



The Need for a Pour Over Will and the Search for Rich Aunt Mabel

By: Bruce G. Kaufmann, J.D.



If your practice is like mine, some clients will wonder, “Why do I need a Pour Over Will if I have a Revocable Living Trust?” The answer of course is that you may not need the Pour Over Will if you properly fund the Trust. If you transfer all your assets into the trust then the Pour Over Will is not necessary. But often an asset gets left out of the trust either intentionally, accidentally or incidentally.

Some recommend that the automobile be intentionally placed in a separate trust or left in the individual’s name if all other assets are in the trust. Since the automobile is often involved in expensive accidents the thought is that if it is left out of the trust then it will be more difficult to attach other assets in the trust to pay for any damage exceeding the limits of the insurance policy coverage. I have used automobile trusts for years to provide creditor protection for the automobile and asset protection for the trust or the owner. In the state of Florida, the Department of Motor Vehicles requires all trusts to renew the license in the month of June instead of the birthday month of the private owner. If the vehicle is held in the owner’s name then the Pour Over Will can be used to transfer the automobile into the assets of the trust upon the owner’s death so that the automobile can be distributed in accordance with the terms of the trust.

Some have found over the years that banks do not like to fund mortgages on homestead or real estate property if it is in a trust. The banks require the home to be transferred out of the trust for the purposes of lending money and filing the mortgage and note. Many times in my practice I have seen the homestead which was in the trust and then was transferred out of the trust for purposes of refinancing accidentally not be transferred back into the trust before the grantor dies or becomes incapacitated and then the homestead or an investment real estate property is left outside of the trust. The Pour Over Will would then be useful in transferring the property back into the trust for purposes of distribution in accordance with the terms of the trust.

I have seen many cases where deceased family members have inherited money from relatives who have died and left assets to their heirs. These assets are incidentally left to the client who had no idea that they would be receiving them and therefore had no way of knowing to put them into the trust. The Pour Over Will therefore becomes a useful tool in moving the asset from the estate of the deceased into the trust of the deceased for purposes of distribution or investment under the terms of a continuation trust.

Since many families have become very large and have migrated all over the United States and the World, it is often the case that a close relative will die and leave an inheritance to a client without the client even realizing that the relative is dead or that an inheritance is in existence. In a recent case a 92 year old client received an inheritance from a 76 year old son two months before her own death. The family friend who served as guardian became the personal representative of the estate. Because the client, believing that she would not have any estate to pass on, refused to create a will or trust prior to her incapacity to provide direction on how she wished to devise her property, the estate became an intestate estate.

The personal representative had had personal contact with three relatives over the two decades that she had had contact with the client. She believed that she would only have to distribute inheritances to three relatives. The relatives did not indicate otherwise. However, upon counsel’s advice to hire a genealogist to prepare a report to support the Petition to Determine Beneficiaries it was learned that the deceased client was sister to seven other siblings. There were 71 family members 32 of which were still alive and in line to inherit various substantial amounts of money from the nearly \$400,000 estate. It is often wise to pay for the services of a genealogist even if it only confirms the correctness of your understanding of the family structure. Several of the heirs were actually deceased relatives who had died after the client. In cases where the Pour Over Will distributed the inheritance into the Trust the transition was

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nearly seamless. In some situations, if the estate had not been opened or the Pour Over Will had not been probated as a “useless” exercise the unexpected inheritance caused a probate estate to be required which slowed down the proper distribution of assets in the client’s estate.

Counsel would be wise to inquire into the specifics of the family genealogy. Often we think to ask about the Testator/Testatrix’s children and grandchildren but it would be a good exercise to inquire into ancestors and collateral heirs as well. Gathering as much information, names, addresses, birthdates, marriages, children and other identifying and locating information could become very valuable. Every state has a Division for Abandoned and Unclaimed Property. Counsel would be wise to employ the services of an Asset Location Specialist. These people are usually licensed private investigators who will locate family or assets for a reasonable fee. If counsel knows all the states where the decedent lived, owned property or has relatives located, an asset location search may recover undistributed assets which would then be appropriately transferred from the decedent’s estate using the Pour Over Will to the decedent’s revocable living trust for assembly and distribution or investment if the trust is designed to continue on in existence.

Counsel believes that in all estates the Pour Over Will should be immediately probated so that the will is on record at the Courthouse and the Personal Representative has been appointed, the will has been admitted into probate and even if the estate is summarily administered and closed the important paperwork has been preserved for future use if rich aunt Mabel happens to be discovered leaving an unexpected inheritance to the client.

Bruce G. Kaufmann, J.D., P.A. has been handling clients unique legal matters for nearly 30 years. A graduate of Washington University, School of Law, St. Louis, Missouri, with a Juris Doctoris degree and was inducted into the International Order of Barristers. He worked as a Deputy Attorney General for three years assisting the State of Indiana in the collection of Sales and Use Tax as well as representing many of the State’s professional regulatory agencies. He worked as an Assistant Public Defender

in Indiana and for nearly three years in Florida. He has had his own firm in Indiana for six years before moving to Florida where he has had his own firm for 18 years. A member of WealthCounsel, National Association of Tax Professionals and the National Association of Consumer Bankruptcy Attorneys, Bruce G. Kaufmann, J.D., P.A. has assisted many clients in making estate planning decisions at all levels.

Bruce G. Kaufmann, J.D. of Clearwater, Florida has been assisting clients in handling their complicated estate planning and tax-paying issues with unique creative legal solutions for nearly thirty years.