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A Deed to a Trust, LLC, or Corporation, Granted Before the Entity is Created,
May Still Transfer the Property – the Requirements in California

A California court faced a situation in whether or not a deed granting property to a trust, granting the property Prior to the creation of the trust, is sufficient to transfer the property. The court held that a quitclaim deed transferring property to the trustee of a trust is not void as between the grantor and grantee merely because the trust had not been created at the time the deed was executed, if (1) the deed was executed in anticipation of the creation of the trust and (2) the trust is in fact created thereafter. Such a deed is valid between the grantor and grantee on the date the trust was formed.

In *Gloria Luna v. Erica Brownell* (185 Cal.App.4th 668 (2010)), the dispute arose regarding a house in Monterey Park. Al owned the property, and wanted to plan for his passing. He signed a deed granting the property to himself, his brother, and two sisters as co-owners. Later (here's where the attorney got involved) the two sisters each signed two deeds, one granting their interest back to Al as an individual, the other to Al as trustee of a trust (that had not been created). Several weeks later, Al executed the Declaration of Trust. The sister's deeds to the Trust were recorded, and Al died 11 days later. The sisters' greedy heirs filed this lawsuit claiming that the deed to the Trust was void because the trust did not exist when the deeds were signed and delivered to the Lawyer.

Because there were no prior California decisions addressing this issue, the court looked at out-of-state decisions. The West Virginia Supreme Court held that a deed drawn and executed in anticipation of the creation of the grantee as a corporation, limited liability company, or other legal entity entitled to hold real property is not invalidated because the grantee entity had not been established as required by law at the time of such execution, if the entity is in fact created thereafter in compliance with the requirements of law and the executed deed is properly delivered to the entity, the grantee, after its creation." As qualified by a Washington Court -A deed to a

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corporation made before its organization is valid between the parties but *is void when asserted against third parties*. Title passes when the corporation is legally incorporated.