**KNOW YOUR LEGAL RIGHTS**

**Avoid probate so your loved ones can properly grieve**

By Atty. Linda R. Renard

People often believe that having a will alone avoids probate after death. This is simply not true. Avoiding probate requires you to take active steps so that you don’t have to go through the time-consuming process.

**What is Probate?**

Probate is the court-supervised process of transferring assets from a deceased person’s name to the beneficiaries. Avoiding probate is less time consuming – it may take up to one year to complete, it requires the help of an attorney, and there is a court filing fee based on the value of the assets.

**What Triggers a Probate Situation?**

Probate is required in Wisconsin if an individual’s solely owned assets exceed $50,000.00 in value. If you own a home, this automatically creates a probate situation. If you own property jointly with your spouse, there is no probate. The property passes to the surviving spouse. Don’t forget to remove your deceased spouse’s name from the title.

**Avoiding Probate, Part I**

You can avoid probate by:

* Adding beneficiary designations to all of your assets, including life insurance, annuity, and retirement assets.
* Adding “pay on death” (POD) designations to your cash accounts at your financial institution.
* Contacting your financial advisor where your mutual funds are held and add “transfer on death” (TOD) designations to those accounts. After death, financial institutions freeze accounts, so you will need to present a death certificate and identification to receive your inheritance.

**Disadvantages to Using Payment on Death**

You will need to update your beneficiary designations as your circumstance changes, and you may forget to do so. Also, if there are expenses to be paid after death, your account is frozen and no one, including your children, will have the legal authority to pay your bills. However, your kids may feel a moral obligation to do so. Do you want to leave this up to your children or other beneficiaries?

For real estate, a Transfer on Death (“TOD”) Deed can be created to pass property to intended beneficiaries without probate administration, and it is best to retain an attorney to assist with this work. Also, when the single owner of the property dies there is a Termination of Decedent’s Interest form that must be prepared and filed with the local Register of Deeds office to remove the Decedent’s name from the title.

If all of your assets contain beneficiary designations, there will be no probate after your death.

**Avoiding Probate, Part II**

There is another way to avoid probate: Create a Revocable Living Trust. One person, the Trustee, has legal authority to pay all your bills and expenses. The person must follow the terms of the trust to expeditiously distribute the assets of the estate.

A Trust is a more expensive estate plan because it includes several legal documents. The Trust only works to avoid probate if you retitle your assets into the name of the Trust, or if you designate an asset as payable on death or transferrable upon death to the Trust. The goal is that all of your assets end up in the Trust at the time of your death.

**Consult with Your Attorney**

An estate planning attorney should discuss probate avoidance techniques with you and assist you in determining which method of probate avoidance planning works best for your situation.

*Attorney Linda R. Renard, Renard Law Office, LLC, West Bend, focuses on estate planning, elder, and probate and trust administration. She is a member of the State Bar of Wisconsin Lawyer Referral and Information Service, which connects Wisconsin residents with lawyers throughout the state. Learn more at* [wislaw.org](http://www.wislaw.org/).