Howard Roitman & Associates, Inc.
8921 W. SAHARA AVE STE B
LAS VEGAS, NV 89117
(702) 631-5650
(800) 799-5868
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Ten Ways To Avoid Probate

When someone dies, his or her assets go to people named in a will. If there is no will, the property goes to heirs as set by state law. Courts manage the transfer of property in a procedure called “probate,” a process many people want to avoid because it can be long and expensive.

Over the years several ways have been created to pass property outside the court’s probate process. Today there are more options then ever, but they require some advance planning. Here are ten of the best ways to avoid probate.

1. Transfer Property While You are Alive.

One way to avoid probate is to transfer some of your property while you are alive. Money, stocks, land, cars or any other property can be given to charities tax free. Gifts to anyone else, up to $12,000 each per year (for 2008), are also tax free. So is using your money to pay someone else’s medical or education costs.

Some people set aside money, jewelry, land or stocks knowing they will never use it. They plan to leave it to loved ones, friends and charities and relish the joy these gifts will bring after their own death. Making the gifts while you are alive can avoid costs and complexities of probate, and also let you share in the joy of giving.

2. Own Property as Joint Tenants.

There are different ways to hold title to money, land, stocks and most other property. "Joint tenancy” is a form of property ownership for two or more people who want to avoid probate. When any “joint tenant” dies, the property automatically goes to the remaining joint tenant(s) who are still alive. The last to survive becomes sole owner of the property. No court probate process is involved.

3. Set Up Bank Accounts With "Pay on Death" Instructions.

Savings and checking accounts can be set up with instructions that at your death, the bank must pay the money to a person (or persons) you name. When you die, the person you named to be "paid on death" will have the right to receive the funds in the account without going through the probate process.

4. Name a Beneficiary for Securities.

Most states have laws which let you name someone to receive your stocks and bonds when you die. Under these laws, the company that issued the stocks or bonds must be provided adequate evidence of the original owner's death. The company then re-registers the securities to the person named by the original owner.

5. U.S. Savings Bonds.

U.S. Savings Bonds can also be passed at death to a beneficiary outside of probate. This just requires the purchaser, when buying the savings bond, to name a person to be "paid on death." The bond belongs to the original recipient while he or she is alive. When the person dies, the savings bond automatically passes to whoever is named.

6. Name a Beneficiary for Retirement Accounts.

Normally paperwork to open a retirement account, like an IRA or 401(K), has a line to name a beneficiary in case the account holder dies. Funds or assets in the account pass to the beneficiary without going through the probate process. If the account holder is married, the spouse may have rights in the funds. Therefore a married person who wants to designate a beneficiary other than his or her spouse should first consult a lawyer.

7. Use Life Insurance.

The basic operation of life insurance is that premiums are paid during the life of the insured person. When the person dies, the insurance company pays the policy benefit to whoever is named as beneficiary. The policy benefit payment does not go through the court's probate procedure. Policy benefits can be large amounts of money, making life insurance another way to pass substantial amounts to others outside of probate.

8. Put Property in a Living Trust.

A living trust is a transfer of property to someone else to hold title as trustee, but you still have use and control of the property while alive. When you die, the trustee takes over and distributes the property in accordance with your instructions in the trust document. Since the trust is the legal owner, the property is not officially part of your estate for probate purposes, so it stays out of probate.

9. Use Community Property Rules.

In nine states, wages, other earnings and most other property acquired during marriage automatically belong to husband and wife together, as "community property." The states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin. Married couples in Alaska can choose to have the same treatment by signing an agreement saying so.

In community property states, if a spouse dies, it is possible for all community property to be recognized as belonging to the living spouse without going through probate. The procedures differ in each state. For example, in some states the property must have been designated as community property "with right of survivorship." So consult a lawyer. Also, community property treatment does not apply to gifts and inheritances from others. These belong just to the individual spouse who receives them.

10. Simpler Procedures for Small Estates.

Many states have rules to let smaller estates avoid probate or go through a streamlined process. States have different limits on what is a "small estate." Typical caps are $10,000, $20,000, $50,000 or $100,000.

In one simplified procedure, property that normally goes through probate can be claimed by presenting a death certificate and sworn statement showing the recipient's right to the property. In another procedure the court uses streamlined steps to open the probate, conduct the process, distribute the property and conclude the probate quickly.

These are ten of the best ways to avoid probate. Advance planning on how to avoid probate can help your property pass much faster and easier to the people you want to receive it after your death. For help in planning your estate and to learn which probate avoidance methods are best for your personal and family situation, please call us.

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