What Is a Pour-Over Will in Massachusetts and How Does It Work?

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Many people want to keep control of their property during their lifetime while knowing that those same assets will ultimately pass to the people they intend to provide for. A pour-over will works toward that goal by directing anything still held in your individual name at your death into a trust you have already established. It does not change how you use your property while you are alive.

In this way, a pour-over will acts as a safety net rather than a substitute for funding your trust. It catches any assets left in your own name and routes them into the trust, so nothing is unintentionally left out of your plan. If you are curious about pour-over wills in Massachusetts, speaking with a Massachusetts estate planning and elder law attorney at Cohen Cleary can help you gain the clarity you need.

What Is a Pour-Over Will?

Even the most prepared individuals may miss certain assets, or may acquire them shortly before passing. A pour-over will is a legal document used alongside a trust that can act as a safety net to ensure everything goes where it should. Rather than naming individual beneficiaries in a will, a pour-over will names your living trust as its primary beneficiary.

If you created a revocable trust during your lifetime, a pour-over will support your goal of having assets pass into that trust after your death. Under Massachusetts law, a will can direct any assets still held in your individual name into the trust, where they are then administered and distributed according to the trust's terms.

How a Pour-Over Will Works With Your Living Trust

When you create a revocable trust, this sets aside your assets, requiring you to retitle deeds, bank accounts, and investments. This process is known as funding the trust, and any assets not funded into the trust at the time of your death will be managed by the pour-over.

Upon your passing, the personal representative named in your will gathers the remaining individually owned property and transfers it directly to your successor trustee. Those assets will then be a part of the trust, and the successor trustee will distribute them to your beneficiaries according to the private rules you authored in your trust agreement.

Is a Pour-Over Will Right for You?

If you choose to create a trust in Massachusetts, a pour-over will is recommended. They are especially helpful if you expect your assets to change over time, such as purchasing new real

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estate, vehicles, or investment assets that are not titled in the trust. They can also be valuable if you expect to receive an inheritance or lawsuit settlement shortly before your passing.

Massachusetts Legal Requirements for a Pour-Over Will

To be legally enforceable, a pour-over must satisfy the strict execution laws outlined in the Massachusetts Uniform Probate Code (MUPC) under MGL c. 190B:

1. **Capacity**: The testator must be at least 18 years old;
2. **Written Format**: The document must be in writing;
3. **Witnesses**: The will must be signed by the testator along with at least two competent, adult witnesses who also sign the document; and
4. **Valid Trust Reference**: Under MGL c. 190B, § 2-511, the will must clearly identify the trust receiving the assets.

To ensure your pour-over will is valid and legally sound, work with a trust attorney from Cohen Cleary, P.C.

What Are the Key Benefits of a Pour-Over Will?

A pour-over ensures that any assets left out of your trust are not distributed under arbitrary state intestacy laws. It consolidates your entire estate under a single, unified set of instructions managed by your successor trustee. Additionally, the details of trust distribution are often less public than what you would expect from a will, allowing you and your family more privacy.

What are the Limitations and Drawbacks of a Pour-Over Will?

The biggest limitation you may find while considering a pour-over will is that it may not completely bypass probate. Any asset that must pass through a pour-over will to reach your revocable living trust will likely first undergo the traditional Massachusetts probate process. While a pour-over will provides an excellent safety net, you should still diligently transfer your assets into the trust during your lifetime to maximize your family's ability to avoid probate.

Key Differences Between a Pour-Over Will and a Traditional Will

The primary difference between a pour-over will and a traditional will lies in who benefits and how assets are managed. A traditional will distributes property directly to named individuals, heirs, or charities, while a pour-over will names your revocable living trust as its primary beneficiary, funneling any leftover assets into a private trust for managed distribution.

Pour-over wills can provide more privacy, as the distribution rules remain confidential in the trust document, whereas a traditional will becomes public record.

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Common Mistakes to Avoid in a Pour-Over Will

Some people assume having a pour-over will means they do not need to fund their revocable living trust during their lifetime. Massachusetts law allows a pour-over addition to a trust whether it is funded or unfunded, but assets left to pass through the will alone may still need to go through probate first.

Work With a Massachusetts Estate Planning Attorney

A pour-over will is a great tool when paired with a trust, but it must be drafted with precise cross-references to satisfy Massachusetts probate courts. A single technical oversight can delay your estate and expose your family to unnecessary stress, and a thorough pour-over will can go a long way in preventing this unnecessary stress and cost.

At Cohen Cleary, P.C., an experienced estate planning attorney will carefully structure your trust and backup will to safeguard your family's future. Contact us today to schedule a comprehensive consultation.

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