A GUIDE TO FLORIDA PROBATE

Essential Information for Managing a Loved One's Estate



South Florida Law PLLC

A Guide to Florida Probate

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Table of Contents

Introduction	page	1
Chapter 1: What Is Probate?	page	2
Chapter 2: When Is Probate Required?	page	6
Chapter 3: Who Is Involved?	page	7
Chapter 4: Where Does Probate Take Place?	page	9
Chapter 5: How the Process Works	page	10
Chapter 6: Essential Documents	page	12
Chapter 7: Managing Estate Assets	page	13
Chapter 8: Dealing with Debts and Creditors	page	15
Chapter 9: Common Challenges	page	17
Chapter 10: Costs and Timeline	page	19
Chapter 11: Tax Considerations	page	21
Chapter 12: Final Distribution and Closing	page	23
Essential Checklists	page	25
Key Resources	page	26
Final Thoughts	page	28

Note: *Content in this book is not legal advice.*

Introduction

This guide gives families the key facts they need to settle a loved one's estate through Florida's probate system. It works as both a big-picture overview and a practical reference to keep close at hand until the estate is closed. Each chapter explains one part of the process in plain language and points to the Florida law that applies.

What's New in the 2026 Edition

Florida changed several probate rules on July 1, 2026, and federal tax figures changed for 2026 and 2027. This edition reflects those changes:

- The summary administration limit doubled from $75,000 to $150,000.
- Small-estate shortcuts increased to $20,000 for certain estates without a will, $2,000 for small bank accounts, and $5,000 for federal tax refunds.
- Personal representatives gained new powers over a decedent's safe deposit box. They can also go to court, with legal fees recoverable, when someone refuses to honor their authority.
- The federal estate tax exemption is $15 million for 2026 deaths and $15.48 million for 2027 deaths.
- New sections explain homestead, surviving spouse rights, ways to avoid probate, and every major deadline.

When to Seek Professional Help

- In formal administration, the personal representative must hire a Florida attorney unless that person is the only interested person or is a Florida attorney (Rule 5.030).
- Complex assets, family disputes, homestead questions, and tax issues call for professional guidance.
- Attorney help is optional in summary administration, but recommended. People who receive property through summary administration can be held personally responsible for the decedent's valid debts, up to the value of what they received (§ 735.206).

How to Use This Guide

- The person who died is called the "decedent."
- References that begin with "§" point to sections of the Florida Statutes. The Florida Probate Code is found in Chapters 731 through 735.
- References to a "Rule" point to the Florida Probate Rules, which set the court's procedures.
- This edition reflects Florida and federal law as of November 2026.

Probate mistakes can be costly and hard to undo. Families who work with an experienced Florida probate attorney from the start are more likely to avoid missed deadlines, personal liability, and family conflict.

Chapter 1: What Is Probate?

Probate is the court-supervised process of settling a person's final affairs after death. During probate, the court confirms who has authority to act for the estate, valid debts and taxes are paid, and the remaining property passes to the people entitled to it. Florida's probate rules are found in the Florida Probate Code, Chapters 731 through 735 of the Florida Statutes.

Florida's Probate Options

Florida has two main types of probate, plus several shortcuts for very small estates.

Formal Administration

- Available for an estate of any size (§ 735.202)
- Required when the probate assets, not counting homestead and other exempt property, are worth more than $150,000 **and** the death occurred within the last 2 years, or when the will calls for formal administration
- A personal representative is appointed and receives Letters of Administration
- More court supervision, typically 6 to 18 months

Summary Administration

- Available when the probate assets, not counting homestead and other exempt property, are worth $150,000 or less, **or** when the death occurred more than 2 years ago (§ 735.201)
- The will must not require formal administration
- No personal representative is appointed; instead, the court signs an order that sends the property to the people entitled to it
- Simpler process, typically 2 to 6 months

Small-Estate Shortcuts

Some estates qualify for options that are simpler still:

- **Exempt property and final expenses only:** If the estate holds only exempt property, plus personal property worth no more than the funeral bill and medical bills from the last 60 days of life, the court can release the property without administration (§ 735.301).
- **Small estates without a will:** If there is no will, the decedent has been dead more than 1 year, and the estate holds only personal property worth up to $20,000 plus funeral and final medical costs, the heirs can claim it by filing a sworn affidavit with the court (§ 735.304).
- **Small bank accounts:** If the decedent's bank accounts without a beneficiary total no more than $2,000, a surviving spouse (or, if none, an adult child, adult descendant, or parent) can collect the money by sworn affidavit starting 6 months after the death (§ 735.303).
- **Tax refunds:** A surviving spouse, or a child if there is no spouse, can receive a federal income tax refund of up to $5,000 without probate (§ 735.302).
- **Vehicles:** Heirs can often retitle a car through the county tax collector without a probate order, if the estate is not in debt and the heirs agree (§ 319.28).

People who collect property through some of these shortcuts can be held responsible for the decedent's valid debts, up to the amount they received.

