



## A Step-By-Step Guide to the Florida Probate Process for Those We Leave Behind

While most adults in Florida have heard the term probate at some point, they often don't really understand what it is or how it can affect them. Unfortunately, the point at which they will need to go through probate is going to be directly after the death of a loved one, which will make the entire process much more difficult for everyone involved. The easier you can make this process for your loved ones, the better.

This step by step guide to the Florida probate process should ideally be reviewed by your loved ones as soon as possible. The information within will help them through any probate process, whether it is for your death or someone else. If they can't go through it now, providing this guide along with other documents may prove beneficial.

### **Step 1 – Gathering All Legal Documents**

After a loved one has died there will be a lot that needs to get done within the first several days. If you are appointed as the personal representative or the executor of an estate, you will have additional responsibilities. One of the first things that needs to happen is all the legal documents of the deceased need to be located.

In many cases the deceased will have let the executor know where these things are located, but there are times when that is not the case. If you are in this situation, you'll want to look for the following types of documents:

- Last Will and Testament
- Revocable Living Trust
- Funeral Instructions
- Life Insurance Policies
- Bank Statements
- Deeds or Titles to Homes/Boats/Cars
- All retirement account information
- Stock Certificates
- Credit Card or Loan information
- Tax Returns

As you can see, there are many things you'll need to get together. Most people will have these documents stored either in a filing cabinet, with an estate attorney, or at a bank. Taking the time to track everything down is an important first step.



## **Step 2 – Meet with a Probate Attorney**

When you have all the documentation together it will be time to call a probate attorney, such as Luis E. Barreto, and set up a meeting. Provide them with all the legal documents you have. If anything is missing, the attorney can typically let you know so you can continue looking. Once they have everything they need, the attorney will open the probate estate.

While this is certainly an essential step in the process, it is one that you don't typically need to worry about because it will be handled by the probate attorney. This process involves filing the proper paperwork with the court, having a judge be assigned to the case, and other preparatory work. The few things you need to do at this point will be directed to you by the attorney. This may include opening an estate checking or savings account and things like that.

## **Step 3 – Value the Estate**

The next thing you'll need to have done is determine the value of the estate on the date of the death of your loved one. Your probate attorney can recommend a service to help with this process. Some things are quite easy to put a value on, such as bank accounts, retirement accounts, and more. Other items like property, homes, vehicles, and collectables may need to have an appraisal done.

The purpose of determining the precise value of the estate is to first make sure that all debts of the estate can be paid and next to determine how the estate is distributed to the heirs and any tax burdens that are created.

In this step, you will also be gathering together all information about any money that is owed by the estate. This can include a mortgage balance, credit cards, car loans, and much more. Getting an exhaustive list of debts as quickly as possible is very important.

## **Step 4 – Notify Heirs & Creditors**

Once you have an understanding of what the estate is worth, it is time to notify all beneficiaries and creditors of the situation. Keep in mind that you may not yet be able to distribute the assets because they may need to be sold, transferred, or have other legal work done on them.

Informing the parties involved early, however, is generally a best practice. This is especially true of creditors because it can help to stop any interest collections processes if they have begun. Your probate attorney can also help you to provide additional information such as an expected time at which the estate will be distributed.



### **Step 5 – Pay All Creditors**

When going through the probate process an estate will always have to settle any debts before distributing anything of value to the beneficiaries. Ideally you should be able to pay off any debts using the cash from the estate's savings accounts, retirement accounts, or other liquid assets. If there is insufficient cash, it may be necessary to sell off certain assets to come up with the money to pay the debts.

When this is the case it is typically permitted to give the beneficiaries of the estate the opportunity to buy certain assets to cover the debts. This helps to reduce the risk that loved ones will actually lose physical assets (such as homes, farms, vehicles, etc) that were part of the estate.

Keep in mind that included in the list of creditors should be the IRS. In almost all probate cases there will be some taxes that are owed upon death. Paying the IRS out of the estate will help to minimize any potential tax burden on your loved ones.

### **Step 6 – Distribute Estate to Beneficiaries**

Finally, once all the other steps are completed, it is time to distribute all remaining assets to the beneficiaries listed in the last will and testament or other estate planning documents. When properly formed, these documents will specifically identify who will be getting what assets. If there is a dispute, the parties involved may need to go to probate court to plead their case. This can cause significant family problems, which is why it is so important to have a detailed estate plan that is clear to all involved.

### **Working with an Estate Planning Attorney**

Whether you have been notified that you are an executor for an estate, or you would like to begin the estate planning process for yourself, please don't hesitate to contact the law office of Luis E. Barreto & Associates, PA. Our firm has helped hundreds of residents throughout Miami and South Florida. We would be honored to go over your specific situation and provide you with the assistance you need. Call today at (305) 742-0066.