

## **Do You Need a Lawyer for Probate in Florida?**

The answer to this question is “Yes, in the majority of probate cases, a Probate lawyer is required in Florida.” The only two exceptions include:

1. When the estate is very small and can be disposed of without administration
2. If all assets have been directed to beneficiaries by way of “Pay on Death” or “Co-Ownership”

Probate is a complex legal undertaking and involves many steps which can easily thwart someone without knowledge of the laws in Florida. The legal system in Florida is rather complex for most people with no legal background to follow; hence, there is a need for guidance from a lawyer. Further, judges can be very finicky and demand that all probate documents have the correct wording and specifications.

In Florida probate matters, relying on the county clerk’s office for guidance to undertake the probate process is not realistic or practical. Finally, probate forms are usually not available in any library or online, making having an attorney a necessity.

## **Does a will have to be in writing or can it be verbal?**

In Florida, only a written will is accepted in probate court. Any oral or recorded will is not accepted in court because there is no way of verifying it or knowing if it belongs to the decedent. For assets to be passed over to heirs and beneficiaries, only a written will is acceptable in court.

## **What if the decedent did not have a will?**

If the decedent did not have a will at the time of death, then the court will appoint an individual who will serve as the custodian or personal representative of the estate. This individual will then interact with the family members of the decedent, identify all the assets, and maintain communication with the lawyer and/or court.

In addition, the personal representative will open a probate estate bank account and look after the decedent’s assets while the issue is being resolved in court.

## **What happens when one the heir(s) to the estate cannot be found?**

Sometimes one or more of the heirs or beneficiaries who have inherited a portion of the estate may be missing or not easily located. Under Florida law, the legal system permits the Personal Representative to deposit the share of the missing heir(s) into a court registry. The shares will be forwarded to the heir when he or she is found.

## **Is probate always necessary in Florida?**

No, if the individual who passes away did not own any assets in his or her name at the time of death, or if the decedent's bank account or home is held jointly with another individual, probate may or may not be necessary.

## **Is full probate required for all estates in Florida?**

No. When the estate is very small and there is no real property, then this may qualify for Summary Administration or disposition without administration. This method of probate is much faster and less costly than a full probate. In addition, if the estate holder has been deceased for less than 24 months, the estate is usually managed by Summary Administration.

## **Should I opt for summary administration?**

In general, summary administration is used when the decedent has been dead for less than two years and the total worth of the estate is less than \$75K. The pros of Summary Administration include the following:

- It is a shorter process- usually 3-6 months
- There is less paperwork and, hence, less costly
- It is also less complicated

Summary Administration is ideal when there is only one heir or beneficiary. However, it also has some disadvantages which include the following:

- A personal custodian or Personal Representative is not usually appointed in Summary Administration.
- You need to know the complete details of all the assets
- It may not be practical to utilize Summary Administration if the decedent had many creditors
- Summary Administration does not accommodate for a missing heir

## **Is there a deadline to initiate probate?**

No, there is no absolute deadline for probate in Florida. However, you should try and file for probate as soon as you can. If you let too much time elapse, then some of the heirs may disappear and/or die and this makes the process more complicated. Florida courts are generally considerate of late filings.

## **Do I have to pay estate tax in Florida?**

Florida is one of the few states where you do not have to pay estate tax or an inheritance tax. All the assets are passed directly to the heirs without tax hassles.

## **Is probate necessary if the decedent has a will?**

Yes, even if the sole beneficiary is the Personal Representative, probate is still required. The estate needs to pass through a probate court for the assets to be legally distributed.

The good news is that if the estate value is less than \$75K, the less formal administrative probate process takes place, which is much faster and cheaper. But if the estate is more than \$75K, then formal court-ordered probate is necessary.

## **In what ways can a will be contested?**

Sometimes the validity of the will may be contested. Some of the objections to the will may include the following:

- The will was made under duress
- The will was made by a person lacking full mental capacity
- The will was forged
- The signatures are invalid or fraudulent
- There were no witnesses to the will

## **What if the heirs have disagreements?**

When disagreements occur among the heirs, the probate court will determine who the legal heirs are of the decedent and how much or what inheritance (if any) each heir will receive.

All heirs are entitled to the estate information, including a copy of the will and a statement as to how the assets will be divided.

## **How long will the probate process take?**

Summary probate is a much shorter process and may be completed in a few months. Formal probate is a much longer procedure and can take anywhere from 6-12 months if there are no disagreements between the parties concerned. If disputes arise or there is litigation involved, the process can last several years.

## **How can a Florida lawyer assist me?**

The probate process is complex, requiring significant legal knowledge and administrative paperwork. The probate process requires verification of many facts like the will, discovering all the assets, speaking to the heirs, knowing the creditors, and filing paperwork.

- Some important things to note about probate include the following:
- Filing the decedent's will in probate court and proving its validity
- Locating and informing all heirs and creditors that the individual has expired

- Discovering and totaling the decedent's assets
- Getting appraisal of any real estate, jewelry, antiques, etc.
- Reimbursing all the creditors and paying off any liens, including any residual property taxes
- Distribute the assets among the heirs
- Take care of any disputes that may arise during the probate process.