

Florida Small Estates and Probate Without a Lawyer

An Educational Overview of Disposition Without Administration, Summary Administration, Transfers Outside Probate, and the Affidavit of Heirs, with Links to the Florida Statutes, Probate Rules, and Federal Law

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Laws change. The links in this report point to official or primary sources. Always confirm you are reading the most recent version.

1. First Question: Does Anything Actually Need Probate?

Probate is the court process for transferring assets that were titled in a deceased person's **name alone**, with no beneficiary designation and no survivorship feature. Before anyone files a case, the family should list every asset and sort it into two piles. Assets in the first pile **never need probate**:

- Property owned **jointly with right of survivorship** or as **tenants by the entirety** — the survivor already owns it; a death certificate is recorded or presented ([§ 689.15](#)).
- Accounts with a **payable-on-death (POD)** or **transfer-on-death (TOD)** beneficiary, and **life insurance, annuities, and retirement accounts** with a living named beneficiary ([§ 655.82](#); [§ 732.703](#)).
- Real estate conveyed by an **enhanced life estate (Lady Bird) deed** — the remainder beneficiary records the death certificate.
- Assets held in a **trust** — the successor trustee administers them under the trust document ([Chapter 736](#)).
- **Motor vehicles and mobile homes** — Florida allows title transfer to the surviving spouse or heirs **without probate** when no administration is opened, using the death certificate, the title, and the heir affidavit section of DHSMV Form HSMV 82040. See [§ 319.28, Fla. Stat.](#)
- **Small bank accounts** — after six months, if no probate is pending, a bank may pay a “qualified account” of **\$1,000 or less** directly to the spouse, children, or parents on their affidavit. See [§ 735.303, Fla. Stat.](#)
- **Final wages** up to \$300 may be paid to the surviving spouse or children ([§ 222.15](#)).

Only the second pile — assets in the decedent's sole name with no automatic transfer — determines which probate procedure, if any, is needed.

2. The Attorney Rule — What a Self-Represented Family Can and Cannot File

Florida Probate Rule 5.030(a) requires that **every personal representative** be represented by an attorney unless the personal representative is the **sole interested person** in the estate. The rules are published by [The Florida Bar](#). Because a personal representative is appointed only in **formal administration**, that is the procedure a family generally cannot pursue without a lawyer. The two small-estate procedures below involve **no personal representative**, and courts routinely accept them from self-represented petitioners — although any judge may require counsel in a case that becomes contested or complex. Court procedures vary by circuit; most clerks publish probate instructions.

Note on nonlawyer assistance. Unlike family law, landlord-tenant, and small claims, there are **no Florida Supreme Court approved forms** for summary administration. A nonlawyer document preparer may therefore type only the factual information a petitioner supplies in writing and may not ask questions to fill in blanks or tell the petitioner how to file (Rules 10-2.1 and 10-2.2, Rules Regulating The Florida Bar). Many clerks provide their own instructions and checklists for self-represented filers; those are the proper source for procedural questions.

3. Disposition of Personal Property Without Administration

This is Florida's simplest procedure, under [§ 735.301, Fla. Stat.](#) It is **not** an estate administration at all; it is a request that the court authorize a particular asset to be paid or transferred to the person who paid the final expenses. It is available only when **all** of the following are true:

- The decedent left **no real estate** (in Florida or elsewhere) that requires probate;
- The only assets are **exempt personal property** under [§ 732.402](#) (household furnishings up to \$20,000, two motor vehicles, certain tuition plans and benefits), personal property exempt from creditors under [Art. X, § 4\(a\)\(2\), Fla. Const.](#) (up to \$1,000), and **non-exempt personal property whose value does not exceed** the sum of preferred funeral expenses (capped at \$6,000 under [§ 733.707](#)) and reasonable and necessary medical and hospital expenses of the **last 60 days** of the final illness;
- The person applying has **paid** those expenses (or is the one entitled to the exempt property).

The applicant files a short verified petition or letter (most clerks provide a form) with the death certificate, paid funeral and medical bills, proof of the asset (for example, a bank statement), and the will if any, and pays the clerk's fee under [§ 28.2401](#). No hearing is normally held. The court issues an **order** directing the bank or holder to pay the asset to the applicant. The whole process is typically measured in weeks. Typical uses: a final paycheck, a refund, a small checking account, or an insurance policy with no beneficiary, where a family member paid the funeral.

