

POUROVER WILL

(ALL TO REVOCABLE TRUST OF TESTATOR/TESTATRIX)

HIGHLIGHTS OF THE PLAN

OVERVIEW

A will is a legal instrument that permits a person to direct how his or her assets will be distributed after death. The person who sets up a will is called the testator, if male, or the testatrix, if female.

Some assets owned by the testator/testatrix, such as jointly-held property with right of survivorship and life insurance, pension assets, and other assets with a named beneficiary, pass by operation of law or contractual provisions and are not subject to the terms of the will. The assets that are owned by the testator/testatrix at death that are subject to the will are known as the probate estate.

For a will to be valid it must be drafted and signed according to strict requirements imposed by state law. Though similar, these requirements vary from state to state. Before a will can be administered it must be filed with the local probate court and its administration must be supervised by the court. However, most states permit what is known as "independent", "informal", or "unsupervised" administration, thus requiring little or no supervision of the probate court. The person who administers the estate is sometimes called the executor or executrix, or may simply be referred to as the personal representative. There may be more than one personal representative appointed, and the will may provide for a successor personal representative to be appointed in the event a personal representative resigns, dies, becomes disabled or otherwise refuses to serve. The person or persons who are benefited by the will are called beneficiaries.

CHANGING WILL PROVISIONS

A will is a revocable legal instrument, which means the testator/testatrix has the power to change the terms of the will or revoke it until the time when he or she dies. A new will may be drafted to replace the existing will, or the existing will may be changed by drafting and executing a codicil or amendment. The codicil should refer to the will that is being changed and describe precisely what the changes or additions are and where they should be inserted.

POUROVER WILL

A pourover will is one that contains simple dispositive provisions designed to pass all estate property that is not specifically given to a particular individual or charity into a trust that is executed during the testator/testatrix's lifetime. Such a trust is generally called a revocable living trust and is created in a separate document from the will. Until the creator of the trust, often called the settlor of the trust, dies, the trust can be changed or revoked. After the settlor dies, the trust becomes irrevocable, meaning it cannot be changed or revoked. If the spouse dies before the testator/testatrix, who is also the settlor of the living trust, the property will go directly into the

trust for the benefit of the children. Sometimes the trust is designed to receive all the property in the estate and will benefit both the spouse and the children, with the children's share qualifying for the estate tax credit and the spouse's share qualifying for the estate tax marital deduction. A charity might be the recipient of the estate in the event that no spouse, children or other descendants are alive at the Testator/Testatrix's death. Sample provisions for the gift of property to charity are included in the Technical Preface.

ADVANTAGES OF A POUROVER WILL

1. A will permits the testator/testatrix to direct the distribution of his or her property at death, thus, avoiding the rigid inheritance laws prescribed by the state for those who die without a will.
2. A will can be used to appoint a guardian for minor or incompetent children and a personal representative to administer the estate.
3. The bulk of the property can be placed in the revocable living trust during life, thus avoiding probate on that property. A pourover will permits the testator/testatrix, who is also the settlor of the living trust to place any property he or she owns outside of the trust during life inside the trust at death. This allows for all the person's property to be subject to the terms of the trust.
4. A pourover will permits property to be passed to the trust at death for the benefit of minor children.

DISADVANTAGES OF A POUROVER WILL

1. A will is subject to probate. This means that the estate is subject to the expense and time delays that result from administering a will under court scrutiny, oversight, and approval, as required by the probate process.
2. Wills are public documents. A will must be placed in the public records when it is probated, thus allowing anyone to read the terms of the will.