

Probate: Florida

MARY BETH CRAWFORD, DAVID A. LUDGIN, ROBERT L. LANCASTER AND HOWARD M. HUJSA,
CUMMINGS & LOCKWOOD LLC, WITH PRACTICAL LAW TRUSTS & ESTATES

Search the [Resource ID numbers in blue](#) on Westlaw for more.

A Q&A guide to the laws of probate in Florida. This Q&A addresses state laws and customs that impact the process of an estate proceeding, including the key statutes and rules related to estate proceedings, the different types of estate proceedings available in Florida, and the processes for opening an estate, appointing an estate fiduciary, administering the estate, handling creditor claims, and closing the estate.

KEY STATUTES AND RULES*

1. What are the state laws and rules that govern estate proceedings?

The Florida Probate Code is found in Chapter 731 to Chapter 735 of the Florida Statutes (§§ 731.005 to 735.302, Fla. Stat.), and the rules governing Florida probate proceedings are found in Parts I and II of the Florida Probate Rules (FL ST PROB Rule 5.010 to 5.530). Counsel should also check the local rules for the court they are practicing in, since each court is different and the rules vary (see, for example, 17th Judicial Circuit Court of Florida and Eleventh Judicial Circuit of Florida).

2. What court has jurisdiction over estate proceedings in your state?

In Florida, the circuit courts have exclusive original jurisdiction of proceedings usually pertaining to courts of probate, including the settlement of decedents' estates and the granting of letters testamentary (§ 26.012(2)(b), Fla. Stat.).

TYPES OF ESTATE PROCEEDINGS

3. What are the different types of probate or other estate proceedings or processes for transferring a decedent's assets at death?

In Florida, the four main types of estate administration are:

- **Formal administration.** This is the proceeding for admitting a will to probate if the decedent died with a will, appointing a fiduciary to administer a decedent's estate, and court oversight of the estate administration process. Formal administration is appropriate whether or not a decedent dies with a will. Formal administration is required when the value of the entire probate estate (less the value of property exempt from the claims of creditors) exceeds \$75,000. There are alternatives to formal administration if certain criteria are met, but formal administration is the most common estate proceeding (§§ 733.101 to 733.903, Fla. Stat.).
- **Summary administration.** This is an expedited estate proceeding that can be used if the decedent has been dead for more than two years or the value of the entire probate estate does not exceed \$75,000 (§§ 735.201 to 735.2063, Fla. Stat. and see Summary Administration).
- **Disposition of personal property without administration.** This is an unsupervised administrative proceeding and is limited to situations where the decedent dies leaving only personal property within certain limitations (§ 735.301, Fla. Stat. and see Disposition of Personal Property Without Administration).
- **Ancillary administration.** This is the proceeding if a non-Florida resident dies leaving Florida property that does not pass by title or operation of law, including real or personal property, credits due from Florida residents, or liens on property in Florida. Ancillary proceedings can be used whether a decedent dies with or without a will. (§§ 734.101 to 734.202, Fla. Stat. and see Ancillary Administration.)

OPENING THE ESTATE

4. What is the typical initial filing process for opening an estate? Specifically, please discuss:

- How original wills are handled.
- Whether filing typically occurs by mail, e-filing, or in person and common practices for the most common methods.
- Documents typically submitted to the court with the initial filing.
- Any additional practical advice regarding the initial process for opening an estate.

ORIGINAL WILLS

If a decedent had a will, Florida statutes require that the person in possession of the original will must deposit the will, including any codicils or separate writings, with the county clerk of the county that has venue of the decedent's estate within ten days after learning of the decedent's death (§ 732.901, Fla. Stat.). The venue for a probate proceeding is the county in Florida where the decedent was domiciled or, if the decedent had no domicile in Florida, in any county where the decedent's property is located (§ 733.101, Fla. Stat.). A decedent's domicile is the decedent's usual place of dwelling and, for probate, is synonymous with the decedent's residence. (§ 731.201(13), Fla. Stat.)

Under the probate rules, the will can be deposited on its own or with the petition for administration (FL ST PROB Rule 5.200(j)). However, with the advent of mandatory e-filing, the typical process for depositing the will is for counsel to e-file the initial pleadings with a copy of the will and death certificate (without cause of death) and to wait for the court to assign a file number. Once the court has assigned the file number, counsel sends the original will and original certified copy of the death certificate to the court. It is frequently impossible to file the will within ten days of the decedent's death, and wills are regularly filed well past the ten-day deadline without consequence.

E-FILING

E-filing is mandatory for all probate proceedings in Florida (FL ST J ADMIN Rules 2.516, 2.520, and 2.525 and FL ST PROB Rule 5.041). However, the original will and an original certified copy of the death certificate (without cause of death) must be mailed to the clerk of the court. For additional information regarding e-filing, see Florida Courts: Frequently Asked Questions: E-Filing.

DOCUMENTS SUBMITTED WITH INITIAL FILING

The initial filing to open an estate proceeding in Florida includes:

- The original will, any codicils, and any separate writing disposing of tangible personal property, if not already deposited with the county clerk (see Original Wills).
- A petition for administration (see Petition for Administration).
- A notice of designation of email addresses for service of documents (FL ST J ADMIN Rule 2.516).
- A certified copy of decedent's death certificate, without cause of death (see Application for Florida Death Record). In Florida, death certificates can be ordered with or without the decedent's cause of death. The nominated personal representative or a family member should order multiple certified copies of the decedent's death certificate, without cause of death, as soon as possible. Certified copies of the death certificate may be needed to facilitate the transfer of the decedent's assets throughout the estate administration.
- A proposed order admitting the will to probate (if the decedent died with a will) and appointing the personal representative. Some counties require the proposed order to be filed by e-courtesy once a file number has been assigned. E-courtesy is similar to e-filing but is not used for actual filings. E-courtesy instead is used to deliver extra copies of already filed and served documents to judges.
- Proposed letters of administration. Some counties require proposed letters of administration to be filed by e-courtesy once a file number has been assigned.

- Waivers of service of the notice of administration and consents to probate from all interested parties who are willing to sign (§ 733.212(8), Fla. Stat.; FL ST PROB Rule 5.180; see Waivers and Consents).
- An oath of personal representative for each personal representative seeking appointment and a designation and acceptance of resident agent (these are combined in one document). The handling attorney typically acts as resident agent. (FL ST PROB Rule 5.320 and 5.110.)
- A notice of confidential information, which must be filed with the petition for administration, death certificate, and inventory because they each contain information considered confidential under Florida law (FL ST J ADMIN Rule 2.420).

