

H O G E ■ F E N T O N

**SO YOU SIGNED YOUR TRUST— WHAT
NOW?**

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ESTATES & TRUSTS

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Perhaps the ink is drying on your newly-signed revocable living trust (“trust”), or perhaps you executed your trust a number of years ago. Your estate planning attorney, when sending you off with your documents in hand, no doubt provided you with instructions on completing the funding of your trust. Why go through the hassle of funding your trust? Because it is required, and without doing so, you will likely lose the primary impact of establishing a trust in the first place.

In general, funding your trust involves changing title on those assets that you intend to be controlled by the terms of the trust into your name as trustee of your trust. Simply assigning your assets to your trust on a Schedule A or Schedule of Transferred Assets, or other similar document reflecting your

intent to transfer assets to your trust, is insufficient to complete the transfer of title. If your assets are not funded into the trust, then the trust terms do not apply to those assets.

Funding your trust will make it easier for your successor trustee to take the reins to access and manage those assets in the event of your incapacity or death. Furthermore, funding your trust will avoid the probate of such assets on your death.

Even if you executed your trust a number of years ago, it is important to check the title on your assets to confirm that you have properly titled your assets in your name as trustee of your trust. Below is a list of assets that generally should be transferred to your trust:

1. Real property;
2. Business interests, including sole proprietorships, partnerships, LLC member interests, stock in a closely-held business, stock in a corporation, etc.;
3. Financial accounts, including stocks and bonds, non-retirement brokerage and mutual funds accounts, money market accounts, cash, checking and savings accounts, and certificates of deposit.

Some assets cannot be transferred to a trust during a person's lifetime, such as qualified pension plans or shares in a professional corporation. Other assets (such as individual retirement accounts) cannot be transferred to a trust because doing so would trigger a tax liability or would have some other negative consequence. Nevertheless, these assets need attention too. For beneficiary designated assets such as retirement accounts and life insurance policies, have you designated a primary beneficiary, as well as a secondary beneficiary, in the event that your primary beneficiary predeceases you? It is advisable to consult with your estate planning attorney about the beneficiary designations on these assets so that you can coordinate the beneficiary designations with your overall testamentary wishes. It is also important that you first speak with an attorney before naming a minor or a revocable living trust as a beneficiary on an IRA, 401(k), or similar retirement account due to the particular federal laws applying to such assets.

The drafting attorney will generally prepare and have you sign the deed(s) transferring your California-based real property(ies) into the trust at the time you execute your estate planning documents. However, if you have acquired California real property since executing your trust, then you should confirm that you indeed took title in your name as trustee of your trust.

If you own out-of-state real property, it is advisable that you consult with local counsel to confirm that the transfer to the trust is permissible under that state's law and to be sure that there are no differences with that state's law that might cause a problem when administering that asset. Transferring out-of-state real property into the trust can be particularly valuable because it can possibly avoid an otherwise requisite ancillary probate in that state. Local counsel in that state should advise you in that regard, and they should prepare the necessary deed and corresponding documents.

If you have a business interest (e.g., a member interest in an LLC, stock in a closely-held business, etc.), it is important to consult counsel about transferring your interest to the trust. Generally, this involves reviewing the governing documents and the preparation of an assignment to the trust.

Failing to properly fund your trust may result in a probate of your estate costing your estate unintended costs and time, both of which could be significant. Similarly, if you assigned your assets to your trust but did not actually transfer title, then later, upon your incapacity or death, a petition to the court will need to be made to request a judicial determination that specified assets are indeed part of the trust even though title on those assets stated otherwise. While funding your trust may take some time and energy now, it is a worthwhile exercise to spare the successor trustee of your trust, as well as your beneficiaries, the potential delay, cost, and frustration of court proceedings.

If you have questions about funding your trust, or need assistance in transferring a particular asset to your trust, the estate planning attorneys at Hoge Fenton can work with you to help avoid an unplanned probate or court proceeding following your death.

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