

The Biggest “Hole” in Trust Based Estate Planning

Creating revocable living trusts as part of your estate plan *can* save you money in federal estate taxes and shelter your estate from the publicity and expense of the probate process. But *will* it? Simply creating a trust will not accomplish this. A trust that is created, but holds no assets will not work as intended.

The process of placing assets into a trust is commonly referred to as 'trust funding,' and is the legal transfer of ownership of your assets to the trust. It is the key ingredient to the effectiveness of your estate plan.

In fact, the way in which assets are held is the key to *any* estate plan, even if you are not utilizing a trust. In order for a trust to function properly, assets must be properly titled. Similarly, for a will to function properly, assets must be properly titled. A proper estate plan recognizes the importance of title, because it directs how your property will pass upon your death.



Generally, there are three types of title. First, there are the assets that are held in your individual name. It is these assets that will pass according to the terms of your will, and these are the only assets that your will controls. Additionally, assets that pass according to a will are subject to the court's supervision; a process referred to as probate. Secondly, there are assets that are jointly-held that are owned by you in conjunction with someone else. Typically, these assets have a survivorship element that dictates that these assets will pass automatically to the surviving owner upon the other owner's death. This is an automatic transfer and will take effect regardless of contrary instructions in a will or a trust. Lastly, there are assets that are owned according to a contract. Examples are assets owned by a trust and controlled by a trustee and various assets that have beneficiary designations such as annuities, life insurance policies and individual retirement accounts. Upon your death, assets held by contract will pass according to the terms of the contract (the beneficiary designation or the terms of the trust).

Many people go through great time and expense creating a trust in order to avoid taxes, probate and to have specific terms and conditions in place to better control and protect their assets. Once the trust is created, people feel a sense of security and relief knowing they took the proper steps to protect wealth and ensure the proper estate plan. However, the most essential step is often missed and the results can be devastating. In short, an empty trust is a *useless* trust. Trust funding, while difficult and tedious, is avoided by most estate planning firms. Clients are presented with a carefully drafted trust and told to complete the funding process themselves. Often, the client does not have the time or the skills to effectuate this process. Even when attempted, assets are often missed or estate plans are not kept current. Sadly, this oversight isn't recognized until it is too late to remedy.

So, does your estate plan consist of an empty or underfunded trust? Have you carefully drafted an estate plan, but left the job of properly titling assets undone? Our firm builds the trust funding into our estate planning fee and ensures that the funding is maintained throughout the client's lifetime. This is a *unique* service that truly provides security and peace of mind to our clients.