

## What Is A Pour Over Will

Clients commonly ask, "why should I write a trust *and* a will?" Their rationale is that both are testamentary instruments which dispose of their property when they die. So if one is written, this eliminates the need to write the other and vice-versa.

While technically true, such a statement does not grasp the practicalities of estate planning. The common route is to write both because California Probate Code permits the trust and will to work in harmony because of a specific law, the Uniform Testamentary Additions to Trusts Act, (UTATA). California Probate Code §6300 reads:

"A devise, the validity of which is determinable by the law of this state, may be made by a will to the trustee of a trust established or to be established by the testator or by the testator and some other person or by some other person (including a funded or unfunded life insurance trust, although the settlor has reserved any or all rights of ownership of the insurance contracts) if the trust is identified in the testator's will and its terms are set forth in a written instrument (other than a will) executed before or concurrently with the execution of the testator's will or in the valid last will of a person who has predeceased the testator (regardless of the existence, size, or character of the trust property). The devise is not invalid because the trust is amendable or revocable, or both, or because the trust was amended after the execution of the will or after the death of the testator. Unless the testator's will provides otherwise, the property so devised (1) is not deemed to be held under a testamentary trust of the testator but becomes a part of the trust to which it is given and (2) shall be administered and disposed of in accordance with the provisions of the instrument or will setting forth the terms of the trust, including any amendments thereto made before or after the death of the testator (regardless of whether made before or after the execution of the testator's will). Unless otherwise provided in the will, a revocation or termination of the trust before the death of the testator causes the devise to lapse."

The law's importance is that it closes the estate funding gap. When a trust is created, it becomes effective immediately. This is why the term "living trust" is used. The person will fund the trust with various property (house, bank account or brokerage account). However, it is virtually impossible to ensure that every asset is titled in the name of the trust at one's death. There are a couple of reasons for this.

First, the person may simply forgot to title the asset in the trust's name. Second, the asset cannot effectively be titled in the trust's name (fancy rug, coin collection, bitcoin). When the person dies, the will they wrote becomes effective. Simply stated, wills only become effective at death.

UTATA allows a person's will to name their trust as the exclusive beneficiary of their estate. This bookends the person's estate as the trust can handle the bulk of the estate when the person writes it and the will can capture anything that was not titled in the trust's name at the person's death. This reduces the chances that an asset will fall through the cracks and not be part of the trust.

The type of will described above is known as a "pour-over will."