

# Understanding Florida Probate Law



**What you must know  
before starting probate**

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What you *must* know before starting probate

**By: Long H. Duong, Esq.**

Courtesy of

<http://WeProbateFlorida.com>

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## Introduction

The Florida Probate process is filled with **pitfalls that if properly avoided** can make probate a **harmless and pleasant experience**. One wrong step, an improper filing or a petition that includes or omits proper clauses can really throw a wrench in the administration of an estate.

Despite the fact that Florida Statutes **require a personal representative (executor) to be represented by an attorney**, once in a blue moon, a client will call us after trying to open probate on their own. Court clerks sometimes miss the fact that a petition has not been signed off by an attorney and when problems arise, which they almost always do, the clerks cannot and will not give legal advice to help fix problems. So before you think you can go it alone, without representation, consult a Florida Probate attorney so you know what you are getting yourself into. Again, a **personal representative must be represented by a Florida Probate attorney** to administer an estate in probate court.

This guide is provided to you to help you understand what it is that probate attorneys will be preparing and requesting from you. It is not intended to encourage anyone to try to probate an estate themselves. **Our firm believes in the value of an informed client**. It shouldn't be mysterious.

**You will be involved to a degree, but at the end of the day, your attorney should be doing most of the heavy lifting.**

At the risk of being redundant, we've prepared this guide by pulling together some of our most popular articles on our website/blog, WeProbateFlorida.com. There is also some **additional information** you won't find on the websites (consider yourself lucky!)

Of course, this is a **downloadable, printable** collection that will hopefully be more convenient to take with you and read.

When you are ready to move forward and secure the services of a Florida probate attorney, call us or fill out our convenient contact form:

<http://WeProbateFlorida.com/contact-us>

We'll schedule a consult when it's convenient for you or if you're available to discuss your case when we call, we might be able to tackle it right then and there.

We hope this guide will help you understand the process better. There will be a direct link to each article as it appears online. **Happy reading!**

# What is Florida Probate?

(link: <http://weprobateflorida.com/what-is-florida-probate/>)

## Florida Probate in a nutshell:

- Florida probate administration is a **court process**.
- **Assets** are collected, **creditors** are paid and **beneficiaries** receive whatever remains.
- Assets = **Real Estate or Personal Property**
- Two kinds of “Florida Probate”:  
**Summary & Formal**
- The existence of a Will *does not* eliminate the need for probate
- In Florida, “Personal Representatives” are in charge of “probating” the estate
- Personal Representatives **must have attorney representation** (attorneys do most of the work)
- Most probate cases are filed by mail with telephone hearings (so **your attorney does not have to be in the county where probate is required**)

## Our office in a nutshell:

- **Probate is “our thing”** - Our practice is almost 100% focused on Florida Probate matters!
- **We file probate cases STATEWIDE.** Our clients are NATIONWIDE.
- We handle almost every aspect. 99.99% of the time, our clients never even come to Florida.

- In our office, all probate petitions are personally **prepared by a Florida Probate attorney** (not a paralegal)
- **We LOVE technology** and embrace the use of phones, fax, email and the internet to streamline our probate cases. (which means **open communication** and **efficient service**)
- Your **“no strings, no pressure”** and **absolutely free consultation** is with a Florida Probate attorney, not a paralegal.

The key question on every person’s mind when faced with probate is:

**“Do I really have to go through probate?”**

The answer is always a big fat **“maybe”**.

**Let us figure it out for you. Absolutely free.**

## You don't need a Will to go through probate. (But it helps)

**Intestate:** A decedent is said to have died "intestate" if he or she did not leave a Last Will.

**Testate:** A decedent is said to have died "testate" if he or she left a Last Will.

If a person dies **owning anything in their own name** (checking account, real estate, car, etc) probate is necessary. The existence of a Last Will (aka Last Will and Testament) does **not** determine whether probate is necessary. It is the existence of **assets titled only in the decedent's name** that lets us know whether or not probate is necessary.