> **2026 Update**
>
> On July 1, 2026, Florida doubled the summary administration limit from $75,000 to $150,000. It also raised the shortcut amounts from $10,000 to $20,000 for small estates without a will, from $1,000 to $2,000 for bank accounts, and from $2,500 to $5,000 for tax refunds. When a death occurred before July 1, 2026, the family should ask a probate attorney which limits apply.

Assets That Avoid Probate

Many assets pass directly to a named person and never go through probate:

- Property owned jointly with right of survivorship, including real estate owned by a married couple as tenants by the entirety
- Bank accounts with payable-on-death (POD) beneficiaries (§ 655.82)
- Brokerage accounts with transfer-on-death (TOD) beneficiaries (Chapter 711)
- Retirement accounts and life insurance with living named beneficiaries
- Assets held in a trust, such as a revocable living trust
- Real estate deeded with an enhanced life estate deed, often called a "Lady Bird" deed

Florida does not offer a transfer-on-death deed for real estate. Owners who want a home to skip probate usually sign a Lady Bird deed or place the home in a revocable trust.

Assets That Usually Require Probate

- Real estate titled in the decedent's name alone (a homestead follows the special rules below)
- Bank and investment accounts in the decedent's name alone with no POD or TOD beneficiary
- Personal property, such as vehicles, jewelry, art, and furniture
- Business interests owned by the decedent
- Accounts payable to "the estate," or whose only beneficiary died first
- Money owed to the decedent, such as unpaid wages, refunds, or loans

Florida Intestacy (No Will)

When someone dies without a valid will, Florida law decides who inherits (§§ 732.102–732.104). "Descendants" means children, grandchildren, and later generations.

Who survives the decedent	Who inherits
A spouse, and no descendants	The spouse inherits everything.
A spouse and descendants, all of whom are also the spouse's, and the spouse has no other descendants	The spouse inherits everything.
A spouse and descendants, when the decedent or the spouse has descendants from another relationship	The spouse gets one-half. The decedent's descendants share the other half.
Descendants, but no spouse	The descendants inherit. If a child died first, that child's share passes to his or her descendants.
No spouse or descendants	Parents inherit first, then brothers and sisters and their descendants, then more distant relatives.

> **Example**
>
> James dies without a will. He leaves his wife, Ana, and their two children. Ana also has a son from an earlier marriage. Because Ana has a descendant who is not James's, Ana receives one-half of the estate, and James's two children share the other half. Their home follows the homestead rules below.

Homestead: Special Rules for the Family Home

For many Florida families, the home is the largest asset, and it follows its own rules under Article X, Section 4 of the Florida Constitution and § 732.401:

- A Florida resident's protected homestead does not count toward the $150,000 summary administration limit. It also generally passes free of the decedent's unsecured debts, although mortgages and property taxes still apply.
- If the owner is survived by a spouse or a minor child, the owner's will cannot freely leave the home to others. When there is a spouse but no minor child, the home can be left to the spouse. A spouse can give up these rights in a valid written agreement (§ 732.702).
- When the home cannot pass by will, or there is no will, and a spouse and descendants survive, the spouse receives a life estate and the descendants receive the remainder. Instead of the life estate, the spouse can elect, within 6 months after the death, to take a one-half interest in the home as a tenant in common with the descendants (§ 732.401).
- A home owned as tenants by the entirety, or jointly with right of survivorship, passes directly to the surviving owner and is not covered by these rules.
- A court order determining homestead status is usually needed before the home can be sold or refinanced.

Protections for a Surviving Spouse

Florida law gives a surviving spouse several protections in addition to homestead rights:

- **Exempt property:** Household furniture and appliances worth up to $20,000, up to two vehicles regularly used by the family, and 529 college savings plans pass to the spouse (or, if there is no spouse, to the children), free of most creditors' claims. A petition must be filed by the later of 4 months after the notice of administration is served or 40 days after any related court proceeding ends (§ 732.402).
- **Family allowance:** The court can order up to $18,000 to support the spouse and dependents during administration (§ 732.403).
- **Elective share:** A surviving spouse can choose to take 30% of the decedent's "elective estate," which includes many non-probate assets, instead of what the will provides (§ 732.2065). The election must be filed by the earlier of 6 months after service of the notice of administration or 2 years after the death (§ 732.2135).

Chapter 2: When Is Probate Required?

Basic rule: Probate is required when someone dies owning assets that can only be transferred through a court process. Assets with a surviving joint owner, a named beneficiary, or a trust as owner usually pass without it (see Chapter 1).

Quick Assessment

Probate is likely required if the decedent owned any of the following in his or her name alone:

- Real estate, including a homestead, which usually needs at least a court order confirming who inherits it
- Bank or investment accounts with no joint owner or beneficiary
- Other titled property, except vehicles, which can often be retitled without probate (§ 319.28)
- Business interests or valuable personal property, such as jewelry, art, or collections

Which Type of Probate Fits?

