

DEEDS

How to Draft
Deeds into Trust

About me



Leah Del Percio, Esq.

Founder and CEO,  trustate

- Settled **hundreds** of estates, nationwide.
- Administered over **\$50B** via estate administrations.
- **12+ years experience** as estate attorney (JD & LLM) with multi-jurisdictional estate/trust admin practice.
- Learn more: trustate.com



Welcome!

DEED

Objectives

- ✓ Distinguish between types of deeds used in trust transfers and their application in trust transfers with no or nominal consideration.
- ✓ Understand the legal implications of transferring real property to a trust.
- ✓ Identify the relevant transfer tax exemptions and state-specific rules governing no or nominal consideration transfers to trusts.
- ✓ Explore tax implications and potential risks associated with no or nominal consideration transfers to trusts.



Welcome!

DEED

Why are we here?

- ✓ Because friends don't let friends not fund their trusts.
- ✓ Probate Avoidance - Probate = an annoying hiccup, at best
- ✓ Privacy
- ✓ Smooth transition at incapacity





Introduction to Deeds and Devises in Trust Law

Overview of Property Transfers in Trust Planning

- The role of property ownership and transfers in estate planning.
- Why transfers to trusts often involve no or nominal consideration.

Nominal Consideration

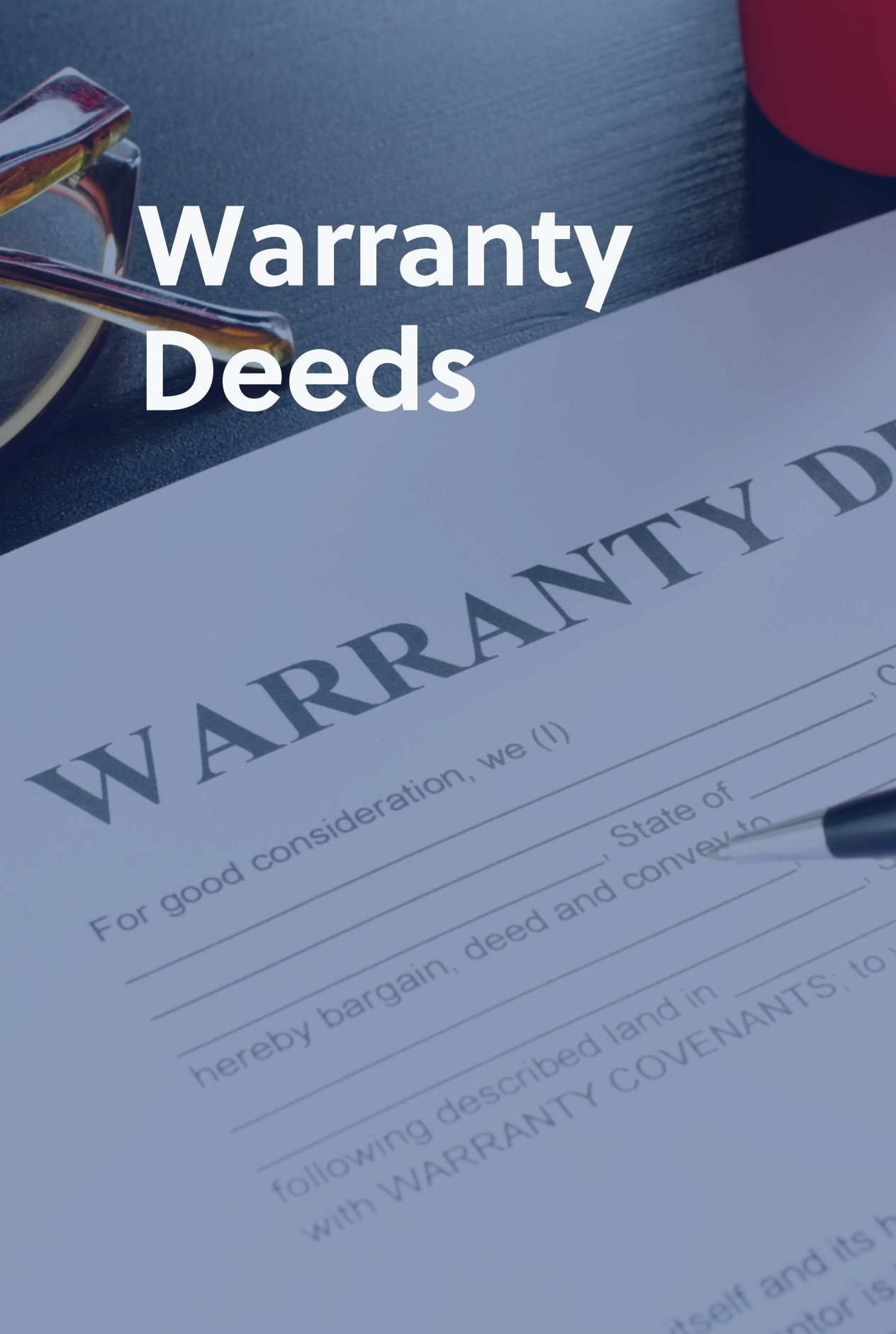
- What constitutes "nominal" consideration in legal terms.
 - Under \$100, usually listed as \$10 or Zero dollars.
- Common uses for nominal consideration in trust transfers.
 - There is no bona fide sale to a third party when funding a revocable trust.
 - It is a mere change of name, not beneficial ownership.
 - ★ These types of transfers are not an actual sale, but rather a gift of property from the owner to their trust.



