



Have you Properly Funded your Trust?

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Many people go through the time and expense of setting up grantor revocable trusts to avoid probate, reduce or avoid payment of federal estate taxes, and ensure that their assets are distributed to their intended beneficiaries. However, sometimes they fail to properly fund their trusts once they have been established. A trust does not automatically distribute assets. Rather, a trust is like an empty pitcher that must be "filled" with the assets it is intended to transfer. Once the assets are transferred to the pitcher, they can eventually "flow" out of the pitcher to the grantor's intended beneficiaries.

With a few types of assets such as deferred interest retirement plans, a grantor will need to carefully consider whether she or he has more flexibility and advantages naming the trust or individuals as its primary and contingent beneficiaries. However, most assets can and should be retitled in the name of the trust. If the assets are not transferred to the trust, they will not automatically pass under it and risk being probated. Probate is an expensive and time-consuming process, and people are generally not happy to discover that an asset needs to be probated when they took steps to avoid it by setting up the trust in the first place. Often, the probate process costs more, particularly for large estates, than the cost of the estate planning.

Your attorney can help you fund your trust by drafting deeds, assignments, and other transfer documents and by giving you general funding instructions. Grantors should then tackle the transfer of other or new assets in a timely manner so that the trust is properly funded.

Not only does proper funding of a trust avoid probate, but it also helps married couples take advantage of their "exemptions" from federal estate taxes. Currently, the "exemption" amount is \$2,000,000. If all or most of a married couple's assets are titled in the name of one spouse or his or her trust or the trusts are otherwise unevenly funded, the couple is risking not taking full advantage of the "exemption" amount. With proper planning, a married couple can double the "exemption" amount. Although a married couple may have established marital trusts containing language meant to avoid payment of federal estate



taxes, if the trusts and the credit-shelter sub-trusts within them are not properly funded, they will not be able to fully use or double their exemptions.

It is helpful for married couples with tax-planning trusts to meet with their attorney periodically to review the funding of and asset allocations between their trusts. If the attorney discovers that the marital trusts are inadequately funded, she or he can recommend how to re-title the assets to take advantage of tax planning strategies. With the uncertainty that currently exists regarding and fluctuations in the federal estate tax exemption, it is especially important that grantors continue to take steps to ensure that their revocable trusts are properly funded.