The value of the probate assets decides which type of probate applies, not whether probate is needed:

- **$150,000 or less**, not counting exempt property: summary administration is usually available.
- **Over $150,000:** formal administration is usually required, unless the decedent has been dead more than 2 years.
- **A will that requires formal administration:** formal administration, no matter the value.

Asset Valuation for the $150,000 Threshold

Counts toward the limit: bank accounts and investments in the decedent's name alone, real estate other than homestead, personal property, and business interests (§ 735.201).

Does not count: protected homestead; exempt property, such as household furniture up to $20,000, two family vehicles, and 529 plans, when a spouse or children survive (§ 732.402); and non-probate assets, such as joint accounts with survivorship, POD and TOD accounts, life insurance payable to named beneficiaries, and trust assets.

> **Example**
>
> Maria, a widow, dies in August 2026. She leaves her homestead condo, her car, household furniture worth less than $20,000, and a $90,000 bank account in her name alone with no beneficiary. Her two adult children survive her. The condo, the car, and the furniture do not count toward the limit, so the estate is worth $90,000 for this test, and her children can use summary administration. Under the old $75,000 limit, they would have needed formal administration.

Two-Year Rule

Summary administration is available no matter how large the estate is if the decedent has been dead for more than 2 years (§ 735.201). By then, most creditor claims are barred (§ 733.710).

Chapter 3: Who Is Involved?

Personal Representative (Executor)

Florida uses the term "personal representative" for the person or institution in charge of an estate. Other states often say "executor." A personal representative is a fiduciary, which means he or she must manage the estate carefully, honestly, and in the best interests of the beneficiaries and creditors (§ 733.602).

Responsibilities

- Find, secure, and manage the decedent's probate assets
- File court documents and meet court deadlines
- Notify beneficiaries and creditors
- Pay valid debts, expenses, and taxes
- Keep careful records and prepare the final accounting
- Distribute the remaining assets to the people entitled to them

Who Can Serve

- Florida residents age 18 or older who have no felony conviction, no conviction for abusing, neglecting, or exploiting an elderly or disabled adult, and who are mentally and physically able to serve (§§ 733.302, 733.303)
- Out-of-state residents only if they are the decedent's parent, grandparent, child, grandchild, adopted child or adoptive parent, spouse, sibling, aunt, uncle, niece, or nephew; a lineal relative of one of these; or the spouse of anyone on this list (§ 733.304). An out-of-state friend cannot serve.
- Banks and trust companies with trust powers in Florida (§ 733.305)

Who Gets Priority

When the will names a personal representative, the court usually appoints that person. When there is no will, the surviving spouse comes first, followed by the person chosen by a majority of the heirs, and then the closest heir (§ 733.301).

Compensation

Florida presumes the following commissions reasonable for ordinary services. They are based on the value of the probate assets plus income the estate earns during administration (§ 733.617):

Value of the estate	Presumed commission
First $1 million	3%
Over $1 million up to $5 million	2.5%
Over $5 million up to $10 million	2%
Over $10 million	1.5%

Extra pay may be allowed for extraordinary services, such as selling real estate, handling a lawsuit, or dealing with homestead. Family members who serve often waive the commission.

> **Example**
>
> A probate estate worth $400,000, including income earned during administration, carries a presumed commission of $12,000 (3% of $400,000). When the personal representative is also the only beneficiary, waiving the commission may make sense. A commission counts as taxable income, while an inheritance generally does not.

Beneficiaries and Heirs

Beneficiaries are the people named in a will. **Heirs** are the relatives who inherit under Florida law when there is no will. Their rights include:

- Receiving the notice of administration, which explains key deadlines (§ 733.212)
- Receiving a copy of the inventory if they are the surviving spouse, an heir in an estate without a will, or a residuary beneficiary, or if they ask in writing (Rule 5.340)
- Reviewing the final accounting and objecting to it (Rule 5.401)
- Asking the court to remove a personal representative who mismanages the estate (§ 733.504)
- Receiving their lawful inheritance once debts, expenses, and taxes are paid

Probate Court

In Florida, probate cases are heard by the circuit court, usually in its probate division. The court appoints the personal representative, resolves disputes, rules on objections, and approves the final discharge.

Attorney Requirements

Required: A personal representative in formal administration must be represented by a Florida attorney, unless the personal representative is the only interested person or is a Florida attorney (Rule 5.030).

Optional but recommended: people filing for summary administration, and beneficiaries who are not involved in disputes.

The estate's attorney represents the personal representative, not each beneficiary. A personal representative can be held personally liable for mistakes, such as paying the wrong creditor or distributing assets too early, so working with an experienced Florida probate attorney is the safest course.

Chapter 4: Where Does Probate Take Place?

Primary Rule

Probate is filed in the county where the decedent was domiciled, meaning his or her legal home, at the time of death (§ 733.101). For example, the estate of a Hollywood resident is opened in Broward County, and the estate of a Coral Gables resident is opened in Miami-Dade County.

