

Fact Sheet

Avoiding Probate in Arkansas

(This information is provided as general background for informational purposes only. It is not intended as legal advice. Many legal issues are very fact specific and an attorney should be consulted for legal advice and counsel tailored to any particular situation.)

Avoiding the financial and time cost of a court directed probate proceeding is often an objective when Arkansas residents plan for the transfer of their property and assets upon their death. The good news is that there are many tools available to meet this objective, and by taking advantage of them, most Arkansans can avoid or limit probate proceedings.

Joint Ownership. This type of co-ownership, common among married couples, allows for the right of survivorship. This simply means that when one joint owner dies, his or her share automatically passes to the surviving joint owner(s). Financial accounts, real property, and vehicles are a few examples of assets that can be jointly-owned. Upon the death of a joint owner, the survivor needs only to notify the institution and provide requested information to change ownership of the asset.

Financial and Investment Account Payable on Death Beneficiary Designations. Most, if not all, financial and investment institutions allow account holders to designate a beneficiary. Upon the death of an account holder or the death of the last co-owner of a joint account, beneficiaries need only file a claim with the financial institution to have the asset transferred to them. Owners of US Government Savings Bonds can also list and change beneficiaries by contacting the Department of the Treasury. Upon the owners' death, beneficiaries can then cash the bond at a local bank or via the Treasury Direct website.

Real Property Beneficiary Deed. Arkansas law (Ark. Code § 18-12-608) allows property owners to execute a beneficiary deed that will be effective upon the death of the owner or the death of the last joint owners. This deed must be recorded with the county clerk where the property is located prior to the death of the grantor(s) in order to be effective. This deed can also be revoked by the grantor(s). Upon the death of the grantor(s), the beneficiary need only request the county clerk issue a new deed listing the property's new owner.

Vehicle Certificate of Title with Beneficiary. Arkansas law (Ark. Code § 27-14-727) allows vehicle owners to obtain a title that indicates the present owner of the vehicle and designates a beneficiary who takes ownership of the vehicle upon the death of the owner or upon the death of all joint owners. The beneficiary need only apply for a new title with the Department of Motor Vehicles upon the death of the owner(s).

Last Will and Testament. Even if great effort is taken to avoid probate, it is a good idea to also have a Last Will and Testament. In the event there is property that does not or cannot pass automatically, a Last Will and Testament will direct where the left-over property should go. Without this document, the property will be distributed in accordance with Arkansas law, which may not comport with the owner's wishes. Also, a Last Will and Testament can inform others regarding final disposition of remains, address issues the deceased felt were significant, and relay other pertinent information to loved ones.