



TRANSFERRING ASSETS MEMO

Guidelines for "Funding" a Trust

By Layne T. Rushforth

A. Funding a Trust: Your Trust is of limited value until assets are owned by that Trust. The process of transferring assets to a Trust is called "funding" the Trust. To be subject to the Trust, assets are (1) owned by the Trustee, or (2) owned in the name of the Trust (with or without mention of a specific Trustee) or (3) payable to the Trust or its Trustee as a beneficiary (such as life insurance and other death benefits). Several common methods of owning assets are discussed in this memo.

B. Financial Accounts: Existing financial accounts are transferred as the financial institution directs, usually by making a notation on your signature card or by making a new signature card or by opening one or more new accounts. Contact each bank or other financial institution to determine the procedure it requires.

B.1 The ownership designation for each account is usually worded something like "*<Name of Trustee>, Trustee of the '*<NAME OF TRUST>' dated <Date of Trust>.*" The bank will usually want a copy of your "Certification of Trust."*

B.2 The tax identification number (your social security number) will not change.

B.3 It is normally unnecessary to change account numbers or to include a reference to the Trust or to the Trustee on checks, deposits, and withdrawal slips.

B.4 If a credit union or other financial institution does not permit living Trusts to own accounts, the Trust can be designated as the beneficiary of the account, such as "*<Name of Trustee>, ITF the <NAME OF TRUST> dated <Date of Trust>.*" "ITF" is an abbreviation for "in trust for." Sometimes "POD" (pay on death) or "TOD" (transfer on death) is used instead of "ITF."

C. Certificates of Deposit: These are like other financial accounts, and usually title can be changed without incurring an early withdrawal penalty. If an early withdrawal penalty would otherwise be incurred, you may wish to defer the change until the certificate matures. Certificates of deposit should be listed on a Trust schedule or supplemental Trust schedule, especially if they are not owned in the name of the Trust or its Trustee. Even if a certificate is listed on a trust schedule, until the banks records have been changed to show the trust as owner, arrange with the bank to list the trust as the beneficiary under a pay-on-death designation.

D. Securities Accounts: A securities broker can transfer a securities brokerage account to the Trustee's name. The broker will have each owner of the account sign a completed form or a letter of instructions directing the transfer.

D.1 It is common to own a securities account in the name of "*<Name of Trustee>, Trustee under agreement dated <Date of Trust>.*"

D.2 Abbreviations are frequently used. A new account number will probably be required, and the broker may request a copy of all or part of your Trust or of the Certification of Trust.

D.3 **Securities:** Stocks and bonds (other than bearer bonds) can be transferred to a Trust by placing them into a securities account in the name of the Trustee. If actual certificates are preferred, you should:

D.4 Endorse each certificate or sign a separate stock power transferring the stock or bond to the Trustee. Each signature must be guaranteed (not notarized) by an officer of a commercial bank. Before you do this, you should verify with the issuing company or its stock transfer agent the type of signature guarantee that is required. For example, if a Gold Medallion Signature Guarantee is required, you will need to go to a bank or broker that has qualified to issue that type of signature guarantee.

D.5 Send, by registered mail or by an insured carrier with tracking capability, the certificate and any related stock power to the stock transfer agent, which is usually named on the certificate itself. To avoid having the certificate and stock power fall into the wrong hands, it is safer to send them in separate envelopes.

D.6 A stockbroker can also assist with securities transfers, usually for no charge or for a nominal fee. Our office can also help, but you will be billed at our standard hourly rates for the time expended by attorneys and legal assistants, as well as for any transaction fees.

E. Life Insurance Policies: The Trust should be designated as the primary beneficiary of any insurance policy (unless there is a separate irrevocable life insurance Trust). Contact your insurance agent to see that the change is formally made. Some companies require that the original policy be sent in to have the change affixed to the policy itself. Comply with each company's requirements, since a beneficiary change is usually not effective until it is accepted by the insurance company. Your trust should also be the owner of any policy having a cash value, and you will need to obtain a "transfer-of-ownership" or "assignment" form for each policy from your agent(s).

