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THREE REASONS TO AVOID PROBATE

Written by Francine D. Ward

When you die under probate, your heirs will likely have to sign documents to receive their inheritance. This can happen if you own property in your name only and you haven't expressly designated a beneficiary. Those properties might include real estate, a house, a car, a bank account, an investment account, jewelry, antiques, intellectual property, or another type of asset. Although having a will is an essential estate planning tool, it does not avoid probate. If you have just a will, probate is inevitable. A will informs the probate court of a person's intentions and desires. However, your heirs must access the probate process to make those wishes legal.

Now you have an idea why probate might be necessary. Let's take a look at three reasons why you might prefer to avoid probate—if you can:

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Avoid Probate



Public Record.

Almost everything involving a court process becomes a matter of public record. That includes probate. So all family and financial information documents could become available through the probate court. This would allow access to anyone who wants to see them. While such access might not include bank account and social security numbers, it would consist of the value of your accounts and property, creditor claims, the identities of your beneficiaries, contact information for your loved ones, and even disputes regarding your assets. All of this could be made public if you have only a will. For that reason, most people would prefer that their information be kept private whenever possible. When probate is involved, that's not possible.

Costly.

The cost of probate can run into thousands of dollars, even for small estates. Court costs, attorney's fees, executor fees, and other related expenses all add up. And if family disputes and creditor claims arise during the process, then the cost of probate can become prohibitive. When probate is involved, a significant portion of your money goes to that process instead of going into the hands of your beneficiaries. However, even if you implement an estate plan that avoids probate, there will still be costs. But while you may pay a little more to set up a probate avoidance plan, in the long run, you and your heirs will benefit. You'll save money, time, grief, and offer privacy and peace of mind. Ben Franklin once said, "An ounce of prevention is worth a pound of cure." Liken that to the preventative measure of establishing a trust-based estate plan. The costs you incur in putting together a trust-based plan are more definite as compared to the indefinite expenses your heirs will incur during probate. Proper planning can reduce the risk of expensive disputes and eliminate extraneous costs. NO probate equals NO probate filing fees and NO court costs.

Duration.

Rarely is probate a quick process. The time it takes to shepherd a matter through probate depends on the size of the estate, its value, and the complexity of the deceased person's accounts and property. If the property is located in different states and countries, that adds another knot to be unraveled. Then, a version of the probate process must be repeated in every state where the property is located. It is not unusual for probates to take upward of six months to a year or more, even for the seemingly simple estate. When it comes to the law, nothing is simple because people are involved. If your beneficiary needs money immediately, such a delay can create havoc. A trust-based estate plan offers a speedier and more straightforward administration process.

To learn more, contact my office and schedule a complimentary consultation.



PROS AND CONS OF PROBATE

Written by Francine D. Ward

The concept of probate often conjures up feelings of fear and frustration. And for many people, the avoidance of probate is their sole aim when it comes to estate planning. Those who believe in probate avoidance offer many reasons for that perspective.

Before we look at the Pros and Cons of probate, let's define it. First and foremost, probate is a legal form of resolution. It was established to protect a deceased person's assets and ensure they were distributed as the deceased wanted. Such assets may include financial accounts, real property, tangible assets, and intellectual property. Sometimes probate can work in someone's favor, but more often than not, it becomes burdensome for those left behind.

The Pros

One of the most significant advantages of probate is when a person dies with a will, a probate court (sometimes known as surrogates court), ensures that the executor does exactly as they were instructed to do. If no will or trust exists, then state law governs the process of distributing the deceased person's assets. This is called intestate succession. If minor children are involved, the court may nominate someone to care for the children.

Below is a short list of some additional advantages to court involvement in settling a deceased person's affairs:

- Sometimes probate is too expensive for small estates; the court can offer more affordable option for distributing assets.
- When someone dies without a will or trust, intestate succession is a reliable option, although not necessarily the option the deceased would have wanted.
- To ensure all parties involved are on their best behavior, the probate judge has power to resolve conflicts.
- If a will does exist, probate validates and enforces the deceased person's intentions.
- Probate ensures that taxes and necessary debts are paid, assuring a sense of finality to the deceased person's affairs.
- Probate limits the length of time for a creditor to file a claim

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The Cons

Probate is designed to facilitate a fair transfer of a decedent's assets to their beneficiaries. However, there may be times when one might want to avoid probate. Here are a few reasons:

- Most often, probate is a matter of public record. That means some personal documents will be open to the public, including personal family and financial information.
- There may be considerable costs, e.g., court fees, attorney's fees, and executor fees, all of which are deductible from the value of what you were intending to leave your loved ones.
- Probate can be time-consuming, holding up the distribution of your beneficiaries' inheritance for months and sometimes years.
- Probate can be complicated and stressful for your executor and your beneficiaries.

Bottom line: While probate is a default mechanism that ultimately works to enforce the fair distribution of even small amounts of money and property, it can create undue costs and delays. For that reason, many people prefer to use strategies to keep their property out of probate when they die.

An experienced estate planning attorney can develop a strategy to help you avoid probate and make life easier for the next generation. For more information about your options, [contact me today to schedule a consultation.](#)

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INTELLECTUAL PROPERTY AND ESTATE PLANNING ATTORNEY



CELEBRITY PROBATE DISASTERS

Written by Francine D. Ward

It's easy to assume that when someone is wealthy, they know enough to protect their assets, especially celebrities with massive bank accounts. But that is not necessarily true. Sadly, some of the richest and most successful people die without a plan--an estate plan. Non-celebrities make the same mistake, but celebrities get the attention. When they do, we all get to hear about it. Mainly because we, as a culture, are obsessed with the lives of others. **Let's take a look at three celebrity, high-profile probate disasters and the lessons we can learn from them:**

Prince

Should your mistrust of lawyers and other legal professionals interfere with your willingness to protect what's yours? Prince's attitude got in the way of his ability to protect his massive estate.

