

October 12, 2021

PROBATE VS. NON-PROBATE PROPERTY | ESTATE PLANNING

Clients requesting help with their estate plan often expect a will to dispose of all their property upon their deaths. However, a will only governs the disposition of probate assets, and it does not affect the disposition of non-probate assets. Part of our mission in serving our clients is to educate them about which of their assets constitute probate vs. non-probate property and to ensure that the beneficiary designations associated with their various non-probate accounts dovetail with the estate plan we craft for them.

What is Probate Property?

Every item of a client's property falls into one of two categories: probate property or non-probate property. It is important for clients to know the differences when comparing probate vs. non-probate property. Probate assets are items of property owned by the decedent and that will pass according to the decedent's will at death (or following state law if the decedent did not have a valid will). Non-probate assets are property that passes outside of the decedent's will, which is to say that they pass without the involvement of the court. Examples of non-probate assets include property held in the name of a revocable trust, property owned with another person or persons jointly with rights of survivorship, retirement accounts and life insurance policies with valid beneficiary designations, and bank accounts with transfer-on-death ("TOD") or payable-on-death ("POD") designations.

Put simply, probate assets are subject to probate (the judicial process through which a will is determined to be valid and the decedent's estate is settled), and non-probate assets are not subject to probate.

Benefits of Non-Probate Property

There are several benefits associated with non-probate assets' avoidance of probate. First, beneficiaries receive the particular non-probate item or account devised to them without the involvement of the probate court. This often means that they gain access to their inheritance more quickly.

Second, no probate fee is charged in connection with non-probate assets. North Carolina's probate fee (40 cents per every \$100 in assets) is capped at \$6,000. South Carolina's fees, however, are not capped and therefore may be significant. Thus, minimizing the number of assets passing under a will might also minimize the probate fee charged in connection with a decedent's estate.

Third, the decedent and beneficiaries enjoy a veil of privacy concerning non-probate assets. **Estate administrations** are public matters. When a decedent dies, the decedent's will is filed publicly, along with values and income from the decedent's probate assets. Therefore, the public may inquire into what probate property a decedent owned and to whom the decedent left the property. Conversely, the existence of non-probate assets and to whom such assets are distributed is not public information. Bypassing probate may lessen the likelihood of a disinherited friend or relative contesting a decedent's estate plan. This is because such individuals are left unaware of the existence of non-probate assets that pass to third parties.

Finally, many non-probate assets have the added benefit of creditor protection. For example, life insurance and retirement accounts are not subject to claims of a decedent's creditor when left to a designated beneficiary. However, if such proceeds and accounts are left to the decedent's estate, they are subject to creditor claims.

[Click here to learn more about how JAH can help with your estate plan.](#)

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