

LEGAL TOOLS FOR PROBATE AVOIDANCE

CHAPTER THIRTEEN:

Legal means available in planning to reduce or eliminate probate involvement are described in this chapter.

LEGAL TOOLS FOR PROBATE AVOIDANCE

There is an arsenal of legal documents and steps which may be used to reduce involvement in or avoid the probate process. However:

- they must be carefully utilized;
- their value and application must be frequently reconsidered;
- they should only be utilized under the counsel of a knowledgeable estate planning attorney of your choosing.

This arsenal includes:

- Power of Attorney (durable)
- Life Estate Deeds (reserving full powers)
- Living Trusts (revocable or irrevocable)
- Totten Trusts
- Lifetime Gifts
- Fully Exercising Beneficiary Designations
- Joint Ownership (with right of survivorship)

Power of Attorney (Durable) - Authorizes another person to transact business for you. May be used on behalf of one who has become too disabled to act to transfer property interests out of their name prior to death.

Life Estate Deed (reserving full powers) - Reserves to the owner of realty, full use, benefit, and control of property during their lifetime, but immediately upon their death, transfers title to named survivor, or charity.

Living Trusts (Revocable or Irrevocable) - An arrangement whereby property is transferred (during one's lifetime) to one party (called a trustee) for the benefit of another. The trust continues in existence after the creator's death and the property in the trust is not considered a part of the deceased's probate estate. An excellent summary of trusts and their uses is provided at Appendix V.

Totten Trust - A trust in the form of a bank account which passes to the named beneficiary upon the creator's death (assuming no successor trustee is named).

Lifetime Gifts - The process of giving up full and absolute control and benefit of property to another during one's lifetime. Property given away during life - even the day before death - is not a part of one's probate estate at death.

Fully Exercising Beneficiary Designations - Life insurance policies, employee death benefits, pension benefits, U.S. Government bonds, brokerage accounts, mutual funds, retirement accounts, etc. allow for designating who your beneficiaries or in some cases, successor owners, will be at your death. If these designations are not fully thought out and properly executed (including designating alternate beneficiaries) the proceeds could end up being paid to your probate estate.

Joint Ownership (with right of survivorship) - A joint holding of an undivided interest in property whereby the surviving joint owner(s) become owner of the whole at the instant of death. Between husband and wife this is called tenancy by entirety.

Planning Exercise 19

Which of the above should you review with your attorney to determine if you should revise your present arrangements?

- Power of Attorney
- Life Estate Deed (reserving full powers)
- Living Trusts (revocable and irrevocable)
- Totten Trusts
- Lifetime Gifts
- Beneficiary Designations (POD and TOD forms)
- Joint Ownership (with right of survivorship)