

# THE PROBATE ROAD



*It can be a long and winding path, but we can help you navigate it without losing your sanity (or your savings)!*

**\*REALTOR EDITION\***

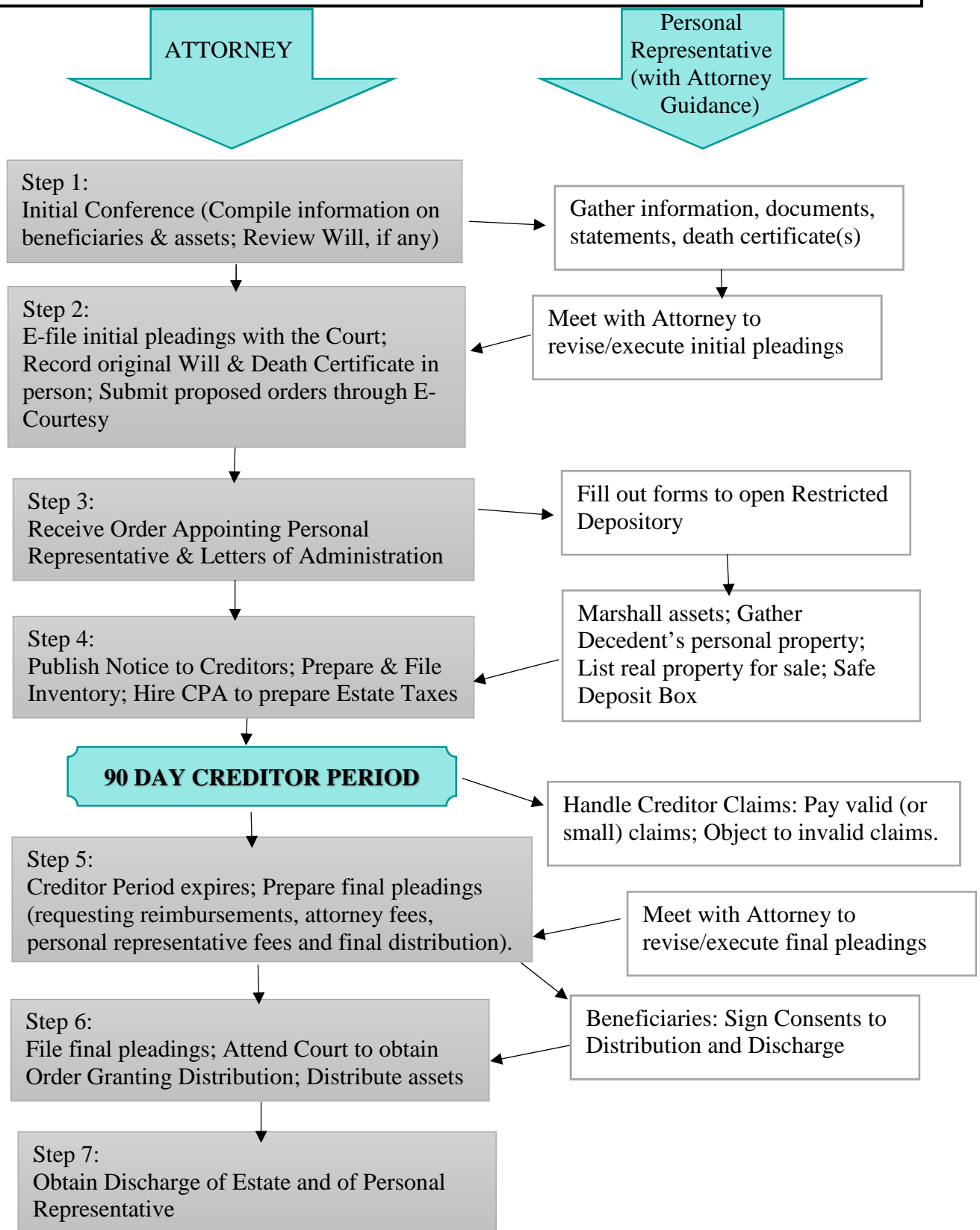


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## TABLE OF CONTENTS

Probate Process in a Flowchart .....	1
Florida Probate Deadlines .....	2
What are Probate Assets.....	3
Sale of Real Property in an Estate .....	4
Miami-Dade Checklist for Sale of Real Property.....	7
Miami-Dade Checklist for Determination of Homestead.....	8
Want to get started? Fill out the Probate Questionnaire.....	12

