

**Foundations Of Estate Administration Defined,
Preparing To Begin The Administration Process
And Considerations For Collecting The Assets,
Preparing The Inventory And Handling Claims
Against The Estate**

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I. FOUNDATIONS OF ESTATE ADMINISTRATION DEFINED

A. Identifying Probate and Non-Probate Assets

Probate is a court-supervised process for defining and gathering the assets of a deceased person (decedent). The decedent's debts will be identified and paid and eventually the remaining assets will be distributed to the decedent's beneficiaries. This process is needed to allow the court-supervised re-titling of certain assets, the payment of decedent's creditors, the wrapping up of financial affairs, and to protect against abuse and fraud.

A probate asset is an asset that the decedent owned in his or her name at death or that was owned by the decedent and one or more co-owners and lacked a provision for automatic succession for ownership at death. An example would be where the decedent died owning 1,000 shares of AT&T stock. After the decedent's death, the question is, who has the right to the stock and how do they get it? If it has no provision for the immediate ownership after the decedent's death, such as joint ownership or payable on death (POD), a probate proceeding would take place to determine the ownership of the stock and whether it will be distributed according to a valid Will or if no Will, the laws of intestacy. The laws of intestacy are state laws determining who gets what after a decedent's death when the decedent left no instructions of his own in the form of a valid Will.

A non-probate asset avoids the probate process because there is a valid legal provision that vests the ownership or title to the asset in another individual automatically following the death of a decedent. The most common example is the bank account owned by the decedent and another individual. If both signed the bank signature card identifying them as joint owners, the surviving joint owner will automatically be vested with full ownership rights. F. S. 655.79 and

F. S. 655.82. Similarly, a payable on death (POD) bank account or transfer on death (TOD) brokerage account will automatically vest in the named beneficiary upon presentation of the decedent's original death certificate.

Homestead Property

Another non-probate asset that has been the subject of much controversy is the homestead property. This is the most complicated and difficult asset to deal with in a probate estate. Most assets identified above are either probate or non-probate assets. The homestead property, however, blurs the definitional lines because it is a non-probate asset and a probate asset at the same time. After the decedent's death, if not survived by a spouse, the question is, who controls the house and how is title transferred to the heirs?

F. S. 733.608(2) grants authority to the appointed Personal Representative of the decedent's estate to take possession of the homestead property for the limited purposes of preserving, insuring, and protecting it for the person having an interest in the property, pending a determination of its homestead status. The statute provides that if the Personal Representative takes possession of the property, any rents and revenues may be collected by the Personal Representative for the account of the heir or devisee, but the Personal Representative shall have no duty to rent or otherwise make the property productive. Section (3) of the statute provides that if a Personal Representative expends funds or incurs obligations to preserve, maintain, insure, or protect the property, the Personal Representative shall be entitled to a lien on the property and its revenues used to secure repayment of those expenditures and obligations incurred. See *Estate of Mahaney*, 903 So.2d 234 (Fla. 2d DCA 2005), for great discussion of protected homestead status. The judge recognized that the homestead property may be devised, but it does not become part of a probate estate subject to the control of

the Personal Representative unless a testamentary disposition is made to someone other than an heir. In *Monks v. Smith*, 609 So.2d 740 (Fla. 1st DCA 1992), decedent's sister and only heir under Florida law did not waive her rights to homestead protection based on her having treated the house, which was devised to her, as an asset of the estate while she served as Personal Representative.

F. S. 731.201(33) defines protected homestead as 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 pursuant to the Constitution. This definition does little to help determine if the property is protected homestead. Generally, as a practical pointer, the homestead is the decedent's domicile. This is where he lives, has all his mail delivered, the state where his driver license is issued, and where he votes. Even if the decedent has moved out of state for convalescent care, as long as the homestead property has not been leased or rented, it will maintain its homestead status. The Constitutional homestead provision allows a testator with no surviving spouse or minor children to devise homestead, with its accompanying protection from creditors, to any family member within the class of persons categorized in the state's intestacy statute.

The homestead does not automatically vest in the heirs. There is a legal process needed to determine that the property is protected homestead. In order for the legal process to occur, there has to be someone placed in charge. The only way to have someone placed in charge is to initiate a probate process. Once a formal probate process is initiated and a Personal Representative has been authorized by the court to act on behalf of the decedent, through Letters of Administration, a petition may be filed for determination of homestead status. See Fla. Prob. R. 5.405(a)-(b). If approved, the court will sign an Order Determining Homestead Status and vest full title to the homestead in the appropriate heirs, Fla. Prob. R.

5.405(c). An alternate process is through a Summary Administration as identified below. The beneficiaries sign a Petition for Summary Administration and likewise sign a Petition for Determination of Homestead Status. If appropriate, a judge will sign an order determining the property was the decedent's homestead and title will vest in the appropriate heirs pursuant to the order. There will not be a deed transferring the property.

See Homestead Checklist (handout)

Other Non-Probate Assets

Will substitutes normally take the form of a gift, Trust, contract or other non-testamentary agreement that technically operates as a lifetime transfer while leaving the transferor with substantially undiminished ownership rights until death. Will substitutes achieve the practical effect of a Will, while avoiding probate.

B. Understanding the Various forms of Administration

Testate

When someone dies testate, it means that they died with a valid Will. It is important to remember what comprises a valid Will.

F. S. 732. 501-518 sets forth the requirements for the creation of a valid Florida Will.

- The maker of the Will (called the testator), must be at least 18 years of age, unless emancipated.

- The maker must be of sound mind at the time the Will is signed. Sound mind means testator's ability to mentally understand in a general way the nature and extent of the property to be disposed of and the testator's relation to those who would naturally claim a substantial benefit of the Will, as well as a general understanding of the practical effect of the Will as executed, *Wilmots Estate*, 66 So.2d. 465 (Fla. 1953).
- The Will must be written.
- The Will must be witnessed by two witnesses who sign as witnesses after the maker signs the Will.
- To be effective, the Will must be proved in and allowed by the probate court.
- A codicil shall be executed with the same formality as a Will.

A Will from any other state that is valid in that state, will also be valid in Florida. Any Will created in a foreign country that is valid in that country will also be valid in Florida. However, if the Will is written in a foreign language, it must be translated into English and certified before it becomes valid. No Will becomes final until the death of the testator. It may be changed or added to by the testator by drawing a new Will or by creating a codicil. The terms of a Will cannot be changed by writing something in or crossing something out after the Will is executed. The benefit received from a Will is that the testator laid down instructions and decided for himself how his estate was going to be devised.

Intestate

When someone dies intestate, they died without a Will. The decedent missed the opportunity to express dominion over the division of his assets. In the case of an intestate estate, the legislature has crafted what they believe is a fair and

reasonable distribution guideline. It is premised on following statutory guidelines for disposition that have traditionally been the norm throughout history.

F. S. 732.101-732.1101 leave an intestate estate to the decedent's spouse and to his lineal descendants, and so on, per stirpes (down the branches of my bloodline, equally). This example demonstrates that without a Will, a person cannot devise any of his assets to a church, or a beloved community organization, etc.

The surviving spouse will be entitled to the decedent's entire estate if the decedent is not survived by any lineal descendants. If there are surviving descendants of the decedent, all of whom are also lineal descendants of the surviving spouse, the first \$60,000 of the intestate estate, plus one-half of the balance of the intestate estate, shall go to the surviving spouse. If there are surviving descendants, one or more of whom are not lineal descendants of the surviving spouse, one-half of the intestate estate shall pass to the surviving spouse. If there is no surviving spouse, the entire estate shall pass to the descendants of the decedent. If there are no descendants, the entire estate shall pass to the decedent's father and mother equally, or to the survivor of them. If there are none of the foregoing, the entire estate shall pass to the decedent's brothers and sisters and the descendants of the deceased brothers and sisters. If there are none of the foregoing, then the estate shall be divided, one-half of which shall pass to the decedent's paternal kindred, and the other half to the decedent's maternal kindred, in the order prescribed by statute, F. S. 732.103.

Formal Administration

All estates in Florida require Formal Administration unless they fall into one of three exceptions. If assets were jointly titled, payable on death or transfer on death to a surviving beneficiary, formal probate is not required. Likewise, if the

entire estate subject to Florida administration does not exceed \$75,000, excluding homestead and other exempt property, formal probate is not required. Lastly, if the decedent has been dead for more than two years, formal probate is not required.

If real property is located outside the state of the decedent's last domicile, it may be necessary to open ancillary probate proceedings in several states. The probate process excludes life insurance, retirement plans, annuities and Trusts. Each of these assets will have a specifically named beneficiary or an alternate beneficiary. The presentation of a certified death certificate triggers the distribution of these assets to the named beneficiary. If there is no beneficiary designated or that beneficiary has died with no alternate designated in the document or pursuant to the terms of the agreement, that asset will become a probate asset. The Will would then control the asset or if no Will, the laws of intestacy pursuant to F. S. 732.103.

Formal probate is a long, expensive and intensive legal process. Included is the formal checklist used by our office and several county clerks to properly begin a formal probate estate.

(See Formal Probate Checklist in Exhibits)

Summary Administration

Summary Administration is governed by Ch. 735 of the Florida Probate Code and has several prerequisites. Summary Administration is not available in a testate estate in which the decedent had specifically directed Formal Administration by his or her Will, F. S. 735.201(1). If the decedent has been dead for two or more years, the estate is eligible for Summary Administration, regardless of size. F. S. 735.201(2). Summary Administration is available after two years because of the

two-year statute of non-claim, F. S. 733.710(1). But the administration will include the creditor claims that were filed within the two-year period. Summary Administration is available if the entire estate subject to Florida administration does not exceed \$75,000, excluding homestead and exempt property, F. S. 735.201(2). All assets held in an intervivos Trust, irrevocable Trusts, and assets held in tenancy by the entirety are not included in the calculation of the \$75,000. See *Ford v. Ford*, 581 So.2d. 203 (Fla. 5th DCA 1991).

Disposition Without Administration F. S. § 735.301

This procedure is available only if probate assets consist solely of property classified as exempt property under F.S. 732.402. It is available for non-exempt personal property if it does not exceed the total value of funeral expense that did not exceed \$6,000 and the amount of all reasonable and necessary hospital expenses incurred in the last 60 days of the decedent's final illness.

C. Considerations for the Small Estate

First, determine the value of the probate estate. The "value" as used in F. S. 735.210(2), refers to the gross as opposed to the net value of the estate. When there is a small estate and you are considering Summary Administration, the probate estate must be less than \$75,000. The estate's non-probate assets are excluded, F. S. 731.201(12), F. S. 735.201(2), *In Re Estate of Mosley*, 402 So.2d 594 (Fla. 5th DCA 1981). Exempt property under F. S. 732.402 is excluded, but either a spouse or minor child must survive for the property to be exempt.

What Creditors Are Out There?

You can also have a Summary Administration if the decedent has been dead for over two years. This is due to F. S. 733.710, which bars creditor claims made

after two years from the decedent's death. If there are reasonably ascertainable creditors and they have not been paid or notice has not been given to them, the beneficiaries can become personally liable to them to the extent of the estate assets received.

Is There a Homestead Property?

