

10 Ways to Avoid Probate

Probate is the process in which a court of law supervises the transfer of assets from a decedent to his or her heirs. The probate process can easily last over a year. Many people attempt to avoid probate due to the costs of attorney's fees, executor's commissions, court costs, family conflicts, delay and lack of privacy. This report showcases ways of structuring and titling assets that allow assets to pass immediately outside of probate, eliminating the stress and costs that generally accumulate in probate.

- 1. Revocable Living Trusts:** The revocable living trust is an effective method of avoiding probate, as assets held by the trust are not considered probate assets. In addition, a revocable living trust provides for management of the funds if the grantor becomes incapacitated, and allows for more seamless transition of management and transfer of assets after death.
- 2. Life Insurance:** The proceeds of life insurance are rarely subject to probate administration. Exceptions which would require probate include: (a) where the insured's estate is the named beneficiary, (b) where all of the named beneficiaries pre-decease the insured, and (c) where no beneficiary was named.
- 3. Retirement Accounts:** Many people concentrate wealth in retirement accounts. Beneficiary designations direct ownership of the account after the account holder's death, and the beneficiaries designated will receive the account regardless of any provisions to the contrary contained in a will or trust.
- 4. Joint Tenancy in Real Property:** Joint tenancy is a form of property ownership in which title passes automatically to the surviving joint tenant(s) upon a tenant's death. In many states, joint tenancy between spouses is referred to as "tenancy in the entirety."
- 5. Joint Tenancy in Personal Property, Bank Accounts, and other Property:** Many assets other than real property can be held jointly with right of survivorship as well, including cars, bank accounts, and securities.
- 6. Pay-on-Death (POD) Designation:** If someone does not wish to hold an account jointly with another person during their lifetime, financial accounts can designate one or more "pay-on-death" beneficiaries who will receive the funds upon the account holder's death without requiring probate administration.
- 7. Transfer-on-Death (TOD) Designation:** In many states, securities accounts can be registered so that ownership passes to named beneficiaries at the death of the owner(s). Transfer-on-death designations direct disposition of property regardless of the provisions of the account holder's will or revocable living trust.
- 8. Community Property with Rights of Survivorship:** In community property states, spouses may take title to property as "community property with right of survivorship." Under this form of ownership, title passes automatically to the surviving spouse.
- 9. Totten Trusts:** A Totten trust is a vehicle for passing savings accounts to heirs. The trust funds are held in a bank account with instructions for the account to be paid to a beneficiary upon the account holder's death. The beneficiary has no ability to gain access to the bank account until the depositor or settlor's death.
- 10. Lifetime Gifts:** Even gifts made shortly prior to death will avoid probate. Gifts in excess of \$15,000 require filing a gift tax return.