

Avoiding Probate Through Living Trusts

Avoiding Probate Court involvement in the settlement of an estate at the time of death is an increasingly common estate-planning goal. While there are several ways to structure an estate plan and ownership of assets to achieve this goal, planners have found that through the use of a funded Living Trust, the desired goal of avoiding Probate Court involvement can be achieved with the least amount of risk or loss of control over assets.

The Probate Court process is one in which the Probate Court will re-title assets owned by a decedent at the time of his or her passing. Due to tax filings and creditor rights, it can often take anywhere from nine months to several years to complete the probating of an estate. The cost of the Court process and the associated legal fees, along with the very public nature of the process often motivates people to avoid subjecting their assets to Probate.

To fully avoid Probate at the time of death, a person cannot own assets in his or her name alone. The safest, most common approach to avoiding Probate is through the use of a funded Living Trust of which the creator is also the Trustee.

Once created, the Trust can be made the owner of a person's assets, so that at the time of death, the person owns no assets in his or her own name, and therefore has no need for Probate Court involvement. The Trust would name the creator or Grantor as one of the initial Trustees.

The trust should be drafted to allow the Grantor to have exclusive rights during lifetime to the assets placed in the trust, and upon the Grantor's death, the assets will pass (without Probate Court intervention) directly to the people named as beneficiaries.

During lifetime, the only change required is that the name on the various assets (bank account, stock brokerage accounts, real estate, etc...) be changed to reflect the Trust ownership. These assets would no longer be titled in an individual, but rather, would be held by the Trust. There are no income tax or capital gains tax consequences to changing the name of assets to the name of the Living Trust.

By creating and funding the private Living Trust, you afford yourself maximum flexibility in controlling your family assets during your lifetime while avoiding the expense and delay associated with Probate Court involvement in transferring assets to your heirs after you have passed away.