



Estate Planning: Bypassing Probate

Probate is the legal process whereby a will is “proved” in a court and accepted as a public document that is the true last testament of a deceased person. The granting of probate is the first required step in the legal process of administering the estate of a deceased person’s property under a will. During the probate process a will may be contested. If you bypass probate, your estate will go to your beneficiaries without any court proceeding, you may save time and expenses, and all matters will remain private (not in the public record). However, there is usually little reason for most people to avoid probate today.

The probate 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. Additionally, for larger estates, the cost may be as high as 5 percent of the estate’s value. As a result, some individuals and families may find it is in their best interest to avoid probate altogether.

Should you want to know more about probate and it’s correlation to estate planning we invite you to contact SOUND Wealth Management Group for a complimentary consultation. Furthermore, 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 sections in this document.

■ Transferring Assets to a Revocable Living Trust

A trust is like a basket that holds your assets. A revocable living trust (also known as an inter vivos 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.

■ Joint Tenancy Property Ownership 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.

■ 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.

■ Making 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
- 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
- Gifts to qualified charities
- Gifts totaling \$15,000 (in 2020) or less per person, per year (\$30,000 in 2020 if you and your spouse can split the gifts)

■ Other Options

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 fairly large. Expect the process to take 30 to 45 days.

Another method is for your executor to file for summary, also known as a simplified probate. This streamlined process is generally a paper filing only, requiring no attorney. States vary widely regarding the allowable size of an estate for simplified probate.

Summary

When legal structure and documents are required please be aware that Sound Wealth Management Group (SWMG) can provide guidance, refer you to an appropriate trusted legal partner, or assist with your current trusted professionals. SWMG can help you cut through the possible confusion and make the best choice for your goals. As mentioned in the introduction, if you have any questions regarding the probate process and your overall financial plan, we invite you to contact SWMG for a complimentary consultation. Let's have the conversation...



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