

How to Avoid Probate in Florida

Florida has no state estate tax and no inheritance tax. So why do Florida families still lose money at death? Because of probate itself. On a \$1 million probate estate, which in Florida usually doesn't include a protected homestead, the statutes presume a \$30,000 fee for the personal representative and another \$30,000 for the lawyer. Florida's statutes also don't currently offer a transfer-on-death deed for real estate, and its homestead rules limit who can inherit the family home. Five legal tools move assets around probate.

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THE FLORIDA REALITY

In Florida, the statutes presume \$60,000 in probate fees on a \$1 million probate estate.

Florida law presumes \$30,000 for the personal representative and \$30,000 for the attorney on a \$1 million probate estate. Both fees apply only to assets that go through probate, and a protected homestead usually isn't one of them.

Does Florida tax your estate or your heirs? No, neither one.

Florida has no state estate tax and no inheritance tax. Florida's Constitution bars any estate or inheritance tax larger than what a similar federal or state tax allows as a credit or deduction (Fla. Const. art. VII, sec. 5). Florida's estate tax statute is tied to the old federal credit for state estate taxes (Fla. Stat. 198.02), and that credit ended after 2004. Florida's Department of Revenue says the federal change eliminated Florida's estate tax for deaths after December 31, 2004. Both facts hold in 2026. If an estate, plus taxable gifts made during life, stays below the federal threshold, **no Florida or federal transfer tax is due.** Real estate owned in a state with its own estate tax can still be taxed there. The federal threshold is \$15 million per person in 2026 under the One Big Beautiful Bill Act of 2025. A married couple can shelter up to \$30 million if the first spouse's estate files a timely federal estate tax return electing portability.

No estate or inheritance tax still doesn't make Florida a free ride. The cost that remains is the **probate process**: the time, the public court file, the personal representative's commission, the attorney fee, and the court costs. Florida stands out because its statutes put a presumed dollar figure on both fees.

Two more Florida facts decide what happens to the house. **Florida's statutes don't currently offer a transfer-on-death deed for real estate.** Many states let an owner name who inherits a home on a single recorded form. As of 2026, Florida hasn't adopted one, so the home usually passes through a funded trust, an enhanced life estate deed, or survivorship titling. And **Florida's homestead rules limit who can inherit the family home,** which the next section covers.

What an estate owes at death in Florida	2026 reality
Florida estate tax	\$0. Tied to a federal credit that ended after 2004. No Florida estate tax return is due for those deaths.
Florida inheritance tax	\$0. Florida doesn't have one, and its Constitution limits any such tax (Fla. Const. art. VII, sec. 5).

What an estate owes at death in Florida	2026 reality
Federal estate tax	\$0 if the estate is below \$15M per person, or up to \$30M for a married couple with a portability election. No scheduled expiration under the 2025 federal law; indexed for inflation from 2027.
Probate court costs	A filing fee of up to \$395 plus a \$4 service charge for formal administration (Fla. Stat. 28.2401), plus newspaper publication and certified copies. About \$1,000 in total (our estimate).
Personal representative commission	Presumed reasonable by statute: 3 percent of the first \$1 million, 2.5 percent from \$1 million to \$5 million, 2 percent from \$5 million to \$10 million, 1.5 percent above \$10 million. Extra pay is allowed for extraordinary services (Fla. Stat. 733.617).
Probate attorney fee	Presumed reasonable by statute: \$1,500 up to \$40,000, \$750 more up to \$70,000, \$750 more up to \$100,000, then 3 percent of the next \$900,000, stepping down to 1 percent above \$10 million. Extraordinary services cost more. Not mandatory, and negotiable by law (Fla. Stat. 733.6171).
Time tied up	At least 3 months, because creditors get 3 months from the first published notice to file claims (Fla. Stat. 733.702). Our estimate: 6 to 12 months for a clean case, 12 to 24 months if contested.
Smaller estates	Summary administration, a shorter court process, is open when the estate, less property exempt from creditors, is \$150,000 or less, or the person died more than 2 years ago. It isn't open when a will directs full administration. The limit rose from \$75,000 on July 1, 2026 (Fla. Stat. 735.201). The 2026 law doesn't say whether the new limit depends on the date of death or the date of filing. For a death before July 2026, that's a question for a Florida attorney.

