



Trusts & Estates Newsletter

FALL 2015

PROBATE AVOIDANCE: IS IT WORTH IT?

Probate is the legal transition of assets from a deceased person to his or her beneficiaries. But sometimes assets can pass to a person's beneficiaries without probate. There are many tactics for avoiding probate, and some of those tactics are great – but sometimes avoiding probate can cause more harm than good. These are some ways people try to avoid probate:

Deeding Property to Children. If you give your home to your children during your life, your home could be at risk if they get divorced or have creditor problems. Additionally, they would lose the opportunity to get a value readjustment on your death that would save them capital gains taxes.

Transfer on Death Deeds. These deeds, new in Washington, allow the transfer of a home directly to your beneficiaries at death. However, because they are new, title companies might not recognize them when your heirs choose to sell. In any event, it's important to also spell out your intentions in your Will.

Community Property Agreements. These agreements usually provide that when one spouse dies, all assets pass to the surviving spouse. This can work well in a long, stable marriage, but causes problems if spouses wish to give gifts to different people, or if their estate is taxable (more than \$2 million in Washington). These Agreements can only be revoked by both spouses together, not just one or the other.

Revocable Living Trusts. While we think these are the best probate avoidance tools, they are not a panacea. If you don't transfer title to all your assets to the trust during your lifetime, you'll likely end up needing a probate anyway.

Transfer on Death Designations. Most banks and brokers allow you to name a pay-on-death designee. But these designations are generally not subject to your Will and may be unfair to other family members. Plus it's unclear who has responsibility for paying your final expenses, including taxes.

Joint Accounts with Right of Survivorship. Having a child on your bank account can really help with bill paying, but legally, this almost always means the child on the account inherits it. Again, that might not be fair to other family members.

Small Estate Affidavits. If, after using some of the methods above, your remaining assets total less than \$100,000, Washington law lets heirs use an affidavit procedure to claim the rest without probate. But there still are likely to be fees, and some financial institutions resist honoring them. Also, the affidavit method does not work for real estate.

The GTH Trusts & Estates Group provides individual and family estate planning to clients throughout the Puget Sound area. We strive to provide superior, personal service by preparing wills, trusts and other contingency-plan documents tailored to each client's unique needs. We also analyze and help to carry out lifetime personal planning arrangements, advise those administering estates, trusts and guardianships, and help to resolve disputes among heirs and with taxing authorities. Our group includes a Certified Elder Law Attorney, a former CPA, and a member of The American College of Trust and Estate Counsel.

QUESTIONS

To discuss any aspect of your estate planning, please contact the attorney with whom you work or any of the following members of our Trusts & Estates Group.

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Probate Avoidance continued...

Probate isn't all bad. Here are some positive things about probate:

1. It provides an orderly, formal means for your chosen executor to wrap up your affairs.
2. Creditors have a time limit for making claims against your estate.
3. Troublesome heirs have a time limit during which they can contest your Will.
4. Title to your property passes to your heirs with a deed that will be recognized by the title company.
5. Your executor's duties and liability are clear and limited.
6. Washington's probate laws are simpler than other states and provide for minimal court involvement.

If you're considering using any of the probate avoidance tools described above, think about consulting us to avoid costly mistakes. And if you are faced with a probate, we can help guide you through the process.

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