

## WHAT IS PROBATE AND WHY DO I NEED TO DO ESTATE PLANNING? – By Kirk T. Bauer

### *What is Probate?*

Probate is the process for transferring the assets of a deceased person to those persons or entities that are legally entitled to such assets. It is a court supervised process where a judge determines the beneficiaries of the decedent, requires the payment of all lawful debts, and ensures that the proper parties receive the assets of the decedent.

The Florida Probate Code is found in Florida Statutes Chapters 731 through 735 which govern the administration process. Probate is only required when a decedent dies leaving assets solely in his or her own name at the time of death. Usually a personal representative is appointed by the Court to take control of such assets, wind up the decedent's financial affairs, and distribute the decedent's assets to the proper beneficiary. The Court monitors the process and requires the personal representative to comply with the decedent's wishes or applicable law.

### *Why do I need to do Estate Planning?*

In order for the Court to decide who is to receive the assets in the decedent's estate, the Court must determine if the decedent made written directions on what was to happen to his or her estate. These directions are typically found in a document called a Will. It is a written document that must meet the requirements of Florida Law, where the decedent describes what is to happen to his or her assets. The Court requires the personal representative to comply with the decedent's wishes as set forth in such Will.

If someone dies without a valid Will, it is referred to as dying "intestate". In that situation, the beneficiaries of the estate are the heirs of the decedent as outlined by Florida Statute Chapter 732.

A Revocable Trust is commonly used for the management of assets during a person's lifetime and then requires specified distribution after death. Assets within such trust do not need to go through probate as they are held in a trust and there is no need to move them from the decedent's name. Trusts also allow for the successor trustee to manage the assets in the trust should the maker of the trust become incompetent or unwilling to continue to manage such assets.

Each person should do "estate planning" to make sure that their assets are passed to those persons or organizations that the decedent desires. It is also wise to make certain health care desires known and appoint individuals to assist when the time comes to help with health issues.

Over 25 years Legal Experience in YOUR Community

Local Lawyers...

### Protecting Your Interests

- ✓ Estate Planning
- ✓ Wills
- ✓ Trusts
- ✓ Probate
- ✓ Guardianships
- ✓ Real Estate Matters
- ✓ Business Formation & Operations
- ✓ Contract & Property Disputes
- ✓ Homeowners' Association Law
- ✓ Contracts
- ✓ Leases
- ✓ Litigation

The hiring of an attorney is an important decision that should not be based solely upon advertisements.

Before you decide, ask us to send you free written information about our qualifications and experience.

**Bauer & Associates**  
ATTORNEYS AT LAW

223 S. Woodland Blvd. • DeLand, FL 32720  
386.734.3313 • [delandattorneys.com](http://delandattorneys.com)

***The hiring of an attorney is an important decision that should not be based upon advertisements. Before you decide, ask us to send you free written information about our qualifications and experience.***