Probate and Non-Probate Assets

Your estate assets are divided into two categories: those that are subject to probate and those that are not. Understanding the difference between probate and non-probate assets can help you make decisions about assets that could be transferred either way.

Probate Assets

Probate assets include any property you own individually — which means in your name alone — from bank accounts and investments to real estate and automobiles. It also includes all your personal property including furniture and jewelry, whether or not you specify in your will to whom you want to give those items.

Non-Probate Assets

Non-probate assets are typically transferred directly to the beneficiary and are not subject to probate court proceedings because they are not included in your will. In practically all cases, non-probate assets are passed to beneficiaries more quickly than those that are probated. That may explain why some people choose to take assets out of the probate estate if that is possible.

Types of Non-Probate Assets

1. **Assets with named beneficiaries.** These assets include insurance policies, annuities, employer sponsored retirement accounts, such as 401(k)s, individual retirement accounts (IRAs), education savings accounts, 529 plans and health savings accounts (HSA) for which you have named a beneficiary. They are always part of the non-probate estate and are never transferred by your will.
2. **Assets with joint owners.** These are assets that you may have purchased with a joint owner, each of you with right of survivorship, or that have been retitled from individual to joint ownership. The surviving owner becomes the sole owner at your death.
3. **Assets you title as payable or transferable on death.** With these assets, you retitle accounts that were yours to be payable on death (POD) in the case of bank accounts or transferrable on death (TOD) in the case of investment accounts. The person you name becomes the sole owner at your death.

   All you do is contact the bank or brokerage firm where you have the account and make that arrangement. That takes these assets out of the probate estate.
4. **Living trust.** If you wish, you may move some or nearly all of your assets in a living trust. A living trust is one that you set up during your lifetime as a way to reduce the size of your probate estate and speed up the transfer of assets to your beneficiaries. For example, you might choose to leave only the money in your checking account and your personal property in the probate estate.

You can find a list of state probate courts at
https://estate.findlaw.com/probate/state-probate-courts.html

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