*You **cannot** carry out instructions in a Last Will and Testament **until you have started probate.***

*Even if you are the named personal representative or executor, the Will must first be admitted to the probate court.*

*Most people find this out quickly when someone asks them for court orders, despite the fact that they have been presented with the Will.*

## What happens if I can't find the Will?

(link: <http://weprobateflorida.com/quick-qa-what-happens-if-i-cant-find-the-will/>)

***Marie from Rochester, NY has turned her father's house upside down and can't find the Will.***

*Question:*

"My dad who ironically was an attorney, died and **we can't find his Will**. We have no reason to believe that he wrote a Will other than the fact that **he was an attorney and we find it hard to believe he didn't prepare one**. I, my biological sister and my adopted brother are the only beneficiaries. We've turned the house upside down and we just can't find it! What happens in Florida probate if we can't find the Will?"

*Answer:*

For some reason, I'm hearing more of these stories about attorneys who didn't leave Wills. It is strange, but not uncommon. First, check out my other post with [tips for finding the will](#). Failing that, here's the quick answer:

**If the Will can't be found, the decedent is presumed to have died "intestate"** which means "without a Will." It happens all the time and is **not a problem** so long as the the intestate heirs (heirs of the decedent pursuant to Florida Statutes) **don't quarrel over the statutory distribution of the estate** and no one else tries to "prove" up what

they believe to be the Last Will and Testament.

*A copy of the Last Will is not sufficient. You must locate the original Will. There are certain situations where the copy can be "proved" to the court, but it is frowned upon.*

*The fact that the original Last Will cannot be found implies that the original was destroyed or revoked by the decedent.*

## Probate Case Scenarios and Solutions

(link: <http://weprobateflorida.com/probate-case-scenarios-and-solutions/>)

There are basically three ways to "probate" an estate.

### **Summary Administration for Real Estate only**

#### Non-Homestead Real Estate:

If the decedent owns only non-homestead real estate (real estate which was not decedent's principal residence), then a Summary Administration is an available route, provided that either the property is worth less than \$75,000 or it has been more than 2 years since the decedent died.

#### Homestead Real Estate (only):

If the decedent's only significant asset is homestead property (real estate which was decedent's principal residence), then a Summary Administration is available, provided that all other personal assets are less than \$75,000 or it has been more than 2 years since the decedent died.

*To be clear, Homestead real estate is defined as real estate where the decedent made his or her home.*

*A person can only have ONE (1) homestead in the entire United States – the address on the death certificate is often the indication of where the decedent's homestead is located. If the death certificate is incorrect, you may want to have it amended before moving forward. Contact the funeral home if the decedent died recently, or contact the authority that issues death certificates.*

In Florida, visit this link:

[http://www.doh.state.fl.us/planning\\_eval/vital\\_statistics/deaths.htm](http://www.doh.state.fl.us/planning_eval/vital_statistics/deaths.htm)

## Summary Administration for Personal Property only

If the decedent's only assets were personal property such as **stocks/securities, bank accounts, death payouts from various pension, retirement or other similar plans**, Summary Administration is available provided that the total of the personal assets (located in Florida) are less than \$75,000 or it has been more than 2 years since the decedent died.

*Personal property is anything other than real estate.*

## Formal Administration

Formal administration is typically required when one or more the following conditions exist:

- There are **more than \$75,000 in assets** (other than the homestead);
- There are multiple beneficiaries who will not readily consent to whatever the personal representative requests of the probate court;
- There are multiple creditor claims; or
- There is a wrongful death lawsuit;
- A beneficiary can not be located

*You may have been advised by someone that you need “**Letters of Administration.**”*

*Though this is not always true, you should understand that these “**Letters**” can **only be issued when you open Formal Administration, NOT Summary Administration.***

## Buying or Selling Probate Property in Florida?

(link: <http://weprobateflorida.com/buying-or-selling-probate-property-in-florida/>)

Here's just a bit of a primer for sellers and buyers of probate property (**real estate**) in Florida. It's only the nuts and bolts - bottom line - **INQUIRE EARLY TO SEE IF PROBATE IS NECESSARY!**

### For Sellers:

If you just inherited property in Florida and you're looking to sell it, make sure your ducks are all in a row. **You can't sell the property you don't legally own!**

*If probate is required, you **don't own property until it has been “probated”** and distributed to you by the order of a probate judge.*

We frequently get calls from real estate agents wanting to know how long probate in Florida will take. The answer is invariably, “it depends.”