All together, a \$1,000,000 estate that runs through Florida formal administration could pay about **\$61,000 in presumed fees and court costs**. That's \$30,000 to the personal representative, \$30,000 to the attorney, and about \$1,000 in court costs. Probate ties the

estate up for the better part of a year (our estimate). The attorney fee and court costs leave the family, and the commission goes to whoever serves as personal representative.

Can a Florida owner leave the homestead to anyone? Not when a spouse or minor child survives.

Florida's Constitution restricts who can inherit a homestead. A homestead here means a residence owned by an individual and used as the owner's or family's home, within the Constitution's size limits. When a Florida owner dies leaving a spouse or a minor child, the homestead can't be left by will to anyone else. The main exception: with no minor child, it can go to the spouse (Fla. Const. art. X, sec. 4). A second home or a rental property usually isn't homestead. The same rule reaches a home held in a revocable trust. Florida law treats the trust's gift of the home as if the owner had made it by will (Fla. Stat. 732.4015).

When a gift of the homestead fails under these rules and the owner leaves a spouse and children, the spouse receives a life estate in the home. The children receive what remains after it. The spouse can instead elect, within 6 months of the death, to take half the home outright as a co-owner with the children (Fla. Stat. 732.401). A spouse can give up these homestead rights in a written agreement signed in front of two witnesses. A spouse can also give them up by joining a deed that carries the waiver language set out in the statute (Fla. Stat. 732.702 and 732.7025).

Homestead status also changes the probate math. A protected homestead isn't an asset in the personal representative's hands (Fla. Stat. 733.608), so it's usually left out of the commission base. Work on homestead questions counts as an extraordinary service, though, and both the personal representative and the attorney can be paid extra for it (Fla. Stat. 733.617 and 733.6171). A home owned by spouses as tenants by the entireties, or by co-owners with a stated right of survivorship, isn't protected homestead at all (Fla. Stat. 731.201(33)).

Which tools keep assets out of Florida probate? Five, and the house usually passes by trust, deed or title.

Florida law offers several ways to pass assets to a family **without** probate court touching them. Because Florida's statutes don't currently offer a transfer-on-death deed, real estate usually goes through a trust, a deed, or survivorship titling instead of a quick form. Families commonly use more than one of these tools. Which combination fits a family is a question for a Florida attorney.

TOOL 1: OFTEN USED FOR REAL ESTATE AND COMPLEX ESTATES

Funded Revocable Living Trust

A revocable trust is a document the owner signs, usually naming himself or herself as trustee during life. The owner retitles assets into the trust's name, including the deed to a house, and keeps full control: the owner can sell, refinance, change beneficiaries, or revoke the trust. At death, a successor trustee hands out the trust assets under the trust's terms, with no probate case (the trustee files a short notice of trust with the court). For a trust signed while the owner's legal home is in Florida, the parts that take effect at death are valid only if it's signed with the same formalities as a will. Two Florida limits travel with the trust. The homestead rules apply to a home held in it. And the trust can be called on to pay the estate's debts and expenses if the probate estate falls short. **Authority: Florida Trust Code, Chapter 736 of the Florida Statutes (736.0403); Fla. Stat. 732.4015, 733.707(3) and 736.05055.**

Commonly used for: *Florida homeowners who want the house handled without probate, plus people with several properties, business interests, blended families, or incapacity concerns. The catch: a trust only avoids probate on assets actually retitled into it. An unfunded trust avoids nothing.*

