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## What is Probate?

Estate planning is one of the most important steps any person can take to make sure that their final property and health care wishes are honored, and that loved ones are provided for in their absence. Though often overlooked or put off in favor of more immediate concerns, a comprehensive estate plan can resolve a number of legal questions that arise whenever anyone dies: What is the state of their financial affairs? What real and personal property do they own? Who gets what? Does a personal guardian need to be appointed to care for minor children? How much tax will need to be paid in order to transfer property ownership? What funeral arrangements are appropriate?

### What is “Probate”?

Probate is the court administered legal process of validating a will, supervising the administration, giving creditors of a decedent the opportunity to file claims, and ultimately making distribution of estate assets to beneficiaries. The probate process can be very complex and time consuming and costly. Court supervision is required before property will pass to your heirs. In the probate process, the court will appoint a personal representative of the estate who must closely follow the terms of the Will, the Florida Probate Code and deliberately and carefully account for and distribute assets. The personal representative must value all assets, file an inventory, notify and pay creditors and often become involved in disputes over the validity of meaning of a will.

Probate procedures can go on for years, especially where the estate is not properly planned, if it is of substantial value, or where the probate proceedings become adversarial in nature. This leads to inevitable delays in providing your heirs with the benefits of the decedent’s estate. The length and complexity of the probate process can drain the value of assets from an estate; value that the deceased intended to provide to his or her family.

If you die without a will, your estate will pass under the provisions of the Florida Probate Code, which may not necessarily be in accordance with your true wishes. This can often lead to the individuals who dearly need the benefits of your estate being denied access to it.

Probate procedures will be applicable to all property that is the subject to the terms of a will. Adopting a will alone is not sufficient to avoid probate. All property that is provided for in a Will will be subject to probate and its innate delays and costs.

## What is an "Estate"?

Your "estate" consists of all property owned by you at the time of your death, including:

- Real estate
- Bank accounts
- Stocks and other securities,
- Life insurance policies,
- Qualified Accounts (401(k), IRA Accounts, Qualified Annuities);
- Personal property such as automobiles, jewelry, and artwork.

## How Can an Estate Plan Help?

Regardless of your age, or the size and complexity of your estate, an estate plan can accomplish the following:

- Identify the family members and other loved ones that you wish to receive your property after your death.
- Ensure that your property will be transferred to those you have identified, as quickly and with as few legal hurdles as possible.
- Minimize the amount of taxes that will need to be paid in order for your property to pass to others after your death.
- Avoid the time and costs associated with the probate process by utilizing estate planning devices like living trusts and "payable on death" bank accounts.
- Dictate the kinds of life-prolonging medical care you wish to receive should you be unable to make your wishes known when the time comes.
- Set forth the kind of funeral arrangements you would like, and how related expenses are to be paid.

Understanding the estate plan options that are right for you can be a complex undertaking. An experienced estate planning attorney can explain all options available to you in meeting your estate planning goals and fulfilling the needs of your loved ones -- whether you need to revise an existing will or create a comprehensive estate plan from scratch.

## **ESTATE PLANNING GLOSSARY OF COMMON TERMS**

In the definitions, words that appear in italics are words that also appear in the glossary.

**Administration:** the process of handling the affairs of a deceased person's *estate* or a *trust*.

**Administrator:** the person or financial institution that is appointed to take care of the estate of a deceased person who died without a *will*. This term is now obsolete in Florida. The position is now called "*personal representative*."

**Adult:** in Florida, a person who is 18 years of age or older.

**Ancillary Administration:** probate *proceedings* in another state. This is usually necessary when the deceased person owned real estate in a state other than his or her home state.

**Assets Subject to Administration:** this refers to those assets that are subject to *administration* in the probate court, i.e., those assets that were in the name of the deceased person only. Sometimes these assets are referred to collectively as the "probate estate." Assets owned jointly with a surviving joint owner, life insurance proceeds, and retirement plan proceeds payable to a named beneficiary other than the estate are normally not part of the probate estate because they are not subject to *administration*.

