

How to Avoid Probate

Almost all of my estate planning clients have one thing in common: they all want to avoid probate. Probate is the process where a decedent's assets are marshaled, bills are paid, and the remaining assets are transferred to the person's heirs. The only assets that pass through probate are those in the decedent's name alone and which do not have a beneficiary designation. Why does everyone want to avoid probate? Probate is expensive and time-consuming. In Florida, an attorney's fee is deemed to be reasonable at typically 3% of the value of the probate assets. Due to the paperwork involved and built-in time constraints, a typical probate lasts at least 9 months.

So how do you avoid probate? First, make sure that your beneficiary designations are filled out on all life insurance policies, annuities, IRAs, 401(k)s, etc... Once you die, these assets can pass directly to your heirs without going through probate. Do not list your estate as the beneficiary. If you do, you are guaranteed a probate upon your death! Bank accounts and brokerage accounts can be made to avoid probate through the use of "pay on death" and "transfer on death" designations, respectively.

While joint title with right of survivorship or tenancy-by-the-entireties (husband and wife) property will pass to the surviving co-owner, you may only be putting off probate until the last co-owner dies.

Assets held in a revocable living trust will avoid probate as well. In fact, a revocable living trust can also provide relief in the event of the incapacity of the grantor (maker) and may be utilized by married couples to reduce estate tax exposure. Estate taxes kick in for estates over \$2 million this year. And with some simple trust planning, up to \$4 million can be protected from estate taxes. Florida does not have a separate inheritance tax. One word of caution, if your assets are not re-titled into the name of the trustee of your revocable living trust prior to your death, then your assets will have to go through probate in order to get put into your trust.

Lastly, wills do not avoid probate. Probate means to prove (i.e. Prove the will is valid). Thus, assets passing to heirs via a will (testate) or without a will (intestate) will need to go through probate. Another word of caution is that beneficiary designations, survivorship rights and trusts all "trump" the will provisions. Thus, if you add a child's name to your bank account and then die, that child will be presumed to inherit that account regardless of what your will says. Your other children might not be happy with that result.

The point is to know the rules and plan accordingly. There is a lot of misinformation out there. Nothing is more heart-breaking than seeing a trust someone created but did not fund properly cause all of the decedent's assets to go through probate.