

# IS PROBATE ALWAYS REQUIRED IN CONNECTICUT?

*“The probate process is a legal mechanism that can enter the picture when an estate is being administered. Generally speaking, if you die while you are in direct, sole personal possession of property, it would become probate property after you die.”*



**BARRY D. HOROWITZ**  
Connecticut Estate Planning Attorney



The court would supervise the administration of the estate, and the property would not be distributed to the heirs until the estate was probated and closed by the court.

Our practice is located in the state of Connecticut. In our state, there is an exception to the rule for small estates. If the estate in question is valued at \$40,000 or less, and there is no real property, a simplified probate process could potentially be utilized.

There are some types of asset transfers that would not be subject to the probate process. Remember, probate property is property that was in your sole and direct personal possession when you passed away.

Let's look at some of the transfers that would not be subject to probate.

## ***PAYABLE ON DEATH ACCOUNTS***

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When you open up a bank account, you could opt for a payable on death account. These accounts are sometimes called transfer on death accounts. Brokerages also offer this type of account.



With a payable on death account, you name a beneficiary. Some institutions will allow you to add multiple beneficiaries. The beneficiary cannot access the funds in the account while you are living, so you have no concerns on that level.

## ***LIFE INSURANCE PROCEEDS***

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When you go to an insurance company to take out a life insurance policy on your life, you name a beneficiary, or multiple beneficiaries. The company is contractually obligated to deliver the proceeds to the beneficiary after you pass away, as long as the circumstances are in line with the agreement.

This type of transfer would not be subject to the process of probate.



## ***PROPERTY HELD IN JOINT TENANCY***

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Joint tenancy can sound like something that is a bit complicated, but in reality, it is a simple arrangement. If you own property, you could add a co-owner to the title or deed. In legal lingo, this is the condition of joint tenancy. The co-owner would be called a joint tenant.

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When one joint tenant dies, the other joint tenant would assume ownership of the entirety of the property that was held in joint tenancy. The probate



court would not be involved in the transfer.

This can sound like a turnkey arrangement, but you have to understand the fact that the person that you add to your title as a joint tenant would own half of the property immediately. As a result, the joint tenant would have to sign off on the sale if you wanted to liquidate the property. Plus, the property could be attached if the joint tenant was to run into legal or financial difficulties.

## ***REVOCABLE LIVING TRUSTS***

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If you were to use a revocable living trust as the centerpiece of your estate plan instead of a last will, you could act as the trustee while you are alive and well. In the trust agreement, you would name a successor trustee to assume the role after you pass away. You would also leave behind specific instructions with regard to the way that you want the assets to be transferred to the beneficiaries.

After your passing, the trustee would follow your instructions. Assets would be distributed to the beneficiaries in accordance with your wishes, and the probate process would not be a factor.

## ***SUMMARY***

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The probate court handles estate matters. Under many circumstances, the court will supervise when an estate is being administered.

However, there are some circumstances that would allow for asset distributions outside of probate. Property held in joint tenancy would not be subject to the process, and assets in a payable on death account would be transferred outside of probate.

Life insurance proceeds can be distributed without probate court involvement, and assets in a living trust could also be transferred free of probate.

To learn more about probate and how you may be able to avoid it, schedule a consultation with a licensed estate planning attorney.

## ***REFERENCES***

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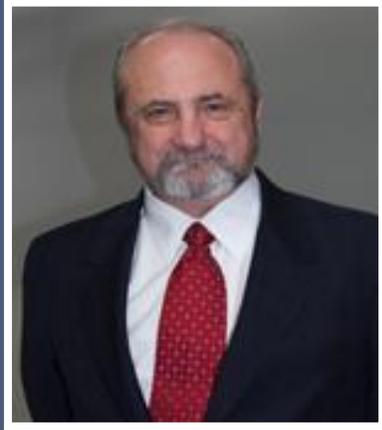
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## About the Author

### Barry D. Horowitz



Barry D. Horowitz is a founding partner in the law firm of Nirenstein, Horowitz & Associates, P.C. He received his diploma from the Loomis Chaffee School and his Bachelor of Arts from Bennington College, where he dual majored in philosophy and music.

Mr. Horowitz was awarded his Juris Doctor degree with honors from the University of Connecticut School of Law. While attending law school, Mr. Horowitz received the American Jurisprudence Award in Legal Ethics and the Nathan Burkan Award.

After graduation from law school, Mr. Horowitz continued his legal education at New York University School of Law where he received a Post Doctorate Law Degree in Taxation. He has also recently received a national achievement award.

Mr. Horowitz is admitted to practice before all the state courts in the State of Connecticut and the United States District Court. He is a member of the Hartford County Bar Association, a charter member of the American Academy of Estate Planning Attorneys, and has recently received the American Academy Award. Mr. Horowitz is also an active member of the Connecticut Bar Association where he is a member of the Elder Law Section, the Estate Planning and Probate Section, and the Professional Ethics Committee. Mr. Horowitz practices exclusively in the area of Estate Planning where he has earned a reputation as a dynamic and entertaining speaker. He also has recently published a book entitled "Guiding Those Left Behind in Connecticut."

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