If there is a homestead property and a surviving spouse or heirs, the Order for Summary Administration can properly vest title of the home to the surviving spouse or heirs. The judge's order acts as a deed transferring title to the property. Many clients are confused by this because they do not have a deed showing ownership of the property. Most all other asset ownership can be transferred via the judge's Order of Summary Administration. However, there are occasions where certain stock transfer agents will not accept the Order for Summary Administration and require the appointment of a Personal Representative for stock transfer. This can be quite frustrating if the stock has a value of no more than a couple thousand dollars.

Cost Benefit for the Client

A client, one who has planned to have his estate assets pass outside of probate, can use a Summary Administration to quickly tie up any loose ends. A Summary Administration with Notice to Creditors filed, protects against creditors before and after the two-year creditor statute has run, F. S. 733.710. Issues presented by creditors are no longer a deterrent to its use. The Summary Administration process consists of preparing a Petition for Summary Administration, preparing notices if required, and preparing the final Order for Summary Administration where the judge directs who receives the assets of the estate. This entire process generally costs less than \$2,000 and is completed within a matter of weeks.

Procedures

Fla. Prob. R. 5.530(a) gives us the procedural requirements for filing a Petition for Summary Administration and what the petition needs to allege. The drafter must be careful to distinguish the things that must be alleged in Fla. Prob. R. 5.530(a) and the prerequisite requirements of F. S. 735.201 that must also be alleged. For example, you may find yourself drafting a complaint and alleging only the requirements from F. S. 735.201; that the decedent's Will did not direct administration under Ch. 733, the value of the estate subject to administration is less than \$75,000, or the decedent has been dead for over two years. If you only allege these, your complaint will be incomplete. A description of all assets in the estate and an estimated value of each, and a separate description of any protected homestead and exempt property must be alleged. Further, the Petition must include one of the following via Fla. Prob. R. 5.530(a)(9):

- A statement that all creditor claims are barred; or,
- A statement that a diligent search for known ascertainable creditors has been made and the estate is not indebted; or,
- A schedule of creditors, including their name, address, amount owed, whether amount is estimated or exact, and when the debt is due.

The petition must be signed and verified by the surviving spouse, if any, and any beneficiaries, F. S. 735.203(1), & F. S. 5.530(b). Occasionally, a beneficiary does not sign the petition. In that case, the beneficiary must receive formal notice of the petition. Upon filing the Petition for Summary Administration, the Will, if any, shall be proved in accordance with Chapter 733 and admitted to probate, F. S. 735.206 & Fla. Prob. R. 5.530(c). If the estate is testate, an Order Admitting Will should also accompany the petition.

The Order for Summary Administration should set forth a schedule of distribution. The order should designate each person and the asset they are to receive. An Order of Summary Administration is invalid if the true value of the property on the date of death exceeds the statutory limit, In re: *Estate of Bernard*, 183 so.2d 715 (Fla. 1st DCA 1966). If the estate includes a homestead, a Petition for Homestead Status and Order Determining Homestead Status should accompany the petition.

Notice to Creditors F. S. 735.2063

Once the Order for Summary Administration has been signed by the judge, the beneficiaries may publish a Notice to Creditors and forever bar the claims of creditors, unless the claims are made within three months from the time the proof of publication was filed with the court.

Miscellaneous procedural requirements:

Fla. Prob. R. 5.205(a)(3) states a requirement that a copy of an official record of death shall be filed at any time prior to the entry of the Order for Summary Administration.

Note:

The rule was substantially rewritten in 2007 to require the petition to include essentially the same information required to be stated in a Petition for Administration and to require the petitioners to specify facts showing they are entitled to Summary Administration.

(See sample petition forms in Exhibits)

Petition for Summary Administration (Intestate)

Petition for Summary Administration (Testate)

A sample petition for Order on Summary Administration (testate and intestate)

Notice to Creditors (Summary Administration)

- D. Knowing the Advantages and Disadvantages of Informal Administration and Complying With the Procedures of Disposition Without Administration, F. S. 735.301.

Personal property may be transferred informally if the total value does not exceed the amount of exempt property and the amount of preferred funeral expenses and reasonable and necessary medical expenses of the last 60 days of the last illness. The attorney does not take an active part but may answer questions that may be raised by the parties. It is common that the attorney will prepare the Petition for Distribution of Personal Property Without Administration. A sample of the form can be found at <http://www.clerk.leon.fl.us>.

(See example petition for Disposition of Personal Property Without Administration in Exhibits)

Disposition of Personal Property Without Administration has advantages for estates consisting of no more than personal items. For example, a client lost a son in a motorcycle wreck. The personal items consisted of a stereo unit, clothing and other miscellaneous household and personal items in the son's apartment. The client paid for his son's funeral. The client was able to obtain this Petition for Disposition of Personal Property Without Administration from the clerk. He completed the form, the judge signed it, and he cleaned out his son's apartment

with no further cost, expense or involvement by the court. The obvious advantage is that it was quick, easy and inexpensive. Other assets such as bank accounts and stock certificates with nominal value pose a problem. If the bank or transfer agent honors the court's order, then the process is quick and simple. If they do not, then the client must turn to the attorney for some other form of administration in order to clear title. If the asset has a value of \$1,500 or less, any formal involvement by an attorney may not be justified.

II. PREPARING TO BEGIN THE ADMINISTRATION PROCESS

A. Understanding the Laws of Intestacy and How They Affect the Estate

Intestacy laws address certain basic estate planning issues involving rights of spouses and children and distributional schemes for intestate succession. As discussed earlier, intestacy is not a preferred planning device, as much as it is a "default mechanism" provided by the legislature. Assets falling into intestacy have not been effectively disposed of by a Will or passed outside of probate via Will substitutes. Intestacy laws apply only to assets that are subject to administration, not assets that pass by reason of survivorship, beneficiary designation, Trust law, or other Will substitute, and do not apply to homestead realty and exempt personalty when they pass by special statutory rules.

If an individual dies without a Will, assets he owns at death will pass according to intestate succession, F. S. 732.101-.111. All distributions will be made per stirpes. This means, for example, that when dad dies, the children of his deceased son, will receive their father's share, F. S. 732.104. If a provision of the Will fails and there is no catchall residuary, then the rules of intestacy apply. For example, Anna Nicole Smith, died several years ago directing all assets go to her only son. Her Will specifically omitted any after-born children. That means her daughter,

Dani Lynn, was specifically excluded as a beneficiary from her mother's Will. However, because Anna Nicole Smith's son died before she did, the Will then had no valid beneficiary. The intestate laws of California were triggered to include Anna Nicole Smith's daughter, Dani Lynn, as the sole beneficiary of the estate.

Another situation sometimes occurs when a Will has been obtained through the use of undue influence, fraud or while the testator is incompetent. The testator will then be said to be not of "sound mind" pursuant to F.S. 732.501, and the Will will be held invalid. The laws of intestacy will then control.

Florida Homestead

Rules of intestacy apply when Florida homestead realty cannot be devised or is not devised as permitted by law. F. S. 732.4015 states that the homestead cannot be devised if the owner is survived by minor children; however a married couple with minor children may choose tenancy by the entirety ownership to avoid the prohibition that otherwise would apply if the sole owner died first. If the homestead owner cannot or does not devise as permitted by law, the homestead will pass according to intestate statutes. A homestead passes free from creditors, and this holds true as long as it passes to someone within F. S. 732.103 definitional description of heirs.

How to Avoid Intestacy

Creating a valid Will allows the testator to have authority over the disposition of his assets. Ch. 733. Making use of Will substitutes also avoids intestacy. Examples are as follows:

F. S. 689.15 Estates by survivorship
F. S. 689.11(1) Estate by entirety, Homestead
F. S. 222.13 Life Insurance
F. S. 655.79 Joint accounts
F. S. 655.82 Pay-on-death accounts
F. S. 736.0401 Trusts

B. Knowing What to Get Out of the Client Interview

Identify the client

It is important to remember the attorney represents the Personal Representative; not the estate, not the beneficiaries, not the creditors. The preferred client is one who is capable of paying attorney's fees, has authority to act as Personal Representative, is not already guilty of wrongdoing, and appears willing to seek and accept the attorney's advice. The attorney should ask within the first 15 minutes of the first meeting if the client has a felony conviction. If so, that client cannot serve as the Personal Representative pursuant to F. S. 733.303. The client must be either named in the Will to serve as Personal Representative or be elected by a majority vote of the residuary beneficiaries. If the client is a nonresident, they must be related by blood or marriage to the decedent or a spouse of a person related by blood or marriage to the decedent, F. S. 733.304. It might also be necessary to have the client appointed as Personal Representative by a probate court in another state. If land is owned by the decedent in another state, then there will be an ancillary probate in that state as well.

The following is a list of additional information to obtain from the client interview to initiate the probate process:

- List of assets
- Death certificate
- List of known creditors
- Names and addresses of beneficiaries
- Original Will (if there is one)
- Tax returns for the previous three years (if necessary)

(See sample forms in Exhibits)

Probate intake form

Sample fee contract

C. Determining the Survivors' Immediate Needs

During the initial interview, the attorney should assess immediate needs of the estate and the Personal Representative. Most of the time, it is just information that is needed first. What to do, how to proceed and how long the process will take, are all initial concerns. The attorney should gather as much information as possible during this interview and try to put the client at ease. The client should know this will be a professional and orderly process. The attorney should tell the client what to tell the other beneficiaries so that they will not continually call the client's house or the attorney's office. The attorney should instruct the client on what information to provide to the beneficiaries and how often to provide it. Immediate discussions should include how to secure the property, especially if there is real property involved. Insurance should be kept on all property and the client will want to know how to pay for that insurance. The client will learn that once the probate process starts, it may be several weeks before the Letters of Administration is signed by the judge and returned to the client. This legal document allows the client to go to the banks, deal with insurance companies and generally administer the estate. There is always that awkward lag time between the date of death of the decedent and the date the Letters of Administration is issued by the court. Bills may be due, house payments, insurance payments, and other expenses need to be taken care of. If the client has money, they can pay for those expenses out of their own pocket and be reimbursed once the Letters of Administration authorizes them to access the bank account. Sometimes, the client does not have any money and the situation is awkward. Somehow the clients seem to take care of the critical payments needed. The decedent's automobile is

another asset that should be dealt with as soon as possible. It is a liability to the estate and some insurance companies may not offer coverage once the decedent is gone. A call to the car insurance company should be made as soon as possible to determine how long insurance will last for the car and who should be an authorized driver. It might be easier to either transfer the title to the intended beneficiary or simply sell the car and remove it as an asset from the estate.

If the client is the surviving spouse or child of the decedent, they may be entitled to exempt property. The attorney should question the client about the existence of exempt property and if appropriate, file a petition to determine exempt property pursuant to F. S. 732.402(2). Additionally, the surviving spouse and certain lineal heirs have a right to receive an amount of the decedent's estate not to exceed \$18,000 to support them during the administration process. F. S. 732.403.

D. Examining the Safe Deposit Box: Identifying Important Documents

Occasionally, a client will die owning a safe deposit box held solely in their name. If the original Will cannot be located, there is a statutory procedure for opening and examining the contents of a safe deposit box. Frequently, however, the safe deposit box will be held in joint names with one of the decedent's children and this process is avoided.

A Personal Representative appointed by a court in Florida, has the right to remove any part or all of the contents upon presentation of a certified copy of the Letters of Administration. F. S. 655.936(1). A Personal Representative appointed by the court in another state, may have to wait three months after the letters are issued to obtain access to the safe deposit box.