Domicile depends on where the person lived and intended to stay. Signs of domicile include a Florida driver's license, voter registration, a homestead exemption, and a declaration of domicile filed with the clerk. If the family disagrees about where the decedent lived, the court decides. The family cannot simply pick a different county.

When the Decedent Lived Outside Florida

- If the decedent did not live in Florida, probate can be filed in any county where the decedent's property is located.
- If the decedent had no property in Florida, probate can be filed in the county where a debtor of the decedent lives (§ 733.101).
- If a case is filed in the wrong county, the court can transfer it to the proper county.

Ancillary Administration

When a nonresident dies owning Florida real estate in his or her name alone, a second probate case, called **ancillary administration**, is usually needed in Florida in addition to the main probate in the home state (Chapter 734). Smaller estates can use summary administration instead (§ 735.201). No Florida probate is needed for property held in a trust, owned jointly with right of survivorship, or deeded with a Lady Bird deed.

> **Example**
>
> Linda lived in New York and owned a condo in Fort Lauderdale in her name alone. After her estate is opened in New York, her personal representative will usually need an ancillary administration in Broward County to sell or transfer the condo. If the condo is worth $150,000 or less, a simpler ancillary summary administration may be available. Had Linda placed the condo in a revocable trust, no Florida probate would have been needed.

Chapter 5: How the Process Works

Formal Administration Process

Phase 1: Opening the Estate (Weeks 1–6)

1. Deposit the original will with the clerk of court within 10 days after learning of the death (§ 732.901).
2. File the petition for administration in the proper county.
3. The court admits the will to probate and appoints the personal representative.
4. The personal representative files an oath, a designation of resident agent, and any bond the court requires (Rules 5.110, 5.235, 5.320).
5. The clerk issues Letters of Administration, which give the personal representative legal authority to act.

Phase 2: Administration (Months 1–12)

6. Serve the notice of administration on the surviving spouse, beneficiaries, and other interested persons (§ 733.212).
7. Publish the notice to creditors and serve it on known creditors (§ 733.2121).
8. File and serve the inventory within 60 days after letters issue (Rule 5.340).
9. Secure and manage assets, review creditor claims, and pay valid debts.

Phase 3: Taxes, Accounting, and Closing (Months 6–18)

10. File required tax returns and pay any taxes due.
11. File and serve the final accounting and petition for discharge, including a plan of distribution. These are due within 12 months after letters issue, or 12 months after any federal estate tax return is due, unless the court extends the time (Rule 5.400).
12. Allow 30 days for objections, then distribute the assets and collect receipts (Rule 5.401).
13. The court enters an order discharging the personal representative.

Creditor Notice Requirements

- Publish the notice to creditors promptly, once a week for 2 consecutive weeks (§ 733.2121).
- Serve the notice on every known or reasonably ascertainable creditor.
- If the decedent was 55 or older, serve the notice and a copy of the death certificate on Florida's Agency for Health Care Administration (AHCA) within 3 months after first publication.
- Most claims must be filed within 3 months after first publication. Chapter 8 explains the deadlines in detail.

Summary Administration Process

1. Confirm eligibility: probate assets of $150,000 or less, not counting exempt property, or a death more than 2 years ago, and no will requiring formal administration (§ 735.201).

2. Deposit the original will with the clerk, if there is one.
3. Search for known creditors, serve them with the petition, and arrange for their payment (§ 735.206).
4. File the petition, describing the assets and the proposed distribution. The surviving spouse and the beneficiaries generally must sign it, but a beneficiary who receives a full share may instead receive formal notice (§ 735.203).
5. The court enters an order of summary administration.
6. Use the court order to transfer assets to the people named in it.

After the order is entered, the petitioners may publish a notice to creditors. Doing so bars claims from unknown creditors who do not file within 3 months after first publication (§ 735.2063).

Chapter 6: Essential Documents

Initial Documents Needed

- Certified death certificates. Ordering 10 to 15 copies is wise, since banks, insurers, and the court often each need one.
- The original will and any codicils. Whoever holds the original will must deposit it with the clerk of court within 10 days after learning of the death (§ 732.901).
- Names, addresses, and relationships of all beneficiaries and heirs, plus the birth dates of any minors
- An Employer Identification Number (EIN) for the estate from the IRS, which is needed to open an estate bank account

Key Court Documents

- Petition for Administration (formal) or Petition for Summary Administration
- Oath of personal representative and designation of resident agent
- Letters of Administration
- Notice of Administration, served on beneficiaries and other interested persons
- Notice to Creditors, for publication and service
- Inventory of estate assets
- Final accounting, petition for discharge, and plan of distribution
- Receipts from beneficiaries and the order of discharge

Asset Documentation

- Deeds, titles, and recent property tax bills
- Professional appraisals of real estate and valuable personal property. Date-of-death values matter because they usually set the heirs' tax basis.
- Statements for bank, brokerage, and retirement accounts
- Insurance policies and beneficiary designations
- Business records, agreements, and valuations
- Recent tax returns, which often reveal forgotten accounts and income

Tax Forms

- Final individual income tax return (Form 1040) for the year of death
- Estate income tax return (Form 1041), if the estate has gross income of $600 or more in a tax year
- Federal estate tax return (Form 706), if the decedent's gross estate plus taxable lifetime gifts exceeds the federal exemption: $15 million for 2026 deaths and $15.48 million for 2027 deaths. A Form 706 may also be worth filing to preserve a deceased spouse's unused exemption (see Chapter 11).

