KUSHNER LAGRAIZE
CPAs & CONSULTANTS

# Properly Funding Your Living Trust

**A living trust is a popular estate planning tool that allows individuals to transfer their assets to a trust during their lifetime. The trust then manages and distributes those assets to beneficiaries upon the individual's death. However, failing to properly fund a living trust is one of the most common errors people make and can lead to unintended consequences and added costs for both the individual and their beneficiaries. In this article, we'll provide an overview of properly funding a living trust.**

# Funding process

The funding process involves transferring assets from an individual's ownership to the ownership of their living trust. This can vary depending on the type of asset, with some requiring more complex transfers than others.

**Bank Accounts**

Transferring bank accounts to your living trust is a relatively simple process. To do so, you will need to take a Certificate of Trust to your bank and request that your accounts be retitled in the name of the trust or that the trust be added as a beneficiary. A Certificate of Trust is a document that provides basic information about a living trust, such as the name of the trust, the date it was created, and the name of the trustee. It is used to establish the existence of the trust and provide evidence of the trustee's authority to act on behalf of the trust. Importantly, the Certificate of Trust does not disclose any private information about the trust's assets or beneficiaries.

If the bank requests a taxpayer identification number, you should be able to use your social security number, assuming that you are the grantor, trustee, and beneficiary of the trust as is common for revocable living trusts.

**Real property**

Transferring real property into a living trust typically requires a deed, usually a quit claim deed, which must be executed in accordance with state law where the property is located. After completing the deed, it is necessary to file it along with a Certificate of Trust. While there may be transfer taxes and other fees associated with transferring real property, some states may exempt the transfer to a living trust.

Transferring property into a living trust should not typically trigger a due-on-sale clause under your mortgage, but it's always wise to consult with an estate attorney to discuss any potential legal implications.

**Titled personal property**

To transfer titled personal property like cars, trucks, motorcycles, or boats to your living trust, you may need to obtain a new title that reflects the trust as the owner. In some states, you may be able to designate the trust as a beneficiary on the title to keep the property under your name, but then automatically transfer ownership to the trust upon your death.

It's critical to determine whether the transfer will incur taxes or fees, and if the property is subject to a lien, you may need to obtain permission from the lender before re-titling the asset.

**Securities**

Transferring securities, such as stocks, bonds, or mutual funds, into your living trust can be accomplished by re-titling your brokerage account or making the trust a beneficiary of the account. Your broker can provide guidance on the steps necessary to complete the transfer process, including any paperwork required and the appropriate method for re-titling the account.

**Retirement accounts**

Transferring qualified retirement accounts, such as IRAs, 401(k)s, 403(b)s, or qualified annuities to your living trust is generally not recommended. Attempting to re-title the account as part of your living trust could result in unintended tax consequences and penalties. Instead, you may want to change the beneficiary designation on the account to ensure that your assets are distributed according to your wishes. It is important to consult with an experienced advisor to determine whether your trust should be designated as a primary or secondary beneficiary based on your unique situation and applicable tax laws.

**Life insurance**

When transferring life insurance into a living trust, you have the option to make the trust the owner or the beneficiary of the policy. If the trust is made, the owner, the successor trustee may be able to manage the policy and borrow against it, depending on the policy's terms, for your care in case of incapacitation.

However, in some states, transferring ownership to a living trust may result in the loss of creditor protection for the policy's cash value. In this case, listing the trust as the beneficiary and using a power of attorney to manage the policy during incapacitation may be a better option.

**Business interests**

For transferring business interests into a living trust, it is essential to review the organization's governing documents to determine any transfer restrictions or procedures. These documents may include a partnership agreement, operating agreement, or articles of incorporation. You may also need to obtain the approval of other owners or partners, depending on the type of business entity.

**Untitled personal property**

Transferring untitled personal property, such as furnishings, jewelry, or tools, to your living trust is usually accomplished by executing an assignment of ownership document that is typically included as part of your trust documentation. It's important to provide a detailed description of the property, including any unique identifying features, to avoid confusion or doubt about the property's identity.

**Pour-Over Will**

So what about items that you don't transfer or assign to your trust?  You can use a pour-over will which is a legal document that ensures that your remaining assets will automatically transfer to your trust upon your death. While a pour-over will does not necessarily avoid the probate process for those items, it does ensure that the items will be transferred to your trust and thus distributed according to your wishes

