

# Florida Probate Quick Reference Guide

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## Executive Summary

Probate is the legal process for transferring assets owned by decedent according to the decedent's will or Florida intestate law to his or her beneficiaries after all legitimate creditors of the estate have been paid. The Personal Representative (in other states this role is called the "Executor") is the person appointed by a will to follow the instructions of the will and administer the estate in strict compliance with Florida law. If there is no will, the Personal Representative is the person authorized to administer the estate under Florida law.

This guide discusses:

- The **three types** of Florida proceedings
- The **time frames and attorney fees** connected to each proceeding
- **Six Critical Deadlines**
- **Ancillary Probate** for non-Florida decedents who own Florida property
- **Homestead:** the most confusing issue for many; we will help clarify

**Note: You need a Florida Attorney:** In Florida, every personal representative, unless the personal representative remains the sole interested person, must be represented by an attorney admitted to practice in Florida. Fla. Prob. R. 5.030(a).

This is a short summary, not a full review of the law. This guide is designed to address some of the most common questions asked about Florida probate.

Questions specific to an estate should be addressed to an experienced Miami probate attorney. Although located in Miami Lakes, our firm can usually represent you in any Florida county if the probate is uncontested.

## A. Three Types of Proceedings

Florida has three types of proceedings to transfer title of a decedent's assets.

### 1. No Probate: Disposition Without Administration

**When Available:** This procedure can only be used for very small estates – less than the funeral bill or maximum of \$6,000 in some counties. This process allows someone who paid for the person's final expenses - the funeral and expenses of the last illness – to be reimbursed from the assets of the estate. Fla. Stat. 735.301 It can be used only when the deceased person did not leave

any real estate, and the only assets are either exempt from creditors' claims or do not exceed the amount of final expenses.

## 2. Summary Administration

**When Available:** Summary administration may be used for either a resident or non-resident decedent's estate if (a) the value of the decedent's entire estate subject to administration in this state, exclusive of exempt property, does not exceed \$75,000; or (b) the decedent has been dead for more than two years, regardless of the size of the estate. F.S. 735.201(2)

**Note:** The "value" is the gross as opposed to the net value of the estate. The value of the homestead is not included in the gross value.

**Time Frame:** 3-6 months for simple, uncontested administrations in most counties. However, the time frame can vary according to the Florida county.

**Attorney's Fees:** Summary Administrations are usually charged at the attorney's hourly rate. After reviewing the will (if there is one), inventory, and death certificate, our Firm can give you a reasonable estimate of our fees.

**More information:** See [Fast Track Florida Probate](#)

## 3. Formal Administration

**When Required:** This administration must be used if the decedent's estate does not qualify for summary administration because the decedent's estate exceeds \$75,000 or the decedent has been dead for less than two years. Strategically, if the decedent had all assets in a trust, formal administration may be advisable to clearly cut off creditor claims.

**Time Frame:** 6-9 months if simple and not contested for most counties. However, the time frame can vary according to the Florida county. More complex estates range from 9 months to 1 year or more. If a Federal estate tax return (Form 706) is required additional time may be needed to close out all issues with the IRS.

**Attorney's Fees:** Florida law provides a presumptive statutory fee schedule based upon the value of probate assets. It is as follows:

- \$100,000 - \$1 million: 3%
- Above \$1 million-\$3 million: 2.5%;
- Above \$3 million-\$5 million: 2%.
- Above \$5 million - \$10 million: 1.5%
- Above \$10 million: 1%

Additional fees may be charged at an hourly rate for extraordinary services, such as sale of real estate, preparation of a tax return, representing the estate if the will is contested, etc. See F.S. 733.6171

**Note:** For more information about Florida probate attorney fees, see our report [Florida Probate Attorney Fees: The Inside Scoop](#)

**Personal Representative's Fees:** The fee rates for the PR are similar to, but not the same as, the attorney rates. See F.S. 733.617.

### **Personal Representative's Powers and Duties**

The Personal Representative (or "PR") is a fiduciary and is responsible – and liable – to the estate beneficiaries. The PR is also the person responsible to the IRS for the decedent's final income tax return, the Federal estate tax return if required, and any other tax returns required by the estate.

