

# How to Avoid Probate

*The probate process can be costly and may give the court undue control and jurisdiction over the handling of an estate. Lifetime planning to reduce the probate estate is the most effective means of eliminating the need for probate.* The probate estate includes only those assets owned at the time of death not automatically passed to another person by contract or agreement. Thus, reducing the costs associated with a probate administration by reducing the probate estate before death is possible.

## Life Insurance and Retirement Plan Beneficiary Designations

Assets easily removed from probate estate are the proceeds of life insurance policies, benefits from qualified retirement plans, and IRAs. By removing them through lifetime planning, assets are allowed to be passed on to family members or other beneficiaries outside the probate process.

- / Life insurance proceeds pass to a named beneficiary (including an estate), under the life insurance contract. If someone other than an estate is the beneficiary, the proceeds will pass to the beneficiary outside the probate process.
- / Retirement plan proceeds can be removed from a probate estate by designating a person, other than the estate as beneficiary.

## Joint Ownership

**Joint Tenants and Right of Survivorship:** Structuring the ownership of titled property to pass to a surviving joint owner automatically is possible. This is accomplished by holding title to property as joint tenants with right of survivorship, or as tenancy by the entirety. Joint tenancy with right of survivorship is a form of joint ownership in which the owners in writing, state, that upon the death of the first party, the remaining property will automatically pass to the survivor.

**Tenancy by the Entirety:** This form of ownership applies primarily to real property and only deals with joint ownership between husband and wife; popular in many common law property states. The existence of tenancy by entirety is subject to the specific terms of the applicable state law.

**Tenants in Common:** Specifically designating property, owned by two individuals as tenants in common, to pass to the survivor automatically. Unless specifically designated, property that two individuals have owned as tenants in common, will be part of the probate estate and will pass according to the terms of the Will or the state's laws of intestacy. If that happens, the survivor must show a greater contribution to the jointly owned property, or probate will consider the survivor to have owned a prorata share of the property.

**Transfer by Gift:** Transferring titled assets (while living) to those individuals intended to be beneficiaries of the estate. Although these transfers will generally be subject to gift taxation, the recipients of the gifts will become the new owners of the property and they will no longer include it in the estate.

**Revocable Living Trust:** A revocable living trust is an arrangement in which the legal title to the property is placed in the name of a trustee. Because the title has already been transferred, the property does not have to pass through probate.

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## Alternatives to Probate Administration

Other alternatives exist that are more cost effective and less time consuming, besides those described earlier, one can adopt to avoid probate. Unfortunately, not all these alternatives are available in Connecticut.

**Affidavits of Heirship:** An affidavit of Heirship is a sworn statement of fact detailing a family history and heirs. If death occurs without a Will, an affidavit of Heirship is generally used to simplify the transfer of real property.

**Small Estate Affidavit and Order:** When the value of an estate is less than a specified dollar amount (such as \$50,000), some states provide for clearing of title to personal property. Under such circumstances, when death occurs without a Will, a Small Estate Affidavit may be used to clear title to the personal property. A Small Estate Affidavit will not be sufficient to clear title to real property. In Connecticut, an Affidavit in Lieu of Administration is available and is applicable to certain estates of less than \$20,000 in value.

**Heirship Determination:** An Heirship Determination is a judicial proceeding similar to an Affidavit of Heirship. Because of the need of a hearing and notices requirements, it is more costly. In some circumstances however, an Heirship Determination may be less costly and just as efficient as a Probate Administration. An Heirship Determination is used if death occurs without a Will and the total value of an estate exceeds the allowable amount for the Small Estate Affidavit. When title companies do not accept Affidavits of Heirship to transfer title to real estate, an Heirship Determination may be used instead.

**Probate of Will and Muniment of Title:** When a Will exists at the time of death, some jurisdictions provide for a summary proceeding commonly known as *Muniment of Title*. Muniment of Title is used in place of a full administration of an estate. No executor or administrator is appointed and no costs are incurred beyond the hearing date, the probate proceeding acts as a record of title only.

In a Muniment of Title proceeding, the application and notice requirements are similar to those required in a regular probate administration.

For example, a hearing must be held, proof concerning the Will (proof of death and testimony of witnesses) and period for holding meeting is the same (if it is not a self-proving Will).

This method is less costly than an actual administration and can be completed much faster than an independent administration. Connecticut does not recognize summary proceedings.

**Informal Probate:** Some jurisdictions (not Connecticut), allows for a procedure known as Informal Probate. This procedure is only available when a written Will exists and not presented for a formal probate administration. Informal Probate however, may have even more stringent filing requirements than a regular application for probate and typically, applies to small estates (a dollar limit on the value of the estate and generally an inventory). **The advantage:** If all the necessary information is supplied, the court can enter an order without the requirement of a formal hearing.

**Order of No Administration:** An Order of No Administration is a procedure followed by some states. The procedure can be useful when none of the other alternatives is available. After filing an affidavit with Probate Court to show who is entitled to receive the property and the nature of the property, the court will enter an order designating the individuals entitled to receive estate property. The order affects third parties in possession of assets, such as transfer agents, etc. For Connecticut law, please refer to the "Small Estate Affidavit and Order" discussed previously.

**Minor's Property:** When a minor is the beneficiary under a will with no Trust was setup to hold and manage the property for the minor's benefit, a guardian must be appointed. The same is true when death occurs without a will (intestate), and minor children are the heirs under state law. Depending on the size of the inheritance, guardianship can be avoided by having the minor's inheritance paid to the court or to a designee of the court.

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