



# Probate, Explained:

A Quick Guide to Inheriting  
Property in Florida

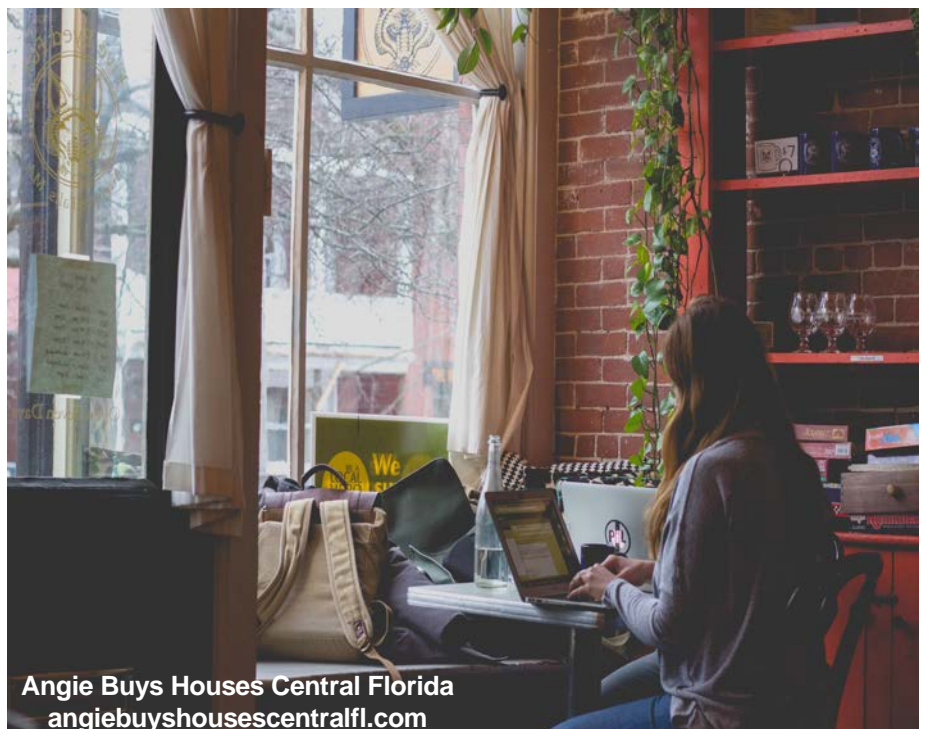
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*Disclaimer: We are not tax professionals or attorneys. This guide is not meant to provide tax or legal advice. If you find yourself entering into probate in Florida, we **strongly recommend** that you contact a tax professional and/or a qualified attorney.*



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## Chapter 1

# A Probate Primer

Inheriting property can be emotional, exciting, and perhaps a bit overwhelming. Unfortunately, you don't get to simply take possession of inherited property. In Florida, inherited property often has to go through probate. Probate is the term for the legal proceedings that determine the assets of the estate, pay debts, and distribute property and other assets to the beneficiaries.

In Florida, probate typically takes between 1 and 4 months. But it can drag on for over a year. Why is this timeline important? ***If the property you are inheriting has a mortgage, the mortgage must continue to be paid or else the house may go into foreclosure. If there are property taxes due on the property, they must also be paid.***



In short, regardless how long probate takes, the financial responsibilities associated with the property must still be maintained. Financial obligations may also include utilities, homeowner association fees, etc.



## Chapter 2

# Which Properties Will Require Probate?



Let's take a moment to examine ***which properties will require probate:***

- A non-homestead property that belonged only to the deceased must go through probate.
- A non-homestead property in the name of the deceased and another person(s) must go through probate.
- A homesteaded property not deeded to a surviving spouse must go through probate. *However, the homesteaded property is protected from creditors during probate.*
- If rights of survivorship are employed in the will, probate is NOT required.
- If both spouses are on the deed, the property transfers directly to the surviving spouse. Probate is NOT required.
- If the property is in a trust, probate is NOT required.

## Chapter 3

# Who are the Players in Probate?



### Probate involves a whole cast of characters:

- Anyone who inherited property or assets.
- The personal representative (named by the deceased or appointed by the court).
- The attorney for the personal representative.
- Creditors who want to collect a debt from the estate.
- The clerk of the circuit court.
- The circuit court judge.
- And the IRS (although not typically in person).



## Chapter 4

# Who Pays for the Probate Lawyer?

The estate. The guidelines regarding fees for a probate lawyer are laid out in Florida statute, based on the value of the estate. Homestead property is not included in the value of the estate.



