

Your *Trust* Matters

April 2021 Newsletter



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Bypassing Probate

First, how does probate start?

If your estate is subject to probate, someone begins the process by filing an application for the probate of your will. The application is known as a petition. The petitioner brings it to the probate court along with your will. Usually, the petitioner will file an application for the appointment of an executor at the same time. The court first rules on the validity of the will. If the will meets all of your state's legal requirements, the court will then rule on the application for an executor. If the executor meets your state's requirements and is otherwise fit to serve, the court generally approves the application.

You may have heard about the horrors of probate, but in truth, probate has gotten an undeservedly bad reputation, especially in recent years. If you bypass probate, your estate will go to your beneficiaries without any court proceeding, and you may save a certain amount of time and expenses. States continue to revise their probate laws, making them more consumer friendly, particularly for small estates. For most modestly sized estates, the probate process now costs little. In fact, there are some good reasons to distribute your property by will. Decisions are binding and have legal finality once your will is probated. Creditors who fail to file claims against your estate within a specific amount of time, usually six months after receiving notice are out of luck.

However, some major drawbacks to probate do exist, including the time it can take. The process averages six to nine months to complete but may take up to two years or more for some complex estates, tying up the assets that your family may need immediately. Also, for a larger estate, the cost may be as high as 5 percent of the estate's value.

If you feel that the size and complexity of your estate warrant exploring alternatives to probate, you may want to consider one or more of the following:

Transfer your assets to a revocable living trust

A trust is like a basket that holds your assets. A revocable living trust is flexible enough to include almost any asset that you own. While you are living, you can act as the trustee and can add or remove property as you see fit. You can also terminate or amend the trust at any time. When you die, your successor trustee distributes the trust assets to the trust beneficiaries, according to the trust agreement. Trusts require a significant amount of paperwork, are costly to create and maintain, and usually require a lawyer to draw up the trust documents. Also, a revocable living trust does not shield your estate from your creditors, creditors of your estate, or estate taxes.

Own property as joint tenancy with rights of survivorship

Assets owned as joint tenancy with rights of survivorship pass automatically to the surviving joint owner(s) at your death. To establish joint ownership, you may need to record new real estate deeds, titles for your car or boat, stock and bond certificates, statements of account for mutual funds, registration cards for your bank accounts, and other assets. This costs little and usually does not require a lawyer. Some drawbacks are that the joint owner has immediate access to your property, and your joint owner's creditors may reach the jointly held property.

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Designate beneficiaries

Assets pass outside of probate if you establish payable-on-death provisions for your savings accounts and CDs. Ask your agent to set up transfer-on-death provisions for brokerage accounts containing stocks, bonds, or mutual funds. Your retirement accounts, such as profit-sharing plans, 401(k)s, and IRAs can also pass along to designated beneficiaries. Finally, life insurance death proceeds will avoid probate, provided you name a beneficiary other than your estate.

Make lifetime gifts

Another way to avoid probate is to simply give away your property to your beneficiaries while you are living. Carefully planned gifting can also free those assets from gift and estate taxes. The following are usually nontaxable gifts:

Gifts to your spouse

Gifts to qualified charities

Gifts totaling \$15,000 in 2021 or less per person, per year (\$30,000 in 2021 if you and your spouse can split the gifts)

Tuition payments on behalf of an individual directly to an educational institution

Medical care expenses paid directly to the provider on behalf of an individual

Other ways to bypass or minimize probate

If your estate is small enough to meet state guidelines, your beneficiaries can simply claim your assets by presenting a notarized affidavit. About half of the states set a limit of \$10,000 to \$20,000 of the qualified estate value; most of the other states allow as much as \$100,000. You can generally deduct estate expenses from your qualified estate value, such as taxes, debts, loans, or family allowance payments, plus the value of any other assets that pass outside probate (e.g., a home jointly owned with a spouse). Real estate is usually disqualified from claims by affidavit. Therefore, your estate may qualify even if it is large. Expect the process to take 30 to 45 days. Another method is for your executor to file for summary, or simplified probate. This streamlined process is generally a paper filing only, requiring no attorney. States vary widely regarding the allowable size continue of an estate for simplified probate.

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