

Understanding Probate and Probate Alternatives (FL): Overview

by Practical Law Trusts & Estates

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A Practice Note providing an overview of probate and estate administration in Florida. This Note identifies and provides an overview of the key types of estate administration available in Florida, including formal administration and ancillary administration, and the various small estate processes under the Florida Probate Code, including summary administration and the processes that are referred to collectively as disposition of personal property without administration, which include the processes for disposition without administration, disposition without administration of intestate property in small estates, payment to successor without court proceedings, and payment of income tax refunds.

Estate planning, estate and trust administration, and estate and trust taxation filing deadlines may be impacted by emergency measures enacted in response to the 2019 novel coronavirus disease (COVID-19). For current updates on certain state and local laws and procedures impacted by COVID-19, including electronic signature, notarization, and witnessing laws and emergency orders, court closures, deadline extensions, and updated procedures, tax extensions, and general emergency estate planning guidance, see [Private Client Global Coronavirus Toolkit](#).

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Probate in Florida is a court-supervised process for identifying and gathering the assets of a deceased person (decedent), paying the decedent's debts, and distributing the decedent's assets to the decedent's beneficiaries (see [Florida Courts: Probate](#)). The procedure of admitting a will (if any) to probate and appointing a personal representative plus the estate administration itself are often referred to collectively as the probate process.

There are various types of probate in Florida and the proper type of probate for a decedent depends on:

- The decedent's estate plan.
- The decedent's assets at death and how they are titled.
- The decedent's residency or domicile at death.
- The value of the decedent's probate estate.

Counsel must understand the various options for estate administration and their respective requirements whether representing a client in the estate planning process, a fiduciary in the estate administration process, or a beneficiary of an estate. Failure to understand the rules can lead to an estate plan that does not achieve the client's objectives, a breach of fiduciary duty by the personal representative, or a disadvantage to the estate or a beneficiary of the estate. This Note provides an overview of the various types of probate available in Florida.

Types of Probate

The Florida Probate Code is found in the [Florida Statutes Chapter 731 through Chapter 735 \(§§ 731.005 to 735.304, Fla. Stat.\)](#), and the rules governing Florida probate proceedings are found in the Florida Probate Rules Part I and Part II ([FL ST PROB Rule 5.010 to 5.180 and 5.200 to 5.530](#)).

In Florida, the main types of probate proceedings and processes are:

- Formal administration. This is the most common estate administration proceeding in Florida ([§§ 733.101 to 733.903, Fla. Stat.](#) and [Formal Administration](#)).
- Small estate processes, which include:
 - summary administration ([§§ 735.201 to 735.2063, Fla. Stat.](#)); and
 - the grouping of processes referred to as disposition of personal property without administration ([§§ 735.301 to 735.304, Fla. Stat.](#)).

(See [Small Estate Processes](#).)

- Ancillary administration ([§ 734.102, Fla. Stat.](#) and [Ancillary Administration](#)).

Determining Where to Initiate the Proceeding

Jurisdiction

In Florida, the circuit courts have exclusive original jurisdiction of proceedings pertaining to courts of probate, including the settlement of decedents' estates and the granting of letters testamentary ([§ 26.012\(2\)\(b\), Fla. Stat.](#)).

Venue

Regardless of the form of estate administration used, venue is generally appropriate in the county in Florida where the decedent was domiciled ([§ 733.101\(1\)\(a\), Fla. Stat.](#)). A decedent's domicile is the decedent's usual place of dwelling and, for probate, is synonymous with the decedent's residence ([§ 731.201\(13\), Fla. Stat.](#)).

If the decedent was not domiciled in Florida, the Florida probate proceeding should be initiated in:

- Any county where the decedent's property is located, if the decedent had property in Florida.
- The county where any debtor of the decedent resides, if the decedent had no property in Florida.

([§ 733.101\(1\)\(b\), \(c\), Fla. Stat.](#))

The probate process is generally governed by state law, but counsel should also consider local county procedures.

Probate Versus Non-Probate Assets

A deceased individual generally has assets at the individual's death that are either subject to probate (probate assets) or that are not subject to probate (non-probate assets). Probate assets include any assets individually owned by the decedent, including personal property and business interests and any assets with a beneficiary designation if the named beneficiary is the estate of the decedent. Examples of probate assets include:

- Bank accounts in the decedent's name alone, with no pay-on-death (POD) designation.
- Securities in the decedent's name alone with, no transfer-on-death (TOD) designation.
- Real estate titled in the decedent's name alone, with no TOD designation.

