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WHAT THE HECK IS A POUR-OVER WILL? By Randy Spiro

A Pour-Over Will is a particular type of Will. Wills pass certain assets at the signer's death. Assets that do not pass under the Will are: assets that have a beneficiary, assets that are in joint tenancy with one or more surviving persons and assets owned by a Trust.

There is a two step process for a revocable trust: Signing it and then funding it. Funding means changing the title and owner of the creator's assets to the name of the Trust.

Some Creators of Trusts forget to make their trusts the owner (or in some cases the beneficiary) of their assets. Good practice dictates that the attorney who drafts the Trust also prepare a Pour-Over Will.

The Pour-Over Will says that any assets that the Creator of the Trust failed to transfer into the Trust during his or her life (and assuming the asset was not held in joint tenancy and that there was no beneficiary) will pass to the Trust at the death of the signer of the Will. Stated simply, the trust is the beneficiary of the Will.

A Revocable Trust is intended to avoid probate. Suppose the Client owned 5 pieces of real property but only gave the attorney deeds for 4 of them. On these 4 properties, the attorney prepared quitclaim deeds from the Creator to the Trust. The 4 quitclaim deeds were then signed, notarized and then recorded.

Property number 5 will go through probate. It will pass under the Pour-Over Will. It will only become part of the Trust at the end of the probate. The order of final distribution ending the probate will order property number 5 distributed to the trust and that order will be certified and recorded to clear title. Properties 1, 2, 3 and 4 do not go through probate.