

## A Basic Guide to Probate in Florida

A probate attorney assists a client with the transfer of a loved one's assets after his or her death. The assets owned by a person at the time of his or her death are known as the probate estate. If you lose a loved one, it is important that you or someone related to your loved one talk to a probate attorney. A probate attorney will be able to determine if your loved one's estate requires probate administration and will be able to explain the probate process. If probate administration is required, the personal representative, working with a probate attorney, will administer the probate estate. This will ensure that your loved one's assets are transferred in accordance with the law and your loved one's wishes.

### Common legal terms associated with probate law:

Here are some common legal terms used when lawyers talk about probate:

- **Probate Administration** - This is the act of going through the legal process required by Florida law to pay a decedent's creditors, and convey a decedent's assets in accordance with the law and the decedent's wishes.
- **Assets** – The items owned by the decedent at the time of death. Assets can include bank accounts, investments, houses, property, cars, boats, businesses, legal claims, and other items.
- **Creditors** - People or businesses to whom the decedent owed money at the time of death.
- **Decedent** - The person who passed away. Usually probate cases are named In re: The Estate of or In the Estate of and then the decedent's name.
- **Estate** - The legal term that refers to the all of the assets owned by a decedent at the time of death.
- **Intestate** - This is when a person dies without a will. Intestate estates are also probated and the assets are distributed according to the schedule set out in the Florida Statutes.
- **Testate** – If the decedent had a unrevoked will at the time of death, the decedent is considered to be testate.

- **Personal Representative** - The person who is in charge of the estate's assets and administration. In Florida, this person is called the "personal representative," but you may have heard this person referred to as an "executor" in other states. The personal representative is usually named in the decedent's will. If there is no will or if the named personal representative is unable to serve, the personal representative is determined by statute.
- **Beneficiary** – a person who is entitled to receive certain assets from the probate estate. The term beneficiary can include people named in a will in a testate estate or an heir of the decedent in an intestate estate.
- **Petitioner** – In probate estates that qualify for summary administration, the petitioner is the person who files the initial documents with the court requesting that the court distribute the decedent's assets according to his or her will, or according to statute in an intestate estate.

### What is probate?

Probate is the legal process required to pass title of assets to those entitled to receive it after the owner of the property dies, which includes paying creditors or distributing the assets to beneficiaries. Assets such as real property (land), assets that require a title (such as a car), and other specific assets must pass through probate in order to be sold, conveyed or otherwise transferred. An easy way to think about this is: Anything owned by the decedent where a third party, like the government or a brokerage, keeps track of *who* owns *what* will likely need to go through probate in order to be transferred according to the decedent's wishes. Additionally, any debts owed by the decedent at the time of death will need to be paid out of the decedent's assets before any distributions to the beneficiaries are made in the probate case. There are a few exceptions to this, and those exceptions may require additional documents to be filed in the administration. A probate attorney will be able to tell you what needs to be done in the probate administration.

### Who needs probate?

If a person owns assets at the time of their death, probate is usually necessary to distribute those assets in accordance with the law. If you have been named in a will as a

beneficiary or a personal representative, you should speak to an attorney as soon as possible in order to find out what the next steps are and what rights you may have. Usually, the person named as the personal representative will choose the probate attorney to administer the decedent's estate. However, if you are a beneficiary in a will or relative of the decedent, it may also be important to talk to a probate attorney to make sure that any assets that the decedent wanted to be transferred to you are in fact transferred in accordance with the decedent's wishes.

**Even if someone has a will, a probate case must be initiated in order to properly transfer the assets according to the decedent's wishes as set out in the will.**

What type of probate administration do I need for my loved one's estate?

In Florida, there are two types of probate administrations based upon the value of the assets in the probate estate. In estates with an asset value of less than \$75,000, or if it has been more than 2 years since the death of the decedent, a summary probate administration is appropriate. A summary administration is an abbreviated administration with less work required to get to the point where the court transfers the assets of the estate to the beneficiaries or heirs. There is no requirement for the petitioner in a summary administration to be represented by an attorney. However, due to the complexity of probate law, it is recommended to have an attorney represent you in a summary administration process. Typically, attorney's fees are less expensive in a summary administration. In a summary administration, the assets are directly transferred to the beneficiaries or heirs through the order of summary administration.