If a safe deposit box is leased in two or more names, F. S. 655.937(4) allows the co-lessee of the safe deposit box access even if the financial institution has been advised of the decedent's death. The co-lessee is able to go into the box and empty the contents. For this reason, it would be prudent to get a complete inventory as soon as possible. F. S. 655.937(5) allows for a complete written inventory to be made by the Personal Representative in the presence of either the co-lessee, employee of the financial institution, or attorney licensed in Florida.

Upon the death of the lessee, the contents of a safe deposit box may be inventoried, F. S. 655.935. Before the appointment of a Personal Representative, with satisfactory proof of death of the lessee, a spouse, parent, adult descendant, or person named as Personal Representative by the purported Will may open and examine the contents in the presence of an officer of the lessor. Persons named in a court order also have this right. The statute allows the client to secure important documents before the appointment of a Personal Representative, F.S. 655.935(1)(a-c). The lessor may remove and deliver the following:

- Any writing purporting to be a Will, to the court having probate jurisdiction in the county in which the financial institution is located;
- Any writing purporting to be a deed to a burial plot, or to give burial instructions to the person making the request; and/or
- Any document purporting to be an insurance policy on the life of decedent, to the beneficiary of such policy.

When the decedent is the sole lessee, and access is not needed to obtain a Will, the initial opening requirements are set forth in F. S. 733.6065 and Fla. Prob. R. 5.342. An inventory of the contents must be made jointly with the Personal Representative, an employee of the lessor or Personal Representative's attorney of record. The inventory must be signed by each of them and the original inventory,

together with a copy of the box entry record, must be filed with the court within 10 days after the box is opened. The entry record must cover a period of six months preceding the decedent's date of death and continuing until the time of inventory. The inventory is to be served on the surviving spouse, each heir at law in an intestate estate, each residuary beneficiary in a testate estate, and other interested persons who have requested it in writing.

(See sample Inventory of Safe Deposit Box form in Exhibits)

E. Locating the Will and Knowing What to Do Next

It would be wise to have your clients keep a copy of their Will with their appointed Personal Representative. This allows for an efficient means to start the process. Other common places clients keep their Wills include the safe deposit box (procedures discussed above) and personal safes. They may also leave the original Will with their attorney. Upon learning of a Will maker's death, the person holding the Will, the custodian, has a duty to deposit the Will with the clerk of the court where the decedent was domiciled within 10 days, F. S. 732.901. If the Will is misplaced, lost or destroyed, any interested person may establish the full and precise terms of a lost or destroyed Will and offer the Will for probate. The specific content of the Will must be proved by the testimony of two disinterested witnesses, or, if a correct copy is provided, it shall be proved by one disinterested witness, F. S. 733.207. A correct copy is a photocopy of the signed and witnessed Will. An unexecuted computer-generated copy from the attorney's office will need the oath of two witnesses to the Will.

In order to avoid the hassles of locating witnesses to a Will, Florida statutes allow Wills to be self-proved. If the Will was signed in conformity with F. S. 732.502, it may be made self-proved at the time of its execution by the acknowledgment of

it by the testator and the affidavits of the witnesses made before a notary. If done properly, the oath of witnesses is not needed before the Will can be admitted to probate. Occasionally, a Will presents itself as one that is not self-proved. It is signed at the end by the testator and witnessed by two people, but it has not been self-proved by signing it again, witnessing it again and having all the signatures notarized. Generally, these are out-of-state Wills or ones prepared by clients who obtained forms from the Internet. Extra time and expense is needed to locate the witnesses to the Will and have them travel to the courthouse and sign an oath in front of the clerk. The rules also allow for a separate commissioner to be appointed by a Florida court in order to accept the signature of an out-of-state witness.

(See the sample forms in Exhibits)

Oath of attesting witness before the judge or clerk, 733.201(2)

(Oath of Witness to Will)

Oath of the Personal Representative or oath of disinterested party,
733.201(3) (Proof of Will)

Establishment and probate of lost or destroyed Will, 733.207

(Oath of Witness to Will-copy) even if self-proved, the oath is still required.

F. Considerations in Appointing and Counseling the Personal Representative

A statutory preference in appointment of Personal Representative is found in F. S. 733.301. In a testate estate, the Will has the primary authority to nominate a Personal Representative. If the Will is silent, then next in preference is a person

selected by a majority in interest of the persons entitled to the estate. Finally, a devisee under the Will, if more than one, then the court may select the best qualified. A person convicted of a felony or who, from sickness, impertinence or want of understanding, is incompetent to discharge duties of the Personal Representative is not qualified to serve as Personal Representative, F. S. 733.302. An individual may be considered unsuitable to administer the estate, even if named in the Will, if there is an adverse interest of some kind, hostility to those immediately interested in the estate, or an interest adverse to the estate itself, *Schleider v. Estate of Schleider*, 770 So.2d 1252 (Fla. 4th DCA 2000).

In an intestate estate, the surviving spouse has first priority of appointment. Then a person selected by a majority in interest of the heirs, then to the heir nearest in degree, if more than one, then the court may choose the best qualified. As discussed above, it is important to make sure your client is capable of being the Personal Representative by falling into one of these categories, and hopefully enjoying the highest degree of preference.

A Personal Representative must file an oath that he or she will faithfully administer the estate of the decedent, Fla. Prob. R. 5.320. This oath must be executed and filed before the Letters of Administration will be granted.

(See Exhibits for Oath of Personal Representative)

The role of the Personal Representative is to take possession of all of the decedent's property except protected homestead, marshal the assets, recover and administer the assets. The Personal Representative has the right to demand funding from the Trustee of a revocable Trust to pay expenses if adequate assets do not remain after providing for statutory entitlements to all devisees other than residual devisees, F. S. 733.607.

Section 733.612 grants a list of powers the Personal Representative may use without court order. The significant asset not covered under this rule is the transfer or encumbrance of real property where the power is not provided for in the governing instrument such as the Will. Section 733.613 grants the Personal Representative the authorization to sell real property. In an intestate estate or where the Will's real estate sale provision is inadequate, a court order authorizing or confirming the sale is necessary. In the testate estate, where the Personal Representative's power to sell realty is granted adequately, title will pass without court order. Whether by power in the Will or by court order, the buyer takes title free of claims of creditors and beneficiaries, but mortgages and other liens are not affected. The Personal Representative is protected from the rise and fall of the asset market. In *Baker v. Vidoli*, 751 So.2d 608 (Fla. 2d DCA 1999), the Personal Representative had the authority to sell the estate's securities because the decedent's Last Will and Testament contained a power of sale clause that encompassed the sale of securities. The Personal Representative sold the securities and in a short period of time, the securities dramatically increased in value. The court reasoned that to require a Personal Representative to accurately predict the rise and fall of the stock market would constitute an unrealistic burden and could foreseeably result in litigation in nearly every estate in which marketable securities are an estate asset.

Marshalling, safeguarding, and inventorying of assets are a few of the first jobs of the Personal Representative. Estate assets should be identified, recovered from other parties, protected or insured. Keys, passwords, records, papers and all other important information should be gathered. If valuable assets are subject to theft, they should be stored in a secure, insured location. Once the estate assets are properly identified, an inventory must be filed with the probate clerk's office and a copy sent to other interested beneficiaries. The inventory must include an

estimated value of the assets. In most estates, a guesstimated value of personal items will be sufficient. However, if there is a fight over the personal property, an estate appraisal should be done. All real property should be appraised by a state certified real estate appraiser. This appraisal should be done with only a few exceptions. The cost of the appraisal runs around \$400 per residential appraisal. This appraisal sets the date of death value so that in the future, when the property is sold, the cost basis has been determined as of the date of death. If the estate will not be liable for death taxes, the appraisal should be on the high-end of the appraiser's subjective limit. This means fewer capital gain taxes will be due when the property is sold.

G. Practical Tips for Obtaining Information Concerning Assets

Occasionally, a decedent dies and his son has been doing his taxes for the past four years. The son, who eventually becomes the Personal Representative of the estate, is intimately familiar with all of the decedent's assets, taxes and liabilities. The son, for the past four years, has had all of decedent's mail forwarded to his home. In this instance, the future Personal Representative knows everything about the decedent's estate. Unfortunately, most estates do not follow this pattern. The son gets a call that his father has passed away. The son drives into town and has to hire a locksmith to open the door to his father's house. Upon entering the house, he sees a neglected disheveled mess. Thousands of envelopes are stacked together with rubber bands. Many are unopened. This future Personal Representative has no idea what assets his dad owned. He is not sure how the house is titled or if there is a mortgage. He does not know the location of any bank, brokerage, savings or money market accounts.

It will take countless hours to sort through this mess. I suggest three boxes be placed in each room. The first box should be labeled "keep." Any account

statement that seems recent or reflects an asset, should be kept in this box. The second box should be labeled "I don't know." Any asset statement or paper that you are not sure about should be placed in that box. The third box, which should be the largest box, is labeled "discard." Once the relevant paperwork has been reviewed and placed in the appropriate box, it should then be placed in a three ring binder. Each asset should have a separate tabbed section. All future statements should be placed in that separate tabbed section. Cash accounts, brokerage accounts and deeds should each have a separate tabbed section.

Bank statements for the last 12 months should be reviewed. Post office box payments, safe deposit box payments and any other periodic payments should be reviewed. These payments may indicate a separate location for assets or additional assets that do not provide monthly statements. The tax returns for the prior three years should be reviewed to search for additional assets. If the decedent has received an inheritance, a review of the prior decedent's inventory might provide information regarding additional assets and their value. If the decedent was divorced in the past five years or so, a review of the divorce decree and inventory might be appropriate. Insurance forms detailing specifically insured items would be relevant. Asset and liability statements as well as a statement of net worth could identify additional assets.

H. Renunciations and Election of Statutory Share

A surviving spouse has certain statutory rights under Florida law. If the surviving spouse is not satisfied with the assets left to him or her at the decedent's death, an election can be made to take part of the decedent's estate, regardless of what the Will says. This right, in Florida, is called an elective share and is governed by F. S. 732.201. It is available to spouses who are unhappy with what they have been left, as well as those estates that have been drawn in such a way the election will

result in a substantial increase in the marital deduction, thus reducing inheritance taxes. The elective share shall be in addition to the homestead, exempt property and other allowances provided by statute, F. S. 732.2105. Fla. Prob. R. 5.360 prescribes the procedure to be followed by the Personal Representative or the surviving spouse in petitioning for a determination of entitlement to and the amount of the elective share.

The elective share is an amount equal to 30% of the elective estate, F. S. 732.2065. This right can be waived with a valid pre-nuptial agreement or a valid post-nuptial agreement, F. S. 732.2155. If the prior waiver has not been made, then a surviving spouse must make an affirmative election to take the elective share within six months after service of the copy of the Notice of Administration on a surviving spouse, F. S. 732.2135. The elective share process is an adversary proceeding under Fla. Prob. R. 5.025(a).

Once the election is made, the Personal Representative has a duty to determine the property entering into the elective estate. The elective estate includes the decedent's probate estate, F. S. 732.2035(1). The probate estate is defined as all property wherever located that is subject to the administration in any state of the United States or the District of Columbia, specifically, including real estate in other states. The value of the probate estate is its fair market value on the date of decedent's death, less any claims paid or payable from the probate estate, and any mortgages, liens, and surety interests on the property. Administrative expenses are not deducted, F. S. 732.2055(5).

