



A Dirt Lawyer's Guide to Probate Essentials, Parts 1 & 2

Presented by
LEGAL EDUCATION DEPARTMENT
of
Attorneys' Title Fund Services, LLC

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A Dirt Lawyer's Guide to Probate Essentials, Part 1

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Legal Education Attorney



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Topics

Part 1

- Introduction & Background
- Formal Administration – Procedure

Part 2

- Sale of Decedent's Real Property
- Summary Administration – Procedure
- Title Insurance Requirements

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Introduction & Background



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Terms:

- Testate Estate – where decedent had a will
- Intestate Estate – where decedent did not have a will
- Devisee – a person designated in a will to receive real or personal property of decedent
- Domiciliary Estate – estate in jurisdiction where decedent was domiciled
- Ancillary Estate – estate in jurisdiction where decedent owned property but was not domiciled
- Interested Person – any person who may reasonably be expected to be affected by the outcome of the proceeding – may vary according to the purpose of the proceeding

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What is Probate?



Probate of Will is defined as "all steps necessary to establish the validity of a will and to admit a will to probate."

- Sec. 731.201 (31) F.S.



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Effect of Probate

Until admitted to probate, "the will is ineffective to prove title to, or the right to possession of, the property of the testator."

- Sec. 733.103 F.S.
- Title Standard 5.2



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Probate without a will?

Probate of an intestate estate is needed to determine heirs under Florida law.

- *Sec. 733.105 F.S.*



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Governing Law

- Florida Probate Code

Chapters 731-735 Florida Statutes

- Florida Probate Rules

Chapter 5, Florida Rules of Court Procedure

<https://www.floridabar.org/rules/ctproc/>



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Forms

Florida Lawyers Support Services, Inc.
(FLSSI) <https://flssi.org>

- Petition for Administration (Testate)
(P-3.0100)
- Petition for Administration (Intestate)
(P-3.0120)

IN THE CIRCUIT COURT FOR _____ COUNTY,
FLORIDA
IN RE: ESTATE OF _____

File No. _____
Deceased: _____ Division _____

PETITION TO ADMIT FOREIGN WILL TO RECORD

Petitioner, _____, alleges:

1. Petitioner has an interest in the above estate as _____
Petitioner's address is _____

and the name and address of petitioner's attorney are set forth at the end of this petition.

2. Decedent, _____, whose last known
address was _____ and, if known, whose
age was _____ died on _____, at _____, and on the date of
death, decedent was domiciled in _____.

3. Domiciliary probate proceedings were conducted in _____
_____ which was
the proper court, and:
more than two years have elapsed since the date of death of the decedent [delete if inapplicable].
the domiciliary personal representative has been discharged [delete if inapplicable].

4. Attached to or accompanying this petition is an authenticated transcript of so much of the
domiciliary proceedings as will show:

(a) the foreign will (and codicils, if any) of the decedent (the will);
(b) the petition for probate; (or an affidavit or certificate establishing that no petition for
probate was required); and
(c) the order admitting the will to probate.

Bar Form No. P-2 0800-1 of 2
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January 1, 2020

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Probate Procedures



- *Formal (full)
Administration*
- *Summary
Administration*
- *Ancillary Administration*
 - *either formal or summary*

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Formal Administration



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Personal Representative



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The Personal Representative



- The fiduciary appointed by the court to administer the estate.
 - a/k/a “administrator” or “executor”
- Sec. 731.201 (28) F.S.

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The Personal Representative

Order of Preference

- Testate Estate – (1) person, or his/her successor, nominated in the will, (2) person selected by majority of beneficiaries, (3) a devisee under the will.
- Intestate Estate – (1) the surviving spouse, (2) person selected by majority of heirs, (3) the heir in nearest degree.

Sec. 733.301 (1)(a) F.S.

Sec. 733.301 (1)(b) F.S.



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Opening Probate

Initial Steps



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Initial Steps

1. Production of the Will for Probate
2. Determine identity of the PR
3. File Petition for Administration
4. Order Admitting Will to Probate or Order Appointing PR
5. Letters of Administration



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Initial Steps



1. Production of the Will for Probate

- Custodian of the will must deposit it w/ clerk of court within 10 days of receiving notice the testator has died
- Petition to compel custodian to produce the will may be filed

Sec. 732.901 F.S.

Initial Steps

2. Determine identity of the PR

- Person nominated in the will is typically granted letters of administration except in limited circumstances if person is expressly disqualified under statute
- Nominated PR can decline to serve
- PR must be represented by FL attorney unless PR is the sole interested person or is a FL attorney. *Fla. Prob. R. 5.030(a)*

Initial Steps

3. File Petition for Administration

- Petition may be filed by any interested person – typically filed by PR
- Includes personal info on decedent, statement that court has venue, statement the PR is qualified under FL law, names & addresses of surviving spouse and beneficiaries, statement of approx. value & nature of estate assets

NOTE: even if protected homestead, still list it on the petition as an exempt asset – file a petition to determine homestead along with petition for administration



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Initial Steps

4. Order Admitting Will to Probate (testate) or Order Appointing PR (intestate)

- PR must file an oath and designation of his/her address as well as the PR's resident agent (attorney).
- PR must execute and file a bond unless requirement waived by testator in the will, the PR is a qualified bank or trust co, or the court on petition waives (usually only if all bens waive)



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Initial Steps

5. Letters of Administration (a/k/a Letters Testamentary)

- Court issues Letters of Administration to the PR granting authority to administer the estate.
- Practice tip: order extra certified copies from the clerk



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Inventory & Appraisal



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Inventory & Appraisal

- Value of assets – tax basis
- Have real estate appraised (not by real estate broker)
 - Protected Homestead? Not an estate asset so no need to appraise but it still must appear on inventory

NOTE: real estate held as TBE or JTWROS is not a probate asset and title vests immediately in the survivor. No need to include on the inventory

Inventory & Appraisal



- Personal property – art objects, collectibles
 - PR has duty & responsibility to marshal assets
 - Search for assets
 - Decedent list disposing of tangible personal property

Inventory Form

- FLSSI Form P-3.0900
 - Include all real estate
 - Protected homestead
 - Non-protected homestead
 - Other real estate in FL
 - Real estate outside FL
 - Personal Property

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IN THE FLORIDA	CIRCUIT COURT FOR	COUNTY,
	PROBATE DIVISION	
IN RE: ESTATE OF		
File Number _____		
Division _____		
Amended Form? : _____		
Deceased.		
INVENTORY		
The undersigned personal representative of the estate of _____,		
deceased, who died on _____, submits this inventory of all the property of the estate,		
SSN _____, that has come into the hands, possession, control, or knowledge		
of this personal representative:		
REAL ESTATE IN FLORIDA -- Exempt Homestead:		Estimated Fair Market Value
Description		
REAL ESTATE IN FLORIDA -- Non-Exempt Homestead:		Estimated Fair Market Value
Description		
(Whether property is protected homestead and therefore exempt from the claims of creditors, is a judicial determination.)		

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Creditors



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Creditor Claims

- PR must ascertain debts & claims to be paid by the estate
- No assets can be distributed until the PR is certain the debts & claims can be paid
- Assets may need to be sold to pay claims, including non-protected homestead and other real estate.



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Creditor Claims

- Notice to Creditors – must be published “promptly” after issuance of Letters of Administration. Sec. 733.2121(1)
 - PR must file proof of publication within 45 days
 - Known or reasonably ascertainable creditors must be given actual notice
- Creditors must file claims w/in 3 months of the date of first publication, or within 30 days after receipt of service of process, for those who are required to be served
- Statute of limitations – 2 years from date of death, even if no estate administration



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Creditor Claims

- PR should investigate all claims and object to any determined to be unjust or invalid
 - Any other interested person can file an objection
 - Objection must be filed w/in 30 days of claim, or 4 months from first publication, whichever is later
- Creditor then has 30 days to bring an action on the claim, and if creditor does not file an action on the claim, the claim is automatically barred
- Order of payment of claims – *Sec. 733.707 F.S.* – costs and expenses of administration are paid first



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Liens that Survive Probate – TN 2.02.05

- Mortgage or security interest on the property of the decedent
- Liens in favor of counties or municipalities: taxes, special assessments & code enforcement
- Association liens
- Federal liens including tax liens

See *Sec. 733.702 F.S.*



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Management, Sale & Transfer of Assets



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Examples of Non-Probate Assets

Tenancy by the
Entireties

Joint Tenancy
with Right of
Survivorship

Jointly Owned
Property or
POD/TOD

Wages, Traveling
Expenses and
Unemployment
Compensation

Life Insurance
Proceeds –
Retirement
Accounts

Protected
Homestead

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Exempt Property

Must be survived by a spouse or a child for property to be “exempt”



Household furniture, furnishings & appliances in decedent's home – up to \$20,000



Up to 2 motor vehicles (personal use)



Personal property – up to \$1,000

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Management, Sale & Transfers of Assets

PR has duty to:

- Assume control of the assets for preservation
- Manage the assets
- Sell assets as needed
- Distribute the assets to the heirs or beneficiaries

Sec. 733.607(1) F.S.



