

# HOW YOUR FAMILY CAN INHERIT YOUR ASSETS WITHOUT GOING THROUGH AN EXPENSIVE PROBATE



ROCKY MOUNTAIN  
WILLS & TRUSTS

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How can I leave my assets to my family when I die without having to go through probate? At Rocky Mountain Wills and Trusts, we are very often asked some form of this question. The good news is that there are a number of strategies you can use to AVOID having your assets go through the probate process after you die. The bad news; well there really isn't any, unless you count the expense, hassle and stress to be dealt with by those you leave behind (in addition to mourning your passing) if you fail to implement an effective plan.

We know you likely downloaded this E-Book for a reason. You want to know the answer to the above-listed question. We will tell you that, but we also want to give you the information you need to understand why this is the answer and allow you to determine whether it is the best answer for you and your family. So, we hope you will take the time to read and understand what we have prepared for you.

*"BOY: Mr. Owl, how many licks does it take to get to the Tootsie Roll center of a Tootsie Pop?"*

*MR OWL: Let's find out... One.. Two...Three*

*\*CRUNCH NOISE\**

*MR OWL: Three"*

*~ Tootsie Roll Industries, Inc. (Candy Company)*

Can't stand the suspense? Ok, we will make a deal with you. We'll tell you here at the beginning what in our experience we find to be the most effective way to pass on your assets after you die without having to go through probate, but, you have to promise you will look over the next few pages explaining your options and why we concluded what we did. Agreed? (If you want to wait until the end, then skip the next paragraph and read on.)

While there are a number of different ways people will try to keep their assets out of probate, we have found that for most of our clients, using a Living Trust is the most effective way of achieving this desired result. Now read on to understand why.

*"The Answer to the Great Question... Of Life, the Universe and Everything... Is... Forty-two, said Deep Thought with infinite majesty and calm."*

*~ Douglas Adams, The Hitchhiker's Guide to the Galaxy (Author)*

Before understanding an answer, it is always important to know what question is being asked. When it comes to passing on your assets to your loved ones after your death, some people know what probate is, but we find that for most people, unless they have prior direct experience with the process when another loved one passed away, they really aren't sure what probate is.

Therefore, the starting point is to explain exactly what probate is and why it is even important.

## **WHAT IS PROBATE?**

Probate is the court process where a deceased person's (referred to in legalese as the "Decedent") assets are inventoried and distributed according to their wishes. This includes their personal items, their cash, bank accounts, automobiles, real estate, and everything else they owned in his or her own individual name at the time of his or her death.



Such distribution of the Decedent's assets is usually accomplished with a written Will (often referred to as the "Last Will and Testament") often in combination with a trust. If the Decedent did not sign a Will prior to his or her death, or the Will cannot be located, the Decedent's assets will instead be distributed according to the law of the state where the probate process is taking place.

Probate can be a long and protracted process, often taking six months to a year, or even stretching over years, before it is complete. Additionally, probate is usually expensive. There are various court costs and fees involved, other costs associated with the distribution of assets, and, in most cases, attorney fees. Such fees can quickly add up to thousands of dollars which will be paid from the Decedent's estate (before the Decedent's heirs receive their respective shares of the estate, meaning that the heirs are losing out on some of their inheritance).

In addition to the financial costs and the lengthy time before the Decedent's estate is finally closed, there is a personal time element. Because assets cannot be distributed without going through the Probate Court, it may take many months (or longer) before the Decedent's heirs can access those assets. Further, the Probate Court will appoint an Executor (also known as a Personal Representative) to manage the Decedent's probate estate. This individual is usually named in the Decedent's Will. The Executor has the responsibility to manage the Decedent's probate estate. In most cases, the Executor will hire an attorney to assist them, but there are still many duties and responsibilities for the Executor which do not end until the probate estate is finally closed.

The Executor must gather documents, prepare and sign paperwork, make funeral arrangements, pay bills, communicate with creditors, banks, investment brokers, insurance companies, the real estate agent, the accountant, family members, other heirs, as well as many other things that come up which require the Executor's time and attention. In most cases, the Executor is not paid for their services, and to top it off, because they are acting on behalf of the Decedent's estate, they have what is called a "fiduciary duty" to the estate. In short, this means that the Executor may be held personally liable if it is later determined they mismanaged the Decedent's estate or its assets.

## THE ANSWER

*"Google can bring you back 100,000 answers. A librarian can bring you back the right one."*

*~ Neil Gaiman (Author)*

There are number of strategies people use to keep their assets out of probate. Below is a brief summary of some of the strategies and what we see is often the best solution for many people. We will start with what we find to be the best strategy for many of our clients.

## USE OF A LIVING TRUST

In our experience, using a Living Trust, also interchangeably referred to as either a Revocable Trust or a Revocable Living Trust, is a an extremely effective way of passing along assets to your heirs without going through probate after you die. Briefly, assets that are titled in the name of a Living Trust do not go through probate.

