



## Life Counsel® Probate Decision Tree

### The Real Goal (Read This First)

The goal is **not** to “avoid probate at all costs.” The goal is to **preserve family wealth and prevent needless family conflict**. A practical corollary: **the right people get the right property at the right time—and the wrong people get nothing**. Any strategy that undermines that outcome is not a win, even if it reduces probate.

**Step 1. List what you own and how it transfers.**

*A. Assets that typically transfer outside probate (for that asset):*

- Joint ownership with right of survivorship (JTWROS)
- Tenancy by the entirety (often for married couples)
- POD/TOD designations on bank and brokerage accounts
- Life insurance with a named beneficiary
- Retirement accounts (IRA/401(k)) with a named beneficiary
- Assets titled in the name of your trust (if you have one)

**If almost everything you own is in Category A:** You may reduce probate exposure, but you still must ensure your beneficiary forms and titling match your plan.

*B. Assets that often trigger probate (or a court process) if titled in your name alone.*

- Real estate titled solely in your name
- Bank/investment accounts in your sole name with no POD/TOD
- Vehicles/boats titled solely (rules vary by state and value)
- Any asset payable to “Estate of [Your Name]”
- Assets a third party will not release without court “letters” (authority)

**If you have any Category B assets:** Assume you have probate exposure until you redesign ownership/titling or otherwise plan around it.

**Step 2. If you have a trust, is it doing the work? If you have a trust, ask one question: Are your assets titled to the trust?**

- Yes, mostly:** probate exposure is often lower and administration is often smoother.
- No or partially:** the trust may be a binder on a shelf, and probate may still be required for the “left-out” assets.

If you do not have a trust: Your plan will rely heavily on beneficiary designations and joint titling, and those must be maintained and periodically audited.

**Step 3. If probate happens, what controls distribution?**

- If you have a will:** it generally controls only probate assets (not everything you own).
- If you do not have a will:** your state’s intestacy rules control—often producing outcomes you would not choose.

Key point: a will often does not “fix everything.” It governs only what passes through the probate system.

#### Step 4. Do not plan around “small estate” shortcuts.

Many states offer simplified procedures for small estates, but eligibility depends on state-specific rules such as:

1. Value thresholds
2. Whether you own real estate in your sole name
3. Waiting periods, notices, and creditor rules.

**Bottom line:** “My estate will be small enough” is not a strategy. Alignment and maintenance are the strategy.

#### Watch Out for the Pitfalls (Where Plans Break and Families Fight)

1. **Chasing probate avoidance instead of outcome control:** Avoiding probate is not a virtue if it increases the chance the wrong person gets access, control, or leverage.
2. **Beneficiary designations that don’t match your plan:** Beneficiary forms frequently control, even when your will or trust says something else.
3. **Naming “my estate” as a beneficiary:** This often forces probate, delays distributions, and increases costs.
4. **Adding someone “for convenience” to an account or deed:** This can create unintended gifts, expose assets to their creditors/divorce, and cause unequal outcomes.
5. **Unfunded or partially funded trusts:** A trust that does not own the assets cannot manage or distribute them the way you intended.
6. **Blended families, minor children, unequal inheritances, or a beneficiary with disabilities:** These situations require careful design, or they frequently trigger conflict, court involvement, or both.
7. **Real estate in more than one state:** This can multiply administration and costs unless planned around properly.
8. **A plan that never gets updated:** Marriage, divorce, births, deaths, moves, business changes, large purchases, and family estrangements can silently break your plan.
9. **Retirement Accounts**

Be very careful naming a trust or non-person as the beneficiary of a retirement account that will trigger accelerated mandatory withdrawals, increasing income tax exposure.

#### Maintenance Rule (Non-Negotiable)

Review all beneficiary designations at least every 3 years—and immediately if you change your plan or experience a major life event.

- Specifically review:
- Life insurance
- IRAs / 401(k)s / pensions
- Annuities
- Bank and brokerage POD/TOD forms.
- Transfer-on-death deeds (where available)

**If your beneficiary forms and your plan disagree, the forms often win.** When the forms win, families fight—because the outcome feels unfair, surprising, or inconsistent with what everyone was told.

#### Practical Next Step

To protect your family and your legacy, get advice from an experienced, state-licensed elder law and estate planning attorney in your state.

State rules, tax consequences, creditor issues, and long-term care planning risks vary widely—and small drafting or titling mistakes can create big costs later.

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