

PROBATE PROCESS FROM A TO Z

Submitted by J. Mark Fisher

I. LOCAL PROBATE COURT RULES AND PROCEDURES

- a. The First Judicial Circuit (<http://www.firstjudicialcircuit.org/>) Includes:
 - i. ESCAMBIA
 1. Honorable Michael G. Allen
 - a. <http://www.firstjudicialcircuit.org/judges/escambia-county/michael-g-allen>
 2. Honorable J. Scott Duncan
 - a. <http://www.firstjudicialcircuit.org/judges/escambia-county/j-scott-duncan>
 - ii. SANTA ROSA
 1. Honorable Marci L. Goodman
 - a. <http://www.firstjudicialcircuit.org/judges/santa-rosa-county/marci-l-goodman>
 - iii. OKALOOSA
 1. Honorable Michael A. Flowers
 - a. <http://www.firstjudicialcircuit.org/judges/okaloosa-county/michael-flowers>
 2. Honorable William F. Stone
 - a. <http://www.firstjudicialcircuit.org/judges/okaloosa-county/william-f-stone>
 - iv. WALTON
 1. Honorable W. Howard LaPorte
 - a. <http://www.firstjudicialcircuit.org/judges/walton-county/w-howard-laporte>
- b. The Fourteenth Judicial Circuit Includes: (relevant to us)
 - i. BAY
 1. Honorable Elijah Smiley
 - a. <http://www.jud14.flcourts.org/Judges/FormsChecklists/formschecklists.htm>

This is a list of the probate judges and their personal sites for the local area. You will notice that some judges have no local rules and simply reference the probate rules and statutes, while some simply have rules to follow to set a hearing, and others have an exhaustive requirement checklist to be followed. It is advisable to visit the site of the judge you will be working with and follow any procedures or rules that he or she wants. Above are links to their sites.

See Judge Smiley's Checklists in Exhibits

II. THE INITIAL FILING

a. WHEN IS PROBATE NECESSARY? FORMAL VS. INFORMAL?

i. Necessity

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. In short, probate is necessary to re-title the decedent's property into the names of the beneficiaries.

ii. Formal

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 estate assets are 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 typically 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 Fla. Stat. § 732.103.

Formal probate is a long, expensive and intensive legal process. Included below 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

iii. Informal Probate, or 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, Fla. Stat. § 735.201(1). If the decedent has been dead for two or more years, the estate is eligible, regardless of size, Fla. Stat. § 735.201(2). Summary Administration is available after two years because of the two-year statute of non-claim, Fla. Stat § 733.710(1). However, 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, Fla. Stat. § 735.201(2). All assets held in an inter-vivos 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).

iv. Disposition of personal property without administration

Fla. Stat. § 735.301 states “no administration shall be required or formal proceedings instituted upon the estate of a decedent leaving only personal property exempt under Fla. Stat. § 732.402, personal property exempt from claims of creditors under the Florida constitution, and nonexempt personal property the value of which does not exceed the sum of the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of the last illness.”

In short, this procedure is available only for personal property. If probate assets consist solely of property classified as exempt property under Fla. Stat. § 732.402 and non-exempt personal property if it does not exceed the total value of funeral expenses (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, an interested party may file an application by affidavit to have the property retitled.

b. WHAT DOCUMENTS TO INCLUDE?

The following are the basic documents used to open an estate:

- i. Petition for Administration
- ii. Petition for Summary Administration
- iii. Order of Summary Administration
- iv. Last Will and Testament
- v. Order Admitting Will to Probate
- vi. Oath of Personal Representative and Designation of Resident Agent
- vii. Letters of Administration
- viii. Petition to Determine Homestead (if applicable)
- ix. Notice of Confidential Information within Court Filing
- x. Death Certificate

See samples found in the Exhibits

c. WHO MUST AND SHOULD BE NOTIFIED?

Under the Florida Probate Code, notice is a requirement you will see everywhere. However, within the scope of the “Initial Filing” there are two main classes that must be notified.

i. Beneficiaries:

Beneficiary is defined by Fla. Stat. § 731.201(2) as “heir at law in an intestate estate and devisee in a testate estate. The term beneficiary does not apply to an heir at law or a devisee after that person’s interest in the estate has been satisfied. In the case of a devise to an existing Trust or Trustee, or to a Trust or Trustee described by Will, the Trustee is a beneficiary of the estate. Except as otherwise provided in this subsection, the beneficiary of the Trust is not a beneficiary of the estate of which that Trust or the Trustee of that Trust is a beneficiary.”

Fla. Prob. R. 5.040 states “Beneficiaries should receive a Formal Notice, which includes copies of the initial petitions.” (Petition for Administration, Homestead, Family Allowance, etc.)

See sample Formal Notice found in Exhibits

ii. Creditors

Fla. Stat. § 733.2121, § 733.701 and Fla. Prob. R. 5.241 require that a diligent search for any creditors be made and notice be given to any ascertainable creditor. A further requirement is to “Publish a Notice to Creditors” in a newspaper in the county where the estate is administered.

If the decedent is over the age of 55, the Personal Representative shall serve a copy of the notice to creditors and a copy of the death certificate on the Agency for Health Care Administration, Fla. Stat. § 733.2121(d).

See sample Notice to Creditors found in Exhibits

While we are reviewing notice requirements, here is an exhaustive list of notice requirements under the Probate Code:

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

d. THE MASTER TIMELINE-DON'T MISS ANY CRUCIAL DUE DATES!

When Letters of Administration are signed, the clock begins to tick. You have to publish a Notice to Creditors, prepare an Inventory, submit the death certificate (if not already done), file a Statement Regarding Creditors, file an Affidavit of No Florida Estate Tax Due, or if estate tax is due, then, a Florida Tax Certificate or its receipt. The Final Accounting and the Petition for Discharge are due 12 months from the date of issuance of the Letters of Administration unless a 706 tax return is due.

Remember, each jurisdiction may have slightly different requirements when it comes to timelines. It is important to check with the local administrative orders to review the “crucial due dates” that the Personal Representative you are representing may be subject to.

A common due date that is routinely missed can be seen in Fla. Stat. § 732.901 **Production of Wills**. It states that the custodian of a Will shall submit the Will to the court having Venue within 10 days after receiving information that the testator is dead.

Look to the exhibit section for Administrative Orders for Okaloosa and Escambia Counties that outline timeline requirements.

See Administration Order for Okaloosa County in Exhibits

See Administration Order for Escambia County in Exhibits

e. INTRA-OFFICE COMMUNICATION-SETTING UP THE FILE SO THAT
YOUR STAFF CAN PROPERLY ACT ON IT

First, there is no right or wrong way to accomplish this goal. This is usually an attorney’s personal preference, and no two offices accomplish this goal the same way. The following is an example of how to set up a probate file.

Setting up “Classification Folders” which are folders with several dividers, each divider with coated fasteners on the top, are a useful tool to keep your case organized as it progresses through the probate process.

A “Classification Folder” with 2 dividers will have six sections, the sections are as follows:

1. Time and Costs
2. Data and Checklists
3. Notes and Miscellaneous Info.
4. Correspondence
5. Assets and Claims
6. Pleadings

These sections should also be digitally mirrored on your computer or server. A file should be set up on you server under the decedent’s name with the six sections serving as subfolders. When

new documents are prepared or you receive incoming correspondence, you should scan and save into the corresponding subfolder. This serves to back-up the physical file, and allows you to instantly print or email from the scanned folders. If your office has a server, then each staff member will be able to access the file and work on it from their own computer.

f. DEALING WITH INTESTACY

Intestacy is the term used to describe someone that dies without a Will. We would say, "John Doe died intestate." This means that we will look to the intestacy statutes, which govern the disposition of the decedent's estate, Fla. Stat. § 732. 101.

Intestacy laws address certain basic estate planning issues involving rights of spouses and children and distributional schemes for intestate succession. 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 to assets that are subject to administration, not assets that pass by reason of survivorship, beneficiary designation, Trust law, or other Will substitutes, 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/she owns at death will pass according to intestate succession, Fla. Stat. § 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, Fla. Stat. § 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, Dannielynn, 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, Dannielynn, 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 Fla. Stat. § 732.501, and the Will will be held invalid. The laws of intestacy will then control.

i. Florida Homestead

Rules of intestacy apply when Florida homestead realty cannot be devised or is not devised as permitted by law. Fla. Stat. § 732.4015 states that homestead cannot be devised if the owner is survived by a spouse or a minor child or minor children, except that the homestead may be devised to the owner’s spouse if there is no minor child or 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 Fla. Stat. § 732.103 definitional description of heirs.

If the decedent died intestate, the Personal Representative must be a blood relative, spouse, the spouse of a blood relative, a legally adopted child or adoptive parent of the decedent or a Florida resident. Only a blood relative, a legally adopted child or adoptive parent of the decedent or the spouse of a person otherwise qualified under Fla. Stat. § 733.304 may live outside of the state and serve as Personal Representative. Let us say a family of five children comes into your office and their father just passed away. All of the children live in Ohio and Texas, except one daughter, who lives locally. As long as the local daughter does not have a felony, is not adverse to the estate or the other children, and seems like a responsible and reasonable person, then simply by reason of her locale she would be the recommended Personal Representative.

Disputes over who will be nominated as the Personal Representative may arise. If they do, the following statutes help to resolve the dispute. Fla. Stat. § 733.301 **Preference in Appointment of Personal Representative**; this statute outlines preference given to a candidate to be appointed as the Personal Representative when there is a Will, when the Will is contested, when there is not a Will (intestate) and when more than one person is petitioning to be appointed Personal Representative in an intestate estate. Also, Fla. Stat. § 733.504 **Removal of Personal Representative; Causes for Removal** can be helpful when a dispute arises over who will be the Personal Representative. For example, if the candidate already exhibits characteristics that would subject him/her to removal, he/she would certainly not be suitable as the best choice to serve as Personal Representative.

b. EDUCATING THE PR ON HIS/HER DUTIES

Fla. Stat. § 733.601 – § 733.620 known in the Probate Code as **PART VI. DUTIES AND POWERS OF THE PERSONAL REPRESENTATIVE** contains the relevant laws that govern a Personal Representative while serving.

A statutory preference in appointment of Personal Representative is found in Fla. Stat. § 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, Fla. Stat. § 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 Oath of Personal Representative in Exhibits

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, Fla. Stat. § 733.607.

Fla. Stat. § 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. Fla. Stat. § 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, usually within 60 days of the issuance of the Letters of Administration and a copy sent to the interested parties. 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.

See Estate Executors Checklist in Exhibits

- c. HOW MUCH IS IT IN YOUR INTEREST AND WITHIN ETHICAL BOUNDS TO HELP THE PERSONAL REPRESENTATIVE?
 - i. Personal Representative is the Client

As the attorney for the estate, the Personal Representative is the primary client and you should look out for the best interest of the Personal Representative, except when such interests run contrary to applicable law and ethics rules. Fla. Bar. R. 4-1.7 states “In estate administration the identity of the client may be unclear under the law of some jurisdictions. In Florida, the personal representative is the client rather than the estate or the beneficiaries. The lawyer should make clear the relationship to the parties involved.”

ii. Lawyers draft pleadings

Fla. Prob. R. 5.020 states, “All Pleadings in a probate proceeding must be signed by the attorney of record. During the representation, the Personal Representative will be required to communicate with the court. The attorney will draft pleadings that will facilitate this communication.”

d. REPRESENTING PRs IN PROBATE DISPUTES/LITIGATION

i. Fla. Prob. R. 5.030:

An attorney of record for an interested person in a proceeding governed by these rules (rules of probate) shall be the attorney of record in all other proceedings in the administration of the same estate, except service of process in an independent action on a claim, unless at the time of appearance the attorney files a notice specifically limiting the attorney’s appearance only to the particular proceeding or matter in which the attorney appears.

ii. Common disputes to be aware of:

The following are common disputes that are deemed adversarial under Fla. Prob. R. 5.025:

- a. Removal of personal representative; Fla. Stat. § 733.504-506, § 733.609, Fla. Prob. R. 5.440
- b. Probate a lost or destroyed Will; Fla. Stat. § 733.207
- c. Determine beneficiaries; Fla. Stat. § 733.105
- d. Partition property for the purpose of distribution; Fla. Stat. § 733.814
- e. Determine pretermitted share; Fla. Stat. § 732.301, § 732.507
- f. Determine amount of elective share; Fla. Stat. § 732. Part II., Fla. Prob. R. 5.360

- g. Revocation of Probate of a Will; Fla. Stat. § 732.518, § 733.107

These common probate disputes all have correlating statutes and case law. Each case will be different and will require adequate legal research.

- iii. Disputes involving documents the lawyer drafted, such as the decedent's Will

R. Regulating Fla. Bar 4-3.7 states, "a lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a necessary witness on behalf of the client."

An attorney who prepared and notarized a Will that was being asserted as a valid Will to dispute the administration of the testator's estate under an earlier Will was properly disqualified from representing, at trial, the party who was seeking to introduce the later Will. *Eccles v. Nelson*, 919 So. 2d 658 (Fla. Dist. Ct. App. 5th Dist. 2006). R. Regulating Fla. Bar 4-3.7 will allow disqualification because the attorney's knowledge and involvement in the later Will would require him to testify as to substantive and central matters in the Will dispute, such as mental incapacity, undue influence, and genuineness of the testator's signature.

IV. PROPER AND PRUDENT TREATMENT OF ASSETS

- a. ASSESS AND DOCUMENT BEFORE OR AFTER THE INITIAL FILING?

- i. Before Filing

The Petition for Administration requires a good faith statement of the nature and approximate value of the assets that will be going through probate, Fla. Prob. R. 5.200(g). At the very least, the petitioner needs to have a good idea of the assets that will need to be probated.

Steps that can be taken to assess the assets before filing, include researching the county property appraiser's website and the official records website for the county that has venue, and the surrounding counties. If there is property in the decedent's name, it will appear.

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 the 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. A common scenario will be, 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 and 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 any additional assets and their values. 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 also identify additional assets.

b. TIPS FOR EFFECTIVE MARSHALING OF ASSETS

A Personal Representative is required to file an Inventory of the property of the estate, Fla. Stat. § 733.604(1). The Inventory shall include all property of the estate. That is, all property subject to administration, Fla. Stat. § 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, Fla. Stat. § 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.

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", Fla. Stat. § 733.607, Fla. Stat. § 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, Fla. Stat. §655.935, Fla. Stat. §655.936, Fla. Stat. §733.6065, and 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 and the official records 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, Fla. Stat. § 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, Fla. Stat. § 733.607(1).

Common causes of action used in these matters include:

1. Conversion
2. Civil theft
3. Replevin
4. Restitution
5. Relevant case law:
 - a. *Perez v. Lopez*, 454 So.2d 777 (Freezing assets)
 - b. *In re Estate of Katz*, 501 So. 2d 68 (Turnover of disputed assets to the Personal Representative)
 - c. *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, Fla. Stat. § 733.602(1). The Personal Representative is a fiduciary and must adhere to Standards of Care applicable to Trustees, Fla. Stat. § 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 Fla. Stat. § 733.612. The Personal Representative may retain assets owned by the decedent, Fla. Stat. § 733.612(1). He may perform, compromise, or when proper, refuse to perform decedent's contracts, Fla. Stat. § 733.612(2). He may invest funds, provided such investments are in accordance with the prudent investor rule, Fla. Stat. § 733.612(4) and sell or exercise stock subscription or conversion rights, Fla. Stat. § 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, Fla. Stat. § 733.612(20) and Fla. Stat. § 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 Fla. Stat. § 731.201(21). An interested person is defined 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, Fla. Stat. § 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. Fla. Stat. § 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, Fla. Stat. § 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

c. STEPPED-UP BASIS OF VARIOUS ASSETS

The stepped-up tax basis is the last, greatest, tax break. As seen in IRS Publication 551 (<http://www.irs.gov/pub/irs-pdf/p551.pdf>) “If you inherit property from a decedent, your basis in property you inherit is generally the fair market value (FMV) at the date of the individual’s death.” See also IRS Publication 4895 (<http://www.irs.gov/pub/irs-pdf/p4895.pdf>).

There are three types of assets passing to the heirs with a taxable component. The first are qualified accounts, such as IRA’s, 401k’s, SEP’s, etc; the second are Annuities and the third are U.S. Savings Bonds. When a beneficiary receives a qualified account such as an IRA, either from the probate estate or directly as the beneficiary on the account, all proceeds are treated as ordinary income. The recipient will have three options when receiving such an account. Option one, the beneficiary may take the entire lump sum and report it as ordinary income on that year’s income tax return. Option two, the beneficiary may take the amount in a 5 year installment plan, where recipient will pay tax on 1/5 each year. The third option allows the recipient to accept the IRA over their lifetime. This is called a stretch IRA. The tax will be due according to the recipient’s life expectancy. For example, if the recipient is 50 years old, he has a life expectancy of an additional 29 years. He will take 1/29th of the IRA in that year and pay tax on it. The next year he will take 1/28th, and so on.

The annuity recipient, whether the estate or the beneficiary directly, will have to pay ordinary income tax on the gain on the annuity. For example, if the decedent purchased the annuity and paid \$100,000 for it and at death the value was \$200,000, then the gain would be taxed as ordinary income to the recipient at their new tax bracket, not the favorable capital gains tax rate, currently 15%. The last taxable asset the heirs typically receive are U.S. Savings Bonds. There, the interest income from the bond is taxable as ordinary income when the bond is cashed.

See IRS publications in Exhibits

d. EXEMPTED PROPERTY

i. Homestead 732.401 – 4015

A 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. The homestead property 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 or minor child, the question is, who controls the house and how is title transferred to the heirs?

