

# Complete Guide to Navigating Florida Probate

This **Florida probate guide** can help you understand and navigate the often complex and slow probate process. If you've lost a loved one, we know that's the last thing you want to deal with right now. Alternatively, if you're estate planning for yourself, this knowledge can help protect your estate and make the probate process easy for your surviving loved ones.

If you have any questions or need support with probate in Florida, then feel free to contact our **estate planning attorneys** for a free consultation today.

*The material here should be used as an introductory guide. Always consult a Florida estate planning attorney before making financial decisions and actions.*

## Florida Probate Guide

### What is Probate?

Probate is the legal process where a deceased individual's will is validated and proved authentic by a probate court before the estate is administered.

The process includes distributing the assets owned by the deceased person to named beneficiaries in a will, or if there is no will, to the heirs according to Florida's intestate succession laws.

An estate can include assets such as bank accounts, real estate, cars, guns, jewelry, cryptocurrency and personal items.

### Summary Administration vs. Formula Administration

In Florida, there are two types of probate administration.

- **Summary administration** is used when the estate is valued at less than \$75,000 in non-exempt assets or more than two years have passed since the decedent died. It features direct inheritance of assets and does not provide a personal representative with further administrative power.
- **Formal administration** is used for all types of estates. Although slower than summary administration, it provides much more control for the personal representative.

Contact a *Florida estate planning attorney* to determine which type of administration is best for your circumstances.

### What Passes Through Probate and What Doesn't?

Any asset owned by a deceased individual is subject to probate in Florida, except for assets with a named beneficiary or rights of survivorship - such as life insurance, retirement accounts or bank accounts with 'pay on death' details.

Real estate also jointly owned will not pass through probate if it has 'rights of survivorship', which automatically transfers the property to the surviving spouse upon the death of their partner.

Assets such as real estate, vehicles and personal property all pass through probate. Alternatively, some surviving loved ones may discover that assets were owned by a trust and not the individual, in which case they are not subject to probate either and will instead be distributed per the terms of the trust.

## How Does the Probate Process Start?

After the death of a loved one, the surviving family members will be curious as to how probate starts and when.

The first step in opening probate in Florida is for the 'personal representative' (also referred to as the 'executor') to file a petition with the probate court. They cannot distribute, discard or sell property from the estate until approved by the probate court.

The personal representative is advised to contact a [Florida probate attorney](#) to ensure they do everything legally and swiftly and to avoid making any mistakes that could leave them liable.

The custodian of the Will must also deposit the original copy to the clerk of the Court within 10 days of being notified of the death.

At this phase, the personal representative will also need to find and provide: financial statements, life insurance policies, real estate deeds and any evidence of debts owed.

## How Long Does Probate Take in Florida?

The time it takes probate to be completed can vary, depending on the size of the estate and any disputes that may complicate matters.

Generally, an uncontested case should take around 4-8 weeks to be completed. If beneficiaries contest how the estate is being administered, considerable delays may arise.

Contact our *Florida probate attorneys* today to better understand how long your probate case should take.

## How Much Does Probate Cost in Florida?

The cost of probate administration in Florida varies with the size and complexity of the estate.

Court filing fees of around \$345-\$405 are required for each case. Some estates may require newspaper publications to notice creditors, which usually costs around \$250.

It is also highly advised to hire a Florida probate attorney, which can be repaid to the person paying for them via the estate's funds.

## **What is Florida's Probate Jurisdiction?**

*Florida probate follows [Florida Statute 733.101](#).*

If the deceased person was a Florida resident, then probate must be filed in the county where they lived. If they were an out-of-state resident, then probate should be filed in a county where they owned property.

In Florida, the courts can only transfer property located within the state and only if it was owned by the decedent. If a property is suspected of having been owned by the decedent, then a court can freeze it until legal ownership is determined.

## **Does the Personal Representative Physically Need to Go to Court?**

Thankfully in the modern day, it is not usually necessary for personal representatives to physically attend the probate court. Hearings can usually take place online via video or through telephone conference calls.

## **What is a Will?**

A will is a document drafted by an individual to record how they want their estate to be distributed after their death. It can also name important information such as what should happen to any surviving minor children and list a 'personal representative'.

A valid will is signed by the testator (the person creating the will) and two witnesses. The witness signings must be completed in the presence of each other *and* the presence of the testator. Since the COVID-19 pandemic, it has been possible to do this remotely in video calls.

