



PROBATE IN FLORIDA *What You Need to Know*

Probate is the judicial process by which a deceased person's estate is administered, ultimately resulting in the transfer of assets to the proper beneficiaries. When a loved one passes away, families are often confused as to how the estate of the deceased is handled. In this guide, we hope to provide some clarity on a few of the basic questions surrounding this process.

Do I Need Probate?

Probate is not necessary in all cases, as some assets transfer immediately upon death. Examples include assets that are held jointly with rights of survivorship, accounts that are payable on death to a beneficiary, or assets that are held in a trust. On the other hand, **assets that are titled in the deceased person's name alone** will usually require probate.

Who Can File a Probate?

Any "interested person" can file the initial petition in a probate case. Under Florida law, an "interested person" is any person who may reasonably be expected to be affected by the outcome of the probate. That being said, in many cases, the nominated personal representative of the estate ordinarily files the initial petition. With few exceptions, **a personal representative must be represented by an attorney** under Florida law.

How are Probate Beneficiaries Determined?

If probate is necessary, the court will make the final determination regarding beneficiaries of the estate. If the deceased has a valid Last Will and Testament that is accepted by the probate court, estate beneficiaries will be determined according to that document. If there is no Will, the deceased person's closest relatives will inherit under the order prescribed by Florida intestacy law.

Other Important Things to Know

- A valid Last Will and Testament **does not** avoid the necessity of probate. This is a common misconception and often the most expensive.
- Barring infighting among family members or other litigation regarding the estate, most probate cases can be finalized within six months from the initial filing date.
- A nominated personal representative has no authority to act on behalf of the deceased until they are formally appointed by the probate court.
- A Power of Attorney is no longer effective following the death of the principal. This is another common misconception, as many believe that a Power of Attorney will give an agent the right to control a deceased person's financial affairs.

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