

## **Probate Information and Forms**

Probate is the legal process through which a deceased person's estate is properly distributed to heirs and designated beneficiaries and any debt owed to creditors is paid. The court oversees the process to ensure that the estate is properly administered.

A library of checklists and some forms can be found by visiting the Eighth Circuit Court's website: <https://circuit8.org/forms-checklists/estate>

**Legal Representation:** Probate procedures can be highly complex, you may wish to consult an attorney before proceeding.

**Where to File a Probate Petition:** The place to file a probate petition (venue) is the county where the decedent resided, or if the decedent is not a Florida resident, where the decedent's property is located.

**Types of Probate Proceedings:** There are three basic types of proceedings for administering a decedent's estate.

### Formal Administration

This type of proceeding is used when there are considerable assets, and/or it is necessary to appoint a personal representative to act for the estate. A formal administration must be filed by an attorney licensed to practice law in Florida, unless the personal representative is the sole beneficiary.

### Summary Administration

Summary administration may be filed when the value of the entire estate does not exceed \$75,000, excluding exempt property, or when the decedent has been deceased for more than two years.

### Disposition of Personal Property without Administration

This type of proceeding allows reimbursement to a person who paid for final expenses, which are funeral costs or medical bills that accrued in the last 60 days. Cars and household furnishings can only be claimed as exempt property by a surviving spouse or children of the decedent, though they can be distributed as a reimbursement if the estate otherwise qualifies including these assets.

There may be a \$1,000 personal property exemption that also can be in this proceeding.

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## **STATUTE REFERENCES**

### **CHAPTER 732 - INTESTATE SUCCESSION AND WILLS**

Intestate Succession - ss. 732.101-732.111  
Elective Share of Surviving Spouse; Rights in Community - ss. 732.201-732.228  
Pretermitted Spouse and Children - ss. 732.301, 732.302  
Exempt Property and Allowances - ss. 732.401-732.403  
Wills - ss. 732.501-732.518  
Rules of Construction - ss. 732.6005-732.616  
Contractual Arrangements Relating to Death - ss. 732.701-732.703  
General Provisions - ss. 732.802-732.806  
Production of Wills - s. 732.901

### **CHAPTER 733 - ADMINISTRATION OF ESTATES**

General Provisions - ss. 733.101-733.109  
Commencing administration - ss. 733.201-733.213  
Preference in appointment and qualifications of personal representative - ss. 733.301-733.3101  
Fiduciary Bonds - ss. 733.402-733.406  
Curators; Resignation and Removal of Personal Representatives - ss. 733.501-733.509  
Duties and Powers of Personal - ss. 733.601-733.620  
Creditor Claims - ss. 733.701-733.710  
Special Provisions for Distribution - ss. 733.801-733.817  
Closing Estates - ss. 733.901, 733.903

### **CHAPTER 735 – SMALL ESTATES**

Summary administration; nature of proceedings - 735.201  
May be administered in the same manner as other estates – 735.202  
Petition for summary administration – 735.203  
Filing of petition – 735.2055  
Summary administration distribution – 735.206  
Notice to creditors – 735.2063  
Disposition without administration – 735.301  
Income tax refunds in certain cases – 735.302

## AFFIDAVIT OF HEIRS

1. An Affidavit of Heirs is to be used when the decedent died without a will.
2. For purposes of this document, you must list ALL RELATIVES of the decedent, including yourself, if applicable.
3. If the relative was deceased at the time of the decedent's death, please provide the deceased relative's name, indicate deceased, and date of death. Answering with n/a, not applicable, or any other such designation is inappropriate for this document; unless the decedent never had a relative within a particular category (i.e. the decedent was an only child, and therefore had no sibling(s)).
4. When appropriate you must indicate if the relationship is that of a half-relative (i.e. half-brother or half-sister).

IN THE CIRCUIT COURT OF THE \_\_\_\_\_ JUDICIAL CIRCUIT  
IN AND FOR \_\_\_\_\_ COUNTY, FLORIDA

IN RE: ESTATE OF

CASE NO.:

\_\_\_\_\_  
Deceased.

\_\_\_\_\_ /

**AFFIDAVIT OF HEIRS**

(§ 732.103, Fla. Stat.)

