

## FREQUENTLY ASKED QUESTIONS ABOUT FLORIDA PROBATE

### What is probate?

Probate is a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying his/her debts, and distributing the assets to his/her beneficiaries.

### What are the different types of probate proceedings?

There are 3 different types of probate proceedings:

- (1) **Disposition Without Administration** - This administration is a non-court supervised proceeding. This type of administration applies only in limited circumstances. The probate estate assets must consist solely of property classified as exempt from creditor claims by applicable law and non-exempt personal property, the value of which does not exceed the total of (1) the amount of preferred funeral expenses; and (2) the amount of all reasonable and necessary medical and hospital expenses incurred in the last 60 days of the decedent's final illness, if any. For assistance with this type of administration, you can contact the clerk's office for the county in which the deceased person lived at the time of his/her death.
- (2) **Summary** - Summary administration is generally available only if the estate subject to probate in Florida (minus the value of property exempt from creditor claims) is \$75,000 or less, and if the decedent's debts are paid, or the creditors do not object.
- (3) **Formal** - Formal administration is the most common form of probate in Florida. If an estate does not qualify for summary administration or disposition without administration, it must be formally administered.

1206 East Ridgewood Street • Orlando, Florida 32803  
407.480.5005 Telephone • 407.480.5025 Facsimile  
[www.deloachplanning.com](http://www.deloachplanning.com)

**It is our privilege to continue preserving family legacy after a loved one has passed. Our dedicated Probate line is available 7 days a week: 1-844-FLPROB8.**

**What is a personal representative?**

The personal representative is the individual, bank, or trust company appointed by a judge to be in charge of the administration of the probate estate. To qualify, an individual must be either a Florida resident or a spouse, sibling, parent, child, or other close relative of the decedent. The personal representative cannot be an individual who is under the age of 18, has been convicted of a felony, or is mentally or physically unable to perform the duties.

**Does a personal representative need an attorney?**

A personal representative should always engage a qualified attorney to assist in the administration of the decedent's probate estate. Many legal issues arise, even in the simplest cases, and most of these issues will be unfamiliar to non-attorneys; and could result in delays and additional expenses.

**Can a personal representative make distributions to beneficiaries?**

The legitimate debts of the decedent, including proper claims, taxes, and expenses of the probate administration, must be paid prior to making any distributions to the beneficiaries.

**Is the personal representative compensated?**

The personal representative, attorney, and other professionals whose services may be required in administering the probate estate are entitled to reasonable compensation. The personal representative's compensation is usually determined in one of the following ways:

- (1) as set forth in the Will;
- (2) by the amount presumed to be reasonable calculated under Florida law, if the amount is not objected to by any of the beneficiaries; or
- (3) as determined by the judge.

**Does the personal representative need to contact Social Security?**

Yes. Notify social security as soon as possible when someone getting benefits dies. In most cases, the funeral director will report the person's death to social security. Once social security is notified, they will automatically stop the payment made to the decedent in the month of the decedent's death, as well as any future payments made to the decedent's account.

**Does the personal representative need to provide death certificates? Short form? Long form?**

Yes. One certified copy of the short form death certificate must be filed with the court in all probate administrations. The short form death certificate does not include the cause of the death. It is likely that a few additional short forms (certified copies) will be needed. The state of Florida does not require a long form death certificate to be provided in any instance.

**Which assets are subject to probate?**

Probate administration only applies to probate assets. Probate assets are those which are held in the decedent's name alone at his or her death, without beneficiary designations, payable on death (POD) designations, joint ownership rights, or trust ownership.

**What happens if there is no will?**

If someone dies without a valid will, he/she dies "intestate." Even if the decedent dies intestate, his or her probate assets are rarely turned over to the State of Florida. (The state will take the decedent's assets only if the decedent has no heirs). Normally, the decedent's probate assets will be distributed to his/her heirs, who are people related to the decedent and described in the Florida statute governing the transfer of probate assets for decedents who die intestate.

**What are the estate's obligations to estate creditors?**

One of the main purposes of probate is to ensure that the legitimate debts of the decedent are paid in an orderly fashion. The personal representative must use diligent efforts to give actual notice of the probate proceedings to "known or reasonably ascertainable" creditors. This gives the creditors an opportunity to file claims on the decedent's probate estate, if any.

**What is the process with the local courts?**

The first steps will be to prepare a number of documents to notify the court of the decedent's death, the identity of the personal representative (if any), the names of any beneficiaries of the estate, the nature of the assets that will be part of the estate, and the identity of the attorney who will be representing the estate. Depending on the type of administration, the court will review this information and issue Letters of Administration for the estate that name the personal representative or enter an Order of Summary Administration that directs the disposition of assets.

**How long does probate take?**

Even the simplest of probate estates must be open for at least the three-month creditor claim period. This being the case, it is reasonable to expect that a simple probate estate will take approximately six months to complete.

*If a loved one has passed away and you require assistance with the probate, please call our office to schedule an appointment.*