

# 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 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 a na davit and probate may not be necessary*

### Probate De ned:

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 ordered 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**