

STEP-BY-STEP GUIDE

TO THE

PROBATE PROCESS

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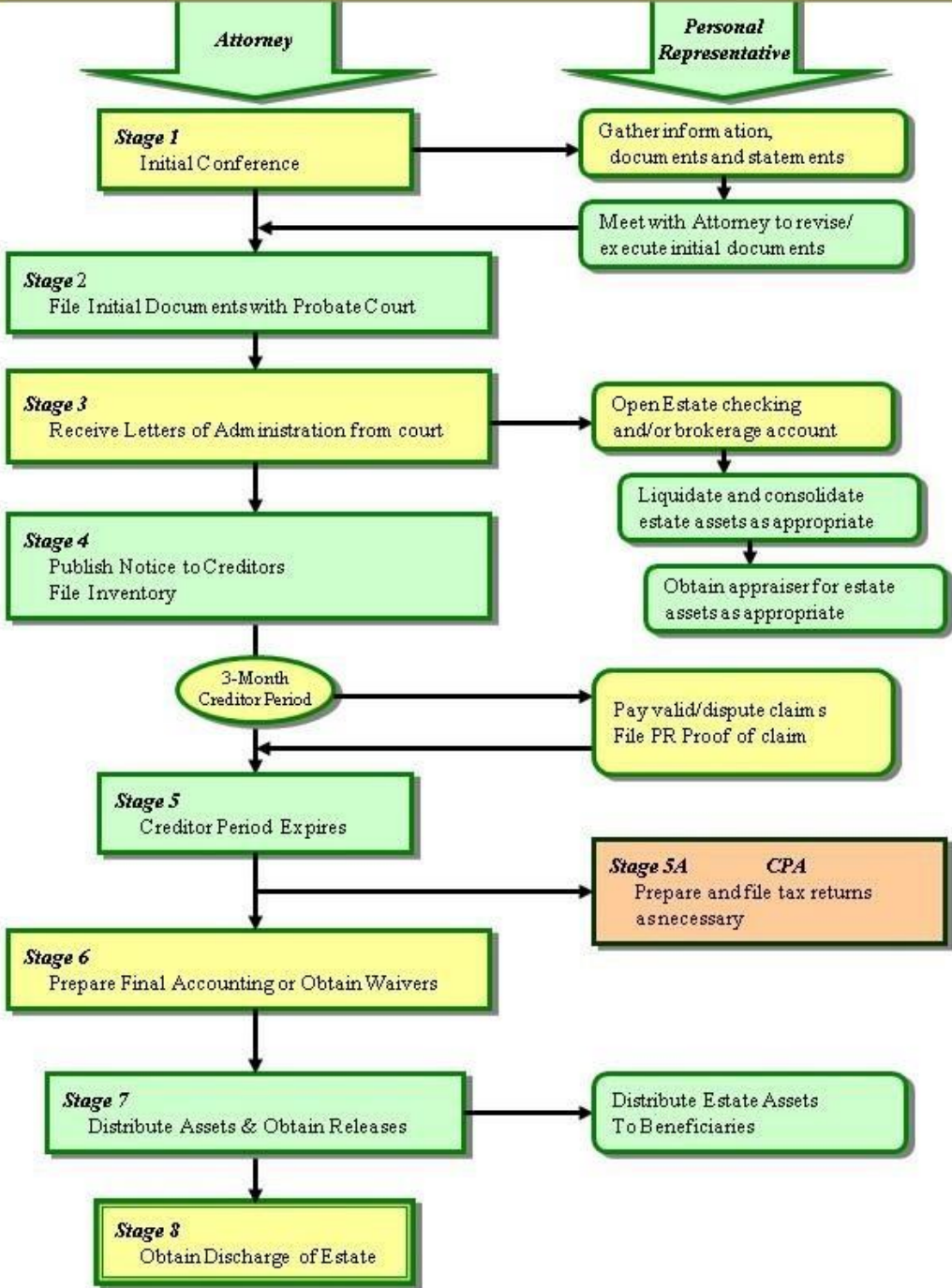
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Full Administration Probate Process



A GUIDE TO PROBATE ASSETS

A decedent's assets are generally characterized into two categories: probate assets and non-probate assets. Non-probate assets are those assets which do not need to be included in the probate process in order to transfer ownership. Non-probate assets include any assets which have a beneficiary designation, joint ownership, or any assets that are titled in a trust. Probate assets are any assets that are held individually in decedent's name alone.

