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Why Avoid Probate

If you can avoid probate it's always good idea. You've probably heard that it's smart to avoid probate court, but never really knew why. The two main reasons are:

- 1) It's time consuming, usually tying up assets for months or even years.
- 2) It's expensive. Attorney and court fees can take 3 to 10% of an estate's value.

The Process

The majority of what happens in the probate process is for the most part clerical. More often than not cases will involve no conflict or no contesting parties and none of the usual reasons for court proceedings.

Probate attorneys, or their staff, fill out and file a small mountain of forms and keep track of filing deadlines and other procedural technicalities. Attorneys may need to make a few routine court appearances, but more often the procedure can for the most part be handled by mail.

Fees

Your attorney and your Personal Representative will be entitled to fees from your estate.

Personal Representative fees. The Personal Representative will commonly waive fees, especially if he or she inherits a substantial amount of the estate assets.

Attorneys' fees. In Michigan, probate fees are what the court approves as "reasonable." They can be calculated from the number of hours spent by the attorney times his or her hourly rate. They can be based on a percentage of the estate subject to probate. Or they can be an agreed upon flat rate.

Other costs. In addition, there are court costs (filing fees, inventory fee, etc.), appraiser's fees, and sometimes other expenses.

Bonus Reasons

Other reasons people want to avoid the probate process are that:

- It is a public process – anyone can find out what you had, who got it, and how.
- It is open to contest – anyone can show up and challenge the will or distribution.
- It often causes family strife.