I, the undersigned, \_\_\_\_\_, do hereby state that as of the Decedent's date of death:

1. The Decedent has the following heirs:

a.  Surviving Spouse  No Surviving Spouse

Name: \_\_\_\_\_

And

b.  Children, including date of death  No Children

if deceased

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

and / or

c.  Children of Deceased Child  No Children of Deceased Child

Name: \_\_\_\_\_

Name: \_\_\_\_\_

and / or

d.  Grandchildren of Deceased Child  No Grandchildren of Deceased Child

Name: \_\_\_\_\_

Name: \_\_\_\_\_

2. If there are none of the above heirs, the Decedent has the following:

Father

No Father or Mother

Name: \_\_\_\_\_

Mother

Name: \_\_\_\_\_

3. If there are none of the above heirs, then the decedent has the following heirs:

a.  Siblings (brothers and/or sisters)

No Brothers or Sisters

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

and / or

b.  Children of Deceased Siblings

No Children of Deceased Siblings

(Nephews and Nieces)

(Nephews and Nieces)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

and / or

c.  Grandchildren of Deceased Siblings

No Grandchildren of Deceased

(Great Nephews and Nieces)

Siblings (Great Nephews and Nieces)

Name: \_\_\_\_\_

Name: \_\_\_\_\_

4. If there are none of the above heirs, then the Decedent has the following heirs:

Grandfather

No Grandfather or Grandmother

Name: \_\_\_\_\_

Grandmother

Name: \_\_\_\_\_

5. If there are none of the above heirs, then the Decedent has the following heirs:

Uncle(s) or Aunt(s)

No Uncles or Aunts

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Children of any Uncles or Aunts

No Children of any Uncles or Aunts

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

6. If there are none of the above heirs, then the last deceased spouse has the following:

Kindred of last deceased spouse

No kindred of last deceased spouse

Children

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Other kindred of last deceased spouse

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Name: \_\_\_\_\_ Relationship: \_\_\_\_\_

Executed this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Signature \_\_\_\_\_

Print Name \_\_\_\_\_

Telephone Number \_\_\_\_\_

Mailing Address \_\_\_\_\_

City/State/ZIP \_\_\_\_\_

County of \_\_\_\_\_ State of \_\_\_\_\_

Sworn to (or affirmed) and subscribed before me by \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Signature of Notary \_\_\_\_\_

(Check one)

Personally Known

Or produced identification

Type of identification produced \_\_\_\_\_

\_\_\_\_\_  
Print, type, or stamp name of Notary Public



**DISPOSITION OF PERSONAL PROPERTY WITHOUT  
ADMINISTRATION**

NOTE: You must consult section 733.101 and any other applicable Florida Statute to ensure you file your petition in the correct county. If you file in the wrong county, the case will be transferred to the decedent's county of residence and another filing fee will be required in the transferee county.

To Qualify:

- See the Clerk of Courts Website
- See Section 735.301, Fla. Statute

IN THE CIRCUIT COURT, EIGHTH JUDICIAL CIRCUIT  
IN AND FOR [REDACTED] COUNTY, FLORIDA

IN RE THE ESTATE OF:

Case Number: \_\_\_\_\_

\_\_\_\_\_

Deceased.

**PETITION FOR  
DISPOSITION OF PERSONAL PROPERTY WITHOUT ADMINISTRATION  
(Verified Statement)**

Petitioner, \_\_\_\_\_, alleges:

1. Petitioner, whose address is \_\_\_\_\_

\_\_\_\_\_ is \_\_\_\_\_ (relationship to decedent)

of \_\_\_\_\_, the decedent, who died at \_\_\_\_\_

on \_\_\_\_\_ a resident of \_\_\_\_\_. Decedent's  
whose last known address was \_\_\_\_\_,

and if, known, whose age at the time of death was \_\_\_\_\_.

The decedent left no will.

The 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<br>[if Minor] |
|------|---------|--------------|--------------------------|
|      |         |              |                          |
|      |         |              |                          |
|      |         |              |                          |
|      |         |              |                          |

3. The estate of decedent consists only of personal property exempt from the claims of creditors under section 732.402, Florida Statutes, or 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 the decedent's last illness, all being described as follows:

| <b>EXEMPT:</b> | Description | Value |
|----------------|-------------|-------|
|                |             |       |
|                |             |       |
|                |             |       |
|                |             |       |

| <b>NON-EXEMPT:</b> | Description | Value |
|--------------------|-------------|-------|
|                    |             |       |
|                    |             |       |
|                    |             |       |
|                    |             |       |

