PacificCPE

COURSE

40757A

Executor Essentials: Non-Probate Transfers

Not all estate assets go through probate, and understanding which ones bypass the process is essential for efficient estate administration. This course covers joint tenancy and survivorship property, community property rules including survivorship agreements, and the procedures for claiming retirement plan benefits. It also addresses savings bond valuation and what happens to community property at the second spouse's death. Tax professionals will find this course particularly valuable when advising clients on beneficiary designations, stepped-up basis issues, and inherited retirement account rules.

CREDIT HOURS 2 | FIELD OF STUDY BUSINESS | EXAM QUESTIONS 10

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LEARNING ASSIGNMENTS AND OBJECTIVES

Assignment

- Study the full course materials included here.
- Complete the review questions after each chapter.
- Answer 10 final exam questions.
- Final exam is scored immediately, 70% or better passes.
- Certificate of completion is available in your account.
- Failed exams can be retaken free of charge.

Course Objectives

- Identify the types of property that do not need to go through the probate process.
- Identify the items included in an Affidavit of Survivorship.
- Identify the community property state that utilizes the spousal property petition.
- Recognize the age at which individuals must take required minimum distributions from their retirement accounts.

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Chapter 1: PROPERTY THAT DOESN'T GO THROUGH PROBATE

Chapter Objective

After completing this chapter, you should be able to:

- Identify the types of property that do not need to go through the probate process.

As you've no doubt heard by now, the formal probate process is tedious and expensive. Is it the only way to make sure that a deceased person's assets go to the people or institutions that the person intended? No, and legislators have taken note. The last 25 years have seen a "non-probate revolution"— an explosive increase in the use of "will substitutes" that make probate unnecessary but still ensure that the deceased's person's wishes are followed.

This chapter explains which assets can pass without probate (though some simple paperwork is usually still required). If the assets you're dealing with don't make it into this camp, all is not necessarily lost. Most states offer "probate lite," a simplified probate process for small estates, which takes only a few weeks or months and shouldn't require a lawyer. And even if you're headed for full probate, you might find that your state offers an informal probate process that's more streamlined than formal probate.

You might be able to handle estate assets in more than one way. If the most significant assets can be transferred without probate, check out Chapter 2 of course 40758B to see whether the remaining assets qualify for your state's simplified probate process for small estates.

If the remaining assets are still too large, you'll have to use regular probate, discussed in Chapter 3 of course 40758B. You're most likely to face a probate court proceeding if the deceased person wasn't married at the time of death and didn't do any probate avoidance planning.

Reasons to Go Through Probate

Even if out-of-court methods are available to transfer property in the estate, you might still want to file a probate court case. Probate might be a good idea if:

- You expect large claims from creditors and want probate because it gives creditors a deadline for submitting claims, or
- Beneficiaries are fighting and you want court supervision.

COMMON ASSETS THAT DON'T GO THROUGH PROBATE

In general, two kinds of property don't need to go through probate:

- Property the deceased person owned with someone else in a way that gives the surviving owner automatic ownership, and
- Property for which the deceased person named a beneficiary in a document other than a will.

Example

At her death, Ramona owned a house and bank account in joint tenancy with her husband. She also owned an individual retirement account. On a form provided by the institution that managed the IRA, she had named her husband as beneficiary. Her husband was also named as the beneficiary of a life insurance policy Ramona owned. None of these assets will have to go through probate.

The checklist below includes common kinds of nonprobate property. Go down the list and, based on the inventory you made in Chapter 2 of course 40754B, check the kinds of property you think the estate includes. Then read this chapter's discussion of that kind of property to see whether you can get by without probate.

Finally, go to the chapter listed in the table for information on transferring the property directly to the people who inherit it.

