

Transferring Assets into Trust: A Practical Guide



Introduction

You and your attorney have determined the type of trust you need and the trust document has been executed. For those assets that have been earmarked to go in trust, it is important to transfer the assets in a timely manner and not wait or put off the task. An unfunded trust could cause confusion amongst your loved ones at your death and the estate tax consequences you wanted to mitigate may not be available.

Overview

Asset Transfer Details

Financial Accounts

This includes Cash accounts, Brokerage Accounts, and Money Market Accounts

Clients should reach out to the institution holding the assets (bank, broker dealer, etc.) to learn about the process and paperwork required to transfer ownership to the Trust. The paperwork might include a *Transfer Request* form or *Change of Ownership* form. You may also need to provide a copy of the trust agreement or a *Certificate of Trust*. Finally, for brokerage firms it is a common requirement to provide a *Letter of Instruction*. If your bank account has an accompanying safe deposit box, do not forget to include those in the transfer, too.

Life Insurance Policies

Life insurance companies, like other financial institutions have processes and paperwork in place for transfer of ownership to a Trust.

The paperwork might include a *Transfer Request* form or *Change of Ownership* form. You may also need to provide a copy of the trust agreement or a *Certificate of Trust*.

The transfer of a life insurance policy to another person or entity should be made with an awareness of the Transfer for Value rules for life insurance policies. If the transfer from one person to another does not fall within an exception it becomes a taxable event. See the concept piece *Transfers for Value* at:

<https://www.today.newyorklife.com/agencyportal/servlet.shepherd/document/download/0693g00000G4YRuAAN>.

Real Property

No Mortgage: If there is no mortgage on the property, a new deed of conveyance needs to be prepared, signed and notarized. Typically, this would be a General Warranty deed or a Special Warranty deed. After the deed has been executed, the executed deed needs to be recorded at the county property records office, where the property is located.

Mortgaged Property: Determine whether permission is needed to make the transfer from the institution holding the mortgage. Changing



ownership may trigger repayment of the entire loan. If the property is part of a homeowner's association, they may also need to grant permission for the transfer. Once those issues have been resolved, follow the same steps above.

Contact your property insurance agent or broker to ensure the trust is added as an additional insured.

Business Interests

Partnership Interests and LLCs

First: Review the partnership agreement or LLC Operating Agreement to ensure there are no restrictions on transferring interests to a trust. Some agreements may require consent from other partners/LLC Members or have specific procedures for transfer.

Second: Draft and execute an *Assignment of Interest*, a document that formally states the transfer of your interest to the trust.

Third: If required by the partnership agreement or LLC Operating Agreement, notify your partners of the transfer. The required notice may include providing a copy of the assignment instrument.

Finally, ensure that the Partnership or LLC updates its official records to reflect the new ownership by the trust.

Corporations

First: Check the corporation's bylaws for any specific procedures or restrictions regarding the transfer of ownership interests to a trust.

Second: Complete the necessary documentation to assign the corporate stock to the trust. This often involves an "Assignment of Stock" form.

Third: Contact the corporation and inform them of the transfer. They will typically require you to provide the trust's name, address, and other relevant information. They may also have its' own set of transfer documents for internal records for recording the transfer. If you hold physical stock or bond certificates, these must be reissued in the name of the trust. The corporation will issue new stock certificates.

Sole Proprietorship

A sole proprietorship is a business form that is owned and operated by an individual and there is no legal distinction between the owner and the business. As a result, if you would like to transfer the business to the trust, you will not be transferring a business entity, but rather transferring the business assets, such as bank accounts, business inventory and equipment or any other assets used in the business.

You will need to draft and execute an "Assignment of Interest" that clearly outlines which assets you're transferring to the trust.

NOTE: If an S Corporation interest is held in trust, it must be transferred to an individual within a 2-year period or else the S Corporation status will be lost/forfeited.

Oil, Gas and Mineral Interests

First: Similar to real property, one needs to draft a deed of conveyance, conveying the interest to the trust.

Second: Once finalized and executed, the document needs to be recorded in the county where the mineral rights are located. **Third:** Finally, it's important to notify the Operator (Oil well operator) by providing them with a copy of the recorded document *as recognized and recorded* by the county office and request an ownership transfer.

Qualified Accounts

During your lifetime it is not recommended that you transfer your IRA, 401(k) or other qualified account to a trust. The IRS considers this an outright distribution, and it has severe tax consequences.

If you are considering naming beneficiaries of your qualified account at death, you have options.

One option is to name your loved one as a beneficiary of your account. At your death, the account will remain open with the same administrator and distributions will begin at the appropriate time to your named beneficiary.

Another option is to name a trust as beneficiary. These trusts are often referred to as "see through trusts. As an overview, the trust will be disregarded, and the individual beneficiaries of the trust will be recognized as the designated beneficiaries of the qualified account. There are strict rules that define a trust as a "see through trust". One should seek professional advice if considering this option.

Tangible Personal Property

Examples of tangible personal property include, but is not limited to, jewelry, art, collectibles, furniture and classic or high value vehicles. Generally, one needs to execute an *Assignment of Ownership* document which transfers the items to the trust. In some cases, you might want to create a separate trust schedule listing the personal items. When deciding which assets to transfer to trust, keep in mind those assets that you would not want to go into trust for simplicities sake. For example, your everyday use vehicles or a checking account that is used for daily household expenses. From a practical standpoint, transferring those out of trust may

be more time consuming when their need may be immediate.

Transfer Tax Implications

Revocable Trust: A revocable trust is one that you can modify or revoke it at any time during your lifetime. The Grantor can add assets and remove assets in and out of trust.

Tax Transfer implications: Transfers to revocable trusts typically don't trigger immediate tax consequences since the trust is considered an extension of the grantor.

Irrevocable Trust: Unlike a revocable trust, an Irrevocable trust generally cannot be amended or revoked. It also requires its own tax identification number (EIN).

Transfer tax implications: Transfers to irrevocable trusts may have gift tax consequences. The annual exclusion amount for 2026 is \$19,000 per donee. Based on the number of beneficiaries of your trust, this can be impactful.

For 2026, the applicable lifetime exclusion for federal estate tax purposes is \$15,000,000 per person. Most large gifts are reportable on the IRS form 709.

Conclusion

After properly transferring assets into trust, ensure you keep all documentation of each transfer for your records. Depending on the state where you live, there may be other requirements associated with asset transfers into a trust. We encourage you to engage a local legal advisor to ensure all appropriate steps are taken in transferring assets and to advise you on the tax implications of such transfers.