Types of Deeds Used in Trust Transfers

- ✓ Warranty Deeds
- ✓ Quitclaim Deeds
- ✓ Special or Limited Warranty Deeds
- ✓ Other Deeds





Warranty Deeds

What is a Warranty Deed?

Purpose

- **Guarantees Clear Title**
 - With a warranty deed, the seller (grantor) guarantees that they hold clear title to the property, free of any encumbrances, liens, or claims, and have the legal right to sell it.
- **Full Protection for the Buyer**
 - The deed offers the buyer (grantee) protection, as it includes warranties that defend against any future claims to the property. If a problem arises with the title after the sale, the buyer may have legal recourse against the seller.
- **Used in Most Real Estate Sales *to Third Parties at arm's length***
 - Because it protects the buyer, warranty deeds are commonly used in standard real estate transactions involving lenders or title insurance.





Quitclaim Deeds

What is a Quitclaim Deed?

Purpose

- **No Guarantees or Warranties**
 - A quitclaim deed transfers whatever interest the seller may have in the property but makes no promises about whether the title is clear. The seller essentially "quits" any claim they have, if any, on the property.
- **Limited Protection for the Buyer**
 - Quitclaim deeds don't guarantee that the seller has full ownership or that there are no liens or encumbrances. The buyer assumes more risk, as they can't later make claims against the seller if issues arise with the title.
- **Common in Transfers Among Family or When Correcting Title Errors**
 - Quitclaim deeds are often used in non-sale situations, like transferring property between family members or clearing up title issues, since there's generally trust or a prior relationship





Special or Limited Warranty Deeds

What is a Special Warranty Deed?

A middle ground between full warranty protection and no warranty at all. Most suitable when there's confidence in the title's history, such as when dealing with properties owned by banks or in cases where additional title insurance can be obtained.

Purpose

➤ Limited Title Guarantee

- Unlike a general warranty deed, which guarantees the property's title against any past claims, a special warranty deed only covers issues or claims that might have arisen during the seller's ownership. If any claims or title defects existed before the seller took ownership, the seller is not liable.

➤ Protects Against Seller's Actions

- The seller guarantees that they have not done anything to encumber or damage the title during their ownership. This means that any liens, encumbrances, or claims from prior owners aren't covered under this deed.

➤ Common in Commercial Real Estate

- Special warranty deeds are often used in commercial transactions or cases where a bank or other institution sells a property (such as foreclosed property). Sellers, in these cases, typically aren't familiar with the property's entire history and only guarantee against issues that may have occurred while they owned it.



A man in a dark suit and striped tie is seated at a wooden desk, signing a document with a pen. Behind him are tall wooden bookshelves filled with books. The scene is dimly lit, with a warm glow from the desk area.

Summary

Main difference between the 3 main types:

General Warranty Deed	Special or Limited Warranty Deed	Quitclaim Deed
Covers any title issues from <i>*any*</i> prior owner.	Only covers title issues during the current seller's ownership period.	Offers no guarantees about title; simply transfers the seller's interest, if any.





