

How to Minimize Probate Hassles When You Own Property in More Than One State

Laws can be very confusing, and some of the most complicated laws are the ones that affect what happens to your property after you pass away. The government has established complex probate laws designed to protect people, but the process can be an expensive, lengthy headache.

The government wants to ensure it receives the taxes it is entitled to collect. Laws also protect creditors to ensure that their debts are repaid. And fortunately, some of the probate requirements are intended to ensure that the right people receive the property left over after taxes and other debts have been paid. Even when the intentions are good, however, the process of achieving the goal can be a painful ordeal.

The probate process usually requires court authorization and often oversight of specific transactions. Making a mistake can cause delays and even lead to a lawsuit against the people involved. In most probate proceedings, Texas law requires the assistance of an attorney, but it is generally advisable to work with one during probate, even in states where legal representation is not required.

If you own property in more than one state, the probate process can become doubly complicated because unless you've taken the right steps to prepare, the process will need to be completed in every state where you own property. Although every state has different probate laws and requirements, there are some strategies you can use to prevent the need for legal proceedings in more than one state. An experienced estate planning attorney can assess the options and devise the plan that would be most efficient for your particular situation.

We cannot provide that level of specificity in a blog like this. But here, we introduce some factors to keep in mind as you review the options with your attorney. If you'd like

to discuss possibilities with us, we offer free consultations.

Domiciliary and Ancillary Probate

The state you are living in at the time of your death is usually the state where your estate will go through the primary or domiciliary probate process. When you are domiciled in a particular place, it means you live there with the intention of remaining indefinitely. It is the place you identify as your permanent address and where you pay state income taxes. If you were domiciled in Texas at the time of your death, then the primary probate process would be handled according to Texas law.

Ancillary or additional probate processes would need to be opened in other states where you owned real estate titled in your own name. If you own other types of property located in another state, it is considered personal property that is movable (even if it would be hard to move) and so it can be covered by the domiciliary probate process. Ancillary probate is usually only a concern if you have a second house, vacation home, rental property, commercial real estate, or share of a family home in another state.

The Problems with Ancillary Probate

To understand why it is wise to avoid a situation requiring ancillary probate, it is helpful to review the probate process and the concept of a legal estate.

An Estate Can Be Everything or Nothing

The term estate refers to the property left behind at the time of someone's death, and it can include all types of property, including a partial ownership of something, such as

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half the ownership interest in household furniture. However, not all property an individual leaves behind automatically becomes part of an estate. A well-prepared individual might own millions in various assets and leave no estate behind.

That is because estate and probate laws exclude certain property from the estate. Property is not part of a deceased person's estate if it:

Is held in a trust. Property in a revocable or irrevocable trust is handled separately by the trustee.

Is subject to a beneficiary clause. Then it transfers immediately to the named beneficiaries upon the original owner's death. Many retirement accounts allow transfers through a beneficiary clause.

Is subject to a transfer or payable-on-death clause. Then, at the time of death, the property immediately passes to the named person. Many bank accounts can be set up with a P.O.D. clause.

Is held in joint ownership with a right of survivorship. When one of the owners dies, their interest automatically passes to the other owner or owners. (If property is owned jointly but a right of survivorship has not been established, however, then the deceased person's share of the property will become part of the estate.)

Property that is left after these items are subtracted is what forms the estate. Property in the estate is distributed according to the terms of the will if the deceased person left a will. If there is no will or the court finds the will to be invalid, then the Texas laws of intestate succession determine what happens to the property in the estate. It is important to note that any intentions of the deceased will not have legal effect unless they are properly recorded in the appropriate legal documents.

The Probate Process

Probate usually begins when a close relative of the deceased—acting through their attorney—approaches the court to request authority to administer the estate. If there is a will, it is generally the person nominated as the executor/personal representative who seeks authority to fulfill this role. Being named as the executor doesn't convey any authority. Only the probate court can grant that authority.

The court will review the will and determine whether it is valid under Texas law. Regardless of whether there is a will, the court will grant someone authority to administer the estate. Then that person needs to comply with legal requirements to notify potential creditors, legatees, and heirs, inventory all the debts and assets of the estate, manage estate property to maintain its value, and pay bills in order of legal priority. Some assets may need to be converted or sold either to pay bills or for distribution. Income and estate taxes need to be paid, and other legal priorities satisfied. When those tasks are complete, then the person administering the estate can start distributing remaining assets to heirs or legatees. The process often takes a year or more to finish.

Probate is Costly and Time Consuming

As you've probably realized, the probate process is quite an ordeal. You don't want your loved ones to incur the expense in one state and then start over again in another. If you don't plan ahead, however, that's exactly what may happen. But you have the power to prevent it.

Options for Avoiding Double Probate

The precise legal options available will depend on where the property is located and the type of property and ownership interest involved. For many people, the easiest option is to establish a revocable living trust and then have your attorney create and record a new deed in the name of the trust. With a revocable trust, you can still control the property, but because the property is nominally owned by the trust, it will not become part of an estate. Instead, it will pass to successor beneficiaries automatically when you pass away. Revocable trusts are helpful for dealing not only with out-of-state property but also with most of your other property. Your estate planning attorney can help you structure the ownership of all your property so that it passes entirely outside the probate process to your loved ones.

Another option for transferring real estate without probate is to create a new deed that transfers ownership. Many states allow property owners to hold real estate through a transfer on death deed that names a beneficiary who will automatically inherit the property at the time of your death. The transfer prevents the property from becoming part of your estate. However, it is important to verify that this type of deed is valid in the state where the property is located, as not all states recognize this transfer instrument.

You can also create a deed that shares ownership with a right of survivorship. However, sharing ownership during your lifetime can have legal and financial implications that cause complications. In addition, when the joint owner passes away, the property will be subject to probate unless other steps are taken to prevent it.

Another option that proves advantageous in some situations is to establish a business entity such as an LLC and transfer ownership of the out-of-state property to the entity.

Your ownership interests in the business entity are generally considered personal property, which can be included in your domiciliary probate process rather than requiring an ancillary process in another state. This strategy often works well for commercial property or shared family vacation homes.

Talk to The Nordhaus Firm About Establishing the Most Effective Plans to Reduce Probate Burdens

What is the best way for you personally to minimize probate hassles for your family if you own property in more than one state? It is impossible to give the right answer without knowing more about your situation. And that is why it is crucial to work with an experienced estate planning attorney rather than trying to piece together strategies on your own, one at a time. An attorney who understands the legal requirements and advantages offered by various strategies can review your options and help you make an informed choice about the approach to take. Then your attorney can ensure that your preparations cover all the bases so there are no unpleasant surprises later.

To talk to April Nordhaus about ways to protect yourself and ease the burden on your loved ones in the future, call The Nordhaus Firm today at 214-726-1450 or contact us online to schedule your free consultation.