

A Plan You And Your Family Need—But Hopefully Won't Use

Many of our firm's estate planning clients want to make sure that when they pass away, their families can bypass dealing with the probate court. That's because probate can be time-consuming, inconvenient, and involve additional attorney's fees and administrative fees.

Contrary to popular belief, having a last will and testament does not ensure your family can avoid probate. The opposite is true: A last will and testament is a ticket to probate. For most of our clients seeking probate avoidance, the best solution is setting up a revocable (living) trust.

It follows then, that clients are sometimes startled when, in the process of designing their living trust, we tell them *they also need a will*. There's a logical explanation for this, though: We are referring to a special type of will, called

a *pourover will*. This is a document that, if all goes according to plan, will never be used and never see the light of day in probate court.

Let me explain. Assets titled in the name of your living trust can avoid probate. But what happens if you have mistakenly left out of your trust an otherwise probatable asset? It's not an uncommon occurrence. People acquire assets after setting up their trusts and forget to transfer the title. They may acquire an asset shortly before passing on and not have time to retitle it. If you pass away



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and have an asset that is not in your trust and that does not have a named death beneficiary or co-owner, that asset must go through probate. Moreover, it will be treated as if you died intestate, and distributed among your heirs based on Florida intestacy law, not based on the provisions of your trust.

This is the time that your pourover will comes to the rescue: It directs that any such "orphan" assets should be transferred into your existing trust, and distributed according to your trust's directions.

Please be sure to consult with

an experienced Florida estate planning attorney to ensure that your goals for your family and your assets will be fulfilled once you're gone. And if your goal includes a living trust and probate avoidance, a pourover will must be part of your plan. It's the safety net you hope will never be needed.

Joseph S. Karp is a nationally certified and Florida Bar-certified elder law attorney (C.E.L.A.) specializing in the practice of Trusts, Estates and Elder Law.

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Read The Florida Elder Law and Estate Planning Blog at www.karplaw.blogspot.com.

Listen to Joe Karp and Anita Finley on WSBR 740AM and WWNN 1470AM and on our YouTube Channel: BoomerTimes Presents.

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