



# 5 CHEAP WAYS TO AVOID PROBATE

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## Five “Cheap” Ways to Avoid Probate!

Most agree that avoiding the expense and hassle of probate is an important estate planning objective. By avoiding Probate, you save your loved ones a great deal of expense, delay, and hassle. The vast majority of my estate planning clients can establish a comprehensive estate plan for less than \$1,000 per person, while a basic probate will start at approximately \$2,500, take 9 months or more, and go up from there.

Even though trust-based planning is a major bargain compared to probate, some may still be reluctant to incur the expense of a Revocable Living Trust (RLT). While a RLT may be an excellent option for many, it is not always necessary, and there are some relatively cheap ways to avoid probate here in Arizona.

### 1. Have your Home pass to your Beneficiaries or Children via Beneficiary Deed

For a small fee, you can have your local estate planning attorney draft and record a beneficiary deed that will give your home to your children, or any named beneficiary, once you pass away. If you are married, it will not give your house away until both of you have passed. This is an efficient way to pass along your home because it avoids probate and also does not give your children/beneficiaries any ownership over your home during your lifetime. Your home is therefore protected against the various liabilities that can affect your children during your lifetime, such as law suits, divorces, bankruptcies, or other creditors. A beneficiary deed, however, is not generally recommended for any investment or rental properties that you own. Not all states offer this kind of deed, but Arizona does!

Warning... it is almost never advisable to add your children on to the deed of your home as a “joint tenant” during your lifetime. This can create a taxable “gift”, create other unwanted taxes on your children, and puts your home at the mercy of any financial calamity that might befall your child (bankruptcy, divorce, law suit, etc.)

There are some weaknesses to the Beneficiary Deed strategy that should be discussed with your attorney.

### 2. All Tax-Deferred Retirement Assets will Avoid Probate with Proper Beneficiary Designations

Your IRA, 401K, Pension, and other retirement assets that enjoy tax efficiencies all have beneficiary designations on them or available to them. You should check your beneficiary designations regularly and update them as necessary. It is highly recommended to have a primary **and** contingent (secondary) beneficiaries designated on all of these assets. The most

common scenario is to have your spouse as the primary and your children as equal contingent (secondary) beneficiaries. With correct beneficiary designations, your retirement assets will pass on to your loved ones outside of probate.

Again, there are drawbacks to this strategy that might affect you that should be discussed with your estate planning attorney.

### **3. All Non-Tax Deferred Assets can pass to Loved Ones with POD/TOD Instructions**

Your accounts that are not tax deferred - savings, checking, brokerage accounts - should all offer you the option to “Pay On Death” (POD) or “Transfer On Death” (TOD) to your loved ones. You should contact your financial institution to make sure you have designated someone (or multiple people) to receive your accounts upon the passing of the last surviving account owner. These POD/TOD designations should not cost you anything and allow the assets in these accounts to pass outside of probate to whomever you designate. You may have the option to designate “primary” and “secondary” beneficiaries, depending on the options provided by your financial institution.

### **4. Your Vehicles can Pass to your Loved Ones via Beneficiary Designation**

There is a Department of Motor Vehicles form to fill out that allows you to designate a beneficiary or beneficiaries of your vehicle after your death. This is also a probate-free process and requires that you simply attach this notarized form to your vehicle title.

### **5. If all of your remaining assets, not already covered above, qualify for the "Small Estate Exemption", then you may have avoided probate in Arizona.**

Probate can be avoided in Arizona if your personal property (everything except for real estate) does not exceed \$75,000.00 (as of 2017). The small estate exemption for real property is \$100,000 or less of net equity. If your assets fall under both of these small estate exemptions, then you can keep your estate out of probate in Arizona.

Instead of Probate, beneficiaries or heirs can claim this property by presenting a special affidavit to the applicable institution. The affidavit process is much faster, and less expensive than probate. Remember that any personal property conveyed by beneficiary designation or using "Pay on Death" instructions, automatically avoids probate and is not counted towards the \$75,000 small estate value. Any real estate that is conveyed by Beneficiary Deed is likewise not counted toward your small estate real property exemption value of \$100,000.

Consult an estate planning attorney if you need help with the affidavit for collection of personal or real property.

This “affidavit” process, however, has some serious limitations and does not always work as expected. This strategy should not be relied upon as a highly reliable probate-avoidance strategy. It is more of a “fall back” plan in the event that important assets were left out of the previously mentioned strategies.

## **Additional Notes about Estate Planning:**

### **At the Least, you Need a Last Will and Testament.**

A Will is an important document that establishes your intentions for your property once you have passed. This is important in order to keep your family members from fighting over your property. If you have young children, it is important that you appoint a guardian for them in your Will in the event that you and your spouse both die unexpectedly. In Arizona, it is critical that you have your will drafted by an attorney, and it should be signed, notarized, witnessed and include a self-proving affidavit that is also signed, notarized and witnessed. Do not try to write a Will on your own!

### **For Many, a Trust is a Better Solution.**

Do you have children with special needs? Do you own rental property? Do you have a vacation home? Do you want to control how your beneficiaries receive their inheritance (ie: not all at once!)? Do you own a business? Do you have a blended family? Do you own collectibles or tangible property (not in a financial institution) worth more than \$75000? Do you need to protect your assets and qualify for Arizona Medicaid (AZ Long Term Care System)? Are you a veteran looking to qualify for the Veterans Administration Aid and Attendance benefits? If you answered "Yes" to any of these, then a Trust may be a better estate planning solution for you and you should consult with an estate planning attorney for guidance. HP Law will offer you a free initial consultation to discuss your options.

### **Make sure You are Taken Care of During Your Lifetime; “Life Care Planning”**

All of the above refers to planning for when you die, however, your first priority in your estate plan should be to provide for your care in the event of a catastrophic illness or mental incapacity. In addition to a Last Will and Testament, make sure you have in place a Living Will (Advanced Medical Directives and sometimes Do Not Resuscitate/“DNR” directive), Health Care Power of Attorney (including mental health provisions), Financial Power of Attorney. Your Powers of Attorney should include, if possible, guardianship and conservatorship language in order to avoid court intervention if you become incapacitated. These are all important because it is impossible to appoint someone once you are incapacitated, avoiding the need for family members to use the courts to appoint a guardian and conservator over you. If the court gets involved, the process becomes much more cumbersome and expensive for everyone involved.

## **Use an Attorney!**

It is very important that you NOT rely upon non-attorney practitioners to prepare your estate planning documents. It is not just a question of expertise (which is very important) but a matter of attorney-client confidentiality and attorney-client privilege.

In the unlikely event that your planning documents become a subject of a law suit, you cannot rely on a non-attorney practitioner to protect your confidentiality if subpoenaed.

Also, you cannot receive legal advice from a non-attorney, lowering the chance that your estate planning will actually provide you with the RESULTS you expect when a crisis has occurred in your family's life (death or disability).

## **Get the advice and results you want at an affordable price.**

**Request a Free Consultation Today.**

Disclaimer: This guide is informational only, is not legal advice, and does not create an attorney-client relationship. If you wish to receive legal advice particular to your situation, you should consult directly and privately with an attorney licensed in your state of residence.