



Questions About Probate

What is probate?

After you die, your “estate” needs to be taken care of. Your estate is the money and property you own and the debts you owe. If your estate is worth more than \$75,000 or if you own a home or other real estate a probate proceeding is necessary. It is necessary even if you have a will.

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 is sometimes called the Executor.



The Personal Representative makes a list of all money and 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 money and property distributed. If you do not have a will, this is called “intestacy” and state law has rules about who gets your money and property. Even without a will, your money and property go to family unless you have no living relatives. In that situation it would “go to the state.” See our fact sheet, [Questions About Wills](#).

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

Money and Probate

Retirement money or other assets that you listed a beneficiary for do not count toward the \$75,000 limit. A beneficiary is someone you name on an account or on property who gets your assets or property when you die. Real estate means buildings and land. If the real estate is in your name only with no beneficiaries named in the public property records, a probate is necessary.

Real Estate and Probate

If you are the sole owner of real estate when you die, and you have not filed a Transfer on Death Deed (TODD) with the county, a probate is needed. It is needed even if your other assets are worth less than \$75,000. The personal representative deeds the property to your heirs or sells it and distributes the money.

See our fact sheet [Transfer on Death Deeds](#).

What does it mean to “avoid probate”?

To “avoid probate” means your heirs don’t have to go to probate court to get your money and property transferred to them. For example, if you have a joint bank account with another person, or own land with another person as “joint tenants.” 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. You can also name “Payable on Death (POD)” beneficiaries on assets like bank accounts or other investments. Then your assets go automatically to the beneficiaries without probate. Talk to your bank about naming POD beneficiaries for your bank accounts.

Beneficiaries can be named to real estate too. 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 your beneficiary. They are given ownership after your death and a probate is then not needed to transfer your real estate. See our fact sheet [Transfer on Death Deeds](#).

It is not always the best thing to avoid probate. Probate doesn’t cost a lot or take very long 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, if you own it alone or with others, and who you want to get it. As explained above,

- if you own real estate (without a TODD) or

- your assets are more than \$75,000 (without a POD)
- having a will does not change the fact that your estate still needs a probate.

If family members disagree with the will or how the estate is handled, they can contest the will and the Probate Court decides who gets the property. Probate is also needed when there is no will and family members don't agree with the handling of the estate.

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 "Forms & Instructions"
- 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.

An heir, or someone named in your will, can present the Affidavit to your bank, or another place that holds your assets. They can ask them to transfer your assets to them.



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 you added 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.



Note: if you put someone's name on your account, that person may not be able to get some government benefits. This can happen because it looks like all of your money is their money too.

Talk to a lawyer before you put another person's name on any account or your property, even if the person is your child.

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 to try 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 your home or bank account **is** a transfer of property. It could disqualify you from getting MA help when you need it. Talk to a lawyer who knows about property transfers and MA before you transfer any property.

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.

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