4. Summary Administration

Summary administration under [§§ 735.201–735.2063, Fla. Stat.](#), and Probate Rule 5.530, is an abbreviated court proceeding in which the judge, by a single order, directs **who receives each asset**, without appointing a personal representative and without the months-long process of formal administration. It is available when **either**:

- The value of the **entire estate subject to administration** in Florida — **excluding** exempt property and **protected homestead** — does not exceed **\$75,000**; or
- The decedent has been **dead for more than two years**, regardless of the estate's value (because creditor claims are then barred by [§ 733.710](#)).

Summary administration is available with or without a will. If there is a will, it must be deposited with the clerk ([§ 732.901](#)) and admitted; the will must not direct formal administration. It is **not** available if the estate owes more than it holds and the creditors have not been paid or arranged for.

Who signs

The petition is signed and verified by the **surviving spouse, if any, and every beneficiary** — or served on those who do not join ([§ 735.203](#)). This is why summary administration works best when the family agrees; one beneficiary who will not sign or cannot be found turns it into a contested matter.

What the petition must contain

Under [§ 735.203](#) and Rule 5.530, the verified petition states the decedent's name, address, and date of death; the names and addresses of the spouse and all beneficiaries (and heirs if intestate); the facts showing eligibility; a **schedule of every asset** with its value; a statement about creditors — that all known debts are paid or how they will be paid, or that the estate is not indebted, or that claims are barred by the two-year rule; and the **proposed distribution** of each asset.

Creditors

Petitioners may **publish a Notice to Creditors** under [§ 735.2063](#) to start the three-month claims period and cut off unknown creditors; reasonably ascertainable creditors must be served. Beneficiaries who receive assets through summary administration remain **personally liable to creditors** up to the value of what they received for two years after death unless the claims process has been completed ([§ 735.206](#)). Families often choose to publish for exactly this reason.

Homestead

Protected homestead is **excluded** from the \$75,000 calculation and passes to the heirs by operation of law under [§ 732.401](#). But to give the heirs marketable title, a **Petition to Determine Homestead Status of Real Property** (Probate Rule 5.405) is normally filed with the summary administration petition, and the resulting **Order Determining Homestead** is recorded in the official records. Title companies and buyers rely on that order, not on a family's own affidavit (Section 6).

The order

After the petition and the clerk's fee (set by § 28.2401 and currently in the range of a few hundred dollars depending on estate size) are filed, and any required notice is complete, the judge signs an **Order of Summary Administration** that names each asset and each recipient. Certified copies of the order are then presented to banks, brokers, DHSMV, and (for real estate) recorded with the clerk. Many summary administrations are completed in one to three months.

5. Formal Administration — When It Is Required

Formal administration under [Chapter 733](#) is required when the probate estate exceeds \$75,000 and death occurred less than two years ago, when a personal representative is needed to sign documents, pursue a lawsuit, sell real estate to pay debts, or collect assets that a holder refuses to release without Letters of Administration, or when the will directs it. Because a personal representative must have an attorney under Rule 5.030, this report does not describe the procedure beyond noting the threshold.

6. The “Affidavit of Heirship” (Affidavit of Heirs) in Florida

Families searching online encounter “affidavit of heirship” forms, often from other states, and assume Florida has a similar shortcut. Florida does **not** have a statute that lets heirs transfer real estate by recording an affidavit. In Florida the document functions in a narrower way:

- **Inside a probate case.** When a decedent died **intestate** (without a will), most circuits require an **Affidavit of Heirs** to be filed with the petition for summary or formal administration. It is a sworn family tree — the decedent's marriages, children (including deceased children and their descendants), parents, and siblings — that lets the court identify the heirs under the intestacy statute, [§§ 732.102–732.104](#). Clerks and judicial circuits publish their preferred form. The affidavit supports the court's **order**; the order is what transfers title.
- **Vehicles.** The heir section of DHSMV Form HSMV 82040 is, in substance, an affidavit of heirship that the state honors for titles under [§ 319.28](#).
- **Small accounts.** The family affidavit under [§ 735.303](#) serves the same purpose for qualified accounts of \$1,000 or less.

