

How to Avoid Probate in Arizona: A Downloadable Guide

Introduction

Probate is the legal process of settling a deceased person's estate. It can be a time-consuming and expensive court process. Probate proceedings can also be a public record. Individuals often want to avoid probate to minimize expenses, maximize efficiency, and keep post-death matters private.

There are a few ways to avoid probate in Arizona, and the best way for you will depend on your individual circumstances. You should always consult with a qualified estate planning attorney for legal advice unique to your family and your assets.

This guide will provide an overview of the probate process in Arizona, as well as the different ways to avoid probate. It will also include some tips on how to get started with estate planning.

What is Probate?

Probate is the legal process of distributing a deceased person's estate assets to their beneficiaries. It is overseen by a probate court, and it can be complex and time-consuming.

The first step in probate is to open a probate case with the court. This involves filing a petition with the court and providing information about the deceased person's estate, including whether there is a Will. Once the case is opened, the court will appoint a personal representative to administer the estate.

The personal representative is responsible for gathering the deceased person's assets, publishing notice to creditors, paying valid debts, communicating with the Arizona Department of Revenue and the IRS, preparation of an estate accounting, and distributing the remaining estate assets to the beneficiaries. The personal representative must also file a variety of paperwork with the court throughout the probate process.

When is Probate required in Arizona?

When an individual dies owning more than \$100,000 in equity in real property or other assets which exceeds a total value of \$75,000.00, and those assets or accounts are titled with surviving joint owner or to a Trust and there is no beneficiary designation, a probate proceeding will be required to administer the decedent's estate.



A common myth is that probate is not required if the decedent had a Will. However, whether probate is required depends solely upon the value of the “estate” assets (i.e., “leftover” assets not otherwise distributed by non-probate transfer), as set forth above. While a Will designated the personal representative and sets forth how and to whom the estate assets, after payment of debts and expenses, should be distributed the Will itself does not avoid the probate process. In fact, the Court will authenticate the Will via the probate proceeding.

Why Avoid Probate?

There are a few reasons why you might want to avoid probate.

- First, probate can be a time-consuming process. It can take months or even years to complete, depending on the complexity of the estate.
- Second, probate can be expensive. The personal representative is entitled to a fee for their services, and the estate must also pay court costs and other expenses. There are also the attorney fees and accounting costs to consider.
- Third, probate is a public record. This means that anyone can access information about the deceased person's estate, including the value of their assets and the names of their beneficiaries. Additionally, all the decedent's children (even those who may not be included in the Will) are entitled to notice of the probate proceedings.

How to Avoid Probate in Arizona

There are a few ways to avoid probate in Arizona. The most common way is to create a revocable trust (aka living trust). A revocable trust is a legal document that allows you to transfer ownership of your assets to the trust during your lifetime. After your death, the trustee of the trust will pay debts and distribute your assets to your trust beneficiaries according to your instructions.

Another way to avoid probate is to own your assets jointly with another person with rights of survivorship. This means that when one of you dies, your interest in the asset will automatically pass to the surviving joint owner.

You can also designate beneficiaries on real property, account, and policies to avoid probate. At time of death, the designated beneficiary will collect the asset.

This guide will discuss the most common ways to avoid probate in Arizona in more detail. It will also discuss the pros and cons of each method, and help you understand which method may be right for you and your family.

Creating a Revocable Trust

A revocable trust is the most common way to avoid probate in Arizona. A revocable trust is a legal document that allows you to transfer ownership of your assets to the trust during your



lifetime. After your death, the trustee of the trust will pay debts and distribute your remaining trust assets to your beneficiaries according to your instructions in the Trust Agreement.

There are several advantages to creating a revocable trust. First, it can help you avoid probate. Second, it can give you more control over how your assets are distributed after your death. Third, it can provide for and protect your beneficiaries, including minor children or disabled individuals, after your death. Lastly, it can be used to protect you from potential financial exploitation during your lifetime in the event of your diminished capacity.

To create a living trust, you will need to work with an estate planning attorney. The attorney will help you draft the trust agreement and transfer ownership of your assets to the trust. Depending upon the assets owned, we routinely recommend the use of revocable trusts as they provide significant upside and no downside in estate planning.