In Florida, there is no requirement for a will to be 'notarized'. However, a notarized will makes things much easier as they're considered 'self-proved' and therefore will considerably speed up the probate process.

Read related: [Frequently Asked Questions about Wills](#)

## **What Happens in Probate if There is No Will?**

If someone dies without a will in Florida, then the estate will be distributed according to Florida's intestate succession laws.

- The estate will be shared in order of priority (Surviving spouse, adult children, followed by close and trusted family members).
- The guardianship of surviving minor children will be determined by the court.

Read our [Florida intestate succession laws guide](#) here.

## Who is Involved in the Florida Probate Process?

The Florida probate process can include:

- Clerk of the circuit court in the Florida county where the decedent resided at the time of their death.
- Circuit court judge.
- Personal representative.
- Florida probate attorney for legal advice and expertise.
- Creditors.
- Health care providers.
- IRS, to collect any federal income taxes that the decedent's estate may owe.

## Who Supervises the Florida Probate Process?

Florida probate is overseen by the circuit court judge.

The judge will review the documents and evidence to confirm beneficiary and heir identities to ensure the correct people receive their share of the estate.

If the decedent nominated a personal representative, the judge will determine if the person is qualified and able to serve the role. Should they be approved, the judge will then issue Letters of Administration (also called Letters) that confirm the personal representative has authority to administer the estate.

Should any disputes arise during probate administration, then the judge will hold a hearing before providing a decision called an 'order'.

## Should Probate be Avoided?

Probate can potentially be avoided should the decedent plan carefully before their death. Estate planning can allow you to structure assets so they're protected from creditor claims and to allow immediate or future transfer of assets.

This can allow surviving beneficiaries to bypass probate effectively, however it may not be suitable for all families and estates. Contact a [Florida trust attorney](#) to learn more.

Possible probate avoiding options include:

- Pay-on--death financial accounts
- Rights of Survivorship deeds

- Trust estate plans

## Creditors Claims in Florida Probate

Paying creditors' claims is a crucial part of the probate process. However, you shouldn't pay debts without first talking to a Florida probate attorney. Never use your own money to pay the debts of someone else's estate.

If the decedent died more than two years before their estate was administered, [then no debts should be paid](#). However, this does not apply to creditor claims on mortgages or real estate.

## How are Creditor Claims Handled?

How estate debts are handled varies with the type of probate administration. For summary administration, known debts must be paid from eligible assets. Some assets are exempt.

In formal administration, creditors must file claims in a timely manner after being notified of the estate administration beginning.

Unknown creditors should be notified via a newspaper notice in a county where the decedent lived. Creditors then have 90 days to file a claim.

Known creditors should be notified directly and are given 30 days to file a claim. If no claim is made, the claim is waived.

## Exempt Property

If a decedent had a spouse or children, some assets are exempt from creditor claims. These assets should not be used to pay off creditor debts.

This includes:

- Head of household wages
- Annuities and life insurance proceeds and cash surrender value
- Homestead property
- Retirement accounts, including Roth IRA, IRA, 401k
- Disability income
- Prepaid college funding
- Social security
- Miscellaneous exemptions

You should contact a Florida probate lawyer to identify the exempt property in your loved one's estate.

## Homestead Property in Florida Probate

Florida law protects homesteads from being taken by creditors after death so that descendants are protected from becoming homeless.

However, exceptions to this rule may include mortgages on the property, tax debts and contractor debts - this is called 'consensual liens'.

To be considered a homestead, the decedent must have resided in the home with the intention to make the property their permanent residents if it wasn't already.

Homes owned in companies or irrevocable trusts are ineligible for homestead protection.

## **Contact a Probate Attorney Today**

We hope this complete Florida probate guide has helped you gain a clear understanding of the process. If you need to administer an estate of a loved one, then our experienced [Florida estate planning attorneys](#) can help.

We regularly guide Florida residents through the probate process, ensuring they avoid disputes and complications with creditors.

### **Free Consultations**

Battaglia, Ross, Dicus & McQuaid, P.A. is U.S. News and World Reports Tier 1 law firm in Florida, specializing in Estate Planning & Probate since 1958. With award-winning experienced estate planning attorneys, they can help you create a will or trust.

[Schedule a free consultation today to get started.](#)