Fla. Stat. § 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 purpose of preserving, ensuring, 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 three 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), the 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.

Fla. Stat. § 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 matter, the homestead was the decedent's domicile. This is where he lived, had all his mail delivered, the state where his driver's license was registered, and where he voted. Even if the decedent had moved out of

state for convalescent care, as long as the homestead property had not been leased or rented, it would 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.

e. REQUESTING DECEDENT'S POLICY INFORMATION FROM THE
INSURANCE COMPANIES AND INSURING REMAINING PROPERTY

i. Property Insurance

Once the Personal Representative has been granted Letters of Administration, they now have the authority to conduct business on behalf of the estate. This will include reviewing the decedent's insurance and maintaining said insurance during the period of administration.

Fla. Stat. § 733.612(13) expressly grants to the Personal Representative the authority, and without court order, to "insure the assets of the estate against damage or loss and insure against personal and fiduciary liability to third persons."

The two most important items to keep insurance on are the car and home. Be aware that the decedent may have been ill for some time before they died, and may have been neglecting paying their insurance and the insurance may have lapsed. It is advisable to check the insurance policy and catch up on the payments, if necessary. Insurance on a home is far more expensive when no one is living there and the house is sitting vacant. The car can be a source of liability for the estate. It is best to keep it insured while part of the estate, but to quickly move it out of the estate.

f. SPOUSAL RIGHTS TO PROPERTY

i. Pretermitted Share

Fla. Stat. § 732.301 states, “When a person marries after making a Will and the spouse survives the testator, the surviving spouse shall receive a share in the estate of the testator equal in value to that which the surviving spouse would have received if the testator had died intestate, unless:

1. Provision has been made for, or waived by, the spouse by prenuptial or post nuptial agreement;
2. The spouse is provided for in the Will;
3. The Will discloses an intention not to make provision for the spouse.

The share of the estate that is assigned to the pretermitted spouse shall be obtained in accordance with Fla. Stat. § 733.805.”

This statute takes into consideration the pretermitted share within the scope of “Order in which Assets Abate.” Under this section, after the debts, family allowance, exempt property, expenses of administration are designated, a pretermitted share has a greater priority than the residuary and specific devisees for his or her intestate share.

Fla. Stat. § 732.507 states, “Neither subsequent marriage, birth, nor adoption of descendants shall revoke the prior Will of any person, but the pretermitted child or spouse shall inherit” as set forth in Fla. Stat. § 732.301(pretermitted spouse) and Fla. Stat. § 732.302 (pretermitted child).

ii. Elective 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 Fla. Stat. § 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, Fla. Stat. § 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, Fla. Stat. § 732.2065. This right can be waived with a valid pre-nuptial agreement or a valid post-nuptial agreement, Fla. Stat. § 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, Fla. Stat. § 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, Fla. Stat. § 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, Fla. Stat. § 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, Fla. Stat. § 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, Fla. Stat. § 732.2035(3).

Property held in a revocable Trust is included in the elective estate, Fla. Stat. § 732.2035(4). Certain irrevocable transfers by the decedent are also included, Fla. Stat. § 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, Fla. Stat. § 732.2035(6) and (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, Fla. Stat. § 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, Fla. Stat. § 732.2075(2).

See Elective Share Example in Exhibits

iii. Family Allowance

The surviving spouse and the decedent's lineal heirs the decedent was supporting at the time of his or her death are entitled to a reasonable allowance of money out of the estate for their

maintenance during administration. The allowance shall not exceed a total of \$18,000. This amount shall be paid to the surviving spouse, but if the surviving spouse is not living or the lineal heirs have another person in charge of their care and custody, then to the custodian or guardian. Fla. Stat. § 732.403. A verified petition requesting this allowance must be filed pursuant to Fla. Prob. R. 5.407.

iv. Homestead

In regard to a spouse's right to homestead property, the spouse has traditionally received a life estate in the property with a vested remainder going to the descendants in being at the time of the decedent's death. A recent change in the law now allows a surviving spouse to elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants. The practical effect of this new option allows the spouse to now be able to sell the house and receive half of the proceeds. Fla. Stat. § 732.401 has been amended to reflect these changes.

g. TREATMENT OF REAL PROPERTY IN PROBATE-TENANTS,
MORTGAGES, FORECLOSURES, SALES, ETC.

It is always appropriate to read the testator's Will when dealing with real property. The Will can grant or confer powers to the Personal Representative that give the Personal Representative complete authority to handle tenants, mortgages, foreclosures, and sales. But, when these powers are not expressly conferred or a decedent dies intestate, we have a statutory guideline to follow.

The Personal Representative has a fiduciary duty to manage and invest assets. Therefore, the Personal Representative is subject to the Prudent Investor rule, requiring the Personal Representative to exercise reasonable care in the investment and management of the estate assets, Fla. Stat. § 518.11.

i. Tenants

The Personal Representative is given express authority and without court order under Fla. Stat. § 733.612(7) to "enter into a lease, as a lessor or lessee, for a term within, or extending beyond, the period of administration, with or without an option to renew."

ii. Mortgages

In a mortgage which occurs under a specific power (in a Will) or under a court order authorizing or confirming that act, the purchaser or lender takes title free of claims of creditors of the estate and entitlements of estate beneficiaries, except, existing mortgages or other liens against real property are not affected, Fla. Stat. § 733.613(3).

iii. Foreclosures

First, if a mortgage is owed to the estate, the Personal Representative may, “extend, renew, or in any manner modify any obligation owing to the estate. If the personal representative holds a mortgage, security interest, or other lien upon property of another person, he or she may accept a conveyance or transfer of encumbered assets from the owner in satisfaction of the indebtedness secured by its lien instead of foreclosure,” Fla. Stat. § 733.612(15).

Second, if property that is owned by the estate is under foreclosure, the Personal Representative has the authority to “abandon property when it is valueless or so encumbered, or in a condition, that it is of no benefit to the estate,” Fla. Stat. § 733.612(9).

Further, the Personal Representative may “prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and the Personal Representative”, Fla. Stat. § 733.612(20).

Fla. Stat. § 733.608 allows the Personal Representative, after expending funds to preserve, protect, and maintain homestead property, to secure a lien on the property, and potentially recover the funds expended by foreclosing on the lien, if the amount is not paid by other means.

iv. Sales

A Personal Representative may sell real property. The Personal Representative shall consider if the sale is in the best interest of the estate and those interested in it. The sale of real property may be done at a public or private sale. No title shall pass until the court authorizes or confirms the sale, Fla. Stat. § 733.613. The Will may authorize the sale of real property. If this

authorization is not extremely clear and well drafted or non-existent, all real property sales should not be pursued unless specific court authority is received. The pleading should include all particulars regarding the sale including the buyer, the price and sale expenses.

PRACTICE TIP: If in doubt, always get the court's permission to engage in the sale of any real property.

h. BUSINESS TRANSFERS

Fla. Stat. § 733.612(22) allows the Personal Representative to “continue any unincorporated business or venture in which the decedent was engaged for not more than 4 months (without court order), if the continuation is a reasonable means of preserving the value of the business, including good will.”

Further, Fla. Stat. § 733.612(17) authorizes the Personal Representative to “sell or exercise stock subscription or conversion rights or consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business entity.”

The Personal Representative is to act reasonably and for the benefit of the interested persons when conducting the above activities. See Prudent Investor Rule above, Fla. Stat. § 518.11.

PRACTICE TIP: If in doubt, get the court's permission to continue to engage in the decedent's business.

i. TYPICAL CREDITORS AND HOW TO DEAL WITH THEM

i. HCA

Public assistance payments do constitute a debt of recipient. Fla. Stat. § 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" Fla. Stat. § 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 Fla. Stat. § 733.2121(d), § 733.702 and § 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, Fla. Stat. § 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.

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

ii. Credit Cards

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.

j. PROCEDURES FOR PROBATING AN INSOLVENT ESTATE

An insolvent estate is an estate that has more debt than it does assets. In other words, when added up, the value of all of the decedent's individual assets is equal to or less than the amount of creditor claims. Upon “insolvency,” creditors become “interested persons” pursuant to Fla. Stat. § 731.201(23), because they are now “affected by the outcome of the particular proceedings.” There is no need to notice creditors as an interested party unless the estate is insolvent.

It is not unusual for an estate to experience a lack of liquidity, requiring the sale of an asset to pay the expenses and obligations of the estate, but when there is true insolvency there is nothing to liquidate.

If the estate is indeed insolvent, then the Personal Representative will need to prioritize payment to the creditors as provided by Fla. Stat. § 733.707. This statute prioritizes payments that are to be made based on eight classes:

Class 1- costs and expenses of estate administration, including PR and attorney fees

Class 2- reasonable funeral expenses not to exceed \$6,000

Class 3- debts and taxes with preference under federal law, and claims pursuant to Fla. Stat. § 409.9101 and § 414.28 (Medicaid recovery)

Class 4- reasonable and necessary medical and hospital expenses of the last 60 days of last illness

Class 5- family allowance

Class 6- arrearage from court ordered child support

Class 7- debts acquired after death by the continuation of decedent’s business, but only to the extent of the assets of the business

Class 8- all other claims

If the decedent had a Trust, and the decedent, at the time of his death had a right of revocation (Living Revocable Trust), this Trust will be liable for the expenses and debts of the estate, Fla. Stat. § 733.707(3).

EXHIBITS

IN THE CIRCUIT COURT FOR THE 14th JUDICIAL CIRCUIT

ELIJAH SMILEY, CIRCUIT COURT PROBATE JUDGE

CHECKLIST FOR OPENING FORMAL ADMINISTRATION ESTATE 1/2012

ESTATE OF: _____ Case No: _____	Date of Death: _____
Attorney of Record: _____	Phone: _____
TYPE OF ESTATE: Testate: <input type="checkbox"/> Intestate: <input type="checkbox"/> Ancillary: <input type="checkbox"/>	

		YES	NO
1.	Certified Death Certificate Filed?		
2.	Last Will and Testament		
	Original Will filed? (or authenticated copy for ancillary)- Rule 5.200		
	If a copy is filed, a petition to establish lost will complying with F.S. 733.207 and Rule 5.510 & 5.025 has been filed?		
	Will is self proved (F.S. 732.502, 733.201) ?		
	If not self proved, an oath of witness is filed (733.201(2)) ?		
3.	Petition for Administration		
	The verified petition complies with Rule 5.200 and 5.020(e)?		
4.	Personal Representative Preference		
	PR named in Will <input type="checkbox"/> Selected by Majority <input type="checkbox"/>		
	Spouse PR <input type="checkbox"/> If no preference, Notice given -Rule 5.201 <input type="checkbox"/>		
5.	Bond		
	Bond waived in Will -F.S. 733.402 (1) ?		
	Bond waived by all interested parties and waivers are attached?		
	Motion to waive with approximate value of probate assets filed?		
6.	Required Notice has been given to all interested persons?		
Proposed Pleadings Attached?			
Order Admitting Will and/or Appointing PR ____ Letters of Administration ____			
Oath and designation of registered agent ____ Other _____			
I certify that I have personally reviewed the foregoing checklist and it is accurate.			
Attorney for Estate: _____ Date _____			
Mailing Address _____			

judgesmiley/formal checklist

IN THE CIRCUIT COURT FOR THE 14th JUDICIAL CIRCUIT
 ELIJAH SMILEY, CIRCUIT COURT PROBATE JUDGE

CHECKLIST FOR SUMMARY ADMINISTRATION ESTATE 1/2012

ESTATE OF: _____	CASE NO: _____
Date of Death: _____	Testate (____) Intestate (____) Ancillary (____)

	YES	NO
1. Certified Death Certificate Filed?		
2. Last Will and Testament		
Original Will filed? (or authenticated copy for ancillary)- Rule 5.200		
If a copy is filed, a petition to establish lost will complying with F.S. 733.207 and Rule 5.510 & 5.025 has been filed?		
Will is self proved (F.S. 732.503, 733.201) ?		
If not self proved, an oath of witness is filed (733.201(2)) ?		
3. Petition for Summary Administration		
Verified petition complies with F.S. 735.201, Rule 5.530 and 5.020(e)?		
Non Exempt assets <\$75,000 _____ or Deceased > 2 years _____		
All assets and their values are listed in the petition -Rule 5.530(a) ?		
Proposed distribution of assets included 5.530(12)?		
Petition signed by spouse _____ beneficiaries _____ or consents _____		
4. Creditors		
Estate is NOT indebted _____ Claims are barred _____		
Diligent search and Inquiry for creditors done- F.S. 735.206(2)?		
Notice given to Agency for Health Care Administration age 55+ F.S. 733.2121?		
Provision for payment of creditors made to extent of assets?		
Affidavit of no FL tax due filed _____ or Non taxable certificate filed _____?		
5. Required Notice has been given to all interested persons?		
6. An Affidavit of Heirs for Intestate Estate has been filed?		
7. Verified Petition to Determine Homestead filed?		

Proposed Pleadings Attached?

Order Admitting Will _____ Order of Summary Administration _____
 Order Determining Homestead _____ Other _____

I certify that I have personally reviewed the foregoing checklist and it is accurate.

Attorney for Petitioner _____ Date _____

Mailing Address _____

judgesmiley /summary checklist

IN THE CIRCUIT COURT FOR THE 14TH JUDICIAL CIRCUIT, STATE OF FLORIDA
GUARDIANSHIP, PROBATE AND MENTAL HEALTH DIVISION
Judge Elijah Smiley, Administrative Probate Judge

IN RE: _____ **CASE NO.:** _____

_____ **DATE:** _____
Deceased

Reference: Florida Statute 735.301

DISPOSITION OF PERSONAL PROPERTY WITHOUT ADMINISTRATION
(Verified Statement) rvd 9/11

Petitioner, _____, alleges:

1. Petitioner, whose address is _____

_____ and who is the _____ of the decedent, _____ who died at _____ on the _____ day of _____, 20____, a resident of _____, whose last known address was _____, and, if known, whose age was _____.

[] The decedent left no will.

[] The decedent's will was deposited with the clerk on _____, 20____.

2. So far as is known, the names of the beneficiaries of decedent's estate and of the decedent's surviving spouse, if any, their addresses and relationship to decedent, and the ages of any who are minors are:

NAME	ADDRESS	RELATIONSHIP	AGE (birth date if minor)

3. The estate of decedent consist only of personal property exempt under the provisions of Section

IN THE CIRCUIT COURT FOR THE 14TH JUDICIAL CIRCUIT, STATE OF FLORIDA

GUARDIANSHIP, PROBATE AND MENTAL HEALTH DIVISION

Judge Elijah Smiley, Administrative Probate Judge

732.402 of the Florida Probate Code, personal property exempt from the claims of creditors under the Constitution of Florida, and nonexempt personal property the value of which does not exceed the sum of the amount of preferred funeral expenses and reasonable and necessary medical expenses of the last 60 days of the decedent's last illness, all being described as follows:

Description	Value
EXEMPT: _____	

NON-EXEMPT: _____

Preferred funeral expenses (statement or receipt attached):

Services by	Amount	Paid or Due

Medical and hospital expenses for last 60 days of last illness (statement or receipt attached):

Services by	Type of Service	Amount	Paid or Due

Other debts of decedent:

Creditor	Goods or Services (How incurred)	Amount

IN THE CIRCUIT COURT FOR THE 14TH JUDICIAL CIRCUIT, STATE OF FLORIDA
GUARDIANSHIP, PROBATE AND MENTAL HEALTH DIVISION
Judge Elijah Smiley, Administrative Probate Judge

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

Name	Property	Amount or Value
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I know of no other assets or debts of the decedent except: _____

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.

