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Seniors can act now to detail probate for survivors or heirs

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Probate is a well meaning system designed to ensure proper asset disbursement after death, but the same system can stall payouts to survivors and heirs for an indefinite period and cost a barrel of cash.

The following tips are things seniors need to know about common methods used to avoid probate:

• Pay On Death accounts are quick and easy to set up. They can be a life saver for a bereaved, surviving spouse in sore need of ready cash for monthly bills and other living expenses. The Pay On Death designation can be applied to checking and savings accounts, certificates of deposit, Treasury securities and brokerage accounts. By filling out a simple form at the bank, for example, you can ensure that funds pass directly to a named beneficiary without having to get bogged down in probate.

The only hassles come when you need to change beneficiaries on several accounts. Experts suggest doing a periodic review to make sure you've updated your P.O.D.'s with the names of desired beneficiaries. Also, some accounts and investment vehicles grow faster than others, meaning some beneficiaries would ultimately get more than others that's another reason to occasionally review your P.O. D. accounts. The "beneficiary," by the way, is someone you name to receive assets after you die.

The term "probate" refers to the legal procedure courts use to properly divvy up assets and properties someone leave behind after death. A well drafted will often provides the court with solid guidance on disbursement. However, a faulty will, or the lack of a will can mean the probate court will divide assets according to state laws.

• Creating an instrument called a "revocable living trust" gives you control of your assets while you live. After you die, the assets pass to your named beneficiary without interference by the probate system. The term "revocable" means this type of trust can be revoked, or dissolved, anytime. Also, it comes in handy if you become incapacitated because a trusted beneficiary can take over the management of your assets not included in the trust go through probate.

Disadvantages include lots of paperwork -- it can be a costly and time consuming project. Among other detractors, a revocable living trust may complicate the refinancing of property, and after you die there would be no court supervision of your estate's designated trustee.

• Many couples, or a surviving spouse and a friend or child, take a simple path around probate simply by putting property and assets under equal shares of ownership. This is called "joint tenancy." The assets go to the surviving joint tenant when the other joint tenant dies.

Some people need to carefully consider whom they name as a joint tenant because it means they own half of the designated assets or property. It also means they could sell their half at a creditor can go after your half to settle the debt.

For those with estates of $675,000 or more, joint tenancy may nix the opportunity for certain tax advantages. Also, you could trigger gift taxes by naming someone as a joint tenant for property valued at more than $10,000.

• Life insurance money can go directly to named beneficiaries after you die, UNLESS the money is left to the insured's estate. If you want the life insurance money to avoid probate, you must name a specific person or charity as the beneficiary.

Life insurance is a great way to make sure designated heirs get immediate cash after you die. For them, the post mortem period will be a trying time, if not emotionally devastating. Imagine being broke at the same time, while probate lumbers on with their frozen assets.

Also, ask your accountant and Elder Planner how the proper set up of a life insurance policy can avoid future state and federal estate taxes and income taxes.

• Many seniors have an attorney write a will that leaves everything to the surviving spouse. But what if both spouses die at the same time, for example, in a plane crash or auto accident?

The answer is simple: The whole estate goes through probate.

Otherwise, the surviving spouse must file a petition with the court for "spousal partition." When approved, assets go to the spouse. Yet, you give up control of the assets after death, not only to the spouse but to any future husband or wife and their heirs.

With that in mind, some people set aside a portion of the estate for other heirs, say, children, friends or charities. But anything left outside the spousal partition must go through probate, and larger estates miss out on certain tax shelters.

One final note, these methods were designed to avoid probate, not taxes. Contact your Elder Planner, accountant or tax attorney or all three for information about the many instruments designed to decrease the potential tax burden of your estate.

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