The elective estate includes the decedent's ownership interest in accounts or securities registered as payable on death (POD), transfer on death (TOD), in Trust for, or co-ownership with right of survivorship. The decedent's ownership interest means one-half of the value of accounts or securities held as tenants by the

entirety and the portion of the accounts or securities which the decedent had, immediately before death, the right to withdraw or use without any duty to account to any person. This means the entire balance of any joint account where the decedent contributed all the money would be used to determine the elective share, F. S. 732.2035(2). Likewise, the decedent's fractional interest in all real property held in joint tenancy or tenancy by the entirety shall be included in the elective estate, F. S. 732.2035(3).

Property held in a revocable Trust is included in the elective estate, F. S. 732.2035(4). Certain irrevocable transfers by the decedent are also included, F. S. 732.2035(5). However, an irrevocable Trust established by the decedent's parents, for example, would not be included. The cash value of any life insurance owned by the decedent and all retirement accounts and other retirement benefits are also included, F. S. 732. 2035(6) & (7). Gifts made within one year of the decedent's death are included. The IRS gift annual exclusion amount, as well as, payment for medical or educational expenses pursuant to IRS gift exclusions, are excluded.

Once the elective estate is determined after excluded items and proper reductions are made pursuant to statute, the spouse will then receive 30% of that amount. However, if the spouse has received certain assets as a result of the decedent's death, then those amounts shall be applied against the outstanding elective share amount, F. S. 732.2095. Depending on the nature of assets held in the estate, there may not be sufficient probate assets to satisfy the elective share claim. In this case, the statute provides for an apportionment clause setting forth the liability for the payment of the unsatisfied balance among other direct recipients of property included in the elective estate, F. S. 732.2075(2).

I. Using Disclaimers Correctly

F. S. 739, the Florida Uniform Disclaimer of Property Interests Act, repeals the statutory disclaimer once found at F. S. 689.21 & F. S. 732.801. It was repealed July 1, 2005. Disclaimer means the refusal to accept an interest in or power over property. The term includes a renunciation. The alleged beneficiary may disclaim property as well as fiduciaries and guardians. Succession to a property interest, powers of appointment, spend thrift benefits, right of survivorship interest and tenancy by the entirety interests, may all be disclaimed. A partial interest may also be disclaimed.

The disclaimer must be made in writing. It must specifically describe the disclaimed interest and that the person disclaiming is giving up this interest. It must be signed and witnessed and acknowledged in the manner for the conveyance of real property, F. S. 739.104(3). It may be made any time, unless barred by F. S. 739.401, 402. Disclaimers relating to the IRS must be made within six months from receiving the asset.

When the interest being disclaimed is created under the laws of intestate succession or by Will, the disclaimer must be delivered to the Personal Representative of the decedent's estate, F. S. 739.301(2). If no Personal Representative has been appointed, the disclaimer is to be filed with the clerk of court in the county where venue of administration is proper, F. S. 739.301(2).

When the disclaimer is by a surviving holder of jointly held property, or by the surviving tenant in property held as tenancy by the entirety, the disclaimer **MUST** be delivered to the person whom the disclaimed interest passes, or, if they cannot find them, to the Personal Representative of the decedent's estate, F. S.

739.301(7). If no Personal Representative has been appointed, the disclaimer is to be filed with the clerk.

A disclaimer is effective when the original is delivered and filed as required by F. S. 739.301, F. S. 739.104(3). The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable. If interest is created under intestate succession, it takes effect at the time of decedent's death, F. S. 739.201. A disclaimer becomes irrevocable when any conditions expressly stated in writing by the person disclaiming are satisfied and when the disclaimer is delivered or filed pursuant to F. S. 739.301. Once an interest has been disclaimed, the person disclaiming no longer has any interest or control over the property. If the disclaimed interest occurs in a Will, the Will will be read as if the person disclaiming predeceased the decedent. Any interest will then pass as though the person disclaiming was not then living when the decedent died and that interest will pass to the next heir in line to receive the asset had the person disclaiming not been living.

J. Notice Requirements

Giving notice is relentless. It serves as a receipt of proof that correspondence has been lawfully attempted. It also adheres to the tenants of fairness by assuring interested parties have notice of a potential right in conflict. Here is a list of relevant statutes and probate rules that not only have been referenced in earlier sections but will help archive the notice requirements during a probate administration in one list.

Notice of accounting

Final 5.345(b), 5.400(c), 5.340(h)

Interim 5.345(b)

Notice of petition for administration 5.201, 733.2123

Contents 5.240(b), 733.212(2)

Objections 5.230(e), 5.240(b)(3), (d), 733.212(2)-(3), 733.2123

Service 5.240(a), (e), 733.212(1), (5)-(7)

Waiver 5.240(e), 733.212

Notice of adversarial proceedings 5.025(b)(4), (d)(1)

Notice of ancillary administration 5.065(b)-(c), 5.470(b), 734.102(1)

Notice of appointment of:

-Ancillary PR 5.470(b), 734.102(1)

-guardian 5.560(b), 744.331(1)

PR 5.201, 733.212

Notice to creditors

5.241, 5.260(e), 5.475(b), 733.2121, 733.701, 734.102(5), 734.1025(2),
735.206(2), 735.2063

Notice defined at 5.015(b)(2)-(b)(3), 5.040(c), 731.201(22)

Notice of determination of beneficiaries and shares 5.385

Notice of discharge of PR 5.400(c)

Notice of disqualification of PR 733.3101

731.301 Notice - Notice and Representation

-remind of effect of (3)

Notice of elective share 5.360(a)-(b)

Notice of lost or destroyed will 5.510(d)

Notice of estate tax and federal 5.393

Notice of fee petitions 5.120(d), 744.108(6), 744.641

Notice of final accounting 5.400(c)

Notice of possession of homestead by PR

Contents 5.404(b)

Filing 5.404(a)

Service 5.404(c)

Request for notice and copies of pleadings 5.060

FORMAL NOTICE for:

Adversarial proceeding 5.025(b)(3), (d)(1)

Ancillary proceeding 5.470(b)

Destroyed/lost Will proceeding 5.510(d)

Elective share 5.360(a)(2)(B), (b)(3)

Notice of admin 5.240(a), 733.212

Taking possession of protected homestead 5.404(c)

Defined 5.015(b)(2), 5.040(a), 731.201(8)

Generally 5.040(a), 731.301(2), 744.106

Waiver of formal 5.180, 731.302

INFORMAL

Defined 5.015(b)(3), 731.210(22)

Generally, 5.040(a)(2), (b)

Service 5.040(b)

Waiver 5.180

Resignation of personal rep 5.430(c), 733.502

Sale of real property 5.370(b)

Summary admin

Notice to creditors 735.2065

III. CONSIDERATIONS FOR COLLECTING THE ASSETS, PREPARING THE INVENTORY AND HANDLING CLAIMS AGAINST THE ESTATE

A. Practical Procedures for Opening Estate Accounts

Once the estate has been opened and the Letters of Administration issued, you may apply for an Employee Identification Number (EIN) for your client. This will be discussed in detail in the next section. Advise the client to take the EIN, along with a copy of the Letters of Administration, to the bank. The Personal Representative should ask the bank to open an "Estate Account," and list themselves as the Personal Representative for the estate. The Personal Representative should then transfer any monies held in the decedent's name only, to that estate account. Accurate and legible receipts for any and all expenses paid from the estate account should be kept. At the end of the probate, the Personal Representative may be required to furnish copies of bank statements for the duration of the probate and explain all transactions that have occurred.

Practice tip: advise your client to be diligent in this task. It will serve to protect him from liability, should anyone question his spending.

If there is no money in the estate to start the estate account, the Personal Representative can "loan" money from his personal account. This money will be reimbursed before the estate closes.

B. Obtaining Tax Identification Number and Title to Assets

After the Letters of Administration have been issued, the newly appointed Personal Representative will then have the authority to locate and take possession of the decedent's assets. Generally, the first order of business is to convert the

decedent's checking, savings and other cash accounts into an estate account. In order to do this, a separate estate tax identification number called an EIN, will have to be obtained. Since the decedent is dead, his or her Social Security number is no longer used. A copy of the IRS Form SS-4 is attached. This form is used to obtain the EIN from the IRS. Once this form is completed and signed by the Personal Representative, it is then forwarded to the IRS to await their assignment of a new number. To shortcut this procedure, the Personal Representative's attorney can prepare a third- party designee authorization, which allows this EIN to be obtained online in a matter of minutes. A copy of the third-party designee authorization form is attached.

IRS form SS-4 and Third Party Designee form:

Form SS-4 (Rev. January 2010) Department of the Treasury Internal Revenue Service	Application for Employer Identification Number (For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.) ▶ See separate instructions for each line. ▶ Keep a copy for your records.	OMB No. 1545-0003 EIN _____
Type or print clearly.	1 Legal name of entity (or individual) for whom the EIN is being requested	
	2 Trade name of business (if different from name on line 1)	3 Executor, administrator, trustee, "care of" name
	4a Mailing address (room, apt., suite no. and street, or P.O. box)	5a Street address (if different) (Do not enter a P.O. box.)
	4b City, state, and ZIP code (if foreign, see instructions)	5b City, state, and ZIP code (if foreign, see instructions)
	6 County and state where principal business is located	
	7a Name of responsible party	7b SSN, ITIN, or EIN
	8a Is this application for a limited liability company (LLC) (or a foreign equivalent)? <input type="checkbox"/> Yes <input type="checkbox"/> No	
	8b If 8a is "Yes," enter the number of LLC members _____ ▶	
	8c If 8a is "Yes," was the LLC organized in the United States? <input type="checkbox"/> Yes <input type="checkbox"/> No	
	9a Type of entity (check only one box). Caution. If 8a is "Yes," see the instructions for the correct box to check.	
<input type="checkbox"/> Sole proprietor (SSN) _____ <input type="checkbox"/> Estate (SSN of decedent) _____ <input type="checkbox"/> Partnership <input type="checkbox"/> Plan administrator (TIN) _____ <input type="checkbox"/> Corporation (enter form number to be filed) ▶ _____ <input type="checkbox"/> Trust (TIN of grantor) _____ <input type="checkbox"/> Personal service corporation <input type="checkbox"/> National Guard <input type="checkbox"/> State/local government <input type="checkbox"/> Church or church-controlled organization <input type="checkbox"/> Farmers' cooperative <input type="checkbox"/> Federal government/military <input type="checkbox"/> Other nonprofit organization (specify) ▶ _____ <input type="checkbox"/> REMIC <input type="checkbox"/> Indian tribal governments/enterprises <input type="checkbox"/> Other (specify) ▶ _____ Group Exemption Number (GEN) if any ▶ _____		
9b If a corporation, name the state or foreign country (if applicable) where incorporated	State _____ Foreign country _____	
10 Reason for applying (check only one box)		
<input type="checkbox"/> Started new business (specify type) ▶ _____ <input type="checkbox"/> Banking purpose (specify purpose) ▶ _____ <input type="checkbox"/> Hired employees (Check the box and see line 13.) <input type="checkbox"/> Changed type of organization (specify new type) ▶ _____ <input type="checkbox"/> Compliance with IRS withholding regulations <input type="checkbox"/> Purchased going business <input type="checkbox"/> Other (specify) ▶ _____ <input type="checkbox"/> Created a trust (specify type) ▶ _____ <input type="checkbox"/> Created a pension plan (specify type) ▶ _____		
11 Date business started or acquired (month, day, year). See instructions.	12 Closing month of accounting year	
13 Highest number of employees expected in the next 12 months (enter -0- if none). If no employees expected, skip line 14.	14 If you expect your employment tax liability to be \$1,000 or less in a full calendar year and want to file Form 944 annually instead of Forms 941 quarterly, check here. (Your employment tax liability generally will be \$1,000 or less if you expect to pay \$4,000 or less in total wages.) If you do not check this box, you must file Form 941 for every quarter. <input type="checkbox"/>	
Agricultural _____ Household _____ Other _____		
15 First date wages or annuities were paid (month, day, year). Note. If applicant is a withholding agent, enter date income will first be paid to nonresident alien (month, day, year) _____ ▶		
16 Check one box that best describes the principal activity of your business.		
<input type="checkbox"/> Construction <input type="checkbox"/> Rental & leasing <input type="checkbox"/> Transportation & warehousing <input type="checkbox"/> Health care & social assistance <input type="checkbox"/> Wholesale-agent/broker <input type="checkbox"/> Real estate <input type="checkbox"/> Manufacturing <input type="checkbox"/> Finance & insurance <input type="checkbox"/> Accommodation & food service <input type="checkbox"/> Wholesale-other <input type="checkbox"/> Retail <input type="checkbox"/> Other (specify) _____		
17 Indicate principal line of merchandise sold, specific construction work done, products produced, or services provided.		
18 Has the applicant entity shown on line 1 ever applied for and received an EIN? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes," write previous EIN here ▶ _____		
Third Party Designee	Complete this section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.	
	Designee's name	Designee's telephone number (include area code) ()
	Address and ZIP code	Designee's tax number (include area code) ()
Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.		Applicant's telephone number (include area code) ()
Name and title (type or print clearly) ▶		Applicant's tax number (include area code) ()
Signature ▶ _____ Date ▶ _____		

