What assets are subject to probate?

Probate assets are the assets owned by you in your name alone at the time of death. The exception to this rule: if the solely owned asset has a designated beneficiary (other than the estate).

You may be able to avoid the probate process entirely by naming a beneficiary on life insurance, annuities, individual retirement accounts, 401(k)s, or other retirement accounts. The company then simply pays the policy proceeds to your named beneficiary. These assets will not require any type of probate.

While not typically recommended, probate can also be avoided by joint ownership of accounts. There are many pitfalls to joint ownership when the co-owner is not your spouse. You are exposing your assets to the co-owner’s actions and control. That person could empty your bank accounts or jeopardize your accounts through divorce, creditors, or bankruptcy. Meanwhile, the only benefit is probate avoidance.

Many people assume a surviving spouse automatically inherits the deceased spouse’s property. This is not true. A surviving spouse typically receives everything because of joint ownership or beneficiary designations. The surviving spouse simply claims the beneficiary designated assets or continues to own the joint property. Will your spouse have to go through the probate process when you pass away? You should take a minute to review your account ownership and beneficiary designations.

You may also utilize a revocable trust agreement for probate avoidance. Simply signing a trust agreement does not avoid probate. You must fund your trust – meaning the trust becomes the new owner or the designated beneficiary of your assets. You would no longer own property in your name alone. The trustee holds legal title to property, which avoids probate.