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Unfunded Trusts Don't Work



Trusts are legal instruments used to achieve a variety of objectives. Different trusts serve different purposes. Intervivos trusts are trusts created during one's lifetime. They can be revocable or irrevocable, depending on the goal for which the trust was created. To have a successful estate and disability plan using a trust, the trust document must be properly signed by both the creator and the trustee(s); and the trust must be funded.

It's important to remember that a trust controls only the assets owned by the trust. Signing a trust is not enough. The ownership of the assets must be changed and retitled to the trust for the provisions of the trust to have effect on those assets (i.e., the bank account owned by Mary Smith needs to be retitled to the Trustee of the Mary Smith Trust.) Often, this includes the preparation and filing of a new deed if a piece of real property is intended to be owned by the trust. This may also include the retitling of bank or investment accounts. A revocable trust is frequently used to avoid probate, but if an individual's assets are not properly retitled to the trust, this plan may fail. An irrevocable trust is commonly used to shelter assets from creditors, such as Medicaid, but the trust can only protect the assets it owns. If a particular asset is not transferred into the irrevocable trust, that asset will not be protected. Tax planning can be effectuated by trust, but again, the tax planning strategy fails if the assets are not transferred into the trust.

If you have a trust, now is a good time to review the assets owned by the trust to confirm that your trust is properly funded. Of course, if you are thinking of creating a trust or if you have any questions about the funding of your existing trust, contact us so we can discuss your situation with you.

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