# Probate Process Flowchart (Full Administration)



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# FLORIDA PROBATE DEADLINES

TYPE OF FILING	DEADLINES	AUTHORITY
Tenant in Common Election	6 months from DOD	F.S. 723.401
Filing Original Will	10 days from knowledge of death	F.S. 732.901
To object to will, PR or Jurisdiction	20 days from Service of Formal Notice Or 3 months from service of NOA	Pr. R. 5.040(a); Pr. R. 5.200; Pr. R. 5.201; F.S. 733.212
Filing Inventory	60 days issuance of Letters	Pr. R. 5.340
Filing Petition for Exempt Property	4 months from service of NOA Or 40 days after termination of proceeding for will contest or will construction	F.S. 732.402; Pr. R. 5.406 F.S. 732.402
Filing Election for Elective Share	Earlier of 6 months from service of NOA; or 2 years from DOD	F.S. 732.2135
Filing for \$18,000 Family Allowance	Any time during administration	F.S. 732.403; Pr. R. 5.407
Filing Election for Community Property	Within 3 months of service of NOA	F.S. 732.221; F.S. 732.333
Filing a Creditor Claim; or PR's proof of claim	Later of 3 months after 1St publication of NTC; or 30 days after service of NTC; All claims barred after 2 years	F.S. 733.702 (extension only upon motion to extend); Pr. R. 5.490; Pr. R. 5.498
To Object to a Claim	Later of 4 months after publication of NTC; or 30 days from timely filing of claim	F.S. 733.705 (extension by court only upon motion for good cause); Pr. R. 5.496 (Objection must be served within 10 days of filing) Pr. R. 5.499
To File independent action on claim or declaratory action	30 days from service of objection	F.S. 733.705(5) (PR Must agree in
To file Proof of Publication	Must be filed with court within 45 days of 1St publication	Pr. R. 5.241(c)
Statement re: Creditors	Must be filed within 4 months from	Pr. R. 5.241(d)
Affidavit of No FL Estate Tax Due	12 months from LOA (nontaxable)	
Final Accounting	12 months from LOA (nontaxable)	Pr. R. 5.400
Petition for Discharge	12 months from LOA (nontaxable)	Pr. R. 5.400
Objection to Final Accounting and Petition for Discharge/ Interim Accounting	30 days from service of Notice	Pr. R. 5.401
NOH on Objection to Final Accounting or Petition for Discharge	NOH must be served within 90 days of Objection or they are waived	Pr. R. 5.401

## WHAT ARE PROBATE ASSETS?

A decedent's assets are generally characterized into two categories:

- Probate Assets
- Nonprobate assets

Non-probate assets are those assets which do not need to be included in the probate process in order to transfer ownership. Non-probate assets include any assets which have a beneficiary designation, joint ownership (with right of survivorship), or any assets that are titled in a trust. Probate assets are any assets that are held individually in decedent's name alone or jointly without a survivorship provision.

<b>PROBATE ASSETS</b>	<b>NON-PROBATE ASSETS</b>
Any asset held in decedent's individual name	Life insurance, IRA or CD or any asset with a beneficiary designation
Bank accounts with no joint owners and no POD, TOD, ITF designation	Any bank or brokerage account with a TOD, POD or ITF designation
Real property held jointly but without a survivorship provision in the title	Real property held jointly as tenants by the entirety or joint tenants with right of survivorship
	Assets titled in a revocable trust including real property, bank accounts, brokerage accounts, etc.
	Exempt Homestead (real property passing to a surviving spouse or heirs)**

\*\*Though homestead property (where Decedent resided) is not considered a probate asset, the Court retains jurisdiction to make a ruling as to whether the property was the Decedent's homestead or not, by entering an Order Determining Homestead. This cannot be done until the expiration of the creditor period and if there are existing creditors' claims, all creditors must be noticed on the Petition to Determine Homestead by either Formal Notice or by setting the Petition for hearing and notifying the creditors.