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 |
|----------|----------------------------------|--------|
|          |                                  |        |

|  |  |  |
|--|--|--|
|  |  |  |
|  |  |  |

4. 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 |
|------|----------|-----------------|
|      |          |                 |
|      |          |                 |
|      |          |                 |

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 \_\_\_\_\_  
(Signature of Petitioner)

\_\_\_\_\_  
(Name of Petitioner)

Deputy Clerk \_\_\_\_\_  
(Address)

J.K. "JESS" IRBY \_\_\_\_\_  
(Address)

CLERK OF THE CIRCUIT COURT  
(Seal) Telephone: \_\_\_\_\_

OR

Sworn to or affirmed and signed before me on \_\_\_\_\_ by \_\_\_\_\_ who is  
\_\_\_\_\_ personally known or \_\_\_\_\_ produced identification, type of identification: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

[Print, type, or stamp commissioned name of notary or clerk.]

## SUMMARY ADMINISTRATION

### Nature of proceedings:

1. Summary administration may be had in the administration of either a resident or nonresident decedent's estate, when it appears:
  - a. In a testate estate, that the decedent's will does not direct administration as required by chapter 733.
  - b. That 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 or that the decedent has been dead for more than 2 years.
  
2. A petition for summary administration may be filed by any beneficiary or person nominated as personal representative in the decedent's will offered for probate. The petition must be signed and verified by the surviving spouse, if any, and any beneficiaries except that the joinder in a petition for summary administration is not required of a beneficiary who will receive a full distributive share under the proposed distribution. However, formal notice of the petition must be served on a beneficiary not joining in the petition.
  
3. If a person named in paragraph 2 has died, is incapacitated, or is a minor, or has conveyed or transferred all interest in the property of the estate, then, as to that person, the petition must be signed and verified by:
  - a. The personal representative, if any, of a deceased person or, if none, the surviving spouse, if any, and the beneficiaries;
  - b. The guardian of an incapacitated person or a minor; or
  - c. The grantee or transferee of any of them shall be authorized to sign and verify the petition instead of the beneficiary or surviving spouse.
  
4. If each trustee of a trust that is a beneficiary of the estate of the deceased person is also a petitioner, formal notice of the petition for summary administration shall be served on each qualified beneficiary of the trust as defined in s. 736.0103 unless joinder in, or consent to, the petition is obtained from each qualified beneficiary of the trust.

See Chapter 735 of the Florida Statutes.

IN THE CIRCUIT COURT OF THE  
EIGHTH JUDICIAL CIRCUIT IN AND  
FOR \_\_\_\_\_ COUNTY, FLORIDA

PROBATE DIVISION

IN RE: ESTATE OF

\_\_\_\_\_

Deceased.

CASE NO.: \_\_\_\_\_

**PETITION FOR SUMMARY ADMINISTRATION**

Petitioner(s), *[name(s) of petitioner(s)]*, alleges:

1. Petitioner(s) has/have an interest in the Estate of *[name of decedent]* \_\_\_\_\_, decedent,  
as *[description of interest]* \_\_\_\_\_. Petitioner(s) address(es) is/are

\_\_\_\_\_  
\_\_\_\_\_. The relationship of petitioner(s) to decedent is/are *[specification of relationship to decedent]*  
\_\_\_\_\_.

2. *[Name of decedent]* \_\_\_\_\_, decedent, whose address was  
\_\_\_\_\_, in \_\_\_\_\_ County, *[name of state]*  
\_\_\_\_\_, died on *[date of death]* \_\_\_\_\_, at the age of \_\_\_\_\_, in  
\_\_\_\_\_ County, *[name of state]* \_\_\_\_\_, and was a permanent resident of  
\_\_\_\_\_ at the time of death.

3. Venue for this proceeding is in \_\_\_\_\_ County because

\_\_\_\_\_.

4. Proceedings concerning this decedent's estate \_\_\_\_\_ are [or] \_\_\_\_\_ are not pending in another state or  
country. If proceedings are pending, the name and address of the personal representative / executor and the court  
in which the proceedings are pending are:

\_\_\_\_\_  
\_\_\_\_\_.

5. Decedent \_\_\_\_\_ left a will, the original of which is attached to this petition or \_\_\_\_\_ died intestate (without a will). After exercising reasonable diligence, the petitioner is unaware of any other unrevoked wills or codicils. If the decedent left a will, the will is either in the possession of the court or accompanies this petition. (If the decedent died intestate, an Affidavit of Heirs must be filed along with the petition.)

