



~ FUNDING YOUR TRUST ~

This material describes how to fund your Dynamic Trust with **The eStatePlan™ Funding Kit** utilizing the Quick Funding Method™ (QFM) with (i) digital Asset Ledgers, (ii) electronic signature (ESIGN) technology, and (iii) the Master Signatory Guarantor recording certificate. The common methods of funding a Revocable Living Trust – that is, the *formal retitling* of equity accounts, personal realty deeds, and other assets to the grantor/trustee – can be a time-consuming, exasperating experience. But that has all changed now for those taking advantage of our QFM.

THE QUICK FUNDING METHOD™

- As [a] **The eStatePlan™ / Dynamic Trust Portfolio** client-user, you may identify all of your personal assets simply by utilizing electronic asset-transfer ledgers, which are **activated using electronic signatures (ESIGN)** within our proprietary Funding Kit system. Both the asset-ledger-schedule funding design and ESIGN protocols are recognized under state and federal authority.
- The asset-assignment method of funding a living trust is also **codified under Nevada law per NRS 163.002, which is our recommended venue for establishing a living trust** regardless of whatever state you may currently reside. When bundled together, those applications serve to provide an effective, convenient, and time-saving procedure to fully fund your eStatePlan.
- With the funding method, the grantor of a living trust may electronically list his assets on a "Ledger of Assignment" (Schedule "A") which will be recognized as a contemporary ledger of assets transferred from the grantor to himself as trustee of his trust (Uniform Trust Code, §401[2]). The following is the UTC Commissioners' published statement concerning 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."***
- The QFM also allows unrestricted modifications to the Ledger of Assignment **even after the Ledger has been ESIGNED**. Personal assets can therefore be *added to and/or removed from* the Ledger of Assignment whenever necessary through the simplicity and convenience of making only keyboard entries within a personalized, password-protected Client Console.

APPELLATE COURT ➤ ESTATE OF HEGGSTAD (1993)

In the Estate of Heggstad case, a California Court of Appeals ruled that a separate, **formal realty deed was not necessary to affect a transfer of realty property to a trust where the grantor was currently serving as trustee**. The court stated:

“It is well established that if two specific requirements are met, real property may be made part of a trust's assets WITHOUT (emphasis added) a separate deed transferring property to the trust. The first requirement is that the owner of real property is the settlor creating the trust with himself or herself (serving) as the trustee. 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. Accordingly, a written declaration of trust by the owner of real property, in which he names himself as trustee, is sufficient to create a trust in that property (i.e. without the use of a formal realty deed to affect the transfer).” (Estate of Heggstad [1993] 16 Cal.App.4th 943, 947-950.)

APPELLATE COURT ➤ KUCKER V. KUCKER (2011)

In the Kucker v. Kucker case, 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 stating 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.**”

The Appellate Court ruled 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 Court pointed out that 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).

(STATE) SUPREME COURT ➤ NICHOLS V. GOUGHNOUR (2012)

The informal funding-by-schedule principle was also confirmed by a North Dakota Supreme Court: *“The **primary purpose** in construing a [realty] deed **is to ascertain and effectuate the grantor’s intent**” (regardless of the transfer form used). Nichols v. Goughnour, ND 178, 12, 820 N.W. Another ND Court decision affirmed: ... “the purpose of a [generic] granting clause [i.e. property to be conveyed by an Asset Schedule, for example] is to define and designate the (real) estate conveyed and [as in warranty clause exceptions]... **are not intended as a limitation** on the nature of the interest conveyed by the granting clause.”*

(STATE) SUPREME COURT ➤ CHEBATORIS V. MOYER (2008)

In *Chebatoris V. Moyer* 757 N.W.2d 212 / 276 Neb., a 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.**"*

APPELLATE COURT ➤ COMBS V. HOUNSHELL (1961)

A Kentucky Court of Appeals also expounded on the legal credence of the effectiveness of the general conveyance doctrine in a decision many years ago in *Combs v. Hounshell*, 347 S.W.2d 550, Ky. "We have no hesitancy in abandoning this archaic and technical rule [referring to an old common law rule that a conveyance of realty interest is ineffective if it does not specify reservations and/or exceptions to the transfer]. It is entirely inconsistent with **the basic principle** followed in the construction of deeds, which **is to determine the intention of the grantor** as gathered from the four corners of the [transferring] instrument."

ADDITIONAL RULINGS ON ASSIGNMENT LAW

The Court in *Allen v. Willis*. 60 Tex. 155; *Tittle v. Vanleer*, 89 Tex. 174, 29 S.W. 1065, 34 S.W. 715, 37 L.R.A. 337 ruled as follows: "A **valid assignment places the title** to the property in the assignee for the purpose of the trust."

