

Lindstrom Estate & Trust

Probate Avoidance

PROBATE AVOIDANCE

Although probate is not always the nightmare process that some believe it to be, it is often worthwhile to take actions to avoid a Probate proceeding when possible. Generally, having a Living Trust / Revocable Trust is the most common method used to avoid a Probate proceeding. However, there are numerous other methods that can be used to avoid a Probate proceeding.

A probate asset is an asset that does not have a beneficiary designation or is not held in a trust. Thus, by adding POD (payable-on-death) or TOD (transfer-on-death) designations to your assets along with having beneficiaries listed for retirement-type accounts and life insurance, a probate can be avoided. *(There are situations when this does not make sense, such as when your children are minors and you desire that payments be deferred to later ages (beyond age 18)).* However, if you are leaving assets directly / outright to your children or other beneficiaries then a little effort can eliminate the time and expense of a Probate proceeding. I have seen many situations where a few hours of planning would have saved the time and expense of a Probate proceeding including legal fees and Court costs. Often times that be a 5 or 6 fold return on the investment. The following is a common scenario:

A parent with two adult children, a few accounts worth \$500,000, and a home worth \$400,000 is leaving those assets outright to their children via a Will and through a Probate proceeding. In such case, the legal fees and Court costs could be \$5,000 - \$6,000 or more.

In contrast, assuming there are no issues between the children, that same parent could leave assets outright to their children by adding beneficiaries or payable-on-death designations to their accounts and have a TOD (transfer-on-death) Deed prepared for their home. In such case, a few hours of legal time would eliminate the legal fees of a Probate proceeding, eliminate the Court costs, and eliminate unnecessary delay in distribution. Overall, this allows for a more efficient and economical distribution to their children.

That is just one example of where a few probate avoidance techniques can be very valuable!

Accordingly, based on the above, if probate avoidance is a desire, a little planning can go a long way towards eliminating the time and expense of a Probate proceeding whether it is done through a trust or through other processes such as adding proper POD, TOD, or beneficiary designations to assets. This is especially true when the parent has real estate in multiple States where a Probate proceeding would be required in each State where real estate is owned (i.e. home in Minnesota, cabin in Wisconsin, winter home in Florida).