

# PROBATE

## Basics

- Probate is a court-supervised process for identifying and gathering the assets of a deceased person (decedent).
- To pay the decedent's debts
- To distribute the decedent's assets to his or her beneficiaries.
- Probate is governed by F. S. 731 (The Probate Code) and the Florida Probate Rules.
- Florida Probate Rule 5.030 states, "Every guardian and every personal representative, unless the personal representative remains the sole interested person, shall be represented by an attorney admitted to practice in Florida."

# QUALIFICATIONS

## ■ FORMAL ADMINISTRATION

- If a decedent's estate consists of:
- A value exceeding \$75,000 and includes real property, or
- The gross estate for federal estate tax purposes is in excess of the amount requested.

## ■ SUMMARY ADMINISTRATION

- The entire value of the estate subject to administration in this state, less the value of property exempt from the claims of creditors, does not exceed \$75,000
- If the will of the decedent does not direct formal administration

# PROBATE TERMINOLOGY

- Probate Assets – Assets that the decedent owned in his or her sole name at death, or that were owned by the decedent and one or more co-owners and lacked a provision for automatic succession of ownership.
- Intestate – If someone dies without a valid will
- Personal Representative – The person, bank, or trust company appointed by the judge to be in charge of the administration of the decedent’s probate estate. (In Florida, used in stead of “executor, executrix, administrator and administratrix”)
- Caveat – Document filed by an interested person that requires notice to him that an estate is being administered or that a will is being offered for probate.

# PROBATE TERMINOLOGY CON'T

- Beneficiary – A person designated as the recipient of funds or other property under a will, trust, insurance policy, etc.
- Will – A writing signed by the decedent and witnesses, that meets the requirements of Florida law which names the beneficiaries whom the decedent wants to receive from the probate assets. The decedent can also designate a personal representative of his or her choosing to administer the probate estate.
- Codicil – An instrument that changes or revokes a prior will or codicil.
- Exempt Property – Household furniture, furnishings, and appliances in the decedent's usual place of abode up to a net value of \$20,000. Other types of exempt property can be found in F. S. 732.402.

# STEPS FOR FILING AN ESTATE SUMMARY ADMINISTRATION

- Petition for Summary Administration and Petition to Admit Will
- Death Certificate
- Last Will and Testament and Codicil (if any)
- Order Admitting Will to Probate
- Order of Summary Administration

# STEPS FOR FILING AN ESTATE FORMAL ADMINISTRATION

- Petition for Administration
- Last Will and Testament
- Death Certificate
- Oath of Personal Representative and Designation and Acceptance of Resident Agent
- Order Admitting Will and Appointing Personal Representative
- Letters of Administration
- Inventory
- Notice to Creditors and Publication
- Verified Initial and Final Accounting
- Petition for Discharge
- Order of Discharge

# STEPS FOR FILING AN ESTATE DISPOSITION OF PERSONAL PROPERTY WITHOUT ADMINISTRATION

- This proceeding is used to request release of assets of the deceased person who paid the final expenses, such as funeral or medical bills, for the last 60 days.
- F. S. 735.301, the estate must consist of personal property exempt from claim of creditors, and non-exempt personal property that does not exceed the amount of funeral expenses. Disbursement cannot exceed the aggregate of \$6,000.00 (F. S. 733.707 (1)(b)).
- There can be no real estate in the estate.
- Forms and instructions are provided by the Clerk's Office. This type of administration is not required to be filed by an attorney.

# TRUSTS

## REVOCABLE TRUST

- A revocable trust is a document created to manage assets during a person's lifetime and distribute the remaining assets after death.
- Upon the death of a person with a Revocable Trust, the trustee is responsible for paying all claims and taxes, and distributing the assets to your beneficiaries as outlined in the trust agreement.
- A revocable trust avoids probate by the transfer of assets during the person's lifetime to the trustee.
- Upon the death of the Trustee, the named trustee must file a notice of trust with the court having jurisdiction of the estate.

# FILING FEES

- Summary Administration less than \$1,000 \$235.00
- Summary Administration \$1,000 or more \$345.00
- Formal Administration \$400.00
- Disposition of Personal Property \$231.00
- Caveat \$ 41.00
- Notice of Trust \$ 41.00

# RESOURCES

- [www.floridabar.org](http://www.floridabar.org) – Consumer Pamphlets-Probate in Florida
- Basic Probate Step by Step by Fitzgerald
- Trawick's Redfearn Wills and Administration in Florida
- Florida Probate Rules

# QUESTIONS

