



PROBATE - A GREAT AMERICAN TRAGEDY

You can't appreciate the advantages of a living trust until you understand what can happen to you and your family in probate.

Nearly everyone has heard of probate, but most people really don't know what it means, until they experience it. In this section, we will tell you the truth about probate so you can avoid it by setting up a living trust - before it's too late to do anything.

What Is Probate?

Probate is the legal process through which, when you die, your bills are paid and your property is distributed based upon what your will says (if you have one) or what the law says (if you don't). Probate also takes control for those who cannot handle their own affairs because they are incapacitated or are minor children. The court controls both their finances and personal affairs while they are not able to take care of themselves - until the incapacitated person recovers or dies, or until the minor child legally becomes an adult.

Probate is the only way to legally transfer title to any titled property (such as real estate, cars, bank accounts, stocks and bonds, etc.) when the person listed as the owner cannot sign his or her name due to death, incapacity or because he or she is a minor.

Why Does Probate Exist?

Probate has existed in one form or another for hundreds of years. It was created with the best of intentions to protect you, your property and your family. It provided an orderly method of paying bills and transferring ownership of property at death, and for managing the financial affairs of an incapacitated person or minor child - all under the direct supervision of the court system.

So, What's Wrong With Probate?

The probate process is simply obsolete. Probate was, and still is, a very slow and cumbersome process. It is a product of the "horse and carriage days," when it took months to locate and notify relatives and creditors of a death or illness. Back then it didn't matter that probate took a long time, but today it does. Things move much more quickly today. We can communicate with friends and relatives anywhere in the world in just seconds, and many times financial decisions must be made within hours. Times have changed, but probate has not. In Missouri, for example, the average probate takes one to two years, and some cases go on for five years and longer.



Besides taking a long time, probate is expensive and inflexible. Once the process begins, you and your family lose control and the court takes over. Probate is a complicated legal process. It can only go by exactly what the law tells it to do, and only when the law says to do it. Probate, with its rigid requirements, costs and painstakingly slow process, can cause all kinds of unexpected problems for today's families.

When Probate Can Get You

Very simply, unless you take the proper action now, probate can and probably will affect you and your family in at least one of the following three ways:

1. When you die
2. If you become incapacitated
3. If your minor children inherit property

There are only two sure ways to avoid probate: Own nothing in your own name, not even a bank account. Realistically, how many of us could live like that? Or you can get a living trust.

We'll look at how you and your family can end up under the control of the probate court in each of these three situations, and what happens if you do. But first, let's look at some traditional methods people use to try to avoid probate, and why in many cases these methods don't work the way people think they will.

COMMON MYTHS ABOUT AVOIDING PROBATE

Myth 1: "I have a will, so my family won't have to go through probate when I die."

False! Having a will does not avoid probate. A will can have no effect unless it goes through the probate process and, in fact, must be admitted to the probate court to be legal and enforceable. Your will must be validated as being authentic before ownership of your property can be transferred to your heirs. The probate court is the only way this can be done - that's its job. So, in effect, a will is a one-way ticket to probate.

A handwritten will (called a "holographic will") doesn't avoid probate either. It's still a will. And it may create other problems because many states will not accept a handwritten will.

Many people believe that if they have a will with a trust in it, the trust lets them avoid probate. But, as we just explained, all wills including those with trusts in them, must go through probate. The trust cannot go into effect until after the will has been probated.



Myth 2: "I don't have a will, so there will be no need for my family to go through probate when I die."

False again. Even if you haven't written a will (after all, the law gives you the option of "doing nothing"), the state has written one for you. Every state has laws for the distribution of property for those who die without a will. So if you don't have a will when you die, the state has to make sure your debts are paid and your property is distributed according to the laws of that state, which may or may not be the way you would have wanted. Consider, for example, the true story of the famous movie actor, James Dean:

His mother died when he was a small child, and his father sent him to live with an aunt and uncle who raised him. James, who had grown very close to his "new" family, had talked about wanting his aunt and uncle to receive most of his property if something happened to him, and particularly had expressed a desire to provide for his young cousin's college education. But he never got around to making out a will. When he was killed suddenly in a car accident, his estate went through probate. Since he did not have a will, his property was distributed according to California law (the state's will). Everything he owned was given to his father, who was his closest surviving relative, even though there was practically no contact between them through the years. Under the terms of the state's will, his aunt and uncle (who had devoted years of their lives to raising and loving him) and his cousin were given nothing. Do you think this is what James Dean would have wanted to happen?

Myth 3: "I own everything jointly, so when I die all my property will immediately go to the other owner without probate."

Maybe, but look out! Joint ownership is a way of titling property, not an estate plan. It does not guarantee that you will avoid probate and can create all kinds of unexpected problems.

The kind of joint ownership that most people have is called "joint tenancy with right of survivorship." This means that when one of the owners dies, his or her share instantly becomes the property of the surviving joint owner. It is often used by husbands and wives or between parents and their adult children in an effort to avoid probate, and in most situations it does work. For instance, if both your name and your spouse's name is on the titles of all the property you own, ownership will immediately transfer to the surviving spouse when one of you dies, without probate.

Unanticipated Problems

But joint ownership can throw you some unexpected curves. If, for example, both you and your spouse are in an accident and die at the same time, your jointly-owned property will have to be



probated before it can go to your heirs, whether you had a will or not. Or, let's say you successfully use joint ownership to avoid probate and your share transfers to your surviving spouse when you die, but for some reason your spouse does not add another joint owner. When your spouse dies, then the entire estate (your spouse's estate plus what you left your spouse) must go through probate before ownership can be transferred to the rest of your heirs. So you didn't avoid probate after all, you just postponed it.

Loss of Control

When most people think of joint ownership, they immediately think of a joint banking account between husband and wife. But a joint banking account is not the same as joint ownership of property (real estate, stocks, bonds, etc.). A joint bank account is actually a contract with the bank that allows each joint "owner" to independently make deposits, withdrawals, or even close the account. Joint ownership of property is something altogether different. To transact any business (buy, sell, get a loan, refinance, etc.) requires the signature of all the owners. For real estate, the signature of every owner's spouse is also required. One owner cannot act for another, so you can easily lose control, especially if the other owner can't or won't sign. It's easy to see how people get confused. Just remember you do not have the same flexibility and control with joint ownership of property as you do with a joint banking account.