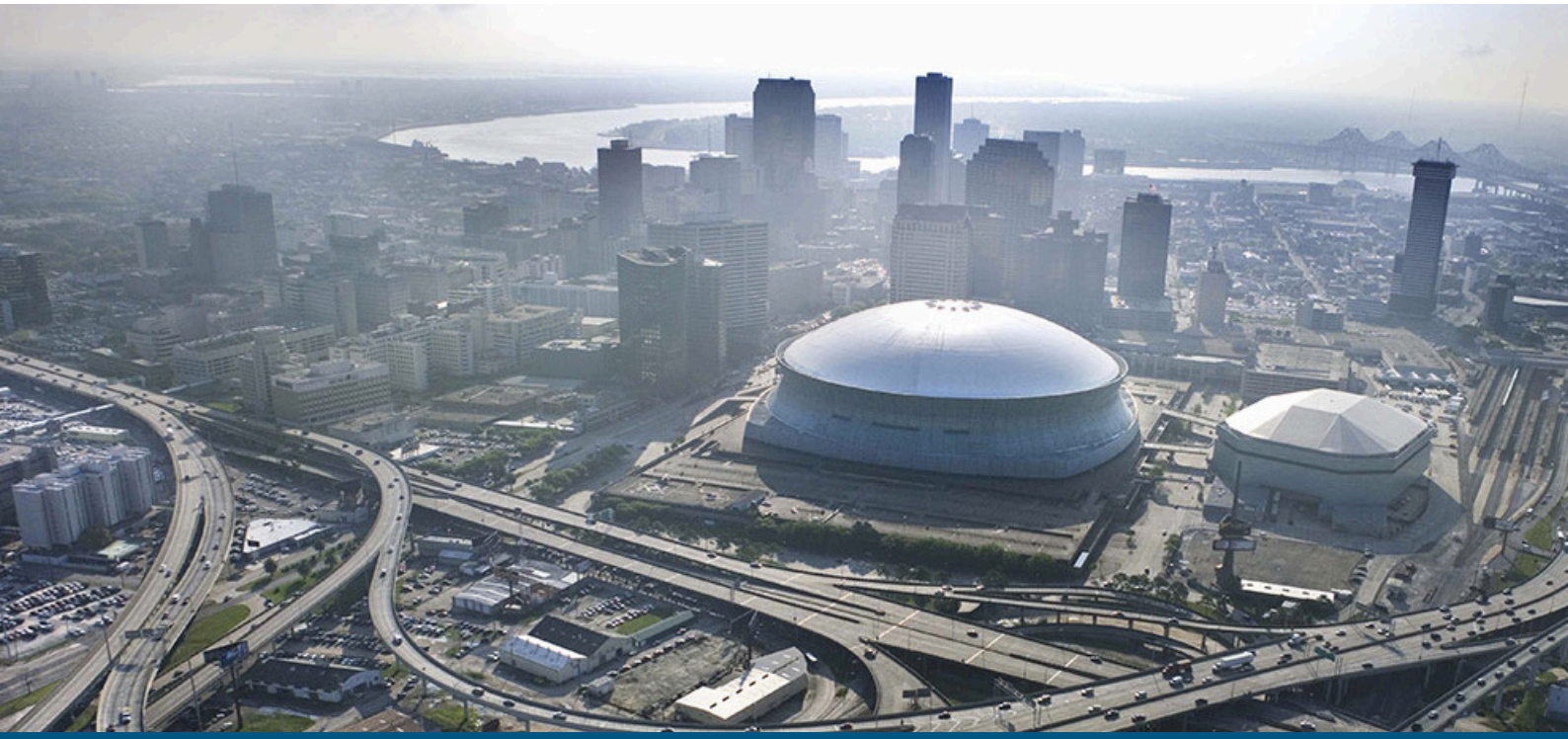
# Maintaining your living trust

Maintaining a funded trust is an ongoing process, especially if you obtain new assets. It's important to re-title certain assets in the name of your living trust if you acquire them after its creation. These assets may include real property, bank accounts, vehicles, investments, life insurance, and business interests.

# Final Thoughts

This document is intended to provide a brief overview of ways to fund a living trust. It is not a substitute for speaking with one of our expert advisors, nor is it to be construed as legal advice. For more information on funding your trust, please contact our office. We'd be happy to speak about your unique situation.

KUSHNER
LAGRAIZE
CPAs & CONSULTANTS



3330 West Esplanade Avenue, Suite 100, Metairie, LA 70002 | 504-838-9991 | info@kl.cpa | www.kl.cpa

# About Kushner LaGraize

Kushner LaGraize, LLC, is a full-service accounting and consulting firm located in Metairie, Louisiana, serving clients principally in the greater New Orleans metropolitan area. Our primary mission is to provide business solutions to our clients through personalized and prompt service, and to provide challenging and rewarding career opportunities for our employees.

The firm began serving clients in December 1985 when Messrs. S. David Kushner and Wilson A. LaGraize, Jr. formed a partnership to provide professional accounting services. The firm has since grown to a staff in excess of 55 professionals and support personnel due to our reputation for providing outstanding quality service. New Orleans City Business has continuously recognized our firm as one of the top ten accounting firms in Metropolitan New Orleans.