Chapter 7: Managing Estate Assets

Initial Steps

- Secure all property: change the locks, store vehicles safely, and protect valuables.
- Keep insurance in force. If no one lives in the home, the insurer should be told, since many policies limit coverage for vacant homes.
- Get an EIN and open an estate bank account. Estate money should never be mixed with personal funds.
- Have the decedent's mail forwarded, and cancel services that are no longer needed.
- List every asset with its value on the date of death.

> **2026 Update: Safe Deposit Boxes**
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> Since July 1, 2026, a bank must give a personal representative who presents letters of administration access to the decedent's safe deposit box. The personal representative can remove the contents, pay any unpaid rental charges, and end the box lease (§§ 655.933, 655.936).

Even before letters issue, a spouse, parent, adult descendant, or person named as personal representative in a copy of the will can ask the bank to open the box, with a bank officer present, to look for a will, burial papers, or life insurance policies (§ 655.935).

Ongoing Management

- Maintain real estate, keep property taxes and insurance paid, and keep the property in good repair.
- Manage investments prudently, and keep any business running or wind it down in an orderly way.
- Collect income, such as rent, dividends, and refunds, and pay necessary expenses from the estate account.
- Keep detailed records and receipts for every transaction. These records become the final accounting.

When Others Refuse to Cooperate

Banks, landlords, and even relatives sometimes refuse to honor a personal representative's authority. Since July 1, 2026, Florida law makes clear that a personal representative can go to court to enforce his or her powers (§ 733.612). If the personal representative wins, the court must award costs and attorney fees, and it can order the person who caused the problem to pay them (§ 733.6125).

Selling Real Estate

Whether a personal representative needs court approval to sell real estate depends on the will (§ 733.613):

- If the will gives the personal representative a power of sale, the property can usually be sold without a court order.
- If there is no will, or the will gives no power of sale, the court must authorize or confirm the sale.
- Letters of administration sometimes limit a personal representative's powers, so they should be read closely before any sale contract is signed.
- Protected homestead usually passes directly to the heirs and is not sold by the personal representative like other estate property.

Sale Decisions

Consider selling when: beneficiaries prefer cash, an asset is hard to divide, carrying costs are high, or money is needed to pay debts and expenses.

Consider keeping when: beneficiaries want specific assets, an item has sentimental value, or an asset is likely to grow in value.

Before selling, the personal representative should check whether the will leaves the asset to a specific person.

Chapter 8: Dealing with Debts and Creditors

Types of Estate Debts

- **Secured debts**, such as mortgages and car loans. The lender's lien stays on the property.
- **Unsecured debts**, such as credit cards and medical bills
- **Administration expenses**, such as court costs, attorney fees, and appraisals
- **Taxes**, including the decedent's final income taxes

Debts are paid from the estate. Family members generally are not personally responsible for a decedent's debts unless they co-signed or shared the account. However, people who receive estate property without a full probate can be held responsible up to the value of what they received.

Notice Requirements

- Publish the notice to creditors promptly after appointment, once a week for 2 consecutive weeks (§ 733.2121).
- File proof of publication within 45 days after first publication (Rule 5.241).
- Serve the notice on every known or reasonably ascertainable creditor. This takes a diligent search of the decedent's mail, bills, and records.
- If the decedent was 55 or older, serve the notice and a copy of the death certificate on the Agency for Health Care Administration within 3 months after first publication, so Medicaid can file any claim.
- File a verified statement describing the search for creditors within 4 months after first publication (Rule 5.241).

Claim Deadlines

- Creditors who are not known must file claims within 3 months after first publication.
- Known creditors who are served have until the later of 3 months after first publication or 30 days after they are served (§ 733.702).
- Most claims are barred 2 years after the death, even if no probate case was ever opened (§ 733.710). This outside limit does not erase a recorded mortgage or other valid lien on property.

> **Example**
>
> The notice to creditors is first published on March 1. On May 20, the personal representative finds an unpaid medical bill and serves the provider with the notice. The provider's deadline is June 19, which is 30 days after service, because that date is later than June 1, when the 3-month window closes.

Evaluating Claims

- Review the supporting documents for each claim.
- Verify the creditor's identity and the amount owed.

- Object in writing to invalid or excessive claims by the later of 4 months after first publication or 30 days after the claim is filed (§ 733.705).
- After an objection, the creditor generally has 30 days to file a lawsuit on the claim, or the claim is barred (§ 733.705).
- Negotiate settlements when appropriate.

