



Four Simple Ways to Avoid Probate

When ensuring one's affairs at death are in order, it has become increasingly common to seek to minimize, or even completely avoid, probate. In a state like Ohio, with a fairly supervised and involved probate process, this is particularly true. Fortunately, there are a few simple methods to accomplish probate avoidance. But be warned, these simple methods can create problems as easily as they can solve them. Stay tuned for future articles highlighting some DIY horror stories and how to avoid them.

What property must be probated?

Before we get into the probate-avoidance methods, it may be helpful for a quick primer on probate property. Probate property is property owned by a decedent in the decedent's sole name, and without any designation or mechanism that directs the disposition of the property upon the death of the decedent. Working from that definition, we can cover the four simple ways to avoid probate.

1. *Dispose of your property during life*

This one may sound crazy, but property transferred during life is not subject to probate. Because only property owned at the time of death may be subject to probate one simple way to avoid probate is to not own the property. Don't want your car to go through probate? Why not give it to your grandchild? Or perhaps donate it to charity. This solution works only to a limited extent, because we need retain assets to pay our bills and purchase necessities. Additionally, there are tax limitations on how much one can give away during life. Please consult an attorney or accountant before using this method of probate avoidance.

2. *Consider joint ownership*

Owning property jointly, with rights of survivorship,

is another way to avoid probate. Certain types of joint ownership, such as being tenants in common, will not avoid probate, but if the property is owned with rights of survivorship such that the decedent's interest passes automatically to the surviving joint owner then that property is not subject to probate. In Ohio, real estate can be owned in this manner, but the deed must clearly state that it is owned with rights of survivorship. Many other assets can be held this way as well. There is a presumption, for instance, that a jointly owned bank account is one with rights of survivorship unless it was otherwise specified when the account was opened. Joint ownership works great for couples and spouses but may not be the best solution to get property



to the next generation. There are gift tax concerns to consider when adding a joint owner who is a non-spouse. Additionally, if the joint owner is one of multiple children, the plan to divide your assets equally upon death can be frustrated when only one child becomes the owner of a jointly owned account.

3. *Use beneficiary designations or POD/TOD designations*

Many assets can now be set up to pass by an

operation of law to a designated individual or entity. Life insurance, for example, allows the owner to designate beneficiaries to receive the proceeds of the policy. Other assets use a similar mechanism called either a payable-on-death ("POD") or transferable-on-death ("TOD") designation. Generally speaking, financial accounts, such as a checking or savings account, can have a POD added to them which will allow the account to pass to the beneficiaries without being subject to probate. Other types of assets, such as real estate and automobiles can use a TOD to accomplish the same goal, both of which are allowed in Ohio. It is important to note that property passing in this manner is not governed or overridden by what one might have written in one's Last Will & Testament or Trust agreement.

4. Use a Trust

One can also minimize or avoid probate with the use of a trust, which is a private contractual agreement between the grantor, who creates the document, and the trustee who will administer the trust assets for the benefit of the beneficiaries. A trust that is created to avoid probate could have the grantor serving both of those roles during life. If a trust is named as either the owner or designated beneficiary of all of a person's property, then that person would have no property that is subject to probate. A trust could become the owner of the property during the person's life, by "funding" the trust. Or, the trust can be used to avoid probate using the beneficiary designation method outlined above. Either method is sufficient to achieve probate avoidance.

Conclusion

While these methods are fairly simple and some of them can be set up easily on one's own, we cannot understate the importance of working with a professional when planning one's estate. These are powerful tools that can and should be used as a part of an effective estate plan, but these tools alone are not all that is needed to have a comprehensive plan for your loved ones in the event of your disability and eventual death. An attorney can help determine the appropriate tools and/or combination of tools to best suit your personal situation and position your estate will

process without complications. If you would like to discuss these tools as they relate to your estate plan, contact your attorney at Carlile Patchen & Murphy LLP or any member of the Family Wealth & Estate Planning practice group.