

IS PROBATE ALWAYS REQUIRED IN NORTH DAKOTA?



RAYMOND J. GERMAN

NORTH DAKOTA AND MINNESOTA ESTATE PLANNING ATTORNEY



There is a misconception that circulates about last wills. Many people think that the executor of the estate can immediately distribute assets to the heirs after the passing of the decedent. In fact, this is not the case.

The executor or personal representative must first admit the will to probate. The probate court supervises the estate. After probate has run its course, the heirs receive their inheritances.

This can be a time-consuming process, so people often look for ways to facilitate asset transfers outside of probate. There are a number of different ways that this can be done.

Let's look at some of them.

AFFIDAVITS AND SIMPLIFIED PROBATE

In the state of North Dakota, it is possible to transfer assets that would otherwise be probate assets with a simple affidavit or a simplified probate process if the estate is relatively small. For a simple affidavit, the value of the estate must not exceed \$50,000.

PAYABLE ON DEATH ACCOUNTS

You can typically add a beneficiary if you open a brokerage account or a bank account. These accounts are called payable on death or transfer on death accounts.



While you are alive, you are the only person who can access the funds in the account. After you die, the beneficiary that you named when you opened the account would assume possession of the assets that remain in the account.

The transfer would take place outside of the probate process.

PROCEEDS FROM INSURANCE POLICIES

The beneficiaries that you named on your insurance policies will be paid by the insurance companies after you die. The insurance companies do not have to involve the probate court. Insurance proceeds would be paid directly to the beneficiaries, and the probate process would not come into play.

JOINT TENANCY

Joint tenancy is the condition of co-ownership. Let's say that you own your home outright, and you want your granddaughter to inherit it after you pass away.

You could make your granddaughter a joint tenant. She would become half owner of the property immediately after you add her to the deed or title.



After your passing, your granddaughter would become the sole owner of the property. The transfer of your share of the property to her would take place

directly, and the probate court would not be involved.

REVOCABLE LIVING TRUSTS

Revocable living trusts are frequently used by people who want to facilitate asset transfers to their loved ones in a timely and efficient manner.

One of the comforting things about revocable living trusts is the fact that you don't lose control of the assets while you are alive and well. After all, you can



revoke the trust and take back personal possession of the property if you choose to do so.

The person creating the trust will typically act as the trustee and the beneficiary initially.

The trustee of the trust handles the assets that have

been conveyed into the trust, so you are the controller when you act as trustee. You can also act as the beneficiary and receive monetary distributions from the trust any time you want to take them.

You ultimately want to arrange for asset transfers to your loved ones after you

die. To facilitate this, you name a successor trustee to administer the trust after your passing. You also name a successor beneficiary, or multiple beneficiaries.

After your death, the successor trustee will follow the instructions you leave behind in the trust agreement. The trustee will distribute assets to your beneficiaries, and probate will not be a factor.

These trusts provide a comprehensive probate avoidance solution.

SUMMARY

Probate is a legal process that comes into play if you pass away while in sole personal possession of property. There are some drawbacks that go along with this process.

It is possible to avoid these drawbacks. There are various different ways that you can get assets into the hands of your loved ones outside of probate. The optimal course of action will vary depending on the circumstances.

To explore your options, schedule a consultation with a licensed estate planning attorney. Your attorney will gain an understanding of your unique personal situation and make the appropriate recommendations.

REFERENCES

Nolo

<http://www.nolo.com/legal-encyclopedia/free-books/avoid-probate-book/chapter0-4.html>

Legal Dictionary

<http://legal-dictionary.thefreedictionary.com/probate>

About the Author

Raymond J. German



As an attorney in Minnesota and North Dakota, Raymond J. German provides a wide range of estate planning services to his clients, with a primary focus on helping them provide for the security of their loved ones, reduce estate taxes and avoid or at least minimize the costs and delays of probate, all with a well-crafted estate plan. Mr. German defines the mission statement for German Law Group, PC, as "Helping one family at a time pass on values, beliefs and finances, which can be shared for generations to come." Mr. German is well aware of the growing importance of estate planning and dedicates himself to informing the public of the need for careful attention to their specific situations. He is a frequent speaker on a variety of estate planning topics, regularly presenting educational seminars for the public as well as private groups.

Raymond J. German approaches each challenge with not just solid expertise, but also remarkable enthusiasm and vigor. By constantly seeking simpler, better, and more effective ways of doing things, he continues to make a real difference in the lives of families and on the way estate planning is practiced by attorneys around the country.

German Law Group, PC
www.GermanLawGroup.com

GRAND FORKS
2650 32nd Avenue South, Suite O
Grand Forks, ND 58201
Phone: (701) 738-0060
Toll Free: (800) 774-7576
Fax: (701) 738-0064