ask.

If you decide to retitle your RV, boat, or motor vehicle into your trust, notify your insurance agent so the trust can be added as an additional insured (also called an “endorsee”) on your auto policy. The same recommendation applies to your personal umbrella liability policy, if you have one.

Life Insurance

It is common practice to name your living trust as the primary beneficiary of your life insurance policies, even when the insurance is intended to benefit a surviving spouse. Most insurance companies make their change-of-beneficiary form available on their website. If your policy is provided through your employer, your human resources department can usually supply the correct form. You may list your trust as the primary beneficiary regardless of marital status, and there is no need to name a secondary beneficiary.

Annuities

If you own an annuity with a death benefit pay-out, you should update the beneficiary designation, so your living trust is named as the primary beneficiary. Most annuity companies provide a change-of-beneficiary form on their website, or you can request one directly from your insurance agent. Because annuities often have unique payout options and tax considerations, it is important to follow the company’s instructions carefully when naming your trust. There is generally no need to name a secondary beneficiary once the trust is listed as the primary beneficiary.

Retirement Accounts (IRA, 401k, 403b, etc.)

You cannot retitle a retirement account into your trust. Doing so would trigger a full liquidation of the account and eliminate the income-tax deferral. Instead, you should consider naming your trust as a beneficiary upon your death.

Naming beneficiaries of retirement accounts is a complex topic, and several issues must be evaluated together. If you have significant assets in retirement accounts, you may want to review the separate article on my website—“Decision Tree for Naming Retirement Account Beneficiaries After the SECURE Act”—which provides a structured analysis of when a trust should be named.

Here is a summary of that analysis:

If you are married and intend for your spouse to receive the funds, you will typically name your spouse as the primary beneficiary unless (A) you want to restrict your spouse’s access to the funds, or (B) you need to protect the funds from a clear and present danger such as spendthrift concerns, susceptibility to undue influence, or qualification for government-sponsored health benefits.

These exceptions are uncommon, so most married couples name each other outright and free of trust.

Similarly, if you intend to leave the funds to a non-spouse beneficiary, you will usually name the individual or charity directly unless (A) the beneficiary is a young child (under age 21), (B) the beneficiary faces an identifiable risk such as addiction, disability, or immaturity, or (C) you want to protect the inheritance from future threats such as lawsuits, ex-spouses, or creditors. Even when one of these exceptions applies, it may still be inappropriate to name a trust if the account balance is relatively low. As a general guideline, it is customary to avoid naming a trust if the account holds less than \$100,000 per non-spouse beneficiary.

On the other hand, if one of the above exceptions applies and the retirement account is substantial, then naming your trust as the primary or secondary beneficiary is advisable. For example, you might name your spouse as the primary beneficiary (outright and free of trust) and your trust as the secondary beneficiary to restrict and/or protect the inheritance for your children.

College Savings Plan Accounts (529 plan, etc.)

College savings plan accounts (such as 529 plans) stay in your individual name and are not retitled into your trust. Your main task is to name a successor owner who can manage the account if you pass away. You may also name your trust as the “death beneficiary” if you want any remaining funds to flow into your overall estate plan, but this is optional. Each plan provides its own forms for updating these designations.

Common Mistakes to Avoid

Many people assume their trust is “automatically” funded once it is signed, but several common oversights can unintentionally trigger probate. The most frequent mistakes include opening new bank or investment accounts in your individual name after the trust is created, forgetting to update beneficiary designations on life insurance or retirement accounts, relying solely on Pay-on-Death or Transfer-on-Death designations when long-term incapacity planning is important, and overlooking assets that require special handling such as business interests, mineral rights, or digital currency. Another common issue arises after refinancing a mortgage—title companies often remove the trust from the deed, and clients do not realize the property must be retitled again. A brief annual review of your assets can help ensure everything remains properly aligned with your trust.

About the Author

Thomas J. Bouman provides legal counsel in the areas of estate planning, estate settlement, and asset protection. He brings a highly systematic approach to the practice of law, which is critically important when wading through the complex, and often bizarre, legal requirements associated with estate and trust law. Mr. Bouman is author of the Arizona Estate Administration Answer Book and a prominent member of Wealth Counsel, LLC, the nation’s premiere organization of estate planning attorneys.