ONLINE EMPLOYER IDENTIFICATION NUMBER APPLICATION
THIRD PARTY DESIGNEE AUTHORIZATION

AUTHORIZATION BY PERSONAL REPRESENTATIVE

THE UNDERSIGNED, _____ does hereby understand and authorize an
employee of the Law Office of _____ to apply for and receive an Employer
Identification Number on my behalf for the **ESTATE OF** _____.

EXECUTED this _____.

Personal Representative

The EIN will be used to obtain possession and control of all bank and brokerage accounts. The Personal Representative will present to the bank, a copy of the Letters of Administration, the new EIN and a copy of the death certificate. The bank will bring out a new signature card for the Personal Representative to sign. All of the decedent's assets will then be transferred into the estate account and the Personal Representative will have total control over the assets to do whatever is necessary to handle the estate business. The bank will no longer have any control or oversight over those accounts. Likewise, once the brokerage accounts have been transferred into the estate account, the brokerage firm will no longer have any control over how the Personal Representative handles the assets in the brokerage account. The Personal Representative may close the account, convert all assets to cash, move the account to another broker or let the stocks sit status quo.

The general rule is that all assets owned by the decedent should be re-titled and transferred into the estate account, except real property. Land stays titled in the decedent's name until the appointed Personal Representative transfers that title out to the appropriate beneficiary or sells the property to a third party. This transfer occurs when the Personal Representative executes a Personal Representative's deed.

Practice pointer: The Personal Representative makes transfer of these assets "in-kind" to the appropriate beneficiary. Simply put, a brokerage account held by the decedent until his death will be divided into equal parts by the broker. Each beneficiary will open an account with that broker and have their share moved into their own account. Once there, the beneficiary may keep the account with that broker, liquidate the account, or move the account to their own separate broker.

C. Canceling Utilities and Credit Cards

As a practical matter, most modest and small estates include only one parcel of land, the decedent's home. It is generally never appropriate to terminate the utilities to the decedent's home. All major appliances including the air-conditioner, refrigerator, freezer and any other appliances that need electricity, will be left dormant. The contents of the refrigerator and freezer will spoil and the house will accumulate massive amounts of humidity, and mold will start to grow. One of the first priorities of the Personal Representative, even before formal appointment, is to ensure that the utilities are paid and the power stays on. When the Personal Representative makes distribution of the house to an outside buyer, or distribution to a beneficiary, the deed will act as the transferring document. The new owner will then contact the utility company and have the utilities transferred into their own account.

One of the duties of the Personal Representative is to locate any and all potential creditors. This includes a thorough review of the decedent's credit cards. The Personal Representative should first examine the decedent's wallet. A review of all mail for the past six months should be made to determine what credit card bills are currently outstanding. If the charges on the credit cards are unchallenged and justified, then payment should be made for the full balance. This payment should be sent with a death certificate indicating the account should be closed.

D. Best Strategies for Preparing the Inventory

A Personal Representative is required to file an inventory of the property of the estate, F. S. 733.604(1). The inventory shall include all property of the estate. That is, all property subject to administration, F. S. 731.201(14). This property shall be listed with sufficient detail and include for each item the fair market value

at the decedent's date of death, F. S. 733.604(1), Fla. Prob. R. 5.340 indicates a miscellaneous requirement to list the protected homestead and its description, but not include a value, Fla. Prob. R. 5.340(a).

All real and personal property of the decedent, except protected homestead within this estate, and the rents, income, issues, and profits from it are to become "assets in the hands of the Personal Representative", F. S. 733.607, F. S. 733.608(1).

The Personal Representative has a duty to locate all of the decedent's assets. The Personal Representative should start with the decedent's bank to locate the checking, savings, money market and CD's. Also, a determination should be made if the decedent had a safe deposit box, F. S. 655.935, F. S. 655.936, F. S. 733.6065, & Fla. Prob. R. 5.342. The mail should be checked to locate bank statements, brokerage statements and any other investment statements. The county property appraiser's website can be used to determine if the decedent owned any other property in that county. If the mail or any of the decedent's other records indicate property may be located in another county, then that county's real property records can be searched as well. The Personal Representative is authorized to receive assets and information from fiduciaries and other sources such as the decedent's accountant, broker and banker, F. S. 733.612(3).

Occasionally, an asset is located, but its possession or rightful ownership is in dispute. This could be a tool in the decedent's garage or cash in a checking account. The Personal Representative has the duty to stockpile the decedent's assets, make an accounting of all of them, and then distribute them according to either a Will or intestate laws. The Personal Representative shall take all steps necessary for the management of the estate until distribution and may maintain an

action to recover possession of property or to determine the title to it, F. S. 733.607(1).

Common causes of action used in these matters include:

Conversion

Civil theft

Replevin

Restitution

Relevant case law:

Perez v. Lopez, 454 So.2d 777 (Freezing assets)

In re *Estate of Katz*, 501 So. 2d 68 (Turnover of disputed assets to the Personal Representative)

Conger v. Conger, 414 So.2d 230 (Injunctions freezing assets claimed to belong to decedent's estate, though ownership was in dispute)

The Personal Representative is required to settle and distribute the estate as expeditiously and efficiently as is consistent with the best interests of the estate and for the best interest of interested persons, including creditors, F. S. 733.602(1). The Personal Representative is a fiduciary and must adhere to Standards of Care applicable to Trustees, F. S. 733.602(1), and Standards of Care as codified in the Prudent Investor Rule 518.11. The Personal Representative acts without court order pursuant to F. S. 733.612. The Personal Representative may retain assets owned by the decedent, F. S. 733.612(1). He may perform, compromise, or when proper, refuse to perform decedent's contracts, F. S. 733.612(2). He may invest funds, provided such investments are in accordance with the prudent investor rule, F. S. 733.612(4) and sell or exercise stock subscription or conversion rights, F. S. 733.612(17).

The Personal Representative has the authority to prosecute or defend claims or proceedings for the protection of the estate and of the Personal Representative, F. S. 733.612(20), F. S. 733.607(1). Several examples include the Personal Representative defending a surviving spouse's elective share claim. The Personal Representative may object to creditor claims and pursue a former Personal Representative who has stolen money from the estate.

Once the inventory is completed and prepared, it must be sent to all "interested persons" pursuant to F. S. 731.201(21) as "any person who may reasonably be expected to be affected by the outcome of the particular proceeding". The Personal Representative shall file an Inventory of the estate within 60 days after the issuance of Letters of Administration, Fla. Prob. R. 5.340(a). The service of a copy of the Inventory is separate and in addition to publishing a Notice to Creditors. The Personal Representative is required to serve a copy of the Inventory and all supplemental and amended inventories on the spouse, the heirs at law in intestate estate, the residuary beneficiaries of a testate estate and any other interested person that requests it. Additionally, government agencies such as the IRS, Agency for Healthcare Administration (HCA) and the Department of Revenue are entitled to a copy.

All interested parties should be served a copy of the Inventory by mail or hand delivery as described in Fla. Prob. R. 5.041(b). If the beneficiary or creditor is being represented by an attorney, then service is required to be made on the attorney. Proof of service is defined in Fla. Prob. R. 5.041(d)-(f).

The Personal Representative is required to furnish any beneficiary, upon reasonable written request, a written explanation of how the inventory value for an asset was determined, including copies of appraisals, F. S. 733.604(3), Fla.

Prob. R. 5.340. The right for a beneficiary to request the above is dependent upon the beneficiary's interest in the assets. For example, a residual beneficiary, or heir to an intestate estate can request information regarding all inventoried assets, whereas others, such as specific devisees, can only request information about their asset.

Although the homestead usually passes outside the administration process, there is an exception. F. S. 733.608(2) states that if the homestead is not occupied by a person who appears to have an interest in it, the Personal Representative may (is authorized, but not required) take possession of the homestead for the limited purpose of preserving, insuring, and protecting it for the person having the interest. See Fla. Prob. R. 5.404 for “Notice of taking possession of protected homestead.” If, in the process of securing the homestead for the interested parties, the Personal Representative spends money to preserve and maintain the property, the Personal Representative may file a lien and be reimbursed, F. S. 733.608(3)-(12). The procedures for this lien recovery are found in Fla. Prob. R. 5.402, 5.403.

(See sample INVENTORY in Exhibits)

E. Medicare, Insurance Claims and Public Assistance: Understanding the Paperwork Involved

Center for Medicare and Medicaid services (CMS) and the Medicare as Secondary Payer statute (MSP) 42 U.S.C. § 1395(b)(2)(B)(ii) should be reviewed. Government may recover under this clause from any entity that has received payment from a primary plan or from the proceeds of a primary plan's payment to an entity, 42 C.F.R. 411.24(g). CMS has the right of action to recover its

payments from any entity, including a beneficiary, provider, supplier, physician, attorney, state agency, or private insurer that has received primary payment.

Public assistance payments do constitute a debt of recipient. F. S. 414.28(1) states the acceptance of public assistance creates a debt of the person accepting assistance, which debt is enforceable only after the death of the recipient. The debt created is only enforceable by a claim filed against the estate of the recipient or by suit to set aside a fraudulent conveyance. The claim can be for the total amount of public assistance paid to or for the benefit of such recipient. Section (3) of the statute defines "presumed intent" as a transfer or encumbrance for an inadequate consideration made within six months immediately preceding the death of the transferor. It is presumed to have been made with the intent of defeating or hindering the claim of the department.

