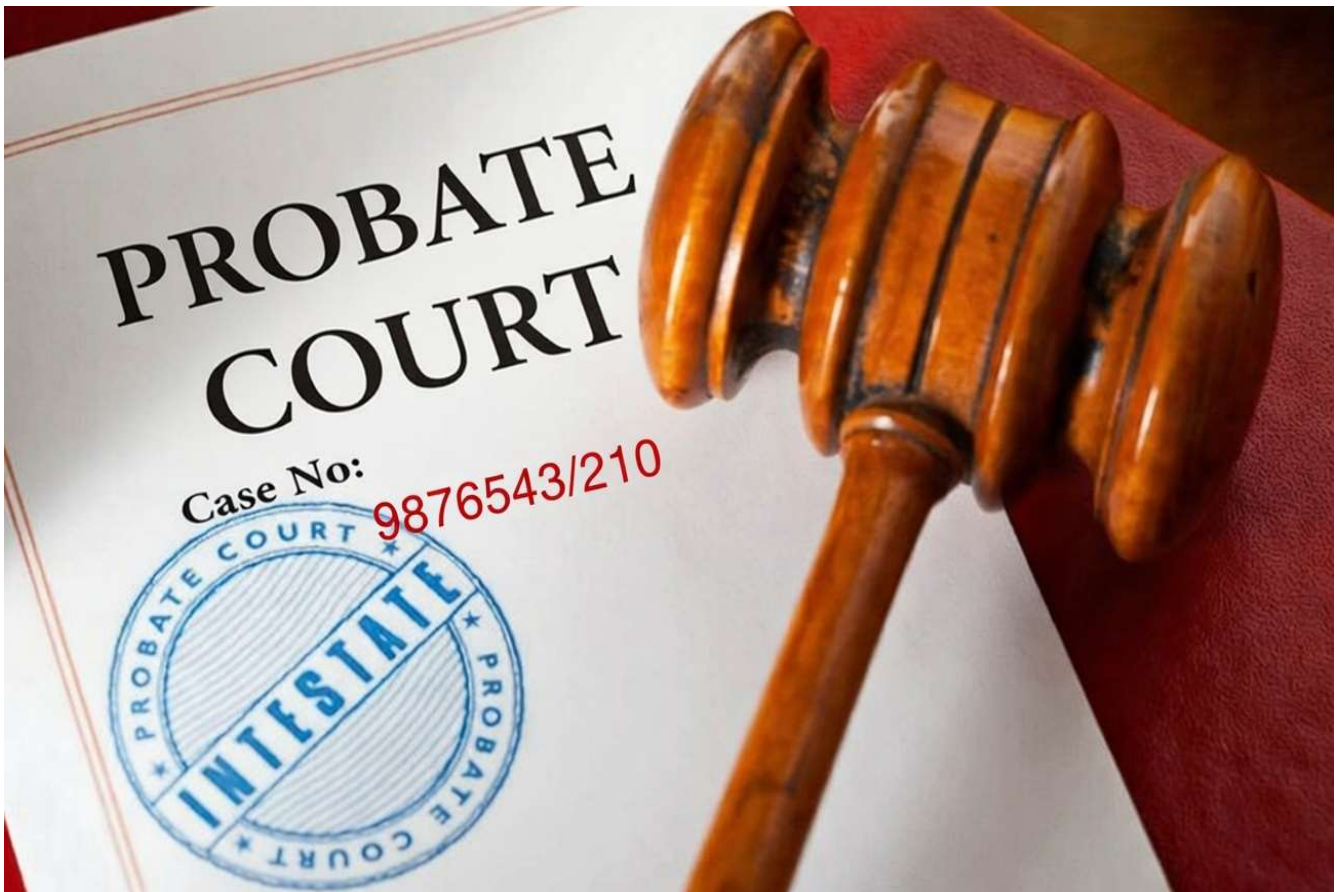


# Florida Probate

*A quick guide to help you and understand probate in Florida!*



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**Certified Probate Real Estate Specialist**

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I hope you find this probate guide helpful, but it is not a substitute for legal advice or professional tax advice. **I am not a lawyer or a tax consultant, this information is for educational purposes only please seek out legal counsel or a tax consultant.** Although we try to keep the info in this guide updated it is provided as a guide and may not always be current. Florida, Federal, and tax laws are always changing.

