If you have an estate plan: Did you fund It?

By Linda T. Cammuso

Trusts are used everyday in estate planning for a variety of reasons that include probate avoidance, gift tax and estate tax planning, protection of beneficiaries including minors, spendthrifts and individuals with special needs and sheltering assets from long-term care/nursing home expenses.

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Today, more than ever, people understand the need to establish trusts as part of estate planning. However, many people fail to take the next step in this important process — funding the trusts with their most valuable assets.

If you wonder what "funding" is, generally speaking, it is the process of situating the ownership and beneficiary designations on your assets to pass in accordance with your estate planning goals. In the context of a trust, funding involves transferring ownership and/or death benefits of your assets into a trust — a legal agreement that holds those assets for the benefit of one or more beneficiaries.

In a typical living trust arrangement, the person (the grantor) who creates and funds the trust with his/her assets holds two roles, that of trustee (legal owner) and beneficiary (beneficial owner). Upon the grantor's death, the trust assets are passed along to whomever the grantor has designated in the trust document — be it a spouse, children, extended family, charities, etc. Trusts can be funded during the grantor's life, or upon the grantor's death through a will or beneficiary designations.

On its own, a will or trust does not dictate how your assets will be distributed upon your death. This is why the funding process is so critical. Even if you have only a simple will, you must still go through the funding exercise to account for the disposition of all your assets.

Suppose your will provides that your estate will pay equally to your three children, but your life insurance policy names your sister as the beneficiary and your retirement account names only one of your children. In spite of what your will says, the beneficiary designations on your life insurance and retirement account will trump the will.

Similarly, having another name on your house or bank account will result in the joint owner inheriting the asset upon your death. This is why estate planning requires a great deal of thought, and is so much more than a pile of documents.

While the funding process is not difficult, many people fail to realize the disconnect between their legal documents and their assets, almost guaranteeing that their estate will not pass where and how they intended upon death.

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