PROTECTING FAMILIES - PRESERVING LEGACIES

How to Protect Your Home and Assets from Probate in Ohio

A Complete Guide for Ohio Homeowners & Families

2026 Edition — Ohio Revised Code Compliant

Discover legal strategies to transfer your home, savings, and assets to your loved ones — quickly, privately, and without costly court involvement.

An Informational Guide for Ohio Residents | Heritage Law LLC

Table of Contents

This guide references Ohio Revised Code (ORC) provisions current as of 2026. Laws are subject to change. Always verify current statutory text before taking legal action.

Chapter 1
Understanding Probate in Ohio

What Is Probate?

Probate is the court-supervised legal process of validating a deceased person's will, paying debts, and distributing assets to heirs. In Ohio, probate is handled by the Probate Division of the Court of Common Pleas, with one probate court in each of Ohio's 88 counties.

When Is Probate Required in Ohio?

Probate is required when a deceased person owned assets:

- Titled solely in their own name with no beneficiary designation
- With no joint owner with right of survivorship
- Not held in a trust
- Real estate not covered by a Transfer-on-Death Affidavit or survivorship deed

What Does NOT Go Through Probate

- Assets with named beneficiaries (life insurance, IRAs, 401(k)s)
- Jointly owned property with right of survivorship
- Assets in a revocable living trust
- Accounts with POD (Payable-on-Death) designations
- Real estate with a recorded TOD Affidavit or survivorship deed
- Assets passing to a surviving spouse under spousal rights

Probate vs. Non-Probate Assets

Asset Type	Goes Through Probate?
Home titled in your name alone	**YES**
Home with survivorship deed	**NO**
Home with TOD Affidavit	**NO**
Home in a living trust	**NO**
Bank account (no POD)	**YES**
Bank account with POD designation	**NO**
IRA / 401(k) with beneficiary	**NO**
IRA / 401(k) naming "Estate"	**YES**
Life insurance with beneficiary	**NO**
Vehicle (no TOD)	**YES**
Vehicle with TOD designation	**NO**

Timeline & Costs

Ohio probate typically takes 6 to 18 months. Costs include:

- Court filing fees (vary by county)
- Attorney fees: often 2–4% of the estate value (ie: Cuyahoga County Local Rule 71.1)
- Executor fees: up to 4% of personal property plus 1% of real estate (ORC §2113.35)
- Appraiser fees, publication costs, and bond premiums

Privacy Concern

Probate is **PUBLIC RECORD**. Court filings, asset values, and beneficiary information are available to anyone who searches.

Tax Note

Ohio repealed its state estate tax effective January 1, 2013. There is no Ohio inheritance tax. Federal estate tax applies only to estates above approximately $13.99 million (2025 exemption, indexed for inflation).

> **NOTE:**
>
> Ohio has 88 counties — each with its own Probate Court, filing fees, and local rules. What applies in Cuyahoga County may differ in Franklin or Hamilton County. Always verify local requirements.

Chapter 2
Ohio's Small Estate Shortcuts

For smaller estates, Ohio offers streamlined alternatives to full probate under ORC §2113.03.

Release from Administration

- General estates valued at $35,000 or less: eligible for Release from Administration
- Estates where surviving spouse inherits everything: up to $100,000
- Summary Release from Administration available for estates $40,000–$45,000 with a surviving spouse

Important: Only *probate* assets count toward these thresholds. Jointly held assets, TOD accounts, and beneficiary-designated accounts are excluded from the calculation.

Small Estate Options in Ohio

Option	Threshold	Who Qualifies
Release from Administration	$35,000 or less	Any heir or creditor
Release (Surviving Spouse)	$100,000 or less	Surviving spouse only
Summary Release	$40,000–$45,000	Estates with surviving spouse

TIP:

Even if your estate qualifies for Release from Administration, planning ahead with TOD affidavits, beneficiary designations, or a revocable living trust can make the process even smoother and faster for your family.

