

PROBATE

Quick Reference

Probate is the court monitored process in which a Personal Representative (also called an Executor or Executrix) gathers the probate 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.



We would be happy to help you navigate the probate process for your loved one's estate

Why is Probate necessary?

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

- If your loved one passes 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 necessary.
 - This includes real estate, bank accounts, life insurance policies, retirement accounts, investment accounts, and more.
- If the bank or financial institution refuses to speak with you, it is usually a sign you are not the beneficiary of the account. A bank may require you to be officially appointed as the Personal Representative before they allow you access to your loved one's account. If the bank makes this request, then you know a probate is likely necessary.
- 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. A simple, uncontested probate may be over in less than a year. 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.

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, the spouse or an heir to the decedent can petition the Court to be appointed as the Personal Representative. Florida law determines who has preference in appointment as the Personal Representative. It is best to meet with an experienced attorney who can properly advise you on these matters and on whether you have priority to serve as the Personal Representative.

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 with an estate plan may be significantly less than the time and money spent by your beneficiaries to administer your estate.