

Probate Basics

What assets need to be probated?

When a loved one passes away it is not always necessary to open a Probate for them. The probate process exists to transfer ownership of assets and to pay creditors.

The Personal Representative or executor will gather all of the assets owned by the deceased individual that need to be probated. However, not everything the person owned during his or her life will need to be probated. Sometimes things will pass outside of the probate process. These are assets or accounts that list a beneficiary, pay on death (POD) beneficiary, transfer on death (TOD) beneficiary, or have a joint owner with a survivorship interest. Generally, assets subject to probate are ones that the deceased person owned in their own name, without a co-owner with survivorship interest, and without a beneficiary designation.

EXAMPLES

1. For example, Zach dies and at the time of his death, he is married to Kelly. He and Kelly have a joint bank account, this account will become Kelly's upon Zach's death. She does not need to include it in the probate.
2. Zach and Kelly own a house jointly with right of survivorship. The house becomes Kelly's upon Zach's death without going through probate.
3. Zach had a 401(k) and he listed Kelly as the beneficiary. He also listed Kelly as the beneficiary on his life insurance. Neither the 401(k) nor the life insurance will go through probate.

However, Zach owned a vacation house with his friend Jessica as joint tenants. This is not an interest that has a right of survivorship. Therefore, Zach's one-half interest could be subject to probate.*

4. Zach also had an individual checking account that did not have a co-owner and no one was listed as the beneficiary. He also owned his own car. That account and the car would be subject to probate.

*In Kentucky, real estate technically passes at the time of death of a decedent, however, real estate can be pulled back into the probate to pay for debts. Further, if real estate owned by the decedent individually is not listed in a probate proceeding, it is possible that clear title could not pass to a third party for two years. Real estate in a Kentucky probate can be tricky. You should speak to a qualified probate attorney for specific advice regarding transfer of real estate in a probate proceeding.

If you have questions regarding the administration of a probate estate, you should contact a qualified probate attorney for specific advice. The above is intended as general information and should not be construed as legal advice to any person or individual.

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