



Joseph E. Smith
Clerk of the Circuit Court
St. Lucie County, Florida
Probate/Guardianship division
201 South Indian River Drive, 5th Floor
Fort Pierce, Florida 34950
(772) 462-6920

Per your request regarding the assets of:

DISPOSITION OF PERSONAL PROPERTY WITHOUT ADMINISTRATION

735.301 Disposition without Administration

No Administration shall be required or formal proceedings instituted upon the estate of a decedent leaving only personal property exempt under the provisions of s. 732.402, personal property exempt from the claims of creditors under the Constitution of Florida, and nonexempt personal property the value of which does not exceed the sum of the amount of preferred funeral expenses and reasonable and necessary medical and hospital expenses of the last 60 days of the last illness.

THE COURT REQUIRES THE FOLLOWING:

1. A certified copy of the death certificate must be filed (with a raised seal).
2. The original will must be filed with this court, if a will exists. There will be a \$1.00 fee to file a will for record
3. The decedent must be a resident of ST. LUCIE COUNTY, FLORIDA. This fact will be noted on the death certificate in the "usual place of residence of the decedent."
4. We must have a copy of the paid funeral bill showing who paid it, or who is responsible for the payment. (If unpaid, the assets for that portion of the unpaid bill must be paid to the funeral home.)
5. A completed Disposition of Personal Property form (enclosed).
6. A copy of the assets (the bank account statement, copy of a check, etc...)
7. A fee of \$231.00 payable in cash or with money order or cashier's check made payable to: **Joseph E. Smith, Clerk of the Circuit Court** should be mailed to:
Clerk of the Circuit Court, Probate Division
P.O. Box 700
Fort Pierce, FL 34954

The decedent must NOT own any real estate, either in Florida or any other state or country. The petitioner must swear to that fact. Any questions regarding the above can be answered by calling (772) 462-6920.

MEMO

From: Burton C. Conner, Circuit Judge
Nineteenth Judicial Circuit



GENERAL INFORMATION REGARDING PROBATE DISPOSITION OF PERSONAL PROPERTY WITHOUT ADMINISTRATION PURSUANT TO F.S. 735.301

Note: This memo gives very general information about how personal property of a decedent may be distributed without formal or summary probate administration. This memo is not meant to give legal advice. If you need legal advice, you must consult an attorney. The Clerk of Court cannot give you advice. Do not call the judge's office, because the judge cannot give you advice.

Florida Statute 735.301 authorizes the court to distribute **personal property** of a decedent under certain limited circumstances, without the formalities of a formal or summary probate proceeding. If the application for "disposition without administration" does not meet the legal requirements of the statute, **the application will be denied**. The application is made by submitting a sworn statement to the probate Clerk of Court. The Clerk of Court can provide you with a form. The Clerk of Court **cannot help you fill out the form, or give you advice on how to fill out the form**. When the application is submitted to the Clerk, the Clerk will forward the file to the probate judge, who will review it without a hearing and will determine if the application meets the requirements of the statute. If the application is not legally sufficient, you may have to amend the application. You may also be required to submit additional documentation before the application can be granted. After reviewing the application, the court may decide it can distribute some of the assets described in the application by using F.S. 735.301 ("disposition without administration"), but also decide that some of the assets will have to be distributed by using some other form of probate proceeding.

INFORMATION POINTS:

It is improper for an applicant to contact the judge's office directly.

"Disposition Without Administration" can only be used to distribute **PERSONAL PROPERTY, NOT REAL PROPERTY**:

Subject to certain statutory limitations, only **personal property** owned by the decedent can be disposed by "disposition without administration". Ownership interest in land, homes, buildings and other real property, **cannot** be distributed by "disposition without administration" (for real property assets, you must consult an attorney). Personal property that can be distributed by "disposition without administration" includes, but is not limited to, bank accounts, certificates of deposit, insurance checks, refund checks, stocks, bonds, motor vehicles, boats, furniture, and appliances. (However, see the limitations described below.)

There are statutory limitations on how much personal property can be distributed by "disposition without administration":

The statute allows only certain categories of personal property owned by the decedent to be distributed by "disposition without administration". Those categories are:

1. **"Personal property exempt under F.S. 732.402":**

Personal property owned by the decedent is exempt from the claims of creditors under F.S. 732.402 (which means creditors cannot force a sale of the property to pay the decedent's debts) if it is:

- A. Household furniture, furnishings, and appliances in the decedent's usual place of abode, up to a net value of \$10,000 as of the date of death.
- B. All automobiles used by the decedent or his family as a personal vehicle. (This category does not include motorcycles, boats, trailers, motorhomes, but it does include pickup trucks, as long as they were not used by the decedent solely for business purposes.)