For checklists for opening a formal administration in the 11th Judicial Circuit, see Checklist for Opening Estate Formal Administration (Testate) and Checklist for Opening Estate Formal Administration (Intestate).

COURT FORMS

Florida courts may provide forms for certain filings in the various estate proceedings. Using these forms may be mandatory when the court provides them (see Mandatory Use of Probate Smart Forms and Checklists in Estate and Guardianship Administrations and Probate Division Forms).

CONTACTING THE COURT

Counsel may want to call the court to check on the estate file or to ask specific questions before filing the opening pleadings. Whether this is helpful or not varies widely from county to county. Some courts have strict rules regarding whether and when they accept calls.

5. Who can petition to open an estate and what information is required for the petition?

STANDING TO PETITION TO OPEN ESTATE

In Florida, any interested person may petition for an estate administration (§ 733.202, Fla. Stat.). An interested person is any person who may reasonably be expected to be affected by the outcome of the estate proceeding. The meaning is determined according to the circumstances and particular purpose of a given proceeding. (§ 731.201(23), Fla. Stat.) In a typical estate administration proceeding, interested parties are likely to include, at a minimum:

- The nominated personal representative.
- The surviving spouse, if any.
- Beneficiaries named in a will.
- Intestate heirs if there is no will (§§ 732.102 to 732.111, Fla. Stat.).
- Creditors of the decedent.

STATUTES OF LIMITATION

There is no statute of limitations for admitting a will to probate in Florida. If a personal representative administers what appears to be an intestate estate and a will is later discovered, the will can be admitted to probate. When an after-found will is later admitted to probate, the initial letters of administration are revoked

and new letters are granted. (§ 733.301(5), Fla. Stat. and see *McCormick v. McCormick*, 991 So. 2d 437 (Fla. 1st DCA 2008).)

This rule also applies if a will is discovered that was executed later than the will that was admitted to probate. Any interested person may petition to revoke the probate of the earlier will. However, this rule does not apply after the estate has been completely administered and the personal representative discharged. No will can be admitted to probate after that time. (§ 733.208, Fla. Stat.)

PETITION FOR ADMINISTRATION

The court process for an administration proceeding in Florida begins with filing the petition for administration. The petition for administration is similar for both testate and intestate estates and includes information about the petitioner, the decedent, the beneficiaries, and the approximate value of the decedent's probate estate (FL ST PROB Rule 5.200). To prepare the petition, the petitioner needs to have access to certain information and to the decedent's will, if one exists.

The petition for administration must include:

- The petitioner's mailing address and interest in the estate (the petitioner's interest is frequently as personal representative nominated in the will, surviving spouse, or child).
- The decedent's name and last known address at the time of death.
- The date and place of decedent's death.
- The decedent's age at the time of death (if known).
- The state and county of the decedent's domicile. The decedent's domicile may be different than the decedent's last known residence if the last place the decedent resided was considered a temporary residence and the decedent intended to return to the decedent's domicile before death.
- The last four digits of the decedent's social security number.
- The name and address of the surviving spouse, if any.
- The name, address, and relationship to the decedent of each beneficiary.
- The dates of birth for any minor beneficiaries.
- A statement showing venue (§ 733.101, Fla. Stat.).
- The name and contact information for the petitioner's attorney. Unless the personal representative is the only interested person in the estate, the personal representative must be represented by an attorney admitted to practice in Florida. If the personal representative is an attorney admitted to practice in Florida, no third-party representation is required. (FL ST PROB Rule 5.030.)
- The nominated personal representative's name and address (the nominated personal representative usually is also the petitioner).
- The priority of the person seeking appointment as personal representative. The person seeking appointment in an estate with a will often has priority as the person nominated in the will (see *Appointing a Personal Representative Where Decedent Died with a Will and Appointing a Personal Representative Where Decedent Died Without a Will*).
- A statement that the person seeking appointment is qualified to serve under Florida law (see *Qualification as Personal Representative*).

- The approximate value and nature of the probate assets.
- If there is no will, a statement that after a diligent search, no will was found (or why any will that was found is not being offered for probate).
- If there is a will:
 - a statement identifying the will and any codicils being offered for probate;
 - a statement that the petitioner is unaware of any other unrevoked wills or codicils or why any other unrevoked wills or codicils that the petitioner is aware of are not being offered for probate; and
 - a statement that the original will is in the court's possession or accompanies the petition.

(FL ST PROB Rule 5.200.)

For information on commencing a process for summary administration, disposition of personal property without administration, or ancillary administration, see *Miscellaneous Estate Proceedings and Processes*.

6. Who does the petitioner have to provide notice to during the estate opening process? Specifically, please discuss:

- Who is entitled to receive notice?
- What notice is required when an estate is open?
- Who has standing to object to the petition for probate or administration?

NOTICE OF PETITION FOR ADMINISTRATION

In Florida, if the person requesting appointment as personal representative is entitled to preference, no notice of the petition for administration is required. If the petitioner is not entitled to preference, formal notice of the petition for administration must be served on all persons qualified to act as personal representative who have a preference equal to or greater than the petitioner, unless this notice is waived in writing. (FL ST PROB Rule 5.201.)

NOTICE OF ADMINISTRATION

Once the personal representative is granted letters of administration, the personal representative must give formal written notice of administration to:

- The surviving spouse, if any.
- The beneficiaries.
- The trustees of any trust the decedent created before death and over which the decedent had a right of revocation at the time of death. For additional information about revocable trusts, see *Practice Note, Understanding Revocable Trusts (FL w-000-2860)*.
- Any person entitled to exempt property (see *Practice Note, Understanding Probate in Florida: Exempt Property (w-000-3003)*).

(§ 733.212, Fla. Stat. and FL ST PROB Rule 5.240.)

Counsel should consider serving a notice of administration on other potentially interested parties, such as heirs as determined under the

Florida intestacy statutes or devisees under a prior will. Notifying these parties of the administration also begins the running of the statute of limitations for any objections they may have to the validity of the will, the jurisdiction of the court, and venue (§ 733.212, Fla. Stat.). For additional information on the relevant deadlines and statutes of limitations triggered by serving the notice of administration, see Practice Note, Understanding Probate in Florida: Deadlines Triggered by Service of Notice of Administration ([w-000-3003](#)).

The notice of administration should include:

- The name of the decedent.
- The file number of the estate.
- The name and address of the court with jurisdiction.
- A statement about whether the estate is testate or intestate and, if testate, the date of the will and any codicils.
- The name and address of the personal representative.
- The name and address of the personal representative's attorney.
- A statement, required by the statute, that "the fiduciary lawyer-client privilege in Section 90.5021, Fla. Stat. applies with respect to the personal representative and any attorney employed by the personal representative."
- Notice of the time limits for filing:
 - objections to the validity of the will, the jurisdiction of the court, and venue;
 - a petition for determination of exempt property; and
 - an election to take an elective share.