Chapter 3
Transfer-on-Death Designation Affidavits (ORC §5302.22)

What Is a TOD Designation Affidavit?

Ohio's Transfer-on-Death (TOD) Designation Affidavit is a legal document that allows a real estate owner to name one or more beneficiaries who will automatically receive the property upon the owner's death — without going through probate. Ohio uses an affidavit (not a deed) for this purpose, which is unique among states and governed by ORC §5302.22.

Key Features

- The owner retains **FULL control** during their lifetime — they can sell, mortgage, lease, or revoke the affidavit at any time
- The named beneficiary has **NO legal interest** in the property until the owner's death
- At death, the beneficiary records the original owner's death certificate and an Affidavit of Confirmation with the county recorder
- Recording fee: approximately $30

Requirements to Create a TOD Affidavit

- Must be notarized (no witnesses required)
- Must include the full legal property description
- Must name specific beneficiaries (individuals, trusts, or charities)
- Can name contingent (backup) beneficiaries
- Must be recorded with the county recorder's office in the county where the property is located

Other Key Rules

- Does NOT trigger a property tax reassessment during the owner's lifetime

- Does NOT trigger Ohio conveyance fees or transfer taxes
- Beneficiary receives a stepped-up income tax basis to fair market value at date of death
- A will CANNOT override or revoke a properly recorded TOD Affidavit
- To revoke: record a new affidavit revoking the prior one, or record a new TOD Affidavit naming different beneficiaries

5 Steps to Create a TOD Affidavit in Ohio

1. Obtain the full legal description of your property (found on your deed or county auditor's website)
2. Draft the TOD Designation Affidavit including your name, property description, and named beneficiaries
3. Sign the affidavit before a notary public
4. Record the original signed, notarized affidavit with your county recorder's office (fee: ~$30)
5. Store a copy in a safe place and tell your beneficiaries that it exists

> **WARNING:**
>
> A TOD Affidavit only covers real estate. You will need additional strategies — such as POD designations and beneficiary updates — for bank accounts, retirement accounts, vehicles, and other assets.

TOD Affidavit — Pros & Cons

Pros	Cons
Inexpensive (~$30 filing fee)	Only covers real estate
Owner retains full control	Does not protect from Medicaid estate recovery
Simple to create and revoke	Beneficiary disputes still possible
No probate for the property	Will not help with incapacity planning
Stepped-up tax basis for beneficiary	No creditor protection
Can name contingent beneficiaries	Must be re-recorded to change beneficiaries

Chapter 4
Survivorship Deeds (ORC §5302.17)

What Is a Survivorship Deed?

A survivorship deed (also called a joint tenancy with right of survivorship deed) conveys real estate to two or more people so that when one owner dies, their share automatically passes to the surviving owner(s) — without probate.

Governed by ORC §5302.17, the deed must use specific statutory language: a conveyance to grantees *"for their joint lives, remainder to the survivor of them."*

How It Works

At the death of one co-owner:

1. Surviving owner obtains a certified copy of the death certificate
2. Surviving owner files an Affidavit of Survivorship with the county auditor and county recorder
3. Property is now vested solely in the surviving owner's name

Common Uses

- Married couples who own their home together
- Parent and adult child sharing property
- Business partners who own real estate together

Key Distinction — Tenants in Common vs. Survivorship

- **Tenants in common:** each owner's share passes through their estate at death (subject to probate)
- **Survivorship deed:** surviving co-owner automatically takes full title — no probate

WARNING:

Once a survivorship deed is created, all owners must agree to sell or refinance the property. A co-owner can petition a court to partition the property. This can create complications if co-owner relationships change — plan carefully before adding someone to your deed.

