

Why Avoid Probate?

Avoiding probate is a good idea. Here's why.

Most of us have heard that it's wise to avoid probate court, but we don't necessarily know why. In a nutshell, there are two big problems with probate:

- It usually ties up property for months, sometimes even a year.
- It's expensive. Attorney and court fees can take up to 5% of an estate's value.

The Probate Process

Most of what happens during probate is essentially clerical. In the vast majority of cases there's no conflict, no contesting parties, none of the usual reasons for court proceedings. Probate rarely calls for legal research, drafting, or a lawyer's adversarial skills.

The probate attorney, or the attorney's secretary, fills in a small mountain of forms and keeps track of filing deadlines and other procedural technicalities. In some states, the attorney makes a few routine court appearances; in others, the whole procedure is handled by mail.

Probate Fees

For their services, both the lawyer and your executor will be entitled to fees from your estate.

Executor fees. It's common for the executor to waive the fee, especially if he or she inherits a substantial amount of your property.

Attorneys' fees. In many states, probate fees are what a court approves as "reasonable." In a few states, the fees are based on a percentage of the estate subject to probate. Either way, a probate attorney's fees for a "routine" estate with a gross value of \$400,000 (these days, this may be little more than a home, some savings and a car) can easily amount to \$20,000 or more.

Other probate costs. In addition, there are court costs, appraiser's fees, and sometimes other expenses.

Reducing Probate Fees

One way to reduce probate fees is for your executor to handle the probate proceedings without an attorney ("in pro per" or "pro se"). But as a practical matter, that's tough in most places.

Hire an attorney for less than the usual fees. You can also try to get an attorney to agree that he or she will do your probate for less than the usual fees. You cannot, however, legally bind an attorney to such an arrangement. In fact, you don't have the power to select the attorney at all -- the law gives this authority to your executor.

Avoiding Probate

Given all this, it generally makes more sense to see if you can avoid probate altogether. At the very least, consider reducing the amount of property that will be subject to probate -- this will reduce fees and ensure that your beneficiaries get some of their inheritance faster.

A common method of avoiding probate for at least certain major assets is the use of Living Trusts and various other types of trusts. Advice and planning is required to utilize these tools effectively however.