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FREQUENTLY ASKED QUESTIONS ON PROBATE IN FLORIDA – PART 2

1. WHAT ARE PROBATE ASSETS?

Probate administration only applies to probate assets. Probate assets are those assets that the decedent owned in his or her sole name at death, or that were owned by the decedent and one or more co-owners and lacked a provision for automatic succession of ownership at death (i.e. a “payable on death” designation).

For example:

- A bank account or investment account in the sole name of a decedent is a probate asset, but a bank account or investment account owned by the decedent and “payable on death” or “transferable on death” to another, or held jointly with “rights of survivorship” with another, is not a probate asset.
- A life insurance policy, annuity contract or individual retirement account that is payable to a specific beneficiary is not a probate asset, but a life insurance policy, annuity contract or individual retirement account payable to the decedent's estate is a probate asset.
- Real estate titled in the sole name of the decedent, or in the name of the decedent and another person as tenants in common, is a probate asset (unless it is homestead property), but real estate titled in the name of the decedent and one or more other persons as joint tenants with rights of survivorship is not a probate asset.
- Property owned by husband and wife as tenants by the entirety is not a probate asset on the death of the first spouse to die, but goes automatically to the surviving spouse.

This list is not exclusive, but is intended to be illustrative. At the Law Office of Imani Boykin, P.A., we can analyze the status of ownership of a decedent's property as just one service provided during a probate administration – it is an important task to distinguish this, as it affects whether creditors can reach such properties.

2. WHAT ARE AN ESTATE'S OBLIGATIONS TO ESTATE CREDITORS?

One of the primary purposes of probate is to ensure that the decedent's debts are paid in an orderly fashion. The personal representative must use diligent efforts to give actual notice of the probate proceeding to "known or reasonably ascertainable" creditors. This gives the creditors an opportunity to file claims in the decedent's probate estate, if any. Creditors who receive notice of the probate administration generally have three months to file a claim with the clerk of the circuit court. The personal representative, or any other interested persons, may file an objection to the statement of claim. If an objection is filed, the creditor must file a separate independent

lawsuit to pursue the claim. A claimant who files a claim in the probate proceeding must be treated fairly as a person interested in the probate estate until the claim has been paid, or until the claim is determined to be invalid.

The legitimate debts of the decedent, specifically including proper claims, taxes, and expenses of the administration of the decedent's probate estate, must be paid **before** making distributions to the decedent's beneficiaries. The court will require the personal representative to file a report to advise of any claims filed in the probate estate, and will not permit the probate estate to be closed unless those claims have been paid or otherwise disposed of.

Probate is a very particular area of law; having an attorney experienced in practicing probate is invaluable. At the Law Office of Imani Boykin, P.A., we are here to counsel and advise personal representatives when faced with the numerous duties and responsibilities that arise in probate administration.

Our knowledgeable attorneys and staff at the Law Office of Imani Boykin, P.A. can help you with your loved one's affairs and make the probate process easy for you during a difficult time.

The material in this legal blog represents general legal advice and does not constitute the existence of a lawyer-client relationship. It is always best to consult an attorney about your legal rights and responsibilities in your particular case. Contact the Law Office of Imani Boykin, P.A. to schedule a consultation so that we can assess whether we can represent you in your legal matter.