Florida's Order of Payment

When an estate cannot pay every claim in full, Florida law sets the order of payment (§ 733.707). Each class must be paid in full before the next class receives anything. If there is not enough to pay a class in full, its creditors share what is available in proportion to their claims.

1. Administration costs, including personal representative and attorney fees
2. Funeral, burial, and grave marker costs, up to $6,000
3. Debts and taxes with priority under federal law, Medicaid and public assistance recovery claims, and unpaid state court costs or fines
4. Medical and hospital bills from the last 60 days of the final illness
5. Family allowance
6. Past-due court-ordered child support
7. Debts from continuing the decedent's business, paid only from that business's assets
8. All other claims, including funeral costs above $6,000 and earlier medical bills

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Chapter 9: Common Challenges

Will Contests

Common grounds: lack of mental capacity, undue influence, fraud, duress, and a will that was not signed and witnessed as Florida law requires (§§ 732.502, 732.5165).

Deadline: A person served with the notice of administration has 3 months after service to challenge the will. All challenges end at the earlier of the personal representative's final discharge or 1 year after service of the notice (§ 733.212).

Defense: Gather medical records, witness statements, and other proof of the decedent's state of mind. A will signed with a self-proving affidavit can be admitted without calling the witnesses to testify (§ 732.503).

Florida does not enforce "no-contest" clauses. A will cannot take away a beneficiary's gift just because he or she challenges the will (§ 732.517).

Family Disputes

Prevention: regular updates, open records, and clear expectations about timing

Resolution: family meetings, mediation, and guidance from an experienced probate attorney

Missing Documents

- Search the decedent's home, files, computer, and email for wills, statements, and policies.
- Check with the clerk of court in the county where the decedent lived, in case someone already deposited the will.
- Ask the decedent's attorney, accountant, and financial advisor.
- Use other records, such as tax returns and bank statements, to find assets.
- If the original will cannot be found, a copy may still be admitted in some cases, but the court requires strong proof (§ 733.207).

Complex Assets

- **Business interests:** get a professional valuation and decide whether to continue or sell the business.
- **Real estate problems:** resolve title issues, unpaid taxes, and needed repairs, and consider market conditions.
- **Out-of-state property:** may require ancillary probate in another state.
- **Digital assets:** Florida law sets rules for when a personal representative can access online accounts and email (Chapter 740).

When to Seek Help

- Will contests or other disputes
- Homestead questions or a spouse's elective share claim

- Complex asset valuations or business interests
- Tax problems or a taxable estate
- Property in more than one state
- Family conflicts that need mediation

Families facing any of these issues should speak with an experienced Florida probate attorney before acting. Going it alone in a contested estate can lead to costly mistakes that are hard to reverse.

Chapter 10: Costs and Timeline

Major Cost Components

- **Court costs and filing fees:** about $400 to $2,000, including certified copies and publication of the notice to creditors
- **Attorney fees:** hourly, flat, or based on Florida's presumed-reasonable schedule below
- **Personal representative commission:** presumed reasonable at 3% of the first $1 million, with lower rates above that (see Chapter 3); often waived by family members
- **Professional services:** appraisers, accountants, and other experts, about $2,000 to $30,000 or more
- **Administration costs:** insurance, repairs, storage, and bond premiums, which vary by estate

Florida's Attorney Fee Schedule

In formal administration, Florida presumes the following attorney fees reasonable for ordinary services. Like the commission, they are based on the value of the probate assets plus income earned during administration (§ 733.6171):

Value of the estate	Presumed reasonable fee
Up to $40,000	$1,500
$40,001 to $70,000	$2,250
$70,001 to $100,000	$3,000
$100,001 to $1 million	$3,000 plus 3% of the value over $100,000
Over $1 million to $3 million	$30,000 plus 2.5% of the value over $1 million
Over $3 million to $5 million	$80,000 plus 2% of the value over $3 million
Over $5 million to $10 million	$120,000 plus 1.5% of the value over $5 million
Over $10 million	$195,000 plus 1% of the value over $10 million

No fee is mandatory. The personal representative and the attorney can agree to a different arrangement, such as an hourly or flat fee, and an attorney who uses the schedule must explain the options in writing. Extra fees may be allowed for extraordinary services, such as litigation, will contests, or the sale of real estate.

> **Example**
>
> A $500,000 probate estate carries a presumed attorney fee of $15,000: $3,000 for the first $100,000, plus 3% of the remaining $400,000. If the personal representative also takes the presumed 3% commission, that adds another $15,000, for a total of about 6% of the estate.

Timeline Expectations

- **Small-estate shortcuts:** often a few weeks once any waiting period has passed
- **Summary administration:** typically 2 to 6 months
- **Formal administration:** typically 6 to 18 months. The 3-month creditor period alone means most estates stay open at least 6 months, and the final accounting is due within 12 months after letters issue unless the court extends the time.
- **Complex or contested estates:** 18 months or longer

Cost Control Strategies

- Use a small-estate shortcut or summary administration when the estate qualifies.
- Get a detailed written fee agreement at the start.
- Keep organized records and respond quickly to the attorney's requests.
- Handle simple tasks, such as gathering statements and securing property, within the family.
- Communicate openly with beneficiaries to reduce the risk of costly disputes.

