

BOUMAN LAW FIRM

ESTATE PLANNING & INHERITANCE PROTECTION

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What You Should Know About Living Trust Funding

1. What is Trust Funding?

Funding is the term used to describe how a trust acquires ownership or control of an asset. There are many types of trusts and many benefits of establishing them, but a trust must be funded properly to make it work. An unfunded or partially funded trust does not achieve its objectives.

There are two methods of funding assets into a trust, depending on the type of asset:

- Ownership changes
Many assets will be funded by changing the title from individual name to the name of the trustee. For example, a bank account would be retitled to show ownership as *Thomas J. Bouman, Trustee of the Thomas J. Bouman Living Trust*.
- Beneficiary changes
Other assets, such as retirement accounts, life insurance, annuities, and some real estate, may be funded by naming the trust as beneficiary effective upon the death of the owner.

2. How is real estate transferred into trust?

Real estate is usually transferred into trust by recording a new deed in the county where the property is located. This process involves obtaining a copy of the existing deed – referred to as a current vesting deed – and then recording a new deed in its place. Each state and county has its own rules and preferences for what information must be included on the deed and how it must be signed and recorded. It is critical to avoid errors when retitling real estate because even a minor typo can create problems many years later.

When real estate is transferred into trust, it is customary to inform the homeowner's insurance company so it can add the trust as an additional insured to the insurance policy (aka endorsement). It is also worth considering whether to notify the lender before mortgaged investment property is transferred into trust. Failure to do so may trigger a due-on-transfer clause in the mortgage document. However, a primary residence is exempt from this requirement.

3. What about bank accounts and non-retirement investment accounts?

Bank and credit union accounts, CDs, and other investments not held in tax-advantaged retirement accounts should be retitled into the name of the trust. This usually requires submitting new account documentation to the financial institution and providing evidence the trust exists.

Arizona law permits the use of a Certification of Trust as a substitute for delivering a copy of the entire trust document to the financial institution. This document includes only the essential information without sharing any confidential information about the beneficiaries of the trust. Many financial institutions have their own form of Certification of Trust.

If the person who established the trust is also acting as trustee of the trust, a separate employer identification number is unnecessary for a revocable living trust. The trust should simply use the trustor's social security number. Any income earned will be taxed to the trustor personally and reported on IRS Form 1040.

4. What about business interests?

If stock in a corporation is to be transferred into trust, the shareholder's existing certificates should be cancelled and issued in the name of the trust. Likewise, if LLC membership interests are to be transferred, an assignment should be completed to reflect the change. All corporate transfers should be accompanied by formal authorization from the shareholders and board of directors. All LLC transfers should be evidenced by an amendment to the Articles of Organization with the Arizona Corporation Commission.

5. What about cars, RVs, and mobile homes?

Cars, RVs, and mobile homes in Arizona may be transferred into trust by obtaining a new title from the Motor Vehicle Department, but only if no lienholder exists. It is customary to notify the auto insurance company to add the trust as an additional insured to the policy (aka endorsement).

6. What about retirement plans and life insurance?

A life insurance policy may be funded by naming the trust as the beneficiary on a beneficiary designation form supplied by the insurance company. The exception is for policies to be owned by an irrevocable life insurance trust, for which ownership of the policy must be in the name of the trust. Tax-advantaged retirement accounts may also name a trust as beneficiary, but this should only be done if the trust is SECURE Act compliant and would qualify as a "designated beneficiary" under IRS tax regulations.

7. What about personal effects?

Personal effects, household furnishings, jewelry, handguns, and the like, are funded into trust by written assignments. Since they do not have titles or deeds, there is no need to record the assignment anywhere.

About the Author

Thomas J. Bouman focuses his practice on estate planning and inheritance 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 the author of the Arizona Estate Administration Answer Book and a prominent member of WealthCounsel, the nation's premiere organization of estate planning attorneys.