



THE LAW OFFICES OF
ODELIA GOLDBERG



Understanding Probate in Florida

By the Law Offices of Odelia Goldberg

If you find yourself reading this guide, you may be facing the emotional journey of navigating the probate process after the loss of a loved one. While this can be a challenging time, understanding the process can help ease some of the burdens and anxieties. It's always helpful to know what we're getting into before we get into it. This guide aims to provide you with a clear overview of the probate process in Florida, while reminding you that we're here to help every step of the way.

Before we start, it's important to note that in general, this is a process that folks are not familiar with. We will be discussing new terminology, new words and new ideas. If you have any questions, please let us know.

Chapter 1: What is Probate?

Probate is the court-supervised process of settling a deceased person's estate¹. Probate involves validating the will (if there is one), paying the deceased person's debts, and distributing the remaining assets to beneficiaries. Florida Statutes § 731.201 provides additional terms that may be beneficial in discussing the probate process.

¹The "estate" is defined as any asset that doesn't already know where to go. If the bank account has a beneficiary, it is not part of the estate because it already has a direction. If an account is jointly owned with a second person, the account is not an estate asset as it already knows where to go.



Contact Us



Call for info:
(954) 832-0885



Visit our website
www.OLGoldberglaw.com

Chapter 2: Key Participants in the Process

1. **The Personal Representative (PR):** This is an individual, often a trusted family member or friend, who is appointed to manage the estate. Florida Statutes § 733.301 dictates the folks that have a preference in acting as the PR of the estate.
2. **Beneficiaries:** These are individuals who will receive assets from the estate. We sometimes refer to them as the heirs (same thing).
3. **The Court:** The probate court acts as a neutral party that oversees the process, ensuring that all legal requirements are met and that the wishes of the deceased are honored. The court is in the county where the decedent resided.
4. **Your lawyer:** We will be drafting all of the paperwork required for the probate process (including the orders for the judge). Our objective is getting the signed orders from the court to empower the PR, or the petitioner, to release the assets out of the estate and provide the assets to the beneficiaries.

Chapter 3: The Steps of the Probate Process

1. **Filing the Will:** If a will exists, it must be filed with the court, as per Florida Statutes § 732.901. If there is no will, the estate will be managed according to Florida's intestacy laws. We will also need to send the original and short-form death certificate to the court when we file the will.
2. **Appointing the Personal Representative:** The court will formally appoint the PR who will take on the responsibility of managing the estate. If you are the appointed PR, remember that you are not alone in this journey, we are here to assist. Florida Statutes § 733.612 provides the transaction authorized by the PR.
3. **Paying Debts and Taxes:** Before distributing assets, the PR must settle any debts and taxes owed by the estate. The order of priority of the estate assets are outlined in Florida Statutes § 733.707. This step can feel overwhelming, but it is important for honoring the financial responsibilities of the estate. In a formal administration, we will shorten the creditor period to 90 days and file a notice to creditors. Once a creditor files a claim against the estate, you and I will have a conversation as to how to deal with them.
4. **Distributing Assets:** Once debts are settled, the remaining assets can be distributed to beneficiaries according to the terms of the will or Florida law.



Chapter 4: Summary Administration: A Simplified Option

For estates that meet certain criteria, Florida law offers a streamlined process known as "Summary Administration". This option can significantly reduce the time and complexity involved in the probate process. According to Florida Statutes § 735.201, Summary Administration may be available if:

- The value of the entire estate, excluding the homestead property, is less than \$75,000; or
- The decedent has passed more than two years ago.

Summary Administration allows for a more straightforward process, as it does not require the appointment of a Personal Representative, which can simplify matters. The process typically involves filing a petition with the court and providing necessary documentation, including a proposed order for distribution of assets. The judge signs the order, telling the banks where the funds should go, and that order is presented to the financial institutions.

Chapter 5: Handling Cars, Homestead Property, and Other Assets with Beneficiaries

1. **Transfer of Title for Vehicles:** For vehicles, the title must be transferred in Florida. Cars are considered tangible items and typically do not need to go through the probate process. Typically, the next of kin (or informant on the death certificate) can take the title to any title agency and transfer the car into their name. We can, of course, include cars in the probate process, but it is not typically necessary.

2. **Homestead Property:** Homestead property in Florida is treated with special consideration. Under Florida Statutes § 732.401 it must be distributed under an order determining homestead. A spouse or minor child cannot be disinherited from the homestead property regardless of the terms of the will.

3. **Beneficiary Designations:** Some assets, such as bank accounts and life insurance policies, may have designated beneficiaries. These assets will pass outside of probate, which can expedite the process for those specific items. Any asset that has a beneficiary is not considered an "estate" asset.

4. **Ancillary probate:** Sometimes we have a scenario where we need two probates (yikes!). If the deceased person owned real property in another state, our FL judge doesn't have jurisdiction over that real property. We will need to take our FL orders and domesticate them in that other state. This is called an ancillary administration.

5. **Jointly Owned Assets:** Assets that are jointly owned with rights of survivorship, such as real estate or bank accounts, will automatically transfer to the surviving owner and typically do not go through probate.