In estates with an asset value over \$75,000, and when the date of death is within two years from the beginning of the administration, a formal administration is necessary. A formal administration is a longer process, which is required due to the higher value of the assets of the estate. A personal representative is required to be appointed in a formal administration and is required to be represented by an attorney. A formal administration allows for the personal representative to take possession of estate property, sell property, pursue claims owned by the estate, collect money, and take other actions that may be important to the beneficiaries and creditors of the estate. A Florida probate attorney will be able to advise you on whether the estate qualifies for formal or summary administration.

### Is a probate attorney required?

Most of the time a probate attorney is required. Sometimes if a decedent does not have a lot of assets, the decedent's estate will qualify for summary administration under Florida law. In a probate case that qualifies for summary administration, an attorney is not required. However, no matter the amount of assets that a decedent has, it is still important to talk to an attorney first, to ensure that the decedent's estate will qualify for summary administration and so that you are fully informed of the risks of moving forward without an attorney .

Even in a summary administration, there are some protections from creditors available for the primary residence of the decedent, two of the decedent's vehicles, and a certain amount of furnishing, fixtures, and personal property located at the decedent's primary home. Obtaining these protections requires additional petitions to be filed in the administration. An attorney will spot these issues early on the process and file the petitions quickly, allowing for the administration to be completed efficiently. Sometimes, if a person elects to do a summary administration by themselves, they can get stuck on some of these steps or may miss out on valuable protections from creditors. In these situations, people often need to hire an attorney in order to complete the administration.

**An important reason to hire an attorney is that probate cases can be a minefield of potential problems or delays. There are deadlines for filing certain documents and missing a deadline can adversely impact the administration of the probate case. Also, notice is required to be given to all creditors of the decedent. If the proper notice, as required by Florida law and probate rules, a creditor can surface later and make claims that may have to be paid! A mistake in the probate administration can cost valuable time and money. It is always less expensive and easier to hire an attorney at the beginning of a complex endeavor, like a probate administration, rather than hire the attorney after something has gone wrong.**

### What assets are exempt from the claims creditors?

Under Florida law, some assets that were owned by a decedent are exempt from the claims of creditors. If the right documents are not filed on time, these exemptions

may be waived by the personal representative and the beneficiaries of the decedent's will. An experienced probate attorney will be able to make sure these assets are protected from creditors involved in the probate administration. These assets include:

- The decedent's homestead - this is the home where the decedent lived at the time of his or her death.
- \$1,000 of personal property
- Up to \$20,000 in value of household furnishings, furniture, appliances located in the decedent's homestead.
- Two vehicles less than 15,000 lbs gross vehicle weight, regularly used by the decedent and their family

#### How much does it cost for an attorney to administer a probate estate?

The cost of probate varies based on the size and complexity of the estate. Attorney's fees for the administration of a probate estate are set by Florida Statute 733.6171, which sets the "presumptively reasonable" fees for probate attorneys. These attorney's fees vary based upon the value of the assets that are involved in the probate estate. The minimum presumptively reasonable attorney's fee is \$1,500 for estates that are valued less than \$40,000.00 For estates with a value of over \$100,000, the presumptively reasonable fee is 3 percent of the value for the administration of the estate. These fees usually do not include fees for work done outside the scope of administering a probate estate, such as litigation, objections to claims of creditors, or representation in any other capacity.

#### What sort of information do I need in order to start a Florida probate administration?

A Preliminary Information List has been included with this informational PDF that you can print out and fill in the information that you have related to a probate administration for your loved one. Before going to your consultation or talking with a Florida probate attorney, take a few minutes to complete the Preliminary Information List. The Preliminary Information List will help you to make sure you have the information you need to start a Florida probate administration. Do not worry if you

cannot complete all the entries. Your probate attorney will assist you with determining the assets that are part of the probate estate.