Fees will be approximately:

- \$1,500 for an estate value of up to \$40,000
- \$2,250 for an estate valued \$40,000 to \$70,000
- \$3,000 for an estate valued \$70,000 to \$100,000

For a complete list of fees, see F.S. 733.6171.

Keep in mind that these fee guidelines are just that—guidelines. A lawyer can charge more for anything that they believe to be outside the scope of an ordinary probate case. In fact, they don't really even have to follow these guidelines at all.

**Consider using an attorney that will charge a flat rate or work for an hourly fee schedule.**



## Chapter 6

# What About Taxes & The IRS?



### How Does the IRS Play a Role in Probate?

The IRS collects taxes owed for the last year of the deceased's life. Various other tax forms may need to be filed, including the Federal Income Tax Returns for the Estate. The IRS gets its money before any inheritances can be doled out.

### What About Capital Gain Taxes?

Capital gains taxes might not be as scary as you imagine. That's because you are paying capital gains *only* on the difference between the value of the property at the date of death and the value when you sell. If your Aunt Edna bought a house for \$45,000 that was worth \$175,000 when she died, you won't pay capital gains on the \$130,000 increase in value. But if you sell the house two years later for \$200,000, you will pay capital gains on the \$25,000 increase in value.

Let's look to the [Tax Policy Center](#) to understand how much you'll pay in capital gains:

For short term capital gains—that's property that you hang on to for less than a year—you'll pay the same rate as ordinary income. Long term capital gains are based on tax bracket. "Taxpayers in the 10 and 15 percent tax brackets pay no tax on long-term gains on most assets; taxpayers in the 25-, 28-, 33-, or

35- percent income tax brackets face a 15 percent rate on long-term capital gains. For those in the top 39.6 percent bracket for ordinary income, the rate is 20 percent.... There also is a 3.8 percent tax on net investment income for single taxpayers with modified adjusted gross income above \$200,000 (\$250,000 for married couples filing jointly)." For a breakdown of income by tax bracket, visit [Tax Foundation](#).



## Chapter 7

# What If My Inherited Property Is Mortgaged?



Keep paying the mortgage on an inherited property or the house will go into foreclosure. If you can locate a copy of the mortgage statement or a bill, the bank will accept payments from the person who inherited the house or from the estate. They simply cash the check and carry on as before. However, the bank will not discuss specifics of the mortgage (including amount due), until they have a copy of the death certificate and a letter of administration (probate document). Contact the bank that administers the mortgage to find out what specific documentation they require.

## Chapter 8

# How Much Will I Get for My Inherited Property?

In order to understand how much your inherited property is worth, you'll need to do a comparable market analysis. It isn't quite as complicated as it sounds. A comparable market analysis examines other similar, recently-sold properties in the area.



### What If I Co-Inherited Property?

The good news: all co-inheritors share monetary responsibility for the upkeep of the property (including mortgage payments, property taxes, homeowner's insurance, utilities, and general upkeep). You won't be stuck shouldering the financial burden alone.

The (potential) bad news: all co-inheritors have equal rights to the property. You can't sell the property without reaching an agreement with the co-inheritors. Once the property is sold, you will split the proceeds with your co-inheritors as outlined in the will.

What factors should you consider as you pull together a comparable market analysis? Market conditions are always a factor, as is location. You'll also want to pull homes that are a similar age, square footage, and have comparable upgrades and extras (like a pool or a large lot). Properties that sold during the last 6 months and fall within 20% of the square footage of the house you want to sell are fair game for comps.



## Chapter 9

# 5 Benefits of Selling to an Investor



1. Sell the property and close quickly (or on a specific date you've chosen).
2. Get **CASH** for the property.
3. Sell the house AS-IS. You don't need to waste time and money renovating or repairing the house. Investors will buy the house—even if you haven't cleaned it out.
4. Experience a hassle-free sale. Don't worry about contingencies or deals that fall through at the last minute. Investors put together an offer and schedule an inspection. Quick and easy.
5. Know exactly how much you'll walk away with. **Angie Buys Houses Central Florida** covers all fees, closing costs, inspections, etc. *The net offer presented is exactly what you walk away with.*



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References:

Tax Policy Center's Briefing Book

[www.taxpolicycenter.org](http://www.taxpolicycenter.org)

Tax Foundation

<https://taxfoundation.org/2017-tax-brackets/>

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