

COMMON QUESTIONS

ARE MY WILL / TRUST FROM UP NORTH VALID IN FL? Maybe.

Properly executed planning documents are recognized in Florida, however the effect of the documents may be different in Florida. Obtain review by a Florida attorney.

WHAT IF I OWN REAL ESTATE IN MULTIPLE STATES? Multiple probates.

Unless the real estate is in joint tenancy or trust at death, your estate will require probate in both states to transfer title to beneficiaries.

HOW SHOULD I TAKE TITLE?

Depends on marital status, residency, co-owners, creditors, etc...

1. Joint Tenancy (rights of survivorship)
passes to surviving joint tenant without probate
2. Tenancy in common-passes to probate estate
3. Individually – passes to probate estate

HOW DO I DOMICILE IN FLORIDA?

Your previous State of residency may attempt to avoid your move to Florida and require you to pay state income tax in your originating state. Establish domicile in Florida by:

- Obtain Florida vehicle insurance
- Transfer vehicle registration to Florida
- Obtain Florida Driver's License
- Register to Vote
- Apply for residence homestead
- Establish Florida bank/ investment accounts
- Utilize Florida doctors, lawyers, CPAs, brokers
(this list is not exhaustive)

HOW DO I APPLY FOR HOMESTEAD FOR MY FLORIDA RESIDENCE?

Obtain title to the real estate and "make your move" on or before January 1st.

Application for homestead must be filed with county property appraiser between January 1st and March 1st.



When Trust Matters



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**Decedents' Estates:
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Benefits of Florida Estate Planning and Residency

*A legal guide for planning, avoiding
probate and benefits of Florida domicile.*

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Disclaimer: The foregoing information is intended to be a brief summary and is not a substitute for legal advice. It is recommended that you seek the advice of an attorney.

ESTATE PLANNING

4 DOCUMENTS EVERYONE NEEDS

1. Last Will and Testament

Designates who will administer a decedent's estate (executor/personal representative) and who will receive decedent's assets.

2. Power of Attorney for Health Care

Authorizes an agent to obtain medical information and make health decisions if the principal becomes incapacitated. Terminates at death with the exception of making final arrangements.

3. Power of Attorney for Property

Authorizes an agent to obtain information and act on behalf of the principal for financial matters. Terminates at death.

4. Living Will Declaration

Designates withholding of life prolonging procedures under certain health circumstances.

ADDITIONAL DOCUMENTS

1. Revocable Living Trust

When properly funded this trust provides probate avoidance and faster asset distribution to beneficiaries in some cases.

2. Irrevocable Trust

This trust can shelter assets, reduced estate taxes and provide creditor protection. Settlor must give up control.

3. Special Needs Trust

This trust for disabled children and adults provides asset protection and allows qualification for government benefits.



PROBATE

WHAT IS PROBATE?

Probate is the court supervised administration of a decedent's estate. The requirement of probate depends on the amount of assets in the name of decedent at death.

A properly executed Last Will and Testament does NOT avoid the necessity of probate.

PROBATE NOT REQUIRED

Joint Assets/ Pay on Death Accounts

If all decedent's assets were titled in joint tenancy, pay/transfer on death or direct beneficiary, probate may not be necessary.

Trust Assets

Assets properly transferred to a valid trust are not subject to probate. If decedent was a settlor, trustee, or beneficiary of a trust, the trust should be reviewed by an attorney.

A Notice of Trust must be filed with clerk of courts.

Exempt Assets

Exempt assets pass to surviving spouse or children of decedent outside of probate:

- Household furnishings and appliances up to \$20,000.00
- Two motor vehicles – a death certificate may be sufficient to transfer vehicles to surviving spouse

FLORIDA SPECIFICS

BENEFITS OF RESIDENCY

No state income tax

Limitations on creditor wage garnishments

Homestead protection from most creditors

RESIDENCE AS HOMESTEAD

Benefits of Homestead

1. Real estate tax exemption and cap on property assessment increases.
2. Protection from most creditors (excludes mortgage holders / mechanic's liens / govt/tax)
 - During lifetime of the owner, homestead may not be attached for forced sale by creditors.
 - At owner's death, homestead passes to beneficiaries clear of creditor claims if bequeathed to heirs.

Restrictions on Devise

Homestead must devise to surviving spouse or minor children. Florida homestead law will trump planning documents designating otherwise.

SPOUSAL ELECTION

1. No Disinheritance:

Disinheriting a spouse is NOT allowed in Florida except with a valid prenuptial or postnuptial agreement.

2. 30% share:

A surviving spouse is entitled to claim thirty percent of the deceased's spouse's assets regardless of provisions in a will or trust. "Assets" includes pay on death accounts and assets in joint tenancy.