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Management of Real Estate



- PR may take possession of all real property except protected homestead
- PR must maintain the property – make ordinary repairs
- PR must make mortgage payments to extent assets of the estate allow – even on protected homestead until determination of homestead (subject to PR lien)

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Transfer of Real Estate to Beneficiaries

- Deed of distribution from PR is not required – title vests in the beneficiary on date of death. *Title Standard 5.1*
- Common practice to record something to provide a public record.
 - Certificate of Distribution
 - Personal Representative's Distribution Deed
 - Include statement that property is transferred free & clear of any PR lien for funds advanced under Sec. 733.608 F.S.

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Determination of Beneficiaries



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Determination of Beneficiaries Definitions:

- “Beneficiary”:
 - Intestate - “heir-at-law” under FL law
 - Testate – “devisee” under the will
- “Descendant”, “Lineal Descendant” and “Issue” – synonymous terms
 - A person in any generational level down the applicable individual’s descending line.
 - Children, grandchildren & more remote descendants



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Determination of Beneficiaries

- Intestate Estate:

- PR needs to identify & locate heirs
 - Decedent had no known relatives
 - Missing branches of a family
 - Known heirs but whereabouts unknown
- PR has a duty to use reasonable diligence to identify & locate beneficiaries
 - Research
 - Hire heir search service



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Determination of Beneficiaries - Procedure



- File Petition for Determination of Beneficiaries:

- Notice to all interested persons
- Notice of Action – must be published if petition alleges there are or may be unknown beneficiaries
- After hearing, court will enter an order determining beneficiaries of the estate and the shares and amounts they are entitled to

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Accountings



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Accounting

- Inventory and Final Accounting are required under *Sec. 733.604*
- Interim accountings are not required
- Final accounting may be waived *Sec. 731.302*
- The inventory is the starting point for any interim accountings or final accounting

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Accounting

- FLSSI Form P-5.0340 – Includes 5 schedules
 - A – Receivables
 - B – Disbursements
 - C – Distributions
 - D – Capital Transactions & Adjustments
 - E – Assets on hand at close of accounting period



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Distributions & Closing the Estate



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Distributions

- Distribution pursuant to the will:
 - Real property vests on date of death
 - PR deed is not necessary, but if used, no transfer tax due
- Methods of Distribution:
 - Assets divided into equal shares and distributed “in kind” to beneficiaries
 - Assets are liquidated and cash proceeds are distributed to beneficiaries



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Closing the Estate

- Creditor Claims:
 - Payment of claims and Satisfactions of claims filed with court.
- Petition for Discharge:
 - PR must file a final accounting and a petition for discharge (includes proposed distribution of assets).
 - Interested persons may waive notice
 - Interested persons have 30 days to file any objection to accounting or proposed distribution
- Order of Discharge:
 - Upon filing report of distribution with receipts from bens
 - Order releases the PR from his/her duties and bars any action against the PR



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Timing Considerations



- Petition for Discharge should be filed within 12 months of Letters of Administration
- If federal estate tax return is due, then within 12 months from date tax return is due
- Court can extend date for cause shown

Fla. Prob. R. 5.400



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**Thank you
for your time and attention**

For more information please contact:

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A Dirt Lawyer's Guide to Probate Essentials

Outline of All Topics Addressed

Part 1

- I. Introduction (10 minutes)
- a. Background – What is Probate?
 - b. “Probate of Will” means all steps necessary to establish the validity of a will and to admit a will to probate.
 - c. §731.201 F.S.
 - d. §733.101 – without a will, a probate proceeding is used to determine heirs.
 - e. Effect of probate - §733.103 – until admitted to probate, the will is ineffective to prove title to, or the right to possession of, the property of the testator.

- II. Formal Administration - Procedure (40 minutes)
- a. Initial Steps
 - b. Appointing the Personal Representative
 - c. Inventory & Appraisal
 - d. Creditors – Notice and Claims
 - e. Management, Sale and Transfers of Estate Assets by the PR
 - f. Determination of Beneficiaries & Their Interests
 - g. Accounting
 - h. Distributions & Closing the Estate

Break (10 minutes)

Part 2

- III. Recap from Part 1 (5 minutes)
- IV. Summary Administration (10 minutes)
- a. When available:
 - b. Non-Estate Property
 - c. Exempt Property – must be survived by a spouse or child

- d. Procedure – Petition
- e. Effect of Order of Summary Administration

V. Sale of Decedent's Real Property (10 minutes)

- a. Where there is no power of sale in will or intestate estate
- b. Bona fide purchasers - creditor claims or claims of beneficiaries
- c. Where there IS a power of sale in the will
- d. Homestead
- e. PR has no authority to sell Protected Homestead

VI. Title Insurance Requirements (10 minutes)

- a. TESTATE: Record Order Admitting Will to Probate, the will itself and Letters of Administration
- b. INTESATE: Record copy of Petition for Administration and Letters of Administration
- c. Record Proof of Death – Death Certificate
- d. Record proof of Estate Tax Clearance – record affidavit
- e. Record Continuous Marriage Affidavit – if property was held as TBE
- f. Record Order Determining Homestead – if homestead
- g. Record Order Determining Heirs (if any)
- h. Record affidavit that decedent was not survived by a spouse or minor children
- i. Record Order authorizing sale of property by PR
- j. Sometimes – record proof of clearance of creditor claims

VII. Food For Thought – Benefits of Probate (5 minutes)

- a. Court determination of validity of the will
- b. Court construction to resolve errors and ambiguities
- c. Determination of heirs in the absence of a will
- d. Determination of creditors and priority of payments
- e. Determination of family protections:

Break (10 minutes)

Total Instruction Time:	100 minutes
Total Break Time:	20 minutes
Total Time:	120 minutes

731.201 General definitions.

731.201 General definitions.—Subject to additional definitions in subsequent chapters that are applicable to specific chapters or parts, and unless the context otherwise requires, in this code, in s. 409.9101, and in chapters 736, 738, 739, and 744, the term:

(1) “Authenticated,” when referring to copies of documents or judicial proceedings required to be filed with the court under this code, means a certified copy or a copy authenticated according to the Federal Rules of Civil Procedure.

(2) “Beneficiary” means heir at law in an intestate estate and devisee in a testate estate. The term “beneficiary” does not apply to an heir at law or a devisee after that person’s interest in the estate has been satisfied. In the case of a devise to an existing trust or trustee, or to a trust or trustee described by will, the trustee is a beneficiary of the estate. Except as otherwise provided in this subsection, the beneficiary of the trust is not a beneficiary of the estate of which that trust or the trustee of that trust is a beneficiary. However, if each trustee is also a personal representative of the estate, each qualified beneficiary of the trust as defined in s. 736.0103 shall be regarded as a beneficiary of the estate.

(3) “Child” includes a person entitled to take as a child under this code by intestate succession from the parent whose relationship is involved, and excludes any person who is only a stepchild, a foster child, a grandchild, or a more remote descendant.

(4) “Claim” means a liability of the decedent, whether arising in contract, tort, or otherwise, and funeral expense. The term does not include an expense of administration or estate, inheritance, succession, or other death taxes.

(5) “Clerk” means the clerk or deputy clerk of the court.

(6) “Collateral heir” means an heir who is related to the decedent through a common ancestor but who is not an ancestor or descendant of the decedent.

(7) “Court” means the circuit court.

(8) “Curator” means a person appointed by the court to take charge of the estate of a decedent until letters are issued.

(9) “Descendant” means a person in any generational level down the applicable individual’s descending line and includes children, grandchildren, and more remote descendants. The term “descendant” is synonymous with the terms “lineal descendant” and “issue” but excludes collateral heirs.

(10) “Devise,” when used as a noun, means a testamentary disposition of real or personal property and, when used as a verb, means to dispose of real or personal property by will or trust. The term includes “gift,” “give,” “bequeath,” “bequest,” and “legacy.” A devise is subject to charges for debts, expenses, and taxes as provided in this code, the will, or the trust.

(11) “Devisee” means a person designated in a will or trust to receive a devise. Except as otherwise provided in this subsection, in the case of a devise to an existing trust or trustee, or to a trust or trustee of a trust described by will, the trust or trustee, rather than the beneficiaries of the trust, is the devisee. However, if each trustee is also a personal representative of the estate, each qualified beneficiary of the trust as defined in s. 736.0103 shall be regarded as a devisee.

(12) “Distributee” means a person who has received estate property from a personal representative or other fiduciary other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increments to them remaining in the trustee’s hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee. For purposes of this provision, “testamentary trustee” includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

(13) “Domicile” means a person’s usual place of dwelling and shall be synonymous with residence.

(14) “Estate” means the property of a decedent that is the subject of administration.