(§ 733.212, Fla. Stat. and see Practice Note, Understanding Probate in Florida: Deadlines Triggered by Service of Notice of Administration ([w-000-3003](#))).

Waivers and Consents

In Florida, in an estate in which no disputes are anticipated, counsel typically ask those entitled to notice of administration to instead waive the notice of administration and consent to the probate. If the interested parties sign the waivers, the waivers can be filed with the court with the initial pleadings, and formal notice is unnecessary (§ 733.212(8), Fla. Stat.). A waiver and consent must be in writing and signed and must include:

- The person's interest in the administration proceeding.
- If the person is signing in a representative capacity, the nature of that capacity.
- What is being waived or consented to.

(FL ST PROB Rule 5.180.)

STANDING TO OBJECT

Any party interested in the estate generally may file objections to the will offered for probate or to the appointment of the personal representative. Objections to the validity of the will or the venue or jurisdiction of the court must be filed:

- Within three months from the date the notice of administration was served on an interested party, with limited possibility for extension only for estoppel based on a misstatement by the personal representative regarding the time period for filing an objection.

- In any event, unless sooner barred, no later than the earlier of:
 - the entry of an order of final discharge of the personal representative; or
 - one year after service of the notice of administration.

(§ 733.212, Fla. Stat.)

For information on notice requirements for summary administration, disposition of personal property without administration, and ancillary administration, see Miscellaneous Estate Proceedings and Processes.

APPOINTING AN ESTATE FIDUCIARY

7. How is the person in charge of the estate (referred to here as the fiduciary) appointed? In particular please consider:

- The procedure for appointing a fiduciary when the decedent died with a will.
- The procedure for appointing a fiduciary when the decedent died without a will.
- The procedure for appointing a fiduciary in urgent or unusual circumstances.
- Any restrictions on a person's eligibility to act as fiduciary, including whether an attorney who prepares a will for a client can act as the fiduciary.

APPOINTING A PERSONAL REPRESENTATIVE WHERE DECEDENT DIED WITH A WILL

In Florida, the personal representative generally cannot take action on behalf of the decedent's estate before being appointed by the court. However, the powers of a personal representative relate back in time so that acts by the person ultimately appointed that are beneficial to the estate have the same effect as those occurring after appointment. (§ 733.601, Fla. Stat.)

The petition for administration is the pleading used to request the appointment of a personal representative in Florida. When the petition for administration is filed and the will (if any) is admitted to probate, the court also appoints the person who is entitled and qualified to be personal representative and issues letters of administration authorizing the personal representative to act (FL ST PROB Rule 5.235).

When the decedent dies with a will, persons with priority to serve are, in order:

- The personal representative nominated in the will or under a power to appoint granted in the will, if any.
- The successor personal representative nominated in the will, if any.
- The person selected by a majority of the beneficiaries.
- A devisee under the will. However, if more than one devisee qualifies, the court selects the most qualified.

(§ 733.301(1)(a), Fla. Stat.)

APPOINTING A PERSONAL REPRESENTATIVE WHERE DECEDENT DIED WITHOUT A WILL

If a decedent died without a will, since there is no will nominating a fiduciary, the court appoints a personal representative to administer

the decedent's estate. The order of priority in Florida for appointing a personal representative where the decedent died without a will is:

- The surviving spouse, if any.
- The person selected by a majority in interest of the heirs.
- The most qualified heir nearest in degree.

(§ 733.301(1)(b), Fla. Stat.)

For more information on appointing an administrator, see Practice Note, Understanding Probate in Florida: Appointment of the Personal Representative.

APPOINTING A PERSONAL REPRESENTATIVE IN URGENT OR UNUSUAL CIRCUMSTANCES

There is no formal procedure for appointing a fiduciary in urgent or unusual circumstances in Florida. However, courts generally accept emergency petitions for administration on an expedited basis. The procedure for petitioning on an emergency basis varies from county to county.

QUALIFICATION AS PERSONAL REPRESENTATIVE

A personal representative in Florida must:

- Be a resident of Florida at the time of the testator's death.
- Not have been convicted of a felony.
- Be mentally and physically able to perform the duties of personal representative.
- Be at least 18 years old.

(§§ 733.302 and 733.303, Fla. Stat.)

A person who otherwise meets the requirements for serving as a personal representative but who is not a Florida resident may still serve as a personal representative if that person is:

- A legally adopted child or adoptive parent of the decedent.
- A direct ancestor or descendant of the decedent.
- A spouse or a brother, sister, uncle, aunt, nephew, or niece of the decedent or a direct ancestor or descendant of any of these people.
- The spouse of a person otherwise qualified to serve under the above rules.

(§ 733.304, Fla. Stat.)

If a desired nominee is not a Florida resident, counsel should take extra care in applying the relationship requirements, which are specific, are somewhat limited, and can lead to counterintuitive results in some circumstances (§ 733.304, Fla. Stat.). For example, a decedent's brother-in-law can serve as personal representative if the brother-in-law has that status because the brother-in-law is married to the decedent's sibling, but a decedent's brother-in-law cannot serve as personal representative if the brother-in-law has that status because the brother-in-law is the brother of the decedent's spouse.

Entities that may also act as representatives of the estate are:

- Any trust company incorporated in Florida.
- All state banking corporations authorized to exercise fiduciary powers in Florida.
- All state savings associations authorized to exercise fiduciary powers in Florida.

- All national banking associations and federal savings and loan associations authorized and qualified to exercise fiduciary powers in Florida.

(§§ 660.41 and 733.305, Fla. Stat.)

If a personal representative is aware that he was not qualified to act when appointed, the personal representative must resign immediately (§ 733.3101(1), Fla. Stat.). If a personal representative was qualified to act when appointed but later becomes unqualified, the personal representative must file and serve a notice that contains:

- The reasons that the personal representative is no longer qualified.
- A statement informing interested persons that any interested person may petition to remove the personal representative.

(§ 733.3101(2), Fla. Stat.)

Interested parties have 30 days from the date of service of this notice to file a petition to remove the personal representative (§ 733.3101(2), Fla. Stat.).

No personal representative is appointed in a summary administration or disposition of personal property without administration. For information about appointing a personal representative for an ancillary administration, see Miscellaneous Estate Proceedings and Processes.

8. Is a fiduciary bond required, and if so, in what circumstances?

In Florida, an individual personal representative generally must post a bond (§ 733.402, Fla. Stat.). The personal representative may pay the bond premium out of the estate assets as an expense of administration (§ 733.406, Fla. Stat.).

