

Whether you are used to working with trusts or you are just getting started with a trust, it is easy to find yourself overwhelmed with questions. Some of the most important questions are those that involve funding the trust. That's because if your trust is not funded correctly, it won't work properly. In fact, it may not work at all.

So, how can you tell if your Texas trust is fully funded? The answer is not simple because different types of trusts have different funding needs. A dedicated estate planning attorney can review your trust objectives and funding and advise you about whether you should consider making some changes. Here are some of the general factors that affect your trust funding.

What it Means to Fund a Trust

Trusts are often thought of as a type of account, but they are actually a much bigger concept than that. A trust is a legal entity set up to hold property, like a virtual container that will hold anything you want to put in it, including different types of accounts. As an artificial, intangible legal creation, it can be hard to understand, but it might help to picture a trust as a large jar, bucket, or file folder.

You have to put property into the trust or the trust won't be able to do anything. Funding the trust refers to putting property into it. Since it's a virtual container, you won't literally be placing property inside it. Instead, you transfer legal ownership of property into it. The methods of funding a trust vary depending on the type of property.

Here are some examples:

To put your house or land into a trust, you need to create a new deed for that property that

transfers it from you to the trust.

To put the furniture, artwork, and other property that may be inside the house into the trust, you can create a list of property and a document that specifies that you are transferring that property into the trust. That list may be incorporated or attached to the document that created the trust. You might describe a few items specifically and then add a blanket statement that covers all your personal property.

To put vehicles with a title, like cars or boats, into the trust, you get a new title issued in the name of the trust.

To put bank accounts into the trust, you need to talk to the bank and follow whatever rules they have established for this type of transfer. You'll probably need to provide them with a copy of the trust or a certification of trust.

Some types of property, such as retirement accounts, should generally not be moved into trusts because that can trigger tax consequences or other problems.

You Need to Consider the Purpose of the Trust

Knowing how to fund a trust and how much to fund a trust are two different issues. How much does your trust need to be “fully” funded? It depends on the reason you created the trust.

A Revocable Living Trust

If you set up a revocable living trust so that your property could pass to your loved ones outside the probate process, then the purpose of your trust is to ensure that when you pass away, you will not leave behind property that will form an estate that will require probate. Ownership of all your property, from real estate to personal property,

must be set up in a way so that it either transfers directly to beneficiaries or goes into your trust for distribution.

Assets in your retirement account, which shouldn't go into your trust, should be set up to pass through a beneficiary clause created by the account managers. Proceeds of your life insurance policy should also pass to loved ones through a beneficiary clause. It is a good idea to check with the companies that manage these accounts to ensure that your beneficiary clauses are active and up-to-date.

If you have property that is co-owned with a right of survivorship, such as a house or car owned jointly by you and another member of your family, then when you pass away, your share of the property goes directly to the other co-owner, so it does not need to go through probate. However, if joint ownership does not include a right of survivorship and your portion is not included in your trust, then when you die, your beneficiaries would need to open probate to be able to take over your share of the property. So it's important to review the details on all assets that you own.

The bottom line is that to fully fund a revocable living trust that is designed to avoid probate, the question is not so much "what do you need to put in?" as "what can you afford to leave out?" Anything that will become part of an estate if left out should be transferred into the trust.

Irrevocable Trusts

While revocable living trusts are extremely popular, they are certainly not the only types of trusts used commonly in Texas. Revocable trusts help your loved ones avoid the delays and costs of probate, but they don't provide any protection for the trust property. Irrevocable trusts can provide that protection, so estate planning attorneys

How Do I Know if My Trust is Fully Funded?

create many different types of irrevocable trusts to protect assets for various purposes.

To fully fund one of these trusts, you need to ensure that you've transferred enough property in to enable the trust to fulfill its mission.

Some different types of irrevocable trusts and their funding needs include:

Education trusts to pay for college for a loved one. To be fully funded, it would need to include assets that would be expected to grow to provide enough funds to pay for college expenses.

Qualified personal residence trusts are designed to enable a home to pass to loved ones without accruing estate or gift tax liability. To fully fund this type of trust, you need to create a new deed transferring ownership of the home to the trust.

Asset protection trusts to safeguard assets from liability in case of lawsuits or other actions. Funding this type of trust is a balancing act – since you may not have access to property transferred into the trust, you will need to leave out enough resources to meet your needs.

Special needs trusts to provide benefits for a loved one with special needs. The trust holds property on their behalf so that the property is not counted against them and won't interfere with their ability to receive benefits such as Medicaid. If the funds in the trust come from assets owned by the beneficiary who has special needs, the trust would be fully funded when it includes enough assets to keep the beneficiary below the resource and income limits for benefits. If the funds in the trust come from a third party, such as a parent, the trust is fully funded when it includes enough assets to meet the anticipated needs of the beneficiary. Asset protection trusts for long-term care to preserve assets while establishing eligibility for Medicaid benefits to cover the cost of long-term care in a nursing home or at home. It may take five years to become eligible for long-term care benefits after establishing the trust, so it is important to leave sufficient assets out to meet needs until that time.

Charitable trusts that provide support to a nonprofit organization while also supplying tax benefits to the creator and resources for the trust creator or beneficiaries. Amounts needed

to fully fund the trust could vary considerably.

As you can see, trust funding is not a straightforward concept. In many cases, it is a matter of judgment and requires a certain amount of educated guesswork.

Reviewing Trust Funding is a Critical Task

For new trusts as well as trusts that have been in operation for some time, it is a good idea to review trust assets with a legal or financial professional periodically to ensure that the right assets are included to meet the trust's objectives. As markets rise and fall and laws change, the ability of a trust funding to keep up with trust needs may shift drastically.

It may be advisable to add more assets to a trust or, in the case of a revocable trust, remove some property from the trust. Your attorney or other professional should help you review ownership of assets that are supposed to be in the trust to ensure that the documentation is correct.

The Nordhaus Firm Can Help You Create or Manage a Trust

Funding and other duties of trust administration can be complicated, and even when you understand what needs to be done, you may not have the time or focus to devote to the task. At The Nordhaus Firm, we can help. We assist with all aspects of trust creation and administration. We know how critical it is to ensure your trust is fully funded, and we would be happy to review your assets to determine whether it might be wise to make some changes.

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For a free consultation to discuss how we can help meet your needs with a trust or other aspects of estate planning and administration, call us at 214-726-1450 or contact us online now.