



## UNDERSTANDING THE FLORIDA SUMMARY PROBATE ADMINISTRATION PROCESS

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Summary administration in Florida is a simplified probate process for estates when the probate assets do not exceed \$75,000 (excluding exempt property) or if the decedent passed over two years ago. It requires filing a petition, having all beneficiaries join and consent, and notifying creditors of the proceedings.

### Requirements and Eligibility

**Estate Size:** The probate estate must be valued at \$75,000 or less.

**Included Assets:** Assets subject to probate administration are those that are solely titled in the name of the decedent at death and do not have a named designated beneficiary. This includes bank and brokerage accounts, real property, and retirement accounts.

**Excluded Assets:** Excluding assets include (i) exempt property (Homestead real property and the decedent's primary automobile(s)) (ii) assets with designated beneficiaries (payable upon death, or transfer upon death (TOD) designation), including life insurance proceeds and retirement accounts; (iii) jointly owned property ("joint tenants with right of survivorship" (JTWROS) or "tenancy by the entirety" pass directly to the survivor; and (iv) Trust assets.

**Two (2) Year Time Period:** If the decedent has been deceased for more than two (2) years, summary administration can be utilized regardless of the estate's value.

### Probate Process:

**Process:** This probate process requires the filing of a petition, in the county court where the decedent lived, having all beneficiaries join and consent to the petition, and notification of all known creditors of the proceedings. It does not require the appointment of a Personal Representative.

**Creditor Liability:** The petitioner has two (2) distinct options to address potential creditors of a decedent's estate: A notice to creditors can be published and provide all creditors with a period of three (3) months to file a claim against the estate.

Alternatively, the beneficiaries can sign an affidavit which affirms that they remain personally liable for any valid creditor claims against the estate for up to two years after the date of death.

### Completion:

Once the Summary Administration process has been completed, the Judge will enter one or more court Orders.

- Homestead Real Property: The court will issue an order determining the decedent's primary residence at death to be "Homestead Property," exempt from any creditor claims and which vests legal title in it to the appropriate beneficiaries. The court order acts like a real estate deed to the beneficiaries and vests them with ownership of the property.
- Exempt Property: The court will issue an order determining exempt personal property (protected from creditor claims). This includes: (i) household furniture, furnishings, and appliances in the decedent's usual residence up to a net value of \$20,000; (ii) two motor vehicles, used by the family; (iii) qualified tuition programs (529 plans); and (iv) certain educator death benefits. A certified copy of this order should be brought to the Department of Motor Vehicles to facilitate the transfer of the title.
- General Court Order: This court order specifically lists the probate assets and how they are to be distributed. For example: 25% to John Smith and 75% to Sally Jones. This court order will advise the bank and/or financial institution to whom it should distribute the decedent's account(s) and in what amounts. A certified copy of the order should be brought directly to the institution to facilitate the transfer of the funds.

*Marc Soss' practice focuses on estate planning, probate and trust administration, and corporate law in Sarasota and Lakewood Ranch, Florida. Marc is a nationally published author and a retired United States Navy Supply Corps Officer.*