

Texas Probate, although simple, some still try to avoid

Texas has one of the most simplified probate processes in the country. Yet, as simple as Texas probate can be, there are still reasons that one may want to avoid it. One reason is that probate does take time and almost always requires retaining an attorney. Some may desire to avoid probate because they have few assets to pass. Another reason to avoid probate is the desire to maintain privacy. Having assets pass outside of probate protects the assets from people prying into the public records of the probate courts for information.

Probate is necessary when there are assets in the estate in a deceased person's name.

Independent administrations which account for the majority of probates in Texas usually involve only one court hearing and allow the executor to settle the decedent's estate without further court supervision. Independent administrations are simple but still some want to avoid them.

There are several ways to avoid probate. A person who dies may own assets that are referred to as non-probate assets that pass at death outside of the probate process. Instead of passing under the decedent's Will, these non-probate assets distribute outright to named beneficiaries. Life insurance policies, retirement accounts and IRAs all pass to listed beneficiaries outside of probate.

Accounts that are owned by the decedent and another individual which are titled as "joint tenants with right of survivorship" pass directly to the survivor outside of probate. Similarly, bank accounts with a "payable on death" also known as POD designation or "transfer on death" known as TOD, pass directly to the beneficiary listed on the account. Funds are paid out to the listed beneficiary with the presentation of a death certificate to the financial institution.

Real property can also be transferred on death without going through probate by a Texas transfer on death deed or lady bird deed. This type of deed does not affect the transferor's homestead rights, their right to transfer or encumber the property, or their ad valorem tax exemptions. Another probate-avoidance technique involving deeds is the creation of a life estate. A life estate is a form of ownership in which one person has exclusive possession and use of the property for life. This person is known as a life tenant. The other person involved in ownership is the remainderman. The remainderman receives the property immediately upon the life tenant's death without the requirement of probate.

The use of a revocable trust is another popular way to avoid probate. Assets transferred to the revocable trust pass privately to the decedent's chosen beneficiaries without the need for probate.

There are also several ways to pass items of personal property without going through probate. One way is to simply give them away before death. To transfer a motor vehicle upon death, the Texas Transportation Code now allows the owner to designate a beneficiary to whom title will pass upon the owner's death. The designation does not provide any ownership interest to the beneficiary during the owner's lifetime.

All of the probate-avoidance techniques can create costly pitfalls for the unwary. For example, as one ages, it is not uncommon to add a child to a bank account so that the child can help with bill paying. The

intent might be only to add the child's name for the sake of convenience not realizing that by checking the box for "right of survivorship" they are leaving the money in the account to that one child, rather than equally to all children as per the provisions in their Will. By checking a box, the account holder may unwittingly cause an unequal distribution of her estate.

Anyone contemplating probate-avoidance techniques should be aware of all available options as well as the pitfalls. Determining if probate-avoidance is best for you involves having an attorney evaluate your situation and advising the best way to accomplish your particular objectives. What is best for one person may not suit another.

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