Ladybird and TOD deeds

TOD Deeds and “Ladybird” Deeds

While both deeds are probate-avoidance tools, a Lady Bird Deed offers more flexibility because the owner can revoke or change the deed without affecting their rights. A TOD Deed is simpler but may have more limitations in revocability and Medicaid planning. The best choice depends on the state and specific estate planning goals.

Both allow property to pass outside of probate upon the owner’s death, but they have key differences:

	TOD	LBD
Ownership Control During Lifetime	Retains full ownership and control during their lifetime, but cannot revoke or change the transfer once the deed is recorded without executing a new deed.	Retains full control, including the right to sell, mortgage, or revoke the deed at any time without the beneficiary’s consent.
Effectiveness and Revocability	Becomes effective only upon the owner’s death. The named beneficiary has no rights to the property until then.	Creates a life estate for the owner with an enhanced right to use and control the property, but still transfers automatically upon death.
Medicaid and Asset Protection	In some states, it may still be subject to Medicaid estate recovery since the transfer happens at death.	Often used in Medicaid planning because the property does not become part of the probate estate, may help avoid Medicaid estate recovery in some states.
State Availability	Recognized in many states, as many have enacted laws specifically allowing them.	Only recognized in a few states (such as Florida, Texas, and Michigan).
Creditor and Estate Claims	Subject to creditor claims in some states since the transfer happens at death.	May offer some protection from creditors because the transfer is considered to occur during the owner's lifetime.



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Both allow property to pass outside of probate upon the owner’s death, but they have key differences:

- 1. Ownership Control During Lifetime
 - TOD: Retains full ownership and control during their lifetime, but cannot revoke or change the transfer once the deed is recorded without executing a new deed.
 - LBD: Retains full control, including the right to sell, mortgage, or revoke the deed at any time without the beneficiary’s consent.
- 2. Effectiveness and Revocability
 - TOD: Becomes effective only upon the owner’s death. The named beneficiary has no rights to the property until then.
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- 3. Medicaid and Asset Protection
 - TOD: In some states, it may still be subject to Medicaid estate recovery since the transfer happens at death.
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- 4. State Availability
 - TOD: Recognized in many states, as many have enacted laws specifically allowing them.
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- 5. Creditor and Estate Claims
 - TOD: Subject to creditor claims in some states since the transfer happens at death.
 - LBD: May offer some protection from creditors because the transfer is considered to occur during the owner’s lifetime.



Elements of a Deed, Generally

A proper deed contains all five elements:

1 Identifies Parties to the Conveyance

- Who is the transferor (known as the "grantor")? This one can be tricky.
- Transferor: Current holder of title to the subject of the conveyance.
- Who is the transferee (known as the "grantee")?

2 Nature of ownership

- How is the title currently held by Grantor?

3 Subject of the Conveyance

- Accurately describes property being transferred.

4 Nature of Conveyance

- Is the Grantor making any "guarantees" or "assurances" to the transfer? Are they merely quitting claim to their claims of ownership? Are they charging anything for the conveyance?

5 Proper execution formalities



How to Draft a Deed

Things needed:

- ☐ **Grantor / Grantee Information**
 - often names and addresses
- ☐ **Property Description (necessary) Can consist of:**
 - Street Address
 - Block and Lot Numbers
 - APN/Parcel ID Number-- some sort of identifier for property tax purposes
 - Land Survey Description from prior deed
- ☐ **Prior Deed evidencing transfer of title to current transferor/grantor (not always necessary but always advisable)**
 - Prior Deed Grantors
 - Book
 - Page
 - Recording book and page (aka "libor"/"folio")
 - Recording Date
 - Prior Deed signing date
- ☐ **Relevant Property Transfer Tax Exemption**
- ☐ **Homestead Exemption knowledge for jurisdiction**
- ☐ **Execution Formalities - i.e. proper signature lines**
- ☐ **Deed tax forms for jurisdiction**



Example of Adequate Property Description

Parcel ID No.: {{ParcelIDNo}}

That the Grantor, for ZERO consideration, receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey unto the said Grantee, its heirs and assigns forever, all that certain plot, piece, or parcel of land, situate (the "Property"), known by its street address as {{PropertyAddress}}, {{PropertyCity}}, {{PropertyState}} {{PropertyZip}}, situated in {{PropertyCounty}} County, New York, being particularly described as follows:

[INSERT Additional Legal Description IF YOU HAVE IT] //OR// A complete legal description of the real property being conveyed by this instrument is attached hereto as EXHIBIT A.

