If you are considering or have already created a revocable living trust, you may have heard that you should have a certain type of will known as a “pour-over will” to complement the trust. This is good advice, but it is a little confusing if you’re not thoroughly familiar with the way a pour-over will operates and how it differs from a traditional will.

At The Nordhaus Firm, we recommend that clients with revocable living trusts execute a pour-over will instead of a traditional will. To understand why, let’s explore these types of wills and why a pour-over will works best with a revocable living trust.

When Your Estate Plan is Built Around a Revocable Living Trust

Pour-over wills are designed to work in tandem with revocable living trusts, so in order to understand their function, it is necessary to know how a revocable living trust works. People in Texas commonly build their estate plans around revocable living trusts as a way to enable their property to pass to loved ones outside the probate process.

A trust is a legal tool for holding property. If you don’t want your family to have to deal with the delays and expense of probate after you pass away, you can have your estate planning attorney create a revocable living trust and transfer your property into the trust. Then, when you pass away, the property in the trust goes directly to whoever you name to receive it as successor beneficiary. Since it goes directly to that person (or people), it never becomes part of your legal estate and there is no need to deal with the formalities of the probate process.

When you don’t have a trust or you have property that isn’t part of the trust, that property forms a legal estate when you die. The state requires that estate to be managed and distributed according under the oversight of the probate court. The probate process is complex, and it takes approximately a year to complete. So passing your property through a trust saves your loved ones time, money, and aggravation.

What a Pour-Over Will Does

A pour-over will is a relatively straightforward document that directs the disposition of property that gets left out of the trust and channels it into the trust. It serves as a safety net to “catch” any property that doesn’t make it into the trust for one reason or another.

When you create a thoughtful estate plan and carefully calculate who should receive particular property, a pour-over will keeps your plan operating as scheduled. In a perfect scenario, the pour-over will would not be used—it’s something we create to cover all the bases, just in case.

If you don’t have a pour-over will, any property that is left out of the trust will pass according to the laws of intestate succession or according to an old will if one is left in place. This could result in your property being allocated to the wrong person and could destroy the balance you’ve created in your estate plan.

A pour-over will can also be used to nominate a guardian/conservator for your minor children. Trust documents cannot be used to meet this critical need.

How a Pour-Over Will Differs from a Traditional Will

An estate plan that uses a revocable trust and pour-over will functions very differently from a plan that is based on a traditional will. A traditional will names the person you want to manage your estate and describes how you want your property to be distributed, but the will has no effect on its own. After your death, the will must be submitted to the probate court, and the court will authorize someone to administer your estate, including paying final bills and distributing your property. The probate court may need to approve various actions throughout the estate administration process.

By contrast, when you have a revocable living trust and pour-over will, the person named in the trust document as the successor trustee automatically has the

authority to manage the trust property and does not need court approval to take care of business. If property has been left out of the trust, then the trustee submits the pour-over will to probate court so that property can be moved into the trust for distribution.

Find Out How a Pour-Over Will and Revocable Trust Can Simplify Property Management in Your Family

Trusts can be challenging to understand for those who are not used to them, so at The Nordhaus Firm, we are happy to offer free consultations where we can explain how a trust and pour-over will would work in your situation and how they compare with a plan built around a traditional trust. To schedule your complimentary consultation, just call us at 214-726-1450 or contact us online now.