### How do I hire a probate attorney?

It is important to make that that you hire a Florida probate attorney that can work with you in order to conduct an efficient probate administration in compliance with the applicable statutes and laws. If the decedent had his or her primary residence in Florida at the time of his or her death, you need to hire an attorney licensed in Florida. Contact our firm today to schedule a free phone or in person consultation in order to see if we can help you if you are named as a personal representative or if you have probate litigation needs.

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## FLORIDA PROBATE INFORMATION LIST

### Prospective Personal Representative Information

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Residence Address: \_\_\_\_\_

Phone: Mobile \_\_\_\_\_ Home \_\_\_\_\_ Work \_\_\_\_\_

Email: \_\_\_\_\_ Alternate Email: \_\_\_\_\_

Relationship to Decedent: \_\_\_\_\_

Interest in Estate: \_\_\_\_\_

### Will Information

Location of original will: \_\_\_\_\_

Preparer Name: \_\_\_\_\_ Address: \_\_\_\_\_

Date of Will: \_\_\_\_\_ Codicil: \_\_\_\_\_ Separate Writing: \_\_\_\_\_

Place of Signing: City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

Notary, if any: Name: \_\_\_\_\_ State: \_\_\_\_\_

**Witnesses to Will:** (Circle letter of witness, if known, who could most conveniently travel to the courthouse to swear to the execution of the Will, if required.)

	<b>Will Witness A</b>	<b>Will Witness B</b>	<b>Will Witness C</b>
Name:	_____	_____	_____
Address:	_____	_____	_____
City:	_____	_____	_____
State:	_____	_____	_____
Zip:	_____	_____	_____
Phone:	_____	_____	_____

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**Witnesses to Codicil:** (Circle letter of witness, if known, who could most conveniently travel to the Courthouse to swear to the execution of the Will, if required.)

	<b>Codicil Witness A</b>	<b>Codicil Witness B</b>	<b>Codicil Witness C</b>
Name:	_____	_____	_____
Address:	_____	_____	_____
City:	_____	_____	_____
State:	_____	_____	_____
Zip:	_____	_____	_____
Phone:	_____	_____	_____

**Did decedent leave written instructions regarding cremation, funeral, disposition of remains, or anatomical donation?** Yes\_\_\_\_ No\_\_\_\_. If "Yes" please provide a copy of those instructions.

**Did decedent create any trusts during their lifetime?** Yes\_\_\_\_ No \_\_\_\_\_. If "Yes" Please provide a copy of each trust document.

**If married, did the decedent's spouse have a pre or postnuptial agreement?** Yes\_\_\_\_\_ No\_\_\_\_\_. If "Yes" Please provide a copy of the agreement and any amendments.

Notes, Comments, questions, or pending items:

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**Decedent Personal Information**

Full Name (as shown in will) \_\_\_\_\_

Any other names used by decedent in legal documents (deeds, etc.):  
\_\_\_\_\_

Place of Death (hospital name, home, etc.) \_\_\_\_\_

City \_\_\_\_\_ County \_\_\_\_\_ State \_\_\_\_\_

Date of death (attach copy of death certificate if available): \_\_\_\_\_

If none available, will we be requesting the death certificate? Yes \_\_\_\_ No \_\_\_\_

Year Florida residence established \_\_\_\_\_ (attach declaration of domicile if available).

Residence: \_\_\_\_\_

Age at Death \_\_\_\_\_ Date of Birth \_\_\_\_\_ Place of Birth \_\_\_\_\_

Social Security No. \_\_\_\_\_ Medicare No. \_\_\_\_\_

Names, ages, and address of all **children** (living or dead) and any surviving spouse. (Indicate by note any person who is deceased, has been declared incapacitated, or is in the armed services, or any minor whose disabilities have been removed.)

<b>Name</b>	<b>Age</b>	<b>Relation</b>	<b>Address</b>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

\* Birth date if minor

Names, ages, addresses, and social security numbers of **estate beneficiaries** (living or deceased). Also include any named in 3.08 above who are beneficiaries. (Indicate by note any person who is deceased, has been declared incapacitated, or is in the armed services, or any minor whose disabilities have been removed.)

