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## **What is Probate? How does a Trust help you avoid it?**

**What is Probate?** Why do so many people fear it? Probate is the court process where a deceased's wealth is passed to the heirs by a Will or by statute. Debts owed by the deceased are paid, the deceased's heirs are identified, and the deceased's Estate is settled and closed.

**Can you avoid Probate?** Yes, but even where probate is required you can take steps to limit the complexity of the probate process for the sake of your family. **There are four types of assets that do NOT require probate:** 1.) Small Estates (involving a personal estate of \$100,000 or less, with no real property ownership); 2.) certain Joint Tenancy Assets (where there is a surviving joint tenant, title immediately transfers to the survivor); 3.) Assets not held in your name or designated to a beneficiary; and 4.) Life Insurance Policies (only insurance policies payable to the decedent's Estate require probate).

**Is a Will enough to avoid Probate?** No. Whether you have a Will or not, probate will still need to be opened. Dying with a Will is referred to as "Testate," whereas dying without a Will is called "Intestate". **Do not be misled by assuming that just because you have a Will means you can avoid probate.** Upon your passing, your Will needs to be filed with the court and provides instructions as to your wishes, instead of turning to the Illinois statute.

The probate process will either be supervised by the court or independently administered. **Supervised administration involves the court at all phases** of probate and is generally requested in contested proceedings. **Independent administration allows** a representative to administer the estate with **little court intervention**, usually requiring that the representative appear in court only to open and close the estate. The named Executor must follow the deceased's wishes as indicated in his/her Will, but the Executor must still go through the court procedures. In your Will, you can elect to have independent administration and supervision will only be required if an "interested person" (includes family and creditors) petitions the court.

Only assets held in your name at the time of your death require probate. Therefore, if you were to sell all your assets before your death you would have nothing left to transfer. **Selling all your assets** before you die **doesn't sound practical**, does it? Let me ask you this: **Have you heard of a Revocable Living Trust?**

**What is a Trust?** A Trust is a legal document that names a Trustee, the person in charge of the Trust, and Beneficiaries, the persons who will benefit from the Trust. A Revocable Living Trust allows the creator of the Trust (known as the Testator) to control the Trust and even revoke it during their lifetime. Once you pass away, the trust becomes irrevocable and cannot be changed except as you provide. I urge anyone who owns a home and has other assets in their name to consider the benefits that a Trust offers.

**What benefits does a Trust offer?** A Trust makes it possible for your family to avoid having to go through Probate, which is a lengthy and often expensive process. Further, a Trust allows you to specify exactly how you want your personal and real property to be distributed and does not allow State law to determine how to distribute your property. Having a Trust provides tax advantages: for example, in Illinois the estate exemption amount is in excess of \$4 million dollars. Your Trust allows you to transfer in excess of \$4 million dollars to your heirs without your estate having to pay taxes on that amount. The Federal exemption amount is in excess of \$5.2 million dollars and the same transfer rule applies. These advantages will not take effect UNLESS you fund your Trust.

**What is funding?** Establishing a Revocable Living Trust is one part of the solution, but just because you have one does not mean you can avoid probate. **To avoid probate you must fund your Revocable Living Trust with all of the assets in your name by changing the owner to the Revocable Living Trust.** Funding is the process of re-titling your assets into the name of your Trust. What this accomplishes is that it allows your name to live on, even after your death. Therefore, because you have limited or no assets in your name at the time of your death, there is nothing for the Probate court to have to re-title, assuming you have appropriately funded your Trust.

End of life planning is not an easy topic, nor does it come without cost, but the benefits far outweigh the cost. Having a Trust allows your family to focus on grieving you, rather than worrying about the court process.

Please let me know whether I can be of assistance in regards to creating your Trust and helping you fund it. If you have any questions, please feel free to contact me using the information in the header on the first page.

Sincerely,

Anthony M. Abou Ezzi