# SALE OF REAL PROPERTY IN AN ESTATE

## Step-by-Step Guide:

1. Send contract to Attorney for Personal Representative.

Things to keep in mind:

- a. Contract must state in Additional Terms: Sale Subject to Court Approval.
  - b. Contract must be signed by the Personal Representative in his/her capacity as Personal Representative. This means writing “as Personal Representative of the Estate of NAME” as the seller and under the signature part of the listing/selling agreement.
  - c. The time to close does not start to be calculated until the Court has approved the Contract. Remember, the entire contract is subject to Court approval. It is not valid until a Court says so.
  - d. Seller’s Disclosures: Many times the Personal Representative will never have set foot in the property, or no one can because there are squatters or tenants who refuse to leave. The Personal Representative should NOT make any guarantees regarding the condition of the property in the Seller’s disclosures unless they have first-hand knowledge of their answer.
2. Send to Attorney for Personal Representative either: Appraisal or Letter from Broker on broker’s letterhead and with Broker’s signature analyzing condition of the property in light of the comparables. Attach to letter Comparative Market Analysis.
  3. Attorney prepares Petition for Authorization to Sell Real Property and Consents to this Petition for ALL beneficiaries. Once all Consents are received and filed with the Court, the Petition can be set for ex-parte hearing. Ex-parte hearings are held on Tuesday and Thursday mornings and are only for uncontested 3-minute issues. Sales of real property where all beneficiaries consent are included in list of acceptable pleadings for ex-parte.
  4. Attorney attends Court and obtains Order Authorizing Sale of Real Property. Attorney sends Order to Realtor and Realtor facilitates the closing by contacting title agent and beginning the underwriting process.

5. Title Company or Attorney for Personal Representative prepares seller's documents for closing. Client can sign in Attorney's office or at Title Company. All closing documents are reviewed by Attorney for Personal Representative to ensure compliance by the Personal Representative of all fiduciary procedures.
6. Closing of the sale happens and Title Company either wires the net proceeds to the Estate's Restricted Depository or drafts a check made payable to the "Estate of NAME" and sends it to the Attorney for the Personal Representative. Realtors are always paid at closing and do not need to wait until distribution to receive commission.
7. Net proceeds are deposited in the Estate Restricted Depository until the Creditor Period has run and distribution is sought by Attorney for Personal Representative.

FYI: Since this type of sale is different from a traditional sale, the agent should be prepared to present aggressive marketing tactics – marketing the property even after the initial offer has been accepted.

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#### MISCONCEPTIONS to keep in mind:

- **You can sell real property in a summary (abbreviated) administration.**
  - **WRONG!** Real property can only be sold by the Personal Representative in an estate. In a Summary Administration, NO Personal Representative is appointed, thus, no one has the right to enter into a contract.
- **You have to wait until the end of the creditor period to sell real property in an estate.**
  - **WRONG!** Real property can be sold in an estate any time after the entry of the Order Appointing Personal Representative / Letters of Administration
- **The sale of Real Property in an Estate is a quick process.**
  - **WRONG!** From the time our office receives a contract for sale, it can take up to five days to finalize the petition, obtain the Personal

Representative's signature on the petition, and obtain the correct supporting documentation. Depending on the number and mindset of the beneficiaries of an estate, it can take additional time to obtain all of the consents to the sale (think: a month).

- **If it is suspect that an estate's beneficiaries are not all on the same page regarding a sale of real property:** WE SET IT FOR HEARING. Waiting around for consents to the sale from beneficiaries who may or may not want to sell the property, or may not be in agreement with the price, could cause the Estate several purchasers and time you cannot get back.
- **Obtaining a hearing from the Court takes no time! Is only a matter of weeks until the Petition is heard.**
  - **WRONG!** There are currently five (5) probate judges, each of whom have a different calendar and schedule. The majority of the judges set hearings for no less than 2-3 months from the date the hearing is requested.
- **Buyers LOVE to buy estate properties.**
  - **MAYBE!** The best way to keep a prospective purchaser of a property in Probate satisfied is to MANAGE THEIR EXPECTATIONS.
    - Do not promise a quick turnaround.
    - Inform them of the process. If you can't remember, ask the Attorney to reach out to them and give them an idea of what to expect from the Court.
    - Keep them informed! Sometimes, a quick email to let them know you are staying updated as to the status of the Court's decision can be all you need to keep impatient buyers at bay.



