

Florida Law: 4 Probate Rules You Need to Know

Some aspects of Florida law are simple to understand, for example, attorneys trying capital cases must meet a certain set of minimum criteria. Other aspects of Florida law, however, are a little more complicated and a little less widely known by those not involved in legal professions. Today we're going to talk about a few of those less widely known rules, all of which pertain to the probate process.

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What is Probate Court?

Firstly, it's important to know what probate is. You can find a more in-depth explanation of what probate is in this step by step guide to probate, but in short, probate is the process of verifying a last will and testament of a deceased person and distributing the estate of the deceased to their beneficiaries. Probate is handled by a probate court.

4 Rules of Probate That You Should Know

1. In the State of Florida, Certain Assets Are Recognized As Non-Probate Assets

In the state of Florida, certain assets do not go through the probate court. These assets are referred to as "non-probate assets". This means that these assets may be handed off to their new "owner" without having to go through the probate courts. In Florida, non-probate assets include the following:

- Property that is held in "joint tenancy", that is, owned jointly. For example, a joint bank account or a house owned by both a husband and

wife. When one of the joint owners died, this property then automatically goes to the co-owner who is still living.

- Assets that have a designated beneficiary. For example, a life insurance policy that is set up to pay out to a spouse upon their partner's death.
- Assets that have been placed in a living trust. For example, a house may be put in a living trust by a living parent. This means transferring ownership of the home to the trust and listing the child as the trustee. When the parent dies, the child then becomes the owner of the home.

2. Probate is Not Always Necessary

In the state of Florida, the probate of an estate is not always necessary if specific circumstances exist. In order to avoid probate:

- The only assets of the deceased must be exempt from creditors claims or be less than or equal to the final expenses incurred. These expenses include funeral costs and illness-related expenses incurred within 60 days of the deceased's final illness.
- The deceased left no real estate behind.

3. The Probate Process Can Be Shortened Using Summary Administration

The probate process is usually quite long but in the state of Florida, an estate can go through a shortened probate process called "summary administration" if certain requirements are met. These requirements include:

- The deceased died over two years ago

OR

- The property that would go through probate is worth less than \$75,000. (This excludes non-probate assets.)

Summary administration requires the filing of a petition for summary administration with the probate court. This petition must list the property included in the estate and it's worth as well as who is set to inherit what. If the court grants the petition, the estate property is released to

the beneficiaries without a formal probate process.

4. “Reasonable” Probate Attorney Fees Are Set Out in Florida Statutes

Most states do not outline what they consider to be “reasonable” probate attorney fees, but Florida is one of the few states that do. These fees are outlined based on the value of the estate that is going through probate and is as follows:

- Value of estate up to \$40,000: \$1,500
- \$40,000 to \$70,000: \$2,250
- \$70,000 to \$100,000: \$3,000
- \$100,000 to \$1 million: \$3,000, plus 3% of the value over \$100,000
- \$1 million to \$3 million: \$3,000, plus 2.5% of the value over \$1 million
- \$3 million to \$5 million: \$3,000, plus 2% of the value above \$3 million
- \$5 million to \$10 million: \$3,000, plus 1.5% on the value above \$5 million
- More than \$10 million: \$3,000, plus 1% of the value above \$10 million

It’s important to note that these are suggestions for “reasonable fees” and not legally regulated fees, so attorneys can charge what they like for their probate services. This guide can, however, help you to select an attorney that charges a reasonable rate.

It is also important to note that these fee suggestions are based on “normal” services and do not cover any services that would be considered unusual or out of the ordinary. For example, if there is a question over the conduct of the estate executor and the attorney must represent the executor in a hearing, this would be considered as an additional service and incur a separate fee.

Need Assistance with understanding Florida Law as it Pertains to Your Case?

If you need assistance understanding Florida law, we encourage you to look around our site here at Florida Rules or, if you’re in the St Pete area of Florida, to reach out and contact attorney Matthew Weidner.