

Florida Estate Procedures

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WHAT IS PROBATE?

Under Florida law, it is necessary to "probate" an estate for any person who has passed away leaving assets titled in their name alone. Any assets which are titled jointly between the decedent and another person or persons should pass automatically to the survivor and will not require the opening of an estate. Assets such as life insurance benefits, IRAs, annuities, and pensions with a beneficiary designation should pass directly to said beneficiaries, and will not require the opening of an estate under Florida law.

The Formal Administration of an estate is necessary to transfer the assets from the decedent's name alone to

the designated beneficiaries of the estate, *after* the payment of any claims and costs of administration. The procedure for Formal Administration is instituted by the filing with the Court of a Petition for Administration requesting appointment of Personal Representative (i.e. Executor). Administration of an estate can either be Testate (with a Last Will and Testament) or Intestate (without a Last Will and Testament).

Once appointed by the court, the Personal Representative's duties include marshalling and protecting all estate assets, preparing an Inventory, paying all claims against the estate, making distribution to beneficiaries, preparation of a final accounting, and the preparation of any necessary federal and state tax returns.

Once the estate has been opened, it is necessary to publish a Notice to Creditors, which notifies potential creditors of the administration of the estate. The Per-

sonal Representative is under an obligation to make a diligent search to determine the names and addresses of creditors of the decedent, and serve a copy of the "Notice to Creditors" upon those creditors. Creditors have a three month period within which to file a claim against the estate with the court, which begins on the date of the first publication of the Notice to Creditors.

During the three (3) month claims period, other matters require the attention of the Personal Representative. These include, but are not limited to, service of Notice of Administration on all interested parties; obtaining appraisals of assets; forwarding of copies of the Inventory on all residual beneficiaries, and a determination as to what tax returns will need to be filed.

Once the three (3) month claims period expires and the claims have been paid and any necessary tax returns have been prepared and filed, the Personal Representative may begin to close the estate. This in-

volves preparing a Final Accounting, Petition for Discharge, a plan of distribution and serving notice thereof on all residual beneficiaries.

Under Florida law, a Formal Administration must be concluded within one year, unless tax or other issues require additional time.

Legal fees for a Formal Estate Administration are typically three percent (3%) of the Inventory value of the estate. Extraordinary legal services may be required in addition thereto. The Personal Representative is also entitled to a fee of three percent (3%) of the Inventory value.

The costs associated with a Formal Estate Administration in Florida, include Court filing fee (\$414.00); fiduciary bond (\$105.00+); publication of Notice to Creditors (\$100.00+); certified copies, photocopies, postage and long distance telephone calls.

This is a brief overview of Florida estate procedures, which give you a better idea of what is involved with an estate administration.

About our firm...

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Michael W. Porter, Esquire, has been engaged in the practice of law primarily in the areas of Guardianship, Probate & Estate Administration, Trusts, Estate Planning, and Real Estate Law since his admission to the Florida Bar in 1986. He maintains strong community ties, and is committed to the pursuit of excellence.

You will find that all members of our staff will communicate effectively and demonstrate the strictest personal and professional ethics as well as the utmost concern for our clients.