**Beneficiary:** a generic term that usually refers to a person or entity that is entitled to receive something, for example, a beneficiary of an *estate* or *trust*, or a beneficiary of life insurance or retirement benefits.

**Claim:** technically, this refers to funeral expenses, the debts of a deceased person, and expenses of administration.

**Codicil:** a written amendment to a *will*.

**Conservator:** an *adult* person or financial institution appointed by a court, who is responsible for a *minor* child's or *legally incapacitated person's* property until that *minor* child becomes an adult or the *legally incapacitated person* becomes competent to be responsible for his or her own property.

**Devise:** when used as a noun, it refers to an inheritance of real or personal property under a *will*. When used as a verb, it means to dispose of real or personal property by *will*.

**Devisee:** a person or entity designated in a *will* to receive a *devise*.

**Domicile:** one's home or permanent residence. The laws of the state of a person's domicile determine what happens to that person's property at death.

**Donee:** the recipient of a gift.

**Donor:** a person who makes a gift. This term is also used to refer to a person who establishes a *living trust*.

**Escheat:** assigning property to the state when a person dies with no known beneficiaries whether or not the decedent had prepared a *will*.

**Estate:** this word has a number of meanings depending on the context in which it is used. For federal estate tax purposes, it refers to all of a deceased person's assets that are included in that person's estate for tax purposes (usually everything). It is also used to refer to those items of property that are subject to *administration* in the probate court. For example, life insurance owned by the decedent and payable to a named beneficiary such as a surviving spouse is not part of the deceased person's *estate* that is subject to *administration* in the probate court, but it is included in the deceased person's *estate* for federal estate tax purposes.

**Federal Estate Tax:** this is the tax that is imposed on the ability to give money away at death. The Federal Government has created a structure to tax a decedent's *estate*, which includes everything the decedent owned an interest. The Federal Government also grants each U.S. Citizen and resident alien in 2005 a credit for the taxes on the first one million five hundred thousand dollars (\$1,500,000.00) of assets distributed at death. This exemption is scheduled to change over the next several years, please consult your experienced estate planning attorney if your *estate* is in excess of \$1,500,000.00.

**Estate Planning:** the process of arranging one's personal and financial affairs.

**Executor:** the person or financial institution that is appointed to administer the estate of a deceased person who died with a *will*. This term is now obsolete in Florida. This position is now called "*personal representative*."

**Exempt property:** in Florida this refers to the right of a surviving spouse to receive from his or her deceased spouse's estate that is subject to *administration* property up to \$10,000. A surviving spouse is also entitled to the *family allowance* and has constitutional interest in the *homestead property*.

**Family Allowance:** an allowance that a surviving spouse is entitled to from his or her deceased spouse's estate that is subject to *administration* for a period of one year during the period of *administration* of the estate. This is not a set amount but is to be a reasonable amount payable to the surviving spouse and minor children. A *personal representative* may determine the *family allowance* without a court order if the *family allowance* does not exceed \$18,000 for the year. A surviving spouse is also entitled to *exempt property* and has constitutional interest in the *homestead property*.

**Fiduciary:** comes from a Latin word meaning trust and confidence. This is a generic term used to refer to a person (or entity) that serves in a representative capacity. *Personal representatives, trustees, guardians, conservators,* and agents under powers of attorney are all fiduciaries. A fiduciary stands in a position of confidence and trust with respect to each *heir, devisee, and/or beneficiary*.

**Formal Probate Administration:** a *proceeding* before a probate judge to determine whether a decedent left a valid *will*. This *proceeding* usually started by a petition or motion and culminating in a hearing before a probate judge after notice to interested persons. In Florida, a *Formal Proceeding* is required when the decedent has at least \$75,000.00 of *assets subject to administration*, and have specific duties to as defined by the instrument or the Florida Statutes. As part of the *Formal Probate Administration*, the *personal representative* is required to give the decedent's known and unknown creditors a three (3) month period in which to file a *claim* in the *proceeding*.

