

Avoiding Probate

People often say “you can’t take it with you,” especially when talking about the wealth you accumulate during your life. They are absolutely right. That’s why today’s blog is about legacy planning. When we at Strategic Wealth discuss legacy planning with clients, we make sure to discuss the entirety of what you are leaving behind. Your finances are a big part of it, but it’s also about how you will be defined and remembered after you’re gone.

While you can’t take it with you, how you leave it behind is important. There are a few steps you can take to simplify the process for your heirs, including avoiding probate where possible.

First, keep in mind this is not intended to provide any tax or legal advice, or provide the basis for any of your financial decisions. But finding the right answers to questions like these can be helpful as you evaluate your retirement strategy. As always I suggest meeting with your financial services professionals to discuss all of your options.

Back to probate. Probate is a court-directed process through which someone’s will is authenticated, their heirs are determined, and their assets are distributed. It is complex and can add additional stress to your family and friends during an already difficult time.

A transfer-on-death account is one way you can avoid probate. The Balance dot com provided an overview of these account types in its piece “[What is a payable-on-death account.](#)”

Transfer-on-death, or T-O-D, and payable-on-death, or P-O-D, are often used interchangeably. To make this less confusing, though, we’ll refer to these accounts as T-O-D in this episode.

T-O-D accounts are available for many types of assets, including checking and savings accounts, stocks, bonds and other securities.

What makes these accounts special is that they are set up in such a way that when the owner of the account dies, the money remaining in the account passes to the owner’s designated beneficiaries. It can be one beneficiary or it can be multiple beneficiaries, and the account owner can usually choose the proportions of the remaining funds that go to each.

Especially important is that with T-O-D accounts, this all happens without becoming subject to probate. There is no need for the court to get involved with these accounts. Usually, all beneficiaries must do to gain access to the account is produce a copy of the account owner’s death certificate and show it to the custodian.

Until then, the owner maintains sole rights to the account’s assets. This is true if it’s not just an individual account, but also an account with joint ownership.

Through a joint account, two or more owners can share a T-O-D account for as long as any of the owners are alive. According to The Balance article, that remains the case until the last

surviving owner dies. Then, the money remaining in the T-O-D account is paid to that owner's designated beneficiaries.

There are definitely benefits to having a T-O-D account, but there are also some potential drawbacks. The Balance dot com covered some of the issues with T-O-D accounts with another article entitled "[Problems Using Joint Accounts to Avoid Probate.](#)"

Two of the biggest problems that The Balance identified are related to beneficiary issues that can arise when you choose a T-O-D account.

One of the most important things you can do when establishing a T-O-D account is to make sure you aren't disinheriting beneficiaries unintentionally.

This can happen if the T-O-D account owner only names one beneficiary on the account, but wants other beneficiaries to share a piece of the account when they pass away. Regardless of intention, the owner will cut out the other beneficiaries if they aren't named on the T-O-D account

That makes it incredibly important for the owner to keep the desired beneficiaries up to date. Fortunately, many T-O-D accounts make it easy to update beneficiary information.

Another problem that can potentially arise is if a beneficiary dies before the account owner does. Again, this would be a problem if the T-O-D account owner isn't diligent about updating the beneficiary information.

So, for the sake of argument, let's say one of the beneficiaries dies before the account owner, who fails to update the account and they, too, pass away. Problems could stem from not knowing how to divide the account value among the remaining beneficiaries.

And if that happens, you find yourself in the unfortunate position of needing an arbitrator to make a ruling. Which means ... for everything you did to avoid probate, you'd still find yourself subject to probate.

Finally, I mentioned earlier that the T-O-D account owner can usually determine not only beneficiaries, but the proportion of the account value that each beneficiary would stand to inherit on the account owner's death.

And that's true, USUALLY, the account owner can do that.

But not always.

According to The Balance dot com article, some institutions require that if more than one beneficiary is named on a T-O-D account, all of the beneficiaries must be entitled to an equal percentage of the account when the owner dies.

So, in cases where the T-O-D account is only one piece of the account owner's legacy, it adds a layer of complication in providing all of the beneficiaries with the decedent's desired portion of assets.

In those cases, the account owner would have to keep a close eye on account values and determine if the TOD account is working in tandem with their other assets to ensure all beneficiaries get their intended inheritance.

There are pros and cons to using T-O-D accounts to avoid probate, but it can play a valuable role if used properly.