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Probate for Inheritances

Probate can be costly in terms of time and money but it may be a necessary step before assets can be transferred to beneficiaries.

Probate is a legal process for settling an estate according to the will of the deceased. The deceased's taxable estate is made up of all of the assets in which he or she holds an interest at the time of death, but only assets held individually in his or her name will generally have to go through probate.

The probate process varies by state—many states offer a quicker, less expensive option if the assets subject to probate are below a certain value (for example, \$25,000 or \$50,000).

Probate is also public record, so it decreases the level of privacy of the estate.

Some assets, such as investment accounts with transfer on death (TOD) designations and retirement accounts, allow for the naming of beneficiaries and, therefore, may transfer to beneficiaries without going through the probate process.

Assets with joint ownership with right of survivorship pass to the second owner when the first owner dies. If there is a TOD on the account, the assets will only go to the beneficiary if both joint owners pass away. In either case, the asset will not likely go through probate.

When someone passes away without a will or intestate, assets pass to heirs at law via the probate process according to state intestacy laws.

There may not be much you can do to avoid going through probate once a loved one has passed away, but it helps to understand the process as you work with an attorney or tax advisor.

Which assets pass through probate

Generally speaking, any asset that allows the owner to name a beneficiary will not have to go through probate, including most assets once they are placed in trusts. The following table gives a general idea of which assets are and are not usually subject to probate in the most common scenarios.

Usually subject to probate	Not usually subject to probate
Cash, cash accounts without TOD designations	Accounts that allow for the naming of beneficiaries (IRAs, 401(k)s) or TOD designations (investment and some cash accounts)
Personal property, including valuable items	Trusts, including assets placed in trusts that might otherwise have to go through probate (cash, real estate)
Real estate	Insurance policy proceeds
Assets that allow naming of beneficiaries, but for which none have been named	Assets with joint ownership with right of survivorship
Assets held as <u>tenants in common</u>	

Questions?

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This means, for the assets not usually subject to probate, if you are a named beneficiary you will likely be able to assume ownership sooner and may save money on court costs and attorney fees.

It's important to note that, generally, even if a named beneficiary conflicts with information stated in the will, the named beneficiary will still receive the assets over the individual named in the will.

Other laws that vary from state to state may apply and dictate how the assets transfer. If there is any doubt associated with the beneficiary, the question is resolved through the probate process.

As always, you should discuss your specific situation with your attorney or tax advisor.

The impact of probate

Because every inheritance is different, it's hard to predict how much probate will cost and how long it will take. The cost will vary by the size and makeup of the estate, the laws of the state in which the deceased lived, and the will (if there is one and how it was written).

Probate costs can include:

- Court fees
- Appraisal and valuation fees
- Account fees
- Fees paid by the executor
- Your attorney's fees to represent you in the process

The typical cost of probate usually adds up to a range of about 2% to 5% of the value of the assets that go through the process.

Probate also delays the transfer of the assets. The delay varies by state and the size and makeup of the estate; some states have a minimum, such as four months, and some states can take more than two years to finalize the process.

What happens if the beneficiary is not named or is unclear?

If the beneficiary designation is missing or rules of succession for the asset don't help to clarify the matter, then the asset is transferred according to the will, if there is one, or to the deceased's estate. In either case, the asset will likely have to go through probate, incurring costs and delaying the transfer of the asset.

Next step

Getting organized

Know what you need to do to ensure a smooth settlement process for the estate.

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