**Grantor:** in a trust context, this refers to a person that established a *living trust*. It is also used to refer to one who is transferring real estate in a deed.

**Guardian:** an *adult* person appointed by a surviving parent in his or her *will* or by a court, who is responsible for a *minor child* or *legally incapacitated person's* personal care and nurturing.

**Heir:** person, who inherits property from the estate of a deceased person who died without a *will*.

**Homestead:** in Florida, the Florida Constitution defines the homestead as "property owned by a natural person: a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner's family." The Florida Constitution provides homestead protections for a decedent's surviving spouse and surviving minor children.

**Intangible Personal Property:** property one cannot physically touch. This type of property may have some paper associated with it. This type of property usually includes such items as stock, bonds, mutual funds, bank accounts, and cash.

**Inter Vivos Trust:** see *living trust* below.

**Intestate:** refers to dying without a *will*.

**Irrevocable Trust:** a *trust* that can no longer be amended or revoked by anyone. Most revocable *trusts* become irrevocable at some time, for example, when the person who established the *trust* dies.

**Legally Incapacitated Person:** a person who has been determined by a court as not capable of handling his or her personal and financial affairs.

**Letters Of Administration:** the paper that is issued by the judge to a *personal representative*, showing that the *personal representative* has the authority to act on behalf of an *estate*.

**Living Trust:** a *trust* that one establishes during one's lifetime which is not part of one's *will*, but is usually established by a separate written trust agreement. The same as "*inter vivos trust*." This type of document is also sometimes referred to as a revocable *living trust*.

**Minor:** in Florida, a person who is under the age of 18.

**Personal Representative:** the person or financial institution appointed by the probate court to administer a deceased person's *estate*.

**Probate:** the process of determining if the deceased person left a valid *will* and admitting that *will* to probate. When a *will* is "admitted to probate" it means that the the probate judge has signed a paper that says the *will* is admitted to *probate*. The paper that the judge signs is called an "order."

**Proceeding:** involves the court in some type of activity such as the admission of a *will* to *probate* in either a *formal probate administration* or *summary probate administration* conducted by the judge after proper notice to interested persons.

**Revocable Living Trust:** a *living trust* or *inter vivos trust* that can be amended and revoked, usually by the person who established the *trust*. This *trust* may become irrevocable and unamendable when the only person who can amend or revoke the trust dies or becomes incompetent.

**Settlor:** a person who established a *living trust*.

**Summary Probate Administration:** a *proceeding* before a probate judge to determine whether a decedent left a valid *will*. This *proceeding* usually started by a petition or motion and culminating in a hearing before a probate judge after notice to interested persons. In Florida, a *Formal Proceeding* is required when the decedent has less than \$75,000.00 of *assets subject to administration*.

**Tangible Personal Property:** property that you can touch, such as cars, dishes, jewelry, tools, guns, sporting equipment, etc.

**Testamentary Trust:** a *trust* that is part of a person's *will*.

**Testate:** refers to dying with a *will*.

**Testator:** a person who makes a *will*.

**Trust:** an arrangement, usually established by a written document, to provide for the management and disposition of assets. It normally involves three parties: the person who establishes the trust (sometimes called a *donor*, *grantor*, *settlor*, or *trustor*), a *trustee*, and one or more *beneficiaries*.

**Trustee:** an adult individual or financial institution that is designated to be responsible for the *administration* of a *trust*. There may be more than one *trustee* (co-trustees), and an individual and a financial institution may serve as co-trustees.

**Trustor:** see *settlor* above.

**Will:** a written document which disposes of one's property at death. The *will* also is used to nominate *personal representatives*. It may also be used to express burial and funeral instructions, make anatomical gifts, and designate a *guardian* and *conservator* for a *minor child* or an *legally incapacitated adult*.

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PLEASE CONTACT OUR OFFICE IF YOU HAVE ANY QUESTIONS  
REGARDING THE ENCLOSED INFORMATION.

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