



Welcome to *Trust Connection*, our monthly newsletter highlighting Trust news and information. Each month we will feature timely articles of interest.

About Us

At Halliday Private Trust, it is our mission to assist our clients in the process of providing solutions, specifically through a wide range of financial advice.

Since 1982, we have utilized a full spectrum of financial services to help our clients navigate every major hurdle in their financial lives. Because we are an independent financial services firm, we utilize an open architecture approach to locating the most suitable investment options for our clients.

Our role is to help clients make smart decisions about their money. We understand that each client has unique needs and requires personalized solutions based on their goals, objectives and concerns.

Avoiding Probate

Probate is the court-supervised process of the administration of a deceased's estate in the county in which the deceased was a resident. A person may die either testate, in which the person has a last will and testament, or intestate, in which a person's estate is administered under that state's laws of intestate succession because there is no will.

Each state's probate laws are different and they can vary widely. In some states, such as Missouri, minimum probate fees are set by statute and, with court costs, can run as much as 10 percent of the estate. Probate is time-consuming: most states will not allow you to close a probate estate in less than one year. Additionally, all documents and matters relating to the probate estate, including the decedent's will, are public records, open to inspection by anyone desiring to do so. Because of the possible expense, time and publicity, it is important to consider avoiding probate.

If a person dies owning property in their name alone and they haven't made a non-probate transfer of that property, it is in their probate estate. Holding property jointly with right of survivorship with another person, including a spouse, avoids probate for the first to die; the property automatically passes to the survivor by operation of law. Likewise, insurance policies, employee benefit plans, IRAs and other investments for which a person names a beneficiary, pass automatically to that beneficiary without having to go through probate. All states have non-probate transfer laws; generally, these are "pay on death" (POD) designations for bank accounts, "transfer on death" (TOD) designations for investment accounts and titled assets like automobiles, and "beneficiary deeds" for real estate. If properly done, these assets will avoid inclusion in a probate estate; to transfer the asset to the designees, they would only have to show a death certificate. Bear in mind that non-probate transfers are a piecemeal approach to estate planning and probate avoidance, so it's important to ensure that every asset has been properly titled.

Perhaps the most comprehensive and popular way to avoid probate is the revocable living trust. "Revocable" means as long as the maker of the trust is alive and competent the trust can be changed or revoked in its entirety. "Living" simply means that the maker created the trust while alive, as opposed to a testamentary trust. Testamentary trusts are created by the last will and testament of a decedent; that will must be probated before the trust can come to life. In a typical revocable living trust, the maker (grantor), the trustee, and the beneficiary of the trust are all the same person. It does not change the way a person lives and spends their money in any regard; they still file the same tax returns and use their social security number wherever called for. The only difference is that once the trust is created, all assets need to be retitled in the name of the trust. Trusts act as a "will substitute" in disposing of assets after a person's death. However, unlike a will, dispositions in trust can survive the death of the grantor and extend to successive

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For information and assistance, please feel free to contact one of our Trust Advisors:

- Michael F. Fleming, Esq.
- Sean S. Mohammadi

generations. Why does a trust avoid probate? With the property now in the name of the trust rather than the deceased owner's name, the trust will live on until its expiration, which effectively avoids probate.

As part of a comprehensive estate plan, the attorney drafting the documents will generally draft a new will called a pour-over will. This document is a legal safety net for those assets that did not avoid probate for whatever reason. The only heir named in this pour-over will is the trust that was created, so that after the asset goes through probate it is put into the trust and administered under its terms.

What if a person has successfully avoided probate but has a last will and testament? Most states require that a valid will be delivered to the probate court within a certain period after the maker's death. In the case of a person who has avoided probate, the only requirement in most states is that the will be delivered to the probate court for filing with "no estate" noted.

There are obviously many legal nuances not addressed in this article such as small estate administration, refusal of letters, and probate administration by affidavit. However, the basic techniques outlined should in most cases serve to allow a person to avoid probate if that is his/her objective. The advice of your wealth management advisor and an attorney are imperative in the drafting of a comprehensive estate plan.

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