# Introduction

I truly empathize with the profound pain and overwhelming emotions that come with losing a loved one—it's a time when everything feels heavy and uncertain for families and friends alike. That's why I handle our first outreach with the greatest sensitivity and kindness, ensuring I am there to support without adding to the burden. As Certified Probate Real Estate Specialist, my primary goal is to assist personal representatives, attorneys and the courts with the management of property maintenance, sales or rentals allowing you to focus on healing during this tender chapter.

**Most of our clients are very lost and don't know where to start.**

This is why I put together this short, but comprehensive booklet detailing the Florida Probate process. It will help you understand the processes, actions, and what questions to ask as you go to the initial attorney selection process.

If you need help with securing properties, cleaning, preparing them for sale, and getting them sold, I am here to help. I have run into properties that are in need of a new roof, new walls, or other major repairs that would prevent a perspective buyer from getting financing so I can help you fix the house or could also recommend cash buyers as well.

*I hope this booklet will help you.*

**Please reach out to me if you have any questions. I would be happy to help make the process as easy as possible for you.**

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## Please Read This:

This guide has a lot of useful and very important information that can assist you in this difficult time.

This book is specifically about the state of Florida, other states might have different laws.

I hope you find this probate guide helpful, but it is not a substitute for legal advice or professional tax advice. I am not a lawyer or a tax consultant, this information is for educational purposes only please seek out legal counsel or a tax consultant. Although we try to keep the info in this guide updated it is provided as a guide and may not always be current.

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## Important definitions to keep in mind:

### What is a Will in Florida?

- **A Will** is a written document, typically on paper, signed by the person who died (the decedent) and witnesses. It must follow Florida's legal rules. A circuit court judge will make the ultimate determination of legality.

### Who is the Custodian of a Will?

- **The custodian of a Will** must deliver the original, inked signed, to the clerk of the Circuit Court in the county where the decedent lived. This must be done within 10 days of learning about the death.

### What is the Probate Process?

- The Florida Probate Code provides step-by-step rules for handling the estate and, in almost all cases, **requires that a licensed attorney administer the estate.**

### Creditor Claims:

- **In Florida, creditors** have up to 3 months from the first publication of a general notice to file claims against the estate.
- If the creditor was directly notified, he or she has 30 days from the date of notification.
- If the no general notice was published, or if the creditor should have been individually notified but wasn't, the deadline is 2 years from the date of death
- Florida also maintains a 4 year statute of limitations on open debts. Please see ( FL Stat § 95.11 & FL Stat § 733.702) for more information

# Getting Started

## What is a Personal Representative?

The "Personal Representative" is a person, bank, or trust company appointed by a judge to manage the administration of a deceased person's (decedent's) probate estate. In Florida, this term is used instead of words like "executor," "executrix," "administrator," or "administratrix." The Personal Representative has a legal duty to handle the estate according to Florida law.

## What is Probate?

Probate is a court-supervised process for distributing a deceased person's assets to the rightful heirs, people, or organizations that are legally entitled to those assets. The court oversees it to ensure the correct recipients get the assets, and might include any of the following actions:

- Decisions about selling real estate (if any) are often based on federal and state taxes the estate owes, plus money needed for probate expenses and creditor claims.
- For assets not sold, the goal is to provide clear or marketable title.
- Once probate is done, the recipients can sell the assets, take loans against them, or handle them freely.

Probate is required based on what assets the decedent owned, how they were titled, and if they had named beneficiaries—not just whether there was a Will.

## What are Probate Assets?

Probate assets are everything the decedent owned that doesn't automatically pass to someone else upon the death. Probate assets include real estate owned only by the decedent, bank accounts in the name of the decedent, and life insurance policies that fail to name a beneficiary or are payable to the estate. If the decedent owned any of these assets, Florida probate will most likely be required.

## What are examples of assets that do not go through probate in Florida?

1. Beneficiary Designations
2. Living Trust Property
3. Property Owned Jointly with Rights of Survivorship
4. Life Estate Deed and Tenancy by the Entirety

## **What are the first steps I should take when a loved one passes away and I can't travel out of state?**

1. Order several "certified" copies of death certificate from funeral home or online. Some funeral homes might provide you a couple copies, you should get at least 6 copies.
2. Get the deceased's mail forwarded.
3. Collect any financial statements and creditor correspondence
4. Contact banks to inform them of passing and freeze accounts.
5. Cancel any credit cards.
6. Secure any real estate properties... Call me, I can help you with that.

