

IS PROBATE ALWAYS REQUIRED?

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Let's look at some of these scenarios.

Life Insurance Proceeds

If you take out a life insurance policy on your life, you name a beneficiary, or you can name multiple beneficiaries. When you enter into the contract, as long as you adhere to the terms, the company will be compelled to deliver the proceeds to the beneficiary or beneficiaries after your passing. This transfer would not be subject to the process of probate.

Payable on Death Accounts

When you open up an account at a banking institution or a brokerage, you have the option of adding a beneficiary. This type of account is called a payable on death or transfer on death account. Another name for a payable on death account is a Totten trust.

You do not have to worry about sharing control of the assets in the account while you are living, because the beneficiary would not have access. After you pass away, the beneficiary would assume ownership of any remainder that may exist in the account. The probate court would not be involved at all.

Joint Tenancy

When you own property, you have the option of adding a co-owner to the property title or deed. In the legal milieu, this is called the condition of joint tenancy.

For example, let's say that you own your home outright. If you were to add your daughter to the title of the home, she would become a joint tenant. She would immediately possess a half interest in the home, even while you are alive.

Joint tenancy typically comes with right of survivorship. This means that the surviving joint tenant would inherit the entirety of the property after the death of one joint tenant (assuming there are just two joint tenants). The transfer of the ownership share would take place outside of probate.

Probate Avoidance Strategies

To this point, we have looked at three different types of asset transfers that would take place outside of probate organically. However, people are sometimes proactive about the implementation of probate avoidance strategies, because probate comes with some drawbacks.

If you use a last will to state your final wishes regarding the distribution of your personally held property, it would be admitted to probate. The heirs would not receive their inheritances while the estate was being probated, and it would take close to a year, even if there were no particular complications.

In addition to the time factor, there is also the money factor. Numerous different expenses can pile up during the probate process, and these expenses take money out of the pockets of the heirs.

Plus, anyone can access probate records to find out how you planned your estate, so there is a loss of privacy.

For these reasons, many people intentionally avoid probate. This can be done in various different ways, but revocable living trusts are very popular. With this type of trust, you maintain control throughout your life, but the assets in the trust can be distributed among the heirs after you pass away free of the probate process.

Summary

Probate is a legal process that would come into play if you pass away while you are in sole and direct personal possession of property. However, there are some asset transfers that are not subject to the probate process, and it is possible to intentionally implement strategies that would facilitate probate-free transfers.

If you would like to learn more about probate and probate avoidance, set up a consultation with a licensed estate planning attorney. Many attorneys will offer free, no obligation initial consultations. As a result, you can get answers to your questions and begin to develop a relationship without making any firm commitments.

References

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About the Author



Attorney Caprice L. Collins is a top rated Harvard Law School graduate. She has 34 years of legal experience with a successful law practice devoted exclusively to Estate/Business Planning and Trust Administration. Attorney Collins is a well-respected keynote speaker on Wills, Living Trusts, Estate Planning, Business Planning and Trust Administration. She has appeared on California's Real Estate Radio Station KTLK AM 1150 as a legal expert on Estate Planning and Living Trusts among many other notable media appearances.

Attorney Collins has substantial experience in Estate Planning for high net worth individuals using Family Limited Partnerships and other business entities to provide Asset Protection to their families. She has assisted organizations in their fundraising efforts by authorizing articles for their publications and conducting free seminars to their donors on advance Estate Planning Strategies such as Charitable Remainder Trusts, Family Living Partnerships, Irrevocable Life Insurance Trusts and Qualified Personal Residence Trusts. She also provides FREE Seminars on Living Trusts, Asset Protection and Business Planning to civic, faith-based, professional and business organizations.

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