

Avoiding Probate: Is It Worth It?

When you die, your estate goes through a process that manages, settles, and distributes your property according to the terms of your will. This process is governed by state law and is called probate. Probate proceedings fall under the jurisdiction of the probate court (also called the Surrogate's, Orphans', or Chancery court) of the state in which you are domiciled at the time of your death. This court oversees probate of your personal property and any real estate that is located in that state. If you own property located in a state other than the state in which you are domiciled at the time of your death, a separate "ancillary" probate proceeding may need to be initiated in the other state.

Note: "Domicile" is a legal term meaning the state where you intend to make your permanent home. It does not refer to a summer home or a temporary residence.

Items that are subject to probate are known as probate assets. Probate assets generally consist of any property that you own individually at the time of your death that passes to your beneficiaries according to the terms of your will. Nonprobate assets include all property that passes outside of your will. Examples of nonprobate assets include property that is owned jointly with right of survivorship (e.g., a jointly held bank account) and property that is owned as tenants-by-the-entirety (i.e., real property owned jointly by a husband and wife). Another example is property that passes to designated beneficiaries by operation of law, such as proceeds of life insurance and retirement benefits.

Why avoid probate?

Most wills have to be probated. The rules vary from state to state, but in some states, smaller estates are exempt from probate, or they may qualify for an expedited process.

Probate can be slow. Depending on where your executor probates your estate and the size of your probate estate, the probate process can take as little as three months or as long as three years. Three years can be a long time to wait for needed income. It can take even longer if the estate is a complicated one or if any of the heirs are contesting the will.

Probate can be costly. Probate costs usually include court costs (filing fees, etc.), publication costs for legal notices, attorney's fees, executor's fees, bond premiums, and appraisal fees. Court costs and attorney's fees can vary from state to state. Typically, the larger the estate, the greater the probate costs. However, if a smaller estate has complex issues associated with its administration or with distribution of its assets (e.g., if the decedent owned property in several states), probate can be quite costly.

Probate is a public process. Wills and any other documents submitted for probate become part of the public record, something to consider if you or your family members have privacy concerns.

Why choose to go through probate?

For most estates, there's usually little reason to avoid probate. The actual time and costs involved are often modest, and it just doesn't make sense to plan around it. And, there are actually a couple of benefits from probate. Because the court supervises the process, you have some assurance that your wishes will be abided by, and, if a family squabble should arise, the court can help settle the matter. Further, probate offers some protection against creditors. As part of the probate process, creditors are notified to make their claims against the estate in a timely

manner. If they do not, it becomes much more difficult for them to make their claims later on.

In addition, some states require that your will be probated before the beneficiaries under your will can exercise certain rights. Among the rights that may otherwise be limited are the right of your surviving spouse to waive his or her share under the will and elect a statutory share instead, the right of your surviving spouse to use your residence during his or her remaining life, the right of your surviving spouse to set aside certain property, and the

right of your surviving spouse to a family allowance.

How to avoid probate

An estate plan can be designed to limit the assets that pass through probate or to avoid probate altogether. The major ways property is passed outside of probate are by owning property jointly with rights of survivorship; by ensuring that beneficiary designation forms are completed for those types of assets that allow them, such as IRAs, retirement plans, and life insurance; by putting property in a trust; and by making lifetime gifts.

Ask the Experts: What is a Rewards Program?

Offered by merchants of all types, rewards programs are marketing tools that encourage brand-loyalty purchasing through price discounts, bonus points and/or coupons toward future purchases, donations to your favorite charity, and even cash rebates. If you're part of the program, you access it by using a membership card that looks like (and often is) a credit card. The card compiles information about your purchases and the rewards you've earned; it also stores information about you that's useful to the merchant when tailoring advertising that's pitched to your spending preferences.

While many rewards programs offer credit with (and rewards from) a particular merchant, other programs, offered by credit card issuers, may allow you to earn rewards, such as gift certificates, that may be used with a wide variety of merchants. And in most cases, these cards offer the option of earning cash back each time you use the card. A cash back reward can be used anytime, anywhere.

The rules, restrictions, and limitations on what you may earn through a rewards program can be complex. Most programs offer a larger percentage reward for purchasing select products or categories of products than they do for all products. You may have to spend a minimum amount per month, quarter, or year to get any rewards, and there are often limits both on the amount of rewards you can earn and on the time allowed for cashing them in. What's more, the originator of the rewards program may change the rules or cancel the program altogether with little notice or recourse.

The prohibition against certain dubious but profitable practices by the Credit Card Accountability, Responsibility, and Disclosure Act of 2009, coupled with the overall tightening of credit, have made the reward card market less lucrative, and credit card issuers with rewards programs may begin to take steps to preserve their profit ratios. Such steps could include higher interest rates and annual fees, restructurings of reward policies that water down the rewards, inactivity fees, and/or reinstatement fees to restore points lost because of late payments.