



**STROHSCHHEIN**  
**LAW GROUP<sub>LLC</sub>**

# UNDERSTANDING the Probate Process in Illinois



Strohschein Law Group LLC

**M**any people believe that it is crucial to “avoid probate.” But just because people may have heard that term doesn’t mean they know what probate means, why it can be a problem, or how to avoid it successfully.

In this E-book, Strohschein Law Group will look at the term “probate” to understand what probate is, what the probate process includes, how to avoid probate, and what to do if you are facing probate.

## What is Probate?

The term probate most literally means “to prove” a will. Today, it covers the entire legal process necessary to settle a person’s estate after they die. The appointed representative (usually a family member) opens the probate case in court. With the attorney’s help, they will work through all of the financial business that the decedent left behind.

For example, probate includes disposing of personal property, money, real property, or anything else that the deceased owned at the time of their death. Probate also deals with any debts that were in existence at the time of death.



## Why is Probate Such a Negative Thing

Probate is not inherently evil. It is merely a legal system that oversees the way estates are handled. However, there is some truth when people say that probate should be avoided, if possible. Some of these cons are listed below:

### **LACK OF PRIVACY**

Probate cases are filed in the court and are in the public record. If — for any reason — a person wants to maintain a sense of privacy after they die, it would be a good idea to avoid probating the estate in court.

### **CREATE FAMILY DISAGREEMENTS**

One reason that wills and estates go to probate court is to allow interested persons the opportunity to represent their claim on the estate by challenging or contesting a will that does not favor them. Avoiding probate should be a top priority for people with complicated family dynamics, unpopular second marriages, or estranged loved ones. When handling an estate through non-probate channels, it becomes much less likely that a will becomes successfully challenged.

### **TIME CONSUMING**

Like most things that end up in the court system, probate can be time-consuming. In more complex estates, the entire process can last months or years. And, while the family waits for this time to pass, the decedent’s assets or property may slowly lose value or be lost entirely.

### **COSTLY COURT PROCESS**

Probating an estate requires the help of a competent probate lawyer to facilitate the matter. Since the process requires court appearances and extensive paperwork, the legal fees can mount up quickly. With proper pre-planning, you or a loved one can avoid the high cost of probate.



## How Can Families Prevent the Need for Probate?

Creating a solid estate plan is the best way to avoid probate. Strohschein Law Group and our experienced team of attorneys can work with you and your loved ones to draft the proper legal documents and carefully time asset transfers in Illinois.

### **REVOCABLE LIVING TRUST**

The revocable living trust is an instrument that dictates the management or distribution of property. The property is transferred in title to the trust during the owner's lifetime. The property owner also chooses someone to act as a trustee, an appointed fiduciary who will manage the trust property and any distributions after the trust creator's death.

The other good thing about a trust is that there is usually no need to involve the court. There is nothing to file, and it does not need to be submitted to the probate court.

### **JOINT TITLE**

Another way to avoid probate hassles is by placing your assets into joint ownership with your future beneficiaries. This way, when you pass away, the ownership interest will automatically transfer to the joint owner. Joint title may accomplish your goal to avoid probate, but doing so may create tax issues.

### **PAYABLE-ON-DEATH AND TRANSFER-ON-DEATH**

Payments on death accounts (POD) have a designation that names a person who will receive the assets in the account when the original account owner dies. At the same time, transfer on death (TOD) is a designation on the title or deed to a real estate piece or a car that will automatically change ownership once the owner dies.

### **DON'T BE TEMPTED TO GIVE AWAY YOUR ASSETS**

Some people assume that the easiest way to avoid probate is to give everything away before you die. However, doing this could cause seniors problems when they may need to qualify for long-term care assistance.

## How We Can Help If You or a Loved One is Facing Probate

Whether you are the Executor or an heir of the probate estate, knowing the lawyer's role is one of the first steps you should take at the beginning of the probate process. One of the most significant conflict sources in probating the estate is understanding the lawyer's role hired by the Executor of a probate estate. Many Executors do not understand the probate process and leave the tasks up to the lawyer.

Some of the shared responsibilities of an executor that a lawyer assists with include:



### **DUTY TO COMMUNICATE**

The duty to notify the beneficiaries the estate exists, identify the Executor, provide a copy of the inventory, provide copies of court filings, generally explain documents that require a beneficiary's signature, etc. This duty to communicate is not the same as an attorney-client relationship, which means there is no attorney-client privilege, and the attorney cannot give legal advice.

### **DUTY TO ACCOUNT**

Provide regular estate accountings, which include explaining funds paid out of estate accounts for expenses.

### **DUTY TO TREAT ALL BENEFICIARIES EQUALLY**

To distribute estate funds simultaneously, if a question arises about how something in the Will is to be interpreted, the attorney cannot interpret it, and the court must interpret it.



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If you want to avoid probate, Strohschein Law Group can help you plan responsibly for the future and navigate the probate process. Take the first step and contact our office at (630) 377-3241 and schedule an appointment with us.

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