F. Retirement Plans; Other Death Benefits: If you want the survivor to benefit from IRA's, 401(k)'s, 403(b)'s, KEOGH's, tax-deferred annuities, pension plans, simplified employee pension plans, and other retirement plans, the account holder's spouse is usually designated as the primary beneficiary, and the Trust is named as contingent beneficiary; however, this may prematurely trigger income taxes after the survivor's death. For those who want the Trust's beneficiaries (and not a spouse) to receive those benefits, the Trust can be designated as the primary beneficiary of such benefits, but, again, this may not be the optimal income tax planning.¹ If one or more qualified charities are designated as the beneficiary of retirement funds and tax-deferred annuities, such charities will receive the full amount, undiminished by federal income or estate taxes. You need to consult with your accountant or us to discuss all of your options. Each bank, broker, or other institution has its own beneficiary designation forms, which you should obtain, complete, and submit once you decide how you want to proceed.

G. Nevada and Utah Real Property: A deed must be prepared and recorded for each parcel of real property and for each trust deed secured by real property.

G.1 The type of deed used to transfer title to the Trustee should be the same type of deed that was used to give you title. In other words, if the property was transferred

¹ **Error! Main Document Only.** A discussion of "stretch IRAs" and beneficiary designations for retirement plans in general is found at <https://rushforthfirm.info/ira-beneficiaries.html>. If you want a trust beneficiary to receive retirement funds over his or her life expectancy, language can be included in the trust that makes it a "qualified beneficiary" for that purpose; however, make sure that your trust contains that language before making the beneficiary designation.

to you by a "Warranty Deed" or "Grant, Bargain, Sale Deed," then you should NOT use a "Quitclaim Deed."

G.2 If requested, we will have each original deed recorded with the appropriate county recorder, and we will bill you for: recording fees, runner charges (for deeds in Clark County, Nevada); any transfer taxes or document stamps; and the time to complete a transfer tax form or prepare related correspondence as required to record the deed.

H. Out-of-State Real Property. We will not prepare deeds or related documents for real property located in states in which we are not licensed to practice law. To assure a proper transfer of out-of-state real property, you must retain an attorney from each state in which real property is located to prepare the deed(s) and related documents, such as transfer tax declarations.

H.1 We can assist you with contacting a Fellow of the American College of Trust and Estate Counsel (ACTEC), or you can look up an ACTEC Fellow at <https://www.actec.org/fellows/directory/>. The fees and costs charged by the out-of-state attorney or law firm will be in addition to the fees and costs you have agreed to pay us.

H.2 If you prefer to avoid paying attorney's fees, you may wish to contact a deed-preparation service. We do not endorse or guarantee the services of any deed-preparation service, but two of them are:

- (a) Smartdeeds at 866-955-5400 or at <http://www.smartdeeds.com>;
- and
- (b) uDeed at (866) 486-5500 or at <http://udeed.com/>.

I. Title Insurance; Property and Casualty Insurance. The transfer of real property to a trust can affect the existing policies of title insurance and property and casualty insurance (including homeowners' insurance). Insurance benefits may be lost unless you contact each title insurance company and each property and casualty insurance company to ascertain the need for additional endorsements or riders (such as title insurance endorsement 107.9 for living trusts) to continue or obtain the insurance coverage that you determine is appropriate. Be sure to ask how your policies are affected when a successor trustee assumes control of the trust upon your resignation, incapacity, or death.

J. Encumbered Property. Some mortgages and trust deeds have a due-on-transfer clause that may allow the financial institution or other holder of a note secured by a mortgage or trust deed to demand payment in full when the property that secures the note is transferred. You may wish to contact the lender (or its successor-in-interest) to find out what its policy is. Your trust qualifies under the Garn-St Germain Depository Institutions Act², which is a federal law that provides exceptions to "due-on-transfer" clauses in mortgages and trust deeds. The regulations promulgated under that Act provide that the due-on-transfer provision cannot be triggered by "a transfer into an inter vivos trust in which the borrower is a and remains the beneficiary and occupant of the property, unless, as a condition precedent to such transfer, the borrower refuses to provide the lender with reasonable means acceptable to the lender by which the lender will be assured of timely notice of any subsequent transfer of the beneficial interest or

² **Error! Main Document Only.** 12 U.S.C. 1701j-3(a)(2).

change in occupancy."³ If you are not going to occupy the property (such as in the case of a rental property), this except does not apply, and you must contact your lender before the deed conveying the property to your trust is recorded.

