

Avoiding Probate in New York: Benefits of Planning Ahead



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What is the Probate Process in New York?

Probate is the formal legal process that gives recognition to a will and appoints the executor or personal representative who will administer the estate and distribute the deceased individual's assets to the intended beneficiaries. In New York, probate courts must inquire particularly into all the facts surrounding a decedent's will and must be satisfied with its genuineness and the validity of its execution before admitting the will to probate.

If you have a validly executed will, your estate will be handled by your nominated executor and pass through probate. If you do not have a will, your assets will still be subject to probate and pass through the laws of intestacy of New York. Any beneficiaries or fiduciaries will be notified by the court based on their entitlement to your estate under the intestacy laws.

While the probate process is necessary in guaranteeing the orderly transfer of assets, New York probate court proceedings can be drawn out, leading to delays and the dwindling of estate assets. Fortunately, there are various ways to avoid the probate process while ensuring your desired beneficiaries receive the assets you intend them to.

Why Avoid Probate in New York?

- **Time and Money:** Probate court proceedings can take a great deal of time, money, and effort from your surviving heirs. To properly probate a decedent's estate, the process may include submitting substantial paperwork and death certificates to the court and institutions holding the decedent's assets, searching for unknown family members and/or engaging with disgruntled extensions of the family, and dealing with creditors of the estate seeking repayment via the decedent's assets. For example, under the New York Surrogate's Procedure Act, an estate must remain open for a minimum of seven months before distributions to beneficiaries can be made to allow adequate time for lawful claims from valid creditors to be filed against the estate. Therefore, whether the estate administration is straightforward or not, the probate process will take a minimum of seven months to complete.
- **Emotional Toll on Families:** It cannot be forgotten that the core of the probate process involves the loss of a loved one. Going through the probate process can make the mourning process prolonged and more difficult as the family must engage in the administration for months, and potentially years, following the decedent's passing. Often, family disputes arise over the distribution of assets based on perceived shortcomings of inheritance and can bring to the surface old family feuds. This can create situations wherein a will is contested by interested parties leading to more time, money, and effort as detailed above. Notwithstanding the above, many family members have never experienced the probate process and navigating the unknown, especially for the nominated fiduciary, can lead to missteps, forcing the estate to expend further resources.
- **Privacy and Control:** In New York, once a will is admitted to probate, it becomes a public document. In cases where family members are treated differently by the decedent in his or her will, the intimate design of the will by the decedent becomes open for review. Will contests can make financial matters and other family information public and in many cases, those involved would prefer to keep this information to themselves. Unfortunately, the probate process is not ideal when you want to keep things private.

Although you can strategically plan for the transfer of assets to desired beneficiaries in a will, subjecting your assets to the probate process can eliminate total control. For example, you may wish to leave the family home to your children for their use. If techniques are not in place that would allow the house to transfer directly to your children, the house must pass through probate before your children may enjoy your bequest. When being probated, various creditors may file claims against your estate, of which your children cannot afford to pay. Instead, the children are forced to sell the family home to pay off creditors and are left with a cash bequest that is minimal compared to the gift of the family home. As detailed below, if early estate planning measures are taken, the children could potentially receive the house directly and avoid liquidating the asset.

How to Avoid Probate in New York

- **Living Trust:** A living trust, also known as an inter vivos trust, is an agreement that one can establish during their lifetime wherein they transfer ownership of certain assets to a trust to be administered and managed for their benefit until death. This person is the trust grantor and can also be the trustee. The trust document will name a successor trustee to administer the trust after the grantor's death, at which point the successor trustee has immediate control and access of the assets without any probate proceedings. It is essential to remember that the trust will only control those assets transferred to the trust prior to the grantor's passing. If any assets remain outside of the trust, a probate proceeding will be necessary.

- **Joint Tenant:** If you own property jointly with another individual, and this ownership includes a right of survivorship, then the surviving owner automatically owns the property when the other owner dies. This is most commonly used for personal residences and although probate will not be necessary to transfer the property, the surviving owner may need to provide proof of the other owner's demise to demonstrate they are now the only person with right to hold title. The same result ensues in the case of joint bank accounts. For example, if you hold a joint bank account with your spouse and you die, the bank account automatically becomes your surviving spouse's sole bank account. Designating property or financial accounts as jointly held is a powerful way to keep certain probate out of probate and allow for the automatic transfer to desired beneficiaries.
- **Payable On-Death & Transfer On-Death Designations:** In New York, account owners can add a payable-on-death (POD) designation to bank accounts and a transfer-on-death (TOD) designation to stock, bonds, and other securities. For example, if you have a savings account, you can add a POD designation to the account allowing for your beneficiary to inherit the funds directly without a probate proceeding. Similar for TOD designations, you may register your stock holdings to transfer directly to designated individuals at your death. Naming specific beneficiaries on these accounts is often required, but if not, contacting your wealth or financial advisor to ensure beneficiaries are listed is essential to ensure these assets do not fall into probate.

Avoiding probate is possible when you take the time to prepare in advance. Planning ahead can help provide a clear path for your assets to be distributed efficiently and effectively, ensuring peace of mind for you and your loved ones.

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