BEING a property with a Block Number of {{BlockNo}}, a Lot Number of {{LotNo}}, and a Section of {{SectionNo}}.

BEING a property which by Deed dated {{PriorDeedDate}} and recorded among the Official Records of {{PropertyCounty}} County, {{PropertyState}}, in Book {{Book}} and page {{Page}}, on {{PriorDeedRecordingDate}}, was granted and conveyed by {{PriorDeedGrantors}} unto the Grantor herein.



Common Language

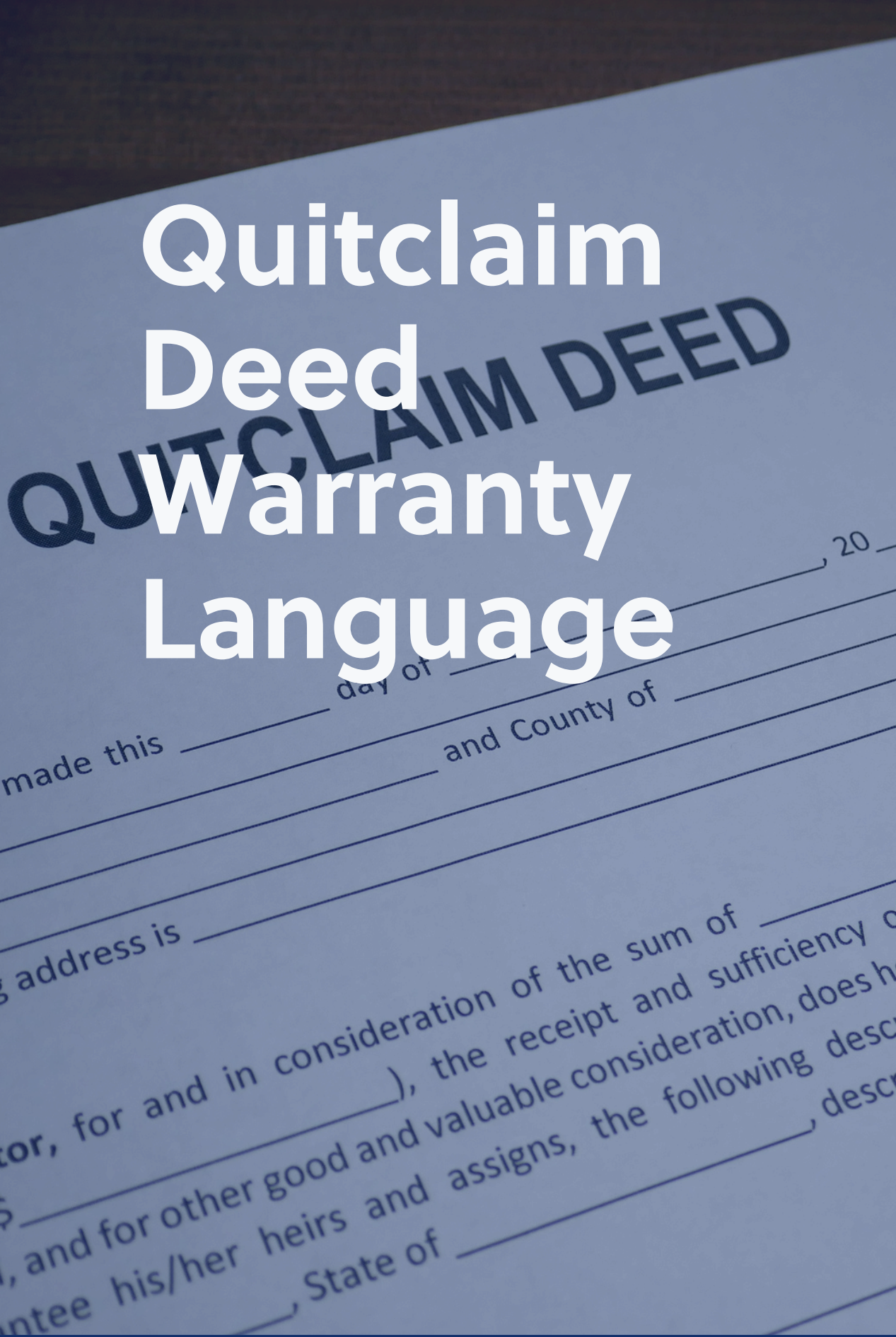
Special Warranty / Limited Warranty Indicator Language needed:

- "Grantors will warrant and defend the title against the lawful claims of all persons owning, holding, and claiming by, through, or under the Grantors."
- "AND THE GRANTOR will warrant and defend the right and title of the above described property unto the said Grantee against the claims of all persons owning, holding and claiming by, through or under the Grantor."

General Warranty Indicator Language

- "And the Grantors hereby warrant and forever defend the right and title to the above-described property unto the Grantee against the claims of all persons whomsoever."
- "And Grantors covenant with Grantees that Grantors are seized of the premises in fee simple, have the right to convey the same in fee simple, that title is marketable and free and clear of all encumbrances and that Grantors will warrant and defend the title against the lawful claims of all persons whomsoever, except for the lien of ad valorem taxes for the year {{Year}}, not yet due and payable; unviolated covenants, conditions, or restrictions that do not materially affect the value of the property; and utility lines, easements, and rights of way located over, under, or upon the subject property that do not materially affect the value of the Premises. That at the time of the delivery of the deed the grantors are seized of the estate in the property which the grantors purport to convey and that the grantors have good right to convey the same."
- "Covenant of Warranty Forever: That the Grantor will forever warrant and defend the above-described premises to the Grantee against every person lawfully claiming the same or any part thereof."





Quitclaim Deed Warranty Language

There is none!!




Other Deeds

Other Deed Types

- **"Deed of Trust"**
 - This is a Recorded Mortgage
- **Grant deeds**
 - Common in certain states where Warranty Deeds not as common (see California)
- **Deed of gift**
 - Less common use in Trust Transfers

Special Issues

- **Timeshares**
 - Must have the timeshare company review and approve
- **Co-ops**
 - No deed used, is an interest in a Corporation
-  **trusuite Searches**
 - If property not coming up, titling may be an issue





Deceased Grantor Language

➤ BEING a property which by Deed dated _____, and recorded among the Official Records of _____ County, [STATE], in Book ____ and page ____, on _____, was granted and conveyed by [PRIOR GRANTOR] unto [NAME 1] and [NAME 2], holding title as joint tenants with rights of survivorship. [NAME 1] died on [DATE], thereby establishing [NAME 2] as the sole owner of the property by virtue of survivorship rights.

OR

➤ [NAME 1] died on [DATE], thereby establishing [NAME 2] as the sole owner of the property by virtue of survivorship rights.



Language

Devise to TWO trusts - 2 variations:

THIS DEED is made this ____ day of _____, {{Year}}, by and between _____ and _____, husband and wife (collectively referred to as the "Grantors"), to _____, Trustee of _____ u/a dated _____, and _____, Trustee of _____ u/a dated _____, as tenants in common (collectively referred to as the "Grantees").

[exempt transfer no consideration section for relevant jurisdiction HERE]

WITNESSETH, that, for NO MONETARY CONSIDERATION, the Grantors grant and convey unto the Grantees, their successors and assigns, the Property (defined below), in fee simple, as tenants in common, as follows:

- One-half (½) of the Property to _____, Trustee of _____ u/a dated _____; and
- One-half (½) of the Property to _____, Trustee of _____ u/a dated _____.

Devise to of a TIC interest to a trust to the other TIC owner

WITNESSETH, that the Grantor currently owns a one-half undivided interest in the Property (defined below) as a tenant in common, and, by this deed, wishes to convey his/her entire tenant in common interest in the Property unto the Grantee.

WITNESSETH, that upon the execution and recording of this deed, the entire Property will be owned by the _____ u/a dtd. _____.

Devise to of a TIC interest to a trust to a third party

WITNESSETH, that the Grantor currently owns a one-half undivided interest in the Property (defined below) as a tenant in common, and, by this deed, wishes to convey his/her entire tenant in common interest in the Property unto the Grantee.

WITNESSETH, that upon the execution and recording of this deed, the Grantor's one-half undivided interest in the Property will be owned by the _____ u/a dtd. _____.