_____ Signature of Petitioner	_____ Signature of Petitioner
Print Name _____	Print Name _____
Address _____	Address _____
Telephone: _____	Telephone _____

Sworn to and subscribed before me this _____ day of _____, 20 _____

CLERK OF CIRCUIT AND COUNTY COURTS

By: _____
Deputy Clerk

IN THE CIRCUIT COURT FOR THE 14th JUDICIAL CIRCUIT IN BAY COUNTY			
ELIJAH SMILEY, CIRCUIT COURT PROBATE JUDGE			
CHECKLIST for Petition To Determine Homestead -Formal			
ESTATE OF:		Case No:	Date of Death:
TYPE OF ESTATE:	Summary (____)	Formal (____)	
	Testate: (____)	Intestate: (____)	Ancillary: (____)

	<i>Reference: Florida Const. Art. X, Sec 4, and Rule 5.405</i>	YES	NO
1.	<i>Certified Death Certificate filed?</i>		
2.	All Required Notice to Creditors, Beneficiaries and Interested Parties Given?		
	Notice of Administration served as required by R.5.240 and/or waivers ____ & proofs filed ____?		
	Notice to Creditors served ____ on DOR ____ on AHCA age 66+ ____ F.S. 733.2121?		
	Proof of publication of Notice to Creditors filed. R.5.241 ____? or claims barred ____?		
	Verified diligent search Statement Regarding Creditors filed R.5.241 ____? or claims barred ____?		
	Notice or consents & waivers to petition to determine homestead filed ____?		
3.	<i>Verified Inventory filed and served as required by F.S. 733.604?</i>		
	All proofs of service of inventory filed as required by R. 5.340 (including DOR) ?		
4.	Taxes		
	Affidavit of no FL tax due filed ____ F.S.198.32? or Non taxable certificate filed ____ F.S. 198.26?		
	Notice of Federal Tax Return filed and served ____? R. 5.395 Tax Return due date is ____?		
	<i>Federal Estate Tax Closing Letter filed?</i>		
5.	<i>Verified Petition to Determine Homestead complying with R.5.405 filed?</i>		
	Decedent was a Florida resident?		
	Statement that decedent owned and resided on the property at death?		
	Legal description of homestead real property listed?		
	Statement that property is inside or outside of municipality with acreage? Fla. Const. Art X, Sec. 4?		
	Surviving Spouse and lineal heirs with dates of birth listed of minors, if any?		
	Statement that property descended to, or was validly devised?		
	Decedent's exemption from claims of decedent's creditors inured to spouse/heirs?		
6.	<i>Order Determining Homestead?</i>		
	Provide the legal description and that the property is the homestead of the decedent?		
	Find that the homestead property descended to or was validly devised?		
	Identify the persons entitled to decedent's exemption from decedent's creditor claims?		
	Define the interest of persons receiving the protected homestead?		
I certify that I have personally reviewed the foregoing checklist and it is accurate.			
Attorney for Estate: _____ Date _____		judgesmiley /homestead checklist	

IN THE CIRCUIT COURT FOR THE 14th JUDICIAL CIRCUIT

ELIJAH SMILEY, CIRCUIT COURT PROBATE JUDGE

CHECKLIST FOR CLOSING FORMAL ADMINISTRATION ESTATE 1/2012

ESTATE OF: _____ Case No. _____ Date of Death: _____

Attorney of Record: _____ Phone: _____

TYPE OF ESTATE: Testate: Intestate: Ancillary:

		YES	NO
1.	All Required Notice to Creditors and Interested Parties Given?		
	Notice of Administration served as required by R.5.240 and/or waivers _____ & proofs filed _____?		
	Notice to Creditors served _____ on DOR _____ on AHCA age 55+ _____ F.S. 733.2121?		
	Proof of publication of Notice of Creditors filed. R.5.241? or claims barred _____?		
	Verified diligent search Statement Regarding Creditors filed. R.5.241 _____? or claims barred _____?		
2.	Verified Inventory filed as required by F.S. 733.604?		
	All proofs of service of inventory filed as required by R. 5.340 ?		
3.	Creditors		
	Estate is NOT indebted _____ Claims are barred _____		
	All filed claims satisfied _____ or settled _____? F.S. 733.705 If not, attach explanation		
4..	Taxes		
	Affidavit of no FL tax due filed _____ F.S.198.32? Non taxable certificate filed _____ F.S. 198.26?		
	Notice of Federal Tax Return filed and served? _____ R. 5.395 Tax Return due date is _____?		
	Federal Estate Tax Closing Letter filed?		
5	Civil Actions and Adversary Proceedings		
	Any adversary proceedings filed R.5.025? _____ If yes, have proceedings been disposed? _____		
	Any Notice of Civil Actions filed R.5.065? _____ If yes, have proceedings been disposed? _____		
6.	Final Accounting		
	Final Accounting filed? _____ or R.5.180 waivers by ALL interested persons filed? _____		
	Any objections to final accounting filed? _____ All objections resolved? _____		
	Final Accounting served on ALL interested persons _____ or R.5.180(b) waivers filed _____		

IN THE CIRCUIT COURT FOR THE 14th JUDICIAL CIRCUIT

ELIJAH SMILEY, CIRCUIT COURT PROBATE JUDGE

PAGE 2 Cont.- CHECKLIST FOR CLOSING FORMAL ADMINISTRATION ESTATE 1/2012

		YES	NO
7.	Petition for Discharge complying with R.5.400 filed?		
	Has petition for discharge been signed by the Personal Rep. Rule 5.330?		
	Has notice of petition been given to beneficiaries (____) and creditors(____) or consents filed? (____)		
	Has the time period expired for filing objections to the discharge?		
	Are there any unresolved objections to the petition for discharge?		
	Name of Interested Persons served with Petition to Discharge:		
	1. _____ Waiver () Date Served ()		
	2. _____ Waiver () Date Served ()		
	3. _____ Waiver () Date Served ()		
	4. _____ Waiver () Date Served ()		
	5. _____ Waiver () Date Served ()		
	6. _____ Waiver () Date Served ()		
	7. _____ Waiver () Date Served ()		
8.	Plan of Distribution complying with R.5.400(b) filed?		
	Proof of distribution filed as required by R. 5.400(e) ____? or R.5.180(b) waivers filed ____?		
9.	Beneficiaries/Heirs		
	Receipts ____ or R. 5.180(b) waivers filed from all beneficiaries/heirs ____		
10.	Compensation Fees Paid		
	Petition to discharge shows compensation paid to attorneys, accountants, personal representative and others employed by the PR and the manner of determining compensation R. 5.400(b) ____?		
11.	Miscellaneous		
	Petition to Determine Exempt Property filed? F.S. 732.402		
	Petition to Determine Homestead filed? R.5.405		
	Affidavit of Heirs filed?		
	Checked with the Department of Unclaimed Property?		
	Death certificate of any beneficiaries filed?		
12.	Proposed Pleadings Attached?		
	Order of Discharge ____ Other _____		
	Order Determining Homestead ____ Other _____		
I certify that I have personally reviewed the foregoing checklist and it is accurate.			
Attorney for Petitioner _____		Date _____	
Mailing Address _____		judgesmiley /closing checklist page 2	

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 PROBATE DIVISION

IN RE: ESTATE OF

File No.

Division

Deceased.

**PETITION FOR ADMINISTRATION
(intestate Florida resident - single petitioner)**

Petitioner, _____, alleges:

1. Petitioner has an interest in the above estate as _____.
Petitioner's address is 8120 _____, and the name and office
address of petitioner's attorney are set forth at the end of this petition.

2. Decedent, _____, whose last known address
_____, and, whose age was _____ and the last four digits of
whose social security number are _____, died on _____, at _____
in _____ County. 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 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	DATE OF BIRTH (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. Petitioner, whose address is _____, and who is qualified under the laws of the State of Florida to serve as personal representative of the decedent's estate is entitled to preference in appointment as personal representative because _____.

6. The nature and approximate value of the assets in this estate are:

NATURE OF ASSETS (example)	APPROXIMATE VALUE
Homestead Property	Exempt
Real Property- 20 acres in _____	\$ 80,000

7. This estate will not be required to file a federal estate tax return.

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

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

Petitioner requests that _____ be appointed personal representative of the estate of the decedent.

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 _____, 2012.

Petitioner

Attorney for Petitioner

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

IN RE: ESTATE OF

Deceased.

File No. _____

Division _____

**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 PROBATE DIVISION

IN RE: ESTATE OF

Deceased.

File No. _____

Division _____

**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 PROBATE DIVISION

IN RE: ESTATE OF

Deceased.

File No. _____

Division _____

**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 \$ _____
_____	_____	_____
		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.

Division

Deceased.

**ORDER ADMITTING WILL TO PROBATE
AND APPOINTING PERSONAL REPRESENTATIVE
(single)**

The instrument presented to this court as the last Will of _____, deceased, having been established by the oath of _____, a subscribing and attesting witness, as being the last Will of the decedent, and no objection having been made to its probate, and the court finding that the decedent died on _____, and that _____ is entitled and qualified to be personal representative, it is

ADJUDGED that the Will dated _____, and attested by _____ and _____ as subscribing and attesting witnesses, is admitted to probate according to law as the last will of the decedent, and it is further

ADJUDGED that _____ is appointed personal representative of the estate of the decedent, and that upon taking the prescribed oath, filing designation and acceptance of resident agent, bond having been waived, letters of administration shall be issued.

ORDERED on _____, 2012.

Circuit Judge

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

IN RE: ESTATE OF

File No.

Division

Deceased.

**PETITION TO DETERMINE HOMESTEAD STATUS OF REAL PROPERTY
(intestate)**

Petitioner, _____, alleges:

1. The decedent, _____, died intestate on _____, domiciled in _____ County, Florida, and was survived by:

a. One or more lineal descendants.

2. At the time of decedent's death, the decedent owned and resided on the following described contiguous parcel of real property (the "Property"):

Address and Legal Description _____

3. The name of the decedent's surviving spouse, if any, and the names of the decedent's heirs at law having an interest in the decedent's estate, if any, and their respective relationships to the decedent and dates of birth of minor lineal descendants are:

NAME	RELATIONSHIP	DATE OF BIRTH (if minor)
-------------	---------------------	-------------------------------------

4. The Property constituted the homestead of the decedent within the meaning of Section 4 of Article X of the Constitution of the State of Florida, and petitioner believes that upon decedent's death, title to the Property descended to and the constitutional exemption from claims of decedent's creditors inured to: _____.

5. The only persons, other than petitioner, having an interest in this proceeding, including unpaid creditors, and their respective addresses are:

Name

Address

Petitioner requests that an order be entered determining that the Property constituted the exempt homestead of the decedent, title to which, upon decedent's death, descended and the constitutional exemption from claims inured as set forth in paragraph 4; directing the personal representative to surrender possession of the Property; and directing that the personal representative shall have no further responsibility with respect to the Property.

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 _____, 2012.

Attorney for Petitioner

Petitioner

I CERTIFY that a copy hereof has been served on:

by U.S. Mail, on _____, 2012.

Attorney

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

IN RE: ESTATE OF

File No.

Division

Deceased.

**LETTERS OF ADMINISTRATION
(single personal representative)**

TO ALL WHOM IT MAY CONCERN

WHEREAS, DECEDENT, a resident of _____ County, Florida, died on December _____, owning assets in the State of Florida, and

WHEREAS _____ has been appointed personal representative of the estate of the decedent and has performed all acts prerequisite to issuance of Letters of Administration in the estate,

NOW, THEREFORE, I, the undersigned circuit judge, declare _____ duly qualified under the laws of the State of Florida to act as personal representative of the estate of DECEDENT, deceased, with full power to administer the estate according to law; to ask, demand, sue for, recover and receive the property of the decedent; to pay the debts of the decedent as far as the assets of the estate will permit and the law directs; and to make distribution of the estate according to law.

ORDERED on _____, 2012.

Circuit Judge

IN THE CIRCUIT COURT FOR
FLORIDA

COUNTY,
PROBATE DIVISION

IN RE: ESTATE OF

File No.

Division

Deceased.

NOTICE OF CONFIDENTIAL INFORMATION WITHIN COURT FILING

Pursuant to Florida Rules of Judicial Administration 2.420(d)(2), the filer of a court record at the time of filing shall indicate whether any confidential information is included within the document being filed; identify the confidentiality provision that applies to the identified information; and identify the precise location of the confidential information within the document being filed.

Title/Type of Document(s): Petition for Administration and Death Certificate

Indicate the applicable confidentiality provision(s) below from Rule 2.420(d)(1)(B), by specifying the location within the document on the space provided:

Chapter 39 records relating to dependency matters, termination of parental rights, guardians ad litem, child abuse, neglect, and abandonment. Sec. 39.0132(3), Fla. Stat. (If the document is filed within a Chapter 39 case, the form is not required.)

Adoption records. Sec. 63.162, Fla. Stat. (If the document is filed within Chapter 63 adoption case, this form is not required.)

Social security, bank account, charge, debit, and credit card numbers in court records. Sec. 119.0714(1)(i)-(j),(2)(a)-(e), Fla. Stat.
Social Security Number, Petition for Administration

HIV test results and patient identity within the HIV test results. Sec. 381.004(3)(e), Fla. Stat.

Sexually transmitted diseases - test results and identity within the test results when provided by the Department of Health or the department's authorized representative. Sec. 384.29, Fla. Stat.

Birth and death certificates, including court-issued delayed birth certificates and fetal death

certificates. Secs. 382.008(6),382.025(1)(a), Fla. Stat.
Death Certificate

____ Identifying information in petition by minor for waiver of parental notice when seeking to terminate pregnancy. Sec. 390.01116, Fla. Stat. (If the document is filed within a Chapter 390 waiver of parental notice case, this form is not required.)

_____ Identifying information in clinical mental health records under the Baker Act. Sec. 394.4615(7), Fla. Stat.

____ Records of substance abuse service providers which pertain to the identity, diagnosis, and prognosis of and service provision to individuals who have received services from substance abuse service providers. Sec. 397.501(7), Fla. Stat.

_____ Identifying information in clinical records of detained criminal defendants found incompetent to proceed or acquitted by reason of insanity. Sec. 916.107(8), Fla. Stat.

____ Estate inventories and accountings. Sec. 733.604(1), Fla. Stat.

____ Victim's address in domestic violence on petitioner's request. Sec. 741.30(3)(b), Fla. Stat.

_____ Information identifying victims of sexual offenses, including child sexual abuse. Secs. 119.071(2)(h), 119.0714(1)(h), Fla. Stat.

____ Gestational surrogacy records. Sec. 742.16(9), Fla. Stat.

_____ Guardianship reports and orders appointing court monitors in guardianship cases. Secs. 744.0176, 744.3701, Fla. Stat.

____ Grand jury records. Ch. 905, Fla. Stat.

____ Information acquired by courts and law enforcement regarding family services for children. Sec. 984.06(3)-(4), Fla. Stat. (If the document is filed in a Ch. 984 family services for children case, this form is not required.)

____ Juvenile delinquency records. Secs. 985.04(1), 985.045(2), Fla. Stat. (If the document is filed in a Ch. 985 juvenile delinquency case, this form is not required.)

_____ Information disclosing the identity of persons subject to tuberculosis proceedings and records of the Department of Health in suspected tuberculosis cases. Secs. 392.545, 392.65, Fla. Stat.

_____ Presentence investigation reports and attached psychological or psychiatric evaluations. Fla. R. Crim. P. 3.712; §§ 921.231(1)(i), 948.015(9), Fla. Stat.

I CERTIFY that a copy of the foregoing Notice has been served on _____ by
U.S. Mail on _____, 2012.

Attorney

Note: The clerk of court shall review filings identified as containing confidential information to determine whether the information is facially subject to confidentiality under the identified provision. The clerk shall notify the filer in writing within 5 days if the clerk determines that the information is NOT subject to confidentiality, and the records shall not be held as confidential for more than 10 days, unless a motion is filed pursuant to subdivision(d)(3) of Rule 2.420.

IN THE CIRCUIT COURT FOR _____
COUNTY,
FLORIDA

PROBATE DIVISION

IN RE: ESTATE OF

File No. _____

Division _____

Deceased.

**DISPOSITION OF PERSONAL PROPERTY WITHOUT ADMINISTRATION
(verified statement)**

Applicant, _____, alleges:

1. Applicant, whose address is _____, is _____ of _____, who died at _____ County on _____, a resident of _____ County, Florida. Decedent's last known address was _____, and whose age at the time of death was ____ years.

Decedent's will was deposited with the clerk on _____.

2. So far as is known, the names of the beneficiaries of decedent's estate and of 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)
-------------	----------------	---------------------	----------------------------------

3. The estate of decedent consists only of personal property exempt from the claims of creditors under Section 732.402 of the Florida Probate Code and the Constitution of Florida, and non-exempt personal property the value of which does not exceed the sum of the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of decedent's last illness, all being described as follows:

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

_____, 20__.

(Signature of Applicant)

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 _____, 20__, 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 _____, 20__.

Resident Agent

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

IN RE: ESTATE OF

Deceased.

File No. _____

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

IN THE FIRST JUDICIAL CIRCUIT IN AND FOR OKALOOSA COUNTY, FLORIDA
PROBATE DIVISION

ADMINISTRATIVE DIRECTIVE 2009-06
RE: TIME REQUIREMENTS

WHEREAS, Rule 2.545(b) of the Florida Rules of Judicial Administration provides that “.....the trial judge shall take charge of all cases at an early state in the litigation and shall control the progress of the case thereafter until the case is determined.....,” and

WHEREAS the Florida Supreme Court prescribed time standards within which to dispose of probate matters, and

WHEREAS the time standard for estate case pursuant to Florida Rules of Judicial Administration 2.250 (D) is as follows:

Uncontested, no federal estate tax return – 12 months (from issuance of letters of administration to final discharge).

Uncontested, with federal estate tax return - 12 months (from the return’s due date to final discharge).

Contested – 24 months (from filing to final discharge), and

WHEREAS, counsel and personal representatives share a continuing duty to this Court to ensure that necessary action is taken in a timely manner, and

IN ORDER to provide for the efficient progression of this cause, it is

ORDERED:

1. Counsel and personal representatives SHALL adhere to the time requirements contained hereby in order to properly distribute and discharge this estate.
2. Counsel SHALL file a motion for an extension of time and a proposed order thereon in the event that the time requirements set forth herein cannot be filed in a timely manner. Failure to file a motion for an extension of time prior to the expiration of these time requirements SHALL result in the issuance of an ORDER TO SHOW CAUSE as why counsel and/or personal representative shall not be found in contempt of court for violation of this order and for failure to timely file the required documents.

RECEIVED
OKALOOSA COUNTY
PROBATE DIVISION
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2009

3. Below are listed PRESUMPTIVE time for the performance and filing of documentation in estate cases which such performance and filing aimed at the ultimate disposition of probate actions within the time standards set by the Florida Supreme Court. All times shall be measured from the issuance of the Letters of Administration.

A) NOTICE OF ADMINISTRATION/NOTICE TO CREDITORS (whichever applies) shall be published as soon as practical.

B) INVENTORY shall be filed within sixty (60) days.

C) DEATH CERTIFICATE shall be filed within (90) days.

D) NOTICE OF DUE DATE FOR FEDERAL ESTATE TAX RETURN shall be filed within twelve (12) months (where one is required).

E) PETITION FOR DISCHARGE shall be filed within twelve (12) months unless the will is contested or a federal estate state tax return is required in which case the petition shall be filed within twenty-four (24) months.