(15) “Exempt property” means the property of a decedent’s estate which is described in s. 732.402.

(16) “File” means to file with the court or clerk.

(17) “Foreign personal representative” means a personal representative of another state or a foreign country.

(18) “Formal notice” means a form of notice that is described in and served by a method of service provided under rule 5.040(a) of the Florida Probate Rules.

(19) “Grantor” means one who creates or adds to a trust and includes “settlor” or “trustor” and a testator who creates or adds to a trust.

(20) “Heirs” or “heirs at law” means those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the property of a decedent.

(21) “Incapacitated” means a judicial determination that a person lacks the capacity to manage at least some of the person’s property or to meet at least some of the person’s essential health and safety requirements. A minor shall be treated as being incapacitated.

(22) “Informal notice” or “notice” means a method of service for pleadings or papers as provided under rule 5.040(b) of the Florida Probate Rules.

(23) “Interested person” means any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent’s estate, or any claims described in s. 733.702(1), the trustee of a trust described in s. 733.707(3) is an interested person in the administration of the grantor’s estate. The term does not include a beneficiary who has received complete distribution. The meaning, as it relates to particular

persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

(24) “Letters” means authority granted by the court to the personal representative to act on behalf of the estate of the decedent and refers to what has been known as letters testamentary and letters of administration. All letters shall be designated “letters of administration.”

(25) “Minor” means a person under 18 years of age whose disabilities have not been removed by marriage or otherwise.

(26) “Other state” means any state of the United States other than Florida and includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(27) “Parent” excludes any person who is only a stepparent, foster parent, or grandparent.

(28) “Personal representative” means the fiduciary appointed by the court to administer the estate and refers to what has been known as an administrator, administrator cum testamento annexo, administrator de bonis non, ancillary administrator, ancillary executor, or executor.

(29) “Petition” means a written request to the court for an order.

(30) “Power of appointment” means an authority, other than as an incident of the beneficial ownership of property, to designate recipients of beneficial interests in property.

(31) “Probate of will” means all steps necessary to establish the validity of a will and to admit a will to probate.

(32) “Property” means both real and personal property or any interest in it and anything that may be the subject of ownership, including causes of action of the estate and causes of action the decedent had at the time of death.

(33) “Protected homestead” means the property described in s. 4(a)(1), Art. X of the State Constitution on which at the death of the owner the exemption inures to the owner’s surviving spouse or heirs under s. 4(b), Art. X of the State Constitution. For purposes of the code, real property owned in tenancy by the entireties or in joint tenancy with rights of survivorship is not protected homestead.

(34) “Residence” means a person’s place of dwelling.

(35) “Residuary devise” means a devise of the assets of the estate which remain after the provision for any devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount. If the will contains no devise which is to be satisfied by reference to a specific property or type of property, fund, sum, or statutory amount, “residuary devise” or “residue” means a devise of all assets remaining after satisfying the obligations of the estate.

(36) “Security” means a security as defined in s. 517.021.

(37) “Security interest” means a security interest as defined in s. 671.201.

(38) “Trust” means an express trust, private or charitable, with additions to it, wherever and however created. It also includes a trust created or determined by a judgment or decree under which

the trust is to be administered in the manner of an express trust. “Trust” excludes other constructive trusts, and it excludes resulting trusts; conservatorships; custodial arrangements pursuant to the Florida Uniform Transfers to Minors Act; business trusts providing for certificates to be issued to beneficiaries; common trust funds; land trusts under s. 689.071, except to the extent provided in s. 689.071(7); trusts created by the form of the account or by the deposit agreement at a financial institution; voting trusts; security arrangements; liquidation trusts; trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind; and any arrangement under which a person is nominee or escrowee for another.

(39) “Trustee” includes an original, additional, surviving, or successor trustee, whether or not appointed or confirmed by court.

(40) “Will” means a testamentary instrument, including a codicil, executed by a person in the manner prescribed by this code, which disposes of the person’s property on or after his or her death and includes an instrument which merely appoints a personal representative or guardian or revokes or revises another will. The term includes an electronic will as defined in s. 732.521.

History.—s. 1, ch. 74-106; s. 4, ch. 75-220; s. 1, ch. 77-174; s. 2, ch. 85-79; s. 66, ch. 87-226; s. 1, ch. 88-340; s. 7, ch. 93-257; s. 6, ch. 95-401; s. 949, ch. 97-102; s. 52, ch. 98-421; s. 11, ch. 2001-226; s. 106, ch. 2002-1; s. 2, ch. 2003-154; s. 2, ch. 2005-108; s. 29, ch. 2006-217; s. 3, ch. 2007-74; s. 8, ch. 2007-153; s. 1, ch. 2009-115; s. 4, ch. 2010-132; s. 1, ch. 2012-109; s. 16, ch. 2013-172; s. 30, ch. 2019-71; s. 2, ch. 2020-67.

Note.—Created from former s. 731.03.

733.301 Preference in appointment of personal representative.—

(1) In granting letters of administration, the following order of preference shall be observed:

(a) In testate estates:

1. The personal representative, or his or her successor, nominated by the will or pursuant to a power conferred in the will.

2. The person selected by a majority in interest of the persons entitled to the estate.

3. A devisee under the will. If more than one devisee applies, the court may select the one best qualified.

(b) In intestate estates:

1. The surviving spouse.

2. The person selected by a majority in interest of the heirs.

3. The heir nearest in degree. If more than one applies, the court may select the one best qualified.

(2) A guardian of the property of a ward who if competent would be entitled to appointment as, or to select, the personal representative may exercise the right to select the personal representative.

(3) In either a testate or an intestate estate, if no application is made by any of the persons described in subsection (1), the court shall appoint a capable person; but no person may be appointed under this subsection:

(a) Who works for, or holds public office under, the court.

(b) Who is employed by, or holds office under, any judge exercising probate jurisdiction.

(4) After letters have been granted in either a testate or an intestate estate, if a person who was entitled to, and has not waived, preference over the person appointed at the time of the appointment and on whom formal notice was not served seeks the appointment, the letters granted may be revoked and the person entitled to preference may have letters granted after formal notice and hearing.

(5) After letters have been granted in either a testate or an intestate estate, if any will is subsequently admitted to probate, the letters shall be revoked and new letters granted.

History.—s. 1, ch. 74-106; s. 62, ch. 75-220; s. 21, ch. 77-87; s. 1, ch. 77-174; s. 988, ch. 97-102; s. 98, ch. 2001-226.

Note.—Created from former s. 732.44.

IN THE CIRCUIT COURT FOR _____ COUNTY,
FLORIDA PROBATE DIVISION

IN RE: ESTATE OF

File No. _____

Division _____

Deceased.

LETTERS OF ADMINISTRATION
(Single Personal Representative)

TO ALL WHOM IT MAY CONCERN

WHEREAS, _____,
a resident of _____ died
on _____, _____, owning assets in the State of Florida, and

WHEREAS, _____ has been
appointed personal representative of the estate of the decedent and has performed all acts prerequisite to
issuance of Letters of Administration in the estate,

NOW, THEREFORE, I, the undersigned circuit judge, declare _____
_____ duly qualified under the laws of the State of Florida to act as
personal representative of the estate of _____, deceased, with
full power to administer the estate according to law; to ask, demand, sue for, recover and receive the property
of the decedent; to pay the debts of the decedent as far as the assets of the estate will permit and the law
directs; and to make distribution of the estate according to law.

ORDERED on _____, _____.

Circuit Judge

IN THE CIRCUIT COURT FOR COUNTY,
FLORIDA PROBATE DIVISION

IN RE: ESTATE OF

File Number _____

Division _____

Amended Form? : _____

Deceased.

INVENTORY

The undersigned personal representative of the estate of _____,
deceased, who died on _____, submits this inventory of all the property of the estate,
SSN _____, that has come into the hands, possession, control, or knowledge
of this personal representative:

REAL ESTATE IN FLORIDA -- Exempt Homestead:
Description

Estimated Fair Market Value

REAL ESTATE IN FLORIDA -- Non-Exempt Homestead:

Description

Estimated Fair Market Value

(Whether property is protected homestead and therefore exempt from the claims of creditors, is a judicial determination.)

OTHER REAL ESTATE IN FLORIDA:

Description	Estimated Fair Market Value
-------------	-----------------------------

Total Real Estate in Florida -- Except Exempt Homestead	\$ _____
---	----------

REAL ESTATE LOCATED OUTSIDE THE STATE OF FLORIDA (if known):

PERSONAL PROPERTY WHEREVER LOCATED:

Description	Estimated Fair Market Value
-------------	-----------------------------

Total Personal Property -- Wherever Located	\$ _____
---	----------

TOTAL OF ALL PERSONAL PROPERTY AND FLORIDA REAL ESTATE
(Except exmpt homestead)

\$ _____

All real estate located outside the State of Florida owned by the decedent of which the personal representative is aware, if any, is described on a schedule attached hereto. [If none, so indicate]

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true to the best of my knowledge and belief.

