

# ELDER LAW *Update*

NEWS AND IMPORTANT INFORMATION FOR SENIORS AND THEIR FAMILIES



## What is a Pour-Over Will and How is It Used?

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A pour-over will is a type of last will and testament typically used in trust-based estate planning. Unlike a traditional will, which directs how your property will be distributed to beneficiaries, a pour-over will states that assets not funded into your revocable living trust should go into the trust when you pass away.

Why is this distinction important? Let's say the grantor, the person for whom the revocable living trust was created, failed to fund all of his or her property into the trust. If there was neither a pour-over will nor a traditional will, the "omitted" property could go to people the grantor never intended to receive it, even though there was a revocable living trust.

Let's look at a hypothetical example. A grantor creates a revocable living trust and funds it.

A few years after creating and funding the trust, however, the grantor buys additional property, such as a second home. Unfortunately, the grantor forgets to fund this new home into the trust. If the grantor then passed away without a traditional will specifying who should receive the home, or a pour-over will directing that all assets should go into the trust, the second home could be distributed according to the laws of intestacy. In such a situation, the second home might go to an individual the grantor never wanted to have it.

In essence, a pour-over will functions like a safety net. You may never need your pour-over will, but it can help ensure that even if you neglect to fund certain assets into your trust, they will still go into the trust after you pass away.

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*Warm wishes for a happy and healthy new year from the Partners and staff at Russo Law Group.*



# Your Estate Plan in a Challenging World!



*By: Vincent J. Russo*

If you have assets such as bank accounts, brokerage accounts, or real property, you have an estate and therefore you need to have a plan! Your estate is what you have today and what you leave behind after you pass away. By having an estate plan, you can control who gets your assets, in what manner, and when.

People who have an estate plan ensure that their assets pass on to their loved ones without problems, high legal fees, and time delays. Sometimes, an estate plan is structured to protect a particular person, such as a spouse or a child. Often, an estate plan is implemented to make certain your beneficiaries have enough assets to live on for the rest of their lives. Others look to minimize or eliminate estate taxes. An estate planning attorney, at a law firm like ours, is your best resource to make this all happen.

## ***Comprehensive Estate Planning***

Life has become so complicated and challenging. No matter what your situation is, you should have a Comprehensive Estate Plan that is responsive to your situation.

The first step is to have basic estate planning documents in place in the event you are not able to manage your financial and/or health care affairs. Also, legal documents such as a Will or Revocable Living Trust provide for your assets to pass to loved ones in the most protective way upon your demise.

If you have a loved one that requires special care, you can implement trusts which can protect the assets while maximizing government benefits.

If you have a taxable estate, you can take steps to implement estate tax planning strategies to minimize or eliminate estate taxes.

## ***A Basic Estate Plan***

Basic estate planning includes the use of a Will, a comprehensive Durable Power of Attorney, and Health Care Directives, such as a Health Care Proxy and Living Will.

If you are unable to make your own decisions, the Durable Power of Attorney allows you to appoint an agent to manage your financial affairs, and Health

Care Directives allow you to name an agent to make health care decisions. These Advanced Directives can help you avoid loss of assets or inappropriate medical treatment. Without these Directives, your loved ones may not be able to make decisions on your behalf.

A Last Will and Testament provides for the administration of your estate and the orderly disposition of your assets upon your demise. There are three areas of consideration in terms of your Will: (i) your decision as to the ultimate distribution of your assets, (ii) appointment of fiduciaries, such as an Executor and a Trustee, and (iii) estate tax consequences based upon the value of your estate.

In your Will, you can set forth your intentions in writing, so that your wishes are carried out upon your passing. You can name guardians for any children who are minors (under the age of 18 in New York). Upon court approval, this will allow the legal guardian to take care of your minor children. A guardian assumes many of the responsibilities of a parent, including basic provisions such as food and housing.

Under New York Law, you can name an individual in charge of your burial arrangements (the "Burial Designation"). You can also provide specific instructions regarding your funeral or burial.

An estate planning attorney can work with you to create an estate plan that best meets your needs.

## ***Who Should Have a Trust?***

Trusts, both irrevocable and revocable, are another tool that an estate planning attorney can use to help you accomplish the goals and wishes that you have for your money, your property, and most importantly, your family.

What is a Living Trust? Most people who set up living trusts do so to avoid probate (the filing of a Will in the Surrogate's court seeking approval of the Will and the appointment of an Executor). Is that the right decision for you? In our experience, there are five common situations when it makes sense to have a living trust:





1. You would like to make it easy for your children to settle your estate. Perhaps they live far away, or they are very busy with jobs and their own families. Your estate will be settled quicker, probate will be avoided, and assets won't have to be collected before they can pass out of the trust.
2. You own property in multiple states and want to avoid multiple probates which entail additional court costs and legal fees.
3. You're thinking of appointing someone to handle your assets after you die, and you want to see how they'll do while you are still alive which allows you to make any changes to your final plans.
4. You are planning on disinheriting a child and you are worried that the child may contest your Will. A living trust makes it much more difficult for the child to successfully challenge your expressed desires set forth in the trust.
5. You want to leave assets to family who are not closely related to you and/or friends. In such a situation, the probate process will typically take longer and cost more. The living trust can make it easier for everyone involved.

