

# Does having a will avoid probate?

No. A common misconception is that having a will eliminates the need for probate, the legal process for finalizing affairs after an individual's death. While having a will can make the probate process simpler, it alone does not eliminate it.

## ▶ WHAT IS A WILL, AND HOW DOES IT IMPACT THE PROBATE PROCESS?

A will is an important estate planning document that provides direction regarding distribution of assets and other estate settlement items. It outlines your final wishes and ensures your preferences can be carried out. A will also captures and directs the transfer of assets that have not been handled by other estate planning methods.

If you leave a will, the probate court's role in the estate settlement process is to simply validate the will and appoint the executor to pay any debts or taxes and distribute assets that have not been directly designated to your beneficiaries. If you do not leave a will, the settling of your estate will rest entirely with the probate court, and your assets will be distributed according to your state's succession laws, which may not align with your wishes.



## ▶ SHOULD I TRY TO BYPASS PROBATE?

In most cases, yes. Probate can be complicated and stressful, especially in a time of grief for heirs. It can also be expensive and time consuming. Common costs may include attorney's fees, executor or personal representative fees, court costs and filing fees, and reimbursement costs. Assets that bypass probate can reduce the overall cost of the probate process, leaving more resources available to fulfill your final wishes.

Another issue to consider is privacy. Probate is a public legal process, so any assets that do not bypass the probate process will be included in public record.

## ▶ WHAT ELSE CAN I DO TO AVOID MY ASSETS GOING THROUGH PROBATE?

### ▶ Own assets jointly

Owning assets (financial accounts or real property) jointly with your spouse, significant other, or desired heir(s) allows them to automatically maintain ownership after your passing.

### ▶ Name Primary and Contingent Beneficiaries

Retirement and employer sponsored accounts, and some other financial accounts, allow account owners to name beneficiaries directly, ensuring account holdings and balances are directly and quickly transferred to desired beneficiaries.

### ▶ Make assets payable or transferrable on death

Designating assets (financial accounts or real property) to be payable or transferable on death establishes an automatic transfer of ownership after the account owner(s) passing. This option is an effective alternative for designating a contingent beneficiary for jointly owned assets or in the event joint ownership is not a preferred option.

### ▶ Utilize a trust if appropriate

Holding property in a trust requires the trustee to manage the assets according to its terms. Assets in a revocable living trust can be used while you are alive and will transfer to beneficiaries after you pass based on the terms of the trust. An estate attorney can advise if a trust is appropriate for your situation and ensure that trust documents accomplish your wishes.

### ▶ Considering gifting before death

Transferring ownership of assets before death keeps those assets out of probate entirely. Gifting should only be done with excess assets and within annual gift tax limits unless a gift tax return is filed. Often no tax will be due on gifts above the annual limit based on the current lifetime exemption amounts, but they must be documented by filing a gift tax return.

### ▶ Consult an estate attorney

Estate attorneys can advise these or additional options based on your unique circumstances and your final wishes for your estate.