<b>Name</b>	<b>Age</b>	<b>Relation</b>	<b>Address</b>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

\* Birth date if minor

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**Decedent's Asset and  
Professional Information**

**How was title to decedent's home or condominium (homestead) owned as shown on deed, mortgage, title police or tax bill?**

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Safe-deposit box Information:

Name of Bank: \_\_\_\_\_ Box No: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Joint signatory (if any): \_\_\_\_\_

Did decedent have any of the following:  
(if "Yes", attach description or explanation)

	Yes	No
Assets subject to rapid or severe deterioration or perishable property:	_____	_____
Assets especially susceptible to theft, destruction, damage, or injury:	_____	_____
An interest in a partnership:	_____	_____
A sole proprietorship:	_____	_____
An interest in a small business corporation:	_____	_____
Substantial obligations payable Within the next 30 days:	_____	_____
Valuable assets that are presently in the possession of another person or in a location that is not secure:	_____	_____

**Accountant(s)**

Decedent's lifetime accountant:

Name: \_\_\_\_\_ Firm: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

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Accountant subsequently selected to prepare various estate returns:

Name: \_\_\_\_\_ Firm: \_\_\_\_\_

Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Decedent's stockbroker or investment advisor:

Name: \_\_\_\_\_ Account Number: \_\_\_\_\_

Firm: \_\_\_\_\_ Street Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

If decedent was engaged actively in Operation of his or her own business, describe business and person(s) now operating business and proposed method of future operation:

\_\_\_\_\_  
\_\_\_\_\_

The last personal income tax return (IRS form 1040) filed by decedent was for income received during the year \_\_\_\_\_ and the return was filed on or about \_\_\_\_\_, \_\_\_\_\_ (a copy of the most recently filed return should be furnished to the attorney.)

**Was the decedent at the time of death regularly required to file tax returns with any other state or country?** (if so, give state and due date of next return.)

Personal income tax return	Yes	No	Due Date
State _____	_____	_____	_____
Intangible personal. property tax return	Yes	No	Due Date
State _____	_____	_____	_____
Tangible or commercial personal property tax return	Yes	No	Due Date
State _____	_____	_____	_____

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Other (Explain) \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ Due Date \_\_\_\_\_

**Did decedent make any lifetime gifts in excess of the annual exclusion amount?**

Yes \_\_\_\_\_ No \_\_\_\_\_ if "Yes" for what year(s) was a return filed? \_\_\_\_\_

**Did decedent ever file a form 709 United States Gift Tax Return?** Yes \_\_\_\_\_ No \_\_\_\_\_ if "Yes" for what year(s) was a return filed? \_\_\_\_\_

**What is the approximate total value of all assets belonging to decedent (not jointly owned), including life insurance payable to decedent's estate \$** \_\_\_\_\_

**Did decedent have a company pension or profit sharing plan, annuity, Keogh plan, 401k, or Individual Retirement Account (IRA)?** Yes \_\_\_\_\_ No \_\_\_\_\_

If yes, describe on Summary of Assets Item 13 below. NOTE: it is important that no election of periodic or lump sum payment of proceeds be made before the attorney can consider the estate tax and income tax consequences of such election.

**Was there a mortgage on any property in which decedent owned an interest?** Yes \_\_\_\_\_ No \_\_\_\_\_. If "Yes" please provide a copy of the mortgage or loan documents and payment schedule. See Summary of Assets item 1 below.

Name of mortgage creditor: \_\_\_\_\_

Payment address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Loan No.: \_\_\_\_\_ Payable (monthly, quarterly, etc.): \_\_\_\_\_

Next Payment due: \_\_\_\_\_ Amount: \_\_\_\_\_ Approx. balance: \_\_\_\_\_

Legal description of mortgaged property (or provide copy): \_\_\_\_\_

**Did decedent owe any other obligation (other than credit cards) that requires periodic payment?** Yes \_\_\_\_\_ No \_\_\_\_\_ If "Yes" please describe below the information requested in this question and also whether the obligation is secured by any of decedent's assets.

