

# Kimball, Tiley & St. John LLP

## Trust Transfer Myths

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One of the most confusing areas of estate planning is transferring assets into a living trust. The goal of a living trust is to avoid the need for a court order (“probate decree”) to transfer property after you are gone. The probate process in California is slow, cumbersome, and expensive.

It is easy to assume that just because you have signed a trust document, all of your assets are somehow “in the trust” and protected from having to go through probate administration if something happens.

The problem is that what you personally list in your trust documents, even in an asset list attached to the trust, doesn't automatically change the title as far as third parties such as banks, title companies and the Probate Court are concerned. Just showing someone a copy of a trust, and saying that the owner meant to put it into the trust, may not satisfy the title company, bank or brokerage, no matter how logical that might seem. In general, a trust is just an empty bucket when it is first created. You need to fill it up with your assets, by transferring legal title into the name of the trust through separate written legal documents. This process is called “funding the trust,” and it is a part of the process that is often ignored, because most of it must be done personally by the owner, rather than by the attorney.

- For bank accounts and brokerage accounts, each institution has its own proprietary forms that need to be filled out and signed at the institution, transferring the account into the name of the trust.
- For stock not in a brokerage account, the old certificates need to be surrendered, and new certificates issued in the trust name.
- For real property, this generally means recording a properly notarized original deed with the County Recorder, so that when a title company examines the title it will show that the property is held in the trust.
- For business owners, stock certificates and records must properly reflect ownership of stock, membership interests, and/or partnership interests in the name of the trust
- There are other processes for other types of property.

This transfer process is often not handled properly during a person's lifetime, especially as people age, and as they buy and sell assets after their trust is signed. The documents required for the transfer can be intimidating and confusing, and it often requires a personal appointment with the bank or broker. The online documents to transfer assets to a trust are often intimidating, and it is difficult for many people to know how to fill in all of the forms. However, after someone dies, it is generally too late to fix it. Families may be unpleasantly surprised when they find out that many of the decedent's assets never were transferred properly into the trust, and that substantial legal work may be required to transfer it (if a transfer can be accomplished after the decedent's death).

There are possible alternatives if something was not transferred properly into a trust during someone's lifetime. In California, as of January 1, 2020, assets up to a total value of \$166,250 can pass through an informal Small Estate Affidavit, without going through the Probate Court.

However, many institutions, especially outside California, are not familiar with this process, and insist on receiving copies of Letters Testamentary or Letters of Administration issued by the Court, which are only available if a formal probate has been filed. Preparing the Small Estate Affidavit generally requires a lawyer, unless the institution has its own form.

Sometimes, if an asset is specifically listed in the trust exhibit list (usually "Exhibit "A"), you can file a special Probate Court petition asking the judge to make an order that someone intended to put it into the trust, but did not transfer it properly. You generally need to show written evidence of intent for it to be in the trust for a judge to make that kind of order. Banks and title companies will generally accept such a court order. While obtaining that kind of order is not as slow or expensive as a formal probate proceeding, it still takes months, and costs several thousand dollars, and the outcome is never certain. If you can use a Small Estate Affidavit, that's much faster and cheaper.

*Whether you need advice on transferring assets into a trust, or are dealing with a decedent's trust estate, Kimball, Tirey & St. John LLP's Estate Planning Team can help you to carry out the necessary transfers, at an affordable price. Please contact us at (800) 574-5587 with any questions.*

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