“The following is a very general checklist. This checklist may be helpful in preparing for a scheduled hearing before the court. Since each case is different, other documents may be required.”

## **SALE OF REAL PROPERTY For ESTATES (CP)**

Step A: Insure that file is CURRENT (all files must be current)

1. Order appointing Personal Representative and Letters of Administration filed. Notice to creditors pursuant to F.S. 733.2121, unless F.S. 733.710 is applicable. *If* Restricted Depository not yet opened in the estate, need Petition and Order Designating Restricted Depository. F.S. 69.031
2. Inventory – Filed within 60 Days after Letters of Administration are Issued. F.S. 733.604, F.P.R. 5.340
3. Acceptance and Receipt of Depository – (If you have liquid assets – Due within 30 days after Letters of Administration are Issued.) Pursuant to F.S. 69.031
4. Verified Statement/Statement Regarding Creditors – filed within 4 months after publication (i.e. the creditor/publication period has run). F.P.R. 5.241(d). Creditor claims must also be resolved.

Step B: eFile:

1. Petition for Order Authorizing the Sale of Real Property, signed by Personal Representative and Attorney, including statement that the contract is fair market price, sale is arm’s length transaction, include property legal description and street address. (F.P.R. 5.370)
2. If Petition is unsigned by Personal Representative, include separate consent by P.R. (F.P.R. 5.330)
3. Copy of Sales Contract attached
4. Copy of Appraisal or Broker’s Letter (signed by broker) with comparable market analysis (CMA) (appraisal only if over \$600K)
5. Consents of ALL residuary beneficiaries in the estate, or proof of formal notice (F.P.R. 5.040) without objection or set a hearing with notice.

Step C: Submit Proposed Order on Sale of Real Property via eCourtesy or bring said order to an ex-parte or scheduled court hearing. Order must match petition and include language that proceeds shall be deposited into Restricted Depository until further order of this Court.

Note- Please see the forms section of the [Probate Attorney’s Corner](#) as it contains numerous standardized petitions and orders that must be used where available.

"The following is a very general checklist. This checklist may be helpful in preparing for a scheduled hearing before the court. Since each case is different, other documents may be required."

IN THE CIRCUIT FOR THE ELEVENTH JUDICIAL CIRCUIT IN MIAMI-DADE COUNTY, FLORIDA  
CHECKLIST for Petition to Determine Homestead

ESTATE OF: \_\_\_\_\_ Case No: \_\_\_\_\_ Date of Death: \_\_\_\_\_

Attorney of Record \_\_\_\_\_ (Please circle and/or check the boxes below)

TYPE OF ESTATE: Testate: (  ) Intestate: (  ) Formal: (  ) Summary: (  ) Ancillary: (  )

STEP A:

- |   |          |
|---|----------|
| 1. Certified Death Certificate filed?   | Yes / No |
| 2. All required Notices to Creditors, Beneficiaries and Interested Parties Given?   | Yes No   |
| Notice served as required by Florida Probate Code Rule 5.240?   | Yes No   |
| And/or waivers _____ & proofs filed _____?  | Yes No   |
| Notice to creditors served _____ on DOR _____ on AHCA age 55+ F.S. 733.2121?  | Yes No   |
| Proof of publication of notice to Creditors filed? _____ or claims barred? _____  |          |
| Verified diligent search Statement Regarding Creditors filed F.P.R. 5.241?  | Yes No   |
| Notice or consents & waivers to Petition to determine Homestead filed?  | Yes No   |
| 3. Verified Inventory filed as required by F.S. 733.604?  | Yes No   |
| All proofs of service of inventory filed as required by Rule 5.340?   | Yes No   |
| 4. Taxes – Affidavit of no FL tax due pursuant to F.S. 198.32(2) filed?   | Yes No   |
| Notice of Federal Tax return filed and served F.P.R. 5.395 filed?   | Yes No   |
| Federal Estate Tax Closing Letter filed?  | Yes No   |
| 5. Verified Petition to Determine Homestead complying with F.P.R. 5.405 filed?  | Yes No   |
| To include:   |          |
| Statement that the decedent was a Florida resident?   |          |
| Statement that the decedent owned and resided on the property at death?   |          |
| Legal description of homestead real property listed?  |          |
| Statement that property is inside or outside of municipality with acreage?  |          |
| Surviving Spouse and lineal heirs with dates of birth listed for minors   |          |
| Statement that property descended to, or was validly devised, and that decedent's exemption from claims of decedent's creditors inured to spouse/heirs? |          |

STEP B:

- |   |        |
|---|--------|
| 6. Supporting Documentation:  |        |
| Has an affidavit of heirs been filed in this Intestate estate?  | Yes No |
| Has a copy of property Tax or utility bill been filed in support of Homestead?  | Yes No |
| Has a Third Party Affidavit in Support of Determination of Homestead (from a Disinterested Independent Third Party) been filed? | Yes No |
| (see requirements of Disinterested Independent Third Party on page 3)   |        |
| 7. Proposed Order Determining Homestead: to include:  |        |
| Should have the legal description and that the property is the homestead of the decedent?                                       |        |
| That the homestead property descended to or was validly devised?  |        |
| Identify the persons entitled to decedent's exemption from decedent's creditor claims?  |        |
| Define the interest of persons receiving the protected homestead?   |        |

8. A. Does the property of the decedent meet all four homestead criteria? Yes No
1. The property was owned by the decedent at death?
  2. The decedent was a Florida Resident?
  3. The Property was the residence of the decedent or his/her family?
  4. Property meets the size and contiguous requirement of the Florida Constitution?  
 No  Yes, inside municipality less than ½ Acre  
 No  Yes, outside municipality less than 160 contiguous acres
- B. Was the decedent's homestead validly devised? Yes No  
 If so, to whom, \_\_\_\_\_,  
 the decedent's \_\_\_\_\_  
 Intestate, and descends by intestacy to \_\_\_\_\_
- C. Does the decedent's exemption from forced sale by the decedent's creditors inure to anyone?  
 No  Yes, if so, to whom, \_\_\_\_\_, the  
 decedent's \_\_\_\_\_
9. Need a petition to designate depository to hold the proceeds from the sale of homestead property separate from other estate assets if the property is sold prior to the expiration of the creditor's period. It is suggested that the separate depository account be titled "Potential Homestead Property Account."
10. Sale of Homestead- If seeking to sell potential homestead property before it can be determined homestead property, you must verify that you published a notice to creditors and you must obtain consents from all potential persons having an interest in the property and all known creditors. If you cannot obtain consents you may set the petition for sale of homestead for hearing with notice to all persons stated above.

Florida Constitution Article X, Section 4, Homestead; exemptions. See also F. S. 732.401, 732.4015

- (a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person: (1) 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 owner's family; (2) personal property to the value of one thousand dollars.
- (b) These exemptions shall inure to the surviving spouse or heirs of the owner.
- (c) The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

## ADDITIONAL INFORMATION

### HOMESTEAD

#### Requirements for *Disinterested Independent Third Party*\*

#### Affidavits filed in support of a Petition for Determination of Homestead Real Property

1. The affiant must have personal knowledge of the facts alleged in the affidavit.
2. The affiant must establish their standing to make the affidavit.
3. The affiant must either list the name of the surviving spouse of the decedent, or if the spouse did not survive the decedent, state that the decedent remained unmarried until demise.
4. The affiant must list the names of the issue of the decedent, and if any issue predeceased the decedent, the names of the issue of the predeceased issue of the decedent.
5. The affiant must state affirmatively whether there are, or are not, any surviving minor children of the decedent or unborn children of the decedent.
6. The affiant must list the street address of the real property and state whether it was, or was not, the homestead of the decedent and that the decedent did, or did not, reside upon the property until demise.
7. The notary public must state that the affiant is known to the notary public, or if not known, list the identification produced by the affiant, that the affiant was sworn in, and that the affiant recited the facts listed in the affidavit.
8. The notary public must witness the signature of the affiant and notarize the affidavit.