TOOL 2: OFTEN USED FOR A SINGLE HOME

Enhanced Life Estate ("Lady Bird") Deed

With an enhanced life estate deed, the owner deeds the home to named beneficiaries but keeps the right to live there for life (a "life estate"). The deed is written so the owner also keeps the power to sell or mortgage the home without the beneficiaries' signatures. A traditional life estate deed doesn't allow that. At the owner's death, the home passes to the named beneficiaries without probate. No Florida statute creates this deed; it rests on Florida case law and real estate title practice. The homestead limits still matter. A married owner can't deed a homestead to someone other than the spouse, such as the children, unless the spouse joins in the deed (Fla. Const. art. X, sec. 4(c)). Whether a deed that keeps the owner's power to sell counts as a gift by will under the homestead limits is a question Florida's statutes don't settle. Fla. Stat. 732.4017 says only that a lifetime transfer the owner keeps no power to take back isn't one, and a Florida appeals court expressly left the question open in September 2026. So a deed naming the children can run into those limits when the owner leaves a spouse or a minor child. **Authority: Florida case law (no statute creates it); Fla. Const. art. X, sec. 4(c); Fla. Stat. 732.4017 (lifetime transfers).**

Commonly used for: *A homeowner with one Florida home and settled plans for who inherits it, who wants to avoid probate without the cost of a trust. Because the homestead rules can limit the deed, it's a document families commonly go over with a Florida attorney before signing.*

TOOL 3: OFTEN USED FOR MARRIED COUPLES

Tenancy by the Entireties and Joint Tenancy with Right of Survivorship

Married couples in Florida can own a home as tenants by the entireties, a form of ownership only spouses can use. At the first death, the surviving spouse owns the whole property, outside probate. Two co-owners who aren't married can hold title as joint tenants with right of survivorship, but only if the deed says so expressly. Florida treats a plain deed to two people as a tenancy in common, which doesn't pass to the survivor. A divorce turns a tenancy by the entireties into a tenancy in common. Property held either way isn't protected homestead, so the homestead inheritance rules don't apply to it.

Authority: Fla. Stat. 689.11, 689.15, 731.201(33) and 732.401(5).

Commonly used for: *Couples who want both names on the deed and a clean transfer at the first death. The limit: it only covers the first death. After both owners die, the property goes through probate unless something else is in place for the next generation.*

TOOL 4: UNIVERSAL

Beneficiary Designations on Retirement Accounts and Life Insurance

A 401(k), an individual retirement account (IRA), a 403(b), and a life insurance policy each have a form naming a beneficiary. That beneficiary inherits directly, by contract, without probate. Beneficiary forms are the simplest probate-avoidance tool on the list, and the most commonly broken. **Where it breaks:** naming "my estate" as the beneficiary, or leaving the beneficiary blank. Both can pull the asset back into probate. With a retirement account, an estate as beneficiary can force heirs to empty the account within 5 years instead of the 10 years a named person usually gets. The 5-year rule applies when the owner died before required withdrawals began. Florida law usually cancels a pre-divorce designation of an ex-spouse on an IRA, a life insurance policy, or a POD or TOD account. Federal law controls most employer plans, such as a 401(k). **Authority: Fla. Stat. 732.703 (effect of divorce).**

Terrence holds the life insurance licenses on our team and is paid when a policy is placed.

Commonly used for: *Florida residents with a retirement account or life insurance. Families commonly review these forms after major life events.*

TOOL 5: BANK ACCOUNTS AND BROKERAGE

Payable on Death (POD) and Transfer on Death (TOD) Registrations

A checking account, savings account, or certificate of deposit (CD) can carry a "POD" designation that names who inherits the balance. A brokerage account holding stocks and bonds can be registered in "TOD" form to do the same. The owner keeps full control during life, and the designation has no effect until death. The beneficiary then deals directly with the bank or broker, with no probate. For TOD securities, the Florida act doesn't cut off creditors' rights under other Florida law (Fla. Stat. 711.509). **Authority: Fla. Stat. 655.82 (bank accounts) and the Florida Uniform Transfer-on-Death Security Registration Act, Fla. Stat. 711.50 through 711.512 (securities).**

Commonly used for: *Florida bank and brokerage accounts. Setup cost: zero. Filed directly with the institution, and revocable anytime.*

What can probate cost a \$1 million Florida estate?

