

FAQ: What is probate and how can I avoid it?

Probate is, generally speaking, the requirements that the Personal Representative (also known as an Executor) of the estate must follow to comply with the laws of the state in which the person was living at the time of death. While the probate requirements of each state differ, these responsibilities often include providing an inventory of assets, notifying heirs and creditors of the person's death, and preparing an accounting of the estate income and expenses during the administration period.

It is important to note that probate generally applies to assets passing under a Will. Thus, the following assets avoid the probate process:

- (i) assets that pass by beneficiary designation (such as life insurance and retirement accounts, assuming a valid beneficiary designation is on file with the appropriate institution);
- (ii) assets that pass by TOD (transfer on death) or POD (payable on death) designations directly to the named beneficiary, and
- (iii) jointly owned assets (at least on the first joint owner's death).

In addition, a common way to avoid probate is to create and fund a Revocable Trust as the primary vehicle (in addition to a Will) of distributing assets upon death. Each of the above options has advantages and disadvantages, and may or may not be appropriate in your particular situation.

Note that avoiding probate does not eliminate the estate administration process – it merely reduces some of the court required paperwork. There still are other steps required in administering an estate.