Signed on _____

Attorney for Personal Representative
Florida Bar No. _____

(address)

Telephone: _____

Personal Representative

[Print or Type Names Under All Signature Lines]

Co-Personal Representative

(address)

Co-Personal Representative

(address)

[Print or Type Names Under All Signature Lines]

PERSONAL REPRESENTATIVE'S RELEASE
AND CERTIFICATE OF DISTRIBUTION OF REAL PROPERTY
(Corporate Personal Representative)

The undersigned, _____,
whose post office address is _____
_____, as personal representative of the estate of
_____, deceased, hereby acknowledges that
title to the real property located in _____ County, Florida,
owned by the decedent at the time of death, described as follows:

Property Appraiser's Parcel Identification Number _____ (the "Property"),
vested in _____,
whose post office address is _____
(the "Beneficiary" or "Beneficiaries"), by operation of law as of the date of the decedent's death pursuant to
Florida law as will more fully appear from the proceedings in the Circuit Court for _____
County, Florida, Probate Division, in File No. _____, subject to rights of the personal representative
under Florida Statutes Sections 733.607 and 733.608 to:

1. take possession or control of the Property;
2. use, sell, encumber or otherwise exercise control over the Property:
 - a. for the payment of devises, family allowance, elective share, estate and inheritance taxes, claims, charges, and expenses of the administration and obligations of the decedent's estate;
 - b. to enforce contribution and equalize advancement;
 - c. for distribution.

Having determined that the Property is not needed for any of the foregoing purposes, except distribution, and that the Property should be released and distributed to the Beneficiary or Beneficiaries, the personal representative hereby releases the Property from all rights and powers of the personal representative and acknowledges that the Property is vested in _____



_____, free of all rights of the personal representative.

IN WITNESS WHEREOF, the undersigned, as personal representative of the estate of the decedent,
has executed this instrument on this _____ day of _____, _____.

Executed in the presence of:

Witness signature

[Print witness name]

Witness signature

[Print witness name]

Corporate title

As personal representative of the estate of

deceased

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me on _____, _____, by
_____ as personal representative of the estate of
_____, deceased, who is personally known to me _____ or
(yes or no)
who produced _____ as identification.
(type of identification)

Notary Public, State of Florida
(Affix notarial seal)

[Print or Type Names under All Signature Lines]

IN THE CIRCUIT COURT FOR _____ COUNTY, FLORIDA

IN RE: ESTATE OF

PROBATE DIVISION

File Number _____

Deceased.

Division _____

_____ ACCOUNTING OF PERSONAL REPRESENTATIVE(S)

From: _____, _____, Through: _____, _____

The purpose of this accounting is to acquaint all interested persons with the transactions that have occurred during the period covered by the accounting and the assets that remain on hand. It consists of a SUMMARY sheet and Schedule A showing all Receipts, Schedule B showing all Disbursements, Schedule C showing all Distributions, Schedule D showing all Capital Transactions and Adjustments (the effect of which are also reflected in other schedules, if appropriate), and Schedule E showing assets on hand at the end of the accounting period.

It is important that this accounting be carefully examined. Requests for additional information and any questions should be addressed to the personal representative(s) or the attorneys for the personal representative(s), the names and addresses of whom are set forth below.

Under penalties of perjury, the undersigned personal representative(s) declare(s) that I (we) have read and examined this accounting and that the facts and figures set forth in the Summary and the attached Schedules are true, to the best of my (our) knowledge and belief, and that it is a complete report of all cash and property transactions and of all receipts and disbursements by me (us) as personal representative(s) of the estate of _____ deceased, from _____, _____, through _____, _____.

Signed on _____, _____.

Attorney for Personal Representative:

Personal Representative:

Attorney

Name

Email Addresses:

(address)

Florida Bar No. _____

(address)

Telephone: _____

[Print or Type Names Under All Signature Lines]

ACCOUNTING OF PERSONAL REPRESENTATIVE(S)

From: _____, _____, Through: _____, _____

SUMMARY

	<u>Income</u>	<u>Principal</u>	<u>Totals</u>
I. <u>Starting Balance</u>			
Assets per Inventory or on Hand at Close of Last Accounting Period	\$ _____	\$ _____	\$ _____
II. <u>Receipts</u>			
Schedule A:	\$ _____	\$ _____	\$ _____
III. <u>Disbursements</u>			
Schedule B:	\$ _____	\$ _____	\$ _____
IV. <u>Distributions</u>			
Schedule C:	\$ _____	\$ _____	\$ _____
V. <u>Capital Transactions and Adjustments</u>			
Schedule D: Net Gain or (Loss)		\$ _____	\$ _____
VI. <u>Assets on Hand at Close of Accounting Period</u>			
Schedule E: Cash and Other Assets	\$ _____	\$ _____	\$ _____

NOTE: Refer to Fla. Prob. R. 5.330(b), 5.345, 5.346, and 5.400.

Also see Accountings, Chapter 12 of Practice Under Florida Probate Code (Fla. Bar CLE).

Entries on Summary are to be taken from totals on Schedules A, B, C, D and E.

The Summary and Schedules A, B, C, D and E are to constitute the full accounting. Every transaction occurring during the accounting period should be reflected on the Schedules.

All purchases and sales, all adjustments to the inventory or carrying value of any asset, and any other changes in the assets (such as stock splits) should be described on Schedule D.

The amount in the "Total" column for Item VI must agree with the total inventory or adjusted carrying value of all assets on hand at the close of the accounting period on Schedule E.

_____ ACCOUNTING OF PERSONAL REPRESENTATIVE(S)

From: _____, _____, Through: _____, _____

SCHEDULE A Receipts

Date	Brief Description of Items	Income	Principal
------	----------------------------	--------	-----------

NOTE: Schedule A should reflect only those items received during administration that are not shown on the inventory. Classification of items as income or principal is to be in accordance with the provisions of the Florida Uniform Principal and Income Act, Chapter 738, Florida Statutes. Entries involving the sale of assets or other adjustments to the carrying values of assets are to be shown on Schedule D, and not on Schedule A.

_____ ACCOUNTING OF PERSONAL REPRESENTATIVE(S)

From: _____, _____, Through: _____, _____

SCHEDULE B Disbursements

Date	Brief Description of Items	Income	Principal
------	----------------------------	--------	-----------

NOTE: Schedule B should reflect only those items paid out during the accounting period. Classification of disbursements as income or principal is to be in accordance with the provisions of the Florida Uniform Principal and Income Act, Chapter 738, Florida Statutes.
Entries involving the purchase of assets or adjustments to the carrying values of assets are to be shown on Schedule D, and not on Schedule B.

_____ ACCOUNTING OF PERSONAL REPRESENTATIVE(S)

From: _____, _____, Through: _____, _____

SCHEDULE C

Date	Brief Description of Items	Income	Principal
------	----------------------------	--------	-----------

NOTE: Schedule C should reflect only those items or amounts distributed to beneficiaries during the accounting period. Assets distributed should be shown at their inventory or adjusted carrying values. Classification of distributions as income or principal is to be in accordance with the provisions of the Florida Uniform Principal and Income Act, Chapter 738, Florida Statutes. Entries involving adjustments to the carrying values of assets are to be shown on Schedule D, and not on Schedule C.

_____ ACCOUNTING OF PERSONAL REPRESENTATIVE(S)

From: _____, _____, Through: _____, _____

SCHEDULE D Capital Transactions and Adjustments

(Does not include distributions. Distributions are shown on Schedule C.)

Date	Brief Description of Transactions	Net Gain	Net Loss
------	-----------------------------------	----------	----------

TOTAL NET GAINS AND (LOSSES)

\$

\$

NET GAIN OR (LOSS)

\$

\$

NOTE: Schedule D should reflect all purchases and sales of assets and any adjustments to the carrying values of any assets. Entries reflecting sales should show the inventory or adjusted carrying values, the costs and expenses of the sale, and the net proceeds received. The net gain or loss should be extended in the appropriate column on the right side of Schedule D. Entries reflecting purchases should reflect the purchase price, any expenses of purchase or other adjustments to the purchase price, and the total amount paid. Presumably no gain or loss would be shown for purchases. Entries reflecting adjustments in capital assets should explain the change (such as a stock split) and the net gain or loss should be shown in the appropriate column on the right side of Schedule D. The NET gain or loss should be entered in the Principal column of the Summary.

_____ ACCOUNTING OF PERSONAL REPRESENTATIVE(S)

From: _____, _____, Through: _____, _____

SCHEDULE E Assets on Hand at Close of Accounting Period

(Indicate where held and legal description, certificate numbers or other identification.)