Unintentionally Disinheriting Your Children

Blind reliance on joint ownership can cause you to unintentionally disinherit your own children. Consider this disaster:

Marie, an elderly widow, had a will that left everything in equal shares to her five grown children. When she learned she had cancer, she put everything she owned into joint ownership with her oldest son, thinking this would avoid probate and make things easier for her family when she died. She discussed it with her son and was sure that he would carry out her wishes and divide everything equally among the children. When she died, ownership did immediately go to her son, but he died suddenly in a construction accident a few weeks later, before the property could be distributed. His wife, only recently married to Marie's son, claimed everything as his surviving spouse, and she decided to keep it all herself! Marie's will (which, remember, left everything in equal shares to her children) was powerless, because as soon as she died she no longer owned anything. Immediately upon her death all ownership transferred to her son, so there was nothing left to will. Marie's joint ownership plan did avoid probate, but it also disinherited her children!

Remarriage and joint ownership can cause some very undesirable results. For instance, you remarry and add your new spouse as joint owner on all your property. You have children from a previous marriage. If you die first, your spouse automatically owns the entire property (including



your share). When your spouse dies the property will go to your spouse's heirs, and since your children are not heirs of your spouse (unless your spouse has legally adopted them), your children get nothing.

Even if your spouse includes your children in his or her current will, you still can't be sure they will inherit. Your spouse could always write a new will disinheriting your children. He or she could also add another joint owner (such as a new spouse) who would then receive full ownership of the property when your spouse dies.

You lose control when you make someone else a joint owner of your property, and you have no way of controlling who will ultimately receive your share of the property.

Incapacity

You can really end up in a mess if one of the joint owners becomes incapacitated and can no longer sign his or her name - especially if real estate is involved. The other owner will have to get approval from the probate court before any jointly owned property can be sold. This is because both signatures are required to transfer title and if one of the co-owners cannot sign his/her name, only the court can sign for that owner. So, in effect, the court becomes a joint owner. And once the court gets involved, it stays involved until that person recovers or dies. This whole issue of incapacity and the involvement of the probate court is so important (and something that so few people know about) that we've included an [entire section on it](#).

Liability

You could also end up in a lawsuit. If you are a joint owner with someone who is sued over an incident that involves the jointly owned piece of property, you will quite likely be named in the lawsuit, even if you have done nothing. Think about this example:

Robert and Toni wanted to help their 18-year-old son get a car, so they co-signed the loan and listed themselves as co-owners with their son on the title. Shortly thereafter, the son was at fault in an accident in which the other driver was seriously injured. When the injured person filed suit for personal injury damages, Robert and Toni were named along with their son. Their personal assets are now at risk - they could be frozen, even seized, to help settle the claim.

Don't become a co-owner with anyone beyond your spouse. Just think for a moment about how "lawsuit-happy" our society is these days. Joint ownership can leave you wide open for a possible lawsuit.



Bankruptcy

Joint ownership exposes your property to the co-owner's creditors. If a joint owner files bankruptcy, he/she must file a list of all jointly owned property (checking and savings accounts, stocks, bonds, real estate, etc.) with the court. This means that the bankruptcy court would now have control of your property. The court could order the sale of your property to pay the other joint owner's creditors. Before you add a joint owner on your property ask yourself "is this worth the risk of exposing my property to someone else's creditors?"

Tenancy-In-Common

There is another kind of joint ownership, used less frequently, called "tenancy-in-common." Even though it works very differently from "joint tenancy with right of survivorship," people often confuse them. Under tenancy-in-common, when one of the owners dies, that owner's share will legally go to his or her heirs, not to the other owner. If you own property with someone through a tenancy-in-common arrangement, you could find yourself with several new co-owners when that person dies and the heirs receive the property. Sometimes it's hard enough to get two people to agree. Imagine how difficult it could be to get several owners to reach an agreement, especially if you are trying to sell real estate. You could also have the same problems we mentioned earlier (incapacity, lawsuits, etc.), and with several owners involved, your risks are even greater.

To avoid confusion, when we refer to joint ownership we are referring to the more common "joint tenancy with right of survivorship."

Joint Ownership - The Bottom Line

Joint ownership may work for you, if everything goes exactly the way you hoped. But then again, maybe it won't. With joint ownership you're playing "Russian roulette" with your family. You can still end up in probate, especially if a joint owner becomes incapacitated. Furthermore, you can unintentionally disinherit your own children and expose your property to the lawsuits and bankruptcies of the other joint owners. Is it worth the risk?

Myth 4: "I have a power of attorney, so I don't need a will or joint ownership to avoid probate."

False. Some people give power of attorney (often called a "general" power of attorney) to a spouse or adult child, assuming it will allow titles to their property to be transferred without probate when they die or become incapacitated. Actually, a power of attorney is automatically revoked at death or incapacity, so it won't be of any use then. Most states permit a "durable"



power of attorney that remains valid if you become incapacitated, but it, too, is automatically revoked at death. Remember, that all powers of attorney are revoked when the signer dies.

If you think a durable power of attorney will protect you if you become incapacitated, think again. Armed with a durable power of attorney, it would be very easy for someone to "raid your estate" if you are incapacitated. This person would be able to transfer titles to your property and accounts to his or her name, and in your condition you probably wouldn't even know about it. You could recover from your incapacity, only to find you have no property or accounts because all of the titles have been changed! You may have a hard time getting your property back. You'll probably have to file a lawsuit, and by the time it's settled there may not be anything left.

In many situations a power of attorney doesn't work at all. Since it is not a contract, anyone can refuse to accept it. Many companies will not accept a power of attorney unless it is on their own form or has a recent date. Banks and brokerage companies routinely reject powers of attorney. Instead, they require an order from a probate court because this order protects them from liability. The older the power of attorney is, the less likely that it will be accepted. Banks, brokerage houses, title companies, etc., are suspicious of old powers of attorney and often reject them outright, even in routine transactions. It can also be very difficult to use a power of attorney for property located in another state, due to the differences in state laws. Finally, with a power of attorney, you are permitting someone else the right to sign your name for you while you are still alive, with total freedom to do with your property as he or she wants. Even if you give the person a list, you have no guarantee that your instructions will be followed or that they will even be accepted. A power of attorney offers benefits when properly used, but it is a weak legal document and should never be used as a primary estate plan to avoid probate.

Myth 5: "I can avoid probate by adding a transfer on death beneficiary on my property."

False. Transfer on death (also called "pay on death" or "TOD" or "POD") is now permitted in many states. Transfer on death is an old idea; life insurance policies have always let you designate a beneficiary. What's new is that the beneficiary concept has been expanded to include property such as bank accounts, stocks, cars, and real estate. With real estate you sign a "beneficiary deed" (naming the beneficiaries) and have it recorded. The beneficiary becomes the owner of the property immediately after your death without probate.

