

## **Avoiding Probate**

The probate process serves the vital purpose of ensuring that an individual's estate is properly distributed to his or her creditors, heirs and beneficiaries. But, the probate process can be slow and can often tie up estate property for several months. Probate may also be costly, with certain fees being paid out of the estate and reducing the amount left for distribution. For these reasons, many people may wish to arrange their affairs so that their loved ones do not have to go through the probate process, and can receive assets from the estate more efficiently.

There are several methods that can be used to avoid the probate process, and to distribute assets immediately at the time of the decedent's death. Among these methods are:

- Joint Ownership with Rights of Survivorship;
- Beneficiary Designation; and
- Revocable Living Trusts.

### **Joint Ownership with Rights of Survivorship**

Property owned in joint tenancy with rights of survivorship automatically passes, without probate, to the surviving owner or owners when one owner dies. Joint tenancy is simply a type of property ownership involving more than one owner, leaving each owner with the right to a larger share of the property should any individual owner die. This model often works well when couples (married or not) acquire real estate, vehicles, bank accounts, securities, or other valuable property together. To take joint title with someone usually only requires that joint ownership is stated on the paper that shows ownership (i.e., car title, a real estate deed, or other document). But since each joint tenant has control over the property, you should be careful when committing to this type of ownership.

### **Beneficiary Designations**

Beneficiary designations can be made under several different types of accounts. Funds from life insurance policies, retirement funds, and IRAs pass directly to the beneficiary because they are considered contractual obligations to pay out a death benefit. These designations prevent the accounts from needing probate consideration.

Payable-on-death (POD) bank accounts are also an effective way to avoid probate. Any money in the POD account passes directly to the named beneficiary upon the account holder's death. The added benefit of a POD account is that the account holder retains exclusive rights to the account while he or she is alive, and retains the right to change the beneficiary to the account.

Transfer-on-death (TOD) securities allow a person to name someone to inherit stocks, bonds, or brokerage accounts without probate. This model works very much like a POD bank account. After a person has registered ownership this way, that person retains exclusive ownership to the stock and, like the POD account, retains the right to change the beneficiary.

A few states offer car owners the option of naming a beneficiary for their vehicle. This transfer-on-death registration for vehicles also provides car owners the same exclusive ownership rights as POD accounts and TOD securities accounts.

### **Revocable Living Trusts**

A revocable living trust can hold title to property for the benefit of an individual. Since title is held in the name of the trustee (usually the person who set up the trust) and a beneficiary is named for the property, the property is not

part of the estate for probate purposes. Similar to a will, a trust document directs the trustee how to distribute the trust property at the time of death, and to whom.

### **A Living Will**

It is a legally binding document that dictates one's wish not be kept alive by artificial life support systems in the event of a terminal illness where you are no longer able to express your wishes because you are unconscious. Furthermore, by limiting treatment, a living will sets limits on hospital bills, which can substantially or even completely drain one's assets so that there is little left in the estate for your beneficiaries.

### **A Testamentary Will**

It is a legal document that dictates how your property is to be distributed after your death. It may also designate guardians for your children. Your will must pass through probate court before your estate can be distributed to your beneficiaries.

### **Getting Legal Help to Avoid the Probate Process**

Sheltering assets from probate or avoiding probate altogether requires advanced planning and expert guidance. If you are considering ways to avoid probate, contact **Goodwin, Gillis & Heck, PLC** discuss your options and get the estate planning process started.

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