

FUNDING YOUR TRUST

– *Electronic Funding Applications with MLCP* –

This material describes how to fund your trust using the MLCP Funding Kit offering (a) electronic Asset Schedule Ledgers, (b) electronic signature (ESIGN) technology, and (c) Master Signatory Guarantor Certificate. The commonly used methods of funding of a revocable living trust can often prove to be time-consuming and even costly. The preparation/recording of realty deeds, the process of contacting account vendors and having to fill out their institutional forms to retitle accounts, and often other unforeseen procedures are reasons that keep many from doing the right thing, and that is to establish a properly funded living trust estate plan. The following explains the legal authority to use these applications in conjunction with 21st century estate-planning technology.

THE QUICK-FUNDING METHOD

- As a MLCP client/user, you can identify ALL of your personal assets under electronic HTML asset transfer ledgers, which are activated using electronic signatures (ESIGN). Both the asset-ledger-schedule funding design and ESIGN protocols are recognized under federal law. When bundled together, those applications serve to provide an effective, convenient, and time-saving procedure for grantors funding their living trusts both now and at any time later.
- With the MLCP ledger-entry method, the grantor/creator of a living trust may electronically list his/her assets on the trust's asset schedule. As a grantor-created asset list, Schedule "A" will be recognized as a contemporary ledger of assets transferred (from the grantor) to the grantor-trustee of the trust (Uniform Trust Code, §401[2]). The following is the UTC Commissioners' published comment on that legally-binding trust funding principal: "*A declaration of trust can be funded merely by attaching a schedule listing the assets that are to be subject to the trust without (emphasis added) executing separate instruments of transfer.*"

NOTE: The trust-funding process outlined in this material has previously been analyzed and validated by judicial authority in various States, including but not limited to, California, Kentucky, Nebraska, and North Dakota. Following are examples such cases.

ESTATE OF HEGGSTAD (1993)

*“It is well established that if two specific requirements are met, real (and/or any other) property may be made part of a trust's assets **without a separate deed** transferring property to the trust. (Estate of Heggstad (1993) 16 Cal.App.4th 943, 947-950 (Heggstad).)*

- *The first requirement is that the owner of real property is the settlor creating the trust with himself or herself (serving) as the trustee. (Heggstad, supra, 16 Cal.App.4th at pp. 947-950.)*
- *Second, because a conveyance of real property is at issue, the other requirement for transferring real property to a trust is compliance with the statute of frauds. (Heggstad, supra, 16 Cal.App.4th at p. 948 (Where the trust property is real estate, the statute of frauds requires that the declaration of trust must be in writing [i.e. in legible document form and properly executed by the grantor].) Accordingly (under the statute of frauds), a written declaration of trust by the owner of real property, in which he names himself (herself as) trustee, is sufficient to create a trust in that property (without the use of a formal realty deed to transfer the property to the trust).”*

KUCKER V. KUCKER (2011)

- *In Kucker v. Kucker, (2011), 192 CA 4th, 90, a California Court of Appeals reversed a lower probate court decision that had not recognized a transfer of stocks into a trust based (only) on the settlor’s “general assignment” document as being transferred to the trustee of her trust. The Appellate Court’s reversal agreed with the petitioner’s position that “a general assignment (by only a generic document) of all or substantially all of the settlor’s assets into one’s trust causes the stocks to be owned by the trustee.”*
- *With the Kucker v. Kucker decision, the (CA) Appellate Court stated that: “There is no California authority invalidating a transfer of shares of stock to a trust (simply) because a general assignment of personal property did not identify the shares, nor should there be.” The paramount rule for the interpretation of a trust that “the intent of the grantor is supreme” is an established legal principle (e.g., Estate of Cairns 188 Cal.App.4th 937; and Citizens Business Bank v. Carrano, 189 Cal.App.4th 1200).*

CHEBATORIS V. MOYER (2008)

In Chebatoris V. Moyer 757 N.W.2d 212 / 276 Neb., the Nebraska Supreme court recognized in their finding that: “The particular words of a conveyance (for assets to a trust) are unimportant if the intention of the parties can be determined. In construing instruments conveying property, equity concerns itself with the substance and not (emphasis added) the form of the transaction, and the particular form or words of a conveyance are unimportant if the intention of the parties can be ascertained.”