So far this sounds great. But what if you become incapacitated? Your beneficiaries have no legal authority until you, the owner of the property die. In the meantime, your beneficiaries cannot manage your financial affairs. They will have to request that the probate court declare you incompetent and put you into a conservatorship before they can take care of you.

Transfer on death doesn't always avoid probate at death either. If the owner and the beneficiary die at the same time or if the beneficiary dies before the owner, probate will occur. Probate will



also be necessary if the beneficiary is incapacitated when the owner dies. If the beneficiary is a minor child, then the property will go into a probate guardianship for the child.

Transfer on death is not an estate plan, and it doesn't avoid probate. You have no control over the outcome, because it is not flexible enough to handle unanticipated events. And it is very risky if the owner becomes incapacitated.

In Summary

Now you know about the risks involved with the most common methods people use to try to avoid probate. A living trust eliminates all of these risks and completely avoids probate. It ensures that your estate plan will remain your plan, and that it can't be changed by the court, unanticipated events, or greedy relatives. Remember, probate can happen in three situations - when you die, if you become incapacitated, and where minor children are involved. The information on the next few pages will help you to better understand each of these situations. To fully comprehend the important benefits of a living trust, you'll need to know exactly what happens during probate - to you, your family and your property.

I. WHEN YOU DIE

Whether or not you have a will when you die, the process to probate your estate (your possessions and debts at the time of your death) is virtually the same. Your family will not be able to change titles on property listed in your name without a court order and this is done only through the probate court. This includes any titled property such as bank accounts, stocks and bonds, real estate, cars, etc. Even if you have a will, a court order is still required because a will by itself is not enough authority to re-title property or release account balances.

THE PROBATE PROCESS

1. First, of course, you die.

Your executor (if you named one in your will) has not yet been formally appointed by the court and can take only limited actions at this point, such as notifying your employer and bank of your death, requesting cancellation of the utilities to your home, and canceling magazine and newspaper subscriptions. If you didn't have a will, then a family member can take care of these things, but legally this is about all they can do at this time.

In addition, your family and/or friends cannot legally take any of your belongings before the probate process has been completed, unless they get specific approval from the court. In fact, there could be serious consequences if they do. You've probably seen or heard of relatives taking



personal belongings and sentimental items immediately after the funeral. If it's your family, don't do it. And if you're named an executor, don't let anyone else do it. Several steps, which follow, must be taken before any property can be distributed to your heirs.

2. File Petition

Probate does not automatically start when you die. Someone must request that probate begin. This generally happens because checks need to be written from your bank account to pay bills, or your property needs to be sold, or your other assets need to be liquidated or transferred to a new owner or to your heirs. Usually a family member (when there is no will) or your executor (when there is a will) requests that probate proceedings begin. This is a formal legal process. A written petition, prepared by an attorney, is submitted to the court to start the proceedings and can include your original will (if you had one). A filing fee (paid from your assets) will be charged to your estate, usually when the petition is presented to the court.

3. Publication

After the petition is filed, in most states the court will order a formal notice to be published in a local newspaper for several weeks or months before the first hearing. This procedure notifies the public of your death, requests that your creditors present any unpaid debts to the court, and invites anyone who feels they have a right to part of your estate to come forward and make their claim. The cost of this advertising (usually several hundred dollars) is paid from the assets in your estate.

The executor is also required to send a written notice of your death to all of your known creditors, and to anyone else he/she thinks may have a claim against your estate.

At the same time, your executor notifies your named heirs of your death, sends each of them a copy of your will (if you had one), and advises them where the probate proceedings will be held. This is when everyone finds out how much they will (or won't) receive from your estate.

4. First Hearing

The first hearing is held six weeks to two months after the filing of the petition. Assuming there are no contests to your will or any other unusual circumstances, the following steps usually occur at this hearing:

Will is Validated

If you had a will, it must be validated by the court. The judge will make sure it meets the state's legal requirements, that it is the correct will (in case you left more than one), that you were in a



competent state of mind when it was drawn up, that all the proper signatures are on it, that it was witnessed, and so on. If the judge rejects your will as invalid, then the court will declare that you died without a will and order the state's will applied instead.

Executor/Administrator Is Appointed

After the will is validated and admitted into probate, the court will formally appoint the executor (now most often called a "personal representative") to manage your estate for the court. If you had a will, you may have named someone to be your personal representative. If this person is still alive and able to act in this capacity, the judge will probably accept your choice. If not, the judge will appoint someone else, usually a relative, but sometimes an attorney or a bank's trust department.

If you did not have a will, the court will appoint an "administrator" to perform these duties. (A personal representative and an administrator have the same responsibilities. To keep things simple, we will use the term personal representative when referring to this position from now on.)

Personal Representative's Duties And Fees

The personal representative helps the court to inventory your possessions and determine their value. He or she is responsible for collecting your bills and preparing your final tax returns, and for presenting them to the court to be approved and paid. The personal representative also applies to Social Security, veterans, union or fraternal organizations, and other groups or organizations for any death benefits to which your estate is entitled. This includes death benefits from life insurance, IRA's, retirement plans, etc., where you named "my estate" as the beneficiary.

The court will grant your personal representative "letters testamentary." This is a legal document; an order signed by the judge that formally appoints the personal representative and grants him or her the authority to act in your place under court supervision. These "letters" are what the bank and others need to close out your accounts and turn your assets over to your personal representative. In effect, the titles of your property transfer from you to your personal representative, who is responsible for their safekeeping while your estate is probated.

Personal representatives are entitled to receive payment for their services and are often required to post a bond; normally both payments are made from the assets in your estate.

It is important to note that in some states the personal representative does not have the authority to act independently. Every action is controlled and must ultimately be approved by the probate court. So, even though your estate is paying for his or her services, your personal representative is really working for the court.



Independent Administration

Many states (including Missouri and Kansas) permit independent administration, in which the personal representative's actions and records are not pre-approved by the court. This does reduce the amount of paperwork; but because the estate is still in probate, it remains a slow process. The requirements for independent administration vary in each state permitting it. In Missouri, for example, you must specifically include in your will that you do want your estate to be independently administered, or all of your beneficiaries must agree to give the personal representative this unsupervised authority. It may be difficult to get them all to agree, especially if they live far apart. In other states, the court can permit independent administration unless your will specifically states that you do not want it.