State-by-State Comparison of Transfer Taxes and Exemptions

Overview of Transfer Tax Rules

Each state has its own rules regarding transfer taxes on property transactions, especially where nominal consideration is involved.

- Comparison of how different states treat conveyances to trusts in terms of transfer taxes.
- Examination of states where nominal consideration or no-consideration transfers are still subject to transfer taxes.
- Description of exemptions available in some states (e.g., Illinois, New York, California) for conveyances to wholly owned revocable trusts or for gifts to irrevocable trusts.

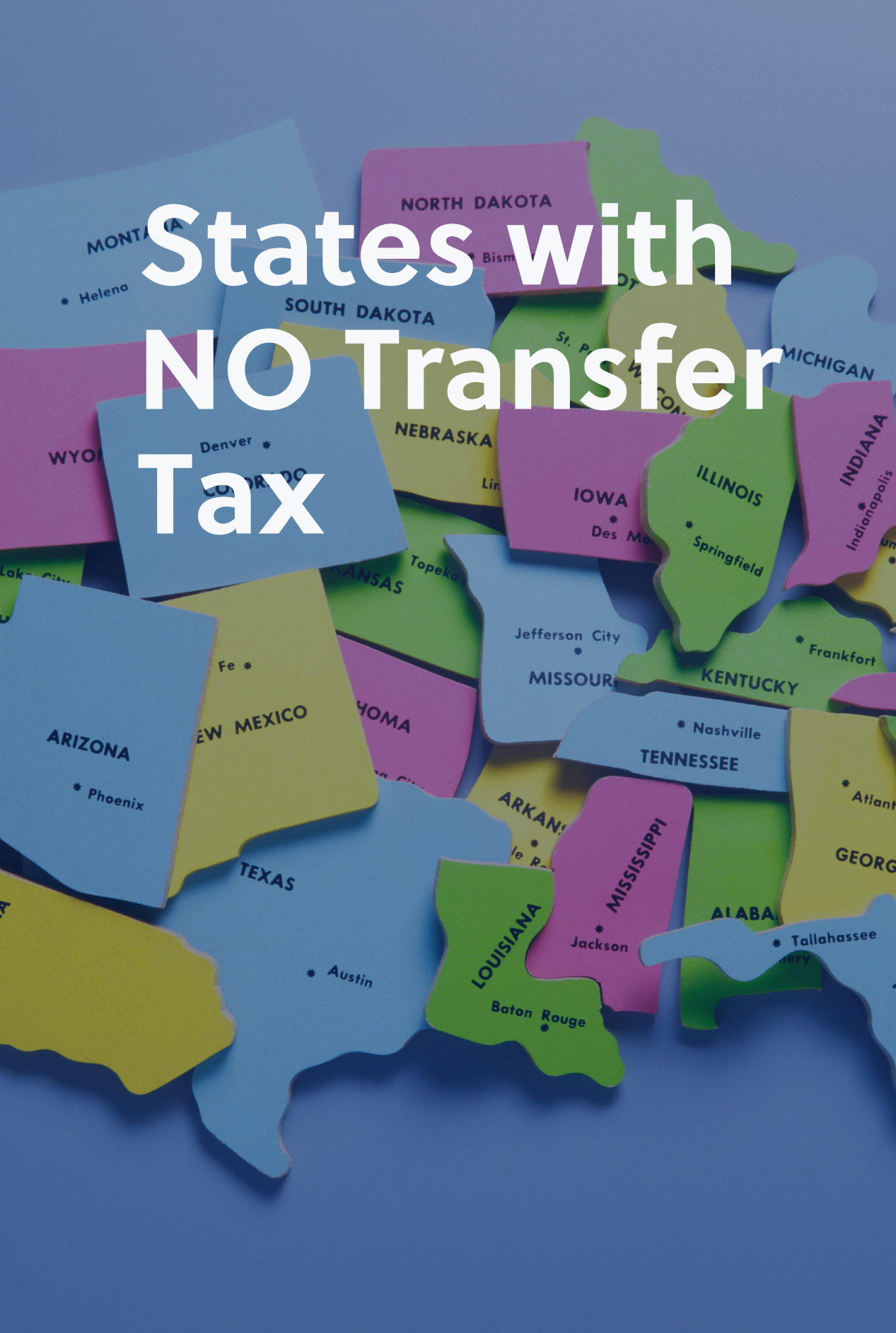


States with Transfer Taxes and Exemptions for Trust Transfer

State	Transfer Tax Exemption	Tax Forms Needed for Transfer?
AL	AL Code § 40-22-1(b)(2)	Y
AZ	ARS §11-1134(A)(7)	N
AR	AR Code Ann. §26-60-101 et seq.*	Y
CA	R&T Code# 11930	Y
CO	C.R.S. § 39-13-104(1)(m)	Y
CT	12-498(a)(10) and 12-498(a)(17)	Y
DE	30 Del. C. § 5401(1)(j)	Y
FL	FL Administrative Code 12B-4.013(28(i))	N
GA	O.C.G.A. 48-6-1, et seq	Y
HI	HI Rev Stat § 247-3 (5)	Y
IL	§35 ILCS 200/31-45(e)	Y
IA	Iowa Code § 428A.2(21)*	Y
KY	Ky Rev. Stat. § 142.050(7)(b)	N
ME	36 M.R.S. § 4641-C(15)	Y

State	Transfer Tax Exemption	Tax Forms Needed for Transfer?
MD	Sections 12-108(ee) and 13-207(a)(23) of the Tax-Property Article	N
MA	Massachusetts General Laws chapter 64D, section 1	N
MI	Michigan Compiled Laws Section 207.526(a)	Y
MN	Minnesota Statute 287.21*	Y
NE	350 Neb. Admin. Code, ch. 52, § 003.02D	Y
NV	NRS 375.090(7)	Y
NH	NH REV STAT § 78-B:2 (XXI)(a)(3)	
NJ	NJAC 18:16-2.7	
NY	NY Tax L § 1405(b)(4)	Y
NC	NCGS 105-228.29(6)	
OH	Ohio Revised Code Sec. 319.54 (G)(3)(t)	Y
OK	68 OK Stat § 3202(4)	

State	Transfer Tax Exemption	Tax Forms Needed for Transfer?