PROBATE ASSETS	NON-PROBATE ASSETS
Any asset held in decedent's individual name	Life insurance, IRA or CD or any asset with a beneficiary designation
	Any bank or brokerage account with a TOD, POD or ITF designation
	Real property held jointly as tenants by the entirety or joint tenants with right of survivorship
	Assets titled in a revocable trust including real property, bank accounts, brokerage accounts, etc.
	Exempt Homestead (real property passing to a surviving spouse or heirs)

Findlay Stokes Law Firm

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STEP-BY-STEP GUIDE TO THE PROBATE PROCESS

STAGE 1 INITIAL CONFERENCE

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Gather the following items:

- original will, if applicable
- death certificates
- warranty deed for home or other real estate, if applicable
- prior appraisals for real property, if applicable
- copies of bank/brokerage/account statements
- copies of stock certificates, dividend statements and/or checks
- outstanding bills, invoices, or other evidence of debts owed
- copy of life insurance policies and beneficiary designations for such policies
- funeral bill and medical bills
- names and current addresses where certified copies of documents can be sent to the beneficiaries
- prior income tax returns

STAGE 2 FILE INITIAL DOCUMENTS WITH PROBATE COURT

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The following documents (not all of which may be applicable to your situation) will need to be signed by the Personal Representative and notarized if applicable:

- Petition for Administration
- Acceptance as Personal Representative and Designation and Acceptance of Resident Agent
- Oath of Personal Representative
- Oath of Witness to Will
- Affidavit of No Florida Estate Tax Due

- Notice of Administration
 - Notice to Creditors
 - Form SS-4 Application for Taxpayer Identification Number
- ☐ There is a possibility, depending on the size of the Estate and the relationship and geographic location of the Personal Representative, that a probate bond will be required by the Court.
- ☐ In addition to the documents signed above, the following documents will be filed for the judge to sign: Letters of Administration, and Order Admitting Will to Probate and Appointing Personal Representative

STAGE 3 RECEIVE LETTERS OF ADMINISTRATION FROM COURT

- ☐ Once the Letters of Administration have been issued, if required, the Attorney will obtain an Employer Identification Number (EIN) from the Internal Revenue Service
- ☐ Upon issuance of the EIN by the IRS, the Personal Representative should take a certified copy of the Death Certificate, the EIN and a certified copy of the Letters of Administration to a bank to open an Estate account
- ☐ The Personal Representative can also take the steps necessary to put any real property owned by decedent that has not been specifically devised on the market. However, any closing on the real property cannot take place until after the expiration of the creditor period.
- ☐ Verify insurance on all assets with existing insurance companies (car, home, umbrella)

STAGE 4 PUBLISH NOTICE TO CREDITORS - FILE INVENTORY

- ☐ The Notice to Creditors puts potential creditors on notice that a probate proceeding has been opened for the decedent.
- ☐ Once the Notice to Creditors is published in a newspaper of local circulation, the Attorney will furnish a copy to all known creditors of the Estate, as well as the State of Florida Agency for Health Care Administration. The Personal Representative should provide the Attorney with copies of all bills or invoices that are received.
- ☐ During this period, creditor's claims may be filed with the Probate Court. The Personal Representative has the discretion whether to pay or dispute the claims. If the Personal Representative chooses to pay the claims, upon notification of a claim, the Personal Representative will mail a check to the attorney for the amount of the claim and the attorney will obtain a receipt from the creditor to file with the Probate Court.

- ☐ During this period the Personal Representative is responsible for the liquidation and closing of all accounts owned in the decedent's name alone. All proceeds should be distributed to the Estate account. Some transfers, such as those involving publicly traded stock, will require assistance from the Attorney.
- ☐ At this time the Personal Representative should also notify and provide the necessary information to any beneficiaries that will be receiving benefits from non-probate assets, such as life insurance and IRA accounts. It is the receiving beneficiary's responsibility to make the claim for the proceeds.
- ☐ Attorney will provide to all beneficiaries, via certified mail, a packet of information containing pertinent documents which have been or will be filed with the Probate Court, and which will require a delivery signature
- ☐ The Attorney will file a final Inventory of estate assets and values with the Probate Court and provide a copy to the Florida Department of Revenue as required by Statute.