- Real estate titled as tenants in common, with no TOD designation.
- The decedent's tangible personal property, if not held jointly, assigned to a trust, or given to a specific beneficiary during the decedent's lifetime.
- Un-deposited checks payable to the decedent, such as a final paycheck, or a tax or other refund, unless they are transferred outside of the probate process (see, for example, [Practice Note, Understanding Probate: Disposition of Personal Property Without Administration \(FL\): Income Tax Refunds to Spouse or Children in Certain Cases](#)).

Non-probate assets bypass the probate process and transfer directly to the next owner or beneficiary. Examples of non-probate assets include:

- Property owned jointly with a right of survivorship or as tenants by the entirety.
- POD or TOD accounts.
- Real property with a TOD designation such as real property conveyed by an enhanced life estate (lady bird) deed (see [Standard Document, Enhanced Life Estate Deed \(Lady Bird Deed\) \(FL\)](#)) or property in which the decedent holds only a life interest.
- Property held in trust, unless the trust instrument provides for payment to the decedent's estate at the decedent's death.
- Life insurance proceeds and annuities with designated beneficiaries other than the decedent's estate.
- Retirement accounts with designated beneficiaries other than the decedent's estate.

Counsel should identify all property as either probate or non-probate assets. Only the probate assets comprising the probate estate are subject to estate administration. Additional property may be included in the gross estate for federal estate tax purposes. For more information on the federal estate tax, see [Practice Note, Federal Estate Tax](#).

Testate Versus Intestate

If the decedent executed a valid will during the decedent's lifetime that is still in force at the decedent's death, the decedent's probate assets are distributed under the terms of the will. In this situation, the decedent died testate.

If the decedent did not have a valid will at death, the decedent is said to have died intestate. When a decedent dies intestate, the decedent's probate property passes under the intestacy statutes. A decedent may also have a partial intestacy. This can happen when the decedent has a will, but some of the decedent's assets do not validly pass by the will or outside of the will by title or beneficiary designation. In this case, only the part of the decedent's estate that is not effectively disposed of by will or otherwise passes to the decedent's heirs under the intestacy statutes. (§ 732.101(1), Fla. Stat.) For additional information regarding intestacy, see [Practice Note, Understanding Probate: Rights of Surviving Spouse and Children \(FL\): Intestacy](#).

Collection of Information

To institute a probate proceeding the individual seeking probate must file a petition for administration (§§ 733.202, 734.102, and 735.203, Fla. Stat.). The petition for administration is similar for testate and intestate estates and for formal, ancillary, and summary administration and includes information about the petitioner, the decedent, the beneficiaries, and the approximate value of the decedent's probate estate.

For information about the petition for administration in:

- Formal administration, see [Practice Note, Understanding Probate: Formal Estate Administration \(FL\): Petition for Administration](#).
- Summary administration, see [Practice Note, Understanding Probate: Summary Estate Administration \(FL\): Petition for Summary Administration](#).
- Ancillary administration, see [Practice Note, Understanding Probate: Ancillary Estate Administration \(FL\): Petition for Ancillary Administration](#).

For information regarding the information required for the various disposition of personal property without administration processes, see [Practice Note, Understanding Probate: Disposition of Personal Property Without Administration \(FL\)](#).

Estate planning counsel should generally begin collecting information that may help at the time of probate during the estate planning phase. To the extent counsel does not have the relevant information when an estate planning client dies or did not represent a decedent during life but is retained to represent the estate, counsel can work with the nominated personal representative or the decedent's family members or friends to gather the required information. This is sometimes difficult when the nominated personal representative is a grieving spouse, partner, or child, which is frequently the case. If the nominated representative cannot assist counsel initially or if there is no nominated personal representative, counsel should work with another close friend or family member of the decedent that can assist with obtaining the necessary information.

Collecting as much information as possible early in the process helps counsel make an informed recommendation for the appropriate type of estate administration. The representative is also better able to administer the estate in a timely and accurate manner on an ongoing basis. While collecting information, counsel may also be able to help manage expectations by providing an overview of the probate process to the interested parties. Counsel can also help resolve any preliminary issues or disputes before starting the probate process.

Types of information required over the course of an estate administration include:

- The decedent's place of residence at death.
- The date and place of the decedent's death.
- Names and addresses of the decedent's beneficiaries, including trustees of any beneficiary trusts.
- Dates of birth for any minor beneficiaries.

- Name and contact information for the petitioner and the petitioner's attorney.
- An inventory of all the decedent's assets.
- The approximate value of the decedent's probate assets.
- Any outstanding debts of the decedent.

Counsel is required to create an inventory of probate assets as part of the probate process. While the court generally only requires an inventory of the probate assets, counsel should have an inventory of all the decedent's assets, including non-probate assets.

