

Keep family matters out of the public eye by avoiding probate

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Although probate can be time consuming and expensive, perhaps its biggest downside is that it's public — anyone who's interested can find out what assets you owned and how they're being distributed after your death. The public nature of probate can also draw unwanted attention from disgruntled family members who may challenge the disposition of your assets, as well as from other unscrupulous parties.

However, by implementing the right estate planning strategies, you can keep much or even all of your estate out of probate.

Probate, defined

Probate is a legal procedure in which a court establishes the validity of your will, determines the value of your estate, resolves creditors' claims, provides for the payment of taxes and other debts and transfers assets to your heirs.

Is probate ever desirable? Sometimes. Under certain circumstances, you might feel more comfortable having a court resolve issues involving your heirs and creditors. Another possible advantage is that probate places strict time limits on creditor claims and settles claims quickly.

Choose the right strategies

There are several ways you can avoid (or minimize) probate. (You'll still need a will — and probate — to deal with guardianship of minor children, disposition of personal property and certain other matters.)

The right strategies depend on the size and complexity of your estate. The simplest ways to avoid probate involve designating beneficiaries or titling assets in a manner that allows them to be transferred directly to your beneficiaries outside your will. So, for example, be sure that you have appropriate, valid beneficiary designations for assets such as life insurance policies, annuities and retirement plans.

For assets such as bank and brokerage accounts, look into the availability of “pay on death” (“POD”) or “transfer on death” (“TOD”) designations, which allow these assets to avoid probate and pass directly to your designated beneficiaries. However, while the POD or TOD designation is permitted in most states, not all financial institutions and firms make this option available.

For homes or other real estate — as well as bank and brokerage accounts and other assets — some people avoid probate by holding title with a spouse or child as “joint tenants with rights of survivorship” or as “tenants by the entirety.” Be aware that drawbacks exist for this technique.

Please contact us with all of your probate questions.

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