\*Disinterested Independent Third Party is defined as someone with no business or family relationship.

### CLAIMS

Claims must be resolved (withdrawn, satisfied or stricken by Court\*

Only at Hearing or Through Formal Notice (not in small estates)

(see below if claims are NOT resolved)

**IF CLAIMS ARE NOT RESOLVED, ADDITIONALLY:** HEARING WITH NOTICE ON CREDITORS WITH UNRESOLVED CLAIMS **OR** THE PETITION FOR HOMESTEAD MUST BE SERVED BY FORMAL NOTICE ON CREDITOR(S) WITH UNRESOLVED CLAIMS, PROOF OF SERVICE OF FORMAL NOTICE FILED, TIME FOR OBJECTION(S) LAPSE, NO OBJECTION(S).

## **SUMMARY ADMINISTRATION**

**JUDGES WILL NOT ALLOW THE SALE OF REAL ESTATE IN A SUMMARY ADMINISTRATION. You must upgrade to formal administration, to strike claims or require a depository to hold cash assets.**

## **SALE OF REAL ESTATE**

ALL JUDGES WILL REQUIRE THE FOLLOWING FOR SALE OF REAL ESTATE: PETITION SIGNED BY PERSONAL REPRESENTATIVE(S) AND ATTORNEY(S); COPY OF REAL ESTATE CONTRACT; SIGNED BROKER LETTER WITH COMPS OR REAL ESTATE APPRAISAL\* (Appraisal mandatory on all sales exceeding 600k) CONSENTS TO SALE OF ALL RESIDUARY BENEFICIARIES OR DEVISEES IF DEVISED; or set the matter for hearing and notice must be provided to all potential persons having an interest in the property and all known creditors. You must also publish a notice to creditors.

***ALSO: PETITION DESIGNATING A RESTRICTED DEPOSITORY UNDER FLORIDA STATUTE 69.031 FOR CASH ASSETS WITH PROPOSED ORDER DESIGNATING THE DEPOSITORY (UNLESS ALREADY ON FILE).***

**REMINDER: Once the Court has entered an order declaring the homestead nature of a property, the Court loses jurisdiction to enter any further orders regarding the property such as a petition for sale of the property.**

Note- Please see the forms section of the [Probate Attorney's Corner](#) as it contains numerous standardized petitions and orders that must be used where available.



**PROBATE QUESTIONNAIRE**

**CLIENT INFORMATION:**

1. NAME: \_\_\_\_\_

2. ADDRESS: \_\_\_\_\_

3. PLEASE ANSWER THE FOLLOWING QUESTIONS:

A. ARE YOU 18 YEARS OLD OR OVER?

\_\_\_\_\_

B. ARE YOU MENTALLY AND PHYSICALLY ABLE TO PERFORM THE DUTIES OF A PERSONAL REPRESENTATIVE?

\_\_\_\_\_

C. HAVE YOU EVER BEEN CONVICTED OF A FELONY?

\_\_\_\_\_

**DECEDENT INFORMATION:**

1. NAME OF DECEDENT: \_\_\_\_\_

2. WAS DECEDENT SURVIVED BY A SPOUSE? (IF THE ANSWER IS YES, PLEASE PROVIDE SPOUSE'S FULL NAME, ADDRESS, AND TELEPHONE NUMBER):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. WAS DECEDENT SURVIVED BY CHILDREN? (IF THE ANSWER IS YES, PLEASE PROVIDE CHILDREN'S FULL NAME, ADDRESS, DATE OF BIRTH, AND TELEPHONE NUMBER(S):

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4. IF THE ANSWERS TO QUESTION 2 & 3 WERE BOTH NO, THEN PLEASE PROVIDE THE FULL NAME, ADDRESS, AND TELEPHONE NUMBER(S) FOR ALL OF THE DECEDENT'S SURVIVING GRANDCHILDREN, SIBLINGS, AND PARENTS. IF THE ANSWER TO QUESTION 2 OR 3 WAS YES, PLEASE SKIP THIS QUESTION. PLEASE USE A SEPARATE SHEET IF NECESSARY.

