Many people establish estate plans based on revocable living trusts to avoid probate. The popularity of these plans is based on a healthy fear of the probate process. Probate has a reputation for being long, complicated, and expensive.

Is it always necessary in Texas? And is it really that bad? While the team at The Nordhaus Firm helps families develop plans to avoid the need for probate, we also guide families through probate requirements and work to make the process manageable and efficient. We can evaluate your situation and determine whether probate is necessary for your particular circumstances, but for background purposes, here are some general guidelines to help you understand when probate is and is not required in Texas.

What is Probate?

Probate is the official process of resolving and closing an individual's estate after they pass away. This includes paying bills left behind and ensuring that the right people receive the remaining assets. The process needs to comply with legal requirements and receive approval by the court, which is why it can be long and complicated. Most people choose to work with an attorney to avoid making expensive mistakes that could delay the process or cause them to face personal liability.

An estate can consist of all types of property, so anyone may leave an estate behind even if they have very few assets. Some property, however, is not counted as part of an estate. So, an individual with millions of dollars in assets may have worked with an estate planning attorney to set up their property in a way that keeps it out of an estate so that none of it needs to go through probate. When an estate is empty or has simple assets of low value, then probate is not necessary.

The bottom line is that the value of property in the estate, not the value of total property owned at the time of death, is what determines whether probate is necessary. When there is a small amount of property in the estate and other requirements are satisfied, it may be possible to use a simplified probate process.

Property That is Not Included in an Estate

How can you tell what is and what is not part of someone's estate? An estate administration attorney can evaluate assets in your particular situation, but here are some types of assets that are generally not included in an estate for purposes of probate:

- Property in any type of trust, including revocable trusts
- Proceeds of life insurance policies
- Property co-owned with a right of survivorship
- Proceeds of accounts with beneficiary clauses

It is important to note that some property that is not in an estate for probate purposes might still be counted as part of an estate for other purposes such as estate tax liability. This is one reason it is so helpful to work with a knowledgeable attorney when planning or administering estates and trusts.

What Happens to Property That is Not Part of an Estate?

The reason that certain types of property are excluded from a deceased person's estate is that they are set up legally to transfer in other ways at the death of the owner. Property in a trust will go to successor beneficiaries (unless the estate is named as the beneficiary or there is no beneficiary.) Life insurance payouts and property in accounts will beneficiary clauses will also go directly to beneficiaries.

When someone owns property with another person and the ownership is set up with a right of survivorship, then when one co-owner passes away, the other owner takes over their share of the property and it never becomes part of the estate. However, if there is no right of survivorship attached to the co-ownership, then the share of the deceased person does become part of the estate and is distributed through the probate process.

Probate Requirements Do Not Depend on a Will

The existence or absence of a will does not have any impact on the need for probate. The first part of the probate process involves admitting the will to the court to determine its validity. However, if there is no will, the probate court will still need to oversee the process of administering the estate. The difference is that instead of determining who will be in charge and who will receive assets being set by the will, these issues will be determined according to Texas intestacy laws.

The Nordhaus Firm Can Help You Plan to Avoid Probate or Manage the Probate Process Efficiently

Whether you are in the planning stages or need to administer an estate, the experienced and compassionate team at The Nordhaus Firm is ready to provide the assistance you need. We take the time to explain your options and answer all your questions so you can make informed decisions that are best for your family. For a free consultation to discuss the ways we can help, call 214-726-1450 or contact us online today.