The court determines the amount of the bond and considers:

- The gross value of the estate.
- The relationship of the personal representative to the beneficiaries.
- The type of assets in the estate.
- Exempt property and any family allowance (for information on exempt property and family allowance, see Practice Note, Understanding Probate in Florida: Exempt Property and Family Allowance).
- Known creditors.
- Liens and encumbrances on the estate assets.

(§ 733.403, Fla. Stat.)

A decedent may waive the bond requirement in the will, or the court may waive the requirement. The court also has discretion to require a bond despite a provision in the will waiving the bond requirement. (§ 733.402, Fla. Stat.) Florida counsel should note that, regardless of what the will states, at least one Florida county (Miami-Dade County) requires either a bond or a restricted depository account for all estates. A restricted depository account is a special account where no withdrawals can be made without prior order of the court.

For language for waiving the bond requirement in a Florida will, see Question 20.

9. How are the key estate fiduciaries compensated?

INDIVIDUAL PERSONAL REPRESENTATIVES

In Florida, individual personal representatives are generally entitled to compensation determined by a statutory fee schedule that compensates the personal representative based on a percentage of the compensable value of the estate that is:

- The inventory value of the probate estate assets.
- The income on those assets during estate administration.

Personal representatives are entitled to additional allowances for extraordinary services, such as the sale of property. The statutory fee ranges from 3% on the first million dollars of assets to 1.5% for assets above ten million dollars. The statutory fee is presumed reasonable for personal representatives but is not mandatory and can be overridden by an express provision in the will. (§ 733.617, Fla. Stat.)

In most circumstances, the personal representative can renounce compensation entirely or can renounce the express compensation under the will and opt instead to take the statutory personal representative fee (§ 733.617(4), Fla. Stat.).

The will may also provide that some or all of the named personal representatives are not entitled to commissions, which is common where the will names family members as personal representative.

MULTIPLE FIDUCIARIES

In Florida, regardless of the number of personal representatives and unless the will provides otherwise:

- All personal representatives must share one full commission in estates with a compensable value of less than \$100,000.
- No more than two commissions can be paid when there is more than one personal representative in estates with a compensable value of \$100,000 or more.

(§ 733.617(5), Fla. Stat.)

CORPORATE PERSONAL REPRESENTATIVES

Corporate personal representatives typically expect higher compensation than individual personal representatives, and corporate fiduciary compensation is typically set by a commission schedule provided by the corporate fiduciary and referenced in the will. Corporate fiduciary fee schedules are sometimes negotiable, depending on the circumstances. A corporate fiduciary is entitled to fees under its commission schedule if the will provides for compensation based on the personal representative's regularly published schedule of fees in effect at the decedent's death (§ 733.617(4), Fla. Stat.).

DRAFTING ATTORNEY AS PERSONAL REPRESENTATIVE

There is no rule in Florida prohibiting a drafting attorney from acting as personal representative for a client's estate (§ 732.806(2), Fla. Stat.). Attorneys also acting as personal representatives are entitled to both fees for legal services and compensation as personal representatives (§ 733.617(6), Fla. Stat.).

In Florida, there is a statutory fee schedule that is presumed reasonable for the personal representative's attorney. It is based on the inventory value of the probate assets and the income earned

on those assets, with allowances for additional compensation for extraordinary services. That fee schedule is not mandatory. (§ 733.6171, Fla. Stat.)

10. What is the level of care that each estate fiduciary owes to the beneficiaries of the estate?

In Florida, the personal representative is considered a fiduciary and must abide by the same standard of care as is applicable to trustees (§§ 733.602(1) and 733.609(1), Fla. Stat.).

For information on the standard of care for trustees, see State Q&A, Revocable Trusts: Florida: Question 20 ([w-007-1198](#)).

ADMINISTERING THE ESTATE

11. What are the main duties of the estate fiduciary in administering the estate?

The general duties of the personal representative are to:

- Act efficiently and in the best interests of the estate and the persons interested in the estate, including creditors.
- Settle and distribute the estate according to the will or, if there is no will, according to the Florida Probate Code, including the statute of intestate succession.

(§§ 733.602 and 733.608, Fla. Stat.)

Over the course of an estate administration, the personal representative:

- Pays any unpaid funeral expenses.
- Gathers the decedent's assets and transfers them to the name of the estate.
- Notifies creditors of the decedent's death and their right to file a claim in the estate proceeding.
- Considers any creditor claims filed in the estate proceeding and either pays or objects to those claims.
- Prepares an estate inventory.
- Manages and preserves the estate assets before distribution.
- Pays estate expenses and taxes, if any.
- Distributes estate assets to the appropriate beneficiaries according to the terms of the will or the rules of intestate succession.

The personal representative may perform other acts throughout the administration, depending on the circumstances. For example, the personal representative may sell real or personal property if directed or authorized to do so in the will or by the court (§ 733.613, Fla. Stat.). The personal representative should consider the estate's liquidity needs, proper asset management, and any tax consequences from the sale and distribution of assets.

For more information on the estate administration process in Florida, see Practice Note, Understanding Probate in Florida ([w-000-3003](#)).

A personal representative is not appointed in either a summary administration or a disposition of personal property without administration. For information about the duties of the personal representative in the ancillary administration process, see Miscellaneous Estate Proceedings and Processes.

12. What are the key documents and procedures in your state for ongoing estate administration?

In Florida, the personal representative generally:

- Files the opening pleadings for an estate proceeding and notifies the interested parties of the estate proceeding (see Opening the Estate).
- Notifies creditors of the estate proceeding and handles any creditor claims (see Considerations for Creditor Claims).
- Files an estate inventory (see Estate Inventory).
- Closes the estate (see Closing the Estate).

ESTATE INVENTORY

Within 60 days of the court's issuance of letters of administration, the personal representative must identify and collect the decedent's probate assets and file an inventory with the court. The inventory must include:

- All of the decedent's probate assets and their estimated fair market value as of the date of death.
- Any real property appearing to be protected homestead.
- Any other real property titled in the decedent's sole name.

(§ 733.604, Fla. Stat. and FL ST PROB Rule 5.340.)

Protected homestead is not otherwise considered property in the hands of the personal representative and does not become a part of a decedent's probate estate but is included on the estate inventory (§§ 731.201(33), 733.607(1), and 733.608(1), Fla. Stat.).

For additional information on homestead property, see Practice Note, Estate Planning and Homestead (FL) ([w-001-4328](#)).

A copy of the inventory is served on:

- The surviving spouse, if any.
- Heirs-at-law in an intestate estate.
- Each residuary beneficiary in a testate estate.
- Any other interested person who provides a written request.