Chapter 11: Tax Considerations

Federal Estate Tax

- **Exemption:** $15 million per person for 2026 deaths and $15.48 million for 2027 deaths, adjusted for inflation each year
- **Rate:** up to 40% on amounts over the exemption
- **Return required:** when the gross estate plus taxable lifetime gifts exceeds the exemption
- **Due date:** 9 months after death. An automatic 6-month extension to file is available, but any tax is generally due at 9 months.
- **Portability:** A surviving spouse can keep a deceased spouse's unused exemption if a Form 706 is filed to elect it. When no return is otherwise required, the IRS generally allows this election up to 5 years after death.

> **Example**
>
> Robert dies in 2026 and leaves his $4 million estate to his wife, Carol, a U.S. citizen. No estate tax is due, because property left to a U.S. citizen spouse is not taxed. Even so, Robert's personal representative can file Form 706 to elect portability. Carol can then add Robert's unused exemption, up to $15 million, to her own, which could save her heirs a large amount of estate tax later.

Estate Income Tax

- **Form 1041:** required if the estate has gross income of $600 or more in a tax year
- **High tax rates:** estates reach the top 37% rate on taxable income over $16,000 in 2026 and over $16,500 in 2027
- **Strategy:** income distributed to beneficiaries is generally taxed to them instead, often at lower rates
- **Due date:** the 15th day of the 4th month after the estate's tax year ends (April 15 for a calendar-year estate). An estate may choose a fiscal year, and an automatic extension is available.

Final Individual Returns

- **Form 1040:** covers January 1 through the date of death
- **Joint filing:** a surviving spouse can usually file a joint return for the year of death
- **Due date:** the normal due date, usually April 15 of the year after death
- **Earlier years:** any unfiled returns from prior years must also be filed

Inherited Property and Capital Gains

Heirs generally receive inherited property with a tax basis equal to its value on the date of death. This "stepped-up" basis can greatly reduce capital gains tax when the property is sold. The rule does not apply to retirement accounts, such as traditional IRAs and 401(k)s, whose withdrawals are generally taxed as income.

Florida Tax Advantages

- No Florida estate tax or inheritance tax
- No Florida personal income tax
- Simpler tax compliance than in many other states

Professional Tax Help Is Needed When

- The estate may owe federal estate tax, or portability should be considered
- The estate includes a business or complex investments
- The decedent had income or property in other states
- The estate earns significant income during administration
- Past tax returns were never filed

A personal representative who distributes assets before taxes are paid can be held personally responsible for the unpaid tax. An experienced Florida probate attorney, working with a CPA, can help the estate avoid that risk.

Chapter 12: Final Distribution and Closing

Before Distribution

- All assets have been found, collected, and managed.
- The creditor period has ended, and valid claims and expenses have been paid or resolved.
- Tax returns have been filed and taxes paid, or money has been set aside for them.
- Deadlines for homestead, exempt property, and elective share claims have passed or been resolved.
- A reserve has been kept for final expenses, such as closing costs and the last tax bills.

Closing Steps

1. File and serve the final accounting and petition for discharge, including a plan of distribution, within 12 months after letters issue, or 12 months after any federal estate tax return is due, unless the court extends the time (Rule 5.400).
2. Allow 30 days for interested persons to object (Rule 5.401).
3. If someone objects, the court rules on the objection and settles the plan of distribution.
4. Distribute the assets under the plan and collect signed receipts.
5. File proof of distribution with the court.
6. The court enters an order of discharge, which releases the personal representative and the surety on any bond.

Beneficiaries often speed up closing by signing waivers of the accounting and of service, along with receipts and consents to discharge.

Final Accounting Requirements

The final accounting shows everything that happened during administration (Rule 5.346):

- Assets on hand at the start, as listed in the inventory
- All income received and all expenses paid
- Gains and losses on sales and investments
- Distributions already made
- Assets remaining for distribution
- Supporting statements and receipts

Asset Transfer Methods

- **Real estate:** a personal representative's deed or a court order; protected homestead passes by an order determining homestead status (Rule 5.405)
- **Financial accounts:** pay or transfer funds from the estate account to the beneficiaries
- **Vehicles:** transfer titles through the county tax collector
- **Personal property:** deliver items directly to beneficiaries and collect signed receipts

After Closing

- Keep estate records for at least 3 years.
- File any remaining tax returns, marking the last Form 1041 as final.
- If a new asset turns up later, the estate can be reopened to handle it (Rule 5.460).
- Focus on preserving family relationships.

