
Four Ways to Avoid Probate

Avoid Probate!

Here are four ways we suggest to avoid probate:

1. **Trusts:** Generally the most efficient and the most recommended way of avoiding probate is through the use of a revocable trust. There are costs associated with creating a trust and administering a trust but these are usually significantly less than the costs of a probate. In addition, you can control funds, specifying to whom they go and at what rate, provide for special needs people, and manage out-of-state property, to name just a few ways. Other types of irrevocable trusts can be used for Medicaid or VA planning, and can provide for care during your lifetime as you need care.
2. **Proper titling:** Titling assets in a non-probate form is another great approach. We usually suggest that you title bank accounts with Pay-On-Death beneficiaries (POD) and use primary and contingent beneficiaries for IRAs and other investment funds. Married couples have a lot of options to avoid probate if one spouse passes away – of course, there is a different plan if both spouses are killed in an accident at the same time. Homes can be transferred using life-estate, or simply giving the home to descendants. But be VERY CAREFUL as some of these steps can conflict with Medicaid planning!
3. **Gifts:** Gifting your assets during your lifetime. However, you should not expect to control or recover money you give others.
4. **Spend your funds:** You can't live forever, so some people spend what they have before they die!

What is probate? Why should I avoid Probate?

Do you own anything?

If you have real property in your name alone, for example, a house worth \$120,000, or any level of investments or cash over \$20,000, then having no estate plan means you have opted for North Carolina's plan of distribution – probate and intestate (without a will) succession.

Do you have an estate plan, or only a Will?

If you have started your estate plan with the use of only a "will" ... that isn't enough – you still will have a probate proceeding. You probably need to include some additional steps to avoid probate.

A Misconception about Wills

A Will does NOT avoid probate... in fact, it requires probate.

If you are not sure what it is – the simple explanation is that probate is a government process or system administered through the courts that helps in the orderly distribution of your assets after you have passed away (of course making sure that creditors and various governmental agencies get paid, too). The probate plan works if you do not have an estate plan (assuming you have assets of a certain

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value and titled in your name alone), but it even controls estates where the “decedent” (who died) left only a will as their main estate planning document.

North Carolina is a relatively easy state in which to probate an estate. And, the fees related to probate and related administrative procedures are not as extensive and time consuming as some other states around us.

But, that is not a reason to intentionally use probate, if you can avoid it.

Some things you should know about probate:

- **There is a cost:** If you use an attorney, probate costs are based on the effort to manage and distribute it to the heirs. Cost might be affected by the size of the estate or the kinds of assets, where they are located, and how involved distribution becomes.
- **It takes time:** For estates with a modest amount of assets (over \$20,000 and real property), a probate process can easily take two years or more, and even longer if a “will contest” (also called a “caveat proceeding”) arises. If you have a smaller estate (under \$20,000 and no real estate) then probate could be relatively quickly settled. We have a current client with an estate that has been in probate for six years because of real estate. The legal fees in these processes reduces the amount that your heirs will eventually receive.
- **You will need an executor:** Someone will have to manage your estate during probate. This is not a fun job! It is a lot of work, and should not be taken lightly. Your elderly father is probably not a good choice. Your sister who is a single mom with small kids is not a good choice. Choose carefully.
- **You will lose control of the process:** A judge you have never met or who doesn’t know you or your family will be ultimately making decisions as to how your assets would be distributed. As we all know, someone might look great on paper and might seem like the obvious choice to be an heir of your estate, but it may not be the person you would choose to receive your assets.
- **You can’t control how funds are distributed for special circumstances.** What if you have a special needs child? Or, if you have living parents? Did you know that in North Carolina, your mother could receive half of your estate, even if you are married? Or that a separated spouse might be able to elect up to half the estate regardless of your plans?
- **You will lose privacy:** Your family matters (think “dirty laundry” in the soap opera context) and potentially the extent of your assets will become part of the public record.
- **You may need out-of-state proceedings.** If you own real property in other states, your executor will need to open estate proceedings in other states. These are usually just a formality, but in most cases, your estate will have to pay a local attorney to open the proceeding, execute any transfers, and file documents in the other state.

How can you avoid probate?

Remove uncertainty...

If you want to find ways to avoid probate in YOUR estate, call us today!

919-883-2800

Or schedule a Complimentary Strategy Session On Aging and Long Term Care at

<http://dougkoeniglaw.com/strategy-session/>