Comparing Real Estate Probate-Avoidance Strategies

Feature	TOD Affidavit	Survivorship Deed	Living Trust
Requires co-owner	No	Yes	No
Owner retains sole control	Yes	Shared	Yes (as trustee)
Avoids probate	Yes	Yes	Yes
Covers incapacity	No	No	Yes
Can name contingent beneficiaries	Yes	No	Yes
Costs	~$30	Attorney + recording	$1,500–$3,500
Revocable	Yes	Requires all owners	Yes
Creditor protection	No	No	No (revocable)

Chapter 5
Revocable Living Trusts

What Is a Revocable Living Trust?

A revocable living trust is a separate legal entity you create during your lifetime. You transfer assets into it, serve as your own trustee during life, maintain full control, and designate a successor trustee to manage and distribute assets after your death — all without court involvement.

Governed by the Ohio Trust Code (ORC Chapter 5801 et seq.), a revocable living trust is the most comprehensive probate-avoidance tool available to Ohio residents.

- **Why "Living"?** It is created and takes effect during your lifetime.
- **Why "Revocable"?** You can change, amend, or completely revoke it at any time while you are alive and competent.

Critical Rule — The Trust Must Be FUNDED

"An unfunded trust is merely a legal document that does nothing." You must transfer or "fund" your assets into the trust for it to work. An asset left outside the trust at your death will still go through probate.

What to Fund

- **Real estate:** execute a new deed transferring property to the trust (e.g., "John Smith, Trustee of the John Smith Revocable Living Trust dated January 1, 2026")
- **Bank accounts:** retitle in trust name or name trust as POD beneficiary
- **Investment/brokerage accounts:** retitle or name trust as TOD beneficiary
- **Business interests:** transfer ownership per operating agreement or articles
- **Personal property:** assign via a schedule or personal property assignment

Ohio-Specific Trust Rules

- No trust registration required during the grantor's lifetime (ORC §5801)
- Trustee must act in good faith and in beneficiaries' best interests (ORC §5808.01)
- Spendthrift provisions are enforceable in Ohio (ORC §5805.02)

- Ohio's 1,000-year rule: trusts created after March 27, 2012 may last up to 1,000 years (ORC §5801.09)

Pour-Over Will

Anyone with a living trust should also have a "pour-over will" — a simple will that captures any assets left outside the trust at death and "pours" them into the trust. Assets passing through the pour-over will still go through probate, so the goal is to keep them minimal by keeping the trust fully funded.

Benefits Checklist

- ✓ Privacy — trust administration is not a public record
- ✓ Speed — no court process; successor trustee can act immediately
- ✓ No court fees or publication costs
- ✓ Incapacity protection — successor trustee manages assets if you become incapacitated
- ✓ Multi-state property — avoids ancillary probate in other states where you own real estate
- ✓ Full control during lifetime — you remain trustee until death or incapacity
- ✓ Flexible distribution — you can set conditions and timelines for distributions to beneficiaries

Cost Estimate

- **Attorney-drafted Ohio trust package:** $1,500–$3,500 (includes trust, pour-over will, healthcare directive, POA)
- **Online/DIY platforms:** $100–$300 (not Ohio-tailored; not recommended for complex estates)

Revocable vs. Irrevocable Trust

Feature	Revocable Trust	Irrevocable Trust
Can be changed	Yes	Generally no
You control assets	Yes	No
Avoids probate	Yes	Yes
Protects from creditors	No	Yes (after transfer)
Counts for Medicaid	Yes	No (after 5-year lookback)
Estate tax planning	Limited	Yes
Typical use	Probate avoidance, incapacity	Asset protection, Medicaid, tax

7 Steps to Create and Fund an Ohio Living Trust

1. Work with an Ohio estate planning attorney to draft your trust document
2. Name yourself as initial trustee and designate a successor trustee
3. Sign the trust in front of a notary public
4. Execute a new deed transferring your real estate into the trust name — record with county recorder
5. Retitle bank accounts or add trust as POD beneficiary
6. Update investment and brokerage accounts with trust as TOD or retitle
7. Execute a pour-over will to capture any assets inadvertently left outside the trust

TIP:

For Cuyahoga, Franklin, Hamilton, or Summit County families with real estate and significant savings, a revocable living trust is often the most comprehensive probate-avoidance tool available.

