

Settling a Florida Estate

DISCLAIMER: The information contained in this fact sheet is of a general nature and is provided for your assistance. It is not intended as legal advice and is not a substitute for legal counsel. If you have any questions as to how the law affects you or your legal rights, contact your civilian attorney or the Eglin AFB Legal Office at (850) 882-4611 for an appointment with a licensed attorney.

WHAT AM I REQUIRED TO DO?

Florida law requires that **any person in possession of a deceased person's will, must file it with the local circuit court within 10 days of learning of the death.** Filing the will with the court does not start probate proceedings: it is a separate (optional) process.

Florida law does not require that any estate be probated and, if probate is necessary, provides several methods for doing it.

WHAT SHOULD I DO FIRST?

Settling an estate can be both stressful and difficult. That is why the Eglin Legal Office **strongly recommends** that personal representatives first seek the advice of a qualified Florida attorney with experience in settling estates. To find an attorney, we recommend using the Florida Bar Referral Service, a service provided by the Florida Bar Association to link potential clients up with Florida attorneys. Consultations made through the Service are set at a fixed fee of \$25 for an initial 30-minute consultation. Referrals can be requested online at www.floridabar.org/public/lrs or by telephone at 800-342-8011 (Monday through Friday, 0800 to 1730).

WHAT IS PROBATE?

Probate is a court-supervised process that typically has three parts:

- (1) Identifying and gathering the assets of a deceased person (called the “decedent”);
- (2) Paying the decedent’s debts;
- (3) Distributing the decedent’s assets to his or her beneficiaries.

If the decedent did not have a will, probate is necessary to transfer their assets to their beneficiaries. It is also necessary to wrap up the decedent’s financial affairs (including satisfying the decedent’s creditors, if any).

Probate is only concerned with the disposition of “probate assets”. “Probate assets” include, but are not limited to, the following:

- A bank account or investment account in decedent’s name only;
- A life insurance policy, annuity contract, or individual retirement account payable to the decedent’s estate;
- Real estate titled in the decedent’s name only or in the name of the decedent and another person as tenants in common (unless it is homestead property).

On the other hand, the following assets are **not** subject to probate:

- Assets that are jointly titled will pass automatically by operation of law to the surviving owner.

- Financial assets (such as life insurance policies and some bank accounts) that have a beneficiary designated can be transferred by contacting the financial institution, providing them a death certificate, and completing the necessary paperwork.
- Assets held in a Trust are excluded from probate and administered by the Trustee.

WHAT TYPES OF ESTATE ADMINISTRATION ARE AVAILABLE IN FLORIDA?

In Florida, there are three different ways an estate can be administered: Disposition of Personal Property without Administration; Summary Administration; and Formal Administration.

DISPOSITION OF PERSONAL PROPERTY WITHOUT ADMINISTRATION

This is the simplest and least expensive process. The basic concept is that where a decedent's estate is so small that their final expenses (the medical expenses incurred within the last 60 days of their lives and the funeral costs) exceed their assets, the decedent's assets can be distributed as reimbursement for payment of the decedent's final expenses.

To take advantage of this process, you need to go to the county courthouse for the county where the decedent last lived and ask for the form to petition the court for Disposition of Personal Property without Administration. You will need to complete that form and return it and any required documents to the courthouse. Usually, the required documents include:

- (1) Death Certificate;
- (2) Proof of payment of final expenses; and
- (3) Documents verifying the assets to be released.

The process is designed to be simple and does not require an attorney. Because this is a non-court supervised administrative proceeding, most references to probate administration in Florida exclude it and discuss only Summary and Formal Administrations.

SUMMARY ADMINISTRATION

Shorter and less expensive than the formal administration of an estate, summary administration can be used in only two scenarios:

- (1) The value of the decedent's estate does not exceed \$75,000 (excluding the Homestead, personal vehicle, and tangible personal property of up to \$20,000); or,
- (2) The decedent has been deceased for more than two years.

Summary administration begins when any eligible person files a Petition for Summary Administration with the county court. Eligible persons include any designated beneficiaries, the personal representative, or, if there is no will, any person who could be an heir to the estate under Florida Statutes ("heirs at law"). Before proceeding with a summary administration, all interested parties (i.e., decedent's spouse, minor children, beneficiaries under the will, or heirs at law) must either consent to the Petition for Summary Administration or be served with formal notice of the petition and given an opportunity to object. If there is a surviving spouse, then the decedent's spouse must sign the petition, even if they are not the personal representative.

