



THE LAW OFFICES OF
HOYT & BRYAN, LLC
FAMILY WEALTH & LEGACY COUNSELLORS

MARGARET "PEGGY" R. HOYT, J.D., M.B.A., B.C.S. ‡†*
RANDY C. BRYAN, J.D., B.C.S. ‡†
SARAH S. AU MILLER, J.D.
MICHELLE A. ADAMS, J.D.

‡ BOARD CERTIFIED IN WILLS, TRUSTS & ESTATES
† BOARD CERTIFIED IN ELDER LAW
*CERTIFIED LEGACY ADVISOR™

Probate v. Non-Probate Assets

When preparing an estate plan, it's important to understand the difference between probate and non-probate assets. Probate is probably one of the most misunderstood areas in estate planning. People often say, "How can I avoid probate?" However, most people do not know what probate is. Probate is a court administered process that determines how your *probate property* will be distributed after you die. It is important to note the words "probate property" in the last sentence. What are probate assets? And, how do you determine what is a probate asset and what is not?

A probate asset is any asset owned solely by the decedent and does not have a beneficiary designation. Probate assets are distributed according to your will or to your heirs if you die without a will.

The following are examples of probate assets:

- Real property that is titled solely in the decedent's name or held as a tenant in common (not joint tenants with rights of survivorship)
- Bank accounts, boats and automobiles that are solely in the decedent's name
- An interest in a partnership, corporation, or limited liability company held in the decedent's name
- Any life insurance policy or brokerage account that lists either the decedent or the estate as the beneficiary

What is non-probate property? Everything else. In its simplest terms, any property that names beneficiaries or is owned jointly (with rights of survivorship or as tenants by the entirety) is non-probate property. How you own your assets trumps what your Will says. As a matter of fact, if a Will designates a beneficiary to receive non probate assets, it is considered void.

Non-probate assets can include the following:

- Property held as joint tenants with rights of survivorship or as tenants by the entirety.
- Bank or brokerage accounts held in joint name or with a payable on death (POD) or transfer on death (TOD) designation.
- Any property held in the name of a trust.
- Life insurance or brokerage accounts that name someone other than the decedent's estate as the beneficiary.

- Retirement accounts that name a beneficiary other than the decedent's estate.

When reviewing your estate plan, it's important to know not only what assets you own, but also the type of ownership interest you have in those assets. Your Will does not control the distribution of non-probate property. This is why it is so important to periodically review beneficiary designations to ensure they remain consistent with and reflect your overall estate plan and ultimate goals. If you are enrolled in our Estate Security Plan (ESP) program we provide funding assistance when you create your plan and we also review your assets annually. We want to make sure all of your assets are coordinated with your overall intent and estate plan. If you are not an ESP member and would like to learn more about the program, please visit HoytBryan.com or contact the Law Offices of Hoyt & Bryan at (407) 977-8080 for more information.