"Medicaid Third-Party Liability Act" F. S. 409.910, can create a significant claim in the estate. The basic premise is that the recipient of public assistance constitutes a debt of the recipient (amounts paid unrelated to the incident that caused the settlement), which is enforceable only after the death of the recipient. Upon the death of a recipient, and within the time prescribed by F. S. 733.702 and F. S. 733.710, the agency, in addition to any other available remedy, may file a claim against the estate of the recipient for the total amount of medical assistance provided by Medicaid. Claims so filed, shall take priority as Class 3 claims, F. S. 733.707(1)(c). The agency must receive actual notice. The estate is required to file a Notice to Creditors with the agency if the decedent is over the age of 55 years. The estate attorney may have personal liability if this is not done.

F. S. 733.707(1)(c) defines a Class 3 expense as debts and taxes with preference under federal law, and claims pursuant to ss. 409.9101 and 414.28.

F. Priority of Concern: Following the Chain of Command in Allowances, Claims and Taxes

The Personal Representative shall promptly publish a Notice to Creditors, which requires filing claims within the later of three months after the date of first publication or 30 days after the date of service of the copy of the Notice to Creditors, F. S. 733.2121. This publication shall be done once a week for two consecutive weeks in a local newspaper. The Personal Representative has a duty to make a diligent search to determine the names and addresses of creditors who are reasonably ascertainable and serve on those creditors, a copy of the Notice to Creditors within three months after the first publication. If the Personal Representative, in good faith, fails to give notice required by this section, the Personal Representative is not liable to any person for the failure. Liability for any failure is on the estate, F. S. 733.2121(e). If the decedent is over the age of 55 years, service of Notice to Creditors on the Agency for Healthcare Administration (HCA) is required. Likewise, service of Notice to Creditors or service of the Inventory on the Department of Revenue is also required. If the creditors are known or reasonably ascertainable, they must be served notice. If they are not served notice, they will be able to maintain a claim in the estate, *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988).

The Personal Representative is required to pay the claims within one year from the first date of publication. Within four months after the first publication date, any interested party may file an objection to paying a claim. The Personal Representative cannot be forced to pay claims within the first five months after the first publication date. The claimant has 30 days after service of the objection to file an independent action. If an independent action is filed, the Personal Representative must file Notice of Civil Action with service on all interested parties, F. S. 733.705.

F. S. 733 .707 sets forth the priorities of payment of the estate expenses and obligations in a series of eight classes:

1. Cost, administrative expenses, Personal Representative and attorney fees;
2. Funeral expenses not to exceed \$6,000;
3. Debts and taxes with preference under federal law and claims under Section 409.9101 and Section 414.28 (Medicaid and public assistance recoveries);
4. Hospital and medical expenses for the last 60 days of last illness of decedent;
5. Family allowance;
6. Arrearage from court-ordered child support;
7. Debts acquired after death from continuation of decedent's business in accordance with Section 733.612, but only to the extent of the assets of that business; and
8. All other claims, including those based on judgments and the excess over limitation above in 2 and 4.

Two years after death, the estate is not liable for claims against the decedent or the estate except where a creditor has properly filed a claim according to law, which is unpaid, or a mortgage or other properly perfected lien is unpaid. F. S. 733.710.

The claim statute eliminates late-filed claims even without objection. However, it is best to serve 30-day late-claim notice on creditors to eliminate the two-year rule. Petitions to strike are now mostly obsolete, *HCA New Port Richey Hospital v. Estate of Boschelli*, 588 So.2d 1012 (Fla. 2d DCA 1991).

There are several taxes which can encumber an estate. The decedent's 1040 tax return for the year of death and possibly for the prior year will be due. Any income earned by the estate will be identified on a 1041, fiduciary tax return. In Florida, there may be intangible taxes due for the year of death and for the prior year. If the estate is greater than the federal unified estate tax rate, assumed to be \$3.5 million in 2011, an inheritance tax return, Form 706, shall also be due. The Personal Representative is personally liable for these taxes as well as taxes for prior years due on the decedent's 1040 tax return. The Personal Representative has a duty to identify any prior taxes owed and use the estate assets to satisfy the debt. If the estate assets are insufficient, the heirs will not get their money and the Personal Representative will be relieved of any further liability. However, if the Personal Representative has given estate assets to beneficiaries, with taxes due, the Personal Representative will be personally liable for those taxes.

After all valid debts, taxes and expenses have been paid, assets remaining in the estate should be disbursed to the appropriate recipients. The estate is not required to make distribution to any beneficiary until expiration of five months from the date letters are granted, F. S. 733.801. Unless the Will says otherwise, the Personal Representative pays, as an expense of administration, reasonable expenses of storage, insurance, packing, and delivery of tangible personal property to a beneficiary, F. S. 733.8 01(b). Specifically or demonstratively devised assets shall be paid or distributed first. Next will be assets not specifically or demonstratively devised and then assets devised to the residuary devisees. The last order of distribution shall be the assets not disposed of by Will to the residuary devisees, F. S. 733.805. In *Estate of Mahaney*, 903 So.2d 234 (Fla. 2d DCA 2005), the testator's homestead, which was the sole asset of her estate, could not be used to satisfy a \$30,000 devise out to the testator's grandniece. Rather, it passed to testator's nephew pursuant to the Will's residuary clause, even if the devise to the grandniece was a general devise. The rules

governing homestead property control over the rules governing priority of devisees, and the homestead never became an asset in the estate.

Final accounting, if not waived, should show and account for all estate assets, principal and income. Fla. Prob. R. 5.346 specifies that all cash and property transactions from the commencement of the administration, shall be shown on the fiduciary accounting. The accounting shall also indicate the assets on hand at the end of the accounting period. The accounting shall be stated in a manner that is understandable to persons who are not familiar with practices and terminology specific to the administration of estates and Trusts. The accounting shall begin with a concise summary of its purpose and content. The accounting shall show gains and losses incurred during the accounting period as well as significant transactions involving disbursements (payment of expenses), and distributions (payment to beneficiaries).

The Personal Representative can be held personally liable for waste of assets, misappropriation and self-dealing. These duties are the same duties as a Trustee exercises when administering a Trust. Any damage or loss to the estate by breach of this duty by the Personal Representative, will result in the Personal Representative being held responsible, F. S. 733.609.

After the administration has been completed, the Personal Representative shall be discharged. This discharge of the Personal Representative shall release the Personal Representative and shall bar any action against the Personal Representative as such or individually, and the surety, F. S. 733.901.

EXHIBITS

CHECKLIST - COMMENCING AN ESTATE - FORMAL ADMINISTRATION

ESTATE OF _____ Case No. 2010-CP Division _____

Check Points:

Will for Safekeeping _____ 732.901 Deposited Will _____ Guardianship # _____ Div _____ Caveat _____
731.110 [If an heir-notify attorney, must serve formal notice before further action may be taken 5.260(f); If a creditor-send Notice to Caveator when Letters are issued 5.260(e)]

I. DOES THE PETITION CONTAIN THE FOLLOWING INFORMATION:

- ___ A statement showing interest of petitioner 5.200(a)
- ___ Petitioner's name and address 5.200(a)
- ___ Petitioner's attorney's name and office address 5.200(a)
- ___ Name of decedent 5.200(b) ___ A/K/A's
- ___ Last known address of decedent 5.200(a)
- ___ Decedent's social security number 5.200(b)
- ___ Date and place of death of the decedent 5.200(b) DOD _____
- ___ State and county of decedent's domicile 5.200(b)
- ___ Name, address of surviving spouse, if any, and beneficiaries/heirs 5.200(c)
- ___ Relationship to the decedent 5.200(c)
- ___ If Trust/Trustee is a beneficiary, has Notice of Trust been filed? 736.05055(1)
- ___ Date of birth of any minor beneficiaries 5.200(c)
- ___ Statement of venue 5.200(d)
- ___ A statement showing approximate value and nature of assets 5.200(g)
- ___ A statement as to whether domiciliary proceedings are pending in another state or country 5.200(f)
- ___ Name and address of foreign personal representative and Court issuing letters, if any 5.200(f)
- ___ A statement in an Intestate estate that: 5.200(h)
 - ___ Petitioner is unaware of any unrevoked will or codicils, or; 5.200(h)
 - ___ Why the wills, or codicils are not being probated, or 5.200(h)
- ___ A statement in a testate estate that: 5.200(i)(j)
 - ___ Identify all unrevoked wills and codicils being presented for probate 5.200(i)
 - ___ Petitioner is unaware of any other unrevoked will or codicil 5.200(i)
 - ___ A Statement of why any other wills or codicils are not being probated 5.200(i)
 - ___ The original of decedent's will () is in possession of Court; () accompanies petition; or () an authenticated copy of will deposited with or probated in another jurisdiction accompanies petition 5.200(j)
- ___ Establishment and probate of lost or destroyed will 733.207/5.510
 - ___ Copy of will 5.510(b) ___ Testimony of witness 5.510(c)/733.207
 - ___ Notice to those who, but for the Will, would inherit 5.510(d)
 - ___ Order states full terms & provisions 5.510(e)
- ___ Ancillary Administration 734.102/5.470
 - ___ Authenticated copies: () Will, () Petition, () Order admitting will: () Letters 5.470(a)(1)
 - ___ Formal notice 5.470(b)(1)/(2)

II. DOES THE PETITION SHOW PRIORITY OF PETITIONER TO SERVE AS PERSONAL REPRESENTATIVE: 5.200(e)

- INTESTATE:** 733.301(1)(b)
- ___ Surviving spouse 733.301(1)(b)1.
 - ___ Selected by majority in interest of heirs 733.301(1)(b)2.
 - ___ Heir nearest in degree (if more than one applies, court may exercise its discretion) 733.301(1)(b)3
 - ___ Guardian of property of a ward entitled to appointment may exercise right to select personal representative. 733.301(2)

TESTATE: 733.301(1)(a)

- ___ Personal representative, or successor, nominated by the will 733.301(1)(a)1.
- ___ Selected by a majority in interest of persons entitled to the estate 733.301(1)(a)2.
- ___ A devisee under the will (if more than one applies, court may exercise its discretion) 733.301(1)(a)3.

III. IF PETITIONER IS A NONRESIDENT, DOES PETITION SHOW THAT HE IS QUALIFIED TO SERVE? 733.304

- ___ Legally adopted child or adoptive parent of the decedent 733.304(1)
- ___ Related by lineal consanguinity to the decedent 733.304(2)
- ___ Spouse, brother, sister, uncle, aunt, nephew or niece - or someone related by lineal consanguinity to any such persons 733.304(3)
- ___ The spouse of a person otherwise qualified to serve 733.304(4)

IV. EXECUTION

Petition () Signed by petitioner 5.020(a); () Signed by attorney 5.020(a)/RJA2.060(c); () Verified 5.200
WILL/CODICIL: () Properly executed 732.502; () Self-proving 732.503; () If not, proper Oath 733.201(2)/(3)
Date of Will: _____ Date of Codicil: _____ Date of Adj: _____

V. GENERAL

- ___ Order of Admitting Will/Codicil 5.235(a)
- ___ Order Appointing P/R 5.235(a)(1) ___ Order provided for Bond if applicable 5.235(a)(2)
- ___ Oath of Personal Representative: () Notarized 5.235(a)(3)/5.320; () Resident Agent Accept. 5.110(d)
- ___ Letters 5.235(b)

VI. BOND OF PERSONAL REPRESENTATIVE

- ___ Is bond waived by testator 733.402(1)
- ___ Is bond waived by heirs/beneficiaries 5.235(c)

IN THE CIRCUIT COURT FOR _____
COUNTY,
FLORIDA
DIVISION

PROBATE

IN RE: ESTATE OF

File No.

