

A Living Trust And A Pour-Over Will Two Estate Planning Documents Working In Tandem

At the very least, your estate plan should include a legally valid will governing the disposition of assets upon your death. But comprehensive estate planning often goes much further. For instance, you may provide for transfers of assets to a living trust (also known as a revocable trust) to supplement your will. For many, the best part of this strategy is that the trust assets don't have to pass through probate.

You can take an additional step by creating a pour-over will. In a nutshell, a pour-over will specifies how assets you didn't transfer to a living trust during your life will be transferred at death.

Complementary Documents

As its name implies, any property that isn't specifically mentioned in your will is "poured over" into your living trust after your death. The trustee then distributes the assets to the beneficiaries under the trust's terms.

The main purpose of a pour-over will is to maximize the benefits of a living trust. But many estate planning experts also tout the merits of using a single legal document — a living trust — as the sole guiding force for an estate plan.

To this end, a pour-over will serves as a conduit for any assets that aren't already in the name of the trust or otherwise distributed. The assets will be distributed to the trust.

This setup offers the following benefits:

Convenience. It's easier to have one document controlling the assets than it is to "mix and match." With a pour-over will, it's clear that everything goes to the trust, and then it's the trust document that's used to determine who gets what. That, ideally, makes it easier for the executor and trustee charged with wrapping up the estate.

Completeness. Generally, everyone maintains some assets outside of a living trust. A pour-over will addresses any items that have fallen through the cracks or that have been purposely omitted. It closes the door on your estate.

Privacy. In addition to the convenience of avoiding probate for the assets that are titled in the name of the trust, this type of setup helps to keep a measure of privacy that isn't available when assets are passed directly through a regular will.

There is, however, one disadvantage to consider. As with any will, your executor must handle specific bequests included in the will, as well as the assets being transferred to the trust through the pour-over provision before the trustee takes over. (Exceptions may apply in certain states for pour-over wills.) While this may take months to complete, property transferred directly to a living trust can be distributed within weeks of the testator's death.

Therefore, this technique doesn't avoid probate completely, but it's generally less costly and time consuming than usual. And, if you're thorough with the transfer of assets made directly to the living trust, the residue should be relatively small, and perhaps there won't be anything at all that will pass via the will.

Note that if you hold back only items of minor value for the pour-over part of the will, your family may benefit from an expedited process. In some states, your estate may qualify for "small estate" probate, often known as "summary probate." These procedures are easier, faster and less expensive than regular probate.

The Role Of Trustee

After the executor transfers the assets to the trust, it's up to the trustee to do the heavy lifting. (The executor and trustee may be the same person and, in fact, they often are.) The responsibilities of a trustee are similar to those of an executor with one critical difference: they extend only to the trust assets. The trustee then adheres to the terms of the trust.

While one of the primary objectives may be that the trustee transfers the assets into the hands of beneficiaries as soon as possible, the

trustee's role may be more complicated in certain circumstances. For instance, the trust document may include terms for handling assets of young children or those with special needs. Along these lines, a trustee may be directed to leave assets in the trust until a child reaches a specified age. Or the trustee may be authorized to make distributions at various intervals.

Account For All Your Assets

The benefits of using a living trust are many. Pairing it with a pour-over will can help wrangle any loose assets that you purposely (or inadvertently) didn't transfer to the living trust. Contact your estate planning advisor for additional details.

SIDEBAR: Revocable Trust vs. An Irrevocable Trust

Should you use a revocable or irrevocable trust? It depends on your needs.

A revocable trust provides more flexibility because you're able to make revisions such as changing beneficiaries. You effectively maintain control over the trust assets. With an irrevocable trust, you give up all rights to the assets after they're transferred to the trust.

The main advantage of an irrevocable trust is that the assets are removed from your taxable estate. But this may not be important to you if the estate is completely shielded from tax by the federal gift and estate tax exemption. The exemption for 2022 is \$12.06 million. As a result, most people opt for a revocable trust.

© 2022



1875 Century Park East, Suite 2000
Los Angeles, CA 90067
(P) 310 553-8844 | (F) 310 553-5165
www.weinstocklaw.com