About \$61,000.

ILLUSTRATIVE: \$1 MILLION FLORIDA ESTATE

Plan A: Will only. Everything runs through probate.

Personal representative commission (3% of the first \$1 million)	\$30,000
Attorney fee (\$3,000 on the first \$100,000, plus 3% of the next \$900,000)	\$30,000
Court costs, publication, miscellaneous (our estimate)	\$1,000

Total probate cost **About \$61,000 (6.1%)**

Assumes all \$1 million is probate assets, such as investment accounts and a rental property in one person's name. A protected homestead is usually left out of the commission base. Income the estate earns during probate and any extraordinary services add to both fees. Plus 6 to 12 months of court administration (our estimate), in a public court file.

SAME \$1 MILLION ESTATE, RESTRUCTURED

Plan B: Funded trust + beneficiary designations + POD/TOD registrations.

Setup cost (revocable trust and funding, account and beneficiary designations; our estimate)	\$1,500 to \$5,000
Personal representative commission	Near \$0
Probate attorney fees	Near \$0
Court costs	Near \$0
Trust lawyer's fee, if the trustee hires one (presumed at 75% of the \$30,000 probate schedule with all \$1 million in trust, before extra services; Fla. Stat. 736.1007)	\$0 to \$22,500

Total cost **\$1,500 to \$27,500**

Accounts with beneficiaries transfer in weeks and trust assets typically within months (our estimate), without a probate case. How much of the \$61,000 the family keeps depends on who serves. In one case, a professional serves as personal representative and takes the commission, and the trustee handles the trust without a lawyer. There the difference is \$61,000 minus \$1,500 to \$5,000, or roughly \$56,000 to \$59,500. When a family member serves as personal representative, the \$30,000 commission stays in the family, so about \$31,000 of Plan A's cost leaves it. The commission is taxable income to the person who serves, which an inheritance isn't, and that person can renounce it (Fla. Stat. 733.617(4)). If the trustee then hires a lawyer at the presumed rate, Plan B costs \$24,000 to \$27,500, and the difference is roughly \$3,500 to \$7,000. Both ranges are our estimate, because the setup cost is. A trustee can also be paid reasonable compensation (Fla. Stat. 736.0708), which Florida doesn't set by schedule, so it isn't in these numbers.

Numbers are illustrative. Florida's personal representative commission and attorney fee schedules are presumed reasonable, not mandatory, and the attorney fee is negotiable by law (Fla. Stat. 733.617 and 733.6171). Fla. Stat. 28.2401 sets \$395 as the usual maximum formal administration filing fee. The trust attorney fee schedule is presumed reasonable, not mandatory, and negotiable too (Fla. Stat. 736.1007). Other court costs, setup costs and timelines are our estimates. Actual numbers depend on county, asset mix, and complexity. This isn't legal or tax advice.

Where does our work stop? We estimate the tax, and attorneys draft.

We're Enrolled Agents. We work on the tax: what your estate would owe the IRS, which filings it triggers, and what each choice is worth in dollars. We don't draft documents and we don't practice law.

Every tool on this page is a legal instrument. Which one fits your family, how it's drafted, and how it works with the documents you've already signed are questions for a Florida attorney. It helps to know what each choice is worth in tax before you sit down with that attorney.

What do Florida families get wrong? Five avoidable mistakes.

Each mistake costs a family time, money or control.

- **Assuming Florida has a transfer-on-death deed like other states.** Florida's statutes don't currently offer one for real estate. The family home usually skips probate through a funded trust, an enhanced life estate deed, or survivorship titling.
- **Leaving the homestead to the children while a spouse or minor child survives.** The Constitution's homestead limits can void that gift, whether it's in a will or a revocable trust. The law then gives the spouse a life estate and the children the rest.
- **Buying a revocable trust and never funding it.** A trust avoids probate only on assets actually retitled into it, including the deed to a house. An unfunded trust avoids no probate.
- **Naming "my estate" as the beneficiary on a retirement account.** Pulls the asset into probate. It can also force heirs to empty the account within 5 years, instead of the 10 years a named person usually gets. If the owner had started required withdrawals, the payout follows the owner's remaining life expectancy instead.
- **Letting beneficiary forms go stale.** Florida law usually cancels an ex-spouse's designation at divorce. Federal law controls most employer plans, though, so an old 401(k) form can still pay a former spouse. That's why families commonly update every form after a divorce.

