Living trusts were used sparingly in the typical estate planning practice as recently as three decades ago. Inter vivos trusts were recommended primarily to achieve estate tax savings and for elderly clients with existing or foreseeable incapacities. During the intervening period, the estate planning landscape has changed dramatically. Living trusts continue to facilitate estate tax savings, but they are also commonly used to avoid probate and to provide for potential incapacity. As living trusts proliferate, it is essential that attorneys fully understand all facets of trusts, including the drafting, funding, and administration of trusts. The focus of this book is on trust funding, which entails the transfer of title to property from the settlor of a trust to the trustee.

Unfortunately, most existing living trusts are totally or partially unfunded. This state of affairs is due to a multiplicity of factors, including lack of awareness, time, and economic incentive on the part of attorneys who draft living trusts. In addition, clients who are instructed to transfer all their property to their living trusts rarely do so, either because it is too much trouble, because they do not know how, or because they just do not get around to it. Moreover, funding an asset into a trust can be a frustrating experience, involving contact with representatives of third parties, such as banks, brokerage firms, transfer agents, insurance companies, and various state and federal agencies, whose representatives may not fully understand the concept of trustee ownership. If trusts are not properly funded, however, the purposes for which they are created will not be accomplished.

The purpose of this book is three-fold. First, the book emphasizes the importance of trust funding in a client’s estate plan and suggests the proper roles for the attorney and client in accomplishing this critical function. Second, the book provides a practical look at the funding process in general and the funding of specific assets. Finally, because more trust funding litigation will likely result as increasing numbers of trusts are administered upon the deaths of the settlors, the book collects and analyzes the existing case law, statutes, and treatises on the necessity of trust funding as well as on specific funding issues. Hopefully, these authorities will be instructive on avoiding funding errors and will also provide guidance for representing successor trustees, beneficiaries, or heirs at law after a settlor has died leaving an unfunded or improperly funded trust.

The book is written for attorneys and their staff members to serve as a broad overview of trust funding as well as a reference book to consult as particular funding
issues arise. The use of the book will depend on the experience of the attorney or staff member. A new attorney, a staff member who is new to trust funding, or a generalist who does not specialize in estate planning will find all the basics of trust funding, including step-by-step instructions for funding many types of assets, practical considerations that may save valuable time and minimize errors, and samples of numerous funding documents. Staff members who are charged with the responsibility of funding trusts but are not given adequate guidance or supervision will find the book a valuable resource. An experienced estate planner may find alternative ways to fund specific assets or may look up information about funding an asset not typically encountered. For example, for my only trust client who owned an airplane, my assistant and I researched, talked with FAA personnel, requested the required forms, and reviewed the applicable regulations in order to ascertain whether and how to transfer the airplane to the trust. A reader in a similar situation may save time and effort by consulting the applicable discussion in the book.

Funding techniques and strategies lack uniformity as a consequence of varying state laws and attorney practices. Thus while my goal is to provide a comprehensive treatment of the subject of trust funding, inevitably there are funding procedures or specific assets that are not addressed in the book. If a reader uses a funding procedure or has experience funding an asset that is not covered, or spots an error or omission, I would like to hear about them.

Carla Neeley Freitag