

Understanding Probate

What Assets Go Through Probate?

A Practical Guide for Financial Advisors

Many clients assume that upon death their assets will automatically transfer to loved ones without delay, but that's rarely the case. Probate applies to most assets unless a valid exception removes them from the probate process. Advisors who understand how asset titling and beneficiary designations affect probate can help clients protect their estates and avoid unintended consequences.

THE DEFAULT RULE: "EVERYTHING...UNLESS IT ISN'T"

Probate generally applies to all assets owned solely by the decedent at the time of death, unless there's a specific mechanism that transfers them outside the court process.

Common probate assets include:

- **Bank and investment accounts** held in an individual's name
- **Real estate** titled solely to the decedent
- **Personal property**, such as vehicles, art, or collectibles

Some assets bypass probate automatically if they have:

- **A beneficiary designation** (e.g., life insurance, IRAs, 401(k)s)
- **A transfer-on-death (TOD) or payable-on-death (POD) designation**
- **Joint ownership with right of survivorship**

Assets can also bypass probate if they are held inside a revocable ("living") trust or an irrevocable trust.

Without one of these mechanisms, even assets the client assumes are "covered" may be subject to probate. Advisors play a key role in confirming proper titling and beneficiary arrangements are in place.

THE IMPORTANCE OF TITLING AND TRUST FUNDING

Creating a living trust is only half the job—funding it properly is what keeps assets out of probate. If an account, home, or investment isn't retitled into the name of the trust and doesn't otherwise contain a bypass mechanism described above, it remains part of the individual's estate and will require probate.

Common advisor touchpoints:

- **Review all new accounts** and ensure the trust is listed as the owner or beneficiary when appropriate.
- **Encourage clients to retitle older accounts** or property if they've been opened or purchased after the trust was established.
- **Verify periodically that beneficiary** designations still align with the client's estate plan.

Advisors should remind clients that the title controls, not the intent. A forgotten account or incorrectly titled property can trigger probate despite careful planning.

JOINT OWNERSHIP AND THE “WILL MYTH”

Joint ownership can help, but only when structured correctly.

- **Tenants in common** ownership provides no right of survivorship; each owner's share still goes through probate.
- Joint tenancy with right of survivorship passes assets to the surviving owner, but probate will occur when that survivor dies unless another mechanism is in place.

Similarly, a last will and testament does not avoid probate. A will merely instructs the probate court how to distribute assets. Only assets held in trust, or with proper designations, bypass the process entirely.

The Bottom Line

Probate is the default path for any asset not otherwise directed. Advisors can add value by helping clients understand which assets are exposed and by coordinating with estate planning attorneys to ensure trusts are funded, titles are correct, and designations are complete.

Use annual reviews to audit client accounts and property titles. Confirm that every significant asset is either held in trust, properly titled, or has updated beneficiary designations. A few proactive steps today can spare clients' families significant cost, time, and conflict later.

To learn more about this topic, please watch our [Office Hours video](#) or reach out to your investment consultant.

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A transfer on death (TOD) ensures your assets are passed immediately to your designated beneficiaries after without legal hurdles, unlike a will, which has to go through the probate process that can be lengthy and tedious.

Joint Tenants With Right of Survivorship (JTWROS) is a legal arrangement that grants co-owners equal ownership rights to an asset, such as a financial account, while ensuring that upon the death of one owner, their interest immediately transfers to the surviving owners. This arrangement bypasses the probate process and overrides any contrary instructions in a will, making it a popular choice for those seeking to ensure seamless transfer of assets.

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