STAGE 5 *CREDITOR PERIOD EXPIRES*

- ☐ The creditor period will expire after three months from the first date of publication of the Notice to Creditors. Once that period has expired, any creditors that failed to file a valid claim are forever barred from recovering from the Estate.
- ☐ Where applicable, the Attorney will file a Proof of Service of Notice to Creditors and Proof of Service of Notice of Administration with the Probate Court.
- ☐ Interim distributions of the Estate account may be made at this time depending on the amount of money held in the Estate account and the distributions. Personal property, automobiles and specific gifts under the will are often the first distributions to be made.
- ☐ At this time, a closing may occur to sell any real property held by the Estate that has not been specifically bequeathed to a living beneficiary, or any homestead property can be transferred to the beneficiary of such homestead property. The Attorney will prepare a Petition to Determine Homestead Status of Real Property and Order Determining Homestead Status of Real Property for the judge to sign transferring such homestead property.
- ☐ Take a death certificate, certified copy of the Letters and proof of insurance to a title agency to have decedent's car transferred out of his/her name, if applicable

STAGE 5A *PREPARE AND FILE INCOME TAX RETURNS*

- ☐ The Personal Representative is responsible for hiring a Certified Public Accountant to prepare decedent's final income tax return and/or other tax returns (*i.e.*, estate tax return), if applicable.

STAGE 6 *PREPARE FINAL ACCOUNTING OR OBTAIN WAIVERS*

- ☐ The Attorney or a Certified Public Accountant will prepare a final accounting to present to each beneficiary which illustrates the assets of the Estate and the resulting values that comprise the Estate account, as well as any distributions made and all administrative costs paid. Costs may include a Personal Representative's fee and any claims that were paid.
- ☐ In certain circumstances, the preparation of a final accounting may be waived upon signing of a Waiver of Final Accounting by all beneficiaries.

STAGE 7 *DISTRIBUTE ASSETS AND OBTAIN RELEASES*

- ☐ Generally, the Attorney will prepare a Proposed Plan of Distribution for the beneficiaries to agree on before distribution of the assets is made.
- ☐ After all beneficiaries have agreed to the Proposed Plan of Distribution, then final distribution of all remaining assets, in the fashion dictated by the decedent's will, can be made.

STAGE 8 *OBTAIN DISCHARGE OF ESTATE*

- ☐ When all of the beneficiaries signed the Acceptance of Final Accounting or Waiver of Final Accounting, they also consented to the release and discharge of the Personal Representative.
- ☐ The Judge will sign an Order of Discharge, which releases the Personal Representative from liability and responsibility on behalf of the Estate and closes the Estate proceedings in the Probate Court.

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MEMORANDUM OF SAFE DEPOSIT BOX PROCEDURES

Pursuant to Florida Statute 655.935, if you are a spouse, parent, adult descendant or person named as personal representative in the will of a deceased person who has a safe deposit box, then you may open and examine the contents of the box in the presence of a bank representative. In order to be allowed access to the safe deposit box you must present a death certificate as proof of the death of the deceased person and identification that proves that you are the spouse, parent, adult descendant or, in the case of a personal representative, a copy of the decedent's will. Upon examination of the contents of the box, if you locate the decedent's original will then you may request that the lessor of the deposit box file the original will with the proper court. In the event that you should find either a deed to a burial plot or burial instructions then you may remove those items from the safe deposit box. If you find an insurance policy which names you as the beneficiary, then you may remove that item or the lessor will, at your request, deliver the policy to the beneficiary named therein. Nothing else may be removed until the personal representative removes the items under Florida Statute 733.6065 which is explained below.

Florida Statute 655.936 requires a personal representative to provide a bank representative with a certified copy of the Letters of Administration for the Estate in order to remove the contents of a safe deposit box. The procedure for inventory and removal of the items in the safe deposit box is explained under Florida Statute 733.6065 which states that the box must be opened in the presence of any two of the following: an employee of the institution where the box is located, the personal representative or the personal representative's attorney. The contents of the box must be inventoried and each person who is present must sign a copy of the inventory under penalties of perjury to verify its contents. The Personal Representative may remove all items from the safe deposit box once the inventory has been conducted. Within 10 days of opening the safe deposit box, the personal representative must file a copy of the inventory of the box along with a copy of the box entry record from a date at least six months prior to date of death with the probate court.