

Probate Avoidance: Non-Testamentary Planning Choices

Paul Premack, CELA



The Premack Law Office
8031 Broadway
San Antonio, TX 78209
PAUL@PREMACK.COM
[210-826-1122](tel:210-826-1122)

Is probate a dirty word?

- Clients think the answer is “yes”
- We have planning options to offer
- Sometimes we aren’t hired until planning options are foreclosed
 - Dependent Probate and Determination of Heirship
 - Independent Probate
 - Muniment of Title
 - Small Estate Affidavit
 - Affidavit of Heirship

Non-Testamentary Planning Tools

- Survivorship
- POD
- Beneficiary Designations
- Living Trust
- Community Property Survivorship Agreement
- Lady Bird Deed / Transfer on Death Deed / Standard Life Estate Deed
- Vehicle Registrations
- Outright Gifts

Financial Accounts

No Presumption of Survivorship

- Other states infer survivorship
- Texas has no inference
- Must be explicit
- Right words are key

Does intent match the paperwork?

- Banks & Brokers may not explain
- They like to avoid liability, have clear road ahead
- Account agreement beats the Will

Dickerson

- “Joint Tenants with Right of Survivorship” does create a survivorship right

Stauffer

- “upon death, balance may be withdrawn by survivor” does not create a survivorship right
- “joint tenants” is not adequate to create survivorship

Martinez

- “Pay to survivor after one of us dies” does not create a survivorship right

McNeme

- Correct language can be incorporated by reference into signature card
- Initials on checkbox can indicate choice

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: Probate Avoidance - Non-Testamentary Planning Choices

Also available as part of the eCourse

[Probate Avoidance: Non-Testamentary Planning Choice](#)

First appeared as part of the conference materials for the
22nd Annual Estate Planning, Guardianship and Elder Law Conference session
"Probate Avoidance - Non-Testamentary Planning Choice"