

What is Probate?

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Probate in Florida has two meanings. One meaning is the court procedure by which a will is proved to be valid or invalid. The second meaning, and the current expanded usage, is the judicial process wherein the estate of a decedent is administered. Typically, this judicial process entails the collecting of a decedent's assets, liquidating liabilities, paying necessary taxes and creditors, and distributing property to heirs.

If one dies testate, meaning having executed a valid will, the court then oversees the process to ensure that assets are rightfully transferred as devised in the decedent's will to the beneficiaries. If a person dies intestate, or without having executed a valid will, the property is passed according to the Florida Legislature's intestacy statutes.

So when is a Probate required? A Probate administration is required when assets or interests in assets remain registered in the decedent's name alone. Some common examples of Probate assets are a home or an interest in a home, a bank account, a stock, a vehicle, and so on.

Unless the estate is exceptionally small, an attorney is required to administer a Probate in Florida. Requiring an attorney's services is advantageous since many of the Probate rules are complex and mandate timely action. For instance, and a rule clients are often unaware of, the holder of a decedent's original will is statutorily mandated to deposit the will into the hands of the court within ten (10) days of the testator's demise.

The most common types of Probate administrations are Summary Administrations and Formal Administrations. A Summary Administration is an abbreviated proceeding that can generally be utilized when the decedent's assets total less than \$75,000 or the person has been dead for more than two years. The crux of this type of administration is a petition to the court requesting judicial approval of distribution of the assets to the rightful heirs or beneficiaries.

A Formal Administration is a more extensive process where a Personal Representative (often referred to as an Executor in other states) is appointed and serves as a fiduciary and figurehead of the estate. Upon receiving court appointed authority, the Personal Representative is to gather all of the decedent's assets, publish a Notice to Creditors in the local newspaper of the decedent's domicile and give direct notice to all reasonably ascertained creditors, pay all claims that the Estate is obligated to pay, and make distribution of any remaining assets to the rightful heirs or beneficiaries.

While many attempt to avoid Probate administration, probating an estate can actually have many advantages. For your own benefit and protection, please consult a Probate attorney to discuss your situation before attempting to transfer any interest in an asset where court action may be required.