4. All papers necessary for discharge SHALL be filed no later than the Petition for Discharge.

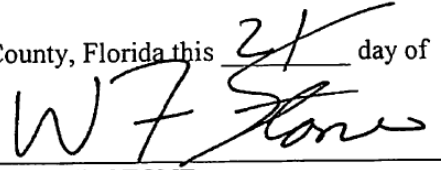
5. Counsel SHALL familiarize themselves with Florida Rules of Probate Rule 5.030 which provides in part:

“An attorney of record for an interested person in a proceeding governed by these rules shall be the attorney of record in all other proceedings in the administration of the same estate or guardianship, except services or process in an independent action on a claim....”

“An attorney of record may withdraw or limit his appearance with approval of the court after filing a motion setting forth his reasons and serving a copy on this client and interested persons.”

6. The Clerk SHALL provide copies of this order to each attorney of record and personal representative in each probate action filed in the Circuit Court in and for Okaloosa County, Florida.

DONE AND ORDERED at Shalimar, Okaloosa County, Florida this 24 day of December, 2009.


WILLIAM F. STONE
Administrative Judge

Copies to:
Don W. Howard, Clerk of Circuit Court
All Circuit Judges, Okaloosa County
Honorable Terry D. Terrell, Chief Judge
Robin Wright, Court Administrator



NCS
12/2/09

**IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
PROBATE DIVISION**

ORDER PRESCRIBING TIME REQUIREMENTS

WHEREAS, Rule 2.085(b) of the Florida Rules of Judicial Administration provides that "... the trial judge shall take charge of all cases at an early stage in the litigation and shall control the progress of the case thereafter until the case is determined ...", and

WHEREAS, the Florida Supreme Court prescribed time standards within which to dispose of probate matters, and,

WHEREAS, the time standard for the above referenced estate is 12 months, and

WHEREAS, counsel and personal representatives share a continuing duty to this court to ensure that necessary action is taken in a timely manner, and

IN ORDER to provide for the efficient progression of this cause, it is

ORDERED:

1. Counsel and personal representatives SHALL adhere to the time requirements contained herein in order to properly distribute and discharge this estate.

2. Counsel SHALL file a motion for an extension of time and a proposed order thereon in the event that the time requirements set forth herein cannot be filed in a timely manner. Failure to file a motion for an extension of time prior to the expiration of these time requirements SHALL result in the issuance of an Order Requiring. Thereafter failure to timely file the required documents will cause the issuance of an Order to Show Cause. At that time, the fiduciary and counsel will be required to appear before the court or face sanctions.

3. Below are listed presumptive times for the performance and filing of documentation in this estate, with such performance and filing aimed at the ultimate disposition of this cause within the time standards set by the Florida Supreme Court. All times shall be measured from the issuance of the Letters of Administration.

A. NOTICE TO CREDITORS – Unless creditors' claims are otherwise barred by law, the personal representative shall promptly publish a notice to creditors as required by law. Proof of publication shall be filed with the court within forty-five (45) days of the first publication. The personal representative shall serve a copy of the notice on all creditors of the decedent who are reasonably ascertainable and, if required by law, on the Agency for Health Care Administration.

FILED
PROBATE DIVISION
ESCAMBIA COUNTY, FL
2012 FEB 24 A 8:50
MIA
COURT


Dkt ID: 00065884653 / CPOPTR / Case: 2012 CP 000075

- B. INVENTORY - Shall be filed within sixty (60) days after issuance of letters.
- C. DEATH CERTIFICATE - Shall be filed not later than three (3) months following the date of the first publication of the notice to creditors.
- D. VERIFIED STATEMENT REGARDING CREDITORS - Shall be filed within four (4) months after the date of the first publication of the notice to creditors.
- E. NOTICE OF DUE DATE FOR FEDERAL ESTATE TAX RETURN - When a federal estate tax return is required, a notice shall be filed within twelve (12) months from the date letters are issued stating the due date of the return.
- F. FLORIDA TAX CERTIFICATE - The certificate of the department of nonliability, or its receipt, or in the case of a nontaxable estate an Affidavit of No Florida Estate Tax Due (regardless of the date of death), shall be filed with or prior to the final account of a personal representative.
- G. FINAL ACCOUNTING AND PETITION FOR DISCHARGE - Shall be filed and served on all interested persons within twelve (12) months after issuance of letters [for estates not required to file a federal estate tax return].

4. All papers necessary for discharge SHALL be filed no later than the Petition for Discharge.

5. Counsel SHALL familiarize themselves with Probate Rule 5.030 which provides in part:

"An attorney of record for an interested person in a proceeding governed by these rules shall be the attorney of record in all other proceedings in the administration of the same estate or guardianship, except service of process in an independent action on a claim...."

"An attorney of record may withdraw or limit the attorney's appearance with approval of the court, after filing a motion setting forth the reasons and serving a copy on the client and interested persons."

6. The Clerk shall provide two (2) [✓]copies of this order to counsel who SHALL FURNISH A COPY TO THE PERSONAL REPRESENTATIVE in the above referenced case.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida, this 24 day of Feb. 2012.



CIRCUIT JUDGE

I hereby certify that two copies of the above and foregoing were furnished to the attorney of record this 24 day of Feb 2012.

ERNIE LEE MAGAHA
Clerk of the Circuit Court

By: 
DEPUTY CLERK

Rev 04/19/2006

Estate Executor's Checklist

- 1 Locate the current Will and file with the Probate Division of the Circuit Court.
- 2 Petition the Court to be appointed as Executor (personal representative of the estate).
- 3 Secure a bond or other safeguard to protect yourself and others in the performance of Executor's duties.
- 4 Arrange for an inventory of safe deposit box contents.
- 5 Make sure the desired funeral arrangements have been carried out.
- 6 Obtain death certificate or doctor's statement (usually provided by the funeral director). Birth and marriage certificates may also be needed.
- 7 Obtain life insurance claim forms, complete and submit them with policy (or policies). Obtain proceeds for named beneficiaries and Form 712 for the Estate Tax return.
- 8 File claims for final medical bills with Medicare and other medical insurance coverage carriers.
- 9 Collect Social Security lump sum benefit (if available).
- 10 Check on veteran's benefits.
- 11 Check on Social Security benefits for survivors.
- 12 Collect possible pension and profit-sharing benefits.
- 13 Locate bank accounts and transfer funds to the account of the estate.
- 14 Make short-term investments of surplus funds.
- 15 Obtain permission from the Court to pay a support allowance to family.
- 16 Collect certificates for all stocks and bonds.
- 17 Notify all heirs, legatees, devisees and next of kin of their interest in the estate.
- 18 Assemble necessary documents for each parcel of real estate—deeds, abstracts, insurance policies.
- 19 Arrange for appraisals of realty, jewelry, stamp and coin collections, etc. to determine fair market value for tax and accounting purposes.
- 20 Investigate the status of any business interest owned in whole or in part by the deceased.
- 21 Prepare an inventory of estate assets including bank account, realty, mobile homes, automobiles and other vehicles, furniture, jewelry and other possessions, filing the original with the Court and sending copies to beneficiaries.
- 22 Publish the Notice of Administration in a newspaper acceptable to the Court.
- 23 Determine the existing debts of the estate. Mortgages? Life insurance loans? Bank loans? Auto loans? Settle these debts.
- 24 If necessary, oppose in Court all incorrect or invalid claims against the estate.
- 25 Pay claims after claim period has expired. Obtain receipts and/or vouchers for all bills and claims paid.
- 26 Examine all real estate. Determine the condition, adequacy of insurance, status of taxes and assessments.
- 27 Collect rents on income-producing real estate. Make repairs; obtain tenants; pay real estate taxes; maintain insurance. Arrange for utilities and other necessary services.
- 28 Set up bookkeeping records for the estate. Keep receipts and records on all disbursements, including your own expenses for travel, lodging, meals, etc., incurred in administration of the estate.
- 29 Arrange for the collection of dividends and interest on estate's securities.
- 30 Ascertain the estate's cash requirements for debts, taxes and expenses, and review all estate assets to determine how necessary funds can best be raised.
- 31 Supervise the operation of family-owned business(es) until either sold or distributed.
- 32 Prepare annual accountings.
- 33 Compute the amount of any State or Federal taxes. Prepare any preliminary tax notices required by law.
- 34 Select valuation data for Federal Estate Tax.
- 35 Prepare Federal Estate Tax return. Determine charitable, marital and other deductions.
- 36 Prepare the final City, State and Federal Income Tax returns of the deceased.
- 37 Determine whether administrative expenses should be charged against income taxes or estate taxes.
- 38 Obtain estate tax closing letter from the Internal Revenue Service.
- 39 If an audit by a governmental agency shows a tax deficiency, determine whether to appeal or accept the ruling.
- 40 Prepare detailed final accounting which is acceptable to the Court, sending copies to the beneficiaries.
- 41 Pay final administrative expenses.
- 42 File the plan of distribution with the Court.
- 43 Arrange for transfer and re-registration of securities with transfer agent.
- 44 Distribute the estate assets to beneficiaries.
- 45 Prepare Report of Final Distribution, sending the original to Court with copies to beneficiaries.
- 46 Petition Court for discharge of Executor.
- 47 Give the Internal Revenue Service notice of termination of fiduciary relationship.

IN THE CIRCUIT COURT FOR _____ COUNTY,
FLORIDA PROBATE DIVISION

IN RE: ESTATE OF

Deceased.

File No.

Division

INVENTORY

The undersigned personal representative of the estate of _____, deceased, who died on _____, 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 Value
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) \$84,450.00**

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



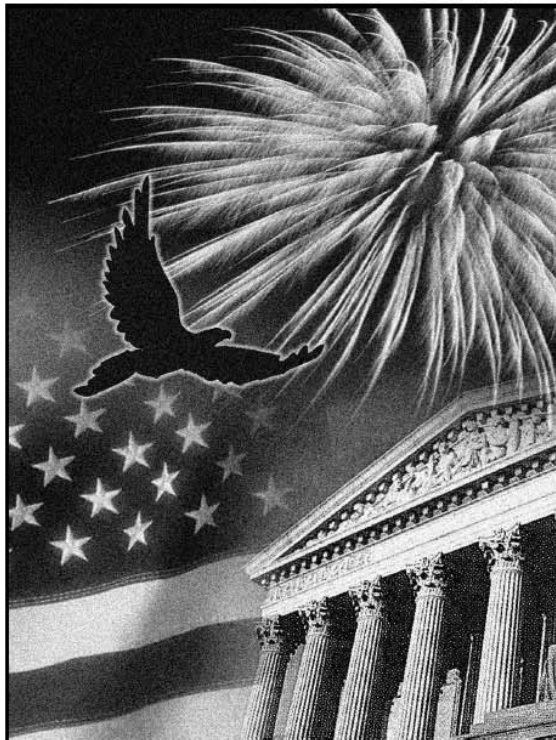
Department
of the
Treasury

Internal
Revenue
Service

Publication 551
(Rev. July 2011)

Cat. No. 15094C

Basis of Assets



Get forms and other information
faster and easier by:

Internet IRS.gov

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What's New

Property acquired from a decedent who died in 2010. Property acquired from a decedent dying in 2010 will no longer have an automatic increase in basis. See Publication 4895, Tax Treatment of Property Acquired From a Decedent Dying in 2010, for details.

Reminder

Photographs of missing children. The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Introduction

Basis is the amount of your investment in property for tax purposes. Use the basis of property to figure depreciation, amortization, depletion, and casualty losses. Also use it to figure gain or loss on the sale or other disposition of property. You must keep accurate records of all items that affect the basis of property so you can make these computations.

This publication is divided into the following sections.

- Cost Basis

- Adjusted Basis
- Basis Other Than Cost

The basis of property you buy is usually its cost. You may also have to capitalize (add to basis) certain other costs related to buying or producing the property.

Your original basis in property is adjusted (increased or decreased) by certain events. If you make improvements to the property, increase your basis. If you take deductions for depreciation or casualty losses, reduce your basis.

You cannot determine your basis in some assets by cost. This includes property you receive as a gift or inheritance. It also applies to property received in an involuntary conversion and certain other circumstances.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can write to us at the following address:

Internal Revenue Service
Business Forms and Publications Branch
SE:W-CAR:MP:T:B
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

You can email us at taxforms@irs.gov. (The asterisk must be included in the address.) Please put "Publications Comment" on the subject line. You can also send us comments from www.irs.gov/formspubs/, select "Comment on Tax Forms and Publications" under "Information about."

Although we cannot respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax products.

Ordering forms and publications. Visit www.irs.gov/formspubs to download forms and publications, call 1-800-829-3676, or write to the address below and receive a response within 10 business days after your request is received.

Internal Revenue Service
1201 N. Mitsubishi Motorway
Bloomington, IL 61705-6613

Tax questions. If you have a tax question, visit www.irs.gov or call 1-800-829-1040. We cannot answer tax questions sent to either of the above addresses.

Useful Items

You may want to see:

Publication

- 463 Travel, Entertainment, Gift, and Car Expenses
- 523 Selling Your Home
- 525 Taxable and Nontaxable Income
- 527 Residential Rental Property
- 530 Tax Information for First-Time Homeowners

- 535 Business Expenses
- 537 Installment Sales
- 544 Sales and Other Dispositions of Assets
- 550 Investment Income and Expenses
- 559 Survivors, Executors, and Administrators
- 564 Mutual Fund Distributions
- 587 Business Use of Your Home
- 946 How To Depreciate Property

Form (and Instructions)

- 706 United States Estate (and Generation-Skipping Transfer) Tax Return
- 706-A United States Additional Estate Tax Return
- 8594 Asset Acquisition Statement

See *How To Get Tax Help* near the end of this publication for information about getting publications and forms.

Cost Basis

Terms you may need to know (see Glossary):

- Business assets
- Real property
- Unstated interest

The basis of property you buy is usually its cost. The cost is the amount you pay in cash, debt obligations, other property, or services. Your cost also includes amounts you pay for the following items.

- Sales tax,
- Freight,
- Installation and testing,
- Excise taxes,
- Legal and accounting fees (when they must be capitalized),
- Revenue stamps,
- Recording fees, and
- Real estate taxes (if assumed for the seller).

You may also have to capitalize (add to basis) certain other costs related to buying or producing property.

Loans with low or no interest. If you buy property on a time-payment plan that charges little or no interest, the basis of your property is your stated purchase price, minus the amount considered to be unstated interest. You generally have unstated interest if your interest rate is less than the applicable federal rate. For more information, see *Unstated Interest and Original Issue Discount* in Publication 537.

Purchase of a business. When you purchase a trade or business, you generally purchase all assets used in the business operations, such as land, buildings, and machinery. Allocate the price among the various assets, including any section 197 intangibles. See *Allocating the Basis*, later.

Stocks and Bonds

The basis of stocks or bonds you buy is generally the purchase price plus any costs of purchase, such as commissions and recording or transfer fees. If you get stocks or bonds other than by purchase, your basis is usually determined by the fair market value (FMV) or the previous owner's adjusted basis of the stock.

You must adjust the basis of stocks for certain events that occur after purchase. See *Stocks and Bonds* in chapter 4 of Publication 550 for more information on the basis of stock.

Identifying stock or bonds sold. If you can adequately identify the shares of stock or the bonds you sold, their basis is the cost or other basis of the particular shares of stock or bonds. If you buy and sell securities at various times in varying quantities and you cannot adequately identify the shares you sell, the basis of the securities you sell is the basis of the securities you acquired first. For more information about identifying securities you sell, see *Stocks and Bonds* under *Basis of Investment Property* in chapter 4 of Publication 550.

Mutual fund shares. If you sell mutual fund shares acquired at different times and prices, you can choose to use an average basis. For more information, see *Average Basis* in Publication 564.

Real Property

Real property, also called real estate, is land and generally anything built on or attached to it. If you buy real property, certain fees and other expenses become part of your cost basis in the property.

Real estate taxes. If you pay real estate taxes the seller owed on real property you bought, and the seller did not reimburse you, treat those taxes as part of your basis. You cannot deduct them as taxes.

If you reimburse the seller for taxes the seller paid for you, you can usually deduct that amount as an expense in the year of purchase. Do not include that amount in the basis of the property. If you did not reimburse the seller, you must reduce your basis by the amount of those taxes.

Settlement costs. Your basis includes the settlement fees and closing costs for buying property. You cannot include in your basis the fees and costs for getting a loan on property. A fee for buying property is a cost that must be paid even if you bought the property for cash.

The following items are some of the settlement fees or closing costs you can include in the basis of your property.

- Abstract fees (abstract of title fees);
- Charges for installing utility services;
- Legal fees (including title search and preparation of the sales contract and deed);
- Recording fees;

- Surveys;
- Transfer taxes;
- Owner's title insurance; and
- Any amounts the seller owes that you agree to pay, such as back taxes or interest, recording or mortgage fees, charges for improvements or repairs, and sales commissions.

Settlement costs do not include amounts placed in escrow for the future payment of items such as taxes and insurance.

The following items are some settlement fees and closing costs you cannot include in the basis of the property.

1. Casualty insurance premiums.
2. Rent for occupancy of the property before closing.
3. Charges for utilities or other services related to occupancy of the property before closing.
4. Charges connected with getting a loan. The following are examples of these charges.
 - a. Points (discount points, loan origination fees).
 - b. Mortgage insurance premiums.
 - c. Loan assumption fees.
 - d. Cost of a credit report.
 - e. Fees for an appraisal required by a lender.
5. Fees for refinancing a mortgage.

If these costs relate to business property, items (1) through (3) are deductible as business expenses. Items (4) and (5) must be capitalized as costs of getting a loan and can be deducted over the period of the loan.

Points. If you pay points to obtain a loan (including a mortgage, second mortgage, line of credit, or a home equity loan), do not add the points to the basis of the related property. Generally, you deduct the points over the term of the loan. For more information on how to deduct points, see *Points* in chapter 4 of Publication 535.