This is because they are legally owned by the Trustee (the person, bank or entity who manages the Trust) on behalf of the Beneficiary (ies) (the person (s) who are entitled to use or receive the Trust's assets). So, if you create a Living Trust, re-title your individually-owned assets from your own name to yourself in the capacity as the Trustee of your Living Trust, and you are also one of the Trust's Beneficiaries, you still have access to your assets, but legally speaking, you no longer personally own them. As a result, those assets will not go through probate. Even better, because of the way a Living Trust operates, you can still transfer assets into it, remove assets from it, or even amend certain provisions, revoke, or terminate the Living Trust at any time. Taking any of these steps may affect whether or not an asset goes through probate, but typically our clients appreciate the flexibility.

In most cases, we find the Living Trust strategy to be optimal for our clients who seek to avoid probate.

## **ADDITIONAL STRATEGIES**

There are other "strategies", although they usually do not provide anywhere near the benefits of having a Living Trust and have certain inherent risks. These strategies include:

### **1. Own Nothing/Have Nothing**

If you have nothing and live in van down by the river, you may be able to avoid probate altogether. Although, depending on the value of the van, your estate might still have to go through probate. If you truly have nothing, or very little, Colorado law allows you to avoid probate.



If the combined value of everything you own exceeds a certain amount, or if you own real estate, then unless we use another strategy, your estate will still likely have to go through probate.

## **2. Spend It All or Give It All Away Before You Die.**

In most cases, we still own personal items or own accounts when we die. If we lived in a world where we knew in advance the date of our own death, we could make a plan to use up all of our assets by that date. However, except in the case of a terminal illness, we rarely have that kind of information. If we spend it all, then we may be creating a lower quality of life for ourselves in our final years. If rather than spending it all, we choose to give it to our loved ones while we are still living, we give up a lot of power and control over our own lives. This may be the right solution for some, but there are many stories where an aging parent gave their home and all their other assets to their children while they were still alive, and then when the parent needed some or all of the assets, the assets were tied up, such as in a house, or otherwise unavailable, or had been spent or lost, had been taken by the child's own creditors, or even more tragic, the child simply refused to use the assets to pay for the parents' expenses. There may also be certain tax consequences to this strategy, which we do not discuss here.

Having to ask your children for money and risk that the assets may no longer be there when needed is not a situation most people want to find themselves in. Therefore, while this sounds like a good solution initially, when we consider it further, it is usually not a recommended strategy.

### 3. Re-Title Certain Assets In Another Person's Name

Oftentimes people choose to take some of their assets and add another person or persons on as partial or complete owners. These are strategies such as Payable On Death Accounts, Joint Tenancy Ownership, or Quitclaim Deeds. These strategies can be used to keep some assets out of probate, but again they often come at a cost. Depending on when or how the transfers take place, such transfers may not be valid, or, the assets may be taken by the other person's creditors, become entangled in subsequent divorce proceedings, and may cause disagreements and strife among family members. And, of course, this type of strategy comes with many of the same concerns discussed in Number 2, as well as potential tax consequences which are not discussed here.

### 4. Bury Your Assets (Literally) (Don't ever choose this one, it's a bad idea and is probably illegal).

You could choose to not put your money in the bank or in investments, not own any real estate, and just live "off the grid". You can then hide your cash under your mattress or bury it in a coffee can in a secret spot, in a location only you know about. While this may have worked 150 years ago, it is not a viable (or recommended) strategy in today's world. Anything could happen to your money. It could be lost, stolen, or your heirs may not know where to find it after you die. And if your heirs do find it, they will probably still have to go through probate or they may be breaking the law. **Unless you are a California Gold Rush miner from the 1840s or 1850s, don't do this as there are better ways to protect yourself and your heirs and still avoid having to go through probate.**



## WHAT IS THE NEXT STEP?

We provide a lot of helpful information in this E-Book. However, note that none of the information herein is intended as legal advice to any reader for their specific situation. Before making a decision on how to keep your assets from going through probate, we recommend that you speak with a knowledgeable and experienced attorney, such as ourselves, to determine what legal strategies are best for you, your family, and your current or future circumstances. If you want to learn more, please check out our other E-Books, our website ([www.rockymountainwillsandtrusts.com](http://www.rockymountainwillsandtrusts.com)), or contact our office to schedule a time to discuss your estate planning questions.

*Only put off until tomorrow what you are willing to die having left undone. ~ Pablo Picasso*

Now, a final thought. None of this means anything if you do not take action. We encourage everyone to consult with an experienced and knowledgeable attorney about their estate plan (or lack thereof). At Rocky Mountain Wills and Trusts, we are happy to sit down with people to review their options, or to review their current plan if they have one, and discuss how we may be able to help them achieve their goals with effective Wills and Trusts. Please feel free to contact us at (720) 420-1777 or email us at [office@rmlfirm.com](mailto:office@rmlfirm.com).

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