K. U.S. Savings Bonds: Savings bonds are transferred by completing the appropriate form.⁴ Because some savings bonds cannot be transferred to a Trust without triggering income tax liability on the accrued income, do not transfer bonds without first talking to your accountant.

L. Business Interests: Business interests in closely held corporations, general and limited partnerships, and limited-liability companies are transferred subject to the provisions of the law and of all governing documents, such as articles of incorporation, partnership agreements, bylaws, articles of organization and operating agreements, management contracts, and buy-sell agreements.

L.1 Closely held corporations are transferred by surrendering the existing stock certificate(s) and having one or more new certificates issued in the name of the Trust. Partnerships and other businesses owned solely by the Settlers usually only require an "assignment" of the interest, and sometimes the Trust schedule is sufficient. In any event, all relevant business documents must be reviewed to make sure that all formal requirements are satisfied and that transfer restrictions are not violated. Write the company or company's representative in charge of ownership transfers and ask them to send you (1) the company's procedures and requirements for transferring the ownership to the trustee(s) of a trust and (2) any required change-of-ownership form that needs to be submitted. The assets of a business should belong to the business entity and not to the trust (except, perhaps, if the business is operated as a sole proprietorship in the name of an individual).

L.2 Business property should not be transferred to the trust. The title to all business assets should be in the name of the business.

M. Vehicles, Boats, and Mobile Homes: With respect to vehicles, there is a potential conflict between having the vehicles in the trust and having the vehicles properly insured.

M.1 At a minimum, we recommend that you sign a written "assignment" of your vehicles, boats, and mobile homes to the trust. If your vehicles, boats, and mobile homes are listed on one or more trust schedules — such as the supplemental trust schedule form provided — that are prepared as notarized assignment documents, an additional assignment is not required. Your successor trustee should be able to use the notarized schedule at the Department of Motor Vehicles to assume ownership of the Trust.

M.2 To be absolutely sure the vehicle ownership by the trust is officially recognized, vehicles owned free of liens should be transferred by completing the reverse side of the certificate of title and by sending it with the appropriate fee to the department which issues title certificates for the type of vehicle involved.

³ 12 C.F.R. Ch. 591.5(b)(1)(vi).

⁴ See https://www.treasurydirect.gov/indiv/planning/plan_estate_trustform_reissue.htm for details.

(a) Subject to the provisions of subsection K.3, consider having your name and the trust as joint owners with “OR” checked between the names. The first name listed should be the first name listed on any related insurance policy.

(b) In Nevada, cars and trucks are registered through DMV, Registration Division, 555 Wright Way, Carson City, NV 89117, boats are registered through the Department of Wildlife, and mobile homes are registered through the Department of Manufactured Housing. You will need to consult each agency for their current policies regarding the documents and fees required to make an ownership transfer to a trust. For assets registered in states other than Nevada, you should consult out-of-state counsel.

M.3 Before you officially change the title to any vehicle and before you purchase a vehicle in the name of a trust, we recommend that you contact the insurance company that insures the vehicle to determine how a transfer to the trust will affect the insurance policy. To avoid penalties associated with having an uninsured vehicle, we generally recommend that the name on the title to the vehicle matches the name on the proof-of-insurance card. If the trust is not named in the insurance policy, you may want to ask the insurance company to include the trust as a named insured party for insurance on trust-owned vehicles.

N. Digital Assets: Digital assets are electronic data. Such assets are stored on the internet ("the cloud", e.g., Gmail and other webmail services, Dropbox, OneDrive, Google Drive, Amazon Drive, ShareFile, Box, personal web storage sites, social media sites, etc.) or on digital devices, such as smartphones, tablets, computers, and storage devices (e.g., USB drives, hard drives, file servers, and network-attached storage devices).

N.1 Digital assets can include:

(a) Documents, spreadsheets, web sites, domain names, blogs, gaming characters, and social media accounts (Facebook, LinkedIn, Instagram, YouTube, etc);

(b) Audio and video recordings, including voice and music;

(c) Business data, such as customer, product, and inventory databases, client documents and records, trade secrets, business accounting information, and intellectual property rights;

(d) Software and hardware design;

(e) Financial data, such as: computer files that have copies of tax returns and bank statements; online user accounts (banks, PayPal, brokerage, utilities, creditors, etc.); and digital currency (e.g., Bitcoin);

(f) Graphic designs, photographs, digitized copies of paintings and sculptures, and all types of artistic content.