Chapter 6
Beneficiary Designations
Life Insurance, IRAs & Retirement Accounts

The Override Rule

Beneficiary designations **OVERRIDE your will entirely**. No matter what your will says, assets with a named beneficiary pass directly to that beneficiary outside of probate.

Accounts That Use Beneficiary Designations

- Life insurance policies
- Individual Retirement Accounts (IRAs)
- 401(k), 403(b), and 457 plans
- Annuities
- Health Savings Accounts (HSAs)
- Pension and profit-sharing plans

Federal Law Note (ERISA)

For 401(k) and other qualified employer plans, federal law (ERISA) requires that a married participant name their spouse as primary beneficiary unless the spouse signs a written waiver consenting to a different beneficiary.

Never Name Your "Estate" as Beneficiary

Naming your estate as beneficiary sends the asset through probate, eliminates favorable IRA "stretch" distribution options for beneficiaries, and may expose the asset to creditors.

Common Mistakes to Avoid

- Not updating designations after divorce (ex-spouses may inherit in some cases)
- Not updating after a beneficiary predeceases you
- Having no contingent (backup) beneficiary

- Naming minor children without a trust or guardian designation
- Naming a person with disabilities without a special needs trust

Action Checklist — Beneficiary Designation Review

- ☐ Locate all life insurance policies and confirm beneficiary forms
- ☐ Review IRA beneficiary designations with your financial institution
- ☐ Review 401(k)/403(b) beneficiary designations with your employer's HR
- ☐ Confirm contingent beneficiaries are named on every account
- ☐ No account lists "Estate" as beneficiary
- ☐ Review after every major life event (marriage, divorce, birth, death)

Chapter 7
Payable-on-Death (POD) Bank Accounts & TOD Investment Accounts

POD Bank Accounts

Any Ohio bank account — checking, savings, money market, or certificate of deposit — can carry a Payable-on-Death (POD) designation. The named beneficiary presents the account holder's death certificate to the bank and receives the funds directly, with no probate required.

Setting up a POD designation is **free** — simply contact your bank or credit union and complete a short beneficiary form.

Multiple POD Beneficiaries

You may name multiple POD beneficiaries. The account balance is divided equally unless you specify different percentages.

TOD Investment/Brokerage Accounts

Brokerage and investment accounts use a Transfer-on-Death (TOD) designation that works identically to POD designations for bank accounts. Named beneficiaries receive the assets after presenting a death certificate.

> **NOTE:**
>
> POD and TOD designations do not protect accounts from your own creditors during your lifetime. They only control who receives the funds after your death.

Chapter 8
Vehicle Transfer on Death in Ohio

Ohio allows vehicle owners to designate a TOD beneficiary on their vehicle title. The beneficiary receives the vehicle directly — without probate — by presenting the original owner's death certificate to the county title office and completing a retitling form.

How to Add a TOD Beneficiary to Your Vehicle

1. Visit your county title office (Bureau of Motor Vehicles)
2. Bring your current vehicle title and photo ID
3. Complete the TOD beneficiary designation form
4. Receive an updated title showing the TOD beneficiary

During Your Lifetime

The TOD designation has no effect. You retain full ownership — you can sell, trade, or re-title the vehicle at any time without the beneficiary's consent.

> **TIP:**
>
> Adding a TOD beneficiary to your vehicle title costs nothing and takes only minutes at your county BMV office. It eliminates a common source of probate assets that many families overlook.

Chapter 9
Ohio Estate & Tax Considerations

State Estate Tax

Ohio **REPEALED** its state estate tax effective January 1, 2013 (formerly governed by ORC Chapter 5731). Ohio residents pay **NO state estate tax** regardless of estate size.

Ohio Inheritance Tax

Ohio has **NO inheritance tax**. Beneficiaries in Ohio do not pay state taxes on assets they inherit.

