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# **DO I NEED A #POUR OVER #WILL?**

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# DO I NEED A #POUR OVER WILL?

## WHAT IS A #POUR OVER WILL?

A “ Pour Over” Will is a Will that works in conjunction with a #Living Trust to ensure that a person’s #assets pass according to their wishes and goals. To see how the Trust and Will work together, let me explain.

## #LIVING TRUST

For most people—even those with minimal estates—creating a “Revocable” or “Irrevocable” Living Trust is a smart idea. Assets transferred into the Living Trust avoid the expenses and delays of probate. An #estate that passes through probate becomes public record; anyone—friends, nosy neighbors, co-workers—can see all the deceased’s financial and personal affairs. But a Living Trust is a private document, visible only to the parties involved. Also assets titled in the living trust can pass automatically to the #beneficiaries. They can pass immediately unless the creator of the trust, in the trust agreement, has imposed restrictions on when and how they may pass—for instance, age limitations, if there are minor children as beneficiaries. Title to the owner’s assets are transferred to a “#Trustee,” who is a fiduciary who manages the assets and ultimately distributes them to the final beneficiaries, according to the terms of the trust agreement created by the owner.

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But, in order for assets to pass through the living trust, they must be titled to pass through the trust. Assets that are not titled in the trust by the time of the owner's death do not pass through the trust.

### **WHY DON'T ALL OF THE OWNER'S ASSETS GET TITLED IN THE #TRUST?**

Sometimes people create a trust and forget - or don't get around—to title all of their assets into the Living Trust.

More often, people acquire assets after they have created the living trust and then fail to title them to the trust.

For instance, suppose John owns a house. He creates a Living Trust and titles the house in the trust. But, sometime later, John sells the house (through the Trust) and buys another house. But John fails to title this new house in the trust. When he dies, the new house does not pass through the trust. Instead, if John also has not created a Will, the house passes according to the laws of John's state. It might pass to heirs John does not want to have the house. That's where a **Pour Over Will** comes in handy.

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## **WHERE DO ASSETS COVERED BY THE POUR OVER WILL GO?**

Assets covered by the Pour Over Will go according to the terms of the will. In our example, if John has executed a Pour Over Will, the second house will go to whomever he names in the Will to inherit it. However, often owners do the smart thing and designate their Living Trust as the beneficiary of the Pour Over Will. Thus, in this case, John's second house would go into the Living Trust. It would be distributed to the beneficiaries of the Living Trust. Perhaps the Trustee might sell it (through the Trust) and the proceeds of the sale would go into the Living Trust, to be distributed according to its terms.

## **DOES A POUR OVER WILL AVOID #PROBATE?**

Pour Over Wills must be probated, just like any other will. However, since the owner—we hope — has titled most of his major assets in his Living Trust, probate should be simplified, less expensive. Possibly the Estate may qualify for #Summary Administration, which is usually much quicker and less expensive.

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## **DOES A POUR OVER WILL RE-ENFORCE THE MAKER'S INTENTIONS?**

A Pour Over Will can restate the Owner's intentions as directed in the Trust. This would be especially important if, for some reason, the Living Trust is invalidated. In that case, the Pour Over Will is the fallback, ensuring that the Owner's intentions are followed.

## **CAN A POUR OVER WILL DISINHERIT PERSONS?**

In a Living Trust, the maker can disinherit specific persons if he wishes.

Likewise, in the Pour Over Will, the maker can repeat his intentions to disinherit specific persons, thus truly making it clear he does not want those persons to inherit from his estate.

## **IS A POUR OVER WILL ESSENTIAL?**

A Pour Over Will is an essential component in any comprehensive estate plan.

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# DO I NEED A POUR OVER WILL?

I have been practicing law since 1978. I have helped many persons with their estate planning needs. I would be happy to help you create an estate plan that meets your goals, intentions, and personal situation. Please call or email me.

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