N.2 Some digital assets have significant monetary value, while others may have only sentimental value. Some digital assets consist of merely having access to data, while others consist of rights to valuable assets.

N.3 It is good to make a list of all digital assets so that they can be listed on a trust schedule or other asset-assignment document, and you should make and securely

store a record of your passwords for your online accounts. Signing a trust schedule or giving your trustee (or anyone else) the passwords to your various online accounts is usually not enough to give him or her true ownership and control of the accounts. If you are serious about passing on rights to digital assets that are controlled by one or more service providers, you must contact each service provider to learn what can be transferred to your trust, what can be passed on to others by beneficiary designation if a transfer to your trust is not possible, and the process required to effectuate your wishes.

N.4 As to the digital assets that can be owned by the trust or that can be transferred to the trust upon your death by beneficiary designation, your trust should contain specific instructions as to what happens to those digital assets unless you want them to be allocated and distributed as part of the "residue" of the trust estate.

N.5 If you are serious about managing your digital assets, you should consider using Directive Communications Systems (<https://www.directivecommunications.com/>), which interfaces with many digital asset "providers" to make sure that you are compliant with the various accounts and other digital assets that you have in directing what happens to each digital asset at your death. We can assist you in signing up for that service.

O. Airplanes: Airplanes are registered through the Federal Aviation Administration (FAA).⁵

O.1 Making the trust the owner of an airplane requires three steps (which you may wish to confirm through the FAA):

(a) Prepare a "Bill of Sale" transferring the airplane from the current owner to the trust. <https://forms.faa.gov/forms/ac8050-2.pdf>.

(b) Prepare Aircraft Registration Application for the trust. FAA Form 8050-1. The faa.gov web site contains these instructions: "Please Note: The Aircraft Registration Application, AC Form 8050-1, is not available for download. Only original forms are acceptable for the registration of aircraft. Use of an original Aircraft Registration Application, AC Form 8050-1, is required. Photocopies and computer-generated copies of this form are not acceptable for the registration of aircraft. Aircraft Registration Applications may be obtained from the Aircraft Registration Branch or your local FAA Flight Standards District Office (FSDO)."

(c) Submit these forms to the FAA with the required processing fee (\$5 payable to United States Treasury), along with an affidavit of citizenship and a certified copy of the trust instrument.

O.2 If the airplane is used for business and not personal use, the airplane should be in the name of the business, and your interest in the business can be owned by the trust.

P. Other Assets: Safe deposit boxes, unsecured promissory notes, and other assets are also transferred by assignment. Contractual rights, patents, trademarks, trademarks and

⁵ This information was taken from the FAA web site (<http://www.faa.gov>). You may want to review this memo: http://www.faa.gov/licenses_certificates/aircraft_certification/aircraft_registry/media/8050-93.pdf, especially items 2, 8, 30 and 33.) It appears that there is a \$5 registration fee and a \$5 recording fee.

other legal rights can be assigned, but should be formally transferred under the direction of legal counsel.

Q. Non-trust Assets: The trust should not be the owner or beneficiary of assets that you want to pass outside the trust. This may include life insurance, retirement accounts, joint bank accounts, and jointly held real property. Keep in mind, however, that if the designated co-owner or beneficiary dies before you do, such assets may become subject to probate in your estate upon your death. If you have designated a beneficiary to receive an asset that you want to pass outside the trust, consider naming the trust as an alternate beneficiary just in case the primary beneficiary dies before you do. Unless your trust specifically states otherwise, assets received by a trust beneficiary from outside the trust will not count against that beneficiary's share.

R. Final Note: Even if you retain us to assist you in asset transfers, you must make sure that the transfers are finalized. Documents showing the completion of a transfer will usually be sent to you, and we will not know if transfers are incomplete unless you let us know. We must rely on the information you provide, and unless you specifically retain us to do so, we do not perform title searches or otherwise verify ownership of your assets. A Trust is truly effective only to the extent that it is "funded." Assets not held in trust may be subject to administration in your probate estate, and other benefits from the Trust may not be realized.

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RUSHFORTH FIRM LTD.

5550 Painted Mirage Road, Suite 320, Las Vegas, NV 89149-4584

702-255-4552 (Office) | 702-255-4677 (Fax)

office@rushforthfirm.com

<https://rushforthfirm.com> | <https://rushforthfirm.info>