

# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHOR

## Avoiding Probate with Relative Ease

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One of my favorite legal quotes is by J.J. Childers: *"There's hell, and then there's probate."*

While certainly not as hopeless as the Chancery Court portrayed in Dickens' Bleak House, the probate process required in the absence of a valid and well-designed estate plan is inevitably time-consuming, expensive, and stressful for the ones left behind. If you do not have an estate plan, or if your current plan is limited to a simple will, your assets will be subject to the probate process and your loved ones will be left subjecting their time and privacy to the Clerk of Superior Court.

Fortunately, there are several options available that may allow you to avoid probate altogether.

### **Joint Accounts with Rights of Survivorship**

Title(s) to assets held in joint tenancy pass automatically at the death of one joint tenant to the others. The only time there is a need for probate is if all joint tenants are deceased. This is a simple, yet effective way to transfer assets in bank accounts, vehicles, or real estate outside of your estate without having to go through the laborious probate process or pay fees to the office of Clerk of Superior Court.

### **Payable on Death Accounts (Totten Trusts)**

With a Payable on Death (POD) account, any beneficiary can be named, including a minor. At death, assets held in the POD account automatically transfer to the beneficiary of the account without going through the probate process. One drawback to this tool is that your creditors are allowed to access assets held in POD accounts in the event that probate assets are insufficient to satisfy amounts owed. During your lifetime, a POD account allows you to draw interest on the account, while leaving the principal intact. The beneficiary of a POD account has no rights to funds in the account until after your death.

### **Living Trusts**

A living trust takes assets owned by a living individual (the “Grantor”) and transfers the title of those assets to the control of the trust. At the time of the Grantor’s death, or at some other time specifically defined by the Grantor in the trust agreement, title of the assets held in trust are passed to the trust’s beneficiaries without having to go through probate. The Grantor, particularly under a Revocable Living Trust, maintains control over the trust, such as in designating the Trustee and in determining when and how assets will be distributed to the beneficiaries.

### **Gifting Assets Prior to Death**

As parents age, they often choose to gift assets to their children as a way to avoid the probate process. This approach is favored by those who wish to exercise their authority in determining who gets what, when they get it, and what they do with it. However, the person making the gift is responsible for paying applicable federal gift tax. For the year 2014, federal tax law permits transfers of up to \$14,000 each to as many people as the giver desires without triggering any federal gift tax. This option provides a significant annual opportunity to transfer assets to the next generation during your lifetime while avoiding probate and potential estate tax.

The options I’ve outlined in this article can be effective tools for avoiding probate, yet this is not an exhaustive list. If you have questions or would like to learn more, please contact me, Cara Williams, at [cwilliams@smithdebnamlaw.com](mailto:cwilliams@smithdebnamlaw.com) or 919.250.2173.

*(A graduate of Wake Forest University and Campbell University School of Law, Cara joined Smith Debnam in 2013 after working with the Wake County Clerk of Superior Court.)*

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