

ANDREW L. BARAUSKAS

Attorney at Law

www.barauskas.com

andrew@barauskas.com

PROBATE

Formal Administration

Formal Administration is required when the non-exempt property of the decedent's probate estate exceeds \$75,000.00 and less than two (2) years have passed since the decedent's death. Formal administration is appropriate for both types of estates: testate (where a valid will exists) and intestate (where there is no will or the will is invalid, distribution of assets is controlled by Florida's intestacy statutes, Chapter 732, Parts I-IV). If the will fails to dispose of the entire estate, certain assets within testate estates may descend under intestacy succession.

Summary administration saves costs and time; however, at the personal representative's decision, small estates can be administered formally. This may be beneficial, even if not required, if the estate has numerous or unknown creditors, or court supervision of distribution is desired. If the administration will be complicated or time-intensive, formal administration ensure payment of the personal representative, whereas the non-attorney involved in summary administration typically is not compensated for their services.

The individual responsible for the protection, accounting, and distribution of estate assets is known in Florida as the Personal Representative (this comprehensive term replaces the titles executor/executrix (testate estate) and administrator/administratrix (intestate estates) in other jurisdictions. In Florida, unless the personal representative is either (a) the sole beneficiary of the estate or (b) a licensed Florida attorney, he or she must be represented by an attorney. The personal representative can take steps to preserve assets and collect information on the estate, but should generally contact an attorney as soon as possible.

Typically, the personal representative never has to go to court, and can work with our office remotely. If a Florida resident passed away in any Florida county, we can handle any and all administration whether the personal representative wants to meet personally or conduct affairs remotely. We are experienced in overseeing ancillary administrations of property owned in Florida by a non-resident decedent, whether the estate has been opened in another state or another country. If real property requires immediate attention for sale or otherwise, call us to facilitate the process.

The attorney files a Petition for Formal Administration, which requests that the court admit the will, if any, to probate, and appoint the personal representative. Once the circuit court judge signs the Order of Formal Administration, it issues Letters Testamentary or Letters of Administration, empowering the personal representative to transact business on behalf of the estate. The personal representative then serves notice of administration on interested parties, and publishes and/or directly mails notice to creditors.

During the three month period for the filing of creditor claims, the personal representative inventories assets, and coordinates with accountants to prepare the decedent's final taxes and the estate tax return, if required. The attorney may file petitions to determine protected homestead status for residential property, and objections to claims which are improperly filed or without merit. Our office can assist the representative

through the entire process and the personal representative can be as involved as they desire.

Closing the Estate

If all beneficiaries waive notice of filing and consent to the Petition to Close the Estate, a formal accounting can be avoided, saving the estate time and expense. Without waiver and consent, the personal representative must compile all expenses, inventories, and disbursements from the estate. The formal accounting is filed with the personal representative's proof of creditor satisfaction and beneficiary distribution. If all is in order, the court will close the estate and discharge the personal representative.

SUMMARY ADMINISTRATION PROBATE

In Florida, Summary Administration under Chapter 725, Florida Statutes, is available when either:

1. the non-exempt property of the decedent's probate estate is less than \$75,000; or
2. two (2) years have passed since the decedent's death;

and:

1. the will (if any) does not direct formal administration.

Once two (2) years since the date of death have passed, Florida Statute §733.710 bars creditor claims, which expedites administration without exposing inheritances to liability for unknown debts of the decedent. Summary administration does not appoint a personal representative. Like formal administration, a summary probate can be either testate (under a will) or intestate (distribution according to statute).

Though formal administration takes at least three (3) months, because of the statutory creditor's claim period, its benefits include a judicial determination of all claims and distributions, statutory payment of the personal representative, and mechanisms for dealing with complicated situations. Those opting for a summary administration enjoy a lower clerk of court filing fee, expedited disposition of assets, and a reduction in the responsibilities and liabilities of the petitioner.

DOCUMENTS TO BRING

The following documents and information will assist in determining the most accurate steps to take in administering the estate you will be overseeing:

- * Last Will and Testament, Codicils/Amendments, if any
- * Trust documents and Amendment, if any
- * Certified copy of the death certificate, without the cause of death
- * Copies of deeds to decedent's real property
- * Bank account information with account numbers: Savings, Checking, CD's, Money Market accounts
- * Stocks & Bonds
- * Investment Accounts
- * Retirement Plans: IRA, 401(k), etc.
- * Pension plans
- * Insurance policies
- * Annuities
- * Business and Professional Interests
- * Debts
- * Safety Deposit Box information
- * Vehicle information including title and VIN#

During the initial consultation, we will gather all of the information about the estate, review the wishes of the decedent, answer all of your questions and determine the best way to proceed.