

A Legal Report

PROBATE: EVERYTHING YOU NEED TO KNOW

A probate is a legal process or a court guided process of passing property of a deceased person to dependents through an administrator.



FLORIDA PROBATE TEAM

For more information or a FREE 1 hour consultation
Call 407-203-9292 or Email: info@flprobate.com

UNDERSTANDING THE PROBATE PROCESS

"You need to know how property is passed from an owner to the dependents, once they die."

In many instances, a probate process is not mandatory unless there is a dispute or the will left by the deceased has some ambiguity. It is one of the legal processes that you can perform without seeking an attorney or a paralegal, depending on the complexity of the matter.

To understand the process, you need to know how property is passed from an owner to the dependents, once they die. While many people leave a clear will, there are those instances where there is no clear administrator.

When there is no clear administrator, the next of kin, a wife or a child can move to court to seek absolute power to distribute the property to others. This is the start of the probate process.





MANDATES OF A PROBATE COURT

A probate court is a state-administered court that has the power to determine matters of property and inheritance. In many states across the U.S., probate laws are similar in various ways though there could be some differences depending on local laws.

The main reason for such a court is to ensure the property is well shared, debts and liabilities are sorted out and there is harmony and fairness in property inheritance. Where there is a will, rarely do we see a challenge of the same. Therefore, it is good to be clear on the contents of the will before a court rules in your favor to make you probate.

KEY STEPS OF THE PROBATE PROCESS

1. FILE A PETITION SEEKING TO BE THE PROBATE

The first step is to move to a probate court and ask to get administration rights. This process is normally simple and is referred to as an application of probate. If a will was clear on who would be an administrator of the estate, this process is simple and doesn't require a lot of court intervention. However, where the will was not clear on the administration of the estate, the court will need to determine if you can be probate or not.

2. GIVE AN INVENTORY OF THE ESTATE PROPERTY INCLUDING CREDITORS AND OTHER LIABILITIES

When you move to court to share the estate among beneficiaries, ensure you have done your homework well. Make sure you know the estate you want to share out very clearly. List all the known properties or that which needs to be shared. Also, ensure you know the debts that the estate owes and seek to settle that once the court determines the probate. This gives the court a clear picture of what is at hand.

3. NOTIFY ALL BENEFICIARIES OF YOUR INTENTION TO INITIATE THE PROBATE PROCESS

Let all the beneficiaries and debtors of the estate about your desire to be probate in this estate. This ensures that there is cohesion in the intent of your actions. This way, you can manage to get any opposition or disputes that might arise before the probate commences.

4. APPEAR BEFORE A COURT TO DETERMINE THE VALIDITY OF INSTRUMENTS OF PROBATE

You may be required to appear in person before a probate court to state your case. However, this can be a simple process where the work is done behind the scenes and not necessarily appearing in person. This includes filling of forms and other documents that will represent the estate property. If the will is not as clear as it should be, you might need a lawyer to present you before a judge.

5. SEEK ORDERS TO PAY ALL LIABILITIES

Once a probate court agrees to let you become a probate, move with speed to pay the liabilities and debts before you can distribute the property to the beneficiaries. This ensures that no one inherits a debt they never created.

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Do you Need an Attorney to Execute a Probate Process?

The process of probate rarely seeks the services of a lawyer. If done properly, this can save the estate a considerable amount of money as legal fees can be sometimes high. The probate process can also be conducted by a probate specialist who can be a paralegal or someone with experience in sorting out probate matters.

However, there are instances where you can't avoid hiring a lawyer.



Four instances where you must seek a lawyer

- When the Will is Disputed (conflicts) – This comes when one party mentioned in the will doesn't agree with the contents of the will or in the case a beneficiary is left out of a will. This time, you will seek a lawyer to file for interpretation of the will and seeking a judge to resolve the conflict. On the same note, a paralegal might not be enough to help in such an incidence.
- When the property listed and liabilities are not tallying with the ones listed in the Will -There are cases where the property listed in the will doesn't tally with the actual property. This arises when a new property was acquired after a will was written and before any amendments were made. This can also happen when a new liability and debt comes after the original will is written. You need an attorney to push this process through a court of law.
- Contracts - Lawyers have a mandate to develop and ascertain contracts. This can't be better done by a lawyer and not necessarily a paralegal.
- When a judge needs to clear a dispute - Some probate judges need to see all the parties in court to determine how property is shared and administered. To appear before a judge, you will need an attorney to help you with court procedures.

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Probate Services You Need

Personal Property Organization & Clean Out:

Your loved one likely left behind a home full of treasures and memories. It can be daunting and emotional to go through everything and make decisions on what to keep, what to sell, and what to throw away or recycle.

Repairs, Upkeep, Remodeling:

Whether you know what you plan to do with the property or not - some maintenance is almost always required. This can range anywhere from lawn care, pest control, or plumbing - to re-roofing, flooring, structural repairs or even a full-scale remodel to maximize sale price.

If Desired, Quick Cash Sales:

You may not want to wait around 3-6 months for a property to sell with a Real Estate Agent. Or maybe the property needs repairs but you don't have money to fix it. In these cases, working cash buyers who are willing to purchase property in "as - is" conditions may be the best option. These buyers will sometimes even pay all closing costs and close, based on your timeline.

Professionally Managed Estate Sale or Auction:

These can be extremely stressful, especially for the family members. Once you have worked out which items you'd like to keep, a professional estate sale team or auctioneer will step in to handle the remaining personal property, and leave all proceeds with the family/estate.

With Probate Matters, Key Issues Need to Be Addressed: Talk to us now!

When it comes to administering an estate, always ensure that you know the estate well. Equally, make sure that you are on the lookout for the property liabilities as the process can drag for a long time on end.



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The End