Essential Checklists

Initial Probate Checklist

- ☐ Order 10 to 15 certified death certificates
- ☐ Find the original will and deposit it with the clerk within 10 days
- ☐ Secure the home, vehicles, and valuables, and keep insurance in force
- ☐ List assets, debts, beneficiaries, and heirs
- ☐ Note which assets have joint owners, beneficiaries, or a trust as owner
- ☐ Decide which process fits: a shortcut, summary, or formal administration
- ☐ Hire a Florida probate attorney (required in most formal administrations)
- ☐ File the petition in the correct county

Administration Checklist

- ☐ File the oath, resident agent designation, and any bond
- ☐ Receive Letters of Administration
- ☐ Get an EIN and open an estate bank account
- ☐ Serve the notice of administration
- ☐ Publish the notice to creditors and serve known creditors
- ☐ Serve AHCA within 3 months if the decedent was 55 or older
- ☐ File proof of publication within 45 days
- ☐ Serve the inventory within 60 days after letters issue
- ☐ File the verified statement on the creditor search within 4 months
- ☐ Review claims and object to invalid ones on time
- ☐ Track homestead, exempt property, and elective share deadlines
- ☐ File tax returns: final Form 1040, Form 1041, and Form 706 if needed

Closing Checklist

- ☐ Pay valid claims, expenses, and taxes
- ☐ Prepare the final accounting
- ☐ File and serve the petition for discharge within 12 months
- ☐ Allow 30 days for objections, or obtain waivers
- ☐ Distribute assets and collect signed receipts
- ☐ File proof of distribution
- ☐ Obtain the order of discharge
- ☐ Close the estate bank account and file final tax returns
- ☐ Keep estate records for at least 3 years

Key Resources

Important Deadlines

Listed in the order they usually arrive:

Deadline	Time limit	Authority
Deposit the original will with the clerk	10 days after learning of the death	§ 732.901
Publish the notice to creditors	Promptly after appointment; once a week for 2 consecutive weeks	§ 733.2121
File proof of publication	45 days after first publication	Rule 5.241
File and serve the inventory	60 days after letters issue	Rule 5.340
Creditors file claims	Later of 3 months after first publication or 30 days after service	§ 733.702
Notify AHCA (decedent 55 or older)	3 months after first publication	§ 733.2121
Challenge the will, venue, or jurisdiction	3 months after service of the notice of administration; never later than final discharge or 1 year after service	§ 733.212
File verified statement on the creditor search	4 months after first publication	Rule 5.241
Object to a creditor's claim	Later of 4 months after first publication or 30 days after the claim is filed	§ 733.705
Petition for exempt property	Later of 4 months after service of the notice of administration or 40 days after a related proceeding ends	§ 732.402
Spouse's homestead election (half interest instead of a life estate)	6 months after death	§ 732.401
Spouse's elective share	Earlier of 6 months after service of the notice of administration or 2 years after death	§ 732.2135
Federal estate tax return (Form 706), if required	9 months after death; 6-month extension to file available	Federal tax law
Final accounting and petition for discharge	12 months after letters issue, or 12 months after Form 706 is due	Rule 5.400
Objections to the final accounting	30 days after service	Rule 5.401
Outside limit on creditor claims	2 years after death, whether or not probate was opened	§ 733.710
Estate income tax return (Form 1041)	15th day of the 4th month after the estate's tax year ends	Federal tax law
Portability-only Form 706	Up to 5 years after death, if no return was otherwise required	Federal tax law

Helpful Websites

- **Florida Courts (flcourts.gov):** court locations and self-help information
- **Florida Statutes (flsenate.gov):** the full Florida Probate Code, Chapters 731–735
- **Florida Courts E-Filing Portal (myflcourtaccess.com):** electronic filing of court documents
- **Clerk of Court:** local probate filing information and fees for the county where the decedent lived
- **IRS (irs.gov):** estate EIN applications and Forms 706 and 1041

Professional Services Needed

- **Probate attorney:** required for most personal representatives in formal administration
- **Accountant or tax professional:** for estate tax, income tax, and portability filings
- **Appraiser:** for real estate, valuable personal property, and business interests
- **Financial advisor:** for managing investments during administration
- **Real estate agent:** for estates that need to sell property

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Final Thoughts

Probate administration is a significant responsibility that requires attention to detail, good organization, and often professional guidance. The process can seem overwhelming, but most families complete probate successfully by following established procedures and getting the right help at the right time.

The keys to success are understanding the personal representative's duties, keeping beneficiaries informed, keeping detailed records, and meeting every deadline. Above all, families do best when they stay focused on honoring a loved one's wishes while preserving family relationships and assets.

This guide reflects Florida and federal law as of November 2026, including the probate changes that took effect on July 1, 2026. Laws and court procedures continue to change, and every estate is different. Families should revisit the relevant chapters as questions arise and seek professional guidance whenever a situation becomes complex or contentious.

For professional legal help with probate matters, contact South Florida Law PLLC at (954) 900-8885 or visit www.southfloridalawpllc.com for experienced guidance through Florida's probate process.

Note: Content in this book is not legal advice.