

Don't be afraid of probate

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The word “probate” may conjure images of lengthy delays waiting for wealth to be transferred and bitter disputes among family members. Plus, probate records are open to the public, so all your “dirty linen” may be aired. The reality is that probate doesn't have to be so terrible, and often isn't, but both asset owners and their heirs should know what's in store.

Defining probate

In basic terms, probate is the process of settling an estate and passing legal title of ownership of assets to heirs. If the deceased person has a valid will, probate begins when the executor named in the will presents the document in the county courthouse. If there's no will — the deceased has died “intestate” in legal parlance — the court will appoint someone to administer the estate. Thereafter, this person becomes the estate's legal representative.

Probate is predicated on state law, so the exact process varies from state to state. This has led to numerous misconceptions about the length of probate. On average, the process takes six to nine months, but it can run longer for complex situations in certain states.

Planning to avoid probate

Certain assets are automatically exempt from probate. But you also may be able to avoid the process with additional planning. The easiest way to do this is through the initial form of ownership or use of a living trust.

By using joint ownership with rights of survivorship, you acquire the property with another party, such as your spouse. The property then automatically passes to the surviving joint tenant on the death of the deceased joint tenant. This form of ownership typically is used when a married couple buys a home or other real estate. Similarly, with a tenancy by entirety, which is limited to married couples, the property goes to the surviving spouse without being probated.

A revocable living trust is often used to avoid probate and protect privacy. The assets transferred to the trust, managed by a trustee, pass to the designated beneficiaries on your death. Accordingly, you may coordinate your will with a living trust, providing a quick transfer of wealth for some assets. You can act as the trustee and retain control over these assets during your lifetime.

Achieving all estate planning goals

When it comes to probate planning, discuss your options with family members to develop the best approach for your personal situation. In addition, remember that avoiding probate should be only one goal of your overall estate plan. We can help you develop a strategy that minimizes probate while reducing taxes and achieving your other goals.

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