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Estate Planning: Pairing a Pour-Over Will with Your Trust



Does your estate plan include a trust? If so, you may hear about another estate planning tool called a Pour-Over Will. A Pour-Over Will is a legal document that acts as a back-up to an existing trust by automatically moving property and assets into the trust upon your death, essentially pouring these assets over into that existing trust.

Why Include a Trust?

Many estate plans include trusts for a variety of reasons including privacy, timeliness, costs, and avoiding probate. Much like a simple will, trusts enable an individual to designate how their assets should be distributed after the individual's death. A key difference for many individuals is that, unlike a simple will, a trust keeps these assets and beneficiaries private because it is not filed with the probate court. The assets are distributed directly from the trust which also avoids the time and costs associated with probate court.

Revocable vs. Irrevocable Trust

A trust can be either irrevocable or a revocable – also known as a living trust. An irrevocable trust cannot be modified by the individual who sets up the trust without the consent of the trust's beneficiaries. A revocable or living trust can be modified, and assets can be recalled from the trust until the individual's death.



The Pour-Over Will

Once the trust is established, it is important to “fund” the trust by moving assets into it, now and in the future. Any assets that have been “left behind” or outside the trust would have to go through probate or may even be subject to laws of intestate succession if they are not expressly handled through a will. This is where the Pour-Over Will becomes an important tool. A Pour-Over Will ensures that all assets that were not funded into the trust will be moved into the trust after the individual’s death and will be disbursed according to the terms of the trust.

For example, an individual purchases property and dies before the property is moved into the trust. A Pour-Over Will automatically moves the asset into the trust to be handled according to the instructions in the trust. Another example is personal property such as jewelry, antiques or furniture - items not typically funded into a trust due to convenience. A Pour-Over Will helps to ensure that these types of items are eventually transferred into the trust.

Assets placed into a trust prior to the individual’s death can avoid probate. However, assets placed into a trust via a pour over provision will still need to go through probate. This is why it’s beneficial to put as many assets as possible into the trust prior to the individual’s death and then have a Pour-Over Will just in case some assets were left out.

Additional Protections

There are additional protections provided by a Pour-Over Will. A Pour-Over Will can include language directing that assets be distributed to the trust beneficiaries should the trust become invalid, or in the case of an unfunded trust, face legal issues that make it difficult or impossible to fund at the time of the individual’s death.



Final Thoughts

As you can see, Pour-Over Wills can be an important component of your estate planning. If you have questions about a Pour-Over Will or would like to discuss your estate planning, please contact our office. We're always happy to help.



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