

How to Transfer Real Estate into Your Trust

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Whether you own a beach cottage in Malibu, a Manhattan penthouse or a lake house in Minnesota, you may want to consider transferring your real estate into a revocable trust.

A revocable trust is an estate planning tool that provides you with some control over what happens to your assets when you pass away. This type of trust, also known as a living trust, offers the additional benefit of also keeping control of your property while you are alive.

Placing real estate, including your primary residence, a second home or commercial investment properties, into a revocable trust has become more common in every state over the past 20 to 30 years. Historically, trusts were used in California, Texas, Florida and other states to minimize probate time and expense. In states like New York, which has a court-driven probate process, having a revocable trust own your property instead of a will can potentially reduce a time-consuming and expensive probate.

In addition to streamlining your heirs' access to your property, a trust provides privacy. Probate is a public process, which means that your will, with all the information about your heirs and what assets they will receive, can be searched by anyone.

Retitling your real estate to transfer it into your trust is especially important if you own property in more than one state. If you own the property in your own name, your heirs will potentially have to face probate in more than one state. With a revocable trust, your heirs won't need to go through that process. Placing your real estate into a living trust also means you can continue to decide what to do with the property while you are alive and can make arrangements for the property in case you become incapacitated.

Transferring your real estate into a trust is a relatively simple process. If you are married, you need to determine how the property is owned. If you own the property jointly, depending on the state you live in you may want to consider a joint living trust. If you and your spouse have separate assets, you may want to consider individual living trusts.

Placing your real estate in a trust preserves your privacy so that no one outside of the trust knows what property you own, who will get it or how much it is worth.

Transferring Real Estate into a Trust

The first step in transferring real estate is to prepare and sign a new deed for the property. Typically, you need a grant form or quit claim form to transfer the deed. The forms vary by state and there are some nuances to the process, so it's best to work with a lawyer experienced in each state where you own property to ensure that the details are handled correctly. You will need to file a quit claim deed and a change of ownership form that transfers title from your name to the trust. If you own several commercial investment properties, you might own each of the properties through an individual LLC to limit your liability. If you establish a living trust, you can transfer 100% of the ownership of each LLC into that trust so that your beneficiaries inherit your interest in each LLC.

Some states have additional requirements. For example, in Colorado, you need a Special Warranty Deed, which states that the grantor (property owner) is the trust itself rather than the trustees of the trust.

After you prepare the deed and have it notarized, your attorney will record the deed in the county property records office. An attorney may charge \$500 to \$1,000 to handle the deed transfer for you. Typically, you will also pay a small fee for recording the deed, such as \$100. That small fee is well worth it because you are guaranteeing that your residence and your other property will follow your estate plan in your revocable trust and not be subject to probate.

Transfer taxes, which are required by many state and local jurisdictions when you sell or give away a property, are generally not incurred when you transfer property into a revocable trust. As long as you are transferring the property to the same owners and in the same percentages, transfer taxes are not required. For example, if you and your husband each own 50% of your home and you transfer it to the trust as 50-50 owners, you would not need to pay transfer taxes.

Mortgage Implications For Real Estate Trusts

If you have a mortgage on the property that you plan to transfer into your trust, be aware that this could trigger a "due-on-sale" or "due-on-transfer" clause in your loan. Be sure to check with your lender before you transfer your property into a trust. Most lenders are flexible on this and won't expect you to pay your loan in full immediately.

In most cases, retitling the property to put it into a trust with the same ownership won't require an acceleration of your loan repayment. However, if you are splitting the property in a new ownership percentage, such as in a divorce, or gifting the property, that is likely to trigger a due-on-transfer clause. You should alert your mortgage lender when you transfer your deed into your trust even if no accelerated repayment is required.

Typically, the documents you need to transfer real estate include:

- **The recorded deed for your property, which includes the names of the owners and the legal description of the property**
- **The first and signature pages of the trust for the accurate name of the trust**
- **The names and addresses of the trustees**
- **The names and addresses of the beneficiaries of the trust**

Tax and Insurance Impacts of Real Estate Trusts

Before transferring your property into a trust, you should also check with your title insurance company. Depending on your location and the title company, transferring the deed to your trust could require an endorsement on your title insurance policy or even necessitate the purchase of a new title insurance policy due to the change of ownership.

An endorsement on your title insurance policy can cost as little as \$100. Transferring your real estate into a trust should not require other changes to your property taxes or your insurance, but you do need to provide information to your insurance company and keep all documentation of the transaction.

You don't lose the benefit of a step-up in basis of your property in the event of your death for property held in a revocable trust nor will your property tax assessment change if 100% of the property is going into your own trust. However, it is important to retain the documentation showing this change in ownership. You must file a change of ownership status that clearly states that the ownership is a simple transfer to a trust. If you don't, this could trigger a property reassessment.

You should alert your homeowner's insurance carrier about the transfer of ownership of your property to the trust. Your premiums and your homeowner's policy shouldn't change, but the company does need the policy to reflect the appropriate ownership status.

When you establish a trust, your team of trusted advisors (financial advisor, attorney, accountant, etc.) will ask you about your assets and help you transfer them into a trust. If you buy additional property once your trust is open, you may want to put that new acquisition into the trust as well. With the help of your team of trusted advisors, protecting your property with a living trust can be a simple process that will ease the burden on your heirs.

Source: <https://www.cnb.com/private-banking/insights/transfer-property-into-a-trust.html>

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