Having a complete picture of both probate and non-probate assets is especially important for large taxable estates. If the decedent had non-probate assets, the personal representative often also helps with distributing or changing title to those assets. This sometimes involves pointing beneficiaries in the right direction and helping them understand what they have inherited outside of probate and other times, it can be more involved.

Formal Administration

Formal estate administration is the most common form of probate in Florida. In a formal administration, the court oversees the process of identifying and gathering the assets of the decedent, paying the decedent's debts, and distributing assets to the beneficiaries. The process of formal administration includes:

- Timely depositing the will (§§ 732.524(11), 732.901, Fla. Stat. and see [Practice Note, Understanding Probate: Formal Estate Administration \(FL\): Depositing the Will](#)).
- Filing the petition for administration and requesting that letters of administration be issued to a personal representative. Counsel must ensure that the personal representative requesting appointment, whether nominated in the will or otherwise:
 - qualifies to act in Florida; and
 - has priority to act.

For additional information regarding the rules governing personal representatives, see [Practice Note, Understanding Probate: The Personal Representative \(FL\): Appointing the Personal Representative and Qualifying as Personal Representative](#).

- Providing the relevant notices to beneficiaries, heirs, and other interested parties. For a checklist of the deadlines for required notices in formal administration, see [Understanding Probate: Deadlines and Statutes of Limitations in Formal Estate Administration Checklist \(FL\)](#).
- Determining whether the surviving spouse or children, if any, have any rights to exempt property, a family allowance, an elective or pretermitted spouse's share, or a pretermitted child's share and filing the required elections or

petitions regarding those rights. For additional information regarding the rights of a decedent's surviving spouse and children, see [Practice Note, Understanding Probate: Rights of Surviving Spouse and Children \(FL\)](#).

- Providing notice to creditors. For additional information regarding the creditor claims process, see [Practice Note, Understanding Probate: Creditor Claims in Probate \(FL\)](#).
- Preparing and serving an estate inventory. For additional information regarding the estate inventory, see [Practice Note, Understanding Probate: Formal Estate Administration \(FL\): Estate Inventory](#).
- Administering the estate by:
 - collecting the decedent's probate assets and re-titling them in the name of the estate;
 - paying the taxes and expenses of administration;
 - objecting to invalid creditor claims and paying valid creditor claims; and
 - distributing the estate assets to the decedent's beneficiaries or heirs.
- Filing a final account and petition for discharge or waivers of the final account and petition for discharge.

For detailed information about the formal estate administration process in Florida, see [Practice Note, Understanding Probate: Formal Estate Administration \(FL\)](#).

Small Estate Processes

There are a number of expedited or simplified probate or administrative processes under the Florida Probate Code that can be used instead of a formal estate administration. These processes are collectively referred to in the Florida statutes as small estate processes. The small estate processes are further divided into two separate categories:

- Summary administration, which is an expedited probate proceeding that is available when a decedent has been dead for more than two years or when the value of the entire probate estate subject to administration is \$75,000 or less (see [Summary Administration](#)).
- Disposition of personal property without administration, which is a grouping of processes that can be used instead of a formal or summary administration if certain criteria are met (see [Disposition of Personal Property without Administration](#)).

Summary Administration

A summary estate administration is an expedited estate administration proceeding that is available only in certain circumstances. A summary administration requires court supervision, but it does not require appointment of a personal representative. An estate qualifies for summary administration:

- Whether or not the decedent was a Florida resident.
- Whether or not the decedent died with a will.
- Only if the will (if any) does not direct otherwise.
- If either:
 - the decedent is dead for more than two years; or
 - the value of the entire probate estate subject to administration in Florida (less the value of exempt property) is \$75,000 or less. For additional information regarding exempt property, see [Practice Note, Understanding Probate: Rights of Surviving Spouse and Children \(FL\): Exempt Property Defined](#).

(§ 735.201, Fla. Stat.)

For additional information regarding summary administration, see [Practice Note, Understanding Probate: Summary Estate Administration \(FL\)](#).

Disposition of Personal Property without Administration

Disposition of personal property without administration is a set of processes that can be used instead of a probate if certain criteria are met. These processes include:

- Disposition without administration (see [Disposition Without Administration](#)).
- Disposition without administration of intestate property in small estates (see [Disposition Without Administration of Intestate Property](#)).
- Payment to successor without court proceedings (see [Payment to Successor Without Court Proceedings](#)).
- Income tax refunds in certain cases (see [Income Tax Refunds to Spouse or Children in Certain Cases](#)).

For additional information about the various processes for disposition of personal property without administration generally, see [Practice Note, Understanding Probate: Disposition of Personal Property Without Administration \(FL\)](#).