Points on home mortgage. Special rules may apply to points you and the seller pay when you obtain a mortgage to purchase your main home. If certain requirements are met, you can deduct the points in full for the year in which they are paid. Reduce the basis of your home by any seller-paid points. For more information, see *Points* in Publication 936, Home Mortgage Interest Deduction.

Assumption of mortgage. If you buy property and assume (or buy subject to) an existing mortgage on the property, your basis includes the amount you pay for the property plus the amount to be paid on the mortgage.

Example. If you buy a building for \$20,000 cash and assume a mortgage of \$80,000 on it, your basis is \$100,000.

Constructing assets. If you build property or have assets built for you, your expenses for this

construction are part of your basis. Some of these expenses include the following costs.

- Land,
- Labor and materials,
- Architect's fees,
- Building permit charges,
- Payments to contractors,
- Payments for rental equipment, and
- Inspection fees.

In addition, if you own a business and use your employees, material, and equipment to build an asset, do not deduct the following expenses. You must include them in the asset's basis.

- Employee wages paid for the construction work, reduced by any employment credits allowed;
- Depreciation on equipment you own while it is used in the construction;
- Operating and maintenance costs for equipment used in the construction; and
- The cost of business supplies and materials used in the construction.



Do not include the value of your own labor, or any other labor you did not pay for, in the basis of any property you construct.

Business Assets

Terms you may need to know (see Glossary):

Amortization
 Capitalization
 Depletion
 Depreciation
 Fair market value
 Going concern value
 Goodwill
 Intangible property
 Personal property
 Recapture
 Section 179 deduction
 Section 197 intangibles
 Tangible property

If you purchase property to use in your business, your basis is usually its actual cost to you. If you construct, create, or otherwise produce property, you must capitalize the costs as your basis. In certain circumstances, you may be subject to the uniform capitalization rules, next.

Uniform Capitalization Rules

The uniform capitalization rules specify the costs you add to basis in certain circumstances.

Activities subject to the rules. You must use the uniform capitalization rules if you do any of

the following in your trade or business or activity carried on for profit.

- Produce real or tangible personal property for use in the business or activity,
- Produce real or tangible personal property for sale to customers, or
- Acquire property for resale. However, this rule does not apply to personal property if your average annual gross receipts for the 3 previous tax years are \$10 million or less.

You produce property if you construct, build, install, manufacture, develop, improve, create, raise, or grow the property. Treat property produced for you under a contract as produced by you up to the amount you pay or costs you otherwise incur for the property. Tangible personal property includes films, sound recordings, video tapes, books, or similar property.

Under the uniform capitalization rules, you must capitalize all direct costs and an allocable part of most indirect costs you incur due to your production or resale activities. To capitalize means to include certain expenses in the basis of property you produce or in your inventory costs rather than deduct them as a current expense. You recover these costs through deductions for depreciation, amortization, or cost of goods sold when you use, sell, or otherwise dispose of the property.

Any cost you cannot use to figure your taxable income for any tax year is not subject to the uniform capitalization rules.

Example. If you incur a business meal expense for which your deduction would be limited to 50% of the cost of the meal, that amount is subject to the uniform capitalization rules. The nondeductible part of the cost is not subject to the uniform capitalization rules.

More information. For more information about these rules, see the regulations under section 263A of the Internal Revenue Code and Publication 538, Accounting Periods and Methods.

Exceptions. The following are not subject to the uniform capitalization rules.

- Property you produce that you do not use in your trade, business, or activity conducted for profit;
- Qualified creative expenses you pay or incur as a free-lance (self-employed) writer, photographer, or artist that are otherwise deductible on your tax return;
- Property you produce under a long-term contract, except for certain home construction contracts;
- Research and experimental expenses deductible under section 174 of the Internal Revenue Code; and
- Costs for personal property acquired for resale if your (or your predecessor's) average annual gross receipts for the 3 previous tax years do not exceed \$10 million.

For other exceptions to the uniform capitalization rules, see section 1.263A-1(b) of the regulations.

For information on the special rules that apply to costs incurred in the business of farming, see chapter 6 of Publication 225, Farmer's Tax Guide.

Intangible Assets

Intangible assets include goodwill, patents, copyrights, trademarks, trade names, and franchises. The basis of an intangible asset is usually the cost to buy or create it. If you acquire multiple assets, for example a going business for a lump sum, see *Allocating the Basis* below to figure the basis of the individual assets. The basis of certain intangibles can be amortized. See chapter 8 of Publication 535 for information on the amortization of these costs.

Patents. The basis of a patent you get for an invention is the cost of development, such as research and experimental expenditures, drawings, working models, and attorneys' and governmental fees. If you deduct the research and experimental expenditures as current business expenses, you cannot include them in the basis of the patent. The value of the inventor's time spent on an invention is not part of the basis.

Copyrights. If you are an author, the basis of a copyright will usually be the cost of getting the copyright plus copyright fees, attorneys' fees, clerical assistance, and the cost of plates that remain in your possession. Do not include the value of your time as the author, or any other person's time you did not pay for.

Franchises, trademarks, and trade names. If you buy a franchise, trademark, or trade name, the basis is its cost, unless you can deduct your payments as a business expense.

Allocating the Basis

If you buy multiple assets for a lump sum, allocate the amount you pay among the assets you receive. You must make this allocation to figure your basis for depreciation and gain or loss on a later disposition of any of these assets. See *Trade or Business Acquired* below.

Group of Assets Acquired

If you buy multiple assets for a lump sum, you and the seller may agree to a specific allocation of the purchase price among the assets in the sales contract. If this allocation is based on the value of each asset and you and the seller have adverse tax interests, the allocation generally will be accepted. However, see *Trade or Business Acquired*, next.

Trade or Business Acquired

If you acquire a trade or business, allocate the consideration paid to the various assets acquired. Generally, reduce the consideration paid by any cash and general deposit accounts (including checking and savings accounts) received. Allocate the remaining consideration to the other business assets received in proportion to (but not more than) their fair market value in the following order.

1. Certificates of deposit, U.S. Government securities, foreign currency, and actively traded personal property, including stock and securities.
2. Accounts receivable, other debt instruments, and assets you mark to market at least annually for federal income tax purposes.
3. Property of a kind that would properly be included in inventory if on hand at the end of the tax year or property held primarily for sale to customers in the ordinary course of business.
4. All other assets except section 197 intangibles, goodwill, and going concern value.
5. Section 197 intangibles except goodwill and going concern value.
6. Goodwill and going concern value (whether or not they qualify as section 197 intangibles).

Agreement. The buyer and seller may enter into a written agreement as to the allocation of any consideration or the fair market value (FMV) of any of the assets. This agreement is binding on both parties unless the IRS determines the amounts are not appropriate.

Reporting requirement. Both the buyer and seller involved in the sale of business assets must report to the IRS the allocation of the sales price among section 197 intangibles and the other business assets. Use Form 8594 to provide this information. The buyer and seller should each attach Form 8594 to their federal income tax return for the year in which the sale occurred.

More information. See *Sale of a Business* in chapter 2 of Publication 544 for more information.

Land and Buildings

If you buy buildings and the land on which they stand for a lump sum, allocate the basis of the property among the land and the buildings so you can figure the depreciation allowable on the buildings.

Figure the basis of each asset by multiplying the lump sum by a fraction. The numerator is the FMV of that asset and the denominator is the FMV of the whole property at the time of purchase. If you are not certain of the FMV of the land and buildings, you can allocate the basis based on their assessed values for real estate tax purposes.

Demolition of building. Add demolition costs and other losses incurred for the demolition of any building to the basis of the land on which the demolished building was located. Do not claim the costs as a current deduction.

Modification of building. A modification of a building will not be treated as a demolition if the following conditions are satisfied.

- 75 percent or more of the existing external walls of the building are retained in place as internal or external walls, and

- 75 percent or more of the existing internal structural framework of the building is retained in place.

If the building is a certified historic structure, the modification must also be part of a certified rehabilitation.

If these conditions are met, add the costs of the modifications to the basis of the building.

Subdivided lots. If you buy a tract of land and subdivide it, you must determine the basis of each lot. This is necessary because you must figure the gain or loss on the sale of each individual lot. As a result, you do not recover your entire cost in the tract until you have sold all of the lots.

To determine the basis of an individual lot, multiply the total cost of the tract by a fraction. The numerator is the FMV of the lot and the denominator is the FMV of the entire tract.

Future improvement costs. If you are a developer and sell subdivided lots before the development work is completed, you can (with IRS consent) include in the basis of the properties sold an allocation of the estimated future cost for common improvements. See Revenue Procedure 92-29 for more information, including an explanation of the procedures for getting consent from the IRS.

Use of erroneous cost basis. If you made a mistake in figuring the cost basis of subdivided lots sold in previous years, you cannot correct the mistake for years for which the statute of limitations (generally 3 tax years) has expired. Figure the basis of any remaining lots by allocating the correct original cost basis of the entire tract among the original lots.

Example. You bought a tract of land to which you assigned a cost of \$15,000. You subdivided the land into 15 building lots of equal size and equitably divided your basis so that each lot had a basis of \$1,000. You treated the sale of each lot as a separate transaction and figured gain or loss separately on each sale.

Several years later you determine that your original basis in the tract was \$22,500 and not \$15,000. You sold eight lots using \$8,000 of basis in years for which the statute of limitations has expired. You now can take \$1,500 of basis into account for figuring gain or loss only on the sale of each of the remaining seven lots (\$22,500 basis divided among all 15 lots). You cannot refigure the basis of the eight lots sold in tax years barred by the statute of limitations.

Adjusted Basis

Before figuring gain or loss on a sale, exchange, or other disposition of property or figuring allowable depreciation, depletion, or amortization, you must usually make certain adjustments to the basis of the property. The result of these adjustments to the basis is the adjusted basis.

Increases to Basis

Increase the basis of any property by all items properly added to a capital account. These include the cost of any improvements having a useful life of more than 1 year.

Table 1. Examples of Increases and Decreases to Basis

Increases to Basis	Decreases to Basis
Capital improvements: Putting an addition on your home Replacing an entire roof Paving your driveway Installing central air conditioning Rewiring your home	Exclusion from income of subsidies for energy conservation measures Casualty or theft loss deductions and insurance reimbursements Vehicle credits Section 179 deduction
Assessments for local improvements: Water connections Sidewalks Roads	Depreciation Nontaxable corporate distributions
Casualty losses: Restoring damaged property	
Legal fees: Cost of defending and perfecting a title Zoning costs	

Rehabilitation expenses also increase basis. However, you must subtract any rehabilitation credit allowed for these expenses before you add them to your basis. If you have to recapture any of the credit, increase your basis by the recaptured amount.

If you make additions or improvements to business property, keep separate accounts for them. Also, you must depreciate the basis of each according to the depreciation rules that would apply to the underlying property if you had placed it in service at the same time you placed the addition or improvement in service. For more information, see Publication 946.

The following items increase the basis of property.

- The cost of extending utility service lines to the property;
- Impact fees;
- Legal fees, such as the cost of defending and perfecting title;
- Legal fees for obtaining a decrease in an assessment levied against property to pay for local improvements;
- Zoning costs; and
- The capitalized value of a redeemable ground rent.

Assessments for Local Improvements

Increase the basis of property by assessments for items such as paving roads and building ditches that increase the value of the property assessed. Do not deduct them as taxes. However, you can deduct as taxes charges for maintenance, repairs, or interest charges related to the improvements.

Example. Your city changes the street in front of your store into an enclosed pedestrian mall and assesses you and other affected landowners for the cost of the conversion. Add the assessment to your property's basis. In this example, the assessment is a depreciable asset.

Deducting vs. Capitalizing Costs

Do not add to your basis costs you can deduct as current expenses. For example, amounts paid for incidental repairs or maintenance that are deductible as business expenses cannot be added to basis. However, you can choose either to deduct or to capitalize certain other costs. If you capitalize these costs, include them in your basis. If you deduct them, do not include them in your basis. See *Uniform Capitalization Rules* earlier.

The costs you can choose to deduct or to capitalize include the following.

- Carrying charges, such as interest and taxes, that you pay to own property, except carrying charges that must be capitalized under the uniform capitalization rules;
- Research and experimentation costs;
- Intangible drilling and development costs for oil, gas, and geothermal wells;
- Exploration costs for new mineral deposits;
- Mining development costs for a new mineral deposit;
- Costs of establishing, maintaining, or increasing the circulation of a newspaper or other periodical; and
- Costs of removing architectural and transportation barriers to people with disabilities and the elderly. If you claim the disabled access credit, you must reduce the amount you deduct or capitalize by the amount of the credit.

For more information about deducting or capitalizing costs, see chapter 7 in Publication 535.

Decreases to Basis

The following are some items that reduce the basis of property.

- Section 179 deduction;
- Nontaxable corporate distributions;
- Deductions previously allowed (or allowable) for amortization, depreciation, and depletion;

- Exclusion of subsidies for energy conservation measures;
- Vehicle credits;
- Residential energy credits;
- Postponed gain from sale of home;
- Investment credit (part or all) taken;
- Casualty and theft losses and insurance reimbursement;
- Certain canceled debt excluded from income;
- Rebates from a manufacturer or seller;
- Easements;
- Gas-guzzler tax;
- Adoption tax benefits; and
- Credit for employer-provided child care.

Some of these items are discussed next.

Casualties and Thefts

If you have a casualty or theft loss, decrease the basis in your property by any insurance or other reimbursement and by any deductible loss not covered by insurance.

You must increase your basis in the property by the amount you spend on repairs that substantially prolong the life of the property, increase its value, or adapt it to a different use. To make this determination, compare the repaired property to the property before the casualty. For more information on casualty and theft losses, see Publication 547, *Casualties, Disasters, and Thefts*.

Easements

The amount you receive for granting an easement is generally considered to be a sale of an interest in real property. It reduces the basis of the affected part of the property. If the amount received is more than the basis of the part of the property affected by the easement, reduce your basis in that part to zero and treat the excess as a recognized gain.

Vehicle Credits

Unless you elect not to claim the qualified plug-in electric vehicle credit, the alternative motor vehicle credit, or the qualified plug-in electric drive motor vehicle credit, you may have to reduce the basis of each qualified vehicle by certain amounts reported. For more information, see Form 8834, *Qualified Plug-in Electric and Electric Vehicle Credit*; Form 8910, *Alternative Motor Vehicle Credit*; Form 8936, *Qualified Plug-in Electric Drive Motor Vehicle Credit*; and the related instructions.

Gas-Guzzler Tax

Decrease the basis in your car by the gas-guzzler (fuel economy) tax if you begin using the car within 1 year of the date of its first sale for ultimate use. This rule also applies to someone who later buys the car and begins using it not more than 1 year after the original sale for ultimate use. If the car is imported, the

one-year period begins on the date of entry or withdrawal of the car from the warehouse if that date is later than the date of the first sale for ultimate use.

Section 179 Deduction

If you take the section 179 deduction for all or part of the cost of qualifying business property, decrease the basis of the property by the deduction. For more information about the section 179 deduction, see Publication 946.

Exclusion of Subsidies for Energy Conservation Measures

You can exclude from gross income any subsidy you received from a public utility company for the purchase or installation of any energy conservation measure for a dwelling unit. Reduce the basis of the property for which you received the subsidy by the excluded amount. For more information on this subsidy, see Publication 525.

Depreciation

Decrease the basis of property by the depreciation you deducted, or could have deducted, on your tax returns under the method of depreciation you chose. If you took less depreciation than you could have under the method chosen, decrease the basis by the amount you could have taken under that method. If you did not take a depreciation deduction, reduce the basis by the full amount of the depreciation you could have taken.

Unless a timely election is made not to deduct the special depreciation allowance for property placed in service after September 10, 2001, decrease the property's basis by the special depreciation allowance you deducted or could have deducted.

If you deducted more depreciation than you should have, decrease your basis by the amount equal to the depreciation you should have deducted plus the part of the excess depreciation you deducted that actually reduced your tax liability for the year.

In decreasing your basis for depreciation, take into account the amount deducted on your tax returns as depreciation and any depreciation capitalized under the uniform capitalization rules.

For information on figuring depreciation, see Publication 946.

If you are claiming depreciation on a business vehicle, see Publication 463. If the car is not used more than 50% for business during the tax year, you may have to recapture excess depreciation. Include the excess depreciation in your gross income and add it to your basis in the property. For information on the computation of excess depreciation, see chapter 4 in Publication 463.

Canceled Debt Excluded From Income

If a debt you owe is canceled or forgiven, other than as a gift or bequest, you generally must include the canceled amount in your gross income for tax purposes. A debt includes any

indebtedness for which you are liable or which attaches to property you hold.

You can exclude canceled debt from income in the following situations.

1. Debt canceled in a bankruptcy case or when you are insolvent,
2. Qualified farm debt, and
3. Qualified real property business debt (provided you are not a C corporation).

If you exclude from income canceled debt under situation (1) or (2), you may have to reduce the basis of your depreciable and nondepreciable property. However, in situation (3), you must reduce the basis of your depreciable property by the excluded amount.

For more information about canceled debt in a bankruptcy case or during insolvency, see Publication 908, Bankruptcy Tax Guide. For more information about canceled debt that is qualified farm debt, see chapter 3 in Publication 225. For more information about qualified real property business debt, see chapter 5 in Publication 334, Tax Guide for Small Business.

Postponed Gain From Sale of Home

If you postponed gain from the sale of your main home before May 7, 1997, you must reduce the basis of your new home by the postponed gain. For more information on the rules for the sale of a home, see Publication 523.

Adoption Tax Benefits

If you claim an adoption credit for the cost of improvements you added to the basis of your home, decrease the basis of your home by the credit allowed. This also applies to amounts you received under an employer's adoption assistance program and excluded from income. For more information Form 8839, Qualified Adoption Expenses.

