



HOW TO AVOID PROBATE AND “DEATH TAXES” FACT SHEET



Since 1916, the tax system has included an estate tax. The estate tax rate is about 40%, but it only applies to estates over \$5 million dollars (\$10 million for married couples). Politicians relabeled the Estate Tax as the “Death Tax,” and many people have been concerned ever since. However, the large exemption means, for the vast majority of us, there is essentially no estate tax. Even better, Georgia charges an estate tax only if there is a federal payment due.

Taxes, therefore, are usually not a real concern. Aren't there other reasons to avoid probate, such as the high cost, the long and involved Probate process, and the fact that going to probate means the process is open to the public? None of these reasons are true in the typical case in Georgia; the typical cost, including legal fees, should be roughly \$2000.00, and may be much less. Most probates are opened in less than three months and completed within nine months.

Although going through probate is a matter of public record, meaning your will and the case are recorded, but it is still largely private unless an heir should sue. Finally, depending on the property, it may be possible to file a simplified probate called No Administration Necessary with minimal legal help or without a lawyer at all.

Lawyers are aware of the ways to avoid probate in Georgia. Popular strategies include the revocable living trust, use of “Pay on Death” designations in bank accounts, use of “transfer on death” registration for securities, and joint tenancy with right of survivorship in real estate. All of these methods pass property outside the probate process to another person, and they can be a part of the estate planning process. Your attorney should be able to explain your options.

In estate planning, all of us want to minimize taxes and make sure that we pass our property to our loved ones in the most convenient, inexpensive and hassle-free manner possible. We also want it to work without causing additional problems. No single plan fits all clients, so be aware that “the devil is in the details,” and educate yourself and discuss all matters fully with your attorney

A final tip: Retirees should be able to avoid the probate process in most cases involving husbands and wives. By placing your deed in Joint Tenancy with a Right of Survivorship, and being sure stock registration is also joint or payable on death, ninety percent of Georgia and Alabama retirees could avoid probate on the death of a spouse, and save any legal fees.

If you have any questions or would like additional assistance with your estate planning, please call our office today to make any appointment with one of our attorneys.



Office of the Staff Judge Advocate
Legal Assistance Office
6450 Way Avenue
Fort Benning, GA 31905
706-545-3281/3282