Federal Estate Tax

The federal estate tax applies only to estates exceeding approximately $13.99 million per individual (2025 exemption, indexed for inflation). Married couples can effectively shelter up to approximately $27.98 million using portability of the unused exemption.

Capital Gains — Stepped-Up Basis

Assets inherited at death generally receive a "stepped-up" income tax basis to their fair market value on the date of death. This means inherited assets can often be sold shortly after death with little or no capital gains tax. Assets transferred via TOD Affidavit, survivorship deed, beneficiary designation, and living trust distributions at death generally receive this step-up.

Medicaid / Long-Term Care Planning

Ohio's Medicaid Estate Recovery Program (MERP) can recover costs from a deceased Medicaid recipient's probate estate. Using a revocable living trust does **NOT** protect assets from Medicaid estate recovery in Ohio because the state can now seek recovery from non-probate assets as well (Ohio adopted expanded estate recovery). Irrevocable trusts with a 5-year look-back period may offer protection — consult an Ohio elder law attorney.

> **TIP:**
>
> Ohio's 2013 repeal of the state estate tax removed a major burden for Ohio families. Your planning should be on avoiding probate delay, cost, and public exposure.

Chapter 10
Building Your Probate Protection Plan

No single strategy covers every asset. Use this matrix to match each asset type to the best protection strategy.

Asset Protection Strategy Matrix

Asset Type	Recommended Strategy
Home — sole owner	TOD Designation Affidavit or Living Trust
Home — married couple	Survivorship Deed or Living Trust
Home — leaving to multiple children	Living Trust (most flexible)
Bank accounts	POD designation or retitle in Trust
Investment/brokerage accounts	TOD designation or retitle in Trust
IRA / Roth IRA	Beneficiary designation (primary + contingent)
401(k) / 403(b)	Beneficiary designation (spouse must consent to non-spouse)
Life insurance	Beneficiary designation (primary + contingent)
Vehicles	TOD title designation
Business ownership interest	Living Trust or Buy-Sell Agreement
Out-of-state real estate	Living Trust (avoids ancillary probate)
Valuable personal property	Living Trust or written memorandum

10-Item Estate Planning Checklist

- ☐ 1. List all assets and confirm how each is titled
- ☐ 2. Review and update all beneficiary designations (insurance, IRAs, 401(k))
- ☐ 3. Create or update your Last Will & Testament
- ☐ 4. Consider a TOD Designation Affidavit for solely-owned real estate

- ☐ 5. Convert jointly-owned real estate to a Survivorship Deed (if appropriate)
- ☐ 6. Create a Revocable Living Trust if you have significant assets or complex family situation
- ☐ 7. Add POD designations to all bank and savings accounts
- ☐ 8. Add TOD designations to all brokerage accounts
- ☐ 9. Create a Durable Power of Attorney and Healthcare Power of Attorney
- ☐ 10. Tell your successor trustee, executor, and family where your documents are stored

> **NOTE — When to Call an Ohio Attorney:**
>
> If your estate includes real estate, a business interest, a blended family, a child with special needs, out-of-state property, or assets exceeding $500,000 — a licensed Ohio estate planning attorney is strongly recommended.

Chapter 11
Frequently Asked Questions

Q1: Does a will avoid probate in Ohio?

No. A will must go through Ohio's probate process to be validated and administered. A will tells the court how you want your assets distributed — but it does not avoid probate. Only beneficiary designations, joint ownership, TOD affidavits, and living trusts avoid probate.

Q2: Can I create a TOD Affidavit myself without an attorney?

Yes, Ohio law permits a property owner to draft and record their own TOD Designation Affidavit. However, attorney review is strongly recommended to ensure the property description is accurate, the affidavit complies with ORC §5302.22, and no unintended consequences arise.

Q3: What happens if I do no estate planning?