Division

Deceased.

**PETITION FOR SUMMARY ADMINISTRATION
(intestate)**

Petitioner alleges:

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

2. Decedent, _____, whose last known address was _____, and whose age was _____ years and whose social security number is _____, died on _____, at _____ County, and on the date of death, decedent was domiciled in _____ County, Florida.

3. So far as is known, the names of the beneficiaries of this estate, including the 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 it was the county of the decedent's residence at the time of the decedent's death.

5. After the exercise of reasonable diligence, petitioner is unaware of any unrevoked wills or codicils of decedent.

6. Petitioner is entitled to Summary Administration because:

a. 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.

7. Domiciliary probate proceedings are not known to be pending in another state or country.

8. The following is a complete list of the assets in this estate and their estimated values, together with those assets claimed to be exempt:

Assets

Estimated Value

9. With respect to claims of creditors:

a. Petitioner has made a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors.

b. The estate is not indebted.

c. 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.

d. 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 the claim and, if the creditor prevails, shall be awarded reasonable attorneys fees as an element of costs against those who

joined in the petition.

10. 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 an order of Summary Administration be entered directing distribution of the assets in the estate in accordance with the schedule set forth in paragraph 10 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

**IN THE CIRCUIT COURT FOR ___ COUNTY,
FLORIDA
DIVISION**

PROBATE

IN RE: ESTATE OF

File No. _____

Division _____

Deceased.

**PETITION FOR SUMMARY ADMINISTRATION
(testate)**

Petitioner alleges:

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

2. Decedent, _____, whose last known address was _____, and whose age was _____ years and whose social security number is _____, died on _____, at _____ County, and on the date of death, decedent was domiciled in _____ County, Florida.

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 it was the county of the decedent's residence at the time of the decedent's death.

5. The original of the decedent's last will, dated _____, is in the possession of the above court or 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:

a. Decedent's will does not direct administration as required by Chapter 733 of the Florida Probate Code.

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.

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

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:

Assets

Estimated Value

10. With respect to claims of creditors:

a. Petitioner has made a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors.

b. The estate is not indebted.

c. 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 the claim and, if the creditor prevails, shall be awarded reasonable attorneys 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 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

**IN THE CIRCUIT COURT FOR ___ COUNTY,
FLORIDA
DIVISION**

PROBATE

IN RE: ESTATE OF

File No. _____

Division _____

Deceased.

**ORDER OF SUMMARY ADMINISTRATION
(testate)**

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
-------------	----------------	-------------------------------

Total	\$ _____
--------------	-----------------

2. Those to whom specified parts of the decedent's estate are assigned by this order shall be entitled to receive and collect the same, and to maintain actions to enforce the right.

3. Debtors of the decedent, those holding property of the decedent, and those with whom securities or other property of decedent are registered, are authorized and empowered to comply with this order by paying, delivering, or transferring to those specified above the parts of the decedent's estate assigned to them by this order, and the persons so paying, delivering, or transferring shall not be accountable to anyone else for the property.

ORDERED on _____.

Circuit Judge

IN THE CIRCUIT COURT FOR ____ COUNTY,
FLORIDA PROBATE
DIVISION

IN RE: ESTATE OF

Deceased. File No. ____
Division ____

**ORDER OF SUMMARY ADMINISTRATION
(intestate)**

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; 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
		\$ _____
		Total \$ _____
		\$ _____
		Total \$ _____

2. Those to whom specified parts of the decedent's estate are assigned by this order shall be entitled to receive and collect the same, and to maintain actions to enforce the right.

3. Debtors of the decedent, those holding property of the decedent, and those with whom securities or other property of decedent are registered, are authorized and empowered to comply with this order by paying, delivering, or transferring to those specified above the parts of the decedent's estate assigned to them by this order, and the persons so paying, delivering, or transferring shall not be accountable to anyone else for the property.

ORDERED on _____, 2010.

Circuit Judge

**IN THE CIRCUIT COURT FOR __ COUNTY,
FLORIDA PROBATE
DIVISION**

IN RE: ESTATE OF

_____ **File No.** _____
Deceased. **Division** _____

**NOTICE TO CREDITORS
(Summary Administration)**

TO ALL PERSONS HAVING CLAIMS OR DEMANDS AGAINST THE ABOVE ESTATE:

You are hereby notified that an Order of Summary Administration has been entered in the estate of _____, deceased, File Number _____, by the Circuit Court for _____ County, Florida, Probate Division, the address of which is _____; that the decedent's date of death was _____; that the total value of the estate is \$ _____ and that the names and addresses of those to whom it has been assigned by such order are:

Name

Address

ALL INTERESTED PERSONS ARE NOTIFIED THAT:

All creditors of the estate of the decedent and persons having claims or demands against the estate of the decedent other than those for whom provision for full payment was made in the Order of Summary Administration must file their claims with this court WITHIN THE TIME PERIODS SET FORTH IN SECTION 733.702 OF THE FLORIDA PROBATE CODE.

ALL CLAIMS AND DEMANDS NOT SO FILED WILL BE FOREVER BARRED.

NOTWITHSTANDING ANY OTHER APPLICABLE TIME PERIOD, ANY CLAIM FILED TWO (2) YEARS OR MORE AFTER THE DECEDENT'S DATE OF DEATH IS BARRED.

The date of first publication of this Notice is _____.

Attorney for Person Giving Notice:

Person Giving Notice:

Attorney

Personal Representative

Description

Value

EXEMPT:

\$ _____

NON-EXEMPT:

Applicant requests that the Court issue a letter or other writing under the seal of the Court authorizing payment, transfer, or disposition of the property to:

Name

Property

Amount or Value

\$ _____

Total

\$ _____

\$ _____

Total

\$ _____

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.

Statement made before:

Deputy Clerk

_____, 2010

(Signature of Applicant)

PROBATE INTAKE FORM

 / /

NAME OF DECEDENT: _____

ADDRESS: _____ **CITY:** _____

COUNTY: _____ **STATE:** _____ **ZIP CODE:** _____

DATE OF BIRTH: _____ **DATE OF DEATH:** _____

SOCIAL SECURITY NUMBER: _____

LOCATION OF WILL, IF ANY:

DATE OF WILL: _____

LOCATION OF CODICIL, IF ANY: _____

DATE OF CODICIL: _____

1ST P. R. NAMED IN WILL:

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP CODE:** _____

TELEPHONE: _____ (CELL) _____

RELATIONSHIP TO DECEDENT: _____ **SSN:** _____

Ever convicted of a felony? _____

ALTERNATE P.R. NAMED:

ADDRESS: _____

CITY: _____ **STATE:** _____ **ZIP CODE:** _____

TELEPHONE: _____ (CELL) _____

RELATIONSHIP TO DECEDENT: _____

BENEFICIARIES OF THE ESTATE:

DECEDENT'S SPOUSE: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE: _____

SOCIAL SECURITY NUMBER: _____

DECEDENT'S CHILDREN:

CHILD # 1: _____

DATE OF BIRTH, IF MINOR: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE: _____

SOCIAL SECURITY NUMBER: _____

CHILD # 2: _____

DATE OF BIRTH, IF MINOR: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE: _____

SOCIAL SECURITY NUMBER: _____

CHILD # 3: _____

DATE OF BIRTH, IF MINOR: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE: _____

SOCIAL SECURITY NUMBER: _____

CHILD # 4: _____

DATE OF BIRTH, IF MINOR: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE: _____

SOCIAL SECURITY NUMBER: _____

OTHER BENEFICIARIES:

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE: _____

RELATIONSHIP TO THE DECEDENT: _____

DATE OF BIRTH, IF MINOR: _____

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE: _____

RELATIONSHIP TO THE DECEDENT: _____

DATE OF BIRTH, IF MINOR: _____

NAME: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TELEPHONE: _____

RELATIONSHIP TO THE DECEDENT: _____

DATE OF BIRTH, IF MINOR: _____

ASSETS:

SAFE DEPOSIT BOX: YES: _____ NO: _____

LOCATION: _____

REAL ESTATE:

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

COUNTY: _____ DOD VALUE: _____

HOW TITLED: _____

HOMESTEAD: YES: ___ NO: ___

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

COUNTY: _____ DOD VALUE: _____

HOW TITLED: _____

STOCKS AND BONDS:

1. NAME OF COMPANY: _____

TYPE OF SECURITY: _____

HOW TITLED: _____

LOCATION OF CERTIFICATE: _____

DATE OF DEATH VALUE: _____

2. NAME OF COMPANY: _____

TYPE OF SECURITY: _____

HOW TITLED: _____

LOCATION OF CERTIFICATE: _____

DATE OF DEATH VALUE: _____

BANK ACCOUNTS:

BANK NAME: _____

ACCOUNT NUMBER: _____

HOW TITLED: _____

DATE OF DEATH VALUE: _____

BANK NAME: _____

ACCOUNT NUMBER _____

HOW TITLED: _____

DATE OF DEATH VALUE: _____

BANK NAME: _____

ACCOUNT NUMBER: _____

HOW TITLED: _____

DATE OF DEATH VALUE: _____

MONEY MARKET ACCOUNTS OR CERTIFICATES OF DEPOSIT:

NAME OF INSTITUTION: _____

ACCOUNT NUMBER: _____

HOW TITLED: _____

DATE OF DEATH VALUE: _____

NAME OF INSTITUTION: _____

ACCOUNT NUMBER: _____

HOW TITLED: _____

DATE OF DEATH VALUE: _____

U.S. GOVERNMENT SAVINGS BONDS (E, EE, H):

HOW TITLED: _____

LOCATION OF BONDS: _____

TO BE CASHED? IF YES, NAME OF TRANSFEREE: _____

DATE OF DEATH VALUE: _____

MORTGAGES AND NOTES (RECEIVABLE):

MORTGAGOR: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TERMS OF OBLIGATION: _____

DATE OF DEATH VALUE: _____

MORTGAGOR: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

TERMS OF OBLIGATION: _____

DATE OF DEATH VALUE: _____

INSURANCE ON DECEDENT'S LIFE:

COMPANY NAME: _____ **POLICY #:** _____

BENEFICIARIES NAMED: _____

LOCATION OF POLICY: _____

DATE OF DEATH VALUE: _____

COMPANY NAME: _____ **POLICY #:** _____

BENEFICIARIES NAMED: _____

LOCATION OF POLICY: _____

DATE OF DEATH VALUE: _____

ANNUITIES:

COMPANY NAME: _____ **POLICY #:** _____

BENEFICIARY NAMED: _____

LOCATION OF POLICY: _____

DATE OF DEATH VALUE: _____

COMPANY NAME: _____ **POLICY #:** _____

BENEFICIARY NAMED: _____

LOCATION OF POLICY: _____

DATE OF DEATH VALUE: _____

VEHICLES:

MODEL: _____ **YEAR:** _____

HOW TITLED: _____

LOCATION OF TITLE: _____

DATE OF DEATH VALUE: _____

MODEL: _____ **YEAR:** _____

HOW TITLED: _____

LOCATION OF TITLE: _____

DATE OF DEATH VALUE: _____

MODEL: _____ **YEAR:** _____

HOW TITLED: _____

LOCATION OF TITLE: _____

DATE OF DEATH VALUE: _____

MISCELLANEOUS PERSONAL PROPERTY:

DOCUMENTS NEEDED BY THIS OFFICE:

_____ DEATH CERTIFICATE HOW MANY? _____

_____ COPY OF PAID FUNERAL BILL

_____ REAL ESTATE DEEDS

_____ COPIES OF VEHICLE TITLES

_____ COPIES OF ANY BILLS/CREDITORS ADDRESSES

_____ LAST WILL AND TESTAMENT

NOTES:

ACKNOWLEDGMENT OF ATTORNEY FEES

I, _____, have retained Attorney _____, as the attorney for the **Estate of** _____, and he has informed me of my right to pay the estate attorney fees as set forth below. I have been informed that Attorney _____ charges \$ _____ per hour for his services, and I agree to the following method of payment:

_____ a percentage based on F. S. 733.6171 or

_____ \$ _____ per hour attorney's fees,
\$ _____ per hour paralegal's fees
plus expenses

_____ With a non-refundable retainer of \$ _____

I hereby agree and accept the terms set forth in this Acknowledgment of Attorney Fees.