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5. IF THE ANSWERS TO QUESTION 2, 3 & 4 WERE NO, THEN PLEASE PROVIDE THE FULL NAME, ADDRESS, AND TELEPHONE NUMBER(S) FOR ALL OF THE DECEDENT'S SURVIVING COUSINS, NEPHEWS AND NIECES. IF THE ANSWER TO QUESTION 2, 3, OR 4 WAS YES, PLEASE SKIP THIS QUESTION.

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6. DID THE DECEDENT OWN ANY REAL PROPERTY(IES)? IF THE ANSWER IS YES, THEN PLEASE PROVIDE THE FULL ADDRESS OF SAID PROPERTY(IES). PLEASE PROVIDE COPIES OF DEEDS IF AVAILABLE.

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HAVE ANY OF THE PROPERTIES BEEN RENTED? IF YES, PLEASE PROVIDE DETAILS (TENANT INFORMATION, RENTAL PAYMENTS, IF THERE IS A LEASE, PLEASE PROVIDE A COPY OF THE LEASE, DURATION OF RENT, WHERE RENT IS BEING DEPOSITED, AND ANY OTHER PERTINENT DETAILS).

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7. DID THE DECEDENT OWN ANY VEHICLE, MOTORCYCLE, OR WATER VESSEL? IF THE ANSWER IS YES, PLEASE PROVIDE A DESCRIPTION AND IDENTIFICATION NUMBER. PLEASE PROVIDE TITLES IF AVAILABLE



8. DID THE DECEDENT OWN ANY STOCK? IF THE ANSWER IS YES, PLEASE PROVIDE COPIES OF STATEMENTS AND STOCK CERTIFICATES

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9. DID THE DECEDENT OWN A BANK ACCOUNT(S) WHICH HAD NO BENEFICIARY? IF THE ANSWER IS YES, PLEASE PROVIDE NAME OF BANK, ACCOUNT NUMBER AND FINANCIAL STATEMENT IF AVAILABLE

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10. DID THE DECEDENT HAVE ANY DEBT (I.E. OUTSTANDING MORTGAGES, OUTSTANDING LOANS, OUTSTANDING MEDICAL BILLS, OUTSTANDING CREDIT CARD BILLS, ETC.,) IF THE ANSWER IS YES, PLEASE PROVIDE NAME OF DEBTOR, ACCOUNT NUMBER, ADDRESS AND STATEMENT IF AVAILABLE.

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11. DID THE DECEDENT MAKE ANY GIFTS WITHIN THREE YEARS OF HIS/HER DEATH? IF THE ANSWER IS YES, PLEASE LIST THE GIFT, THE AMOUNT OR VALUE, WHEN MADE, AND TO WHOM.

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12. DID THE DECEDENT HAVE A WILL AND/OR A TRUST? IF THE ANSWER IS YES, PLEASE PROVIDE A COPY OF THE WILL AND/OR TRUST. ALSO, PLEASE BE ADVISED THAT THE ORIGINAL WILL MUST BE FILED WITH THE COURT

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IF THE DECEDENT LEFT A TRUST, AND THE TRUSTEE IS THE SAME AS THE NAMED PERSONAL REPRESENTATIVE IN THE WILL, PLEASE PROVIDE THE CONTACT INFORMATION FOR ALL TRUST BENEFICIARIES.

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WHEN TURNING IN THIS CHECKLIST, PLEASE PROVIDE AN ORIGINAL CERTIFIED COPY OF THE DECEDENT'S DEATH CERTIFICATE AND IF THE DECEDENT LEFT A LAST WILL, PLEASE PROVIDE THE ORIGINAL WILL.