



How to Make Your Eventual Executor Less Stressed Out

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Dear Jonathan: I just completed the probate of my late brother's will. I was the executor he appointed to act on behalf of the estate. This was not a pleasant experience and in fact was quite the opposite and made me realize that I don't want to put my family through anything like this at my death. My wife and I don't have a large estate, but we are comfortable and I want to make sure that everything I own goes to my wife first and then to my kids upon her death without having to go through probate first. What do you recommend we do to avoid probate at either of our deaths?

Jonathan says: I am sorry that you had such a poor experience in acting as executor of your brother's estate. To answer your question, there are three ways probate can be avoided at your death. The key is making sure that you do not hold title to any assets in your name alone at the time of your death and for those assets where beneficiary designations are permitted, that you in fact name both a primary and a contingent beneficiary. The ways probate can be avoided are more fully explained below:

- **Jointly Titled Property.** Any jointly titled property between a husband and wife will avoid probate at the death of either the husband or the wife and the survivor of the two of them will become the sole owner of those assets at the first spouse's death. The risk of utilizing this approach is that if the husband and wife die in a common accident, then those assets will need to be probated in the estate of the spouse who is considered to have been the last to die.

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Even though it is unlikely for spouses to die in a common accident, it does happen, and if you want to avoid the potential of a probate estate, then you should not rely on the joint ownership method to avoid probate. Further, even if one spouse survives the other and there is no probate required at the first spouse's death, a probate will be necessary upon the death of the surviving spouse if he or she has any assets titled in his or her name at the time of death.

- **Naming a Beneficiary.** Another way that probate can be avoided is if an asset contractually passes to a named beneficiary when the owner passes away. So long as that beneficiary is living at the time of the owner's death, that asset will pass automatically to the beneficiary without having to go through probate. For example, if you own a life insurance policy, the death benefits of that life insurance policy will not be probated in your estate so long as you have named a beneficiary to receive those death benefits and that beneficiary is living at the time of your death. In that event, the proceeds of the life insurance policy will be paid directly to that beneficiary without going through probate.

You should always name a primary and a contingent beneficiary so that if the primary beneficiary is no longer living, there is a backup beneficiary to receive the death benefits. You may also be able to set up investment accounts so that they transfer on death to a beneficiary you have named on those accounts. This is known as a TOD (transfer on death) or POD (payable on death) designation.

- **Living Trust.** The safest and most common way people insure that their assets avoid probate at death is to set up a living trust while they are alive. The first step is for a person to create a living trust. Once the trust has been created, the next step is for the creator of the trust, known as the grantor or settlor, to retitle his or her assets in the name of the trust. For example, if a bank or a brokerage account or a home is titled in the grantor's name alone, he or she would retitle those accounts or home in the name of the trust. Once those assets are titled in the name of the trust, they will not be required to be probated upon the grantor's death because he or she no longer owned them. Also, with a living trust, even though the assets have been retitled to the trust, the grantor does not lose any control of those assets during his or her lifetime; the assets were simply retitled for probate avoidance purposes.

I recommend that you meet with an estate planning attorney in your area who can go over these concepts in more detail with you and help you devise an estate plan that will make sure that probate is avoided at either yours or your spouse's death. Good luck.