What doesn't this guide cover? Six issues beyond probate.

Avoiding probate is one part of a full estate plan. Six Florida issues go beyond probate, and each is its own conversation:

- **The surviving spouse's elective share.** A surviving spouse can claim 30 percent of the "elective estate" (Fla. Stat. 732.2065). That estate counts more than probate assets. It includes the homestead, POD and TOD accounts, jointly owned property, and assets in a revocable trust (Fla. Stat. 732.2035). Most probate-avoidance tools don't remove assets from it. It's a question for a Florida attorney.
- **Florida Medicaid estate recovery.** Florida can file a claim in probate for Medicaid paid after a person turned 55 (Fla. Stat. 409.9101). Medicaid recovery is a long-term-care planning conversation, separate from probate-avoidance forms.

- **Asset protection from creditors and lawsuits.** A revocable trust **doesn't** protect assets from the owner's own creditors. Florida's homestead protection from creditors is its own body of law.
- **Federal estate tax planning for estates over \$15M.** A different conversation, and the focus of Lever 5 for ultra-high-net-worth families.
- **Out-of-state real estate, and Florida property owned by nonresidents.** Property in another state can go through its own probate there. A nonresident who dies owning Florida property can face a second, "ancillary" probate in Florida (Fla. Stat. 734.102).
- **Moving a legal home to Florida.** A former home state with its own estate or income tax can still look at whether the move was complete. Establishing Florida domicile is its own project.

What do the legal words mean? Each one, in plain English.

Every term below appears in this guide or in documents a Florida attorney commonly uses.

Term	What it means
Probate	The court process that moves what a person owned into the names of the people who inherit it. In Florida it runs through the circuit court in the county where the person lived.
Personal representative	The person who settles an estate in probate. Called an executor in many other states.
Formal administration	Florida's full probate process, with a court-appointed personal representative, published notice to creditors, and the statutory fee schedules.
Summary administration	A shorter Florida court process for estates of \$150,000 or less (not counting property exempt from creditors), or when the person died more than 2 years ago.

Term	What it means
Disposition without administration	A Florida process with no administration at all: on an informal application, the court can authorize the transfer by letter, for estates holding only exempt personal property plus small amounts that cover funeral and final medical bills (Fla. Stat. 735.301). A related route covers an estate with no will, up to \$20,000 in other personal property beyond funeral and final medical bills, a death more than a year earlier, and no estate already open (Fla. Stat. 735.304; the limit was \$10,000 before July 1, 2026).
Exempt property	Property a surviving spouse or children receive free of the estate's debts, including household furnishings up to \$20,000 and two vehicles (Fla. Stat. 732.402).
Compensable value	The base for Florida's probate fees: the inventory value of the probate assets plus income the estate earns during probate.
Presumed reasonable	A fee the law treats as fair unless someone shows otherwise. It's a starting point, not a required amount.
Extraordinary services	Work beyond routine probate, such as selling property, litigation, or homestead questions. Florida allows extra pay for it on top of the schedules.
Homestead, protected homestead	A Florida residence owned by an individual and used as the owner's or family's home, within size limits, protected by the state Constitution. At death, those protections pass to the surviving spouse or heirs, and the home isn't an asset the personal representative controls.
Devise	A gift of property by will. Florida law treats a revocable trust's gift of the home as a devise for the homestead rules.
Minor child	A child under 18. A surviving minor child blocks a gift of the homestead to anyone, including the spouse.
Revocable living trust	A trust the owner controls and can change or cancel during life. Assets titled in it skip probate.