Employer-Provided Child Care

If you are an employer, you can claim the employer-provided child care credit on amounts you paid or incurred to acquire, construct, rehabilitate, or expand property used as part of your qualified child care facility. You must reduce your basis in that property by the credit claimed. For more information, see Form 8882, Credit for Employer-Provided Child Care Facilities and Services.

Adjustments to Basis Example

In January 2005, you paid \$80,000 for real property to be used as a factory. You also paid commissions of \$2,000 and title search and legal fees of \$600. You allocated the total cost of \$82,600 between the land and the building—\$10,325 for the land and \$72,275 for the building. Immediately you spent \$20,000 in remodeling the building before you placed it in service. You were allowed depreciation of \$14,526 for the years 2005 through 2009. In 2008 you had a

\$5,000 casualty loss from a that was not covered by insurance on the building. You claimed a deduction for this loss. You spent \$5,500 to repair the damages and extend the useful life of the building. The adjusted basis of the building on January 1, 2010, is figured as follows:

Original cost of building including fees and commissions	\$72,275
Adjustments to basis:	
Add:	
Improvements	20,000
Repair of damages	5,500
	<u>\$97,775</u>
Subtract:	
Depreciation	\$14,526
Deducted casualty loss	5,000
	<u>19,526</u>
Adjusted basis on January 1, 2010	<u>\$78,249</u>

The basis of the land, \$10,325, remains unchanged. It is not affected by any of the above adjustments.

Basis Other Than Cost

There are many times when you cannot use cost as basis. In these cases, the fair market value or the adjusted basis of property may be used. Adjusted basis is discussed earlier.

Fair market value (FMV). FMV is the price at which property would change hands between a buyer and a seller, neither having to buy or sell, and both having reasonable knowledge of all necessary facts. Sales of similar property on or about the same date may be helpful in figuring the property's FMV.

Property Received for Services

If you receive property for services, include the property's FMV in income. The amount you include in income becomes your basis. If the services were performed for a price agreed on beforehand, it will be accepted as the FMV of the property if there is no evidence to the contrary.

Bargain Purchases

A bargain purchase is a purchase of an item for less than its FMV. If, as compensation for services, you purchase goods or other property at less than FMV, include the difference between the purchase price and the property's FMV in your income. Your basis in the property is its FMV (your purchase price plus the amount you include in income).

If the difference between your purchase price and the FMV represents a qualified employee discount, do not include the difference in income. However, your basis in the property is still its FMV. See *Employee Discounts* in Publication 15-B.

Restricted Property

If you receive property for your services and the property is subject to certain restrictions, your basis in the property is its FMV when it becomes

substantially vested unless you make the election discussed later. Property becomes substantially vested when your rights in the property or the rights of any person to whom you transfer the property are not subject to a substantial risk of forfeiture.

There is substantial risk of forfeiture when the rights to full enjoyment of the property depend on the future performance of substantial services by any person.

When the property becomes substantially vested, include the FMV, less any amount you paid for the property, in income.

Example. Your employer gives you stock for services performed under the condition that you will have to return the stock unless you complete 5 years of service. The stock is under a substantial risk of forfeiture and is not substantially vested when you receive it. You do not report any income until you have completed the 5 years of service that satisfy the condition.

Fair market value. Figure the FMV of property you received without considering any restriction except one that by its terms will never end.

Example. You received stock from your employer for services you performed. If you want to sell the stock while you are still employed, you must sell the stock to your employer at book value. At your retirement or death, you or your estate must offer to sell the stock to your employer at its book value. This is a restriction that by its terms will never end and you must consider it when you figure the FMV.

Election. You can choose to include in your gross income the FMV of the property at the time of transfer, less any amount you paid for it. If you make this choice, the substantially vested rules do not apply. Your basis is the amount you paid plus the amount you included in income.

See the discussion of *Restricted Property* in Publication 525 for more information.

Taxable Exchanges

A taxable exchange is one in which the gain is taxable or the loss is deductible. A taxable gain or deductible loss is also known as a recognized gain or loss. If you receive property in exchange for other property in a taxable exchange, the basis of property you receive is usually its FMV at the time of the exchange. A taxable exchange occurs when you receive cash or property not similar or related in use to the property exchanged.

Example. You trade a tract of farm land with an adjusted basis of \$3,000 for a tractor that has an FMV of \$6,000. You must report a taxable gain of \$3,000 for the land. The tractor has a basis of \$6,000.

Involuntary Conversions

If you receive property as a result of an involuntary conversion, such as a casualty, theft, or condemnation, you can figure the basis of the replacement property you receive using the basis of the converted property.

Similar or related property. If you receive replacement property similar or related in service or use to the converted property, the replacement property's basis is the old property's basis on the date of the conversion. However, make the following adjustments.

1. Decrease the basis by the following.
 - a. Any loss you recognize on the conversion, and
 - b. Any money you receive that you do not spend on similar property.
2. Increase the basis by the following.
 - a. Any gain you recognize on the conversion, and
 - b. Any cost of acquiring the replacement property.

Money or property not similar or related. If you receive money or property not similar or related in service or use to the converted property, and you buy replacement property similar or related in service or use to the converted property, the basis of the new property is its cost decreased by the gain not recognized on the conversion.

Example. The state condemned your property. The property had an adjusted basis of \$26,000 and the state paid you \$31,000 for it. You realized a gain of \$5,000 (\$31,000 – \$26,000). You bought replacement property similar in use to the converted property for \$29,000. You recognize a gain of \$2,000 (\$31,000 – \$29,000), the unspent part of the payment from the state. Your gain not recognized is \$3,000, the difference between the \$5,000 realized gain and the \$2,000 recognized gain. The basis of the new property is figured as follows:

Cost of replacement property	\$29,000
Minus: Gain not recognized	3,000
Basis of the replacement property	<u>\$26,000</u>

Allocating the basis. If you buy more than one piece of replacement property, allocate your basis among the properties based on their respective costs.

Example. The state in the previous example condemned your unimproved real property and the replacement property you bought was improved real property with both land and buildings. Allocate the replacement property's \$26,000 basis between land and buildings based on their respective costs.

More information. For more information about condemnations, see *Involuntary Conversions* in Publication 544. For more information about casualty and theft losses, see Publication 547.

Nontaxable Exchanges

Terms you may need to know (see Glossary):

- Intangible property
- Like-kind property

- Personal property
- Real property
- Tangible property

A nontaxable exchange is an exchange in which you are not taxed on any gain and you cannot deduct any loss. If you receive property in a nontaxable exchange, its basis is usually the same as the basis of the property you transferred. A nontaxable gain or loss is also known as an unrecognized gain or loss.

Like-Kind Exchanges

The exchange of property for the same kind of property is the most common type of nontaxable exchange.

To qualify as a like-kind exchange, you must hold for business or investment purposes both the property you transfer and the property you receive. There must also be an exchange of like-kind property. For more information, see *Like-Kind Exchanges* in Publication 544.

The basis of the property you receive is the same as the basis of the property you gave up.

Example. You exchange real estate (adjusted basis \$50,000, FMV \$80,000) held for investment for other real estate (FMV \$80,000) held for investment. Your basis in the new property is the same as the basis of the old (\$50,000).

Exchange expenses. Exchange expenses are generally the closing costs you pay. They include such items as brokerage commissions, attorney fees, deed preparation fees, etc. Add them to the basis of the like-kind property received.

Property plus cash. If you trade property in a like-kind exchange and also pay money, the basis of the property received is the basis of the property you gave up increased by the money you paid.

Example. You trade in a truck (adjusted basis \$3,000) for another truck (FMV \$7,500) and pay \$4,000. Your basis in the new truck is \$7,000 (the \$3,000 basis of the old truck plus the \$4,000 paid).

Special rules for related persons. If a like-kind exchange takes place directly or indirectly between related persons and either party disposes of the property within 2 years after the exchange, the exchange no longer qualifies for like-kind exchange treatment. Each person must report any gain or loss not recognized on the original exchange. Each person reports it on the tax return filed for the year in which the later disposition occurs. If this rule applies, the basis of the property received in the original exchange will be its fair market value.

These rules generally do not apply to the following kinds of property dispositions.

- Dispositions due to the death of either related person,
- Involuntary conversions, and
- Dispositions in which neither the original exchange nor the subsequent disposition

had as a main purpose the avoidance of federal income tax.

Related persons. Generally, related persons are ancestors, lineal descendants, brothers and sisters (whole or half), and a spouse.

For other related persons (for example, two corporations, an individual and a corporation, a grantor and fiduciary, etc.), see *Nondeductible Loss* in chapter 2 of Publication 544.

Exchange of business property. Exchanging the assets of one business for the assets of another business is a multiple property exchange. For information on figuring basis, see *Multiple Property Exchanges* in chapter 1 of Publication 544.

Partially Nontaxable Exchange

A partially nontaxable exchange is an exchange in which you receive unlike property or money in addition to like property. The basis of the property you receive is the same as the basis of the property you gave up, with the following adjustments.

1. Decrease the basis by the following amounts.
 - a. Any money you receive, and
 - b. Any loss you recognize on the exchange.
2. Increase the basis by the following amounts.
 - a. Any additional costs you incur, and
 - b. Any gain you recognize on the exchange.

If the other party to the exchange assumes your liabilities, treat the debt assumption as money you received in the exchange.

Example. You traded a truck (adjusted basis \$6,000) for a new truck (FMV \$5,200) and \$1,000 cash. You realized a gain of \$200 (\$6,200 – \$6,000). This is the FMV of the truck received plus the cash minus the adjusted basis of the truck you traded (\$5,200 + \$1,000 – \$6,000). You include all the gain in income (recognized gain) because the gain is less than the cash received. Your basis in the new truck is:

Adjusted basis of old truck	\$6,000
Minus: Cash received (adjustment 1(a))	<u>1,000</u>
	\$5,000
Plus: Gain recognized (adjustment 2(b))	<u>200</u>
Basis of new truck	<u>\$5,200</u>

Allocation of basis. Allocate the basis first to the unlike property, other than money, up to its FMV on the date of the exchange. The rest is the basis of the like property.

Example. You had an adjusted basis of \$15,000 in real estate you held for investment. You exchanged it for other real estate to be held for investment with an FMV of \$12,500, a truck with an FMV of \$3,000, and \$1,000 cash. The truck is unlike property. You realized a gain of \$1,500 (\$16,500 – \$15,000). This is the FMV of

the real estate received plus the FMV of the truck received plus the cash *minus* the adjusted basis of the real estate you traded (\$12,500 + \$3,000 + \$1,000 – \$15,000). You include in income (recognize) all \$1,500 of the gain because it is less than the FMV of the unlike property plus the cash received. Your basis in the properties you received is figured as follows.

Adjusted basis of real estate transferred	\$15,000
Minus: Cash received (adjustment 1(a))	<u>1,000</u>
	\$14,000
Plus: Gain recognized (adjustment 2(b))	<u>1,500</u>
Total basis of properties received	<u>\$15,500</u>

Allocate the total basis of \$15,500 first to the unlike property — the truck (\$3,000). This is the truck's FMV. The rest (\$12,500) is the basis of the real estate.

Sale and Purchase

If you sell property and buy similar property in two mutually dependent transactions, you may have to treat the sale and purchase as a single nontaxable exchange.

Example. You are a salesperson and you use one of your cars 100% for business. You have used this car in your sales activities for 2 years and have depreciated it. Your adjusted basis in the car is \$22,600 and its FMV is \$23,100. You are interested in a new car, which sells for \$28,000. If you trade your old car and pay \$4,900 for the new one, your basis for depreciation for the new car would be \$27,500 (\$4,900 plus the \$22,600 basis of your old car). However, you want a higher basis for depreciating the new car, so you agree to pay the dealer \$28,000 for the new car if he will pay you \$23,100 for your old car. Because the two transactions are dependent on each other, you are treated as having exchanged your old car for the new one and paid \$4,900 (\$28,000 – \$23,100). Your basis for depreciating the new car is \$27,500, the same as if you traded the old car.

Partial Business Use of Property

If you have property used partly for business and partly for personal use, and you exchange it in a nontaxable exchange for property to be used wholly or partly in your business, the basis of the property you receive is figured as if you had exchanged two properties. The first is an exchange of like-kind property. The second is personal-use property on which gain is recognized and loss is not recognized.

First, figure your adjusted basis in the property as if you transferred two separate properties. Figure the adjusted basis of each part of the property by taking into account any adjustments to basis. Deduct the depreciation you took or could have taken from the adjusted basis of the business part. Then figure the amount realized for your property and allocate it to the business and nonbusiness parts of the property.

The business part of the property is permitted to be exchanged tax free. However, you must recognize any gain from the exchange of the nonbusiness part. You are deemed to have

received, in exchange for the nonbusiness part, an amount equal to its FMV on the date of the exchange. The basis of the property you acquired is the total basis of the property transferred (adjusted to the date of the exchange), increased by any gain recognized on the nonbusiness part.

TIP *If the nonbusiness part of the property transferred is your main home, you may qualify to exclude from income all or part of the gain on that part. For more information, see Publication 523.*

Trade of car used partly in business. If you trade in a car you used partly in your business for another car you will use in your business, your basis for depreciation of the new car is not the same as your basis for figuring a gain or loss on its sale.

For information on figuring your basis for depreciation, see Publication 463.

Property Transferred From a Spouse

The basis of property transferred to you or transferred in trust for your benefit by your spouse (or former spouse if the transfer is incident to divorce), is the same as your spouse's adjusted basis. However, adjust your basis for any gain recognized by your spouse or former spouse on property transferred in trust. This rule applies only to a transfer of property in trust in which the liabilities assumed, plus the liabilities to which the property is subject, are more than the adjusted basis of the property transferred.

If the property transferred to you is a series E, series EE, or series I United States savings bond, the transferor must include in income the interest accrued to the date of transfer. Your basis in the bond immediately after the transfer is equal to the transferor's basis increased by the interest income includable in the transferor's income. For more information on these bonds, see Publication 550.

At the time of the transfer, the transferor must give you the records necessary to determine the adjusted basis and holding period of the property as of the date of transfer.

For more information, see Publication 504, *Divorced or Separated Individuals*.

Property Received as a Gift

To figure the basis of property you receive as a gift, you must know its adjusted basis (defined earlier) to the donor just before it was given to you, its FMV at the time it was given to you, and any gift tax paid on it.

FMV Less Than Donor's Adjusted Basis

If the FMV of the property at the time of the gift is less than the donor's adjusted basis, your basis depends on whether you have a gain or a loss when you dispose of the property. Your basis for figuring gain is the same as the donor's adjusted basis plus or minus any required adjustment to basis while you held the property. Your basis for figuring loss is its FMV when you received the gift plus or minus any required adjustment to

basis while you held the property (see *Adjusted Basis* earlier).

If you use the donor's adjusted basis for figuring a gain and get a loss, and then use the FMV for figuring a loss and have a gain, you have neither gain nor loss on the sale or disposition of the property.

Example. You received an acre of land as a gift. At the time of the gift, the land had an FMV of \$8,000. The donor's adjusted basis was \$10,000. After you received the land, no events occurred to increase or decrease your basis. If you sell the land for \$12,000, you will have a \$2,000 gain because you must use the donor's adjusted basis (\$10,000) at the time of the gift as your basis to figure gain. If you sell the land for \$7,000, you will have a \$1,000 loss because you must use the FMV (\$8,000) at the time of the gift as your basis to figure a loss.

If the sales price is between \$8,000 and \$10,000, you have neither gain nor loss. For instance, if the sales price was \$9,000 and you tried to figure a gain using the donor's adjusted basis (\$10,000), you would get a \$1,000 loss. If you then tried to figure a loss using the FMV (\$8,000), you would get a \$1,000 gain.

Business property. If you hold the gift as business property, your basis for figuring any depreciation, depletion, or amortization deduction is the same as the donor's adjusted basis plus or minus any required adjustments to basis while you hold the property.

FMV Equal to or More Than Donor's Adjusted Basis

If the FMV of the property is equal to or greater than the donor's adjusted basis, your basis is the donor's adjusted basis at the time you received the gift. Increase your basis by all or part of any gift tax paid, depending on the date of the gift.

Also, for figuring gain or loss from a sale or other disposition of the property, or for figuring depreciation, depletion, or amortization deductions on business property, you must increase or decrease your basis by any required adjustments to basis while you held the property. See *Adjusted Basis* earlier.

Gift received before 1977. If you received a gift before 1977, increase your basis in the gift (the donor's adjusted basis) by any gift tax paid on it. However, do not increase your basis above the FMV of the gift at the time it was given to you.

Example 1. You were given a house in 1976 with an FMV of \$21,000. The donor's adjusted basis was \$20,000. The donor paid a gift tax of \$500. Your basis is \$20,500, the donor's adjusted basis plus the gift tax paid.

Example 2. If, in Example 1, the gift tax paid had been \$1,500, your basis would be \$21,000. This is the donor's adjusted basis plus the gift tax paid, limited to the FMV of the house at the time you received the gift.

Gift received after 1976. If you received a gift after 1976, increase your basis in the gift (the donor's adjusted basis) by the part of the gift tax paid on it that is due to the net increase in value of the gift. Figure the increase by multiplying the gift tax paid by a fraction. The numerator of the

fraction is the net increase in value of the gift and the denominator is the amount of the gift.

The net increase in value of the gift is the FMV of the gift less the donor's adjusted basis. The amount of the gift is its value for gift tax purposes after reduction by any annual exclusion and marital or charitable deduction that applies to the gift. For information on the gift tax, see Publication 950, *Introduction to Estate and Gift Taxes*.