Unusual Circumstances

If your will is contested or if there are any other unusual circumstances, the court will try to resolve them at this first hearing. If the differences cannot be resolved at this time, there will be subsequent hearings until the conflict can be resolved by the court. The court will decide if anyone who claims to be one of your "heirs" has a valid right to part of your estate, whether or not you included him or her in your will. It is not uncommon for these "heirs" to find out how much your estate is worth from the newspaper publications and court records, and then hire an attorney to contest the will, sometimes even when they have no real hope of getting anything. Because contesting a will can get very expensive and prolong probate, families quite often pay off contesting heirs just to get rid of them.

Also, since personal representatives are entitled to be paid for their services, more than one of your relatives or friends may want this responsibility, resulting in additional court hearings to determine who will actually be appointed by the court. This can significantly increase the time and cost of probate and could result in hurt feelings as well. Even if you specify a personal representative in your will, your choice can be contested.

File Opened/Attorney Appointed

At the end of the first hearing, the court will formally open a file on your estate and appoint an attorney to handle the estate's paperwork for the court. Although having an attorney is not always a legal requirement, it has become a practical necessity because probate paperwork and filing procedures can be extremely complicated. Also, judges prefer to deal with an attorney who understands how the probate system works. If you did not specify an attorney in your will, your family may request a specific attorney or the court will select one. Of course, all attorney fees are paid from the assets in your estate.



5. Assets Frozen/Inventory Estate

During probate, your assets are usually frozen so that an accurate inventory of your property and possessions can be taken. This means that your heirs cannot receive their inheritances, nor can any property or assets be sold or liquidated without the court's permission.

After the first hearing, the personal representative must locate all of your property and possessions, compile a list of them and their values, and present it to the court. This can be a very time-consuming and difficult process, especially if you did not have current and accurate records, or if you had assets in several states. The court will require formal appraisals (usually by a certified, court-approved appraiser) for many items such as real estate, antiques, collectibles, automobiles, furniture, etc. Appraisal fees can be expensive, and these are also paid from your estate.

Family Living Allowance

During this time, your dependents (spouse and minor children) will probably be granted a living allowance, but it must be "reasonable" and approved by the court. To request the allowance, your spouse must submit a written request to the court through an attorney. If there are a number of outstanding debts, or if the will is being contested, a judge may insist that the assets remain intact and reduce, or even deny, the request.

However, proceeds from assets with beneficiary designations (such as life insurance, IRA's, retirement plans) are paid directly to your beneficiary without probate, so your family will probably have some money for living expenses. And it's likely the court will allow your dependents to continue living in your home during probate, even if it will eventually go to someone else.

6. Presentation And Payment Of Debts, Claims And Taxes

Your creditors have a certain number of days from the first publication of notice of your death to come forward and submit their claims against your estate for payment. After this time has passed, the personal representative will audit the claims and present them to the court for approval to pay them from the assets in your estate. If there are any disputes over a claim, there could be additional hearings (at additional costs to your estate), with the judge making the final decision.

7. Final Distribution/Closing Of Estate

Finally, after the court is satisfied that the legal process has been completed, which commonly takes a year or more, it will order another public notice to announce a final hearing to close your



estate. At this hearing, the judge will review all the paperwork and order your debts, claims, taxes and probate expenses (including attorney and personal representative fees, probate fees, bonds, and appraisals) to be paid.

The cash assets in an estate can be greatly reduced, even consumed, due to the ongoing expenses of probate. If there is not enough cash in your estate to pay your debts, then the judge can order that your property, including your personal belongings, be sold at a public auction or estate sale. Many times this will be on a "distressed sale" basis or at a fraction of its worth.

After all bills have been paid, the court will order your remaining property distributed to your heirs according to your will (or the state's will if you didn't have one). The judge will then order the personal representative relieved of his/her duties and the file closed.

8. Multiple Probate?

If you owned real estate in more than one state, this entire process (and its expenses) may have to be repeated in each state where your real estate is located.

A Word About Very Small Estates

The only real exception to the process as we explain it here is that many states have a shortened probate process for very small estates. Estates that qualify can be probated without an attorney or personal representative fairly quickly and with just a minimum filing fee. But very few actually qualify for this special process because the limits on the total estate value are extremely low, as low as \$40,000 in some states. And if any creditor claims are presented, then the estate will probably have to go through regular probate anyway.

WHAT THE PROBATE PROCESS DOES TO YOUR FAMILY

Probate Is Expensive

There are many costs, often substantial, that must be paid from your estate, leaving less for your heirs.

Where Does The Money Go?

First of all, the probate judge does not directly take any of your money. Judges are paid from our tax dollars to enforce the laws. And the government doesn't take money directly from your estate when you die, unless it is large enough to have to pay estate taxes (also known as death taxes).



Before your heirs can receive any part of your estate, all expenses connected with the probate process must be paid. And there are a lot of expenses; filing fees and court costs, publication and advertising expenses, appraisal and auction costs, bond fees, and attorney and personal representative fees.

Attorney And Personal Representative Fees Are Hard To Predict

The biggest expense of probate is the attorney and personal representative fees, which can easily run into many thousands of dollars. Each state has its own method for determining these fees. Some states establish a guideline to help regulate fees, based on a percentage of the gross or net value of the estate, but a judge can (and often does) approve higher fees, based on individual circumstances and the time involved. Other states permit hourly fees, \$100 to \$200 per hour is not an unusual attorney rate. Often, the personal representative will receive a lower hourly rate, but some states specify that the personal representative will be paid the same rate as the attorney.

Most personal representatives and attorneys are required by the court to keep a detailed record of the amount of time they spend on each case, telephone calls, letters, answering questions, court appearances, etc. So the more time they have to spend probating an estate, the more costly the probate process becomes.

So How Much Does Probate Cost?

Total probate costs are often estimated to be from 3% to 5% of an estate's gross value, which is the fair market value of an estate at death before any debts (including the mortgage on your home and other loans) have been paid.

In most states, probate fees are based upon the gross estate value. So if your home is worth \$100,000 when you die, probate fees will be based on \$100,000, even if the mortgage is \$75,000!

The following chart shows the attorney and personal representative fees allowed by statute in Missouri. These amounts do not include other probate expenses, such as publication and appraisal costs, filing and bond fees and additional legal fees (if your estate is complicated or your will is contested).