- **Recorded affidavits concerning land.** An affidavit of heirship recorded in the official records has **no statutory effect on title**. Years later, a title insurer may be willing to insure around a very old, undisputed affidavit under its own underwriting standards, but that is the insurer's business decision, not a legal transfer. A buyer or lender today will almost always require a probate order.

The practical lesson: an affidavit of heirs is a **supporting document** in Florida, not a substitute for the court order that summary administration provides.

7. Documents the Family Will Need

- Certified **death certificate** (the version **without** cause of death is accepted for property matters; from the Bureau of Vital Statistics or the funeral home).
- The **original will**, if any (deposit it with the clerk within 10 days of learning of the death — [§ 732.901](#)).
- Statements for every account as of the date of death; vehicle titles; the last recorded deed; life insurance and retirement beneficiary confirmations.
- Paid funeral bill and medical bills from the last 60 days (for disposition without administration).
- Names and current addresses of the spouse and every beneficiary or heir; dates of death of any predeceased heirs.
- The decedent's Social Security number and date of birth for the court cover sheet.

8. Costs, Timing, and Taxes

- **Clerk fees** are set by [§ 28.2401, Fla. Stat.](#), and differ for disposition without administration, summary administration of estates under \$1,000, and larger summary administrations; ask the clerk or check its fee schedule. Publication of the Notice to Creditors is a separate newspaper charge.
- **Timing** — disposition without administration: usually two to six weeks; summary administration: one to three months, longer if creditors are published or a beneficiary must be served.
- **Florida has no estate or inheritance tax.** The federal estate tax applies only above a very large exemption ([26 U.S.C. § 2010](#)).
- **Income tax.** A final Form 1040 is due for the decedent. Assets received at death take a **stepped-up basis** under [26 U.S.C. § 1014](#). An estate that earns more than \$600 before distribution may need a Form 1041 and an EIN; see [IRS Publication 559, Survivors, Executors, and Administrators](#).

9. Situations That Call for Professional Help

- A beneficiary or heir who **disagrees**, cannot be found, or is a **minor** or incapacitated adult (a guardian may be needed to receive the share).
- **Debts that exceed assets**, Medicaid estate recovery claims under [§ 409.9101](#), or an IRS claim.
- **Real estate** that must be **sold** to pay debts or divide among heirs who want cash — a personal representative with sale authority is usually required.
- A will whose **validity is questioned**, a lost original will ([§ 733.207](#)), or a decedent who was domiciled in another state (ancillary administration).

- An estate over \$75,000 with death within two years — formal administration, which requires counsel.

10. Do Your Own Research — Primary Sources

Each link below goes to an official or primary source. If you are reading a printed copy, the full web address is shown.

[Chapter 735, Fla. Stat. — Small Estates \(summary administration; disposition without administration; payment to successor\)](#)

<https://www.flsenate.gov/Laws/Statutes/2025/Chapter735>

[§ 735.201 — Summary administration; nature of proceedings](#)

<https://www.flsenate.gov/Laws/Statutes/2025/735.201>

[§ 735.203 — Petition for summary administration](#)

<https://www.flsenate.gov/Laws/Statutes/2025/735.203>

[§ 735.206 — Summary administration distribution; liability to creditors](#)

<https://www.flsenate.gov/Laws/Statutes/2025/735.206>

[§ 735.2063 — Notice to creditors](#)

<https://www.flsenate.gov/Laws/Statutes/2025/735.2063>

[§ 735.301 — Disposition of personal property without administration](#)

<https://www.flsenate.gov/Laws/Statutes/2025/735.301>

[§ 735.303 — Payment to successor without court proceedings \(qualified accounts up to \\$1,000\)](#)

<https://www.flsenate.gov/Laws/Statutes/2025/735.303>

[§ 732.402 — Exempt property](#)

<https://www.flsenate.gov/Laws/Statutes/2025/732.402>

[§ 732.401 — Descent of homestead](#)

<https://www.flsenate.gov/Laws/Statutes/2025/732.401>

[§§ 732.102–732.104 — Intestate succession \(spouse's share; heirs\)](#)

<https://www.flsenate.gov/Laws/Statutes/2025/732.102>

[§ 732.703 — Effect of divorce on beneficiary designations](#)

