



Questions About Probate

What is probate?

After you die, your “estate” needs to be taken care of. Your estate is the property you own and the debts you owe. If your estate is worth more than \$75,000 a probate proceeding will be necessary. This \$75,000 does not include real property you own. Real property is buildings and land. A probate court appoints a “Personal Representative” to take care of your estate. You can name someone in your will to be Personal Representative, but the court still has to approve it.



The Personal Representative makes a list of all property in the estate and any debts. The Personal Representative pays your debts, and distributes everything left over to your heirs.

If you have a will, it should say how you want your property to be distributed. If you do not have a will, this is called “intestacy” and state law has rules about who gets your property. Even without a will, your property will go to family unless you have no living next of kin. In that situation it would “go to the state.” See our fact sheet, [Questions About Wills](#).

Probate court is also used when there is a dispute about your will or a judge’s order is needed to distribute your property.

Real Estate and Probate

If you are the sole owner of real property at the time you die, a probate will be needed even if your other assets are worth less than \$75,000. The personal representative will deed the property to your heirs. Your heirs have to record the change of ownership.

What does it mean to “avoid probate”?

To “avoid probate” means your heirs don’t have to go to probate court. This happens for example, if you have a joint bank account with another person, or own land jointly with another person. When you die, that person automatically owns the account or land. No court order is needed and probate court has been avoided. Certain trusts, gifts made before death, and life insurance are all ways to avoid probate.

A way to avoid probate of real estate is to properly sign and record a Transfer on Death Deed (TODD) before your death. The grantee of the TODD is given ownership after your death and a probate is not needed. See our fact sheet [Transfer on Death Deeds](#).

It is not always wise to avoid probate. Probate is not costly or lengthy unless your estate is big and complex or your heirs fight over your estate. Sometimes avoiding probate costs more than probate does.

A good will helps avoid fights over your property in Probate Court.



Can I avoid probate by having a will?

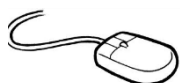
Having a will does not always avoid Probate Court. It depends on what kind of property you own, how much it is worth, whether you own it alone or with others, and who you want to get it.

If family members disagree with the will or how the estate is handled, they can contest the will and the Probate Court must decide who should get the property. When there is no will and, if family members contest the handling of the estate, probate is also needed.

What if my estate is small?

If your estate is worth less than \$75,000, your heirs can usually collect your personal property without going to court by using an “Affidavit for Collection of Personal Property.”

You can [get this form](#) from the court or find it online at www.mncourts.gov.



- Click on “Get Forms”
- Click on “Probate”
- Click on “Affidavit for Collection of Personal Property (Small Estate - No Real Estate)”

Personal property includes bank accounts, debts, stocks, and furniture and personal items, but not your home or real estate.

Your Personal Representative tells your heirs what property they can have, where it is and gives them a copy of the Affidavit.

The heir must present the Affidavit, along with a certified copy of the death certificate to the bank or other holder of the property. This can be done 30 days after the date of death.

Should I add my children's names to my deeds or accounts?

Think carefully about it first! Doing this can cause problems while you are still living. Probate is not as bad as people think. They think it costs more than it usually does.

For example:

If you decide you want to sell the whole property or get a mortgage, the other person has to agree. If they do not agree you might not be able to sell it. They could also try to sell their part of the property to someone else and you would not be able to stop them.

If you put someone's name on your bank account, that person becomes part owner of it. That person has the same right to that money as you do, and may try to take it. Also, if the amount is large, you may have to pay a gift tax.

Talk to a lawyer before you put another person's name on any account or your property.



Can trying to avoid probate affect my eligibility for MA?

Someday you may need Medical Assistance (MA) to help with high medical bills or nursing home costs. MA has limits on how much income and assets people can have. MA also has a rule against giving property away in order to get MA.

When you apply, you must tell MA about any property you gave away, put in a trust or sold for less than full value in the last 5 years. Putting someone's name on a deed

or bank account **is** a transfer of property. You would have to show that the transfer was done for some reason other than to get MA. Avoiding probate is not an acceptable reason. Talk to a lawyer who knows about property transfers and MA before you transfer any property.



Find more fact sheets at www.lawhelpmn.org/LASMfactsheets

Find your local legal aid office at www.lawhelpmn.org/resource/legal-aid-offices

Fact Sheets are legal information NOT legal advice. See a lawyer for advice.

Don't use this fact sheet if it is more than 1 year old. Ask us for updates, a fact sheet list, or alternate formats.

© 2018 Minnesota Legal Services Coalition. This document may be reproduced and used for non-commercial personal and educational purposes only. All other rights reserved. This notice must remain on all copies. Reproduction, distribution, and use for commercial purposes are strictly prohibited.