If your situation sounds like one of the five scenarios listed above, a living trust may be a very smart move. Talk with an experienced estate planning lawyer on our legal team about your estate plan. We will listen to you and stand ready to provide you with peace of mind.

### ***Planning to Protect Loved Ones***

Your Will may establish a trust for a spouse (referred to as a "Supplemental Needs Trust") which will protect the assets in the event your spouse needs long-term care.

Your Will or Living Trust can also provide for the special needs of a beneficiary who is someone other than a spouse (such as a family member who collects disability or SSI benefits). All or a portion of your estate can be placed into a Supplemental Needs Trust. The trustee can be given broad discretion to expend income and/or principal for the special needs of a beneficiary, without affecting the beneficiary's eligibility for governmental benefits, such as Medicaid and SSI.

Another option is to leave your assets to a Family Protection Trust(s) which will allow your assets to be left in a protective way for your beneficiaries. Outright distributions to beneficiaries may leave those assets vulnerable to many circumstances that can lead to the assets being wasted. By establishing a Family Protection Trust, the trust assets will still be available for your loved one but may be protected from unfavorable circumstances such as a bad marriage, creditors, bad asset management, or estate taxes.

### ***Estate Tax Planning***

You may be concerned that your estate is subject to Federal and State estate taxes which are payable within nine months of your demise. In addition, you may be concerned that your estate will increase in value in the future, thus creating greater estate taxes.

There are many strategies available to minimize or eliminate estate taxes upon your demise. The use of trusts such as Grantor Retained Annuity Trusts (GRATs), Qualified Personal Residence Trusts (QPRTs), Spousal Lifetime Access Trusts (SLATs), and Intentionally Defective Grantor Trusts (IDGTs) can be extremely useful, especially in coordination with gifting interests in LLCs and Subchapter S Corporations. If you have charitable intentions, then charitable bequests can be arranged, either outright or through the use of Charitable Trusts.

The estate tax planning strategies available today may not be available in the future. With National Estate Planning Awareness Week happening this week, now is the time to review your estate with an experienced estate planning attorney. They can advise you on the tax strategies that make sense for you and the benefits they provide.





# Finding the Right Nursing Home: Don't Rely Entirely on the Five-Star Quality Rating System



The Five-Star Quality Rating System was created in 2008 by the Centers for Medicare and Medicaid Services (CMS). It has become a popular tool for families to find a quick summary of a given nursing home's overall level of quality. CMS posts its ratings on the medicare.gov website.

Unfortunately, the accuracy of this rating system is open to question. An investigation by the New York Times, in particular, reveals a number of shortcomings. Let's begin by looking at how the system operates.

Ratings are based on a combination of self-reported data from 15,000-plus nursing homes, as well as on-site examinations conducted by state health inspectors. A nursing home's overall score, its star rating, depends on the results of the inspection, the amount of time nurses devote to residents, and the quality of care received by residents.

To evaluate the rating system's reliability, the New York Times created a database with millions of payroll records to analyze the amount of hands-on care residents actually received in nursing homes. The Times also examined 373,000 reports by state inspectors, and the financial statements 10,000-plus nursing homes submitted to the government.

Additionally, The Times was able to access data that is not readily available to the public.

This investigation revealed that nursing homes had submitted inaccurate information, thereby making themselves look safer and cleaner than they actually were. Other erroneous information included exaggerated levels of staffing, underreporting the use of potentially hazardous antipsychotic drugs, and minimizing the number of health problems and accidents among residents. Worse, when even highly rated nursing homes were inspected by CMS investigators in person, they were just as likely to fail the inspection as pass it; information submitted by nursing home operators and owners was rarely audited; nursing homes may have been tipped off before unscheduled, impromptu inspections; and inspectors frequently minimized violations they discovered at highly rated nursing homes, which allowed these facilities to maintain their stars.

All of this is troubling, to say the least. It suggests that a nursing home's five-star rating should be taken with a grain of salt, or perhaps even a shakerful. It also reminds us of the importance of closely scrutinizing every aspect of a given nursing home oneself. AARP provides a detailed checklist to help you evaluate a nursing home on a wide range of crucial criteria.

**YOU CAN DOWNLOAD THE CHECKLIST HERE:**

[https://assets.aarp.org/external\\_sites/caregiving/checklists/checklist\\_nursingHomes.html](https://assets.aarp.org/external_sites/caregiving/checklists/checklist_nursingHomes.html)



## *The New Year is a Great Time to Review Your Estate Plan*

*We would like to add one more item to your list of New Year's resolutions—reviewing your estate plan.*

Why is it so important to keep your plan up to date? In a word, change. As you grow older, your needs inevitably change. So, too, does your health, your income, the value of your assets, and your overall financial situation. The needs of the people you love change as well. Your children may get divorced and remarry, or begin families of their own. Sadly, a loved one might suffer a financial setback and accrue significant debt, or fall under the influence of a person you don't trust, or even develop a dependency on alcohol or drugs.

In addition, the law itself is in a constant state of change, as are the financial landscape, the tax codes, and more.

New or amended laws may make certain asset protection strategies and tools less effective, while at the same time creating new opportunities for wealth preservation and growth.

While it is important to review your plan every year, if you or your loved ones experienced significant changes over the course of last year, it is crucial to have your plan reviewed as soon as possible.

As you reflect upon the changes that took place last year, and look forward to the new year, we hope you also consider the implications of these changes for your estate plan. As always, we are here to assist you.