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Wills, Trusts, and Estates for  
Legal Assistants

Sixth Edition



## Part Four

# NONPROBATE TRANSFERS

## Chapter 13

# REASONS PEOPLE USE NONPROBATE TRANSFERS



# Chapter Objectives

- Discuss the common reasons for making nonprobate transfers
- Explain the consequences of probate delay
- Identify expenses associated with estate administration
- Define and distinguish the probate estate and the taxable estate
- Analyze how nonprobate transfers can impact the claims of creditors

# Reasons for Using Nonprobate Transfers

- Provide non-estate planning benefits
- Accelerate asset distribution
- Reduce estate planning and administration expenses
- Enhance confidentiality
- Minimize taxes
- Retain flexibility
- Change estate plan with less difficulty
- Protect assets from creditors
- Isolate estate plan from challenge
- Increase understandability

# Consequences of Probate Delay

- Heirs and beneficiaries are unable to use property
- Property suffers from a gap in management
- Emotional impact of lengthy administration is prolonged



# Typical Expenses of Estate Planning and Administration

- Attorney's fees
- Personal representative's fees
- Court costs

# Probate Estate and Taxable Estate

- Some nonprobate transfer techniques have the potential of saving the decedent a considerable amount of income, gift, and estate taxes. It is important to note that many nonprobate transfers may have no tax effect or an unanticipated effect and thus must be used with caution in estates large or complex enough to make tax planning an issue.
- The **taxable estate**—the property that is subject to federal or state death taxes--may include many assets that are not part of the decedent's **probate estate**.
- Be careful when you use the terms “probate estate” and “taxable estate”; do not use them interchangeably.



# Nonprobate Transfers

- Intestate succession is inflexible; property passes without regard to the decedent's intent.
- A will provides many opportunities for the testator to control the transfer of property, but there are limits on what a testator can do in the will and the disposition is not effective until the testator dies and the will is properly probated.
- Many nonprobate transfers allow their users to exert greater control and individualization over the use and distribution of assets.
- In addition, nonprobate transfers may be able to provide the testator with immediate benefits such as tax savings and disability protection.





# Practice Tip

- When planning an estate for which gift or estate taxes might be due, all past and present nonprobate transfers should be documented. This will expedite calculation of the tax.