Once the petitioner has disclosed all of the estate's assets and their values as well as all interested parties, the court will determine whether the estate qualifies for summary administration. If it qualifies and there are no objections, the court enters an Order of Summary Administration that identifies to whom the assets should be distributed.

The summary administration process can take as little as several weeks to finish, though one to two months is the more common timeframe. However, if the decedent has been dead for two or more years, the process can take several months (to provide adequate time to give notice to creditors).

FORMAL ADMINISTRATION

The longest and most expensive process, formal administration is appropriate for estates valued at more than \$75,000 (excluding exempted property) and those estates with either multiple known creditors or substantial debts.

In a formal administration, the judge appoints a personal representative to handle the estate. In Florida, the personal representative must be represented by an attorney unless the personal representative is the sole beneficiary of the estate.

Once a personal representative has been appointed, the personal representative (under the court's supervision) compiles and files an inventory identifying all of the estate's assets, addresses all debts, and arranges for the payment of any taxes. After the assets have been collected, the time for creditors to file claims has expired, creditors entitled to payment have been paid, and payments to settle outstanding tax obligations have been made, the personal representative can make distribution of the estate's assets. Once the personal representative completes the distribution of the estate's assets, the estate can be closed.

I AM THE BENEFICIARY OF A PAYBLE ON DEATH ASSET. WHAT SHOULD I DO?

For financial accounts that designate beneficiaries to whom the assets should be transferred or paid out to upon the owner's death, those accounts transfer by operation of contract. You will need to obtain a copy of the decedent's death certificate (which you should record at the courthouse if you have not already done so) and may need to complete a specific form designated by the financial institution.

CAN I TRANSFER THE TITLE OF A MOTOR VEHICLE UPON OWNER'S DEATH WITHOUT PROBATE?

Florida law permits the beneficiaries or heirs of a decedent to transfer the title to a motor vehicle without a formal court proceeding **if the estate is not indebted**. If there are any outstanding debts, those must be resolved first.

The process depends upon whether the decedent died testate (with a Will) or intestate (without a Will). If the person died testate, then the application for a new certificate of title should be made by their personal representative and must include: (1) the completed application, found on the Florida Department of Highway Safety and Motor Vehicles website; (2) the certificate of title or other satisfactory proof of ownership; (3) either a certified copy of the will (if will is being probated) or a sworn copy of the will (if will is not being probated) and an affidavit that the estate is not indebted.

If the person died intestate, the required documentation includes the completed application, proof of ownership,

an affidavit that the estate is not indebted, and an affidavit that the surviving spouse (if any) and the heirs (if any) have agreed on how the estate assets will be divided.

CAN NONRESIDENT ESTATES USE SUMMARY ADMINISTRATION?

Yes, if they are heirs of a nonresident who owned real estate located within Florida and if they meet the same conditions as residents.

WHAT ARE SOME SITUATIONS WHERE SUMMARY ADMINISTRATION IS NOT APPROPRIATE?

Although summary administration is faster and cheaper, it is not always an appropriate option, even for small estates. If a will contest (someone challenging the will's validity) is possible, if some beneficiaries cannot be located, if the decedent had multiple creditors, or if the estate is insolvent, then a Florida probate attorney should be consulted before attempting a summary administration.

WHAT SHOULD I KNOW ABOUT FINDING A PROBATE ATTORNEY?

First, understand that Florida is one of the few states that sets out presumptively reasonable attorneys' fees for probate cases. These fees increase based upon the size of the estate (excluding homestead property), so, for example, an estate valued at \$1 million would have a much higher presumptively reasonable attorneys fee than a \$50,000 estate, even if the amount of work actually required is roughly equal. This fee schedule is not required and some attorneys acknowledge that it can lead to inflated fees, so fees charged may differ substantially from attorney to attorney. If the estate is over \$100,000, you may wish to find an attorney who will quote you a flat fee or work at an hourly rate.

Second, although attorney misconduct is uncommon, it does happen. Before retaining an attorney, you should do your due diligence and search for reviews online. You should also review the Florida bar association's website, where you can look up individual attorneys to see whether they have been disciplined recently.