FUNDING YOUR REVOCABLE LIVING TRUST
STRATEGY AND PRINCIPLES

Introduction

Many people choose a Revocable Living Trust as their primary estate planning tool, rather than relying too heavily on a Will or joint ownership. When used properly, a Revocable Living Trust avoids probate, generates costs savings, and grants added control over personal assets.

A properly funded Revocable Living Trust enables you to provide for your spouse while protecting inheritances for children and grandchildren from the courts, creditors, spouses, and irresponsible spending.

If you want to accomplish these goals, you must properly fund your Trust.

Q&A

1. What is meant by "funding" my Trust?

Funding your Trust means transferring your assets from you (or property owned by you and another – such as your spouse) to your Trust. You will also change most beneficiary designations to your trustee.

2. Will transfers to my Trust cause me to lose control of my Property?

In a word, no. You can appoint yourself as the initial Trustee and retain control of your Trust property as long as you are alive and legally competent.

3. Who controls the assets in my trust?

While you are the Trustee, you do. You will also name successors to your Trust – your spouse, partner, adult children or other trusted individuals – who will control the disposition of your property when you are no longer available to do so.

4. Can I add or remove Property from the Trust?

Yes. You can continue to buy and sell property just as you do now. While you are Trustee, you can add and remove property from the Trust whenever you want.

5. Why is funding my trust so important?

Your Revocable Living Trust can only control the assets you put into it. If you have signed your Living Trust document but haven't changed titles and beneficiary designations, your heirs will not avoid probate. You may have a great trust, but you haven't made that Trust useful until it is fully funded.

6. What happens if I forget to transfer an asset to my Trust?

Unfortunately, in nearly every case you will have to probate the assets you forgot to fund to your Trust. This is particularly true for real estate, other titled assets and accounts.

7. Who is responsible for funding my trust?

You are. The professionals at Lambert & Lambert PLC can assist you in this effort, particularly as to your accounts and real estate.

8. What will Lambert & Lambert PLC do?

When you retain Lambert & Lambert PLC specifically for funding your Trust, we will (a) prepare and deliver the documents necessary to transfer your real estate and titled assets as you request, and (b) advise you as to the necessary steps to transfer other assets (such as your accounts) for which custom documents are unnecessary.

9. Is it difficult to fund my Trust?

No single transfer will be all that difficult; the challenge comes from the necessary attention to detail and the number of your assets. Because living trusts are now so widely used, you should meet with little or no resistance when transferring your assets. For some assets, a short assignment document will be used. Others will require written instructions from you.

10. What will I need to fund my Trust?

Some institutions (usually banks) require proof that your Trust exists. Our typical estate plan package includes a “Certificate of Trust." This is a shortened version of your Trust that verifies your Trust's existence, and gives the recipients the information they need to allow or make the transfer. The Certificate of Trust does not, however, reveal any information about your assets, your beneficiaries and their inheritances.

11. Which assets should I transfer to my Trust?

The general rule is that all of your assets should be in your Trust. We provide a general guide at the end of this Q & A, so you can take a look there.

12. What assets should not be funded to my Trust?

A list of assets that generally should not be funded to your Trust is provided at the end of this Q & A. Aside from that list, you may have personal or legal reasons for not including some of your assets in the Trust. For example, due to your personal circumstances, transferring certain types of property to your Trust may expose you to added or unnecessary exposure to legal liability. For example, a proposed transfer may violate a contractual or legal requirement. Better safe than sorry – if you have any doubts, you should contact us.

13. Will funding my real estate into my Trust cause any problems?

Not usually, but there are some potential sore spots:

A. Refinancing - many lending institutions require that your mortgage be in your personal name, which can create an annoying but minor inconvenience.

B. Due on sale clauses – mortgagees can get testy about this, but Federal law prohibits enforcement of a due on sale clause against a transfer to a Revocable Trust where the Grantor owns the single family house and is the beneficiary. You should discuss the matter with your lender before you change the title.

C. There should be no effect on your property taxes because the transfer does not cause your property to be reappraised.

D. Make sure your homeowners, liability and title insurance are all changed to reflect your trustee as the new owner.

14. What about out-of-state property?

We cannot offer any summary of rules on real estate not located in Michigan or property subject to other states' laws. Such property will have to be addressed on a case-by-case basis.

15. Are there any tax consequences?

There can be in certain circumstances, particularly for large estates and when you designate your Trust as the owner or beneficiary of your retirement assets, annuities, and IRAs. Careful planning with your attorney and advisors is necessary here.

Assets You Probably Want Titled in Your Living Trust

- Real property (home, land, other real estate)
- Bank accounts, credit union accounts, safe deposit boxes
- Investments (e.g., CDs, stocks, and mutual funds)
- Notes payable (money owed to you)
- Business interests
- Intellectual property
- Oil and gas interests, foreign assets
- Clothing, furniture, and other household goods

Assets You May Not Want in Your Living Trust

- IRA and other tax-deferred retirement accounts
- Incentive stock options
- Section 1244 stock
- Interests in professional corporations
- Cars and Boats
- Transfers causing a taxable capital gain

Caution: This article provides general information and is not intended to be legal advice. Your personal circumstances may require you to undertake actions other than those discussed in this article. When in doubt, you should contact Lambert & Lambert PLC or an advisor who handles your personal affairs.