- He died in 2016--WITHOUT an estate plan. Previous legal battles left him bitter and distrusting of lawyers and judges.
- The probate court was charged with identifying Prince's heirs. That was a daunting task considering how many people came forward to collect. In 2017, the court ruled that his five half-siblings and his sister would divide his \$156-million estate.
- The probate battle cost millions of dollars and took six years to resolve. An unfortunate situation, but lucky for the six who go a windfall.

Lesson learned: Accurate legal documentation protects your legacy. Do not let a general distrust or a bad experience propagated through generations, leaving your loved ones to fight or lose their inheritance.

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Whitney Houston

When should you review and update your estate plan? Often. Because Whitney Houston did not update her estate plan, her young daughter inherited more money than she could rightly handle.

- Whitney Houston executed a will in 1993; she died in 2012, having made no updates.
- Her will left everything to her daughter, Bobbi Kristina Brown. As a result, Houston's 19-year-old daughter was destined to inherit millions of dollars.
- According to the will, about \$2 million (1/10 of Whitney's estate) was to be distributed to her daughter when she turned 21. Another one-sixth when Bobbi Kristina turned 25, and the balance when she turned 30.
- Unfortunately, Bobbi Kristina died in 2015 at the age of 22.
- Some observers speculate that her daughter was too immature to be entrusted with even a \$2 million payday at 21.

Lesson learned: It's appropriate to name your kids as beneficiaries, but leaving a large sum of money with no backstop might not be the smartest decision. Consider an ongoing review of your plan and possibly consider a trustee who has discretion when to distribute the money.

Michael Crichton

- The author of blockbuster books and movies, Michael Crichton, died with a will that disinherited future children. He died leaving behind a daughter from a prior marriage and his current wife, who had signed a prenuptial agreement and who was pregnant with his son.
- He never updated his will to make provisions for his unborn child.
- His wife, on behalf of her then newborn son, went to court to fight for his inclusion as an heir and for her to be appointed as guardian. The daughter opposed.
- In the end, his son inherited a portion of Crichton's estate. However, the litigation was costly in many respects: money, time, and the fracturing of family relationships.

Lesson learned: when should you update your estate plan? The major life events when a review should be considered are when there's a birth, a death, a divorce, a move, or a change in behavior relating to your beneficiaries, e.g., addiction, creditors, or youth.

These four cases serve as a reminder that no amount of wealth excuses someone from making poor mistakes. As always, I'm here to help you protect what's yours.



The Best Tool for Avoiding Probate is a Trust

Written by Francine D. Ward

Imagine this perfect scenario when someone passes away:

Everything that needs to be done relating to the deceased person's passing is seamlessly and effortlessly handled. That includes all the paperwork and other documents that need to be completed, and every "i" is dotted and "t" is crossed. This all occurs because of exceptional preparation. This great care and attention to detail take the guesswork and possibility of future court battles out of the equation. All left is for family and other loved ones to grieve and remember the deceased in peace.

A significant concern of estate planning is the creation of peace for the deceased and ease for those who will grieve the loss. How can someone's assets and legacy be transferred to the next generation in an agreeable, stress-free, fair, and reasonable manner? Many people strive to avoid encumbering their loved ones with the complication and cost attendant to probate.

There are a number of effective devices that can be used to avoid probate, such as establishing joint ownership on bank accounts and real estate titles, designating beneficiaries for life insurance policies and certain retirement accounts. That said, the best and most effective way is through a revocable trust.

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What is a trust?

A trust is a legal entity. It is created to hold your assets and may be named as the beneficiary of certain accounts e.g., retirement accounts. When correctly set up, trusts are managed by someone you trust to make decisions on your and your beneficiaries' behalf. A living trust is established while you are still alive, as opposed to being created upon your death, which is known as a testamentary trust. You can be the trustee for your living trust until you cannot manage your affairs or die. You should also designate someone else to be your initial trustee. It is also wise to have a backup trustee if your initial trustee is unable or unwilling to serve in that capacity. That person is known as a successor trustee.

How does a trust help you avoid probate?

The purpose of probate is to transfer the ownership of your assets when you pass away. That includes all accounts and other property you own that do not have a beneficiary, pay-on-death, or transfer-on-death designation when you die. A well-drafted trust can bypass this process because your assets are either transferred to the trust while you are alive or the trust is named as the beneficiary at your death. Almost any asset can go into a trust, such as homes, land, commercial property, artwork, fixtures, antiques, bank accounts, stocks, intellectual property, and more. There is no need for the probate court to get involved as long as everything is done properly. This process reduces court costs and maintains the privacy of your financial records. Creating a trust may seem complicated, and the process can cost a bit more than a will. However, if you are willing to invest a little more upfront, a trust can be your best option for avoiding probate, alleviating frustration, and side-stepping family disputes.

Working with a qualified, trusted professional is key to effective planning that minimizes the likelihood of a protracted, contentious, and expensive process. Contact me today for a complimentary consult.



Give Me a Call

Ensuring your loved ones are cared for after you are gone is your top priority. My priority is to assist in crafting a plan that will ensure continued support and prosperity for your loved ones. Call me today to schedule your appointment.