

The Estate Planning Advisor

The Importance of Funding Your Trust

By Richard J. Shapiro, J.D.

Revocable living trusts are powerful estate planning tools. They permit a person to provide detailed instructions to hand-selected “helpers” in the event of the “Trustmaker’s” mental incapacity, and allow for the after-death disposition of assets to the Trustmaker’s beneficiaries in the manner of the Trustmaker’s choosing.

But revocable living trusts are only truly effective if the Trustmaker, with the assistance of his or her professional advisors, actually accomplishes the “funding” of the trust. Funding a trust is simply the act of transferring title to the assets from the individual Trustmaker’s name (or from a Trustmaker and spouse in the case of a joint account) into the name of the Trustees. Funding is not a difficult task, but it can require tremendous detail and persistence. It requires the Trustmaker to notify all of his or her financial institutions in writing of the proposed change. Many times follow-up communication is required to ensure that proper titling takes place.

Be aware that the new name on the account should not be as the “John Doe Living Trust.” Instead, title should be held by the Trustee(s) in their fiduciary capacity, as follows: “John Doe, Trustee, or his successors in trust, under the John Doe Living Trust, dated June 1, 2005, and any amendments thereto.”

Special care must be given for funding certain assets, such as real property, life insurance policies, IRA’s and other retirement assets. Retirement assets should never be owned by a trust, since a change of ownership will be deemed a distribution of the assets and cause the retirement account to be fully taxable. Instead, the trust may be named as either a primary or contingent beneficiary of the retirement account to provide maximum after-death flexibility.

If you have an existing living trust, you should periodically review whether the trust is properly funded. If you are thinking of establishing a living trust, make sure to work with an attorney who is committed to the funding process so that all of your planning goals can be achieved.

Richard J. Shapiro is a partner with the Middletown law firm of Blustein, Shapiro & Rich, LLP. Mr. Shapiro is a member of the National Network of Estate Planning Attorneys, the National Academy of Elder Law Attorneys, the New York State Bar Association (Trusts and Estates and Elder Law Sections), and the Hudson Valley Estate Planning Council. He can be reached at (845) 692-0011 or at rshapiro@mid-hudsonlaw.com. The information in this article is for general information purposes only and is not, nor is it intended to be, legal advice.