

Probate v. Non-Probate: What Is the Difference?

When planning your estate it is important to understand the difference between probate and non-probate assets. Probate is the process through which a court oversees how to distribute your property after you die. Some assets are distributed to heirs through the court (probate assets) and some assets bypass the court process and go directly to your beneficiaries (non-probate assets).

The probate process includes filing your will and appointing an executor or administrator, collecting assets, paying bills, filing taxes, distributing property to heirs, and filing a final account. Some people try to avoid probate by having only non-probate assets, leaving nothing to satisfy funeral expenses, claims and taxes, and often resulting in unequal distributions.

Probate assets are any assets that are owned solely by the decedent. This can include the following:

- Real property that is titled solely in the decedent's name or held as a tenant in common
- Personal property, such as jewelry, furniture, and automobiles
- Bank accounts that are solely in the decedent's name
- An interest in a partnership, corporation, or limited liability company
- Any life insurance policy or brokerage account that lists either the decedent or the estate as the beneficiary

Non-probate assets can include the following:

- Property that is held in joint tenancy or as tenants by the entirety
- Bank or brokerage accounts held in joint tenancy or with payable on death (POD) or transfer on death (TOD) beneficiaries
- Property held in a trust
- Life insurance or brokerage accounts that list someone other than the decedent as the beneficiary
- Retirement accounts

When planning your estate, you and your attorney need to take into account whether property is probate property or non-probate property. Since your will does not control the distribution of non-probate property it is important that your overall estate plan is arranged and that the will, any trusts you create and your non-probate arrangements work toward your overall goals. Check the ownership of your property and your accounts to make sure jointly owned property will be distributed the way you intend. Talk about this with your attorney and review your beneficiary designations as well. Time spent planning now could save your heirs in the future.