



## **PROBATE FREQUENTLY ASKED QUESTIONS (FAQ'S)**

### **What is probate?**

Probate is simply the process of transferring assets from one person to another.

### **What is a Will?**

A will is a set of directions as to who get which assets and how.

### **What if I don't have a Will?**

Then Florida statutes will decide who will receive your assets and how. However, it is important to understand that what you want and what Florida law provides are not necessarily the same. For example, if a Husband dies, the surviving spouse does not necessarily receive all of his assets (FSS 732.102, 732.103). That is especially true in reference to the homestead (FSS 732.4015) (or home place of the decedent, unless jointly titled).

### **Why do I need a probate in order to pursue a wrongful death action?**

Florida statute requires that a Personal Representative is the only person who can pursue a wrongful death action.

### **How long does probate take?**

A formal administration (where a Personal Representative is appointed) takes an average about six months but can take up to two years or more depending on the facts of the case and the cooperation of the beneficiaries.

Also, please review the Probate Timeline provided and on our website.

### **How much will probate cost?**

Between the filing fees and the cost to publish, the costs alone are approximately \$500.

Attorneys' fees can be charged one of two ways depending on the agreement of the parties.

1. Florida Statute section 733.6171 allows for attorneys to be paid for ordinary services based on the value of the estate based on the following sliding scale:
  - a. \$1500 for estates with a value of less than \$40,000;
  - b. An additional \$750 for estates having a value between \$40,000 and \$70,000;
  - c. An additional \$750 for estates having a value between \$70,000 and \$100,000;
  - d. For estates having a value in excess of \$100,000, at the rate of 3% on the next \$900,000, etc.
  - e. Of course, this amount can be increased for extraordinary services.
2. Or, the attorney can be paid hourly for the work done in the case.

### **Who can be Personal Representative?**

As long as the individual is over the age of eighteen, Florida Statute is very broad about allowing individuals to serve as Personal Representative; however, convicted felons cannot serve as Personal Representative.

### **Can the Personal Representative receive a fee for their work for the estate?**

Yes, per FSS 733.617, Personal Representatives are entitled to a commission from the estate assets (without a court order) based on a sliding scale: 3% of the first \$1,000,000; 2.5% for the amount between 1,000,000 and \$5,000,000, etc.

However, this fee can be increased for extraordinary services based on the complexity of the work done, sale of real or personal property, conduct of litigation on behalf of or against the estate, etc.

### **Does the Personal Representative have to take a fee?**

No, certainly that is in the discretion of the Personal Representative.

### **Do I have to personally pay the claims of the creditors of the decedent?**

No, the estate is obligated to pay the creditors of the decedent based on the assets in the estate.

**How do I know who the creditors of the decedent are?**

First, all known creditors (i.e., nursing home facilities, hospitals where the individual is known to have recently been a patient, credit cards held by the decedent) must be noticed by certified mail. In addition, a Notice to Creditors is published in the newspaper, once a week for two consecutive weeks. Once that Notice is published, creditors have ninety days from the date of first publication to file their claim with the court.

**How do I know if the claim filed is correct?**

We routinely demand supporting documentation in order to verify the claim so that you can carefully review same to determine the accuracy of the claim.

**Why does Medicaid have to be noticed in estates?**

For any decedent, age 55 or older, Medicaid must receive notice of the estate (the Notice to Creditors) so that they can file a claim if appropriate. Per Florida Statute section 733.707, Medicaid is a Class 3 creditor. This claim is for all benefits paid on behalf of the decedent, age 55 and above. It may be possible to negotiate with AHCA/Medicaid on the repayment of this claim.