(FL ST PROB Rule 5.340(d).)

If the personal representative cannot obtain sufficient asset information and values to prepare and file an inventory within 60 days, the personal representative can petition to extend the time for filing the inventory. A copy of the petition must be served on the parties entitled to receive the inventory. (FL ST PROB Rule 5.340(b).)

If the personal representative discovers additional assets or determines a different fair market value of assets after filing the inventory, the personal representative should file a supplemental or amended inventory (§ 733.604(2), Fla. Stat.). Any individual who received a copy of the inventory must receive a copy of the supplemental or amended inventory (FL ST PROB Rule 5.340(d)).

In Florida, certain records remain confidential. The inventory, once filed with the court, is confidential except regarding the personal representative, the personal representative's attorney, or any interested person, or by court order. (§ 733.604, Fla. Stat.) For more information on the inventory, see Practice Note, Understanding Probate in Florida: Inventory ([w-000-3003](#)).

For information about key procedures in summary and ancillary estate administration proceedings and in disposition of personal property without administration, see Miscellaneous Estate Proceedings and Processes.

13. What are the due dates for key documents and processes during and after the estate proceeding?

NOTICE OF PETITION FOR ADMINISTRATION

Although not frequently required in Florida, if a notice of petition for administration is required, formal notice must be served on all persons qualified to act as personal representative who have a preference equal to or greater than the person seeking appointment before the court issues letters of administration (FL ST PROB Rule 5.201 and see Question 6).

NOTICE OF ADMINISTRATION

There is no specific deadline for serving a notice of administration. The personal representative only must serve it "promptly." However, multiple key estate deadlines are triggered by service of the notice of administration, and if it is not waived, it is typically served as quickly as possible after the court issues the order appointing the personal representative. (§ 733.212, Fla. Stat. and see Question 6.)

For additional information about the estate deadlines triggered by service of the notice administration, see Practice Note, Understanding Probate in Florida: Deadlines Triggered by Service of Notice of Administration ([w-000-3003](#)).

NOTICE TO CREDITORS

There is no specific deadline for publishing and serving notice to creditors. The personal representative only must do so "promptly" (§ 733.2121, Fla. Stat.).

Once the personal representative publishes notice to creditors, the personal representative must:

- Do so once a week for two consecutive weeks.
- If the decedent was 55 or older at death, serve a copy of the notice to creditors and provide a copy of the death certificate to the Agency for Health Care Administration within three months after the first publication of the notice to creditors, unless the agency has already filed a statement of claim in the estate proceeding (§ 733.2121(3)(d), Fla. Stat.).

(§ 733.2121, Fla. Stat.)

Both publication and service of notice to creditors trigger important deadlines for creditors to file claims in the estate. The personal representative and attorney for the personal representative should consider these deadlines when deciding when to publish and serve notice to creditors. For additional information on serving notice to creditors, see Considerations for Creditor Claims and Practice Note, Understanding Probate in Florida: Strategies for Serving Creditors ([w-000-3003](#)).

INVENTORY OF ASSETS

The fiduciary must file the inventory of assets with the court within 60 days of the court's issuance of letters of administration (§ 733.604, Fla. Stat.; FL ST PROB Rule 5.340; see Question 12).

FINAL ACCOUNT AND PETITION FOR DISCHARGE

If no federal estate tax return is due, the personal representative has 12 months from the date the court issues letters of administration to file the final account and a petition for discharge. If the estate must file a federal estate tax return, the final account is due within 12 months from the date the return is due. These time periods can be extended for cause. (FL ST PROB Rule 5.400 and see Closing the Estate.) For more information on the federal estate tax and determining if a federal estate tax return must be filed, see Federal Estate Tax Return and Practice Note, Federal Estate Tax ([w-000-2504](#)).

FEDERAL ESTATE TAX RETURN

The due date for filing a federal estate tax return is nine months after the decedent's date of death (26 U.S.C. § 6075). A six-month extension for filing the return may be requested and, if filed before the due date of the return, will automatically be granted (26 C.F.R. § 20.6081-1(b)). If an estate has more than one personal representative, only one personal representative needs to sign the estate tax return. However, all personal representatives are responsible for the information contained on the return (26 C.F.R. § 20.6018-2 and see "Signature and Verification" section of the Form 706 Instructions). For more information on the federal estate tax, see Practice Note, Federal Estate Tax ([w-000-2504](#)).

ESTATE INCOME TAX RETURN

The due date for the estate income tax return, if necessary, varies depending on whether the estate is operating on a calendar year or a fiscal year. For calendar year estates, the return is due by April 15th of the year following the calendar year in which the estate received the income. For fiscal year estates, the return is due by the 15th day of the fourth month following the close of the tax year. An automatic five-month extension is available. (See Instructions for IRS Form 1041.)

CONSIDERATIONS FOR CREDITOR CLAIMS

14. What is the procedure for notifying and paying creditors of the estate?

NOTIFYING KNOWN OR REASONABLY ASCERTAINABLE CREDITORS

In Florida, the personal representative is responsible for performing a diligent search of the decedent's records to determine the identities of any known or reasonably ascertainable creditors of the decedent, even if their claims are unmaturing, contingent, or unliquidated (§ 733.2121(3)(a), Fla. Stat.). Both known creditors and those who are deemed to be reasonably ascertainable should be served with notice to creditors, which is a direct written notice of the decedent's death and the creditor's right to file a claim against the estate (§ 733.2121(3)(a), Fla. Stat.).

NOTIFYING UNKNOWN CREDITORS

To provide notice to any unknown creditors, the personal representative must publish notice in the county newspaper once a week for two consecutive weeks (§ 733.2121, Fla. Stat.).

NOTICE TO THE AGENCY FOR HEALTH CARE ADMINISTRATION

If a decedent was 55 or older at the time of death, the personal representative must also serve a copy of the notice to creditors and provide a copy of the death certificate to the Agency for Health Care Administration within three months after the first publication of the notice to creditors, unless the agency has already filed a statement of claim in the estate proceeding (§ 733.2121(3)(d), Fla. Stat.).

CONTENTS OF NOTICE TO CREDITORS

The notice to creditors must contain:

- The name of the decedent.
- The file number of the estate.
- The designation and address of the court in which the proceedings are pending.
- The name and address of the personal representative.
- The name and address of the personal representative's attorney.
- The date of first publication of notice to creditors.
- A statement that creditors must file claims against the estate within the time limits required by law or be forever barred.

(§§ 733.2121(1) and 733.701, Fla. Stat.)

