

PROBATE DESK REFERENCE

When is probate needed?

- When the total value of probate personal property is greater than **\$75,000**
- When the total equity of the decedent's probate real estate property is greater than **\$100,000**

The only person who can file an affidavit is an heir entitled to the property. It must be done **30 days after** the date of death for personal property and **6 months after** the date of death for real property.

Note: If personal property is less than \$75,000 and real estate is less than \$100,000, then the law allows property to be collected by an affidavit and probate may not be necessary

Probate Defined:

A court procedure to validate a Will (if one exists), and appoint a Personal Representative. The procedure refers to the entire legal process of administering the estate.

What are probate assets?

The deceased's separate property and their share of community property (if married) that has no designation of transfer upon death.

What are not probate assets?

- Assets held in the name of a trust
- Assets with a designated beneficiary like POD or TOD (such as IRA, annuity, pension, or life insurance – unless the estate is or becomes the beneficiary)
- Assets titled as Joint Tenant With Right of Survivorship or as Joint Owners

Probate Key Terms:

- **Probate:**
Court procedure to administer an estate
- **Testator:**
A competent adult who makes a will
- **Intestate:**
Without having a will
- **Will:**
Written plan of where property will go after death. A will allows a testator to say who will get the testator's property when the testator dies.
- **Personal Representative:**
Also called the executor, the person named by the testator to initiate the probate process and to manage the distribution of the assets. (Typically the spouse, child, or heir)
- **Personal Property:**
Everything except real estate

SIMPLE WAYS TO AVOID PROBATE:

The following items bypass a will and help you get your assets to your beneficiaries with a minimum of delay.

Make these plans well before death:

- **Payable-on-Death (POD)**
An arrangement that allows you to name a beneficiary on your bank account
- **Transfer-on-Death (TOD)**
Allows you to name a beneficiary for your stocks, bonds and mutual funds
- **JTWROS (Joint Tenants with Rights of Survivorship)**
All owners have an equal right to the asset and are afforded survivorship rights in the event of the death of another owner
- **Beneficiary Deed**
Transfers title after passing without probate
- **Trusts**
Legal entities that can own and manage property for the named beneficiary

If Probate is Needed:

The probate process can take anywhere from 4-12 months if uncontested.

In Arizona, probate attorneys usually charge an hourly rate, not a percentage of the estate.

If there is an asset to transfer upon death, call a probate attorney.

Plan Ahead:

4 Legal Documents Everyone Should Have:

- **Will:** Directs who will manage your estate and how your property will be distributed after death. In order to avoid unintended results refer to the "Simple Ways to Avoid Probate"
- **Durable Financial Power of Attorney:** Appoints who will handle your finances if you are incapacitated or unavailable
- **Health Care / Mental Health Care Power of Attorney:** Appoints agent(s) to make mental health and health-care decisions up to and including terminating life and life support
- **Living Will:** Determines what care you wish to receive regarding life-prolonging medical treatments

Call 1.800.243.1160 today for a free phone consult with a probate attorney