	Estimated Current Value	Carrying Value

ASSETS OTHER THAN CASH:

OTHER ASSETS TOTAL

\$

\$

CASH:

CASH TOTAL

\$

TOTAL ASSETS (must agree with the Total for Item VI on Summary)

\$

NOTE: Schedule E should be a complete list of all assets on hand reflecting inventory values for each item, adjusted in accordance with any appropriate entries on Schedule D.
Current market values for any assets that are known to be different from the inventory or carrying values as of the close of the accounting period should be shown in the column marked "Current Value." The total inventory or adjusted carrying value (not current Value) must agree with the Total for Item VI on Summary.

IN THE CIRCUIT COURT FOR _____ COUNTY,
FLORIDA PROBATE DIVISION

IN RE: ESTATE OF

File No. _____

Division _____

Deceased.

REPORT OF DISTRIBUTION
(single personal representative)

Petitioner, _____, alleges:

1. Petitioner, as the personal representative of the above estate, files herewith all remaining receipts necessary to show that the estate has been distributed in accordance with the proposed plan of distribution set forth in the Petition for Discharge.

2. The claims of all creditors have been paid or otherwise disposed of.

Petitioner requests that an order be entered discharging petitioner as personal representative of this estate, and releasing the surety on petitioner's bond, if any, from further liability thereon.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on _____, _____.

Personal Representative

Attorney for Personal Representative

Email Addresses:

Florida Bar No. _____

(address)

Telephone: _____

[Print or Type Names Under All Signature Lines]

I CERTIFY that a copy hereof has been furnished to

by _____, on _____, _____.

Attorney

[Print or Type Names Under All Signature Lines]

IN THE CIRCUIT COURT FOR _____ COUNTY,
FLORIDA PROBATE DIVISION

IN RE: ESTATE OF

File No. _____

Division _____

Deceased.

RECEIPT OF BENEFICIARY
AND CONSENT TO DISCHARGE

The undersigned, _____,
hereby acknowledges having received from the personal representative of this estate the following:

The undersigned further acknowledges receipt of complete distribution of the share of the estate to which the undersigned was entitled, releases the personal representative from all further liability in connection with this estate, and consents to the entry of an order discharging the personal representative without notice, hearing, or waiting period and without further accounting.

Signed on _____, _____.

Beneficiary

[Print or Type Names Under All Signature Lines]

IN THE CIRCUIT COURT FOR _____ COUNTY,
FLORIDA PROBATE DIVISION

IN RE: ESTATE OF

File No. _____

Division _____

Deceased.

ORDER OF DISCHARGE
(single personal representative)

On the Petition for Discharge of _____, as
personal representative of the estate of _____, deceased,
the court finding that the estate has been fully administered and properly distributed, that claims of creditors
have been paid or otherwise disposed of, that the tax imposed by Chapter 198 of the Florida Statutes, if any,
has been paid, and that the personal representative should be discharged, it therefore is

ADJUDGED that the personal representative is discharged, and the surety on the personal
representative's bond, if any, is released from further liability.

ORDERED on _____, _____.

Circuit Judge



A Dirt Lawyer's Guide to Probate Essentials, Part 2

Kara Scott
Legal Education Attorney



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Topics

Part 1

- Introduction & Background
- Formal Administration – Procedure

Part 2

- Sale of Decedent's Real Property
- Summary Administration – Procedure
- Title Insurance Requirements

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Recap – Part 1

- What is probate and the effect of probate
- Governing Law – FL Probate Code and Rules of Probate
- Forms (FLSSI)
- Formal Administration
 - The Personal Representative
 - Initial steps to open probate
 - Inventory and Appraisal
 - Creditor Claims
 - Management, Sale and Transfer of Assets
 - Determination of Beneficiaries
 - Accountings
 - Distributions and Closing the Estate



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Sale of Decedent's Real Property



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Protected Homestead



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Protected Homestead

- Decedent survived by a spouse and/or heirs-at-law
- Protected homestead is not a probate asset
- Exempt from creditor claims
- Exemption only inures to surviving spouse or heirs-at-law
- Not all homestead is “protected homestead” (see Kelley’s Paradigm)

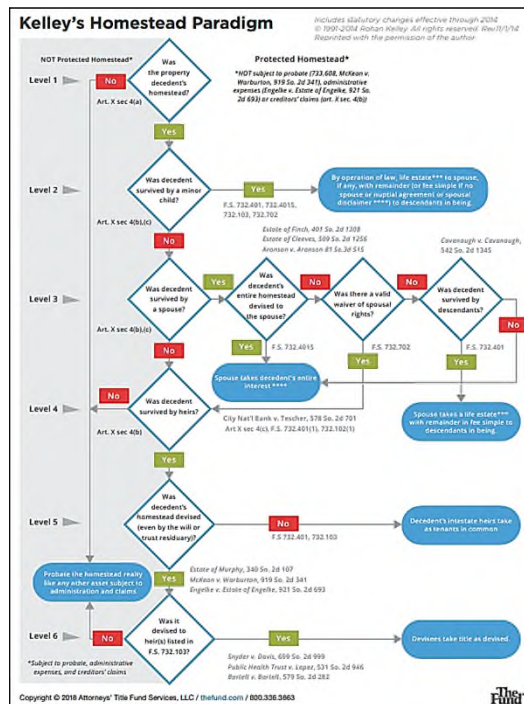


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The Fund

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- Best “user friendly” guide
- Available in materials and interactive version on The Fund website



- If no spouse or minor children, homestead can be devised to non-heir
 - not protected against claims of creditors
 - property becomes a probate asset
 - See *Sec. 732.103 F.S.* for intestate succession

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The Fund®

Determination of Homestead

- PR has no authority to sell protected homestead
- PR files a Petition to Determine Homestead
- Formal Notice must be served on interested persons (including known or reasonably ascertainable creditors)
 - may be served by any form of delivery service requiring a signed receipt

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Effect of Order Determining Homestead



- Title vests in beneficiaries and the homestead is exempt from creditor claims
- Only creditors receiving formal notice are bound by ruling so if within creditor claim period – appoint a guardian ad litem for unknown creditors
- Minor children? A guardian ad litem must be appointed to represent any minors

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P.R. Authority to Sell Real Estate



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Power of Sale in Will



- Review Letters of Administration – some counties limit PR's power of sale
- Any PR discretion must be in the best interest of the estate and for the benefit of interested persons, including creditors
- HOMESTEAD – PR has no authority to sell protected homestead unless the will specifically requires the PR to sell the homestead and distribute the proceeds to heirs. NOTE – it then ceases to be protected from creditor claims!

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No Power of Sale or Intestate – TN 2.08.01

- If no power of sale, or intestate estate, PR must petition court for authority to sell.
 - *Sec. 733.612(2) F.S. and Sec. 733.613 F.S.*
 - *Title Standard 5.4*
- Show that sale is necessary or in best interest of the estate
- Failure to obtain court order – void
- PR can lease property without court order
 - Prudent practice – get court order anyway



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The Fund

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Petition to Sell Real Estate – procedure



- PR files petition for order authorizing sale
- Joinder or Consent of interested persons
- Notice of hearing served on those who do not join or consent
- Hearing – court has discretion to require an appraisal.
- Order – sets forth legal description and the price & terms of sale.
- Certified copy of court order must be recorded in Official Records

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Special Circumstances



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Sale of Real Estate – Special Circumstances

- If successor PR, power of sale in will may be exercised by successor unless it was expressly made personal to the named PR.
- PR as purchaser?
 - Sale is voidable by an interested person who has not consented after full disclosure, unless the will authorizes the transaction, or court approves the sale after notice to interested persons.
 - *Sec. 733.610 F.S. and Title Standard 5.5-1*



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Sale of Real Estate – Limited Liability Company

TN 2.08.07



- Where decedent was sole member of a single member LLC, the PR may be authorized to sell real property owned by the LLC
 - Member-managed – settle the member's estate
 - Manager-managed - wind up the affairs of the company
 - Record a court order authorizing PR to sign the deed conveying LLC property

Note on Revocable Living Trusts

TN 31.06.10

OK

That which the law forbids to be done directly cannot lawfully be done by indirection.”

- *Johns v. Bowden*, 68 Fla. 32, 66 So. 155, 159 (1914)

- Settlor not survived by a spouse or a minor child.
- Settlor not survived by a minor child and homestead is distributed to the surviving spouse in fee simple absolute.
- Settlor survived by a spouse who has executed a homestead waiver that has been judicially determined to be a valid homestead waiver.
- Settlor survived by a spouse who is also a settlor of joint trust and retains the power to revoke or amend the trust.
- Surviving spouse has waived homestead rights related to the restraint on devise, in compliance with Sec. 732.7025, F.S.

Summary Administration



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When is Summary Administration available?

- Will must not require formal administration
- Assets less than \$75,000
 - Value of property subject to administration
 - Not including non-probate assets
 - Not including exempt property

OR

- Decedent dead for more than two years – no value limitation



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Why use Summary Administration?

- Faster and simpler
- Less costly
- No bond requirement because no Personal Representative appointed
- No formal accounting of assets, or inventory, required



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Why NOT use Summary Administration?