RELEVANT TIME PERIODS FOR CREDITOR CLAIMS

To file a claim, creditors who are or should have been served with notice have until the later of:

- Three months after the time of the first publication of the notice to creditors.
- Thirty days after the date of service on the creditor.

(§ 733.702(1), Fla. Stat.)

Creditors who were not required to be served with notice to creditors have three months after the time of the first publication of the notice to creditors to file a claim (§ 733.702(1), Fla. Stat.).

These time limitations do not apply to mortgages, liens, or security interests on the decedent's property, claims against the decedent's casualty insurance, or cross-claims or counterclaims against the estate where the estate instituted the action (§ 733.702(4), Fla. Stat.).

All claims are barred on the date that is two years after the date of the decedent's death. This is an absolute bar and applies even if the will has never been probated or letters of administration have never been issued. However, this provision does not apply to:

- Any claim that was filed before the two-year deadline but has not yet been paid.
- Secured interests.

(§ 733.710, Fla. Stat.)

For more information on creditors' claims, see Practice Note, Understanding Probate in Florida ([w-000-3003](#)).

PAYING AND OBJECTING TO CLAIMS

Creditors must file claims with the court to obtain payment for the pre-death debts of the decedent unless the personal representative

includes the claim in a proof of claim. A proof of claim is a pleading filed by the personal representative that lists claims that the personal representative has paid or intends to pay. (§§ 733.702 and 733.703, Fla. Stat. and FL ST PROB Rule 5.498.)

Once a claim is filed, the personal representative can either accept the claim as valid or object to the claim. If the personal representative accepts the claim as valid, the personal representative must pay the debt within one year from the date of first publication of the notice to creditors. The court may extend the time for paying a claim on a showing of good cause. (§ 733.705, Fla. Stat.)

To object to the claim, the personal representative or any other interested person must file and serve a written objection on the creditor by the later of:

- Four months from the first publication of notice to creditors.
- Thirty days from the timely filing or amendment of the claim.

If the personal representative objects to a claim, the creditor must file an independent action on the claim to pursue it. The creditor has 30 days from the objection to file an independent action on the claim. If the creditor fails to file this action within 30 days, the claim is barred. (§ 733.705(5), Fla. Stat.)

CLOSING THE ESTATE

15. What is the process for concluding (or closing) the estate?

To close an estate in Florida, the personal representative must prepare a final account and a petition for discharge and file them both within 12 months from the date the letters of administration are issued. If the estate must file a federal estate tax return, the final account and petition for discharge are due within 12 months from the date the return is due (for more information on the federal estate tax and determining if a federal estate tax return must be filed, see Practice Note, Federal Estate Tax ([w-000-2504](#))). If the probate takes more than 12 months, the court may grant an extension for cause. (FL ST PROB Rule 5.400(c).)

A copy of the final account and petition for discharge is served on all persons interested in the estate (FL ST PROB Rule 5.400(c)). Any objections to the final account or petition for discharge must be in writing and made within 30 days of service of the last of the petition for discharge or final accounting. If an objection is filed, a notice of hearing on the objection must be served within 90 days or the objection is abandoned. (FL ST PROB Rule 5.400(b).)

FINAL ACCOUNT

The final account generally includes:

- All inventoried assets.
- All receipts.
- All disbursements.
- All distributions.
- Capital transactions and adjustments.
- Assets on hand at the close of the accounting period.

(FL ST PROB Rule 5.346.)

PETITION FOR DISCHARGE

The petition for discharge is filed to close the estate and commence final distribution of the remaining estate assets. The petition states that the personal representative administered the estate and paid all claims, including taxes and administration expenses. The petition must show any compensation paid or to be paid to the personal representative, attorney, accountant, or any other person hired to assist with the estate administration. (FL ST PROB Rule 5.400(b).)

The petition also includes the plan for final distribution. The plan includes:

- Any prior distributions made.
- All remaining property on hand.
- A distribution plan.
- Any funds kept on hand to pay the expenses of final distribution and closing the estate.

(FL ST PROB Rule 5.400(b)(5).)

WAIVER OF FINAL ACCOUNT AND PORTIONS OF PETITION FOR DISCHARGE

To avoid the expense, delay, and potential complication of court oversight, the personal representative often asks the interested parties to waive the final account and consent to the personal representative's discharge. In this document, the interested parties can simplify many of the requirements outlined above by:

- Waiving filing the final account.
- Waiving inclusion in the petition for discharge of the amount and manner of determining compensation of the personal representative, attorney, and accountant.
- Waiving inclusion in the petition for discharge of a plan of distribution.
- Waiving objections to any accounting and to the petition for discharge.
- Acknowledging receipt of their interest in the estate.
- Consenting to discharge of the personal representative.

(§ 731.302, Fla. Stat.)

If the interested parties sign these waivers, the waivers can be filed with the court, and the court can immediately consider the petition for discharge.

16. Please describe if there is any special action needed to discharge the estate fiduciary from continuing liability for actions taken on behalf of the estate.

In Florida, filing the final account and petition for discharge is the process for discharging the personal representative from continuing liability for actions taken on behalf of the estate (§ 733.901, Fla. Stat.).

If the beneficiaries waive a final account for court purposes, the personal representative should consider preparing an informal final accounting that provides a chronological list of all estate transactions and circulate it to the interested parties for review along with a receipt and release agreement. In this agreement, the beneficiaries should acknowledge receipt of their interest in the estate and release the personal representative from liability regarding the estate administration. This informal accounting and release are typically

circulated along with the court waivers. This can be beneficial for all parties because it ensures that the beneficiaries receive important information about the estate administration and knowingly release the personal representative from liability, but also avoids the need for court oversight of this process.

EXPENSE AND TIMELINE

17. What are the expected costs for a typical estate proceeding?

EXPECTED COSTS

The primary costs of an estate proceeding in Florida are:

- Filing fees in the appropriate court. Court filing fees vary depending on the county that has jurisdiction over the estate administration (see, for example, Broward County Fines and Fees, Collier County Probate Fees, Lee County Probate Fees, Orange County Circuit Court Probate Filing Fees, Miami-Dade County Circuit and County Court Fee Schedule, and Palm Beach County Court Services Fees: Probate).
- Attorneys' fees. In Florida, there is a statutory fee schedule that is presumed reasonable for the personal representative's attorney. The fee schedule is based on the inventory value of the probate assets and the income earned on those assets, with allowances for additional compensation for extraordinary services. The fee schedule is not mandatory, and attorneys frequently do not rely on the default fee schedule, particularly when handling large and complex estates. (§ 733.6171, Fla. Stat.)