## **The next necessary step if not done already...**

Should be to contact a knowledgeable probate attorney to initiate the court proceedings for the probate. You can find one online or through referrals from a family lawyer or ask me. Often, a phone consultation is enough to decide on the type of probate needed.

All the needed paperwork to initiate the probate can be drafted and emailed to you for your review and execution. Once the necessary paperwork are sent back to the attorney, they will be e-filed with the probate court. A Probate attorney is key to navigating this process.

## **It is essential to hire a Real Estate Agent that is familiar with the probate process!**

It's crucial to hire a local real estate agent experienced in probate.

They can:

- Meet with vendors like locksmiths, contractors, or inspectors.
- Check if systems like air conditioning work, turn off water to prevent flooding, and video the property via Facetime.
- Address any issues that arise.

A good agent understands the probate basics, works closely with the title company and probate attorney for a smooth sale and closing.

They know:

- Special language required in sales contracts for court timing and approval.
- How to deal with Home Owners Association or Condo Association may have concerns or payments due.

An experienced agent can handle this, reduce headaches, and help overall. If needed, contact me for assistance.

# Probate Administration in Florida

## There are the 10 basic steps

Every estate is unique and may have different issues, so not all steps in a list might apply. However, these 10 steps provide a basic outline for the overall process.

### 1. Deposit of Will with the Court.

The probate process begins by notifying the court of a person's death. Accordingly, within 10 days of learning of the person's death, the custodian of the will must deposit the person's last will with the clerk of the court in the county circuit court of the person. In almost all cases an attorney is hired to file petition.

### 2. Petition for Formal Administration.

Next, a request must be made to the court to "administer" the estate. This request can be made by any interested person. An "interested person" is anyone who might reasonably be affected by the probate outcome. Courts usually interpret "interested person" broadly. You can file the petition whether the deceased had a Will or died intestate (without a Will).

### 3. Appointing a Personal Representative.

Florida law uses the term "personal representative" instead of "executor" or "executrix." The personal representative is usually appointed by a court order. The court issues "letters of administration," which give the representative authority to act on behalf of the decedent. This is typically the first court filing.

If the estate includes real property that needs to be sold. In most cases, you must file a pleading with the court for permission to sell. Proceeds from the sale can go to the clerk of the court. These funds are held for later distribution to heirs, after all creditors and bills are paid and the court approves a final accounting.

### 4. If Necessary you may need a Petition to open a Safe Deposit Box.

Sometimes, a decedent's Will can't be found in their personal belongings. In those cases, you may need to check their safe deposit box for the Will or other important documents. A personal representative can petition the court for an order to access the safe deposit box. Once granted, present the court order (directive) to gain entry.

## 5. Establish Validity of the Will.

A key part of probate administration is confirming the Will is valid. There are three main ways to do this in Florida:

- **Self-Proved Will:** If the Will is "self-proved" and executed under Florida law, its validity isn't questioned, and it can be admitted to probate right away.
- **Witness Attestation:** For a non-self-proved Will, it can be validated if any witness swears under oath to its validity.
- **Oath from Personal Representative or Disinterested Person:** If the first two options aren't possible, the Will can be admitted based on the oath of the personal representative named in the Will, or the oath of any person with no interest in the estate who believes the Will is valid.

## 6. Managing Assets during the Process.

During probate and estate distribution, the personal representative must manage the estate's assets. This can include Inventorying all assets and making decisions about property transfers.

This might involve hiring a real estate agent certified in probate to market and sell any estate property.

## 7. Accounting During the Interim.

The personal representative can file one or more "interim accountings" of the estate with the court before submitting the final accounting. This is optional, not required. It can help avoid problems later when the accounting becomes final.

## 8. Completing any Final Accounting.

Once the estate is administered (including payments to creditors), the personal representative must prepare a final accounting of all actions taken during administration. This accounting is filed with the court. The court holds a hearing to approve it. Any interested person can file an objection within 30 days of receiving notice of the accounting.

## 9. Closing the Estate.

At the end of the process, the personal representative files a petition for discharge. This petition includes a plan for the final distribution of the estate's assets. Once all assets have been distributed and all creditor claims have been resolved, the court will issue an order officially discharging the personal representative.

## 10. Estate Reopening.

Sometimes, additional property or assets are discovered after the estate has been closed. This can also happen if there is evidence of fraud. In those cases, the court may reopen the estate.

## Florida “Guidelines” for Attorney Fees

Attorney’s fees are most of the time based on the size of the estate being probated.