Chapter 6: Common Challenges and How to Address Them

Timeline: in an uncontested probate, the timeline mostly depends on the heirs' ability to get the information to me. A typical probate takes anywhere from 2 to 4 months, but don't hold me to it! There are a lot of variables and most of the probate process is completely outside of my control and dependent on other people (the clerk, the judges, the US postal service, information from beneficiaries and personal Representatives, just to name a few).

Effective Communication: Keeping lines of communication open among beneficiaries can prevent misunderstandings and foster a supportive environment. It's vital to address concerns and questions as they arise. We need to communicate to make this magic happen.

Seeking Professional Help: Navigating probate can be complex, and while some may consider handling it independently, it's often beneficial to consult with a lawyer. You should strongly consider seeking legal advice to navigate the intricacies of the process smoothly. This is a very nuanced type of law, and I liken it to filling your own cavity. Can you do it? Maybe. Should you do it? Probably not. Getting a lawyer that you trust will make it easier for you to navigate this process.

Chapter 7: When to Reach Out for Support

If you find yourself feeling overwhelmed or unsure about the probate process, don't hesitate to reach out to the law offices of Odelia Goldberg. We are here to guide you through this process, providing clarity and compassionate support. Remember, you don't have to navigate this alone.



Contact Us 



Call for info:
+1 (954) 832-0885



Visit our website
www.OGoldberglaw.com

This summary presents only a basic outline. No attempt has been made to address the many legal issues which may arise during the administration of an estate in Florida. Due to the substantial liability exposure in this area, folks entrusted with the responsibility of administering an estate should work closely with legal counsel. A number of probate court proceedings, such as ancillary administrations and disputed estates have not been included in this summary. The document is for informational purposes only and should not be considered professional legal advice.

Conclusion: Moving Forward with Hope

As you move through the probate process, remember to take care of yourself and allow yourself to grieve. While the journey may feel daunting, with patience and our support, you will emerge on the other side. This process is not just about legalities; it's about honoring the memory of your loved one and finding a path forward.

Take each step at your own pace and know that you have our support to help you along the way. You are not alone in this.

And now it's time for my disclaimer.

Please keep in mind that this information is not to be considered as legal advice. You deserve to have your own attorney give you sound legal guidance based on your own unique situation. Getting legal advice from a flyer is never a good idea (even if it's incredibly well written!). I do look forward to working with you and guiding you through the probate process.



When you lose a loved one



How to take care of you

Grief is something that must be dealt with and worked through — a process that takes time. Some experts say grieving takes over a year, while others admit that most people take 2 to 4 years to get beyond the loss of someone close.

With the death of a spouse, a partner, a child or a parent, the grief can last even longer. Yet, while each relationship creates its own form of bereavement, one thing does remain constant: grief will not just go away on its own — or by avoiding it. There is some evidence, in fact, that the stress induced by denial of the mourning process can cause illness, at times even serious illness.

What you're feeling

Those who grieve need to give themselves permission to mourn. The death of a loved one has a profound effect on the mental state of those left behind. For some, the loss is devastating and its effects are long lasting. For others, it is more manageable. In either case, the death irrevocably alters the daily structure, caretaking, companionship and social life of the one left behind.

Grief is a multistage process wherein stages may overlap, leaving you with emotions swinging dramatically from one extreme to another. At first you may experience disbelief, numbness and shock. You may find your eating or sleeping patterns change, and your mind becomes cluttered, leaving no time or room for anything else.

Then, as you begin to feel the separation, you may become extremely depressed and lonely. Sometimes you may find yourself avoiding anything reminding you of the deceased, and other times you may surround yourself with mementos. You may have trouble concentrating, appearing disorganized and forgetful. Normal, everyday dealings may become annoying. And there will be days when you can't help but act irritable, anxious or restless.

What you need

You need support. One way to help resolve your grief is to reach out to those around you for support and understanding. One of the best ways is to share your feelings with others.

Family and friends are usually the first people we turn to in time of need. And yet, if family and friends are going through their own grieving process, they may not be able to lend as much support to you as you need.

Or, you may feel separated from your friends; that you no longer "fit in" with the same social circle. If you've lost a spouse, you may find it awkward to be around couples. If you've lost a child, you may feel uneasy about being around friends who have children.

Perhaps the best way you can gain support is to reach out to an organization specializing in helping people cope with their losses. There are many community service organizations, or possibly a house of worship, that could serve as a resource for bereavement groups. Sometimes sharing your grief with others who face similar issues and who have similar needs can be most helpful.

You need to be well. Whether you feel up to it or not, you must take care of yourself. That means keeping both mind and body healthy. This is extremely important, since one of life's greatest stresses — the death of someone close — can take a toll on your health.

Be sure you get regular exercise, proper nutrition and rest, and consult your physician about any physical ailments, including sleep disturbances, loss of energy or appetite.

We hope what you find on the next few pages is helpful to you during this time. Please see page 21 for a list of additional resources that may be beneficial to you as you cope.