Your assets will pass through full Ohio probate under Ohio's intestate succession laws (ORC §2105.06). The state determines who inherits — which may not match your wishes. The process can take 12–18 months or longer and be costly for your family.

Q4: How long does Ohio probate take?

Simple estates may close in 6 months. Complex estates with real estate, multiple heirs, creditor claims, or disputes routinely take 12–18 months or more. A will contest can extend probate for years.

Q5: Does a living trust protect my assets from creditors?

A revocable living trust does **NOT** protect assets from your creditors during your lifetime because you retain control. An irrevocable trust — once properly funded and past the look-back period — may provide creditor protection. Consult an Ohio attorney.

Q6: Can I change or revoke my TOD Affidavit?

Yes. You may revoke or change a TOD Designation Affidavit at any time before your death by recording a new affidavit with the county recorder. Your most recently recorded affidavit controls.

Q7: What is a pour-over will and do I need one?

A pour-over will is a simple will that directs any assets outside your trust at death to "pour over" into the trust. Even with a well-funded living trust, a pour-over will is essential to capture any assets inadvertently left out of the trust.

Q8: Does Medicaid count my living trust assets?

Yes. For Medicaid eligibility and Ohio's Estate Recovery Program (MERP), assets in a revocable living trust are counted as your own because you retain control. Only properly structured irrevocable trusts — funded more than 5 years before applying for Medicaid — may be excluded. Consult an Ohio elder law attorney for Medicaid planning.

Q9: Do ALL my assets need to be in my living trust?

No. Use a combination of strategies: put real estate in the trust, use beneficiary designations and POD/TOD for accounts, and use a pour-over will as a safety net. Your goal is to ensure that no asset passes through probate.

Q10: What if a named beneficiary dies before I do?

If a primary beneficiary predeceases you and no contingent beneficiary is named, the asset may pass through your estate — and into probate. Always name contingent (secondary) beneficiaries on every account, policy, and TOD affidavit.

Chapter 12
Ohio County Resources & Next Steps

Ohio's 88 County Probate Courts

Each county has its own Probate Court with specific filing requirements, fees, and local rules.

Major Ohio County Probate Courts

County	City	Court Website
Cuyahoga	Cleveland	probate.cuyahogacounty.us
Franklin	Columbus	fcmcprobate.com
Hamilton	Cincinnati	probatect.org
Summit	Akron	cpcsummit.com
Montgomery	Dayton	mcohio.org/probate
Lucas	Toledo	co.lucas.oh.us/probate
Stark	Canton	starkcountyohio.gov/probate
Butler	Hamilton	butlercountyohio.org
Lorain	Elyria	probate.lorainclerk.com
Lake	Painesville	lakecountyohio.gov

Your Next Steps — Action Plan

1. List all your assets and confirm exactly how each is titled
2. Pull out all life insurance policies and review beneficiary forms
3. Contact your bank, broker, and HR department to review POD/TOD/beneficiary designations
4. Consult an Ohio estate planning attorney to discuss your specific situation
5. For solely-owned real estate: create and record a TOD Designation Affidavit
6. For jointly-owned real estate with spouse: consider converting to a Survivorship Deed

7. Create or update your Last Will & Testament and/or Revocable Living Trust

8. Create a Durable Power of Attorney and Healthcare Power of Attorney
9. Sign an Advance Directive / Living Will
10. Tell your family where your documents are stored and who to contact

TIP:

As a resident in Cuyahoga County, your local Probate Court is the Cuyahoga County Probate Court in Cleveland. Local rules, fee schedules, and forms are available at probate.cuyahogacounty.us.

LEGAL DISCLAIMER: This booklet is for informational and educational purposes only. It does not constitute legal advice and does not create an attorney-client relationship. Ohio estate planning laws are complex and fact-specific. The legal strategies described herein may not be appropriate for every individual situation. Always consult a licensed Ohio attorney before taking legal action or making decisions based on this guide. Laws referenced reflect Ohio Revised Code provisions as of 2026 and are subject to change.

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