Disposition Without Administration

A disposition without administration is an unsupervised administrative proceeding and is limited to situations where the decedent dies leaving only personal property of limited value (§ 735.301, Fla. Stat.). A disposition without administration only applies to:

- Exempt personal property, such as household furniture and furnishings up to \$20,000 and two qualified motor vehicles (§ 732.402, Fla. Stat.). For additional information about exempt property, see [Practice Note, Understanding Probate: Rights of Surviving Spouse and Children \(FL\): Exempt Property Defined](#).
- Personal property that is exempt from the claims of creditors under the Constitution of Florida (personal property up to \$1,000) (Art. X, § 4(a)(2), Fla. Const.)
- Nonexempt personal property up to the value of preferred funeral expenses and reasonable and necessary medical and hospital expenses attributable to the decedent's last illness and incurred up to 60 days before death. Preferred funeral expenses are reasonable funeral expenses not exceeding \$6,000 (§ 733.707(1)(b), Fla. Stat.).

(§ 735.301(1), Fla. Stat.)

For additional information regarding the disposition without administration process, see [Practice Note, Understanding Probate: Disposition of Personal Property Without Administration \(FL\): Disposition Without Administration](#).

Disposition Without Administration of Intestate Property

A disposition without administration of intestate property is limited to situations where the decedent dies without a will leaving only:

- Exempt personal property, such as household furniture and furnishings up to \$20,000 and two qualified motor vehicles (§ 732.402, Fla. Stat.). For additional information about exempt property, see [Practice Note, Understanding Probate: Rights of Surviving Spouse and Children \(FL\): Exempt Property Defined](#).
- Personal property that is exempt from the claims of creditors under the Constitution of Florida (personal property up to \$1,000) (Art. X, § 4(a)(2), Fla. Const.).
- Nonexempt personal property that does not exceed:
 - preferred funeral expenses (which are reasonable funeral expenses not exceeding \$6,000 (§ 733.707(1)(b), Fla. Stat.));
 - reasonable and necessary medical and hospital expenses attributable to the decedent's last illness and incurred up to 60 days before death; and
 - up to \$10,000 in addition to these amounts.

In addition, to qualify for a disposition without administration of intestate property:

- The decedent must be deceased for more than one year.
- There must be no administration of the decedent's estate pending in Florida.

(§ 735.304(1), Fla. Stat. and FL ST PROB Rule 5.425(a).)

For additional information regarding the disposition without administration of intestate property process, see [Practice Note, Understanding Probate: Disposition of Personal Property Without Administration \(FL\): Disposition Without Administration of Intestate Property](#).

Payment to Successor Without Court Proceedings

The payment to successor without court proceeding process allows a financial institution in Florida to pay to certain family members of a decedent, without any court proceeding, order, or judgment, the funds on deposit in certain accounts of the decedent at the financial institution if:

- The total amount of the combined funds in the qualified accounts at the financial institution do not exceed an aggregate total of \$1,000 and an affidavit is provided which, among other things, indicates that all accounts at all financial institutions do not exceed \$1,000.
- At least six months have passed from the decedent's date of death.

(§ 735.303(2), (3), Fla. Stat.)

For additional information regarding the payment to successor without court proceedings process, see [Practice Note, Understanding Probate: Disposition of Personal Property Without Administration \(FL\): Payment to Successor Without Court Proceedings](#).

Income Tax Refunds to Spouse or Children in Certain Cases

When a decedent is entitled to a federal income tax refund that is to be paid after the decedent's death and whether the decedent filed a joint or separate income tax return, the refund, if not in excess of \$2,500, may be refunded either:

- Directly to the surviving spouse on the surviving spouse's verified application.
- If there is no surviving spouse, to one of the decedent's children who is designated in a verified application executed by all the decedent's children who are over 14.

(§ 735.302, Fla. Stat.) For additional information regarding the income tax refunds to spouse or children process, see [Practice Note, Understanding Probate: Disposition of Personal Property Without Administration \(FL\): Income Tax Refunds to Spouse or Children in Certain Cases](#).

Ancillary Administration

If a decedent that is not a Florida resident dies leaving assets in Florida, including real or personal property, credits due from Florida residents, or liens on property in Florida, an ancillary administration may be required for an individual to gather and distribute the Florida property (§ 734.102(1), Fla. Stat.). Ancillary administration gives a personal representative in Florida the authority to administer the estate of a non-resident decedent. An ancillary administration is typically secondary to a domiciliary administration, which takes place in the country or state of the decedent's domicile and through which the bulk of the decedent's assets are handled.

For more information regarding ancillary administration in Florida, see [Practice Note, Understanding Probate: Ancillary Estate Administration \(FL\)](#).