NOTE: "Exempt property" may only be distributed to the surviving spouse, if there is a surviving spouse, and if there is no surviving spouse, it may only be distributed to the decedent's children. Keep this in mind when filling out the paragraph of the application describing how the personal property is proposed to be distributed.

2. **"Personal Property Exempt from the Claims of Creditors under the Florida Constitution":**

The Florida Constitution provides that up to \$1,000 of personal property may pass by probate proceedings to the **surviving spouse or lineal descendants**, free of the claims of creditors. This category of personal property can only be distributed to the surviving spouse and/or lineal descendants as appropriate under a valid last will and testament, or by intestate succession, if there is no valid last will. **If there is no surviving spouse or lineal descendants, this provision cannot be used to pass personal property by "disposition without administration. Also, distribution of this category of personal property may be in the form of tangible personal property (vehicles, furnishings, boats, jewelry, guns, etc.) and does not have to be in the form of cash.**

3. "Personal Property, the value of which does not exceed the sum of funeral expenses up to \$6,000 and reasonable and necessary medical and hospital expenses of the last 60 days of decedent's last illness":

This category of personal property is designed to reimburse those persons who have paid up to \$6,000 for decedent's funeral, and to reimburse those persons who have paid medical expenses incurred during the decedent's last 60 days of life, if the decedent died of an illness. This category of property may be distributed to any family member or nonfamily member who paid such expenses. **Tangible personal property, such as vehicles, boats, furnishings, tools, etc., can be distributed as reimbursement; reimbursement does not have to be in the form of cash.**

In making a application for "disposition without administration," you must fill out the application completely. Do not leave blanks empty. Put "none" or "not applicable" if there is no such information to be provided. If the application is not filled out completely, it will probably be denied, and you will have to fill out an amended application.

You must supply documentation to support the application. The following documentation is required:

Last Will: The original last will of the decedent must be provided. If the will is probated in another state, you must supply a certified copy of the last will.

Bank Statement(s): A clear photocopy of the last bank statement for each bank account or certificate of deposit you are seeking to distribute, and the copy must include the name of the bank, the account number, the date of the statement, and the balance of the account.

Vehicle/Boat Title(s) or Registration(s): A clear photocopy of the certificate of title or registration for each vehicle or boat you are seeking to distribute, which shows the property is owned by the decedent, and describes the year, make, and vehicle/vessel identification number for the property. If the decedent's primary residence at the time of death was Florida, the asset does not have to be registered in the State of Florida and may be distributed even if it is registered in another state.

Copies of Checks: Insurance checks and refund checks may be distributed by "disposition without administration, if the checks qualify as being in one or more of the categories of property described above. (For example: if there is a spouse or lineal descendants, the Florida Constitution \$1000 personal property exemption will apply. If a \$6,000 funeral bill was paid by the spouse or children, up to \$7,000 of insurance or refund checks can be distributed by "disposition without administration.") A clear photocopy of each check you are seeking to cash and distribute must be supplied with the application.

Stocks and Bonds: Stocks and bonds may be distributed by "disposition without administration, if they qualify as one of the categories of property described above. A clear photocopy of the stock certificate or bond or an account statement by the issuing company must be supplied with the application which clearly identifies the decedent is the owner of the asset, and describes the name of the issuing company. If corporate stocks are being

distributed, the copy of the stock certificate or account statement must describe the stock certificate number, the cusip number, and the number of shares being distributed.

The application must clearly state who is to get what asset, and the plan of distribution must meet with statutory requirements.

As stated above, certain categories of property which can be distributed by "disposition without administration," must be distributed by statute to certain heirs (spouse or lineal descendants). Once the assets are distributed to the proper persons, if the person receiving an asset then wants to transfer the asset to some other person, that is his or her personal affair. **However, court orders for "disposition without administration" cannot be used to short cut the transfer of an asset to persons not authorized to receive the asset under the statutory provisions.**

You may be required to supply a notarized consent to the application by certain heirs.

If a category of personal property is to be distributed by "disposition without administration" to a spouse or lineal descendants, and if the spouse or lineal descendants agree among themselves that the spouse or a lineal descendant will give up his or her share of an asset, the application should make it clear that a spouse or lineal descendant is giving up his or her share of an asset, and a separate notarized statement by the heir giving up his or her share should be supplied with the application, if the heir giving up the share does not sign the application.

The application is a sworn statement. Any person making a false statement in the application may be prosecuted for perjury or theft.