Although this course doesn't show you exactly how to transfer property in all 50 states (which would take many volumes to cover), it can point you in the right direction

Checklist: Common Kinds of Nonprobate Property		
In estate?	Type of Property	Chapter
☐	Joint tenancy property	13
☐	Tenancy by the entirety property*	13
☐	Community property with right of survivorship*	14
☐	Living trust property	1
☐	Wages, salary, or commissions due the deceased person	5
☐	Payable-on-death bank accounts	16
☐	Life insurance proceeds	5
☐	Retirement accounts (IRAs, 401(k) plans, and others)	15
☐	Securities registered in transfer-on-death (beneficiary) form	16
☐	U.S. savings bonds, if co-owned	13
☐	U.S. savings bonds registered in payable-on-death form	16
☐	Vehicles registered in transfer-on-death form*	16
☐	Vehicles that go to immediate family members under state law	
☐	Pension plan distributions	5
☐	Money in a health savings account with a named beneficiary	16
☐	Real estate left using a transfer-on-death deed (sometimes called "beneficiary deed")*	16
☐	Property that can be claimed with a "small estate affidavit"	17
*This option is not available in all states.		

JOINT TENANCY PROPERTY

Legally, when one co-owner dies, joint tenancy property automatically belongs to the surviving co-owner(s). No probate is necessary. But new owners still need to complete some simple paperwork to make it clear to the world that they own the asset. Chapter 2 explains how.

TENANCY BY THE ENTIRETY PROPERTY

In about half the states, married couples (or domestic partners who have registered with the state) can own assets in tenancy by the entirety. An asset held this way is transferred like joint tenancy property; no probate is necessary. However, some paperwork is still required. (See Chapter 2.)

COMMUNITY PROPERTY

Some community property states have procedures that make it easy for a surviving spouse to take ownership of community property when the first spouse dies. Formal probate might not be necessary.

Community Property with Right of Survivorship

If the deceased person and the surviving spouse (or registered domestic partner) held title to property as "community property with right of survivorship," the property goes to the survivor automatically, without probate. (This option is available only in a few states.) To get the property into the survivor's name, the survivor usually just records a simple affidavit (sworn statement). Chapter 3 explains the process.

Property Covered by a Community Property Agreement

Did the deceased person sign a community property agreement with a spouse? If so, you might be able to transfer property covered by the agreement to the surviving spouse without probate.

These agreements state who gets the couple's community property when one spouse dies. No probate is necessary.

Usually, spouses agree that the survivor inherits all the community property, though other arrangements are possible. (See Chapter 3.)

Other Community Property

If the community property isn't covered by the procedures discussed just above, it still might be able to go to the surviving spouse with a simplified probate procedure or without probate at all. For example, in California, the survivor can file a simple fill-in- the-blanks form with the probate court that asks the court to transfer community property. (Chapter 3 has details.)

PROPERTY HELD IN A LIVING TRUST

Property held in a revocable living trust can be transferred to its new owners without probate; that's the main purpose of creating a living trust. After the person who created the trust dies, the person named in the trust document to take over as trustee (the successor trustee) can transfer trust assets directly to the trust beneficiaries. No probate is necessary.

As executor, you have no authority over trust property unless you are also the successor trustee.

SALARY OR WAGES

If an employer owed the deceased person salary or wages, the employer will generally pay the amount due directly to the estate, without the need for probate. Sometimes, if a special state procedure is available, the money can be paid directly to the surviving spouse instead. (Chapter 2 of course 40752B discusses how to present a request to the employer.)

PAYABLE-ON-DEATH BANK ACCOUNTS

If you've found a bank account or certificate of deposit that names a beneficiary to inherit the funds at death, the money won't have to go through probate. In fact, the beneficiary can probably claim it without any help from you. (See Chapter 1 of course 40758B.)

These accounts, which have named beneficiaries, might be called payable-on-death (POD) accounts or Totten trust accounts. The signature card for a POD account usually reads like this: "Esmee Duland POD Tiffany Duland." The card for a Totten trust or revocable trust account is usually worded like this: "Mabel L. Ostrov, in trust for Harvey Stein." Either way, account funds can go directly to the beneficiary without probate.

LIFE INSURANCE PROCEEDS

Proceeds of a life insurance policy on the deceased person's life go directly to the named beneficiary, without probate. The only exceptions are if the estate was named as the beneficiary (this is rare) or if all of the named beneficiaries (both primary and alternate) have died (also rare). To learn about how the beneficiary can claim the proceeds, see Chapter 2 of course 40752B.