

Funding a Trust – So You Created a Revocable Trust...Now What



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Key Takeaways:

- Funding a revocable trust is what makes it work, because under New York law, a trust controls only the assets actually transferred into it.
- Knowing how to fund a revocable trust means handling each asset correctly, from recording a deed to transfer a house to the trust to executing bills of sales or assignments for personal property.
- A trust doesn't avoid probate if it's never funded, so funding should be an ongoing process. Many people do not realize that executing your revocable trust document does not complete the estate plan. A revocable trust only controls the assets that have been transferred into the name of the trust. This process is called "funding" the trust. If the trust is never funded, it may not do much at all.

How to Fund a Revocable Trust Under New York Law

New York law is clear on these points. Under Section 7-1.18 of the New York Estates, Powers and Trusts Law, a lifetime trust is valid as to its assets only “to the extent the assets have been transferred to the trust.” The statute also says that simply stating in the trust document that you are transferring or holding property in trust is not enough. If you serve as your own trustee, as most people with revocable trusts do, the law spells out what a transfer requires. For assets that can be registered, such as real estate, stocks, bonds, and bank and brokerage accounts, a deed must be recorded, or the asset must be re-registered in the name of the trust. For other assets, you need a written assignment that describes the property “with particularity”. Put simply, the paperwork has to match the plan.

For most people, their residence is one of the primary assets to transfer. To transfer a New York residence into a trust, a new deed must be prepared that conveys the property from you, as the individual owner, to yourself as trustee of your trust. That deed is then recorded with the county clerk, along with the required state and local transfer tax and real property transfer forms. A properly drafted deed must meet New York’s legal requirements, which include correctly identifying the grantor and grantee, the consideration (payment), and a granting clause. Before you transfer the house, it is also wise to confirm a few things: that any property tax exemptions, such as STAR or senior exemptions, will continue; that your homeowner’s insurance policy is updated to name the trust as an additional insured; and that your title insurance coverage carries over. Obtaining the consent of your mortgage lender for the transfer to your trust is also good practice, as it could be viewed as a triggering event requiring the satisfaction of your mortgage loan. Cooperative apartments work differently, as title rights rest in stock in a corporation rather than a recorded deed. Transferring cooperative stock and assigning the proprietary lease to the residence associated with the stock ownership requires the co-op board’s consent, which usually involves the Board’s counsel, sometimes a title update and bonding, and an assignment of the shares and the proprietary lease. The retitling of the co-op stock process could add thousands of dollars to the trust-based estate plan, but the cost may be worth the contemplated reasons why you desired to avoid probate. As such, it is wise to start that conversation early.

How to Fund a Revocable Living Trust With Other Assets

Bank and brokerage accounts are usually simple to fund into the trust. Each institution has its own forms to open a new account in the name of the trust, and the institution will often ask for a copy or a certification of the trust. You can also name the trust as the payable-on-death or transfer-on-death beneficiary of an account. These options should be coordinated with your attorney so that every account ends up where you intend.

Personal property, such as jewelry, artwork, furniture, collectibles, and other household items, generally has no title document. For these items, New York law calls for a written assignment or a bill of sale that transfers the assets and describes the assets with particularity. Vehicles are often handled differently and require involving the DMV; it is worth discussing transferring vehicles with your attorney more in-depth. Interests in businesses, such as LLC membership interests or shares in a closely held corporation, usually require a transfer document that will retitle the membership interests or stock ownership and may require consent under the company’s operating agreement or shareholders’ agreement. Sometimes, such transfers to a trust may be prohibited by these underlying ownership agreements or by the lenders of any credit facilities extended in favor of such businesses.

Some assets should generally not be re-titled into a revocable trust. Qualified retirement accounts, such as IRAs and 401(k)s, cannot be transferred to a trust during your lifetime, so the usual approach is to review and update the

beneficiary designations instead. Whether the trust should be named as a beneficiary depends on your goals and the tax rules. Life insurance and annuities are also handled through beneficiary designations, and the trust may or may not be the right beneficiary.

Does a Trust Avoid Probate If It Is Never Funded?

Any asset that stays in your individual name at your death, with no joint owner or beneficiary designation, will generally have to pass through probate, which is what many people create a trust to avoid. Most well-designed trust plans include a “pour-over” Will, which directs that any assets left outside the trust be added to it after death. However, a pour-over Will still has to be probated, so those assets do not avoid the court process. Real estate in particular can create problems. If a person dies owning real estate in their name alone, the estate will no longer qualify for New York's simplified small estate procedure, which is limited to estates with \$50,000 or less in personal property, and a full probate or administration proceeding will generally be required. An unfunded trust also offers little help if you become incapacitated. Your successor trustee can manage only the assets that are actually in the trust, so your family may need to rely on a power of attorney or, in some cases, a court-appointed guardian for everything else.

Funding is not a one-time event. Whenever you buy a new home, open a new account, or acquire a significant asset, consider whether it should be titled in the name of the trust. It is also a good idea to review your assets and beneficiary designations every few years, and after major life events such as a marriage, divorce, death in the family, or move to another state.

If you're wondering how to avoid probate, a revocable trust can be a helpful tool for keeping your affairs private, and planning for incapacity, but only if it is properly created and funded. Taking the time now to re-title your home, accounts, and other property will help ensure that your plan works as intended. If you have signed a trust but are unsure whether it has been funded, or you would like help with the transfer process, our trusts and estates and estate planning attorneys at Lippes Mathias LLP are here to help.

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