



What's the Difference Between Probate and Non-Probate Property?

Adam L. Fernandez, Esquire

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Adam L. Fernandez, Esq.
afernandez@wispearl.com

What follows is a brief explanation of the difference between probate and non-probate property and why revisiting and confirming your beneficiary designations is as important as ensuring that the provisions of your Last Will and Testament are up-to-date:

When preparing an estate plan; specifically, when determining how property is to be distributed in an estate plan, it is important for you to understand the differences between probate and non-probate property. In the simplest terms, any property that is considered non-probate provides for its own beneficiary or beneficiaries, and therefore does not pass to anyone under the directives of your Will. If a Will provides for the designation of a beneficiary to receive non-probate assets, such designation is invalid. The following lists are non-exclusive and contain the most common types of probate and non-probate property.

Probate property includes the following: (1) real estate owned outright or as a tenancy-in-common; (2) bank accounts that are owned outright but without a beneficiary (payable-on-death) designation and that are not held in joint tenancy; (3) business interests (corporate stock, partnership interests or limited liability company membership interests) that are owned outright and not in joint tenancy; and (4) tangible personal property such as jewelry, antiques, and automobiles.

Non-probate property includes the following: (1) real estate held as joint tenants with right of survivorship or as tenants by the entirety (as between spouses); (2) life insurance (unless a decedent's estate is named as the beneficiary); (3) qualified retirement accounts, such as traditional IRAs, Roth IRAs, 401(k) plans, 403(b) plans, pension plans, Keogh plans, profit sharing plans and SEPs, which have designated beneficiaries; (4) "In Trust For" bank accounts, sometimes called Totten Trusts, which immediately pass to the individual for whom the funds were held "in trust" upon the death of the account owner; (5) Payable on Death (POD) bank accounts; and (6) any beneficial interest in a trust that terminates upon the person's death.

When planning your estate, it's important to have a solid knowledge of the assets you own and the type of ownership interest you have in those assets. Why? Because it bears directly on the type of estate plan you need, which assets will and will not be controlled by your Will, and who will receive your assets upon your death (i.e., you should not name a minor child as the beneficiary of a life insurance policy or qualified retirement account). Remember that one of the key elements of estate planning is to make sure that the beneficiary designations for your non-probate assets are in line with your goals and wishes.

About the Author: Mr. Fernandez focuses his practice on structuring and implementing estate and tax planning strategies for individuals and closely held businesses. His work includes assisting clients with all of the legal and tax aspects of the administration of decedent's estates. If you have any questions regarding the difference between probate and non-probate assets or the beneficiary designations for your non-probate assets, please contact Mr. Fernandez (afernandez@wispearl.com) or one of the other attorneys in Wisler Pearlstine's Estate Planning Practice Group. We look forward to hearing from you.

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