Example. In 2010, you received a gift of property from your mother that had an FMV of \$50,000. Her adjusted basis was \$20,000. The amount of the gift for gift tax purposes was \$37,000 (\$50,000 minus the \$13,000 annual exclusion). She paid a gift tax of \$9,000. Your basis, \$27,290, is figured as follows:

Fair market value	\$50,000
Minus: Adjusted basis	20,000
Net increase in value	<u>\$30,000</u>
Gift tax paid	9,000
Multiplied by $(\$30,000 \div \$37,000)$81
Gift tax due to net increase in value	<u>\$7,290</u>
Adjusted basis of property to your mother	20,000
Your basis in the property	<u>\$27,290</u>

Inherited Property



Special rules apply to property acquired from a decedent who died in 2010. See Publication 4895, Tax Treatment of Property Acquired From a Decedent Dying in 2010, for details.

If you inherited property from a decedent who died before 2010, your basis in property you inherit from a decedent is generally one of the following.

1. The FMV of the property at the date of the individual's death.
2. The FMV on the alternate valuation date if the personal representative for the estate chooses to use alternate valuation. For information on the alternate valuation date, see the Instructions for Form 706.
3. The value under the special-use valuation method for real property used in farming or a closely held business if chosen for estate tax purposes. This method is discussed later.
4. The decedent's adjusted basis in land to the extent of the value excluded from the decedent's taxable estate as a qualified conservation easement. For information on a qualified conservation easement, see the Instructions for Form 706.

If a federal estate tax return does not have to be filed, your basis in the inherited property is its appraised value at the date of death for state inheritance or transmission taxes.

For more information, see the Instructions for Form 706.

Appreciated property. The above rule does not apply to appreciated property you receive from a decedent if you or your spouse originally gave the property to the decedent within 1 year before the decedent's death. Your basis in this property is the same as the decedent's adjusted basis in the property immediately before his or

her death, rather than its FMV. Appreciated property is any property whose FMV on the day it was given to the decedent is more than its adjusted basis.

Community Property

In community property states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin), husband and wife are each usually considered to own half the community property. When either spouse dies, the total value of the community property, even the part belonging to the surviving spouse, generally becomes the basis of the entire property. For this rule to apply, at least half the value of the community property interest must be includable in the decedent's gross estate, whether or not the estate must file a return.

For example, you and your spouse owned community property that had a basis of \$80,000. When your spouse died, half the FMV of the community interest was includable in your spouse's estate. The FMV of the community interest was \$100,000. The basis of your half of the property after the death of your spouse is \$50,000 (half of the \$100,000 FMV). The basis of the other half to your spouse's heirs is also \$50,000.

For more information on community property, see Publication 555, *Community Property*.

Property Held by Surviving Tenant

The following example explains the rule for the basis of property held by a surviving tenant in joint tenancy or tenancy by the entirety.

Example. John and Jim owned, as joint tenants with right of survivorship, business property they purchased for \$30,000. John furnished two-thirds of the purchase price and Jim furnished one-third. Depreciation deductions allowed before John's death were \$12,000. Under local law, each had a half interest in the income from the property. At the date of John's death, the property had an FMV of \$60,000, two-thirds of which is includable in John's estate. Jim figures his basis in the property at the date of John's death as follows:

Interest Jim bought with his own funds— $\frac{1}{3}$ of \$30,000 cost	\$10,000
Interest Jim received on John's death— $\frac{2}{3}$ of \$60,000 FMV	<u>40,000</u> \$50,000
Minus: $\frac{1}{2}$ of \$12,000 depreciation before John's death	<u>6,000</u>
Jim's basis at the date of John's death	<u>\$44,000</u>

If Jim had not contributed any part of the purchase price, his basis at the date of John's death would be \$54,000. This is figured by subtracting from the \$60,000 FMV, the \$6,000 depreciation allocated to Jim's half interest before the date of death.

If under local law Jim had no interest in the income from the property and he contributed no part of the purchase price, his basis at John's death would be \$60,000, the FMV of the property.

Qualified Joint Interest

Include one-half of the value of a qualified joint interest in the decedent's gross estate. It does not matter how much each spouse contributed to the purchase price. Also, it does not matter which spouse dies first.

A qualified joint interest is any interest in property held by husband and wife as either of the following.

- Tenants by the entirety, or
- Joint tenants with right of survivorship if husband and wife are the only joint tenants.

Basis. As the surviving spouse, your basis in property you owned with your spouse as a qualified joint interest is the cost of your half of the property with certain adjustments. Decrease the cost by any deductions allowed to you for depreciation and depletion. Increase the reduced cost by your basis in the half you inherited.

Farm or Closely Held Business

Under certain conditions, when a person dies the executor or personal representative of that person's estate can choose to value the qualified real property on other than its FMV. If so, the executor or personal representative values the qualified real property based on its use as a farm or its use in a closely held business. If the executor or personal representative chooses this method of valuation for estate tax purposes, that value is the basis of the property for the heirs. Qualified heirs should be able to get the necessary value from the executor or personal representative of the estate.

Special-use valuation. If you are a qualified heir who received special-use valuation property, your basis in the property is the estate's or trust's basis in that property immediately before the distribution. Increase your basis by any gain recognized by the estate or trust because of post-death appreciation. Post-death appreciation is the property's FMV on the date of distribution minus the property's FMV either on the date of the individual's death or the alternate valuation date. Figure all FMVs without regard to the special-use valuation.

You can elect to increase your basis in special-use valuation property if it becomes subject to the additional estate tax. This tax is assessed if, within 10 years after the death of the decedent, you transfer the property to a person who is not a member of your family or the property stops being used as a farm or in a closely held business.

To increase your basis in the property, you must make an irrevocable election and pay interest on the additional estate tax figured from the date 9 months after the decedent's death until the date of the payment of the additional estate tax. If you meet these requirements, increase your basis in the property to its FMV on the date of the decedent's death or the alternate valuation date. The increase in your basis is considered to have occurred immediately before the event that results in the additional estate tax.

You make the election by filing with Form 706-A a statement that does all of the following.

- Contains your name, address, and taxpayer identification number and those of the estate;
- Identifies the election as an election under section 1016(c) of the Internal Revenue Code;
- Specifies the property for which the election is made; and
- Provides any additional information required by the Instructions for Form 706-A.

For more information, see the Instructions for Form 706 and the Instructions for Form 706-A.

Property Changed to Business or Rental Use

If you hold property for personal use and then change it to business use or use it to produce rent, you must figure its basis for depreciation. An example of changing property held for personal use to business use would be renting out your former main home.

Basis for depreciation. The basis for depreciation is the lesser of the following amounts.

- The FMV of the property on the date of the change, or
- Your adjusted basis on the date of the change.

Example. Several years ago you paid \$160,000 to have your home built on a lot that cost \$25,000. You paid \$20,000 for permanent improvements to the house and claimed a \$2,000 casualty loss deduction for damage to the house before changing the property to rental use last year. Because land is not depreciable, you include only the cost of the house when figuring the basis for depreciation.

Your adjusted basis in the house when you changed its use was \$178,000 (\$160,000 + \$20,000 - \$2,000). On the same date, your property had an FMV of \$180,000, of which \$15,000 was for the land and \$165,000 was for the house. The basis for figuring depreciation on the house is its FMV on the date of change (\$165,000) because it is less than your adjusted basis (\$178,000).

Sale of property. If you later sell or dispose of property changed to business or rental use, the basis of the property you use will depend on whether you are figuring gain or loss.

Gain. The basis for figuring a gain is your adjusted basis when you sell the property.

Example. Assume the same facts as in the previous example except that you sell the property at a gain after being allowed depreciation deductions of \$37,500. Your adjusted basis for figuring gain is \$165,500 (\$178,000 + \$25,000 (land) - \$37,500).

Loss. Figure the basis for a loss starting with the smaller of your adjusted basis or the FMV of the property at the time of the change to business or rental use. Then adjust this amount for the period after the change in the property's use, as discussed earlier under *Adjusted Basis*, to arrive at a basis for loss.

Example. Assume the same facts as in the previous example, except that you sell the property at a loss after being allowed depreciation deductions of \$37,500. In this case, you would start with the FMV on the date of the change to rental use (\$180,000) because it is less than the adjusted basis of \$203,000 (\$178,000 + \$25,000) on that date. Reduce that amount (\$180,000) by the depreciation deductions to arrive at a basis for loss of \$142,500 (\$180,000 - \$37,500).

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get more information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Contacting your Taxpayer Advocate. The Taxpayer Advocate Service (TAS) is an independent organization within the IRS. We help taxpayers who are experiencing economic harm, such as not being able to provide necessities like housing, transportation, or food; taxpayers who are seeking help in resolving tax problems with the IRS; and those who believe that an IRS system or procedure is not working as it should. Here are seven things every taxpayer should know about TAS.

- TAS is your voice at the IRS.
- Our service is free, confidential, and tailored to meet your needs.
- You may be eligible for our help if you have tried to resolve your tax problem through normal IRS channels and have gotten nowhere, or you believe an IRS procedure just isn't working as it should.
- We help taxpayers whose problems are causing financial difficulty or significant cost, including the cost of professional representation. This includes businesses as well as individuals.
- Our employees know the IRS and how to navigate it. If you qualify for our help, we'll assign your case to an advocate who will listen to your problem, help you understand what needs to be done to resolve it, and stay with you every step of the way until your problem is resolved.
- We have at least one local taxpayer advocate in every state, the District of Columbia, and Puerto Rico. You can call your local advocate, whose number is in your phone book, in Publication 1546, Taxpayer Advocate Service—Your Voice at the IRS, and on our website at www.irs.gov/advocate. You can also call our toll-free line at 1-877-777-4778 or TTY/TDD 1-800-829-4059.
- You can learn about your rights and responsibilities as a taxpayer by visiting our online tax toolkit at www.taxtoolkit.irs.gov. You can get updates on hot tax topics by visiting our YouTube channel at www.youtube.com/tasnta and our Facebook page at www.facebook.com/YourVoiceAtIRS, or



Department
of the
Treasury

Internal
Revenue
Service

Publication 4895
(Rev. October 2011)

Cat. No. 55918T

Tax Treatment of Property Acquired From a Decedent Dying in 2010



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Reminders

Throughout this publication, section references are to the Internal Revenue Code unless otherwise noted.

More information. For more information about the latest developments on Publication 4895, go to www.irs.gov/pub4895. For information about Form 8939 and its instructions go to www.irs.gov/form8939.

Election required. In order for the modified carryover basis rules described in this publication to apply to property you acquired from a decedent who died in 2010, the estate's executor must make a valid and timely election (Section 1022 Election) on Form 8939, Allocation of Increase in Basis for Property Received From a Decedent. If the executor does not make a valid and timely Section 1022 Election, the rules in effect for determining basis in property acquired from a decedent who died immediately before 2010 will apply. For information on the rules applicable if the Section 1022 Election is not made, see Pub. 551.

Introduction

This publication is designed to help executors and individuals who acquired property from a decedent dying in 2010, for which the Section 1022 Election has been made, determine the tax treatment of the property acquired. See *Property Acquired From the Decedent*, later.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can write to us at the following address:

Internal Revenue Service
Individual and Specialty Forms and
Publications Branch
SE:W:CAR:MP:T:I
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

You can email us at taxforms@irs.gov. Please put "Publications Comment" on the subject line. You can also send us comments from www.irs.gov/formspubs/, select "Comment on Tax Forms and Publications" under "Information about."

Although we cannot respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax products.

Ordering forms and publications. Visit www.irs.gov/formspubs/ to download forms and publications, call 1-800-829-3676, or write to the address below and receive a response within 10 days after your request is received.

Internal Revenue Service
1201 N. Mitsubishi Motorway
Bloomington, IL 61705-6613

Oct 14, 2011

Tax questions. If you have a tax question, check the information available on IRS.gov or call 1-800-829-1040. We cannot answer tax questions sent to either of the above addresses.

Useful Items

You may want to see:

Publication

- ❑ 551 Basis of Assets
- ❑ 555 Community Property
- ❑ 559 Survivors, Executors, and Administrators

Form (and Instructions)

- ❑ 8939 Allocation of Increase in Basis for Property Received From a Decedent
- ❑ 706 United States Estate (and Generation-Skipping Transfer) Tax Return

Section 1022 Election

The executor of an estate of a decedent who died in 2010 can elect to apply modified carryover basis treatment to property acquired from the decedent under section 301(c) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (TRUIRJCA). If the election is made, the estate will not be subject to federal estate tax and does not need to file a Form 706 even if the value of the estate is \$5,000,000 or more. As a result, section 1014 generally does not apply to determine the recipient's basis in property acquired from the decedent. Instead, section 1022 applies to determine the recipient's basis in most (but not all) property acquired from the decedent. This election is referred to as the Section 1022 Election.

Form 8939

Form 8939 is an information return used by the executor of a decedent who died in 2010:

1. To make the Section 1022 Election;
2. To report information about property acquired from a decedent (defined in *Property Acquired From the Decedent*, later); and
3. To allocate Basis Increase (defined in *Basis Increase*, later) to certain property acquired from a decedent.

For detailed information about the Section 1022 Election, see Notice 2011-66, 2011-35 I.R.B. 184, available at www.irs.gov/irb/2011-35_IRB/ar09.html and Notice 2011-76, 2011-40 I.R.B. 479, available at www.irs.gov/irb/2011-40_IRB/ar13.html. For optional safe harbor guidance under section 1022, see Revenue Procedure 2011-41, 2011-35 I.R.B. 188, available at www.irs.gov/irb/2011-35_IRB/ar10/html.

The Section 1022 Election is made when the executor timely files Form 8939. The due date for Form 8939 is January 17, 2012. For more information on the filing due date, see *When to File* in the Instructions for Form 8939.

Effect of the Section 1022 Election

If the executor makes the Section 1022 Election, special rules apply. These rules include the following.

- There is no estate tax.
- The basis of property acquired from a decedent generally is determined under the modified carryover basis rules of section 1022 and not under section 1014. Generally, the recipient's basis is the lesser of the decedent's adjusted basis or the fair market value (FMV) at the date of the decedent's death, increased by any allocation of Basis Increase, and as further adjusted as required by sections 1016, 1017, and 1018, or as otherwise specifically provided for under applicable provisions of Internal Revenue laws.

If the executor makes the Section 1022 Election and follows the provisions of section 4 of Revenue Procedure 2011-41, and takes no return position contrary to any provisions of section 4, the IRS will not challenge the taxpayer's ability to rely on the provisions of section 4 on either Form 8939 or any other return of tax.

Once made, the Section 1022 Election cannot be revoked after the due date for filing Form 8939.

Note. If the executor does not make a valid and timely Section 1022 Election, the rules in effect for determining basis in property acquired from a decedent who died immediately before 2010 will apply.

Interaction of Section 1022 with Other Income Tax Provisions

For information on how property acquired from the decedent for which a Section 1022 Election has been made is treated with respect to certain income tax provisions (including holding period, tax character, and depreciation) see Rev. Proc. 2011-41, section 4.06.

Statement to Recipients

The executor filing Form 8939 must furnish a Schedule A (Form 8939) to each person who acquired property from the decedent, including the following persons.

- The decedent's surviving spouse.
- The trustee of a qualified terminable interest property (QTIP) trust.
- Any charitable remainder trust the sole non-charitable beneficiary of which is the decedent's surviving spouse.
- Any other person (other than the executor filing the return) who acquires property from the decedent.

The executor must provide a Schedule A (Form 8939) to each person who acquired property from the decedent no later than 30 days after the date that the executor files Form 8939. The executor must also provide amended or supplemental Schedules A (Form 8939) in certain circumstances. For more information, see Notice 2011-66.

The Schedule A (Form 8939) that the recipient of property receives should include the following information about the property acquired from the decedent.

- A description of the property.
- The date the decedent acquired the property (to help determine the recipient's holding period in the property).
- The adjusted basis of the property on the date of the decedent's death.
- The FMV of the property on the date of the decedent's death.
- The amount of Basis Increase allocated to the property.
- The amount, if any, of ordinary income that would result on the sale of the property.

Property Acquired From the Decedent

Generally, section 1022 determines a recipient's basis in property, but only if the property is acquired from the decedent. Generally, property acquired from the decedent includes the following.

1. Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent.
2. Property transferred by the decedent during the decedent's lifetime to:
 - a. A qualified revocable trust (as defined in section 645(b)(1)), or
 - b. Any other trust with respect to which the decedent reserved the right to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust.
3. Any other property passing from the decedent by reason of death to the extent that such property passed without consideration.

Note. Section 1022 does not apply to a decedent's interest in a QTIP trust or similar arrangement funded for the benefit of the decedent by the decedent's predeceased spouse. A recipient's basis in this property will not be determined under section 1022.

Note. Section 1022 also does not apply to property that constitutes a right to receive an item of income in respect of a decedent under section 691.

Property Eligible for Increase to Basis

Generally, the executor can allocate additional basis under section 1022 (up to the FMV of the property) to property acquired from the decedent that was owned by the decedent at the time of death.

Property Owned by the Decedent at the Time of Death

The basis of property acquired from the decedent can be increased by an allocation of Basis Increase only if and to the extent the property was owned by the decedent at the time of death.

For information about ownership, see *Rules relating to ownership*, in the Instructions for Form 8939.

Amount of Basis Increase

The executor can allocate General Basis Increase (defined in *General Basis Increase*, later), and/or Spousal Property Basis Increase (defined in *Spousal Property Basis Increase*, later) to eligible property (defined earlier) but not in excess of the amount needed to increase the decedent's adjusted basis to the property's FMV as of the date of the decedent's death. The result is that, for each property, the sum of the decedent's adjusted basis in that property and the Basis Increase allocated to that property cannot exceed the FMV of that property on the decedent's date of death.