PA	61 Pa. Code § 91.156(c)(1)	Y
RI	R.I. Gen. Laws § 44-25-1(a)*	Y
SC	Sec. 12-24-40(8)	Y
SD	SDCL 43-4-22 (18)	N
TN	TN Code Section 67-4-409(a)(4)	Y
VT	32 V.S.A. § 9603(5)	Y
VA	VA Code Ann. §58.1-811(a)(12)	N
WA	WAC § 458-61A-202	Y
WV	West Virginia Code §11-22-1	Y
WI	Sec. 77.25(16) Wis. Stats.	Y



States with NO Transfer Tax

- 14 states where conveyances to a wholly owned trust or gifts to trusts are exempt from transfer taxes.
- Highlight of unique exemptions for intra-family transfers and transfers to revocable living trusts.

Alaska	Montana
Idaho	New Mexico
Indiana	North Dakota
Kansas	Oregon
Louisiana	Texas
Mississippi	Utah
Missouri	Wyoming





State-by-State Comparison of Transfer Taxes and Exemptions

State-by-State Transfer Tax

Documentation Requirements

➤ State Dependent

- Documents that need to be filed along with deeds to claim exemptions for trust conveyances.

➤ Common forms, affidavits, and other filings required by the state taxing authorities:

- transfer tax exemption forms, trust copies, e-filings.

★ Call your clerk!

- Practical tips for ensuring proper documentation to avoid state penalties or delays in recording.





Tax Considerations and Legal Implications

Other Considerations

Federal and State Tax Implications

- Gift tax and transfer tax issues when no or nominal consideration is used.
 - Is a taxable gift when made to exempt trust
 - Is not a taxable gift when made to non-exempt trust

Step-up in Basis

- Transfers to Exempt Irrevocable Trusts
 - Carry Over Basis
- Transfers to Revocable Living Trusts and other non-exempt trusts
 - Stepped up Basis at death



What about out of state deeds?

I'm licensed in NY, but needs to transfer a property in a different state.

Do I need to 'refer it out'?