Don’t assume your realtor knows anything about probate. Realtors know plenty about real estate, but *many of them don’t understand probate*. Technically, a real estate listing agreement probably isn’t even binding until you have actually inherited the property through probate administration.

*If the property will go through a formal real estate closing* and title insurance will be issued, **probate is undoubtedly going to be required by the title company!** This can be a deal breaker for a potential buyer if it is not addressed early!

On the other hand, if you plan on signing over a quit claim deed, the buyer will eventually discover the probate problems - a headache you do not want to deal with long after you’ve “closed” the deal.

### **For Buyers:**

If you suspect that the seller is liquidating an estate, **ALWAYS** *inquire if the property is in probate administration or if it has been through probate!* If the answer is “yes” it should be quite simple to confirm in the county clerk’s official records.

Furthermore, unless the seller is a surviving spouse, it is typically **not enough** to simply record a death certificate to “clear” title to the property!

## **How We Work**

(link: <http://weprobateflorida.com/how-we-work/>)

We have streamlined our protocol for handling probate cases. This allows for *efficient* service which ultimately helps us keep our fees and costs low.

1. **Case Review** - Once we receive a free case review request, it is reviewed by an attorney and scheduled into our calendaring system for a call back. Our attorney will discuss the merits of your case, present your options and give you an estimate on the fees and costs needed to handle your matter.
2. **Engagement Letter** - If we decide to take the case, we will submit to you an engagement letter & fee agreement (by fax, email or regular mail.)
3. **Prepare pleadings and orders** - Upon receipt of the returned engagement letter along with other documentation we request, we will begin preparing all petitions, pleadings and orders necessary. They will be shipped off to you for signatures.
4. **Submit to the court** - Once the entire package has been returned and we have established that all supporting documents are available, we will submit the package to the probate court in the appropriate county.
5. **Record Orders** - After the probate judge signs the final Orders, we request certified copies and record them in the Official Public Record books and submit them to any third party who needs copies.

**Simple huh? Don't be deceived. Among other things, a probate attorney may be required to:**

- ensure that the Last Will and Testament is properly proved (which may include a rather complicated "Commissions" process to find witnesses to the Will and take their oaths),
- deal with creditors who make claims including Medicaid,
- inventory assets and prepare final accountings,
- secure title search reports,
- locate missing heirs,
- locate children of predeceased heirs,
- prepare and execute testamentary trusts,
- attempt to waive bond (insurance) which may be required by a judge,
- properly notify creditors (pursuant to Florida Statutes)
- ... and a host of other issues that if done improperly could lead to personal liability on the part of the heirs or the personal representative.

## A word from the author:

Hello, my name is Long H. Duong (*last name pronounced “Young”... yes, it’s funny and yes, I’ve heard all the jokes*). I hope you’ve enjoyed this guide and more importantly that you understand and feel more comfortable with the probate process itself.

I know some of the material may seem a bit daunting and quite frankly, it is designed that way. The Florida legislature understands that the probate process could be subjected to fraud, especially with so many senior citizens retiring in our backyard. Rules that seem to restrictive are designed to protect you and your loved ones. That’s why personal representatives (executors) are required to seek attorney representation.

The website/blog ([WeProbateFlorida.com](http://WeProbateFlorida.com)) that ***I personally maintain*** is for the benefit of current and future clients alike. I want my clients to understand the process. I spend hours on the phone helping clients understand why I’m doing what I’m doing and I never get tired of it. I’d rather my **clients walk away happy** with my service, rather than just walk away with a forgettable experience.

Probate can be complicated and sometimes scary... but with the right representation, it doesn’t have to be. If you don’t hire us, please hire someone!

Remember, our consultations are always free. We ask that you be prepared with as much information as you can and it always helps to fill out our contact form first ([WeProbateFlorida.com/contact-us](http://WeProbateFlorida.com/contact-us)). It really makes our consultation much more efficient.

I look forward to discussing your case with you. ***No strings, no pressure ... just help.***

Sincerely,

*Long H. Duong, Esq.*

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