Term	What it means
Funded trust	A trust that holds the owner's assets, including the deed to a house, because they were retitled into its name. An unfunded trust avoids nothing.
Successor trustee	The person who takes over a trust at the owner's death or incapacity and hands out the assets under the trust's terms.
Florida Trust Code	Chapter 736 of the Florida Statutes, the law that governs trusts in Florida.
Transfer-on-death deed	A recorded form, offered in many states, that names who inherits a house without probate. Florida's statutes don't currently offer one.
Life estate, remainder beneficiary	A life estate is the right to use a property for life. The remainder beneficiary is the person who receives the property when the life estate ends.
Enhanced life estate ("Lady Bird") deed	A deed that keeps the owner's life estate and the power to sell or mortgage, and passes the home to named beneficiaries at death without probate.
Tenancy by the entireties	A form of ownership only married couples can use. The surviving spouse owns the whole property at the first death.
Joint tenancy with right of survivorship	Co-ownership where the surviving owner takes full title at a death. In Florida the deed has to state the survivorship right expressly.
Tenancy in common	Co-ownership with no survivorship right. Each owner's share passes through that owner's estate.
Beneficiary designation	The form on a retirement account or life insurance policy that names who receives it at death.
401(k), IRA, 403(b)	Retirement accounts. A 401(k) or 403(b) comes through an employer. An individual retirement account (IRA) is opened directly by the owner.

Term	What it means
Payable on death (POD), transfer on death (TOD)	A beneficiary named directly on a bank or brokerage account. The account passes to that person without probate.
Certificate of deposit (CD)	A bank deposit held for a set term at a set interest rate.
Elective share	The part of an estate a surviving spouse can claim by law, even if the will leaves less. In Florida it's 30 percent of the elective estate.
Ancillary administration	A second probate in a state where the person owned property but didn't live.
Medicaid estate recovery	The state's right to be repaid from an estate for Medicaid benefits paid during life.
Estate tax	A tax on what a person leaves, paid by the estate before anyone inherits. Florida's has collected nothing for deaths after 2004.
Inheritance tax	A tax on what a person receives, set by that person's relationship to the one who died. Florida doesn't have one.
Transfer tax	A general name for estate, inheritance and gift taxes: taxes on wealth passing from one person to another.
Gross estate, taxable estate	The gross estate is everything a person owned at death for federal estate tax purposes. The taxable estate is what's left after deductions, such as gifts to a spouse or charity.
Exclusion, federal threshold	The amount a person can leave before federal estate tax applies: \$15 million per person in 2026, indexed for inflation from 2027.
Portability	A federal election that lets a surviving spouse use the unused exclusion of the first spouse to die. It requires a timely federal estate tax return (Form 706) at the first death.
Marital deduction	The federal rule that lets assets pass to a surviving spouse who is a US citizen free of federal estate tax.

Term	What it means
Death benefit	The amount a life insurance policy pays when the insured person dies.
Irrevocable life insurance trust (ILIT)	A trust that owns a life insurance policy so the death benefit stays out of the insured person's taxable estate.
Fla. Stat., Fla. Const.	Fla. Stat. is the Florida Statutes, the state's written law. Fla. Const. is the Florida Constitution. "Art. X, sec. 4" means Article X, Section 4.

Questions about the federal estate tax?

Florida has no estate or inheritance tax, but the federal estate tax can still apply. We're always glad to talk about how it works. For anything about drafting or choosing legal documents, talk with a Florida attorney.

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Important. This guide is general educational information about Florida probate law as of October 2026. It isn't legal advice or tax advice for your situation, and it isn't a substitute for the advice of an attorney licensed in Florida. Florida probate, trust, and tax law changes, and statute citations are best re-verified against the current Florida Statutes before any document is filed. The summary administration limit rose from \$75,000 to \$150,000 on July 1, 2026 (chapter 2026-57, Laws of Florida). Federal estate tax figures reflect the One Big Beautiful Bill Act of 2025 (\$15 million per individual exemption, 2026), and current IRS guidance is the place to confirm them. Taylored Tax isn't engaged in the practice of law. Sources for every statute and dollar figure above are available on request.