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FREQUENTLY ASKED QUESTIONS ON PROBATE IN FLORIDA – PART 8

1. WHAT ARE THE RIGHTS OF THE DECEDENT’S SURVIVING FAMILY?

The decedent’s surviving spouse and children may be entitled to receive probate assets from the decedent’s probate estate, even if the decedent’s will gives them nothing. Florida law protects the decedent’s surviving spouse and certain surviving children from total disinheritance.

For example, a surviving spouse may have rights in the decedent’s homestead real property. A surviving spouse may also have the right to come forward to claim an “elective share” from the decedent’s probate estate. The elective share is, generally speaking, 30% of all of the decedent’s assets, including any assets that are non-probate assets. A surviving spouse and/or the decedent’s children may also have the right to a family allowance to provide them with funds prior to final distribution of the estate assets, and rights in exempt property that will be paid to them instead of to creditors in satisfaction of claims against the probate estate. It is important to note that a spouse may waive his or her rights to an elective share, family allowance, and/or exempt property in a valid pre-marital or post-marital agreement.

In addition, if the decedent married, or had children, after the date of the decedent’s last will, and if the decedent neglected to provide for the new spouse or children, an omitted family member may nevertheless be entitled to a share of the decedent’s probate estate.

The existence and enforcement of these statutory rights requires knowledge about the applicable laws and procedures and is best handled by an attorney. Call the Law Office of Imani Boykin, P.A. to schedule a consultation.

2. WHAT RIGHTS DO OTHER POTENTIAL BENEFICIARIES HAVE IN THE DECEDENT’S PROBATE ESTATE? CAN A DECEDENT DISINHERIT BENEFICIARIES?

A Florida resident has the right to entirely disinherit anyone. However, this can only be done with a valid will.

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.