Gross Estate Value	Total Minimum Fees For Attorney and Personal Representative
\$100,000	\$6,600
\$200,000	\$12,100
\$500,000	\$28,100
\$1,000,000	\$53,100
\$2,000,000	\$93,100



Probate costs frequently exceed the fee ranges given above. It is very common for the attorney and personal representative to request and receive additional fees, especially if there are extenuating circumstances involved. If your will is contested or ruled invalid by the court, attorney fees and court costs can escalate dramatically. If you owned several real estate properties that have to be sold, the appraisal and publication costs would be more than an estate which had no real estate. If you die without a will, the court has to spend more time determining your heirs (enforcing the state's will) and deciding who will be your administrator. If you died and left small children, the court will have to establish a guardianship for them (which requires additional court hearings and testimony).

Every additional decision or transaction required to complete the probate process will increase the cost. It is virtually impossible to predict the final probate cost for any estate - there's just no way of knowing until the actual process has been completed.

But I Don't have That Much, So Why Should I Worry About The Cost Of Probate?

Probate can affect any size estate, large or small, and especially those with any amount of real estate. Because probate costs take a greater percentage from small estates than large ones, anyone with a smaller estate should not risk probate. There just isn't that much to go around in the first place.

Your Family Loses Control

As we mentioned earlier, during probate your family may not be able to sell property or liquidate assets without court approval, even if they need the money. The probate process, not your family, has control. Your family must function within the restrictions of the probate system. It can be very frustrating for your family when they have to pay for the court to tell them who gets what and when. You can understand how this can lead to all kinds of family disputes.

Probate Takes Time

Probate delays can also be extremely frustrating. Remember, the probate system was designed to be slow. It must follow legal procedures exactly, and this process is notoriously time consuming. Some of the time required for probate is very specific, such as how long the published notices of your death must run in the papers (in those states that require it) and how long your creditors have to present their claims.

Other parts of the process are totally unpredictable. For example, your personal representative may need additional time to get your affairs in order and to locate all of your assets. Of course, any complications (such as your will being contested) will create additional delays. But, in



reality, a good portion of the time required for probate is due to the over-booked court system. Even if everything else runs smoothly, it may take several months just to get a court date. The probate process is slow, usually taking one to two years, often longer.

Time Is Money

Your assets can depreciate while they are tied up in probate. Stocks, real estate and other assets can lose value if they cannot be sold quickly enough in a declining market. Your heirs could miss out on certain opportunities that require an immediate decision, such as buying a home or making an investment. Probate is a slow process and, in today's financial world, decisions must often be made quickly.

No Privacy

All probate proceedings are a matter of public record. In those states that require it, advertising allows your creditors to present their unpaid bills, but it also encourages the interest and attention of those who may feel they have a right to part of your estate (whether or not they actually do). You may have purposely left some of your relatives out of your will, but they can contest your will and the court, not you, will decide if they are entitled to receive a share of your estate. Remember how many people claimed to be somehow "related" to Howard Hughes when he died?

Since it is public record, anyone can go to the probate court and find out the details of your estate. Jacqueline Kennedy Onassis was one of the most private women in the world, but her will did not protect her privacy. Anyone can look up the probate records and find out how she distributed her estate, including who received her copy of John F. Kennedy's Inaugural Address signed by Robert Frost, or that she left \$500,000 to each of her sister's children. They can also see how much she left family members and friends and learn their addresses at the time of her death. Do you want just anyone to be able to find out what you owned, what you owed, and the amount you left to each of your heirs? Do you want their addresses to be available to the public?

In addition, there are people who go through probate records and compile lists of new widows and beneficiaries. These lists are then sold as leads to companies or individuals selling "investments," offering to "manage" finances, or other "helpful" activities. Some of these are legitimate, but many are outright scams - unscrupulous individuals who prey upon bereaved survivors, particularly spouses, who are at an especially vulnerable time in their lives. Many of these surviving spouses have never had to handle finances before. They are not only emotionally upset about the loss of their partner, but are understandably terrified about being alone and on their own. If your family has to go through probate, then they could be exposed to possible exploitation.



Emotional Costs

Because it is an ongoing process, probate can be a frequent interruption, preventing your family from resuming their day-to-day activities and serving as a constant reminder of your absence. It can also cause unpleasant disagreements among family members who would normally look to one another for support.

A family is used to running its own affairs in private, according to its needs. You make decisions on a daily, even hourly, basis to accommodate different situations and personalities. But probate rules and regulations are very rigid, and the law cannot bend or make allowances for individuals. When it seems that nothing is happening, or that things are taking too long to resolve, it's often impossible for a family member to get answers. The court will not communicate directly with the family (a judge's duty is to enforce the law, not to give legal advice), so all communication regarding the estate must go through an attorney.

It's common for family and in-laws to become frustrated, and because they cannot vent their frustrations on the court, they may end up taking them out on each other. When people react emotionally instead of rationally, it's often impossible to reach an agreement, and then the court may have to get involved to settle what should have been a simple agreement worked out among caring family members.

It's Your Choice - But There's More!

If you're not already convinced that you need a living trust to transfer your property when you die, read a little further, because we're not through yet. Would you believe that the probate process can take control while you are still alive?

II. IF YOU BECOME INCAPACITATED OR INCOMPETENT

Most people usually associate probate with "something that happens when you die." Few know that the probate court can take control of your finances and personal affairs before you die!

If you are unable to manage your personal and financial affairs, then you will most likely be declared incompetent and placed under the control of the probate court in something called a "conservatorship" (also called a "probate guardianship" or "living probate"), especially if you own any titled property (home, other real estate, car, bank or savings accounts). This will affect both you and your family in ways you have never dreamed. Most people don't even think twice about the very real possibility of becoming incapacitated or incompetent at some time in their lives. It can happen to any of us, at any age. And if it does, you could be placed in a probate conservatorship, whether you have a will or not. Incapacitated and incompetent both mean that a



person is temporarily or permanently unable to manage his or her own affairs. To keep things simple, we will, with a few exceptions, use the term "incapacitated" when referring to this condition from now on.

It is estimated that 20% - 40% of Americans will become incapacitated before they die. And with medical advances people are living longer, greatly increasing the possibility of accidents, senility and afflictions such as Alzheimer's disease (the disease that debilitated former President Ronald Reagan).

One thing is certain: most of us will, at one time or another, find ourselves faced with the care of an older relative (most likely our parents). And because most people are not prepared, many of us will have to deal with probate conservatorships when we try to take care of our elderly parents and relatives.

But not just older people end up in probate conservatorships. It can happen to any of us at any time and at any age. Without warning, you could be critically injured in an accident or stricken with a devastating illness (physical or mental). You will be alive but without the capacity to handle your own affairs. If this happens, then you'll probably be placed in a probate conservatorship. Here's why:

Why A Will Won't Protect You

Many people think that if they have a will and become incapacitated, their spouse or adult child (or the person they named as personal representative in their will) can automatically take care of their day-to-day affairs. But a will can only go into effect after you die. It cannot help if you become incapacitated - because you haven't died.

