

# Follow all rules when transferring assets to an irrevocable trust

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Irrevocable trusts can provide a variety of benefits, including gift and estate tax savings, creditor protection and the ability to control how assets are distributed. To preserve these benefits, however, it's critical to respect all trust formalities.

## Case in point

Here's an example of just how critical this can be: In *U.S. v. Tingey*, a taxpayer set up an irrevocable trust for the benefit of his wife and children, naming someone else as trustee. Around the same time, the taxpayer and his wife purchased a ski cabin, the title to which was transferred to the trust. Later, the couple got into financial trouble and ended up owing more than \$2 million in federal taxes. The government successfully foreclosed several tax liens on the ski cabin.

The couple argued that the government couldn't enforce the liens against the ski cabin because title was held by the trust. But the U.S. Court of Appeals for the 10th Circuit disagreed. The court explained that a tax lien may be satisfied by property if it's held by the taxpayer's "nominee" — in other words, "the taxpayer has engaged in a legal fiction by placing legal title ... in the hands of a third party while actually retaining some or all of the benefits of true ownership."

Several factors indicated that the couple had done just that. Among other things, they maintained the ski cabin, paid the utility bills and insurance premiums (on a policy issued in the taxpayer's name), used the cabin without the trustee's permission or supervision, and rented the cabin to friends without the trustee's knowledge.

## Tread carefully when transferring assets

As this case illustrates, if you continue to treat assets as your own after transferring them to an irrevocable trust, they may be at risk. If you have questions regarding asset transfers, please contact us.

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