

If I Avoid Probate Will I Still Owe Estate Taxes and a Probate Fee?

Yes. Avoiding probate and avoiding estate taxes are two completely separate concepts.

Avoiding probate means that you do not need the probate court to clear legal title to your assets upon your death. Probate is the process of validating a Will upon a person's death and transferring assets according to the instructions of the Will. If one does not have a Will, then a similar process, known as intestate administration, is used to transfer a person's assets at death according to the distribution plan created by state laws. One can avoid probate or intestate administration by taking certain steps. Things such as revocable trust assets, joint bank accounts, jointly owned real estate, IRA's, and life insurance proceeds may all pass to the successor without probate court involvement. These assets can be titled so they do not need a Will to pass to the next owner. Yet, all of the above assets will be included in a decedent's taxable estate. A taxable estate includes everything you possess *any incidents of ownership* over at the time of your death, including assets in a revocable trust.

For example, John Thrifty is 60 years old and has been wisely saving for his retirement. It is 2013. His wife Jane recently passed away unexpectedly with a simple will leaving everything to John, and John had to go through the probate process to clear title to some of her assets. John has heard his neighbors touting the benefits of using a living trust to avoid probate. John becomes curious and goes to his family attorney for advice. John tells him he wants to avoid the expenses of probate when he dies.

John owns a beach front home worth \$2,000,000, life insurance with a death benefit of \$7,000,000, an IRA worth \$300,000, and bank savings worth \$200,000.

The lawyer advises him that he only handles simple estate planning matters and is not familiar with estate tax planning. John feels he only has \$500,000 in liquid assets, so he does not need a sophisticated plan. His lawyer advises him he doesn't need a living trust to avoid probate. He can avoid probate by retitling his assets and updating his beneficiary designations. He advises John to put the home and bank account in the joint name of John and his two children, with rights of survivorship. He also advises John to update his beneficiary designations on his life insurance and IRA to name his children instead of his dearly departed wife. The lawyer charges him for a one hour consultation. John sets up the plan as instructed and is happy with how little legal fees were involved.

A few weeks later, John is driving home and is in a fatal car accident. His two children receive all of his assets, totaling \$9.5 million, by virtue of the survivorship designation of the joint assets (home and bank account), and the beneficiary designations (his life insurance and IRA), without going to probate court.

A few months later, John's children realize how expensive it is to run their father's house, because of the high real estate taxes and insurance. They decide to sell it. They see a real estate attorney who advises them that they need a *Certificate Releasing the Estate Tax Lien* to convey clear title to the property. In order to get the certificate, they need to pay a probate fee based upon their father's taxable estate. The attorney informs John's children that they are required to file an estate tax return listing all of the jointly owned assets as part of their father's *taxable estate*, and then file the return with the probate court to determine the probate fee. They must also file the tax return with the Connecticut Department of Revenue Service and pay the estate taxes due. The attorney prepares the Connecticut estate tax return and informs the children that *John's taxable estate is \$9.5 million dollars, causing a CT estate tax owed of \$33,215*. The attorney tells them that the estate tax liability creates an automatic lien on the real estate and will accrue penalty charges if not paid within six months of their father's death.

His children are disappointed to learn *John could have avoided owing any estate taxes* by some simple planning techniques, such as setting up an irrevocable trust to hold his life insurance policy.

If you are unsure of your potential estate tax liability, consult with an experienced tax planning attorney for a confidential assessment of your assets and goals and learn if avoiding probate is right for you (and how to do it without owing estate taxes).

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