- Limited court involvement
- No Personal Representative
- No Letters of Administration
- Pending lawsuits in decedent's name require PR
- Management of LLC? Need a PR to wind up the business
- Personal liability of the beneficiaries (up to 2 years after death)



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Examples of Non-Probate Assets

Tenancy by the Entireties

Joint Tenancy with Right of Survivorship

Jointly Owned Property or POD/TOD

Wages, Traveling Expenses and Unemployment Compensation

Life Insurance Proceeds – Retirement Accounts

Protected Homestead

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Exempt Property

Must be survived by a spouse or a child for property to be “exempt”



Household furniture, furnishings & appliances in decedent's home – up to \$20,000



Up to 2 motor vehicles (personal use)



Personal property – up to \$1,000

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Summary Administration Procedure



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Petition for Summary Administration

Requirements:

1. Who must join in the Petition? *Sec. 735.203 F.S.*
2. Petitioners
3. Beneficiaries
4. List of Probate Assets



IN THE CIRCUIT COURT FOR _____ COUNTY, FLORIDA		PROBATE DIVISION	
IN RE: ESTATE OF _____			
File No. _____		Division _____	
Decedent, _____			
PETITION FOR SUMMARY ADMINISTRATION (estate - single petitioner)			
Petitioner, _____ alleges:			
1. Petitioner has an interest in the above estate as _____ Petitioner's address is set forth in paragraph 3 and the name and office address of petitioner's attorney are set forth at the end of this petition.			
2. Decedent, _____, whose last known address was _____ and, if known, whose age was _____ and the last four digits of whose social security number are _____ died on _____ at _____ and on the date of death, decedent was domiciled in _____			
3. So far as is known, the names of the beneficiaries of this estate and of decedent's surviving spouse, if any, their addresses and relationships to decedent, and the dates of birth of any who are minors, are:			
NAME	ADDRESS	RELATIONSHIP	BIRTH DATE (if Minor)

Bar Form No. P-2.0204-1 of 4
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Revised January 1, 2014

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Petition for Summary Administration

Requirements:

5. List of homestead and exempt property
6. Proposed Plan of Distribution
7. Statement – no unrevoked wills or codicils
8. Statement - less than \$75,000 OR more than 2 years
9. Statement - creditor claims barred or diligent search made



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Petition for Summary Administration

Requirements:

10. Statement of known creditors and plan of payment
11. Statement of Venue
12. No formal administration required under the will
13. If Ancillary - Foreign PR and the Court



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Order of Summary Administration



- Hearing needed? Yes/No?
- Effect of Order
 - Include Order of Distribution and Order Admitting the Will to Probate
- Names & addresses of beneficiaries entitled to distribution

THE CIRCUIT COURT OF THE _____ JUDICIAL
CIRCUIT IN AND FOR _____ COUNTY
STATE OF FLORIDA

IN RE ESTATE OF _____ PROBATE DIVISION
File No.: _____
Deceased.

ORDER OF SUMMARY ADMINISTRATION

On the Petition of _____ for Summary
Administration of the Estate of _____, deceased, the Court finding
that the decedent died on _____ in _____; that
all interested persons have been served proper notice of the Petition and hearing or have waived
notice thereof; that the material allegations of the Petition are true; that the will dated _____
_____ has been admitted to probate by order of this court as and for the last will of the decedent;
that the decedent's estate qualifies for Summary Administration; and that an Order for Summary
Administration should be entered; it is

ADJUDGED THAT there be immediate distribution of the estate assets as follows: a one-
half interest in the following described condominium in _____ County,

[Legal Description]

Comprising the entire assets of the estate, shall be hereby transferred to _____ (1/2),
_____ (1/4) and _____ (1/4).

ORDERED on _____, 20____

Circuit Judge

Order of Summary Administration



Formal vs. Summary



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Similarities

- File Petition with Court
- Protected Homestead
- Exempt Property
- 2 year statute of limitations for creditor claims

Differences

- No PR in Summary
- Limited court involvement vs. more court oversight
- Summary – faster & simpler
- No Letters of Administration in Summary
- No inventory or accountings in Summary

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Title Insurance Requirements



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Title Insurance Requirements

TN 2.09.03



Record in Official Records:

- Proof of death
- Estate tax clearance

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The Fund

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Estate Tax Clearance – Title Notes Sec. 2.10

- * No Florida Estate Tax – after 1/1/2005
- * Record Affidavit of No Florida Estate Tax Due - AFF-46
- * Certain transactions divest the lien
 - * Surviving Spouse – arm's length transaction to BFP



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The Fund

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Title Insurance Requirements – TN 2.09.03

TESTATE ESTATE

IN THE CIRCUIT COURT FOR _____ COUNTY,
FLORIDA PROBATE DIVISION

IN RE: ESTATE OF _____

File No. _____
Division _____

Deceased. _____

ORDER OF SUMMARY ADMINISTRATION
(testate nonresident decedent)

On the petition of _____ for
summary administration of the estate of _____ deceased,
the court finding that the decedent died on _____; that all
interested persons have been served proper notice of the petition and hearing or have waived notice thereof;
that the material allegations of the petition are true; that the will dated _____
_____ has been admitted to probate by order of this court as and for the last will of the decedent; and
that the decedent's estate qualifies for summary administration and an Order of Summary Administration
should be entered, it is

ADJUDGED that:

1. There be immediate distribution of the assets of the decedent as follows:

Name	Address	Asset, Share or Amount
------	---------	------------------------

Record in Official Records:

- Order Admitting Will
- The Will
- Letters of Administration

NOTE – see Sec. 28.223 F.S.

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The Fund

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Title Insurance Requirements – TN 2.09.03

INTESTATE ESTATE

IN THE CIRCUIT COURT FOR _____ COUNTY,
FLORIDA PROBATE DIVISION

IN RE: ESTATE OF _____

File No. _____

Division _____

Deceased, _____

ORDER OF SUMMARY ADMINISTRATION (testate nonresident decedent)

On the petition of _____ for summary administration of the estate of _____ deceased, the court finding that the decedent died on _____; that all interested persons have been served proper notice of the petition and hearing or have waived notice thereof; that the material allegations of the petition are true; that the will dated _____, _____, has been admitted to probate by order of this court as and for the last will of the decedent; and that the decedent's estate qualifies for summary administration and an Order of Summary Administration should be entered, it is

ADJUDGED that:

1. There be immediate distribution of the assets of the decedent as follows:

Name	Address	Asset, Share or Amount
------	---------	------------------------

Record in Official Records:

- Petition for Administration
- Order Appointing PR
- Letters of Administration

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Title Insurance Requirements



Record in Official Records:

- Order Determining Homestead or Affidavit of Non-Homestead
- Order Determining Beneficiaries (if needed)

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Title Insurance Requirements



Record in Official Records:

- Continuous Marriage Affidavit
- Affidavit of no spouse or minor children (if applicable)
- Order Authorizing Sale by PR
 - Deeds from beneficiaries in addition to deed from PR
- Order Closing Estate & Discharge of PR

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Title Insurance Requirements – Summary Administration



Record in Official Records:

- Will (if testate)
- Petition and Order of Summary Administration – include Order Admitting Will to Probate in the Order of S.A.
- Affidavit of no known creditors and diligent search and inquiry (Aff-45) – unless over 2 years

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Food For Thought



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Benefits of Probate

- Court determination of validity of the will
- Court construction to resolve errors and ambiguities
- Determination of heirs in the absence of a will
- Determination of creditors and priority of payments
- Determination of family protections:
 - Elective share
 - Family allowance
 - Homestead rights
 - Pretermitted children



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Kelley's Homestead Paradigm

Additional Information

If the homestead was owned as tenants by the entirety or JTWRROS, this Paradigm does not apply. Title passes automatically to the surviving tenant or tenants free of decedent's creditors. 732.401(5). *Ostyn v. Olympic*, 455 So.2d 1137.

Protected Homestead* NOT subject to probate (F.S. 733.608, *McKean v. Warburton*, 919 So.2d 341), administrative expenses (*Engelke v. Estate of Engelke*, 921 So.2d 693) or creditors' claims (Art. X sec. 4(b)).

NOT Protected Homestead* is subject to probate, administrative expenses, and creditors' claims.

* Protected Homestead is defined in F.S. 731.201(33). Also see 733.608.