This is a starting point for your understanding no two estates are the same the cost will mostly depend on the complexity of the estate, costs will vary. Ask your attorney for details.

Here Are the Florida Statutory Fee Guidelines that Apply to Probate Fees. Courts review these percentages as a baseline and may adjust fees upward or downward for exceptional circumstances.

<b>Estate Value</b>	<b>Statutory Fee Percentage</b>
Up to \$1 million	3.0%
\$1 million–\$3 million	2.5%
\$3 million–\$5 million	2.0%
\$5 million–\$10 million	1.5%
Over \$10 million	1.0%

Here Are the Typical Probate Fee Ranges that I seen in Florida, your rates could be different:

<b>Estate Type</b>	<b>Attorney Fee Range</b>
Simple estates under \$100K	\$2,000–\$4,000
Moderate estates \$100K–\$1M	\$4,000–\$10,000
Complex estates over \$1M	\$10,000–\$50,000+

These guideline fees by the State of Florida are only for “ordinary” services. If a lawyer follows the fee schedule, the fee may be almost unrelated to the amount of legal work done. You might be able to negotiate that item.

Florida attorneys aren’t required to follow this fee schedule, and many acknowledge that it often leads to inflated attorney fees.

Especially if the estate you’re handling is greater than \$100,000, it is helpful to find a few quotes from different attorneys or find one that will quote you a flat fee. However, there are very professional attorneys that will work on an hourly fee that is reasonable. At the end of the day you should learn as much about the lawyers as you can both the positives and the negatives and interview more than one to make a final selection.

# Common Probate Terms

Below are some common probate terms and definitions to help you navigate the probate process

**Abatement** - A proportional reduction or decrease in monetary gifts (pecuniary legacies) from a Will when there aren't enough funds to pay them fully.

**Ademption** - When property specified in a Will can't be given to a beneficiary because it no longer belonged to the deceased at death. For example, the item might have been destroyed, sold, or given away after the Will was made but before death.

**Administrator** - A person or institution appointed by a court to handle the deceased person's estate administration.

**Administrator with Will Annexed (for Administrator CTA)** - An administrator appointed by a court to manage the estate of someone who left a Will, but where the named executor is unwilling or unable to serve.

**Affidavit** - A written statement or affirmation made under penalty of perjury, which requires notarization.

**Ancillary Administration** - The administration of a deceased person's property located in a state other than their primary residence (domicile).

**Beneficiary** - An individual or corporation that receives benefits from a transaction, such as from a life insurance policy, trust, or Will.

**Codicil** - An addition to a Will that can modify, add to, subtract from, qualify, alter, or revoke parts of it. It's a separate document signed with the same formalities as a Will. A codicil can be changed, revoked, canceled, or destroyed at any time.

**Community Property** - Real or personal property owned jointly by a husband and wife as part of their marital partnership. Either spouse can manage and control community property, but both must agree to transfer ownership, lease it for more than a year, or gift community personal property. All property acquired during marriage from earnings (and the earnings themselves) is community property. Property received by gift or inheritance is separate property, not community.

**Conservator** - An individual or corporation legally responsible for caring for and managing the person, property, or both of an adult who can't handle their own personal needs or finances. Limited conservatorships can be set up for adults with developmental disabilities.

**Contingent Beneficiary** - A person or entity who receives a distribution only if a specific event occurs.

**Declaration** - A written statement made under penalty of perjury.

**Devisees and Legatees** - People named in a decedent's Will to receive assets. A "devise" usually refers to real property, while a "legacy" refers to money or personal property.

**Disclaimer** - A formal refusal to accept something, like a gift from a Will, done in a specific way and within a set time.

**Domicile** - The location of a person's permanent home, which determines the laws governing many of their affairs. A person can have multiple residences but only one domicile. The domiciliary proceeding happens in the jurisdiction of the decedent's domicile.

**Donee** - A person who receives a gift from someone else.

**Donor** - A person who gives a gift to someone else.

**Escheat** - The process where property reverts to the state if a person dies without a valid Will and no surviving heirs at law.

**Executor** - An individual or corporation named in a Will by the testator to manage their property after death. Also called a personal representative.

**Ex Parte** - A court proceeding that is granted without giving notice to the other party.

**Fiduciary** - A person required to act with a high degree of care on behalf of another. Executors and trustees are examples of fiduciaries.