The expected costs of an estate proceeding vary greatly depending on:

- The size of the estate.
- The nature and complexity of the estate assets.
- Whether a bond is required.
- Whether there are any challenges to the estate.
- How involved a lawyer needs to be in the estate matters.

18. How long does the typical estate proceeding take?

The typical time line for opening and closing an estate in Florida varies greatly depending on:

- The nature and complexity of the estate assets.
- The particular court where the estate proceeding is filed and the volume of work the court has during the estate administration.

The personal representative has 12 months from the date the letters of administration are issued to file the final account and a petition for discharge or, if the estate must file a federal estate tax return, 12 months from the date the return is due. However, extensions are typically needed and usually granted liberally, though this may depend on the particular court, the number of extensions requested for a particular estate, and the reason the extension is needed. (FL ST PROB Rule 5.400(c).)

MISCELLANEOUS ESTATE PROCEEDINGS AND PROCESSES

19. Please list and describe any simplified or special proceedings or non-court processes for transferring a decedent's assets at death that are available in your state.

SUMMARY ADMINISTRATION

A summary administration requires court supervision but does not require appointment of a personal representative. An estate qualifies for summary administration:

- Whether or not the decedent died with a will.
- Only if the will (if any) does not direct otherwise.
- If:
 - the decedent has been dead for more than 2 years; or
 - the value of the entire probate estate (less the value of exempt property) is \$75,000 or less.

(§ 735.201, Fla. Stat.)

A summary administration is often desirable for smaller estates because this process generally requires less time, effort, and expense than a formal administration. In a summary administration, the elements typically included in a formal administration are all handled in the initial petition for summary administration. Once the court enters an order, that order can be used to collect and distribute estate assets.

Even if an estate qualifies for a summary administration, the estate may still be probated by a formal administration (§ 735.202, Fla. Stat.).

Petition for Summary Administration

The petition for summary administration may be filed at any stage of the administration of an estate as long as the estate qualifies for summary administration (§ 735.2055, Fla. Stat.). A petition for summary administration may be filed by any estate beneficiary (which includes heirs in an intestate estate and devisees in a testate estate) or any person nominated as personal representative in the decedent's will (§§ 731.201 and 735.203, Fla. Stat.).

The petition for summary administration must contain a substantial amount of detailed information since it is intended to provide all information relevant to the administration at one time.

To accomplish this, the petition for summary administration must include:

- General information about the decedent, the petitioner, and the estate, including:
 - a statement of the interest of the petitioner, the petitioner's name and address, and the name and office address of the petitioner's attorney;
 - the name and last known address of the decedent, the last four digits of the decedent's social security number, the date and place of death of the decedent, and the state and county of the decedent's domicile;
 - the name and address of the surviving spouse, if any, and the beneficiaries and their relationship to the decedent and the year of birth of any minor beneficiaries;
 - a statement showing venue;
 - a statement about whether domiciliary or principal proceedings are pending in another state or country, the name and address of the personal representative appointed in any of these proceedings, and the court issuing letters;
 - a statement that the decedent's will, if any, does not direct formal administration;

- a statement identifying all unrevoked wills and codicils being presented for probate; and
 - a statement that each petitioner is unaware of any other unrevoked will or codicil or, in an intestate estate, a statement that after the exercise of reasonable diligence, each petitioner is unaware of any unrevoked wills or codicils.
- Information about the estate assets and creditors, such as:
- a statement that the value of the entire estate subject to administration in Florida, less the value of property exempt from the claims of creditors, does not exceed \$75,000 or that the decedent has been dead for more than two years;
 - a description of all assets in the estate and the estimated value of each;
 - a description of any protected homestead and exempt property;
 - a statement that all creditors' claims are barred or that a diligent search and reasonable inquiry for known or reasonably ascertainable creditors has been made;
 - if creditors' claims are not barred, a statement that the estate is not indebted or, if the estate is indebted, the name and address of each creditor, the nature of the debt, the amount of the debt, whether the amount is estimated or exact, and when the debt is due; and
 - if provision for anything other than full payment of a debt has been made in the proposed order of distribution, a statement including the name of the person who will pay the debt, the creditor's written consent to payment of the debt by a new person, the amount to be paid if the debt was compromised, the terms for payment, and any limitations on liability of the person paying the debt.
- A schedule indicating the proposed distribution of all probate assets and the person to whom each asset is to be distributed. (FL ST PROB Rule 5.530.)

In addition to the petitioner, the surviving spouse and any beneficiaries must sign and verify the petition, except that a beneficiary who will receive the beneficiary's full share under the proposed distribution does not need to sign the petition as long as that beneficiary is served with formal notice of the petition (§ 735.203(1), Fla. Stat.). If a personal representative, spouse, or beneficiary is deceased, incapacitated, or a minor, or has transferred or assigned their entire interest in the estate, the petition should instead be signed and verified by:

- The personal representative of the deceased person, if any, or if none, the surviving spouse and the remaining beneficiaries.
- The guardian of an incapacitated person or minor.
- The grantee or transferee of any interest that has been transferred or assigned.

(§ 735.203(2), Fla. Stat.)

Summary Administration Procedure

The procedure for a summary administration is largely the same whether the decedent died with or without a will, except that in a testate summary administration, the will must be proved and admitted in the same manner as a formal administration (§ 735.206(1), Fla. Stat. and see Opening the Estate).

The petitioner must make a reasonable and diligent effort to identify any creditors and serve a copy of the petition for summary administration on those creditors (§§ 735.206(2) and 735.2063, Fla. Stat.). The petitioner must make provision for payment of all known creditors, to the extent there are sufficient assets, before an order of summary administration will be entered.

Once the order of summary administration is issued, the petitioner may publish notice to creditors to start the statute of limitations running for unknown creditors. If the petitioner publishes notice to creditors and files proof of the publication with the court, all claims of creditors who are not known or reasonably ascertainable are barred if not filed within three months of the first publication of the notice. (§ 735.2063, Fla. Stat.)

For more information on the creditor process and relevant statutes of limitations, see Considerations for Creditor Claims.

Once the will, if any, is proved, the creditors are served, and provision for known creditors is made, the court may enter an order allowing immediate collection and distribution of estate assets to the identified beneficiaries (§ 735.206, Fla. Stat.). The person administering the estate may then distribute the property per the terms of the decedent's will or rules of intestacy.

For additional information regarding summary administration in Florida, see Practice Note, Understanding Probate in Florida: Summary Administration ([w-000-3003](#)).

