

PROBATE AVOIDANCE

Checklist- 8 common actions you can complete to avoid probate.



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1. Execute a Deed Upon Death

Oftentimes, a parent will add a child onto a deed as a Joint Tenant to avoid the matter of probate. Though the intention is admirable, the parent/owner of the property may not realize that doing so subjects the property to all of the debts and creditors of the person they have named their joint tenant. The original owner will also require their joint tenant's signature should they ever decide to do *anything* that might affect the property.

A Deed Upon Death will achieve the same result of avoiding probate for your beneficiaries, but does not give your beneficiaries any rights to the land while you are alive. You can sell the land, gift it, or name a different beneficiary at any time. However, upon your death, the beneficiary can easily claim title to the property without probate. Additionally, by naming someone as joint tenant, you are actually subjecting your beneficiaries to potential capital gains taxes which can be avoided with a Deed Upon Death.

2. Name Beneficiaries for Your Car

Many people do not know this, but you can also name a beneficiary for your car. The DMV has a special Transfer on Death form that can be either downloaded online or obtained at their offices. It is one sheet of paper and requires that you pay a title fee, submit the certificate of title, and the application form.

3. Designate Beneficiaries for Your Bank Accounts

These designations are referred to as a "payable-upon-death" account or POD. It is important that you designate your choice of beneficiaries for checking, savings, CDs, and other bank accounts to ensure it falls outside of probate. Generally, doing so does not require you to complete any special paperwork on your own. Simply contact your bank and they will usually complete the necessary forms on your behalf.

4. Name Beneficiaries for your Retirement Accounts

Like bank accounts, you have the right to name a first choice beneficiary and generally a second choice beneficiary. Doing so would serve the purpose of ensuring your assets go where you wish them to, and save your beneficiaries the trouble of going through probate.

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5. Designate Beneficiaries for Life Insurance

Even if you have already designated beneficiaries, it is generally recommended that you check once every three years to ensure that the institution retains the most updated paperwork. Like bank accounts and retirement accounts, the institution will usually provide you with the paperwork required to complete your designation.

6. Designate Beneficiaries for Stocks

There are many different types of stocks. We will discuss the two most common types.

- i. The first type of stock is owned through a mutual fund or investment firm where companies such as Merrill Lynch will manage the portfolio on your behalf. These stocks, like most accounts, can have a beneficiary easily designated via the forms the management company provides.
- ii. The second type of stock is outright ownership of stock certificates. These are certificates issued by the company itself. For example, you would possess a certificate that states it is X shares of General Electric Stock. To designate a beneficiary for these types of stocks, you will need to execute a transfer on death form. Generally, you will be able to contact the brokerage or source company to provide you with the forms.

7. Designate Beneficiaries for Bonds

Bonds are usually the last things people think of as transferrable, but designating a beneficiary is highly recommended because claiming a bond after someone has passed generally requires more paperwork than any of the previously mentioned assets. Without a beneficiary designation, you may risk your beneficiaries deciding to “let go” of the bond rather than deal with the paperwork.

To designate a beneficiary for your current bonds, simply go to the treasury website to do so. If your bonds are older and in paper format, there is a downloadable form which you can complete and mail into the treasury department. To avoid the additional paperwork in the future, you can name a beneficiary at the time of purchase.

8. Create a List of Personal Items and Designate Who They Should Go To

Oftentimes, the most contentious items that are litigated over are personal effects in an estate. It is usually best to create a list of what items go to whom. More importantly, misunderstandings and litigation can be avoided if you speak with your family and friends and make your wishes clear.

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