

PROBATE

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I know, this is not an exciting topic for the new year but estate planning is a great New Years Resolution!! Maybe this discussion will help get you motivated. I often get asked the question, "So what is probate". My answer is usually that it is the process where a will is filed to determine who gets your stuff. You may then ask, "When does a will have to be filed?".

The will, which is filed with the Estates Division of the Clerk of Court in the county where you reside or own real property, states who the executor of your estate is and who your property passes to at death. The important information here is that this is only for real property or accounts in your sole name that do not have beneficiary designations. Real property in North Carolina deeded to a husband and wife is a special kind of right of survivorship property. If the spouse survives it automatically passes to them according to law. The will does not control unless the spouse is not surviving. Likewise, joint bank or investment accounts which are set up as joint with rights of survivorship pass to the surviving account holder and the will does not control.

Depending on the financial viability of the joint owner, joint accounts may not always be the best way to protect your money. Another consideration for bank accounts is to have the account in just your name but make the account payable on death, or POD, to the person or persons you want to receive it. Investment accounts are similar and can usually be made transfer on death or TOD. These methods give you full ownership rights but avoid probate at death.

Life insurance and retirement accounts have named beneficiaries which means upon your death those assets pass directly to the person or persons you named. Again, the will has no control over these assets unless your beneficiary or beneficiaries predeceases you. Trusts are another way to avoid probate. The assets are set up in the name of the trust and upon death the assets are then distributed according to the terms of the trust.

Deciding the best estate plan for you is a very individual situation. Doing what your best friend did may not be YOUR best plan. For example, if you have a child or grandchild with special needs then passing assets directly to them using one of the above simple methods may get them terminated from some very beneficial governmental benefits. Everyone has a little different situation with types of assets and family. If you are concerned about your estate plan and whether you can avoid probate then one of your resolutions should be to speak with a professional knowledgeable about these matters. HAPPY NEW YEAR!