- Not necessarily, but you might need an attorney to review for compliance.
 - Check with the clerk in that jurisdiction and see if an attorney NEEDS to prepare the deed. (Often, title companies prepare them.) If the answer is NO, then you can most likely prepare the deed yourself.
- Use modern tools to help you with deed prep!
 - Trustate, and others, can help. We can do everything from deeds to transfer tax exemption forms.
- If attorney review is needed, then pre-prepare the deed in a system and give that to the attorney to review for state compliance.



Common Trust Funding Tasks

Mendelsohn, Mendelsohn, & Fry LLP

24 Actions Needed

James Jones

Phase 2: Trust Funding

0 tasks completed

Task	Status	Start Task	Point Person
<input type="checkbox"/> ASSIGNMENT OF TANGIBLE PROPERTY: Generate an assignment of tangible personal property to the trust.	Not Started	Yes	+ ...
<input type="checkbox"/> ASSIGNMENT OF BUSINESS: Generate an assignment of a business interest to the trust.	Not Started	Yes	+ ...
<input type="checkbox"/> OBTAIN DEED: Retrieve a prior deed for a property.	Not Started	Yes	+ ...
<input type="checkbox"/> DEED: Generate a deed to transfer property to the trust. <small>Note: Trustate only prepares deeds for no or nominal consideration.</small>	Not Started	Yes	+ ...
<input type="checkbox"/> DEED TRANSFER TAX FORMS: Generate relevant tax forms associated with the deed to trust, if necessary.	Not Started	Yes	+ ...
<input type="checkbox"/> GIFT TO TRUST: Prepare document for grantor to sign that evidences the gift of a specific property to the trust.	Not Started	Yes	+ ...
<input type="checkbox"/> EIN: Obtain Trust EIN. <small>As long as the Grantor is a trustee of the Trust, the trust may use his/her Social Security Number as its tax ID number, and skip this step. (Treas. Regs. Section 1.671-4(b))</small>	Not Started	Yes	+ ...
<input type="checkbox"/> OPEN TRUST ACCOUNT: Open trust checking account.	Not Started	Yes	+ ...
<input type="checkbox"/> TRANSFER BANK ACCOUNT: Retitle/transfer a bank account into the trust. <small>This task may require an in-person visit with the financial institution. In the event that an in-person visit is required, Trustate will prepare a customized packet for your client, and if needed, book an appointment with the institution.</small>	Not Started	Yes	+ ...
<input type="checkbox"/> TRANSFER INVESTMENT ACCOUNT: Retitle/transfer an investment account into the trust. <small>This task may require an in-person visit with the financial institution. In the event that an in-person visit is required, Trustate will prepare a customized packet for your client, and if needed, book an appointment with the institution.</small>	Not Started	Yes	+ ...
<input type="checkbox"/> BENEFICIARY DESIGNATION - STOCK: Designate trust as primary or contingent beneficiary.	Not Started	Yes	+ ...
<input type="checkbox"/> BENEFICIARY DESIGNATION - LIFE INSURANCE: Designate trust as beneficiary. <small>Use Trustate to obtain/complete the forms for you.</small>	Not Started	Yes	+ ...
<input type="checkbox"/> BENEFICIARY DESIGNATION - RETIREMENT: Designate trust as primary or contingent beneficiary. <small>NOTE - Generally speaking, make sure the trust would qualify as a "see-through trust" prior to naming it as beneficiary of a retirement account. Use Trustate to obtain/complete the forms for you.</small>	Not Started	Yes	+ ...
<input type="checkbox"/> BENEFICIARY DESIGNATION - BANK/INV ACCOUNT: Designate the trust as beneficiary of a bank/investment account. <small>This task may require an in-person visit with the financial institution. In the event that an in-person visit is required, Trustate will prepare a customized packet for your client, and if needed, book an appointment with the institution.</small>	Not Started	Yes	+ ...
<input type="checkbox"/> IRS FORM W9: Prepare IRS Form W-9 for the trust.	Not Started	Yes	+ ...

Note on Trust Funding

Deeds are JUST the beginning!

If you are pre-funding your trusts, ALL client assets need to be moved into the trust to avoid probate.

Not doing so can cause critical account freezes at death!



Resources



Follow Trustate on [LinkedIn](#) for tips and updates.



Visit Trustate's [website](#) to explore subscription options and start streamlining estate planning, trust funding, and administration for all your estates today.



Email info@trustate.com with questions.