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**If decedent did not operate his or her own business, list decedent's occupation or, if retired, his former occupation.** \_\_\_\_\_

**Did decedent own any real estate in another state or country?** Yes \_\_\_\_ No \_\_\_\_ . If "Yes" please indicate the non-Florida location on Summary of Assets Item 1 below.

Notes, Comments, questions, or pending items:

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**Summary of Assets**

**APPROXIMATE VALUE AND NATURE OF ASSETS OWNED BY DECEDENT INDIVIDUALLY OR JOINTLY.** As to each listed asset, indicate form of ownership as "J" (joint), "I" (individually), "POD" or "TOD" (payable or transfer on death), TBE (tenants by the entirety), or "UKN" (unknown). **ATTACH SUPPLEMENTAL SHEETS AS NECESSARY.**

**1. Real Estate:** (indicate J, I, POD, TOD, TBE, or UKN) Provide a copy of a document showing the legal description, if available. If the property is rented, provide a copy of the lease or a separate sheet with the name and address of the tenant, date and amount of next rent payment, and ending date of the lease, plus any options to renew. If any of the real estate is outside Florida or outside the US, please indicate the state or country.

Address	Type of Building	Approximate Market Value	Vacant, rented or occupied	Mortgage balance, next payment date and amount
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**2. Stocks and Bonds:** (indicate J, I, POD, TOD, TBE, or UKN) If in a brokerage account, provide a copy of the statement covering date of death, if available, and only indicate total value of account.

Company Name	No. of Shares	Approx. share value	Approx. total value
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**3. Mortgages and Notes Receivable:** (indicate J, I, POD, TOD, TBE, or UKN) Provide a complete copy of the documents and payment schedule, if available.

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Payor name and address	Original document date	Next payment date and amount	Approx. Current Balance
_____	_____	_____	_____
_____	_____	_____	_____

4. **Bank, Etc. Accounts or Certificates of Deposit:** (indicate J, I, POD, TOD, TBE, or UKN) Provide a copy of a statement that includes the date of death, if available.

Bank	Account Number	Joint owner if any	Check, savings, CD, etc.	Approx. Value
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

5. **Cash** (belonging to Decedent)

Location	Person in possession	Amount
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. **Insurance on Decedent's Life** (provide the attorney with complete copy of the policy)

Company	Policy No.	Beneficiary	Location of Original Policy	Amount
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

7. **Automobiles Leased:** (indicate J, I, POD, TOD, TBE, or UKN) Note: Decedent's automobiles should be parked, locked, and secured unless a family member WHO IS ALSO NAMED SA INSURED ON THE INSURANCE POLICY is using the automobile. If the automobile is being used, please immediately advise the lawyer.

Make	Model	Year	Lessor's name, and address for payments	Date and amt of next
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

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**8. Automobiles owned:** (indicate J, I, POD, TOD, TBE, or UKN) Note: Decedent's automobiles should be parked, locked, and secured unless a family member WHO IS ALSO NAMED SA INSURED ON THE INSURANCE POLICY is using the automobile. If the automobile is being used, please immediately advise the lawyer.

Make	Model	Year	Lender's name, date and amount of next payment and approx. balance on loan	Date and amount of next payment
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**9. Jewelry, Art Objects, Antiques, Furs, and Other Valuable Items:**

Description	Location	Person in Possession	Insurance Coverage	Approx. Value
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**10. Other assets not described above:** (indicate J, I, POD, TOD, TBE, or UKN).

Description	Location	Person in Possession	Insurance Coverage	Approx. Value
Clothes (if nominal value, so indicate)	_____	_____	_____	_____
Ordinary home furniture and furnishings.	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

**11. Insurance (other than life) Coverage:** (indicate name of additional insured or UKN).



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Coverage and Company	Policy number	Agent	Limits and coverage	Paid through
Automobile (describe)				
Homeowners				
Umbrella				

**12. Trusts in which decedent had any interest:** (provide a complete copy, if available)

Current Trustee	Address	Date	Decedent's interest	Approx. Value

**13. Pension, Retirement or profit-sharing plan, annuity, Keogh, 401k, IRA:** (provide a copy of the pension documents, if available)

Company or Trustee and Account Number	Address	Type	Death Benefit Amount	Currently in pay status?