

Florida Probate Information

DISCLAIMER: THE MATERIAL IN THIS PACKET IS INTENDED TO BE FOR INFORMATIONAL PURPOSES ONLY. AS IN ALL MATTERS INVOLVING LEGAL ISSUES, IT IS RECOMMENDED THAT YOU OBTAIN THE SERVICES OF A LAWYER. IT IS IMPORTANT FOR YOU TO UNDERSTAND THAT *THE COURT AND PROGRAM STAFF DOES NOT REPRESENT YOU, YOU REPRESENT YOURSELF*. ALTHOUGH YOU ARE NOT REQUIRED TO HAVE AN ATTORNEY FOR CERTAIN PROBATE PROCEEDINGS, ONLY AN ATTORNEY CAN GIVE LEGAL ADVICE. IF YOU CHOOSE TO PROCEED WITHOUT AN ATTORNEY, AT ANY TIME IN YOUR CASE YOU MAY OPT TO HIRE ONE.

What is probate?

Probate is the legal process through which a deceased person's estate is properly distributed to heirs and designated beneficiaries and any debt owed to creditors is paid. The court oversees the process to ensure that the estate is properly administered.

What law is involved in probate proceedings?

Probate proceedings are primarily controlled by the Florida Probate Rules, as well as Chapters 731 through 735 of the Florida Statutes. For access to the [Florida Probate Rules](#), as well as all Florida Rules of Court Procedure, [click here](#). You may view the entire library of Florida Statutes [here](#).

Where is a probate case filed?

All probate cases must be filed in the court where venue lies. Proper venue depends on the facts of the case. Venue for probate cases is determined by the following:

1. If the decedent was a Florida resident, the case must be filed in the county where they were domiciled, that is, where they were an official resident. You may reference the decedent's death certificate to confirm which county is listed as the official county of last residence.
2. If the decedent was *not* a Florida resident, then the case may be filed in any county where the decedent's property is located. For example, if a Georgia resident owned property in both Gainesville and Tallahassee, the probate proceeding could be filed in either Alachua County or Leon County, but not in any other county.

Do I need an attorney?

This entirely depends on the type of probate proceeding you intend to file. Florida Probate Rule 5.030(a) requires that a personal representative in a formal administration of an estate *must* be represented by an attorney. For other proceedings that do not require formal administration, such as summary administration, disposition of personal property without administration, or disposition without administration in small estates, you are not required to be represented by an attorney. However, probate procedures can be highly complex, **therefore you are strongly encouraged to consult with and/or retain an attorney before proceeding.**

Is a will needed to probate an estate?

No. There are two types of estates—testate, meaning the decedent left a will, and intestate, where the decedent died without a valid will. Both testate and intestate estates may be probated. However, the existence of a will may impact who must be notified of the case, as well as the manner in which any estate assets are distributed.

How much does it cost to open a probate case?

The filing fees vary by type of proceeding, as well as the cost of any certified copies or other documents you may need to obtain. Please contact the specific county’s clerk of court for additional information on filing fees, petitions for civil indigency, or other matters:

Alachua	https://alachuacounty.us/depts/clerk/pages/clerk.aspx	(352) 374-3682
Baker	http://www.bakerclerk.com/	(904) 259-8113
Bradford	https://www.bradfordcountyfl.gov/circuit_court	(904) 966-6280
Gilchrist	https://www.gilchristclerk.com/	(352) 463-3170
Levy	https://www.levyclerk.com/	(352) 486-5266
Union	https://unionclerk.com/	(386) 496-3711

What documents are needed to file a probate case?

In addition to the specific petitions and information required for each type of proceeding, you will also be required to file the following in every case:

1. Certified copy of decedent’s death certificate
2. Affidavit of Heirs
3. The **original** last will and testament and any codicils (if applicable)
4. Proof of service of formal notice of the petitions, *or* joinder, waiver, and consent to the petition by all interested parties

How do I file my case?

Self-represented (pro se) litigants may file petitions or other pleadings or documents in person with the Clerk of Court, by mail, or electronically using the Florida E-Filing Portal. Contact the specific county's Clerk of Court for additional information.

What are the different types of probate proceedings?

Formal Administration

A formal administration may be filed when the estate assets exceed \$75,000, and/or it is necessary to appoint a personal representative to act on behalf of the estate. At the time of appointment, Letters of Administration are issued to the personal representative by the Court giving them the authority to complete the administration of the estate. The appointed personal representative is then responsible for the estate, paying all debts of the decedent and distributing the balance of the estate to the rightful beneficiaries, and the Court oversees the administration of the estate to ensure the decedent's debts are paid and that correct distribution to the heirs and/or beneficiaries. **Florida Probate Rule 5.030(a) requires that every personal representative be represented by an attorney unless they are the sole interested person in the case. If there are circumstances in which you need to be appointed as a personal representative, you are strongly encouraged to consult with and/or retain an attorney before proceeding further.**

Summary Administration

Summary administration may be filed when the value of the entire estate does not exceed \$75,000, excluding exempt property, or when the decedent has been deceased for more than two years. **A personal representative is not appointed in a summary administration.**

Disposition of Personal Property without Administration

This type of proceeding allows reimbursement to a person who paid for the decedent's final expenses. Any expenses paid must be out-of-pocket funds, prepaid funeral plans and bills paid by insurance do not qualify. Final expenses include funeral costs up to \$6,000 or medical bills that incurred in the last 60 days of the decedent's life.

Disposition without Administration of Intestate Property in Small Estates

This extremely narrow proceeding may only be filed by direct lineal heirs in an estate where the decedent died without a will (intestate), has been deceased for at least one year, and only seeks to distribute certain exempt property and non-exempt personal property up to \$10,000.