<https://www.flsenate.gov/Laws/Statutes/2025/732.703>

[§ 732.901 — Production of wills \(10-day deposit\)](#)

<https://www.flsenate.gov/Laws/Statutes/2025/732.901>

[§ 733.707 — Order of payment of expenses and obligations \(funeral expense cap\)](#)

<https://www.flsenate.gov/Laws/Statutes/2025/733.707>

[§ 733.710 — Limitations on claims against estates \(two years\)](#)

<https://www.flsenate.gov/Laws/Statutes/2025/733.710>

[§ 733.207 — Establishment of lost or destroyed will](#)

<https://www.flsenate.gov/Laws/Statutes/2025/733.207>

[Chapter 733, Fla. Stat. — Administration of Estates \(formal administration\)](#)

<https://www.flsenate.gov/Laws/Statutes/2025/Chapter733>

[§ 689.15 — Estates by survivorship](#)

<https://www.flsenate.gov/Laws/Statutes/2025/689.15>

[§ 319.28 — Transfer of vehicle ownership by operation of law \(no probate\)](#)

<https://www.flsenate.gov/Laws/Statutes/2025/319.28>

[§ 222.15 — Wages or unemployment compensation payments due deceased employee](https://www.flsenate.gov/Laws/Statutes/2025/222.15)

<https://www.flsenate.gov/Laws/Statutes/2025/222.15>

[§ 28.2401 — Clerk fees in probate matters](https://www.flsenate.gov/Laws/Statutes/2025/28.2401)

<https://www.flsenate.gov/Laws/Statutes/2025/28.2401>

[§ 409.9101 — Medicaid Estate Recovery Act](https://www.flsenate.gov/Laws/Statutes/2025/409.9101)

<https://www.flsenate.gov/Laws/Statutes/2025/409.9101>

[Florida Constitution, Article X, § 4 — Homestead; personal property exemption](https://www.flsenate.gov/Laws/Constitution)

<https://www.flsenate.gov/Laws/Constitution>

[Florida Probate Rules \(Rules 5.030, 5.405, 5.530 and others\), via The Florida Bar](https://www.floridabar.org/rules/ctproc/)

<https://www.floridabar.org/rules/ctproc/>

[Florida Courts Self-Help Information](https://www.flcourts.gov/Resources-Services/Office-of-Family-Courts/Self-Help-Information)

<https://www.flcourts.gov/Resources-Services/Office-of-Family-Courts/Self-Help-Information>

[Florida Courts E-Filing Portal](https://www.myflcourtaccess.com/)

<https://www.myflcourtaccess.com/>

[Florida Highway Safety and Motor Vehicles — Form HSMV 82040 \(title application with heir affidavit\)](https://www.flhsmv.gov/pdf/forms/82040.pdf)

<https://www.flhsmv.gov/pdf/forms/82040.pdf>

[26 U.S.C. § 1014 — Stepped-up basis at death](https://www.law.cornell.edu/uscode/text/26/1014)

<https://www.law.cornell.edu/uscode/text/26/1014>

[26 U.S.C. § 2010 — Federal estate tax unified credit](https://www.law.cornell.edu/uscode/text/26/2010)

<https://www.law.cornell.edu/uscode/text/26/2010>

[IRS Publication 559 — Survivors, Executors, and Administrators](https://www.irs.gov/publications/p559)

<https://www.irs.gov/publications/p559>

[Rules Regulating The Florida Bar, Chapter 10 — Unlicensed practice of law; nonlawyer form assistance \(Rules 10-2.1 and 10-2.2\)](https://www.floridabar.org/rules/rrtfb/)

<https://www.floridabar.org/rules/rrtfb/>

[In re Amendments to Fla. Family Law Rules of Procedure and Rule Regulating The Florida Bar 10-2.2, No. SC2026-1262 \(Fla. Sept. 10, 2026\) — nonlawyer form-assistance disclosure](https://flcourts-media.flcourts.gov/content/download/2495059/opinion/Opinion_SC2026-1262.pdf)

https://flcourts-media.flcourts.gov/content/download/2495059/opinion/Opinion_SC2026-1262.pdf

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Respectfully prepared for your education,

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