DISPOSITION OF PERSONAL PROPERTY WITHOUT ADMINISTRATION

A disposition of personal property without administration is an unsupervised administrative proceeding and is limited to situations where the decedent dies leaving only personal property (§ 735.301, Fla. Stat.). The estate must not include any real property. Personal property that is eligible for disposition without administration includes:

- Certain exempt personal property, such as household furniture and furnishings up to \$20,000 and two qualified motor vehicles (§ 732.402, Fla. Stat.). For additional information about exempt property, see Practice Note, Understanding Probate in Florida: Exempt Property ([w-000-3003](#)).
- Personal property that is exempt from the claims of creditors under the Constitution of Florida.
- Nonexempt property up to the value of preferred funeral expenses and medical and hospital expenses attributable to the decedent's last illness and incurred up to 60 days before death. Preferred funeral expenses are reasonable funeral expenses not exceeding \$6,000 (§ 733.707, Fla. Stat.).

(§ 735.301, Fla. Stat.)

An interested person may make an informal application for the disposition of personal property by affidavit or letter to the court. If the decedent's personal property includes exempt property, the application must also be signed by all persons entitled to the exempt property or by their representative. (§ 735.301, Fla. Stat. and FL ST PROB Rule 5.420.)

If the property qualifies, the court orders disposition of the personal property to the persons entitled to the property (§ 735.301, Fla. Stat. and FL ST PROB Rule 5.420).

An individual may forego the use of an attorney with this type of administration. On request, a court clerk may help any interested person prepare the required letter or affidavit (FL ST PROB Rule 5.420(c)).

ANCILLARY ADMINISTRATION

If a decedent who is not a Florida resident dies leaving assets in Florida, including real or personal property, credits due from Florida residents, or liens on property in Florida, an ancillary administration may be required to empower someone to gather and distribute the Florida property (§ 734.102(1), Fla. Stat.). Ancillary administration gives a personal representative in Florida the authority to administer the estate of a nonresident decedent regarding the Florida assets. An ancillary administration is typically secondary to a domiciliary administration, which takes place in the place of the decedent's domicile and through which the bulk of the decedent's assets are handled.

Appointment of Ancillary Personal Representative

Appointment of an ancillary personal representative to act in Florida can be complicated because Florida's residency and relationship requirements for qualification of personal representatives apply to both ancillary proceedings and domiciliary proceedings. For more information on qualification as a personal representative in Florida, see Qualification as Personal Representative.

An ancillary personal representative must be qualified to act in Florida to be appointed. The order of priority for appointment is:

- An ancillary personal representative named in the decedent's will.
- The personal representative for the decedent's domiciliary probate administration (foreign personal representative).
- Any qualified alternate or successor personal representative named in the decedent's will.
- An ancillary personal representative who is qualified to act in Florida selected by those entitled to a majority interest of the Florida property.
- If the decedent dies intestate and the foreign personal representative is not qualified to act in Florida, according to the order of preference for appointment of a personal representative as prescribed for intestate estates (§ 733.301(1)(b), Fla. Stat. and see Appointing a Personal Representative Where Decedent Died with a Will).

(§ 734.102(1), Fla. Stat.)

When preparing a will for a person who is a nonresident of Florida but who has property in Florida, counsel should include an appointment of an ancillary personal representative who is qualified to act in Florida (see Qualification as Personal Representative).

Petition for Ancillary Administration

A petition for ancillary administration must include an authenticated copy of the portion of the domiciliary proceedings showing:

- For a testate estate:
 - the will;
 - the petition for probate;
 - the order admitting the will to probate; and
 - the authority of the personal representative.

- In an intestate estate:
 - the petition for administration; and
 - the authority of the personal representative to act.

(FL ST PROB Rule 5.470.)

In a testate ancillary administration, the person petitioning for ancillary administration must file an authenticated copy of the decedent's will with the Florida court. If the will is executed in compliance with Florida law, the court will admit the will to probate. (§§ 732.502 and 734.102(3), Fla. Stat.)

For more information on requirements for will execution in Florida, see Practice Note, Understanding Wills (FL): General Requirements for Wills ([w-000-2999](#)).

Notice of Petition for Ancillary Administration

Before the court issues ancillary letters of administration, formal notice must be given to all:

- Known persons qualified to act as ancillary personal representative whose entitlement to preference of appointment is equal to or greater than the petitioner's and who have not waived notice or joined in the petition.
- Domiciliary personal representatives who have not waived notice or joined in the petition.

(FL ST PROB Rule 5.470.)

Administration and Distribution of an Ancillary Estate

An ancillary personal representative is generally under the same obligations and has the same responsibilities as a personal representative in a formal administration (§ 734.102(4), Fla. Stat.).

After the estate has been fully administered in Florida, including payment of all expenses of administration and claims, the court may order the remaining property held by the ancillary personal representative to be paid to the foreign personal representative or to be distributed directly from the ancillary personal representative to the beneficiaries (§ 734.102(6), Fla. Stat.).

WAIVER OF PROBATE REQUIREMENTS AND FORMAL PROBATE

20. What types of estate proceedings or probate requirements can be waived by will in your state? Specifically, please discuss:

- Whether any particular language is required to accomplish a waiver and if so, please include the language.
- Whether it is common to waive these estate proceedings or probate requirements.

ESTATE PROCEEDINGS

Formal administration is not waivable by will in Florida. Florida offers alternatives to formal administration in certain circumstances, but this depends on whether the estate qualifies for these alternatives, not whether formal administration is waived in the will (see Summary Administration and Disposition of Personal Property Without Administration). Florida wills can contain a prohibition against a summary administration in favor of a formal administration, though this is not frequently done (§ 735.201(1), Fla. Stat.).

PROBATE REQUIREMENTS

In Florida, a will typically contains a provision waiving the requirement for a personal representative to purchase a fiduciary bond and a provision waiving any requirement that the personal representative file a formal accounting with the court for the estate administration or for the administration of any trust created under the will. However, this language is limited in its effect. The court can require a bond despite this language, and the court requires the personal representative to file a final accounting in the estate

proceeding unless the interested parties waive the requirement themselves (see Question 8 and Waivers and Consents).

Counsel can include in a Florida will that:

“No bond or other security shall be required of my Personal Representative or of my Trustee in any jurisdiction. No Personal Representative or Trustee shall be required to account to any court for the administration of my estate or any trust created hereunder.”

ABOUT PRACTICAL LAW

Practical Law provides legal know-how that gives lawyers a better starting point. Our expert team of attorney editors creates and maintains thousands of up-to-date, practical resources across all major practice areas. We go beyond primary law and traditional legal research to give you the resources needed to practice more efficiently, improve client service and add more value.

If you are not currently a subscriber, we invite you to take a trial of our online services at legalsolutions.com/practical-law. For more information or to schedule training, call **1-800-733-2889** or e-mail referenceattorneys@tr.com.