

Why we need your original Memorandum of Trust

What is it? A Memorandum of Trust is a document described in Ohio Revised Code Section 5301.255. It is a written, signed, and notarized instrument that lists certain information found in your trust. Specifically, it includes (1) the name and address of the trustee of the trust, (2) the date of execution of the trust; (3) the powers specified in the trust relative to the acquisition, sale, or encumbering of real property by the trustee or the conveyance of real property by the trustee, and any restrictions upon those powers. (It also may set forth the substance or actual text of provisions of the trust.) It is also sometimes referred to as an “Affidavit of Trust” (though it must include the information listed above).

Why do we need it? You are completing a transaction related to real estate that is titled in your trust. Real estate can be transferred to a trust without trust-related documentation. However, once the trustee is executing a document related to the real estate in the trust (deeds, easements, some contracts, etc.) Ohio title rules require that evidence of the trustee’s identity, powers, etc. first be recorded on the record. Your Memorandum of Trust fulfills that requirement. It will be recorded in the real estate records prior to the new legal instrument(s) to show that the trustee is able to complete this transaction. [Note: If you already have a Memorandum of Trust recorded in the county in which the new transaction is occurring, we do not need to record it again. If this is the case, please provide us with a copy of the recorded Memorandum of Trust or information about when it was recorded.]

Where can you find it? Usually estate plans that include trusts are stored in binders or something similar. It is common for the attorney who created your trust to have included a Memorandum of Trust (or “Affidavit of Trust”) in with those materials. You can also contact that attorney to see if they can help you find it or provide one. We must have an original Memorandum of Trust for recording. The county will not accept a copy.

What if you don’t have one? If you do not have one, a new one can be created and executed now. You are welcome to have the attorney who drafted your estate plan create one for you. Alternatively, our firm may be able to provide one, if Ohio conflict-of-interest standards will not be violated. Contact us for more information. If we need to create one for you, we will need you to provide us with a copy of your trust and your address so we can get the necessary information.

What happens to the Memorandum of Trust after it is recorded? Once it goes through the county recording process, the original will be sent to you.

Please feel free to contact us at (419)289-8080 or (419)994-4892 with any other questions. Thank you.