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YOUR ROLE AS A PERSONAL REPRESENTATIVE

By: Dorothy L. Korszen
January 2007



What an honor—your parents have named you to serve as Personal Representative in their Last Wills and Testaments. Most likely, they have selected you because they trust you and believe that you will handle settling their estate fairly and competently. Now that they have passed away, you could use some guidance on what steps to take.

As Personal Representative (PR), you are responsible for insuring that creditors are paid and that the estate assets are collected then distributed in accordance with the terms of the Will. Although the Will names you PR, your legal authority to act as PR does not begin until the court issues Letters of Administration. Once you receive your “Letters,” you can open an estate checking account, sell property, and generally handle the estate’s business. The Court issues Letters of Administration based on a Petition filed by the PR’s attorney.

Once you receive your Letters, you must give notice of the estate to beneficiaries and creditors. Florida law requires that any known or “reasonably ascertainable” creditors be provided with individual notice. In addition, notice must be published to advise any unknown creditors where they may file claims. The statutory creditor claim period lasts for 90 days.

During the creditor claim period, you will be identifying, collecting and valuing the assets of the estate. You must file an inventory, which is a list of assets and their values, with the court within 60 days of your appointment as PR. The value of exempt assets, such as homestead property if it is devised to a member in the protected class (for example, blood relatives), does not need to be included in the inventory filed with the court. As PR, you may sell assets, such as cars and real estate, so that you can distribute cash to the beneficiaries or pay creditors.

As PR, you are responsible for insuring that all tax returns required to be filed on behalf of the decedent are filed. These could include a federal income tax return, an estate income tax return (if the estate is required to pay income tax), and an estate tax return for taxable estates.



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After creditors have been paid and all estate obligations have been satisfied, you will distribute the estate assets to the beneficiaries. Sometimes a PR may make distributions of property by deeding real estate or retitling investment accounts to a beneficiary. Or, the PR may liquidate property so cash distributions can be made.

Last, the estate can be "closed," which means that final documents are submitted to the court indicating that creditors have been paid, the property has been distributed, and your duties as PR have been completed. The court will then enter an order discharging you as PR.

Although the length of the probate process varies greatly, considering the 90 day creditor claim period and the time required to prepare and file documents with the court, a probate should be completed within nine months to a year. However, many issues can increase this time. Perhaps the PR wishes to liquidate estate assets, such as real estate, and distribute cash. If real estate is not selling quickly, the probate could be left open until the PR sells the property, especially when the PR does not wish to deed the property to numerous beneficiaries. Other issues which can extend the probate process include cases where a beneficiary is a minor, where a beneficiary dies before receiving his or her share, or where a beneficiary contests the will. Probate rules require the final accounting and petition for discharge to be filed within 12 months after issuance of letters of administration for nontaxable estates, or 12 months from the date the estate tax return is due for taxable estates, unless the court extends this time.

Many issues arise during the course of administering an estate. In addition to the legal process, a PR must often deal with sensitive family dynamics among the beneficiaries. Your attorney can help you navigate the probate process, helping you to serve as PR competently and fairly.

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