Level Information:

At Level 2 — protected homestead may not be devised by will or rev trust 732.4015.**

At Level 3 — protected homestead may be devised only to spouse.** Art X § 4(c)

Below Level 3 — protected homestead may be freely devised.** Art X § 4(c)

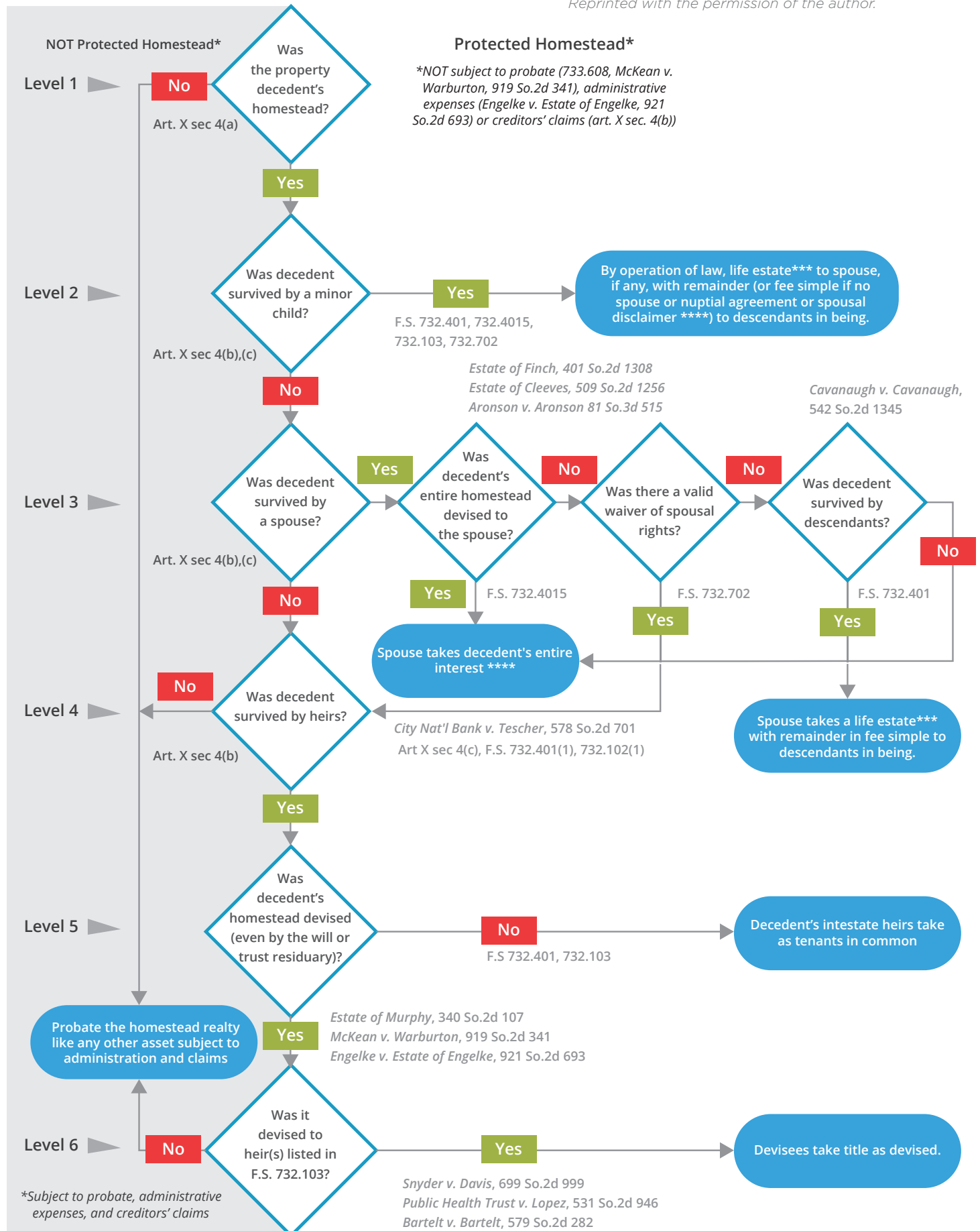
** Devise of protected homestead is limited in the same manner whether title is held by an individual or by a revocable trust. F.S. 732.4015(2)(a).

*** The spouse may elect to take a ½ interest as tenant in common rather than a life estate. F.S. 732.401(2)

**** A disclaimed intestate or validly devised spousal interest passes pursuant to 739.201. Disclaimer of a surviving spouse's life estate does not divest a descendant's vested remainder interest. 732.401(4).

Kelley's Homestead Paradigm

Includes statutory changes effective through 2014
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IN THE CIRCUIT COURT FOR _____ COUNTY,
FLORIDA PROBATE DIVISION

IN RE: ESTATE OF

File No. _____

Division _____

Deceased.

PETITION TO DETERMINE HOMESTEAD
STATUS OF REAL PROPERTY
(Testate)

Petitioner, _____, alleges:

1. The decedent, _____, died
testate on _____, domiciled in _____

County, Florida, and was survived by: [Strike each statement that is not applicable.]

- a. A spouse who has not waived his or her homestead rights.
- b. A spouse who has waived his or her homestead rights.
- c. One or more minor children.
- d. One or more devisees who are neither a spouse nor a minor child of the decedent.

2. At the time of decedent's death, the decedent owned and resided on the following described
contiguous parcel of real property (the "Property"):

3. Decedent's last will [and codicils, if any] admitted to probate and record by Order of this Court devised the Property as follows: _____

4. Petitioner believes the Property

5. The Property constituted the homestead of the decedent within the meaning of Section 4 of Article X of the Constitution of the State of Florida, and petitioner believes that upon decedent's death, title to the Property descended to and the constitutional exemption from claims of decedent's creditors inured to:

6. The name of the decedent's surviving spouse, if any, the names and years of birth of the decedent's minor children, if any, and the names of the decedent's other surviving descendants and devisees having an interest in the decedent's estate, if any, and their respective relationships to decedent are:

NAME

RELATIONSHIP

YEAR OF BIRTH
(Minor child)



7. The only persons, other than petitioner, having an interest in this proceeding, including unpaid creditors, and their respective addresses are:

Petitioner requests that an order be entered determining that the Property constituted the exempt homestead of the decedent, title to which, upon decedent's death, descended and the constitutional exemption from claims inured as set forth in paragraph 5; directing the personal representative to surrender possession of the Property; and directing that the personal representative shall have no further responsibility with respect to the Property.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on this _____ day of _____, _____.

Attorney for Petitioner

Petitioner

Email Addresses:

Florida Bar No. _____

(address)

Telephone: _____

[Print or Type Names Under All Signature Lines]

I CERTIFY that a copy hereof has been furnished to:

by _____, on _____, _____.

Attorney

[Print or Type Names Under All Signature Lines]

IN THE CIRCUIT COURT FOR _____ COUNTY,
FLORIDA PROBATE DIVISION

IN RE: ESTATE OF

File No. _____

Division _____

Deceased.

PETITION FOR SUMMARY ADMINISTRATION
(testate - single petitioner)

Petitioner, _____ alleges:

1. Petitioner has an interest in the above estate as _____.
_____. Petitioner's address is
set forth in paragraph 3 and the name and office address of petitioner's attorney are set forth at the end of
this petition.

2. Decedent, _____, whose last known address was
_____, and, if
known, whose age was _____, and the last four digits of whose social security number are _____,
died on _____, _____, at _____,
and on the date of death, decedent was domiciled in _____.

3. So far as is known, the names of the beneficiaries of this estate and of decedent's surviving
spouse, if any, their addresses and relationships to decedent, and the dates of birth of any who are minors, are:

NAME	ADDRESS	RELATIONSHIP	BIRTH DATE [if Minor]
------	---------	--------------	--------------------------

4. Venue of this proceeding is in this county because _____

5. The original of the decedent's last will, dated _____, _____, and codicil(s), if any, dated _____, _____, is/are in the possession of the above court or accompany/accompanies this petition.

6. Petitioner is unaware of any unrevoked will of decedent other than as set forth in paragraph 5.

7. Petitioner is entitled to summary administration because:

[Strike each statement that is not applicable.]

- a. Decedent's will does not direct administration as required by Florida Statutes Chapter 733.
- b. To the best knowledge of the petitioner, the value of the entire estate subject to administration in this state, less the value of property exempt from the claims of creditors, does not exceed \$75,000.
- c. The decedent has been dead for more than two years.

8. Domiciliary probate proceedings (are)(are not) known to be pending in another state or country.

Letters have been issued by _____
the address of which is _____
to _____, whose
address is _____.

[delete if inapplicable]

9. The following is a complete list of the assets in this estate and their estimated values, together with those assets claimed to be exempt [separately designate protected homestead and exempt property]:

Assets

Estimated Value

10. With respect to claims of creditors: [Strike each statement that is not applicable.]
- a. All claims of creditors are barred.
 - b. Petitioner has made diligent search and reasonable inquiry for any known or reasonably ascertainable creditors.
 - c. The estate is not indebted.
 - d. The estate is indebted and provision for the payment of debts and the information required by Florida Statutes Section 735.206 and Florida Probate Rule 5.530 is as set forth on the attached schedule.
 - e. All creditors ascertained to have claims will be served with a copy of this petition prior to the entry of the Order of Summary Administration.

Petitioner acknowledges that any known or reasonably ascertainable creditor who did not receive timely notice of this petition and for whom provision for payment was not made may enforce a timely claim and, if the creditor prevails, shall be awarded reasonable attorney's fees as an element of costs against those who joined in the petition.