**Gift Tax Annual Exclusion** - Under federal law, a donor can exclude a certain amount of gifts from taxation each year if the gifts are of a present interest (where the recipient has immediate unrestricted right to use, benefit, and enjoy) and given to a specific individual. The federal exclusion amount is \$10,000 per donor per year.

**Grantor** - An individual or corporation who transfers property to another, such as the creator of a trust or the giver of a deed.

**Guardian** - An individual or corporation legally responsible for the care and management of a child's person, property, or both, during their minority.

**Heir** - A person who inherits property under state law.

**Inheritance Taxes** - Taxes imposed on the recipient of property, based on their relationship to the deceased.

**Intestate** - Describes someone who dies without leaving a Will.

**Inter Vivos Trust** - A trust created during the grantor's (trustor's) lifetime between living parties. It can be revocable or irrevocable.

**Irrevocable Trust** - A trust whose terms cannot be changed, modified, altered, amended, or revoked.

**Joint Tenancy** - A type of property ownership by two or more people, often with "right of survivorship." Each joint tenant owns an equal share, and upon one tenant's death, their interest automatically passes to the surviving tenants.

**Letters of Administration** - are court-issued documents that formally appoint a Personal Representative to manage an estate. These letters provide the legal authority to manage assets, pay debts, and distribute property.

**Life Estate** - An interest in property that lasts only for the lifetime of its owner.

**Life Tenant** - A person who receives benefits from real or personal property only during their lifetime. Benefits end upon their death.

**Personal Representative** - A term that describes an executor or administrator.

**Power of Appointment** - Legal authority given by one person's trust or Will (the "donor") to another (the "donee"), allowing the donee to decide how to dispose of the property.

A power of appointment may be general or special, as defined below:

**General Power** - Allows the donee to designate themselves, their creditors, their estate, the creditors of their estate, or any other person as the owner of the property.

**Special Power** - A type of power of appointment that limits who the donee can name as owners of the property. The limits can be specific (e.g., only to A's children), but the donee can't appoint themselves, their estate, their creditors, or their estate's creditors. This prevents the property from being taxed in the donee's estate upon death.

**Pour-over will** - A Will that transfers all or part of the decedent's probate estate assets, after or during probate, from the executor's control to a trustee of a trust that existed before the decedent's death (an inter vivos trust).

**Pretermitted Heir** - A person who would normally inherit from the decedent but is not mentioned in the Will.

**Probate Administration** - The legal process where a probate court oversees collecting a deceased person's debts and taxes, then distributes the property according to their Will or, if none, to heirs. The court has authority over the personal representative and the decedent's assets.

**Quasi-community Property** - In California only, property acquired by a decedent while living outside California that would have been community property if acquired in California. For federal estate tax purposes, it's treated as separate property.

**Real Property** - An interest in land or anything permanently attached to land.

**Remainder Interest** - An ownership interest in property that becomes active after the current owner or life tenant has received all their entitled benefits.

**Residue** - The remaining part of a decedent's estate after paying debts and specific gifts (legacies). Also called the "residuary estate."

**Residuary Beneficiary** - A person or entity who receives all or part of the residue.

**Reversionary Interest** - An ownership interest in property that returns to the original owner when an intervening interest ends.

**Revocable Trust** - A trust whose terms can be changed, modified, altered, amended, or revoked.

**Right of Representation** - A distribution method (also called "per stirpes") where a deceased beneficiary's share is divided equally among their children.

**Tenancy In Common** - A way for two or more people to own real or personal property. Unlike joint tenancy, there's no right of survivorship. Owners don't need equal shares, and upon death, the interest passes by Will or intestate laws.

**Testamentary Trust** - A trust created only after a person's death, as specified in their Will. Once created, it's irrevocable.

**Testate** - Describes someone who dies leaving a Will.

**Testator** - The person who signs a Will to dispose of their property. "Testatrix" is the female term, but "testator" is often used for both.

**Uniform Gifts to Minors Act.** - A law allowing a donor to register stocks, bank accounts, or insurance in a custodian's name for a minor beneficiary without a formal trust. The gift is irrevocable. The custodian manages the property until the minor reaches majority, then transfers it. This is a simple, low-cost way to give small gifts to minors.

**Will** - A document prepared and signed with the required formalities under the laws of the person's domicile at the time. It directs how their estate and affairs are handled after death but has no effect until then. If handwritten entirely by the person, it's a "holographic Will." If typed, it's a "witnessed Will," usually needing two or more witnesses to confirm it wasn't obtained by fraud, duress, or misrepresentation.

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