



How to Avoid Probate

There are various tools that people use to avoid probate. Your best bet is probably a living trust, but there are other tools available.

Question: What is probate and why do you want to avoid it?

Answer: Probate is a court-supervised process for transferring a decedent's assets to beneficiaries entitled to them. The process can vary depending on whether or not you have a valid Last Will and Testament.

If you do not have a valid Will, your assets will be distributed as determined by South Carolina law. If you have a Will the beneficiaries listed in it are entitled to the assets in your estate.

Many people believe that having a Will avoids probate. That is not the case. The term probate comes from a Latin word meaning "to prove". Thus, probate first requires proof that your Will is valid.

Depending on your state, probate can be a long, or short process. Some states have probate that is quite easy (NJ). In other states (SC) the process is more complex for most laypeople to handle on their own.

Some of the most common reasons to avoid probate are:

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Saving Money. Probate can be expensive, often costing thousands of dollars in legal fees and executor fees. The larger and more complex the estate, the higher the legal fees.

Minimizing Hassle. Probate is time-consuming. Your executor must inventory estate assets, file accountings with the court, notify and possibly negotiate with creditors, open estate bank accounts, and transfer assets to your heirs or beneficiaries. This can be quite a burden on the friend or family member handling the estate.

Avoiding Delay. Probate ties up your assets. Beneficiaries must wait until all creditors have had a chance to submit claims, a process which could, in SC, take at least a year.

Protecting Privacy. Once your estate is opened with the Court anyone can obtain a copy of your Will. Some people would prefer to keep that their estate private.

Not all of the above reasons apply in every case. Probate avoidance is not for everyone. To make an informed decision, you need accurate information. Preparing for probate avoidance can cost money. To avoid probate, you will most likely need a living trust and a handful of related documents. These documents will be more expensive than a Will. If you are basing your decision on costs alone, you should compare these costs with the cost of probate. But, cost savings is not the only issue. There is also the inconvenience factor of having surviving family members (out-of state children?) travel to SC to handle estate matters. There is

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also the non-quantifiable cost in having to wait a year to distribute an estate where the decedent may have had not a single creditor at death.

Probate avoidance requires a careful examination of how each of your assets is titled. Most of your assets will need to be re-titled in the name of your trust. This requires work on your end. But the work that you do now is work that the executor can avoid later.

Of several techniques used to avoid probate, a living trust is only one of them. Each technique relies on one simple principle: arrange assets so that there is nothing in your name that does not automatically pass to someone else at your death. For example, joint tenancies with rights of survivorship, life estate deeds, beneficiary designations in IRA's, life insurance, or payable-on-death designations on bank accounts. Not everyone would want to title assets this way because these techniques usually come with their own set of problems that include bad tax consequences, loss of control, or putting the asset outside of reach if it is needed to pay for care during incapacity.

The living trust is a best-of-both-worlds solution. It avoids probate without causing the problems that some of these other techniques can cause.

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