THE MLCP ASSET-LEDGER FUNDING METHOD

- A Declaration of Trust statement by a grantor-trustee declaring to hold certain assets listed on a “Schedule” (of pledged assets) attached to a trust document can be used to accomplish the same result as a general assignment document, which has been accepted by courts, but in a much more clear and concise manner.
- MLCP’S Schedule of Trust Assets more clearly demonstrates the grantor’s intent than a general statement of transfer. Moreover, unlike the general assignment method, the Schedule can also include real estate interests that – when identified with an appropriate legal description – clearly and concisely shows sufficient intent to effect the contemporaneous realty-interest transfer to the grantor-trustee of the trust.

ELECTRONIC SIGNATURE APPLICATIONS

- The MLCP software provides convenient electronic signature dynamics designed for effectiveness and safety. The applications are easy to use (and to re-use) and will help simplify the trust-funding procedures. The essential reasons for Congress (“ESIGN”) and the 50 states (“EUTA”) codifying the acceptance of electronic signatures was to facilitate e-commerce efficiency, transactional speed, implementation ease, acceptable confirmation procedures, and archiving.
- According to the "**Electronic Signatures in Global and National Commerce Act**" (**ESIGN**), the “Act” – a body of law enacted by Congress specifically referred to as The Consumer Consent Provision in CFR §101(c)(1)(C)(ii) of the "Act" – the effect of a valid electronic signature shall be legally sufficient to acknowledge, authenticate, and validate the signator’s intent.
- The Congressional ESIGN Act and the states’ adoption of the “**Uniform Electronic Transactions Act**” (**UETA**) clearly affirm that “*a document or signature cannot be denied legal effect or enforceability solely because it is (only) in electronic form (UETA, Section 7).*” UETA also states that “*any law that requires a writing will be satisfied by an electronic record*” and “*any signature requirement in the law will be met if there is an electronic signature.*”
- Even concerning real estate transactions/transfers, the UETA committee stated: “*...it is unnecessary to maintain (any)... barriers to electronic contracting (executing transactions concerning real estate). There are no (e.a.) unique characteristics relating to real property (to preclude an electronic transaction) as opposed to other business and commercial contracts.*” In other words, by posting a clear description of the intended-transfer-to-trust realty property on a Trust Asset Schedule – even though not on a regular realty deed format (and not even recorded) – the grantor creates sufficient validity with respect to the transfer of that property to his/her trust.

THE MLCP FUNDING KIT

- The Funding Kit dynamics are at your fingertip control – as the end user creator of your trust – through the MLCP password-protected Client Console and is compatible with our ESIGN dynamics.
- The Funding Kit’s electronic ledger can also be edited at any time – by access through the password protected Client Console – to add, remove, or edit any applicable asset information relative to what is currently deemed as “assigned” to the trust.
- Specially designed HTML entry fields allow the user to enter electronic data in the Funding Kit pages relative to the institution/vendor’s name and address as well as the account identification by type, value and account number. This detailed information is then posted via the electronic Funding Kit ledger as part of the Trust Asset Schedule.
- The electronic dynamics of the Funding Kit also enables the user to enter the Trust Effective Date directly on the Trust Asset Ledger/Schedule. The Trust Effective Date will remain the same even though changes may be made on the Schedule.
- Not only can your trust funding be implemented through our proprietary ESIGN/EUTA compliant technology, but it can be additionally and expressly verified – along with the living trust declaration – by a single “MASTER SIGNATORY GUARANTOR” signature page (expressly verifying your ESIGN events) that is designed to be printed out and signed by you in front of witnesses and a Notary Public, which you then upload to your Master Signatory Guarantor folder in your Client Console / My E-Vault.