What Is A Probate Conservatorship?

This is a legal process that was created to protect you and your property if you are unable to take care of your own affairs. The original intention was, of course, very honorable. To prevent someone from taking over your property and squandering your possessions, the court takes control, making financial decisions for you and looking after your welfare.

What's Wrong With It?

Most people would prefer that a family member or friend, rather than the court, take care of them. But if you are placed under a probate conservatorship, the court does take over, and you and your family lose all direct control. You lose your legal rights as an individual and have no choice about how your money is spent or who will look after your care. Even if a family member



is named as your guardian, the court will still control your money. And, just like probate at death, a conservatorship is expensive and time consuming.

If You Own Property In Your Name

If you own titled property (home, other real estate, car, bank or savings accounts) in your name only and you become incapacitated, someone will have to ask the court to act for you. Your family and friends cannot write checks for you and pay your bills to keep your financial affairs in order. If yours is the only authorized signature, the court must do it for you under a probate conservatorship. If any of your titled property must be sold for any reason, including paying for your care, then only the probate court can sign your name to transfer the title.

The Consequences If A Joint Owner Cannot Sign

As we previously discussed, if you own titled property jointly and you become incapacitated, the other co-owner will have to get approval from the probate court (by placing you into a conservatorship) before the property can be sold, refinanced or transferred - even if the other co-owner is your spouse.

Most married couples own their property jointly and they assume that if one of them becomes incapacitated, then the other can continue to take care of their personal and financial affairs without interruption. But look at what happened to Karen.

Bill and Karen, a young professional couple in their thirties were successful and responsible adults. They made safe investments and planned carefully for their future. They owned everything jointly and even had wills leaving everything to each other. But in a split second their lives changed dramatically when Bill was in a tragic car accident and suffered extensive brain damage.

Karen could continue to write checks and pay their day-to-day bills because only one signature was required on their checking account. But soon the cash started running out and Karen realized she needed to sell some of their investments, maybe even their house, to pay for Bill's care and the other expenses. Karen was unable to sell any of their jointly owned property without both signatures. Since Bill could not sign his name, the only way Karen could sell their property was to place Bill into a probate conservatorship and have the court sign for him. Bill's will was no help at all because he was still alive.

Karen had no idea how expensive and cumbersome this legal "protection" would be. Not only did she have to deal with Bill's situation and the effect of this tragedy on their personal lives, but she also had to deal with the court system. She was especially frustrated that she had to pay for the court to approve the sale of their own property and then get the court's approval on how Bill's



share of that money was spent, even when it was used to pay their personal expenses and to take care of Bill! When Bill died more than five years later, Karen found herself back in probate court - this time to probate Bill's will.

The same thing can easily happen to you if you own property through joint ownership. Many older parents list their adult sons or daughters as joint owners on their property (especially real estate), believing they will avoid probate when they die. They mistakenly assume that their adult child will automatically be able to take over for them if they become incapacitated. Most people just don't know how easily joint ownership can lead to a probate conservatorship and they have no idea what it can mean.

THE PROBATE CONSERVATORSHIP PROCESS

This is what generally happens if you are placed in a probate conservatorship. Some steps, as you will see, are very similar to the probate process at death. But keep in mind that while the process is going on, you are still alive.

1. Petition The Court

The court must be petitioned by someone on your behalf to begin proceedings to determine if you are incompetent. Usually a relative or neighbor will hire an attorney to start these proceedings. Very often, because of your condition, you will not know anything about this. In fact, some states do not even require that you be told.

2. Proceedings Advertised

In most states, a notice of the conservatorship proceedings will be advertised in the local papers to allow your creditors a chance to present any unpaid bills to the court. This also makes your situation public.

3. Competency Hearing

A hearing is held to determine if you are incompetent. In some states, you are not even required to be present and the judge bases his or her decision on reports and testimony. If the probate judge decides that you are incompetent, you become a "ward of the court" and immediately lose most of your individual rights as a citizen.

4. Conservator/Attorney Appointed

The judge will appoint a "conservator" to handle your affairs for you (pay your bills, etc.) and make sure you receive proper care. Usually the conservator is a relative, but the judge can



appoint anyone as your conservator, even someone you may not want to take care of you. The court opens a conservatorship file on you, which is available to the public. Conservators are entitled to be paid for their services and are required to post a bond. The court will also appoint an attorney to take care of the required paperwork. All conservator and attorney fees, bonds, filing fees, etc., are paid from your assets.

5. Inventory Property And Debts

The conservator makes a list of your property and debts and submits them, along with a budget for your living expenses, to the court for approval. The court may order your property and personal belongings sold at public auction to help pay your expenses, including the costs of the conservatorship.

6. The Court Takes Control - Or Does It?

From this point, all of your affairs are handled by your court-appointed conservator, under the direct supervision of the court. Depending on the court system, your conservator may have to adhere to a very strict monitoring and regulations, or may not be subject to much control at all.

If the court is very strict, all expenditures your guardian makes on your behalf (including medical care and even personal items, right down to toothpaste) must be documented and approved by the court, creating a lot of paperwork. Once a year, the attorney must submit a report of every financial transaction. This report is audited and must be approved by the court, and it can take months to complete the process.

Other courts are not strict at all, usually because they do not have the resources to properly monitor the financial records. In these situations, the assets can (and often do) simply disappear without a trace, with no record of how the money was spent.

7. Ending A Conservatorship

It is very difficult and expensive to end a probate conservatorship (usually they continue until the person dies). If you recover and are once again able to take care of yourself, you must petition the court and prove your competency. You must hire an attorney to represent you, and you will probably have to hire at least one trained professional (physician, psychiatrist, psychologist, etc.) to confirm that you are now "well" and able to take care of yourself. Practically speaking, this could be difficult, if not impossible, to do. You may have a hard time convincing an attorney and doctors that you are now competent when a court has already declared you incompetent.



8. Probate Again?

When you die, your family may have to go through probate all over again - this time to distribute your remaining assets to your heirs. A probate conservatorship only exists while you are alive; it does not replace probate when you die. So after your conservatorship file is closed (sometimes many months after your death), your remaining assets may be transferred to another court file, and the formal process we discussed earlier begins.

