

FAQ: What is included in a decedent's estate?

Initially, it is important for the Personal Representative or Trustee to gather all information about the decedent's assets. These assets include cash, stocks, bonds, mutual funds, life insurance, retirement accounts, tangible personal property (e.g., art, jewelry and vehicles), partnerships and real property. This information is needed for several reasons, most notably probate and estate tax purposes.

(a) Estate taxes: All assets in which the decedent had an interest will be valued to determine the value of a decedent's estate to see if an estate tax is due. These assets include all property owned by the decedent, whether the property is owned in the decedent's name, jointly with others, or in a revocable Trust. There are exceptions, however, for property in certain irrevocable Trusts.

(b) Probate: Different rules apply to see if assets are "subject to" probate. In general, assets that pass under one's Will are subject to probate; assets that pass to beneficiaries in other ways may avoid the probate process.

Assets that avoid probate include:

- (i) life insurance proceeds and amounts in retirement accounts, assuming there are valid beneficiary designations on file;
- (ii) assets owned by a Trust (whether revocable or irrevocable);
- (iii) jointly owned assets (although the assets will be subject to probate upon the second owner's death);
and
- (iv) assets with a transfer on death ("TOD") or payable on death ("POD") designation. It is important to remember that an asset that avoids probate may still be subject to estate taxes.