



Comparison of Your Legal Choices

The law allows you six estate planning choices. All of these options (except the living trust) are controlled by probate law and therefore, involve risk of probate.

Only the living trust (controlled by trust law) avoids probate 100%.

1 **DOING NOTHING: No written instructions if you become incapacitated or die.**

Incapacity: Probate. If you are unable to manage your affairs because of incapacity, only the probate court can do it for you through a conservatorship or guardianship. (Also called “living probate”.)

Death: Probate. All property titled in your name must be probated before your heirs can receive it.

Type of law: Controlled by probate law and does not avoid probate.

2 **JOINT OWNERSHIP: Also called “joint ownership with right of survivorship.”** **When two or more persons own the same property.**

Incapacity: Probate. If a co-owner becomes incapacitated, the other co-owner may not be able to sell or refinance the property without court approval through the living probate process.

Death: Probate. Property must be probated before going to the heirs of the last co-owner to die.

Liability: Your property is exposed to the creditor claims and lawsuits of the co-owner.

Type of law: Controlled by probate law and does not avoid probate.



- 3** **POWER OF ATTORNEY (for financial decisions): Document giving someone permission to sign your name for you. Ends at incapacity (unless it is a durable power of attorney) and at death.**

Incapacity: Probate. Can be rejected by any person or company at any time for any reason, resulting in living probate.

Death: Probate. All powers of attorney end when the signer dies.

Type of law: Controlled by probate law and does not avoid probate.

- 4** **TRANSFER ON DEATH (TOD): Also called pay on death (POD). Naming a beneficiary to receive your property when you die.**

Incapacity: Probate. Beneficiaries have no legal authority to care for an incapacitated owner or prevent him/her from going into living probate.

Death: Probate, if the beneficiary is incapacitated, dies with or before the owner, or is a minor

Type of law: Controlled by probate law and does not avoid probate.

- 5** **WILL: document containing instructions to the Probate Court for distributing your property after you die.**

Incapacity: Probate. Only effective after you die. Provides no protection from living probate if you become incapacitated.

Death: Probate. Will must be probated before property can be distributed.

Type of law: Controlled by probate law and does not avoid probate.



6 **LIVING TRUST (Revocable):** Also called a revocable “inter vivos” (means living) trust. A legal document into which you place all your property, with instructions for its management and distribution upon your incapacity or death.

Incapacity: No probate. Your personally chosen backup trustee takes over and manages your affairs privately.

Death: No probate. Your backup trustee pays your bills and distributes your property privately according to the instructions in your trust. Probate court is not involved.

Type of law: Controlled by trust law. Avoids probate 100% and is legally recognized in all 50 states.