



Chicago Estate Planning Council

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What property is subject to probate?



The assets subject to probate are those owned in the person's own name, his or her interest in a tenancy in common (see FAQ titled "What is Tenancy in Common?" below) or assets payable to the estate at death (these assets are referred to as "probate assets"). Only probate assets pass pursuant to a will or, if there is no will, under the rules of intestate succession. (See FAQ titled "What is intestacy?" below.) A will does not dispose of property owned as joint tenant with right of survivorship or tenant by the entireties, unless the person is the surviving joint tenant. A will does not dispose of property subject to a beneficiary designation (such as a typical IRA, retirement plan or insurance policy), a Payable on Death (POD) designation, a Transfer on Death (TOD) designation or a Transfer on Death Instrument for residential real estate, unless the beneficiary designation names the owner's estate or defaults to the owner's estate when the other designated beneficiaries fail to survive the owner. Property owned by a trust is disposed of according to the terms of the trust, not by a will.

FAQ'S DISCLAIMER

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