EMPLOYMENT. I, _____, retain you as my attorney to represent me in my action in the Probate of the estate of _____. I authorize you to do and perform all acts on my behalf which are necessary and appropriate to this representation. I understand that this Agreement covers legal representation only regarding probating the estate and through the Order of Discharge. It does not include appeals, re-opening the estate or any other post proceedings. If you continue to represent me after this initial undertaking is completed, I agree that an additional retainer will be required and I agree that all of these provisions will continue to apply and we shall each be bound by this Agreement unless otherwise written arrangements are made. I also understand that if you continue to represent me for post proceedings, my previous bill will be paid in full before initiation of new proceedings.

RETAINER FOR PROFESSIONAL SERVICES. I agree to pay _____. a NON-REFUNDABLE RETAINER of \$ _____. I understand that this is not a FLAT RATE FEE and that I will be billed for attorney's fees at \$ _____ per hour and paralegal fees at \$ _____ per hour and additional costs to be paid in full upon receipt of the professional statement. I understand any and all phone calls made to me or by me to your office are subject to the appropriate hourly fees being charged by you as my attorney or the paralegal with whom contact is made. I understand any and all phone calls made by heirs or beneficiaries of the estate to your office are also subject to the appropriate hourly fees being charged by you as my attorney or the paralegal with whom

contact is made. I also understand that any unpaid balances not received by this firm shall accrue interest at the rate of 1.5% per month or 18% annually.

I understand that prior to the Final Order of Discharge, I shall have to pay in full the estimated total fees and costs for completion of my case and that any unpaid balance will cause the Final Order to be reset for a later date in order to give me more time to pay my bill in full, which could result in additional, unnecessary costs to the estate.

EXPENSES. I agree to pay directly, or reimburse you, for expenses including, photo-copying, postage and court costs such as filing fee, issuance and service of summons and subpoenas, newspaper publication, witness fees, travel expenses, recording fees, accounting and appraisal fees, and fees and expenses of other experts which you deem necessary to assist in the preparation and settlement or trial of my case.

TERMINATION OF REPRESENTATION. I agree that you shall have the right to withdraw from my case, (a) if I do not make all payments required by this Agreement, (b) if I misrepresent or fail to disclose a material fact to you, (c) if I fail to provide you with requested documents, or (d) if I fail to follow your advice. I agree that in any of these events that I will execute such documents, as may be necessary to enable you to withdraw from my case.

COPIES OF DOCUMENTS. I am entitled to request copies of all important papers prepared on my behalf or received from the court or any opposing counsel; and I have the right to be kept informed of the status of my case.

ACCEPTANCE. I agree to the above terms and conditions of this retainer agreement and acknowledge that I have received a copy of this Agreement.

I understand and agree that should I make a payment by check or credit card to _____ for any fees or costs due by me or pursuant to any order of court and any such payment results in a return of the check or credit card charge for any reason, _____ will charge me a \$25.00 service charge fee which I shall be obligated to pay in addition to any fees and costs for which I shall otherwise be obligated.

READ, APPROVED AND ACCEPTED:

CLIENT NAME

Date

ATTORNEY

Inventory of Safe Deposit Box

Date: _____

Lessee: _____

Lessor: _____

Persons present for Inventory:

(Print) Name (Bank Employee)

Signature

(Print) Name (Petitioner)

Signature

List of Items included in Safe Deposit Box # _____:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Items released to Petitioner:

1.

2.

3.

THIS INVENTORY MUST BE SUBMITTED WITHIN 5 DAYS TO:

The Law Office of:

**IN THE CIRCUIT COURT FOR ___ COUNTY,
FLORIDA PROBATE
DIVISION**

IN RE: ESTATE OF

_____ **File No.**
Division
Deceased.

OATH OF WITNESS TO WILL

STATE OF FLORIDA

COUNTY OF _____

The undersigned _____ being duly sworn says that the writing exhibited to the undersigned as the last will of _____, deceased, is the same writing that the decedent executed and that the undersigned and _____ subscribed as attesting witnesses on _____; that the decedent signed the writing at the end in the presence of the attesting witnesses or acknowledged in the presence of the attesting witnesses that the decedent had previously signed the writing at the end; that the witnesses, in the presence of the decedent and in the presence of each other, subscribed their names to the writing as attesting witnesses.

Affiant

Sworn to and subscribed before me on

_____, 2010.

(Circuit Judge)(Clerk)(Deputy Clerk)

**IN THE CIRCUIT COURT FOR __ COUNTY,
FLORIDA PROBATE
DIVISION**

IN RE: ESTATE OF

_____ **File No.**
Division
Deceased.

PROOF OF WILL

STATE OF FLORIDA

COUNTY OF _____

The undersigned _____ being duly sworn says that:

1. The attesting witnesses to the writing dated _____, exhibited to the undersigned as the last will of _____, deceased:
 - a. are unavailable so that their testimony cannot be taken within a reasonable time.
2. The undersigned:
 - a. is the personal representative nominated by the will.
3. The undersigned believes the writing exhibited to the undersigned to be the last will of the decedent.

Affiant

Sworn to and subscribed before me on

_____, 2010.

(Circuit Judge)(Clerk)(Deputy Clerk)
(SEAL)

**IN THE CIRCUIT COURT FOR __ COUNTY,
FLORIDA PROBATE
DIVISION**

IN RE: ESTATE OF

_____ **File No.**
Division
Deceased.

PROOF OF WILL

STATE OF FLORIDA

COUNTY OF _____

The undersigned _____ being duly sworn says that:

1. The attesting witnesses to the writing dated _____, exhibited to the undersigned as the last will of _____, deceased:
 - a. are unavailable so that their testimony cannot be taken within a reasonable time.
2. The undersigned:
 - a. has no interest in the estate under the will.
3. The undersigned believes the writing exhibited to the undersigned to be the last will of the decedent.

Affiant

Sworn to and subscribed before me on

_____, 2010.

(Circuit Judge)(Clerk)(Deputy Clerk)

(SEAL)

**IN THE CIRCUIT COURT FOR __ COUNTY,
FLORIDA PROBATE
DIVISION**

IN RE: ESTATE OF

File No.

Division

Deceased.

**OATH OF WITNESS TO WILL
(copy)**

**STATE OF FLORIDA
COUNTY OF _____**

The undersigned _____, being duly sworn, says that the photographic copy annexed to this oath is a true copy of the last will of _____, deceased, that the decedent executed and that the undersigned and _____ subscribed as attesting witnesses on _____; that the decedent signed the original of the writing at the end in the presence of the attesting witnesses or acknowledged in the presence of the attesting witnesses that the decedent had previously signed the writing at the end; that the witnesses, in the presence of the decedent and in the presence of each other, subscribed their names to the writing as attesting witnesses; and that the undersigned believes the decedent was of sound mind and 18 or more years of age or an emancipated minor at the time.

Affiant

Sworn to and subscribed before me on

_____, _____.

(Circuit Judge)(Clerk)(Deputy Clerk)

**IN THE CIRCUIT COURT FOR ___ COUNTY,
FLORIDA PROBATE
DIVISION**

IN RE: ESTATE OF

File No.

Division

Deceased.

**OATH OF PERSONAL REPRESENTATIVE
AND DESIGNATION AND ACCEPTANCE OF RESIDENT AGENT**

STATE OF FLORIDA

COUNTY OF _____

I, _____ (Affiant), state under oath that:

1. I am qualified within the provisions of Sections 733.302, 733.303 and 733.304 of the Florida Probate Code to serve as personal representative of the estate of _____, deceased.

2. I will faithfully administer the estate of the decedent according to law.

3. My place of residence is _____, and my post office address is ____.

4. I hereby designate _____, who is a member of The Florida Bar, who is a resident of _____ County, Florida, whose office address is _____ and whose post office address is _____, as my agent for the service of process or notice in any action against me, either in my representative capacity, or personally, if the personal action accrued in the administration of the estate.

Affiant

Sworn to and subscribed to before me on _____, 2010, by Affiant, who is personally known to me _____ or who produced _____ as identification.

Notary Public State of Florida
(Affix Notarial Seal)

ACCEPTANCE

I CERTIFY that I am a permanent resident of _____ County, Florida, and my office address is as indicated above. I hereby accept the foregoing designation as Resident Agent.

Signed on _____, 2010.

Resident Agent

**IN THE CIRCUIT COURT FOR __ COUNTY,
FLORIDA PROBATE
DIVISION**

IN RE: ESTATE OF

_____ **File No.**
Division
Deceased.

INVENTORY

The undersigned personal representative of the estate of _____, deceased, who died on January 1, 2010, submits this inventory of all the property of the estate that has come into the hands, possession, control, or knowledge of this personal representative:

**REAL ESTATE IN FLORIDA -- Exempt (Protected) Homestead:
Description**

HOMESTEAD PROPERTY (description)

REAL ESTATE IN FLORIDA -- Non-Exempt Homestead:

Description	Estimated Fair Market Val
NONE	
Total Non-Exempt Homestead Real Estate in Florida	<u>\$0.00</u>

(Whether homestead property is exempt from the claims of creditors, is properly devised and is a probate asset may have to be determined by appropriate proceedings.)

OTHER REAL ESTATE IN FLORIDA:

Description	Estimated Fair Market Value
NONE	

Total Other Real Estate in Florida	<u>\$0.00</u>
Total Real Estate in Florida -- Except Exempt (Protected) Homestead	<u>\$0.00</u>

PERSONAL PROPERTY WHEREVER LOCATED:

Description	Estimated Fair Market Value
2000 Automobile	\$4,000.00
Bank Account	\$80,000.00
100 shares of AT & T stock	\$450.00
Total of Personal Property -- Wherever Located	<u>\$84,450.00</u>
TOTAL OF ALL PERSONAL PROPERTY AND FLORIDA REAL ESTATE (Except exempt (protected) homestead)	<u>\$84,450.00</u>

No real estate located outside the State of Florida, of which the personal representative is aware, was owned by the decedent.

NOTICE: Each residuary beneficiary in a testate estate or heir in an intestate estate has the right to request a written explanation of how the inventory value of any asset was determined, including whether the personal representative obtained an independent appraisal for that asset and, if so, a copy of the appraisal. Any other beneficiary may request this information regarding all assets distributed to or proposed to be distributed to that beneficiary.

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

Personal Representative

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Inventory of the Estate of _____, deceased, was served upon the interested parties listed below:

by U.S. mail on _____.

Attorney for Personal Representative