The Court in *Tribune Co. v. Canger Floral Co.* (1941), 312 Ill. App. 149, 155-56, 37 N.E.2d 906 ruled as follows: (The assignment) "*passes legal and equitable title to the property absolutely... **such an assignment implies a trust** and contemplates the intervention of a trustee.*"

The Court in *Equitable Trust Co v. Milton Realty Co*, 261 Mich. 571, 577; 246 N.W. 500 (1933), defined creating a trust as follows: "*To create a trust, there must be an **assignment of designated property** to a trustee with the intention of passing title thereto, to hold for the benefit of others.*"

ASSET-ASSIGNMENT FUNDING OVERVIEW

A realty deed is essentially a realty-transfer affidavit. The only requirements for a valid realty deed (affidavit of transfer) are **(i) a grantor, (ii) a grantee, (iii) a writing/subscription, (iv) the delivery, and (v) an acceptance.** Recordation, for legal/validity purposes, is unnecessary; its effect is [only] to give constructive notice and determine priorities. (12 Witkin, Summary of Cal. Law (10th ed. 2010) Real Property, § 254; Cal. Civ. Code, § 1217.) Unrecorded deeds are valid as between the parties and as to all those who have (been given) notice thereof. (Cal. Civ. Code, § 1217, supra; Merritt v. Rey (1930) 104 Cal. App. 700, 707 [citing Blackledge v. McIntosh, (1927) 85 Cal. App. 475, 483.].) *Note: These cases provide additional examples of why the MLCP asset-assignment process precludes the requirement of creating and recording formal realty deeds of transfer (until after the decease of the grantor/trustee).*

The doctrine of asset assignability is also recognized by the federal government in numerous Private Letter Rulings and the Internal Revenue Code. An example is recorded in IRC §408(e)(4), which allows for the pledging, by assignment, of a retirement (IRA) account as security for a loan. (See also CCA 2006-44020).

The ASSET SCHEDULE helps to clearly establish the transfer intent of all assets listed, including personal real estate interests, equity accounts, and all other personal property. **When properly filled out, there can be no legal uncertainty** as to the lawful application of the Funding Kit Ledger/Schedule. For trust estate settlement purposes, account vendors/agents (etc.) will be under established legal requirements to accept the validity of the recorded events that assigned your assets to your trust.

ELECTRONIC SIGNATURE APPLICATIONS

While simplifying the trust funding process, the eStatePlan signature dynamics also provide safe harbor recognition within federal rules. According to "**Electronic Signatures in Global and National Commerce Act**" (ESIGN), the "Act" (enacted on June 30, 2000, and specifically referred to as "The Consumer Consent Provision" in CFR §101 of the "Act"), *"The effect of a recognized electronic signature shall be legally sufficient to acknowledge, authenticate, and validate the full intent of the one making it"* (paraphrased).

The States' version of ESIGN, adopted and enhanced as the "**Uniform Electronic Transactions Act**" (UETA), and codified in Nevada under [NRS Title 59 > Chapter 719](#), also affirms 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."*

Concerning **real estate transfers**, the UETA Committee stated: *"...it is unnecessary to maintain [any]... barriers to electronic contracting. There are no unique characteristics relating to real property (to preclude electronic transactions) as opposed to other business and commercial contracts."* In other words, by posting a description of the intended-transfer-to-trust realty property on only a digitized trust asset schedule – without a recordable realty deed format – the grantor can create sufficient validity of realty transfer to his or her trust.

ELECTRONIC FUNDING APPLICATIONS

- The eStatePlan Funding Kit dynamics will always be *at your fingertip control* through your password-protected Client Console and are fully compatible with the platform's electronic signature applications.
- The Funding Kit's electronic Asset Ledger of Assignment/Schedule can be edited at any time allowing you to add, remove, or edit any information concerning your personal assets being *assigned or payable* to your trust as listed on the Asset Ledger/Schedule.
- The Funding Kit also records the time-stamped *effective date* of your trust created simultaneously with the ESIGN of your Dynamic Trust Portfolio, which may remain unchanged even though new entries are made on the Asset Ledger/Schedule at a subsequent, later time.
- A special "MASTER SIGNATORY GUARANTOR" (MSG) document is provided with the ESIGN package, which functions as an *optional* Affidavit of Verification listing ALL time-stamped ESIGN events, including that of your Funding Kit.
- Your MSG Affidavit can be either **(i)** printed out and physically signed before a Notary Public (which would then be uploaded to your Client Console E-vault) or **(ii)** implemented through the convenience of a personalized *digital signature*, which can be jurat-notarized by the attorney of record of your **eStatePlan / Dynamic Trust Portfolio**.