HOW A CONSERVATORSHIP AFFECTS YOU AND YOUR FAMILY

Because a conservatorship is conducted by the probate court, you and your family will be affected in many of the same ways as when an estate is probated at death. The process is still inflexible, expensive and time consuming, but a conservatorship can go on indefinitely, until you either recover or die.

Financial Costs

Even though you are incompetent, all costs associated with your conservatorship, attorney and conservator fees, bonds, advertising, appraisals, filing fees, and court costs, are paid from your assets. These costs are unpredictable and can rapidly add up, especially if you require complicated medical care, have a lot of assets to manage or other special needs, and if the conservatorship continues for many years. The additional expense of a conservatorship can be especially hard on an older couple with a fixed income.

Don't forget the hidden costs. Your assets cannot be sold without the permission of the court, and real estate, stocks and other investments can quickly lose value while they are tied up in probate.

You And Your Family Lose Control

The court, not your family, makes all decisions for you, appointing your conservator, approving how your money is spent and determining the quality of your care. Even if someone in your family is appointed your conservator, the court will control and audit the financial records.

Takes Time

Since the court has to approve your expenses, this takes more time than if you are cared for outside the court system. Besides making sure you receive proper care, your conservator will have to spend additional time keeping up with the paperwork and satisfying the court's requirements. This could be especially difficult for an elderly spouse to handle if he or she is appointed as your conservator.



No Privacy

All probate proceedings are a matter of public record. Your personal and financial information is available for anyone to see even though you're still alive. You probably wouldn't want this information (and your condition) being made public.

Emotional Costs

This can be a very difficult time for your family. It's hard enough for most family members to adjust to the reality of your situation, and normally they want to take care of these matters privately. The conservatorship process only adds to their frustration. If the court orders your possessions sold at public auction to pay for your expenses, it could be an added emotional strain for your family to be forced to publicly sell your possessions while you are still alive.

Conservatorship Battles

The court must appoint your conservator, which can lead to a long and expensive court battle if more than one person wants to be your conservator, for any reason. Remember the Groucho Marx competency hearings, in which a woman friend of his tried to convince the court that he wanted her as his conservator? Although Groucho was living with this woman at the time and she had been taking care of him, the court appointed a relative as his conservator. The hearings were lengthy and very public, not a pleasant situation for any family to risk going through.

Potential For Abuse

As in Groucho's case, the court will usually appoint a family member as your conservator. But if you are alone and have no trusted relatives who live nearby, a scheming relative, associate or neighbor may find it very appealing to have you declared incompetent, have himself or herself appointed as your conservator, put you into a nursing home and take control of your assets. Remember, the court may not even require you to be at the competency hearing.

And, as we mentioned earlier, you run the risk of being placed under the protection of a court that does not have the resources to properly monitor your conservatorship, leaving the door wide open to possible abuse.

Again, You Have A Choice

You can risk being placed in a conservatorship. Or you can get a living trust and keep control of your affairs privately, even if you become incapacitated. It's your choice.



There is one more area in which probate can interfere with our intentions, and that's when a minor child inherits money or property.

III. MINOR CHILDREN AND PROBATE

When most people think about a court guardianship for a child, they think of a situation right out of a Charles Dickens novel, with the poor orphan caught between the lawyers, the court and the guardian. That's not so far off, even today.

But did you know that a child can be placed in a probate guardianship even when one or both parents are still alive? The reason is that minor children cannot legally transfer titles of property in their own names, because minors do not have full legal rights. So if a minor child is named as a joint owner of property or inherits titled property (including real estate, stocks, bonds, proceeds as beneficiary of life insurance or IRA's, etc.), then the court, the only entity that can sign for the child, will have to get involved to protect the child's interests when the property is transferred or sold. Sometimes the court will get involved even before the child can receive the asset or be named on the title, depending on the value and type of property. This is not an unusual situation as we'll explain shortly.

HOW CHILDREN CAN BE PLACED IN PROBATE GUARDIANSHIPS

If Both Parents Die

This is the most obvious situation, but there are some issues here which might surprise you. Most parents think that if they name a guardian for their minor children in their will, then that person will automatically be able to take over upon their death(s) and raise the child using the child's inheritance. But this is not what happens.

When your estate goes into probate after your death, the court must appoint a guardian for your child. If you named a guardian in your will, the court will usually go along with your choice to raise your child, but it doesn't have to. The court may appoint someone else if it decides that person would be better than your choice. Of course, if you didn't have a will, the court will make its decision without knowing your wishes.

But - and this is very important - the court, not the guardian, will keep control over the child's inheritance through a probate guardianship. The guardian will get custody of the child, but the court will have control of the money.



Why A Children's Trust In A Will Is Risky

Some people put a children's trust in their will to prevent the court from taking control of the inheritance. It will work, but probably not the way most people think, and it may not work when your children really need it.

First of all, because it is part of your will, a children's trust can only go into effect after your will has been probated. It is funded with your property. Property with beneficiary designations (such as life insurance, IRA's, retirement plans, etc.) can be paid to your children's trust right away without probate if you have named your children's trust as the beneficiary. But other titled assets (including any real estate) will have to be probated first, and that takes time and costs money (you know the story by now). So it could be months or years before these properties can go into your children's trust.

Secondly, what happens if you become incapacitated due to an illness or accident? Since you haven't died, your children's trust can't go into effect because your will can't be probated. Not even the beneficiary proceeds can be paid because you're still alive. You will probably be placed in a probate conservatorship (along with your children if both parents are incapacitated or if you are a single parent).

Using a children's trust in a will does work eventually, but it doesn't avoid probate and it will not go into effect if you become incapacitated.

If Both Parents Are Not Dead

But what if the child is not an orphan? You may wonder how a child could possibly be placed in a probate guardianship if both parents are still alive and healthy. Surprisingly, this happens more often than you might think.

Inheritances

Many parents (as well as grandparents, aunts, uncles, etc.) leave money, real estate, stocks, CD's, and other investments to a minor child when they die. If the child is still a minor when the estate is probated, the court will have to get involved, especially if the inheritance is substantial. The court has to make sure the child's interests are "protected," even if both parents are alive and well. Of course, this protection isn't free and the child's inheritance (or the parents) will have to pay for it. An attorney will need to represent the child in court, and the court will probably insist that a guardian (usually a parent) is added to the titles when they are transferred to the child.

Establishing a guardianship for a minor child is a relatively simple process, but once it is set up the court will stay involved. Until the child reaches legal age, none of the properties can be sold



(nor the money spent) without the court's approval. And this guardianship can go on indefinitely if the child is incapacitated upon reaching legal age.

