

Setting Up Your Estate to Minimize Probate

What can you do to lessen its impact for your heirs?

Presented by Benedict A. Mitchell Jr.

Probate subtly reduces the value of many estates. It can take more than a year in some cases, and attorney's fees, appraiser's fees and court costs may eat up as much as 5% of a decedent's accumulated assets. Think tens of thousands of dollars, perhaps more.¹

What do those fees pay for? In many cases, routine clerical work. Few estates require more than that. Heirs of small, five-figure estates may be allowed to claim property through affidavit, but this convenience isn't extended for larger estates.

So how you can exempt more of your assets from probate and its costs? Here are some ideas.

Joint accounts. Jointly titled property with the right of survivorship is not subject to probate. It simply goes to the surviving spouse when one spouse passes. There are a couple of variations on this. Some states allow tenancy by the entirety, in which married spouses each own an undivided interest in property with the right of survivorship. A few states allow community property with right of survivorship; assets titled in this way also skip the probate process.^{2,3,4}

Joint accounts may be exempt from probate, but they can still face legal challenges – especially bank accounts when the title is modified by a bank employee rather than a lawyer. The signature card may not contain survivorship language, for example. Or, a joint account with rights of survivorship may be found inconsistent with language in a will.⁵

POD & TOD accounts. Payable-on-death and transfer-on-death forms are used to permit easy transfer of bank accounts and securities (and even motor vehicles in a few states). As long as you live, the named beneficiary has no rights to claim the account funds or the security. When you pass away, all that the named beneficiary has to do is bring his or her I.D. and valid proof of the original owner's death to claim the assets or securities.³

Gifts. For 2013, the IRS allows you to give up to \$14,000 each to as many different people as you like, tax-free. By doing so, you reduce the size of your taxable estate. Please note that gifts over the \$14,000 limit may be subject to federal gift tax of up to 40% and count against the lifetime gift tax exclusion, now at \$5.25 million.⁶

Revocable living trusts. In a sense, these estate planning vehicles allow people to do much of their own probate while living. The grantor – the person who establishes the trust – funds it while alive with up to 100% of his or her assets, designating the beneficiaries of those assets at his or her death. (A pour-over will can be used to add subsequently accumulated assets; it will be probated, however.)^{2,7,8}

The trust owns assets that the grantor once did, yet the grantor can use these assets while alive. When the grantor dies, the trust becomes irrevocable and its assets are distributed by a successor trustee without having to be probated. The distribution is private (as opposed to the completely public process of probate) and it can save heirs court costs and time.⁷

Are there assets probate doesn't touch? Yes. In addition to property held in joint tenancy, retirement savings accounts (such as IRAs), life insurance death benefits and Treasury bonds are exempt. Speaking of retirement savings accounts...²

Make sure to list/update retirement account beneficiaries. When you open a retirement savings account (such as an IRA), you are asked to designate eventual beneficiaries of that account on a form. This beneficiary form stipulates where these assets will go when you pass away. A beneficiary form commonly takes precedence over a will, because retirement accounts are not considered part of an estate.⁸

Your beneficiary designations need to be reviewed, and they may need to be updated. You don't want your IRA assets, for example, going to someone you no longer trust or love.

If for some reason you leave the beneficiary form for your life insurance policy blank, it could be subject to probate when you die. If you leave the beneficiary form for your IRA blank, then the IRA assets may be distributed according to the default provision set by the IRA custodian (the brokerage firm hosting the IRA account). These instances are rare, but they do happen.^{9,10}

To learn more about strategies to avoid probate, consult an attorney or a financial professional with solid knowledge of estate planning.

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Citations.

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