

# PROBATE

## Quick Reference

Probate is the court monitored process in which a Personal Representative (also called an Executor or Executrix) gathers the assets, identifies and pays any valid creditors, and then distributes the remaining assets to the beneficiaries. All interested parties of a probate are notified throughout the probate process. The process can take up to a year or more depending on the assets, creditors, and family dynamics.

The Personal Representative is the individual nominated in the Will. If there is no Will, then the Personal Representative can be nominated by the beneficiaries of the estate. Regardless of whether there is a Will or not, the Personal Representative will need to be officially appointed by a probate Judge. Once appointed by the probate Judge, then the Personal Representative has the authority to act on behalf of the estate. In Florida, an attorney is required to handle the Formal Probate Administration process which includes the appointment of the Personal Representative.

The attorney works with the Personal Representative through each stage of the probate process to ensure the Personal Representative properly handles the estate administration. If a Personal Representative does not properly handle the estate administration, then they can be held personally liable.



## Why is probate necessary?

The primary function of probate is to transfer the decedent's property to their heirs and/or beneficiaries.

- If your loved one passed away owning assets that were titled in their name only and did not have a payable or transfer on death beneficiary, then a probate is likely needed.
  - This includes real estate, bank accounts, life insurance policies, retirement accounts, investment accounts, and more.
- If the bank or financial institution refuses to speak to you, it is usually a sign you are not the beneficiary of the account. A bank may require that you are officially appointed as the Personal Representative before they will allow you access to your loved one's account. If the bank makes this request, then you know a probate is likely needed.
- If you are unsure whether or not you need to probate your loved one's assets please seek the advice from an experienced probate attorney to find out.

## What is involved in administering an estate?

The Personal Representative has many duties, including, but not limited to the following:

- Proving that the Will is valid and legal.
- Identifying and securing all the assets of the probate estate.
- Identifying creditors of the estate and providing notice to the creditors that an estate has been opened.
- Paying valid claims raised by creditors against the estate from estate funds as well as objecting to invalid claims.
- Filing tax returns and paying any taxes that may be owed. Paying expenses of administering the probate estate.
- Distributing estate assets to beneficiaries pursuant to the terms of the Will or pursuant to law if there is no Will.

## How long does estate administration take?

The duration of estate administration varies with the size and complexity of the estate. Generally, the time to complete the probate process increases as the number of assets, beneficiaries, and creditors increases. However, this is not always the case. A simple, uncontested probate may be over in less than a year. Nonetheless, there are various unexpected events beyond our control that may lengthen the duration of the case. Although not uncommon, events such as discovering a new asset late in the probate process, working with a difficult creditor, or disagreement among beneficiaries can slow down the process. For this reason, to give an exact estimate of the time estate administration will take from beginning to end is close to impossible.

## What is the probate process of an uncontested Will?

The individual named in the Will as the Personal Representative should meet with an attorney who is experienced in probate matters. The attorney will prepare and submit the necessary pleadings to the Court to have the individual formally appointed by a Judge as the Personal Representative. Then, the Personal Representative will work to gather the assets of your loved one, identify and pay any valid creditors, and then distribute the remaining assets to the beneficiaries. All interested parties of a probate are notified with court paperwork throughout the probate process. The process can take up to a year or more depending on the assets, creditors, and family dynamics. There are many other steps and responsibilities that the Personal Representative is required to perform in order to complete the probate administration. Each case is unique and the Personal Representative will be advised according to the unique facts of their case.

## Who is responsible for handling probate?

In most circumstances, the nominated Personal Representative is the person who is in charge of the estate and the administration. However, the Personal Representative is unauthorized to act on most matters until the Judge appoints the individual by signing the Letters of Administration.

If there is no Will, usually an heir to the decedent can ask the Court to be appointed as the Personal Representative. In some cases, a creditor of an individual's estate can request to be appointed as the Personal Representative. Florida law determines who has preference in appointment as the Personal Representative. Again, it is best to meet with an experienced attorney who can properly advise you on these matters and on whether you have preference in appointment or priority to serve as the Personal Representative according to Florida law.

## Should I plan to avoid probate?

Probate often costs the beneficiaries of the estate money and often involves a great deal of their time. Whether to spend your time and effort planning to avoid probate depends on many factors, such as age, health, ownership of property, and types of assets that you own. It may be in your best interest to sit down with an Estate Planning attorney to discuss your options and to decide how you would like your loved ones to handle your affairs once you have passed. The time and money spent to plan to avoid probate by having an estate plan may be significantly less than the time and money spent by your beneficiaries to administer your estate.


## How do you settle an estate?

The deceased remains a legal entity through their estate. The assets, debts, and obligations of the deceased are to be settled through the probate process by the Personal Representative on behalf of the estate. We would be happy to help you navigate the probate process for your loved one's estate.

If you have any questions, we invite your call at (321) 345-5945

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