Joint Ownership With A Minor

Naming a minor as a joint owner of any titled property (real estate, stocks, bonds) can have devastating consequences because the only way to transfer, sell or refinance the property is through a probate guardianship. Here is another case of good intentions gone wrong.

Luanne, who was recently divorced, added her 12-year-old son as joint owner on the deed to her house, thinking it would automatically become his if she should die suddenly. A year later, she decided to sell the house. But she couldn't, because her minor son (her joint owner) could not legally sign the deed. She had to put her own son in a probate guardianship and the court had to approve the sale. By that time the buyers were long gone, but the court was still there. Eventually she was able to find another buyer and this time the sale went through. But the court kept control over her son's share of the proceeds until he turned eighteen, at which time he promptly spent it all! Luanne couldn't afford to buy another house with just her share. She found out the hard way that joint ownership with a minor does not work.

In summary, if you leave any titled property to your children or grandchildren, or name the child as a joint owner, or make the child the beneficiary of your life insurance, IRA, or profit sharing/retirement benefits, you could unintentionally create a probate guardianship for the child.

Incapacity

And, of course, if both parents become incapacitated (or if you are a single parent), then the parent(s) and the child will be placed into a court conservatorship/guardianship, even if you have a will and a children's trust in your will.

Minor Children As Beneficiaries

Here's something else you may not have thought about. Most life insurance companies (and other companies who provide assets with beneficiary provisions such as IRA's, profit sharing/retirement plans, etc.) will not knowingly pay death benefits directly to a minor child. They will usually require proof of a court-approved guardianship, because they do not want the risk of legal liability. Obeying a court order eliminates any liability risk that could result from turning over large amounts of money to a minor. Many people are not aware of this and list their minor children as beneficiaries (either primary or secondary) on their life insurance policies and other accounts.



The Guardianship Process

A probate guardianship for minor children works about the same way as for adults who cannot handle their own affairs and have been put into a conservatorship. The child's court-appointed guardian will need to hire an attorney, post bond and submit a detailed report to the court each year. Anything the child needs that costs money (including education, school and social activities, music lessons, clothes, etc.) must be submitted in a written request by the attorney and approved by the court. And, of course, the guardianship costs money, which is paid for from the child's inheritance.

Besides the financial costs, there can also be emotional costs. Guardians and the court can get into disagreements over what is and is not important for the child's welfare. For instance, the guardian may feel it is very important for the child's development to take music lessons or to attend certain social functions. But the court may feel these expenditures are unnecessary or even frivolous. And the child is caught in the middle (shades of Charles Dickens). How do you explain all of this to a child?

This guardianship will continue until the minor child legally becomes an adult (age 18 in most states). At this time, the child will have full control over all of the inheritance. Many parents do not feel their children are mature enough at this age to handle this financial responsibility and prefer that their child inherit at a later age or in installments (receiving some money at age 21, more at 25, and so on). But a court guardianship cannot continue after the child has reached legal age.

Remember, too, if the court is not able to properly monitor the guardianship and the wrong person is appointed guardian, the child's inheritance could disappear. Sadly, this does happen. An understaffed or lax court could attract someone who will pretend they are concerned about the child just to be named guardian, when all that person is really concerned about is the child's money.

HOW A PROBATE GUARDIANSHIP AFFECTS YOUR CHILD AND YOUR FAMILY

Financial Costs

All costs associated with the guardianship are paid from the child's inheritance. Since raising a child can present any number of special circumstances, these costs are unpredictable and will vary for each individual. Depending on the amount of the inheritance and the duration and cost of the guardianship, the child's inheritance may be greatly reduced by the time the child receives it.



You Lose Control

The court, not the guardian you named in your will, controls your child's inheritance. The court can also override your choice of guardian and appoint someone else to raise your child. Your child will receive the entire inheritance when he or she legally becomes an adult in your state. A children's trust in a will does prevent the court from taking control of the inheritance and lets you leave specific instructions for how the money will be spent, when your children will inherit, etc. But remember, the will must be probated first, and this can't happen if you are incapacitated.

Takes Time

In addition to the time it takes to care for your child, the guardian will have to spend time dealing with the court, keeping accurate records, dealing with the attorney and satisfying the court's requirements. This additional responsibility can cause even the most sincere and conscientious guardian to make compromises. It may be easier to "stick to basics" that don't require more time and paperwork, than to put forth the extra effort required to get court approval for a child's special needs.

It also takes time for a court and attorney to react, so there is little flexibility and spontaneity when it comes to your child's needs. And this complicated and time consuming process can easily frustrate the guardian causing him or her to feel some resentment towards the child, especially if the guardian has family responsibilities of his or her own.

No Privacy

Remember, all probate proceedings are public record, so anyone can find out the value of your child's inheritance and see how it is being spent.

Emotional Costs

Within a family, each child is recognized as a unique individual with his/her own identity and needs. But, under the law, the court must treat everyone equally, making it difficult for the court to make exceptions and address the special needs of each individual child. Also, any disputes between the guardian, attorney and court could have a negative impact on a child who has already lost his or her parents.

A Word Of Caution To Divorced Or Separated Parents

If your child's other natural parent is living at the time of your death or incapacity, the court will probably appoint him or her as your child's guardian, even though you may prefer someone else. Guardians are entitled to be paid for their services (from your child's inheritance), and this may



be an incentive for your "ex" to be interested. What's more, if the court does not monitor the guardianship carefully, you run the risk of your "ex" having access to money that you intended to be used only for your child's welfare.

You Have A Choice Here, Too

You can do nothing, you can have a will, and you can even have a will with a children's trust in it, but you still risk having a probate guardianship for your minor children. A living trust will enable you to provide for your minor children, and make sure the court does not get involved even if you become incapacitated.

SO, THAT'S PROBATE!

You can see now why it's so important that you understand probate. Knowing that probate can take control when you die, if you become incapacitated, or if you have minor children and seeing how it can impact you and your family, whether you are married or single, young or old, will help you make the right choices in protecting your estate.

If the risks don't bother you, or if you really don't care about what probate can do, then you can still rely on the more commonly used methods for transferring property at death; wills (yours or the state's), joint ownership, or transfer on death. You can also give away all of your property while you are still alive. At least now you know the risks (and the costs) involved with these methods, before your family gets caught in the middle of probate.

But if you want to completely avoid probate, keep reading. Now we can tell you all about a living trust, what it is, how it works, how it avoids probate, and how your living trust can keep you and your family from unnecessary financial and emotional hardship. Remember, only a living trust avoids probate 100%.