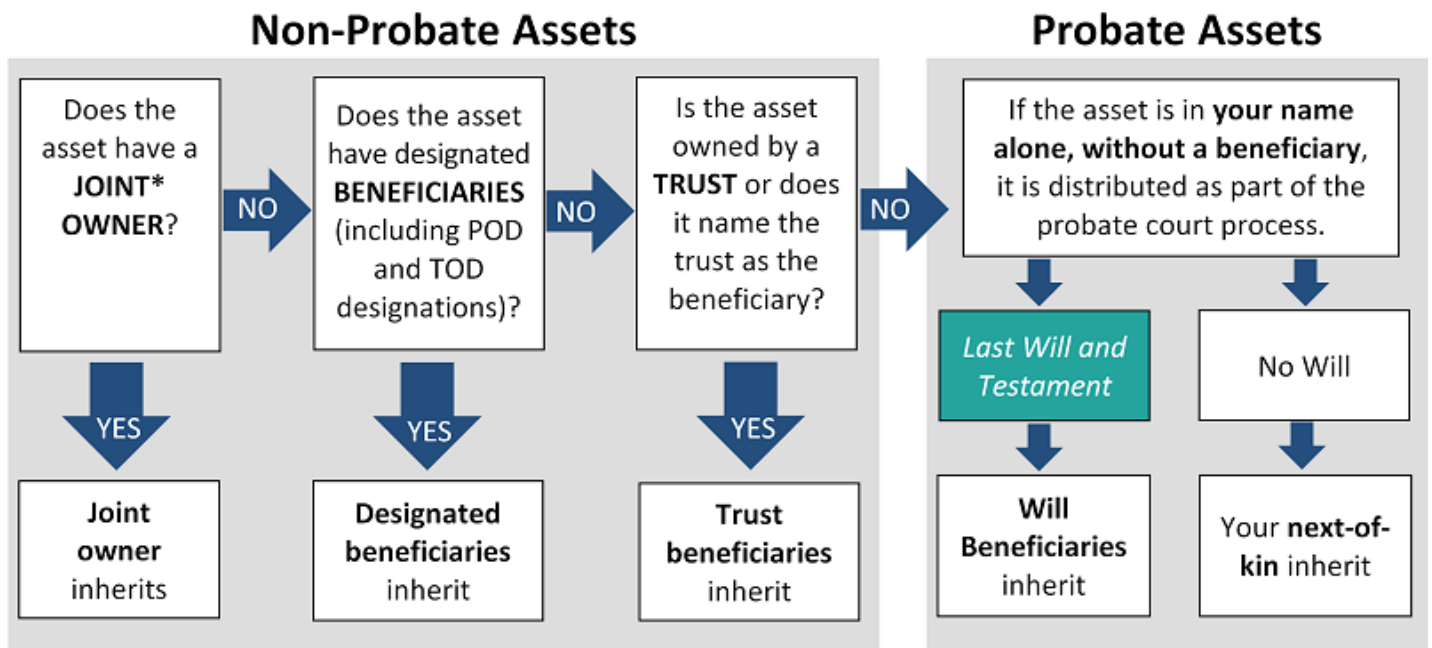


Probate vs. Non-Probate Assets

There is much confusion about the probate court process, including how much it costs, the time involved, and whether it can be avoided. A basic understanding of probate and non-probate assets is an important starting place to understand the role that probate court will play in the transfer of assets after your death.



Non-Probate Assets

Non-probate assets include assets held as joint tenants with rights of survivorship, assets with a beneficiary designation, and assets held in the name of a trust or with a trust named as the beneficiary. Any asset held as joint tenants with rights of survivorship (JTWRoS)* will pass directly to the surviving joint owner. Assets with beneficiary designations may include life insurance policies, 401(k)s, IRAs, annuities, and assets with a pay-on-death (POD) or transfer-on-death (TOD) designation. These assets will pass directly to the beneficiary or beneficiaries who were designated on the asset (for instance, on a 401(k) application or beneficiary form, on a life insurance form, or on your car title.) Assets may also have default beneficiary designations, especially 401(k)s or employer-provided life insurance. Non-probate assets can be claimed by the beneficiaries without involvement of probate court. Your Will does not control these assets.

Probate Assets

Probate assets are those assets held in your individual name only, with no beneficiary designation (or no living beneficiary), and not held as joint tenants with rights of survivorship*. These assets are required to pass through probate court and are distributed according to your Will, and if there is no Will, to your next of kin, according to state law. Examples may include real estate, stock, or a bank account titled in your name alone.

When you are deciding who will benefit from your estate and to what degree, it is important to consider both your probate and non-probate assets. Even if you have a trust, you may end up with probate assets if beneficiary designations are not updated appropriately.

* Most joint assets are held as “joint tenants with rights of survivorship.” Occasionally, joint ownership can be “tenants in common.” In that case, the deceased owner’s share will be a probate asset. We see this situation most often with real estate that was purchased before 1980, or real estate owned jointly with a non-spouse.

Note: In Ohio, there is an exception to the normal probate/non-probate rules for married couples and vehicles. Multiple vehicles, with a total value of less than \$65,000, plus one boat, can be transferred to a surviving spouse directly without going through probate court.