

EASY WAYS TO AVOID PROBATE **BOOKLET**

The Florida Statutes recommend an executor or personal representative's fee of 3%, plus attorney's fees of 3%, of the value of those assets that go through probate in Florida. For example, if you have a \$300,000 probate estate, probate fees could be as much as \$18,000. No wonder people want to avoid probate and, instead, give as much of their hard earned wealth as they can to their loved ones or charity without their estate being reduced by these fees.

The vast majority of people have simple estates that consist of:

- Retirement accounts, IRA's and 401k's
- Life insurance
- Ordinary bank and investment accounts
- One or two pieces of real estate
- Cars, boats and motorhomes

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Does this describe you? If so, you can easily avoid probate using the easy tools explained in this booklet.

GENERAL RULE: Probate is required when someone dies with an asset in their name only. A good example of this is someone's home. If you pass away with your home in your name only, it will require a probate process to get the home out of your name and into the names of your children. This can easily be avoided by using the Enhanced Life Estate deed described later in this booklet.

WARNING: Having a Will does not avoid probate. A Will *simply directs* who receives your assets that go through probate.

**FIRST THINGS FIRST:
SOME ASSETS DON'T GO THROUGH
PROBATE IF YOU NAME BENEFICIARIES**

- Most married couples own everything jointly. That means that, if one of them passes away,

everything automatically belongs to the surviving spouse (no probate required.)

- Under Florida law, cars, boat, motorcycles and other vehicles do not have to go through probate.
- Life insurance, annuities, IRA's, 401k's and retirement accounts don't go through probate if you have named beneficiaries on these accounts. However, make sure that you name primary and contingent beneficiaries.

HOW TO AVOID PROBATE ON YOUR FINANCIAL ACCOUNTS

To avoid probate on all of your financial accounts, including bank and ordinary (non IRA) investment accounts, make them:

- POD 'Payable on Death'
- TOD 'Transfer on Death'

You can make the accounts POD or TOD for your spouse, children, family, friends or charity. You don't do this with your lawyer, you don't do

this in your will, you do this at your financial institution.

DO NOT simply add your children's names to your bank accounts. If you do, and your children get sued or get divorced, their creditors or spouse are going to come after your money.

If you want your children to have access to your bank accounts to pay your bills if you can't, execute a Durable Power of Attorney for Financial Affairs allowing them to do so.

HOW TO AVOID PROBATE ON YOUR HOME AND OTHER FLORIDA REAL ESTATE

DO NOT simply add your children's names to your deed. If you do, and your children get sued or divorced, their creditors or spouse are going to come after your property. In addition, once you add your child's name to your deed, it is written in stone. You cannot change your

mind or sell your home at a later date without their signature and consent. As well, there are some negative tax ramifications to adding your children to your deed.

DO USE an Enhanced Life Estate Deed. An Enhanced Life Estate Deed (ELD) states that, as long as you are alive, you have the sole and exclusive use and benefit of the property and, upon your death, it will automatically pass to your spouse, children, family, friends or charity that you have named in the ELD. An ELD is a tool used to avoid probate on real estate.

BENEFITS OF AN ENHANCED LIFE ESTATE DEED

- You have the sole and exclusive use and benefit of your home during your lifetime.
- You keep your homestead real estate tax exemption which saves you about \$750 per year in real estate taxes.
- The ELD does not change ownership and, therefore, it will not cause an increase in your

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real property tax bill.

- You can change your mind at any time. Even after you do the ELD, you may sell, refinance, or change who gets your home upon your death without your beneficiaries' knowledge, signature or consent. (An ordinary Life Estate Deed requires all of the beneficiaries' signatures and consent to accomplish these things.)
- Your beneficiaries have no rights to your home during your lifetime and, therefore, their creditors will not be able to place a lien against your home. (If you simply own your home jointly with your children, their creditors may have a right to place a lien against your home.)
- An ELD Avoids Probate – Your home or other real estate will automatically pass to your spouse, children, family, friends or charity (whomever you choose) at your death, without the time and expense of probate. All

your beneficiaries will need to do is simply record your death certificate in the public records of the county where the property is located.

- An ELD gives your beneficiaries a stepped-up basis in your home upon your death for capital gains tax purposes, potentially saving them capital gains taxes when they sell it.
- **BLENDED FAMILIES:** If you and your spouse have children from previous marriages, an ELD can insure that someday your home will go to both of your families.

FREQUENTLY ASKED QUESTIONS:

SHOULD I USE A LIVING TRUST TO AVOID PROBATE? A Living Trust is also a good tool to avoid probate. However, a Living Trust is more expensive and more complicated than the easy tools described in this booklet and can often be avoided using these easy tools.

WHAT IF I ALREADY HAVE A LIVING TRUST? Some people decide to replace their Living Trust

with the easy tools described in this booklet. However, seek the advice of a Florida estate planning attorney if you are considering making this change.

I HAVE A LIVING TRUST, BUT MY HOME IS NOT OWNED BY MY TRUST. The attorney who prepared your trust may not have put your home into your trust. In conjunction with your trust, we recommend an Enhanced Life Estate Deed to avoid probate on your home.

I HAVE JOINT ACCOUNTS WITH MY SPOUSE. DO I STILL NEED TO MAKE THEM ITF, POD OR TOD? The answer is “yes” so that the account will still avoid probate if you both die in a common accident.

QUESTIONS, COMMENTS, SUGGESTIONS?

If you have any questions, comments or suggestions please contact us at Olsen on Law Radio Show:

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