6. The estate qualifies for summary administration because

\_\_\_\_\_ The value of the estate, less than the value of property exempt from claims of creditors, is less than \$75,000, OR

\_\_\_\_\_ The decedent has been dead for more than 2 years, and

\_\_\_\_\_ If the decedent left a will, the will does not direct formal administration.

7. According to petitioner's best knowledge, information, and belief, decedent left the following property:

Personal Property: (cash and tangible property)

(a recent copy of the account statement must be attached)

Value

- Bank Account: \_\_\_\_\_
- Bank Account: \_\_\_\_\_
- Bank Account: \_\_\_\_\_
- Other: \_\_\_\_\_

Real Property:

(the legal description, physical address, and parcel number of the property must be attached or listed here)

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8. The names, addresses, ages of minors, and respective relationships to decedent of all of *[his/her]* heirs, and devisees are as follows: *(note if beneficiary has been legally declared incapacitated)*

| Name of Beneficiary | Age of Beneficiary | Address | Relationship of Beneficiary |
|---------------------|--------------------|---------|-----------------------------|
|---------------------|--------------------|---------|-----------------------------|

9. With respect to the claim of creditors *[check any that apply]*,

A. \_\_\_\_\_ Creditor claims are barred because the decedent has been dead for more than 2 years or the publication period has expired.

B. \_\_\_\_\_ The Petitioner has made a diligent search and reasonable inquiry for any known or reasonably ascertainable creditors. To the extent known to petitioner, the names and addresses of all known or reasonably ascertainable creditors of decedent, with the amounts owing to each of the creditors respectively, are as follows:

| Names of Creditors | Addresses of Creditors | Has payment been made to the creditor? |
|--------------------|------------------------|--|
|--------------------|------------------------|--|

If there are any creditors other than those listed above, they are unknown to petitioner and with reasonable diligence cannot be ascertained. Formal notice of the petition must be served on the creditors listed above by certified mail.

C. \_\_\_\_\_ The Petitioner has made a diligent search and reasonable inquiry for any known or reasonable ascertainable creditors and the estate is not indebted.



10. Petitioner proposes to distribute the estate as follows:\*\*

|          |             |       |
|----------|-------------|-------|
| Property | Beneficiary | Share |
|----------|-------------|-------|

\*\*If the beneficiary is a trust, all trust beneficiaries must either consent to the petition and waive formal notice OR formal notice of the petition must be sent by certified mail to the trust beneficiaries.

WHEREFORE, petitioner requests that:

1. The property of the decedent be distributed as follows:

|          |             |       |
|----------|-------------|-------|
| Property | Beneficiary | Share |
|----------|-------------|-------|

2. Petitioner acknowledges that the recipients of the decedent's property under this Order of Summary Administration shall be personally liable for a pro rata share of all lawful claims against the estate of the decedent, but only to the extent of the value of the estate of the decedent actually received by each recipient, exclusive of the property exempt from claims of creditors under the constitution and statutes of Florida. Any known or reasonably ascertainable creditor who did not receive notice and for whom provision for payment was not made may enforce the claim, and if the creditor prevails, shall be awarded reasonable attorney's fees as an element of costs against those who joined in the petition.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged therein are true, to the best of my knowledge and belief.

Petitioners:\*\*\*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\*\*\* The petition must be signed by all beneficiaries or the petition must be served by formal notice by certified mail on beneficiaries.

## **FORMAL ADMINISTRATION**

### **RULE 5.030. ATTORNEYS**

(a) **Required; Exception.** Every guardian and every personal representative, unless the personal representative remains the sole interested person, shall be represented by an attorney admitted to practice in Florida. A guardian or personal representative who is an attorney admitted to practice in Florida may represent himself or herself as guardian or personal representative.

(b) **Limiting Appearance.** 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, unless

(1) 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, or

(2) the court orders otherwise.

(c) **Withdrawal or Limiting Appearance.** 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.

### **Committee Notes**

The appearance of an attorney in an estate is a general appearance unless (i) specifically limited at the time of such appearance or (ii) the court orders otherwise. This rule does not affect the right of a party to employ additional attorneys who, if members of The Florida Bar, may appear at any time.

### **Rule History**

1975 Revision: Subdivision (a) is same as prior rule 5.040 with added provision for withdrawal of attorney similar to Florida Rule of Appellate Procedure 2.3(d)(2). Subdivision (b) reflects ruling in case of State ex rel. Falkner v. Blanton, 297 So. 2d 825 (Fla. 1974).