The executor can allocate Basis Increase to property owned by and acquired from the decedent on a property-by-property basis. For example, the executor can allocate Basis Increase to one or more shares of stock or to a particular block of stock rather than to the decedent's entire holding of that stock.

Basis Increase may not be allocated separately to a life estate and remainder interest in the same property.

Decedent's Adjusted Basis

Generally, the adjusted basis of the property in the hands of the decedent as of the date of the decedent's death is the decedent's cost or other basis, adjusted as required by sections 1016, 1017, and 1018, or as otherwise specifically provided for under applicable provisions of Internal Revenue laws.

Fair Market Value (FMV)

Generally, for purposes of section 1022, the FMV of property is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts.

Basis Increase

Basis Increase is the sum of the General Basis Increase (defined below) and the Spousal Property Basis Increase (defined below).

General Basis Increase

General Basis Increase is the sum of the Aggregate Basis Increase (defined below) and the Carryovers/Unrealized Losses Increase (defined in Rev. Proc. 2011-41). However, for a decedent who was neither a resident nor citizen of the United States, the General Basis Increase is limited to the Aggregate Basis Increase (limited as described below).

Aggregate Basis Increase

Aggregate Basis Increase is \$1,300,000. However, for a decedent who was neither a resident nor citizen of the United States, the Aggregate Basis Increase is \$60,000.

Spousal Property Basis Increase

Spousal Property Basis Increase is \$3,000,000.

Generally, the executor can allocate Spousal Property Basis Increase only to qualified spousal property that was both acquired from and owned by the decedent. Qualified spousal property means:

- Outright transfer property; and
- Qualified terminable interest property.

For more information on outright transfer property and QTIP, see *Spousal Property Basis Increase*, in the Instructions for Form 8939.

Penalty Relief

For certain penalty relief related to the recipient's income tax return and computing the recipient's income tax liability, see Notice 2011-76.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Free help with your return. Free help in preparing your return is available nationwide from IRS-certified volunteers. The Volunteer Income Tax Assistance (VITA) program is designed to help low-moderate income taxpayers and the Tax Counseling for the Elderly (TCE) program is designed to assist taxpayers age 60 and older with their tax returns. Most VITA and TCE sites offer free electronic filing and all volunteers will let you know about credits and deductions you may be entitled to claim. To find the nearest VITA or TCE site, visit IRS.gov or call 1-800-906-9887 or 1-800-829-1040.

As part of the TCE program, AARP offers the Tax-Aide counseling program. To find the nearest AARP Tax-Aide site, call 1-888-227-7669 or visit AARP's website at www.aarp.org/money/taxaide.

For more information on these programs, go to IRS.gov and enter keyword "VITA" in the upper right-hand corner.



Internet. You can access the IRS website at IRS.gov 24 hours a day, 7 days a week to:

- *E-file* your return. Find out about commercial tax preparation and *e-file* services available free to eligible taxpayers.
- Check the status of your 2011 refund. Go to IRS.gov and click on *Where's My Refund*. Wait at least 72 hours after the IRS acknowledges receipt of your e-filed return, or 3 to 4 weeks after mailing a paper return. If you filed Form 8379 with your return, wait 14 weeks (11 weeks if you filed electronically). Have your 2011 tax return available so you can provide your social security number, your filing status, and the exact whole dollar amount of your refund.
- Download forms, including talking tax forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.
- Use the online Internal Revenue Code, regulations, or other official guidance.
- View Internal Revenue Bulletins (IRBs) published in the last few years.
- Figure your withholding allowances using the withholding calculator online at www.irs.gov/individuals.
- Determine if Form 6251 must be filed by using our Alternative Minimum Tax (AMT) Assistant available online at www.irs.gov/individuals.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.



Phone. Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call 1-800-TAX-FORM (1-800-829-3676) to order current-year forms, instructions, and publications, and prior-year forms and instructions. You should receive your order within 10 days.
- *Asking tax questions.* Call the IRS with your tax questions at 1-800-829-1040.
- *Solving problems.* You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers. An employee can explain IRS letters, request adjustments to

your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to www.irs.gov/localcontacts or look in the phone book under *United States Government, Internal Revenue Service*.

- **TTY/TDD equipment.** If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications.
- **TeleTax topics.** Call 1-800-829-4477 to listen to pre-recorded messages covering various tax topics.
- **Refund information.** To check the status of your 2011 refund, call 1-800-829-1954 or 1-800-829-4477 (automated refund information 24 hours a day, 7 days a week). Wait at least 72 hours after the IRS acknowledges receipt of your e-filed return, or 3 to 4 weeks after mailing a paper return. If you filed Form 8379 with your return, wait 14 weeks (11 weeks if you filed electronically). Have your 2011 tax return available so you can provide your social security number, your filing status, and the exact whole dollar amount of your refund. If you check the status of your refund and are not given the date it will be issued, please wait until the next week before checking back.
- **Other refund information.** To check the status of a prior-year refund or amended return refund, call 1-800-829-1040.

Evaluating the quality of our telephone services. To ensure IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to listen in on or record random telephone calls. Another is to ask some callers to complete a short survey at the end of the call.



Walk-in. Many products and services are available on a walk-in basis.

- **Products.** You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county government offices, credit unions, and office supply stores have a collection of products available to print from a CD or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.
- **Services.** You can walk in to your local Taxpayer Assistance Center every business day for personal, face-to-face tax help. An employee can explain IRS letters, request adjustments to your tax account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your individual tax return, or you are more comfortable talking with someone in person, visit your local Taxpayer Assistance

Center where you can spread out your records and talk with an IRS representative face-to-face. No appointment is necessary—just walk in. If you prefer, you can call your local Center and leave a message requesting an appointment to resolve a tax account issue. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. If you have an ongoing, complex tax account problem or a special need, such as a disability, an appointment can be requested. All other issues will be handled without an appointment. To find the number of your local office, go to www.irs.gov/localcontacts or look in the phone book under *United States Government, Internal Revenue Service*.



Mail. You can send your order for forms, instructions, and publications to the address below. You should receive a response within 10 days after your request is received.

Internal Revenue Service
1201 N. Mitsubishi Motorway
Bloomington, IL 61705-6613

Taxpayer Advocate Service. The Taxpayer Advocate Service (TAS) is your voice at the IRS. Our job is to ensure that every taxpayer is treated fairly, and that you know and understand your rights. We offer free help to guide you through the often-confusing process of resolving tax problems that you haven't been able to solve on your own. Remember, the worst thing you can do is nothing at all.

TAS can help if you can't resolve your problem with the IRS and:

- Your problem is causing financial difficulties for you, your family, or your business.
- You face (or your business is facing) an immediate threat of adverse action.
- You have tried repeatedly to contact the IRS but no one has responded, or the IRS has not responded to you by the date promised.

If you qualify for our help, we'll do everything we can to get your problem resolved. You will be assigned to one advocate who will be with you at every turn. We have offices in every state, the District of Columbia, and Puerto Rico. Although TAS is independent within the IRS, our advocates know how to work with the IRS to get your problems resolved. And our services are always free.

As a taxpayer, you have rights that the IRS must abide by in its dealings with you. Our tax toolkit at www.TaxpayerAdvocate.irs.gov can help you understand these rights.

If you think TAS might be able to help you, call your local advocate, whose number is in your phone book and on our website at www.irs.gov/advocate. You can also call our toll-free number at 1-877-777-4778 or TTY/TDD 1-800-829-4059.

TAS also handles large-scale or systemic problems that affect many taxpayers. If you know of one of these broad issues, please report

it to us through our Systemic Advocacy Management System at www.irs.gov/advocate.

Low Income Taxpayer Clinics (LITCs). Low Income Taxpayer Clinics (LITCs) are independent from the IRS. Some clinics serve individuals whose income is below a certain level and who need to resolve a tax problem. These clinics provide professional representation before the IRS or in court on audits, appeals, tax collection disputes, and other issues for free or for a small fee. Some clinics can provide information about taxpayer rights and responsibilities in many different languages for individuals who speak English as a second language. For more information and to find a clinic near you, see the LITC page on www.irs.gov/advocate or IRS Publication 4134, *Low Income Taxpayer Clinic List*. This publication is also available by calling 1-800-829-3676 or at your local IRS office.

Free tax services. Publication 910, *IRS Guide to Free Tax Services*, is your guide to IRS services and resources. Learn about free tax information from the IRS, including publications, services, and education and assistance programs. The publication also has an index of over 100 TeleTax topics (recorded tax information) you can listen to on the telephone. The majority of the information and services listed in this publication are available to you free of charge. If there is a fee associated with a resource or service, it is listed in the publication.

Accessible versions of IRS published products are available on request in a variety of alternative formats for people with disabilities.



DVD for tax products. You can order Publication 1796, *IRS Tax Products DVD*, and obtain:

- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Tax Map: an electronic research tool and finding aid.
- Tax law frequently asked questions.
- Tax Topics from the IRS telephone response system.
- Internal Revenue Code—Title 26 of the U.S. Code.
- Links to other Internet based Tax Research Materials.
- Fill-in, print, and save features for most tax forms.
- Internal Revenue Bulletins.
- Toll-free and email technical support.
- Two releases during the year.
 - The first release will ship the beginning of January 2012.
 - The final release will ship the beginning of March 2012.

Purchase the DVD from National Technical Information Service (NTIS) at www.irs.gov/cdorders for \$30 (no handling fee) or call 1-877-233-6767 toll free to buy the DVD for \$30 (plus a \$6 handling fee).

Estate of: EXAMPLE!!!!

FILE NO. XXXXX

SCHEDULE "A"
ELECTIVE SHARE CALCULATION

1A. The Decedent's Probate Estate - §732.2035(1)

Item	FMV	Claims/Liabilities	Net
Misc. Personal Prop	\$ 5,000.00		\$ 5,000.00
1995 GMC Van	\$ 2,500.00		\$ 2,500.00
Am Exp Trav Checks	\$ 280.00		\$ 280.00
385.6118 Co Stock	\$14,000.89		\$14,000.89
Okaloosa Cty TFCU	\$15,475.41		\$15,475.41
Funeral Expenses Pd		\$11,228.25	(\$11,228.25)
Total			\$26,028.05

B. Joint Bank Accounts or Securities; POD, TOD and ITF Accounts §732.2035(2)

Item	FMV	Liabilities	Net
Bank of America Interest Checking #XXXXXXXXXX and CD's	\$255,040.67		\$255,040.67
Bk of America Chkg #XXXXXX	\$247,105.63		\$247,105.63
Teachers Fed CU acct#XXXX	\$ 21,314.13		\$ 21,314.13
Total			\$523,460.43

C. Property Held in Joint Tenancies and Tenancy by the Entireties Property (Other than Accounts and Securities) §732.2035(3)

ITEM	FMV	LIABILITY	VALUE	%	NET
Auto	\$ 3,000.00		\$3,000.00	50%	\$1,500.00
TOTAL					\$1,500.00

D. Certain Revocable Transfers (including Revocable Trusts): §732.2035(4)

NONE

E. Certain Irrevocable Transfers by the Decedent: §732.2035(5)

NONE

F. Life Insurance: §732.2035(6)

Item	Death Benefit	Net Cash Surrender Value
Life Insurance	\$ 31,896.40	\$ 29,958.72

G. Retirement Accounts and other retirement benefits: §732.2035(7)

Item	FMV	Less Insurance > then cash value	Value
403 (B) TSA	\$ 71,725.94		\$ 71,725.94
AXA Equit. Annuity	\$ 87,117.83	\$ 9,954.60	\$ 77,163.23
Equivest Annuity #XXXXXX	\$156,965.79		\$ 156,965.79
Total			\$ 305,854.96

H. Gifts within one year of death: §732.2035(8)

Less than \$12,000.00 excluded:

\$10,000.00 to _____

I. Property transferred in satisfaction of the elective share: §732.2035(9)

NONE

J. Overlapping provisions: §732.2045(2)

NONE

DETERMINE THE PROPERTY EXCLUDED FROM THE ELECTIVE ESTATE:

2A. 1. Irrevocable Transfer made before October 1, 1999: §732.2045(1)(a)

NONE

2. Irrevocable Transfer made prior to Marriage: §732.2045(1)(a)

NONE

3. Transfers for adequate consideration in money or money's worth: §732.2045(1)(b)

NONE

4. Transfers of property made by the decedent with the spouse's written consent:
§732.2045(1)(c)

NONE

5. Proceeds of any policy of insurance on the decedent's life in excess of the net cash surrender value of the policy: §732.2045(1)(d)

Item	Death Benefit	Net Cash Surrender Value	Excluded
Life Insurance	\$ 31,896.40	\$ 29,958.72	\$ 1,937.68
Total			\$ 1,937.68

6. Any policy of insurance on the decedent's life maintained pursuant to a court order:
§732.2045(1)(e)

NONE

7. Real property in other state that is considered community property and the decedent's one-half interest in any other community property no matter where located: §732.2075(1)(c)–
§732.2045(1)(f)

NONE

8. Property held in a qualifying special needs trust: §732.2075(1)(d)--§732.2045(1)(g)

NONE

9. Property included in the decedent's gross estate for federal estate tax purposes, solely because the decedent held a general power of appointment property:

NONE

10. Property which constitutes the protected homestead of the decedent:

NONE

B. Homestead

EXCLUDED

C. Certain transfer of pre-marital property: §732.2155(6)

NONE

D. Exempt Property: §732.402(7)

Item	Excluded Amount
Misc. Household items (personal property)	\$ 5,000.00
1995 GMC Van	\$ 2,500.00
Total	\$ 7,500.00

DETERMINE THE AMOUNT OF THE ELECTIVE SHARE:

3A. The elective share amount is equal to 30% of the elective estate (after removing excluded items and reducing the value for property deductions).

1. The elective share is a right to a dollar amount, not a right to any specific property.
2. The dollar amount does not have to be satisfied by receiving an outright sum.

B. The elective share amount would be as follows:

Item	Included	Excluded
Misc. Personal Property		\$ 5,000.00
1995 GMC Safari Van		\$ 2,500.00
Amer. Express Trav Checks	\$ 280.00	
Lincoln Automobile	\$1,500.00	\$1,500.00
Company Stock	\$ 14,000.89	
Okaloosa County TFCU#	\$ 15,475.41	
Bk of America #xxxx acct	\$ 255,040.67	
Bk of America #xxxx acct	\$ 247,105.63	
Okaloosa Cty TFCU #xxxxx	\$ 21,314.13	
Life Insurance	\$ 29,958.72	\$ 1,937.68
403(B) TSA retirement acct	\$71,725.94	
AXA Annuity00000000	77,163.23	\$9,954.60
Equi-Vest xxxxxxx	156,965.79	
Total	\$890,530.41	
Less Probate Claims	0.00	
Medical	0.00	
Funeral Expenses	(\$11,228.25)	
Elective Estate	\$ 879,302.16	\$ 20,892.28

Elective Share: \$ 879,302.16 x 30% = \$ 263,790.64

DETERMINE THE VALUE OF ASSETS PASSING TO OR FOR THE BENEFIT OF THE SURVIVING SPOUSE THAT COUNT TOWARDS SATISFYING THE ELECTIVE SHARE

4A. The next step is to determine the value of the assets the surviving spouse has received from the decedent (or will receive from the decedent on death) that count towards satisfying the elective share. §732.2095

Item	Value	
Misc. Personal Property	\$ 0.00	
1995 GMC Van	\$ 0.00	
Lincoln Automobile	\$ 1,500.00	In spouse's possession
Payments to spouse	\$ 33,812.07	Monies spent for the benefit of spouse from 02/15/07 to present (see attached (4A-list)
Company Stock	\$ 14,000.89	Transferred as of 06/17/08
Total:	\$ 49,312.96	

B. The amount remaining to satisfy the elective share is determined as follows:

Elective share	\$ 263,790.64
Amount Satisfied	<u>(\$ 49,312.96)</u>
Amount Remaining	\$ 214,477.68

NOTE: \$ 53,356.35 (monies spent for care of spouse)
(19,544.28) (less retirement & social security amounts received)
NET \$ **33,812.07** (net monies spent for the benefit of spouse)

4A- List of Expenses

02/16/07	#	from #xxxx acct: Eye Institute	\$ 7.52
02/27/07	#	(Long Term Care Facility)	5,162.24
02/27/07	#	Long Term Care Facility	750.00
03/09/07	#	Chest X-ray	123.87
03/26/07	#	clothing	265.79
03/26/07	#	clothing	35.00
03/29/07	#	clothing for	866.14
04/03/07	#	LTC facility	4,189.05
05/02/07	#	LTC facility	4,198.40
05/16/07	#	clothing/supplies for spouse	110.00
05/18/07	#	Private Duty Services	1,305.50
05/18/07	#	Private Duty Services	266.00
05/23/07	#	(20" flat screen TV for spouse's room)	262.47
05/23/07	#	(TV cable install for Rm XXX)	72.00
05/25/07	#	(supplies for spouse)	57.41
05/31/07	#	(pharmacy)	426.93
06/01/07	#	LTC facility	4,214.25
06/20/07	#	pharmacy	9.80
06/22/07	#	Private Duty (4 invoices)	4,799.20
07/03/07	#	LTC facility	4,220.90
07/03/07	#	(eye exam, glasses, supplies)	335.03
03/02/07	#	from acct #xxx- car Repairs	601.53
03/08/07	#	Dept of Veteran Affairs	235.82
06/03/07	Transfr	for spouse's Care	5,000.00
11/19/07		Final Sitter Bill	2,828.00
04/19/07	various	½ of pmts made to accountant or CPA for taxes due	1,013.50
10/24/07	W/D	from #xxxx acct - by signer-for spouse	12,000.00
TOTAL			\$ 53,356.35