11. It is proposed that all assets of the decedent, including exempt property, be distributed to the following:

Name	Asset, Share or Amount
------	------------------------

Petitioner waives notice of hearing on this petition and requests that the decedent's last will and codicil(s), if applicable, be admitted to probate and an order of summary administration be entered directing distribution of the assets in the estate in accordance with the schedule set forth in paragraph 11 of this petition.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Signed on _____, _____.

Petitioner

Attorney for Petitioner

Email Addresses:

Florida Bar No. _____

(address)

Telephone: _____

[Print or Type Names Under All Signature Lines]

THE CIRCUIT COURT OF THE _____ JUDICIAL
CIRCUIT IN AND FOR _____ COUNTY
STATE OF FLORIDA

IN RE ESTATE OF _____ PROBATE DIVISION

File No.:

Deceased.

ORDER OF SUMMARY ADMINISTRATION

On the Petition of _____ for Summary
Administration of the Estate of _____, deceased, the Court finding
that the decedent died on _____ in _____; that
all interested persons have been served proper notice of the Petition and hearing or have waived
notice thereof; that the material allegations of the Petition are true; that the will dated _____
_____ has been admitted to probate by order of this court as and for the last will of the decedent;
that the decedent's estate qualifies for Summary Administration; and that an Order for Summary
Administration should be entered; it is

ADJUDGED THAT there be immediate distribution of the estate assets as follows: a one-
half interest in the following described condominium in _____ County,

[Legal Description]

Comprising the entire assets of the estate, shall be hereby transferred to _____ (1/2), _
_____ (1/4) and _____ (1/4).

ORDERED on _____, 20____.

Circuit Judge

Affidavit
[No Florida Estate Tax Due]

I, the undersigned _____ [*print name of personal representative*] do hereby state:

1. I am the personal representative as defined in section 198.01 or section 731.201, Florida Statutes, as the case may be, of the estate of _____ [*print name of decedent*].
2. The decedent referenced above died on ____/____/____ [*date of death*], and was domiciled (as defined in s. 198.015, F.S.) at the time of death in the state of _____. On date of death the decedent was (*check one*): ____ a U.S. citizen ____ **not** a U.S. citizen.
3. A federal estate tax return (federal Form 706 or 706-NA) is not required to be filed for the estate.
4. The estate does not owe Florida estate tax pursuant to Chapter 198, F.S.
5. I acknowledge personal liability for distribution in whole or in part of any of the estate by having obtained release of such property from the lien of the Florida estate tax.

Under penalties of perjury, I declare that I have read this Affidavit and the facts stated in it are true. This declaration is based on all information of which the personal representative has any knowledge [ss. 92.525(1)(b); 213.37; 837.06, F.S.].

Executed this ____ day of _____, 20____.

(Signature)

(Print Name)

Telephone Number: _____

Mailing Address: _____ City/State/ZIP: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of [☐] physical presence or [☐] online notarization this ____ day of _____, 20____, by _____ who [☐] is personally known or [☐] has produced _____ as identification.

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____

Affidavit

[Arms' Length Transaction — by Surviving Spouse]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ (“Affiant”), who depose(s) and say(s) under penalties of perjury that:

1. This affidavit is made with regard to the following described property:

[insert legal description of real property] (“Subject Property”)

2. Affiant is the surviving spouse of _____ (“Decedent”), and the owner of Subject Property by virtue of that certain deed recorded _____ in O.R. _____, Page _____, and/or under Instrument No. _____, of the Public Records of _____ County, Florida.
3. Affiant was continuously married to Decedent from a time prior to taking title to Subject Property through the date of death of Decedent.
4. Decedent was a U.S. citizen or permanent resident at the time of his death.
5. Affiant is conveying Subject Property to a bonafide purchaser for full and adequate consideration in an arms' length transaction.
6. This affidavit is made to induce **Old Republic National Title Insurance Company** (“Title Insurer”) to insure title to the real property described in item 1 above. Affiant agrees to indemnify **Title Insurer** and hold it harmless from any loss or damage resulting from its reliance on the matters set forth in this affidavit.

(Affiant)

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 20____, by _____ who ☐ is personally known or ☐ has produced _____ as identification.

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____

Affidavit

[Continuous Marriage — by Surviving Spouse]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ (“Affiant”), who depose(s) and say(s) under penalties of perjury that:

1. This affidavit is made with regard to the following described property:

[insert legal description of real property]

2. Affiant is the surviving spouse of _____, deceased, (“Decedent”) and the owner of the real property described in item 1 above by virtue of that certain deed recorded _____ in O.R. _____, Page _____, and/or Instrument No. _____, Public Records of _____ County, Florida.
3. Affiant was continuously married to Decedent from a time prior to taking title under the deed described in item 2 through the date of death of Decedent.
4. This affidavit is made to induce **Old Republic National Title Insurance Company** (“Title Insurer”) to insure title to the real property described in item 1 above. Affiant agrees to indemnify **Title Insurer** and hold it harmless from any loss or damage resulting from its reliance on the matters set forth in this affidavit.

(Affiant)

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 20____, by _____ who ☐ is personally known or ☐ has produced _____ as identification.

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____

28.223 Probate records; recordation.—

(1) The clerk of the circuit shall record all wills and codicils admitted to probate, orders admitting the will to probate, orders determining beneficiaries (* effective 1/1/2025), orders revoking the probate of any wills and codicils, letters of administration, orders affecting or describing real property, final orders, orders of final discharge, and orders of guardianship filed in the clerk's office. No other petitions, pleadings, papers, or other orders relating to probate matters shall be recorded except on the written direction of the court. The direction may be by incorporation in the order of the words "To be recorded," or words to that effect. Failure to record an order or a judgment shall not affect its validity.

(2) The clerk shall record all instruments under this section in Official Records and index them in the same manner as prescribed in s. [28.222](#).

(3) All records of a court of this state heretofore exercising probate jurisdiction shall be placed, and remain, in the custody of the clerk and shall be the records of the circuit court. The circuit court may exercise judicial cognizance and power over them as it may over its own records.

(4) Certified transcripts of the whole or any part of probate or administration proceedings in any court of this state or of any foreign state or country may be recorded. If the certified copy is not a part of a pending probate proceeding in the court, the person causing it to be recorded shall pay the costs of recordation.

(5) The recording of any instrument required or permitted to be recorded under this section in a pending probate or administration proceeding in the county shall be included in the fees prescribed in s. [28.2401](#).

History.—s. 2, ch. 74-106; s. 1, ch. 77-174; s. 161, ch. 95-147; s. 20, ch. 95-401.

* new language added EFFECTIVE January 1, 2025 (HB 923)

Affidavit

[Homestead — Devised Non-Homestead]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ (“Affiant”), who depose(s) and say(s) under penalties of perjury that:

1. This affidavit is made with regard to the following described property:

[insert legal description of real property] (“Subject Property”)

2. Affiant, is the _____ *[state relationship to decedent]* of the decedent, _____ *[state name of decedent]*, (“Decedent”) for whom there was probate filed in the County of _____, State of Florida, under Case No. _____.

3. Decedent was the owner of Subject Property on the date of his/her death, _____/_____/_____ *[state date of death]*.

4. Subject Property was not the homestead of Decedent or that of his/her family, nor was it contiguous to the homestead of Decedent or that of his/her family.

(Affiant)

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 20____, by _____ who ☐ is personally known or ☐ has produced _____ as identification.

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____

Affidavit

[Estates — Diligent Search and Inquiry Regarding Creditors]

BEFORE ME, the undersigned authority, duly authorized to take acknowledgments and administer oaths, personally appeared _____ (“Affiant”), who depose(s) and say(s) under penalties of perjury that:

1. This affidavit is made with regard to the following described property:

[insert legal description of real property] (“Subject Property”)

2. Affiant filed a Petition for Summary Administration in the Estate of _____ (“Decedent”), under Case No. _____ in the County of _____, State of Florida.
3. Decedent was the owner of Subject Property at time of death.
4. Affiant has made a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors of the Estate of Decedent and found none to which the estate is indebted.

(Affiant)

Print Name: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was sworn to and subscribed before me by means of ☐ physical presence or ☐ online notarization this ____ day of _____, 20____, by _____ who ☐ is personally known or ☐ has produced _____ as identification.

[Notary Seal]

Notary Public

Printed Name: _____

My Commission Expires: _____



**Certificate of Accreditation
for Continuing Legal Education**

256131
Attorney's Title Fund Services
PO Box 628600
Orlando, FL 32862-8600

May 31, 2024

<p>Reference Number: 2406157N Title: A Dirt Lawyer's Guide to Probate Essentials Level: Intermediate Approval Period: 08/06/2024 - 02/28/2026</p>

CLE Credits

General	2.0
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Certification Credits

Wills, Trusts and Estates	2.0
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