Avoiding Probate

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Probate is the court-supervised process of settling a person's estate after death. In Massachusetts, it can be time-consuming, public, and costly. The good news is that with some planning, many families can pass assets to loved ones in a manner that avoids probate altogether. Here are the most common strategies.

Joint Ownership. When you own property as *joint tenants with right of survivorship*, your share automatically passes to the surviving owner(s) when you die—no probate required. Married couples in Massachusetts can use a special form of joint ownership called *tenancy by the entirety* whenthey own real estate, which offers similar survivorship benefits along with added protection from certain creditors. This is a simple way to keep a home or bank account out of probate.

Beneficiary Designations. Many accounts let you name the person(s) who will inherit them directly. Bank accounts often call these designations *payable-on-death* (POD) or *transfer-on-death* (TOD) designations. Life insurance, investment accounts, and retirement accounts (e.g., 401(k), IRA) most often call these designations *beneficiary designations.* Keeping these designations current is one of the easiest ways to bypass probate.

Trusts. A *revocable living trust* lets you place assets into a trust you control during your lifetime, then pass them to your beneficiaries after death according to the terms of the trust. You can amend or revoke a revocable trust at any time when the grantor (the trust creator) is living and competent to do so. In some situations, an *irrevocable trust* (which you generally cannot change) may be used for added asset protection or long-term care planning.

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Although most people try to avoid probate, there may be additional considerations when developing an estate plan. First, avoiding probate is not the same as avoiding taxes. Separate planning is needed if minimizing estate tax is also a goal of the estate plan. Second, some strategies—such as giving property away outright or using certain trusts—can affect your eligibility for MassHealth (Medicaid) if you later need long-term care. Acting without guidance can unintentionally jeopardize your benefits or assets.

Every family's situation is different, and the right approach depends on your goals, your assets, and your health. Before making any changes, speak with an experienced elder law attorney who can tailor a plan to your needs and help protect what you've worked a lifetime to build.