PR's first duties are to make sure all properties and papers of the decedent are secure and to marshal all the assets. Of course, the PR must strictly follow Florida law. As noted above, as soon as possible after the decedent's death, the PR must engage a Florida probate attorney unless the PR remains the sole interested person. For a good summary of the PR's duties and responsibilities see our report: [Powers and Duties of the Florida Personal Representative](#)

### **Helpful Checklists for the Personal Representative**

Our office has several checklists to help the PR organize the estate. These are:

- [Checklist of Initial Tasks for the Florida Personal Representative](#)
- [Checklist of Documents for the Florida Personal Representative](#)
- **Mini-Master Information Form:** This form helps the PR inventory all estate assets. Request this form by contacting [info@raricklaw.com](mailto:info@raricklaw.com)

### **B. Six Critical Florida Probate Deadlines**

1. **Deposit Will:** 10 days after death.
2. **Filing Probate Inventory:** 60 days after issuance of Letters of Administration.
3. **Creditor Deadline For Filing Claim Against Estate:** On or before the later of the date of three months after the first date of publication or thirty days after service of Notice Of Creditors for known creditors. F.S. 733.702(1). If there is no publication or service of the Notice Of Creditors, then the deadline is two years from the date of death. Note: Formal Administration requires publication of Notice Of Creditors.
4. **Personal Representative Deadline for Objecting to a Claim:** The PR may object to a claim at any time within the later of four months from first publication of the notice of creditors

or 30 days from the timely filing of a claim or amendment of a claim. F.S. 733.705(2). If the PR fails to object within this time period, the claim is deemed allowed.

5. **Statute Of Limitations For Claims Against Either An Administered Or Unadministered Estate:** Two years from date of death, except for any IRS claims.

6. **Surviving Spouse Homestead Election:** 6 months from decedent's death to opt out of life estate in homestead and take 50% interest. See discussion on homestead below.

### C. **Ancillary Probate Administration**

#### **What is Florida Ancillary Probate Administration?**

This is a legal proceeding that is available for a decedent who resided in a state outside of Florida at time of death, but who has property in Florida - usually real estate. The Florida probate ancillary administration is the legal process required to transfer legal title for the Florida assets to the beneficiaries of the estate.

#### **When Available:**

**If the decedent has a will:** When the decedent has a will that is being probated in another state, the Personal Representative for the Estate (also called Executor in many states) may petition the Florida probate court to admit the decedent's foreign will in the county where the property is located.

Once the foreign will is admitted to record by order of a Florida court, the will shall be deemed as valid and effectual as if it were executed in Florida. With the approval of the Florida probate court, the Personal Representative can either sell the property or distribute it outright to the beneficiaries. See F.S. 734.104.

**If the decedent does not have a will:** In the situation where the decedent did not leave a will and there are probate proceedings in the state where the decedent died, the Personal Representative may petition the Florida court upon proof of certain pleadings from the domiciliary probate.

**Time Frame:** The time to open and close a Florida probate ancillary administration depends on the type of proceeding needed. The proceeding may be a **Summary Administration** for estates under \$75,000 or where the decedent has been dead for more than two years. Otherwise, the proceeding will be a **Formal Administration**. For the time frame for each type of Administration see above.

**Ancillary Probate Administration Document Checklist:** For a checklist of documents we typically need to open an Ancillary Administration see: [Document Checklist for Ancillary Probate](#)

### D. **Homestead: Many Traps for the Unwary**

Homestead issues are the single most common issue that may trip-up attorneys. First, identify if the decedent had a Florida homestead. If the decedent lived in Florida and had Florida real estate the possibility of homestead issues must be analyzed. If the decedent split time living in Florida and another state, you must first determine the state of domicile, as only a Florida resident can claim homestead. If the decedent is survived by a spouse or minor child (a minor is any child under 18), Florida homestead law will trump anything written in the decedent's will or trust. The surviving spouse is given a life estate and the minor child a remainder interest. See F.S. §732.401.

Homestead is not considered part of the probate estate, but the personal representative may have the responsibility to preserve, insure and protect it. See F.S. 733.608(2). If there is any question regarding whether the property is homestead or if the decedent has creditors, the Homestead Petition should be filed, since homestead passes to qualified heirs free of claims against the estate.

**Note:** New legislative changes to F.S. §732.401 allow the surviving spouse to opt out of the life estate, and instead elect to take a 50% tenancy-in-common interest in the property. See [A Life Estate The Spouse Can't Afford](#)

For more information see [Florida Homestead: Three Tricky Issues To Watch](#)

## **Conclusion**

Loss of a loved one is a difficult time for family and friends. We have helped guide many families through these times. Our attorneys will help you from the start to the end of the probate process. We will provide help you prioritize your tasks, organize the estate, and help you stay in compliance with our complex Florida probate laws. We will discuss attorney fees and how you can help to minimize such fees. We will endeavor to open and close the probate as expeditiously as possible.

To schedule an appointment with a Florida probate attorney contact attorneys at **Rarick & Beskin** at (305) 556-5209 (954) 861-1426, or [info@raricklaw.com](mailto:info@raricklaw.com)

## **Special Note**

The information on this guide is of a general nature and is not intended to answer any individual's legal questions. Do not rely on information presented herein to address your individual legal concerns. If you have a legal question about your individual facts and circumstances, you should consult an experienced Miami probate attorney. Your receipt of information from this website or blog does not create an attorney-client relationship and the legal privileges inherent therein.