Joint Ownership with Right of Survivorship

Another way to avoid probate is to own your assets jointly with another person with right of survivorship. This means that when one of you dies, your interest in the asset will automatically pass to the surviving joint owner.

While owning assets jointly may avoid probate upon the death of one owner, there are also some significant disadvantages to this method.

First, owning assets jointly with another person exposes an asset to the joint owner's creditors and your asset could be used to satisfy their debts. Second, joint ownership allows a joint owner to use your asset as collateral. Third, adding a person as joint owner might deprive them of helpful *step-up in basis* tax advantages they would have otherwise enjoyed if they inherited the asset from you at death.

Generally, joint ownership (except perhaps with a spouse) is not recommended due to these significant risks.

Beneficiary Designations

A beneficiary designation is the act of naming an individual(s) who will inherit an asset in the event of the account owner's passing. Some common examples include life insurance policies and retirement accounts. When the account owner passes away, their assets are then transferred to the beneficiary that they designated. In Arizona, persons can also use a beneficiary deed which works similarly for transfer of real property effective upon the property owner's death. With regard to bank accounts, persons can designate a "pay of death" beneficiary(ies). For non-retirement brokerage accounts, persons can designate a "transfer on death" beneficiary(ies).



Use of beneficiary designation may be appropriate in limited circumstances, such as when you intend for one person to inherit all your assets and property (e.g., only adult child). However, if you designate multiple persons as beneficiaries, you are likely significantly complicating their lives and the orderly administration of your post-death affairs. For starters, when multiple persons inherit and co-own real property, all property owners must agree on terms of sale or other actions which can quickly lead to dispute and/or miscommunications. Further, when multiple individuals collect funds directly from your insurance policies, retirement and/or other financial accounts your outstanding bills and expenses (e.g., funeral, final medical, credit cards, household expenses, income taxes, etc.) still need to be paid. Everyone must then agree on how to equally contribute funds to pay the debts and expenses, which process may take up to a year. Again, this can quickly inflame already strained relationships or cause new rifts in familial relationships; the last thing anyone wants after their passing. *For these reasons, sole use of beneficiary designations on all assets/accounts/policies is generally not recommended when there is more than one intended beneficiary. While this approach may seem “simple”, it rarely is.*

Other Ways to Avoid Probate

There are a few other ways to avoid probate in Arizona, but they are less common- including lifetime gifting strategies or collecting assets after death by small estate affidavit if total estate assets do not exceed \$75,000.00 or \$100,000.00 in equity in real property.

Which Method is Right for You?

The best way to avoid probate in Arizona will depend on your individual circumstances. If you want to avoid probate, minimize costs and fees, and have control over how your assets are distributed after you die, then creating a revocable trust may be the best option for you.

How to Begin Estate Planning

If you're interested in avoiding probate, the best way to get started is to talk to an estate planning attorney. Our firm's qualified estate planning attorneys can help you create a plan that is specific to your individual needs and goals.

When you're meeting with an estate planning attorney, you can expect to discuss the following topics:

- Your assets and liabilities;
- Your family situation;
- Who you wish to handle your affairs after you die;
- Your wishes for how your assets should be distributed after you die; and,
- Your tax planning goals.



Your estate planning attorney can help you create a variety of estate planning documents, including a revocable trust, a Will, and financial, health, and mental health power of attorney, living will, and other related estate planning documents.

Additional Tips for Avoiding Probate

Here are a few additional tips for avoiding probate in Arizona:

- Keep your estate planning documents up to date. Your estate planning documents should reflect your current assets, liabilities, and family situation. Be sure to review your estate planning documents at least every three to five years, and update them as needed.
- Name beneficiaries for all retirement accounts. By naming beneficiaries for your accounts, you can ensure that your assets will be distributed to your beneficiaries without having to go through probate. You should also consult with counsel before naming beneficiaries to ensure optimal tax planning strategies for your beneficiaries.
- Use joint tenancy wisely. Joint tenancy can be a good way to avoid probate, but it's important to use it wisely. If you hold assets in joint tenancy with someone else, be sure to understand the legal consequences.

Remember that this guide serves as a general overview, and it's crucial to consult with a qualified attorney to construct an estate plan to your unique situation.

In Arizona? Call our office today at 480-922-1010 or email info@bivenslaw.com to schedule a complimentary estate planning consultation with one of our experienced attorneys. Let us help you craft your legacy.

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