

# BELLER SMITH QUICK GUIDE FOR PROBATE AND TRUSTS

## TO OBJECT TO VALIDITY OF WILL, QUALIFICATIONS OF P.R., VENUE OR JURISDICTION

IF SERVED WITH PETITION FOR ADMINISTRATION BY FORMAL NOTICE	20 DAYS FROM SERVICE (Exclusive of day of service)	Pr. R. 5.040(a); Pr. R. 5.201; F.S. 733.2123
AFTER SERVICE OF NOTICE OF ADMIN.	3 MONTHS FROM SERVICE	F.S. 733.212(3); Pr. R. 5.240
NOTICE OF ADMINISTRATION SERVED BY A P.R. IS DEEMED TO BE SERVED ON P.R. ON THE EARLIEST OF THE FOLLOWING DATES: WHEN P.R. ACKNOWLEDGES RECEIPT, WHEN FIRST SERVED ON ANOTHER, OR 30 DAYS AFTER LETTERS.		Pr. R. 5.2405(a) (SEE 5.2405(b) FOR OTHER NOTICES)

## FORMAL NOTICE AND E-SERVICE

FORMAL NOTICE MUST BE MADE BY COMMERCIAL DELIVERY SERVICE OR MAIL WHICH REQUIRES A RECEIPT OR BY SERVICE OF PROCESS AS PROVIDED IN THE RULES OF CIVIL PROCEDURE OR AS PROVIDED BY FL LAW FOR SERVICE OF PROCESS OR BY FIRST CLASS MAIL WHEN ONLY IN REM OR QUASI IN REM RELIEF IS SOUGHT AGAINST A PERSON.		Pr. R. 5.040(a)(3)
SERVICE IS COMPLETE UPON RECEIPT; NO ADDITIONAL 5 DAYS		Pr. R. 5.040(a)(5), 5.042(d)
RESPONSE - 20 DAYS FROM SERVICE (excl. day of service)		Pr. R. 5.040(a); F.S. 731.201(18); Fl. R. Jud. Admin. 2.514
E-SERVICE IS REQUIRED; TRADITIONAL SERVICE MAY BE MADE IN ADDITION BUT NOT IN LIEU OF E-SERVICE		Fl. R. Jud. Admin. 2.516
ADVERSARY PROCEEDINGS MUST BE SERVED BY FORMAL NOTICE		Pr. R. 5.025(d)

## TO FILE PETITION FOR EXEMPT PROPERTY

IF NO WILL CONTEST	4 MONTHS FROM SERVICE OF NOTICE OF ADMINISTRATION	F.S. 732.402; Pr. R. 5.406
IF WILL CONTEST OR CONSTRUCTION PROCEEDING	40 DAYS AFTER TERMINATION OF PROCEEDING	F.S. 732.402

## HOMESTEAD

NOTICE OF ELECTION OF SURVIVING SPOUSE TO TAKE ONE-HALF UNDIVIDED INTEREST IN HOMESTEAD	6 MONTHS AFTER DATE OF DEATH; ONCE FILED IT IS IRREVOCABLE	F.S. 732.401
NOTICE OF LIEN ON PROTECTED HOMESTEAD	MUST BE SERVED IN MANNER OF FORMAL NOTICE	Pr. R. 5.402
NOTICE OF TAKING POSSESSION OF HOMESTEAD	MUST BE SERVED IN MANNER OF FORMAL NOTICE ON INTERESTED PERSONS AND THOSE IN ACTUAL POSSESSION OF PROPERTY	Pr. R. 5.404

## CREDITORS' CLAIMS

TO FILE CREDITOR'S CLAIM OR PR'S PROOF OF CLAIM	LATER OF 3 MONTHS AFTER DATE OF FIRST PUBLICATION OR, AS TO ANY KNOWN OR REASONABLY ASCERTAINABLE CREDITOR, 30 DAYS AFTER SERVICE OF NOTICE TO CREDITORS	F.S. 733.702 (extension for fraud, estoppel, insufficient notice only); 733.2121(3)(a); Pr. R. 5.2405(b); Pr. R. 5.490; Pr. R. 5.498
	NONCLAIM STATUTE: ALL CLAIMS BARRED 2 YEARS AFTER DEATH	F.S. 733.710
TO OBJECT TO CREDITOR'S CLAIM OR PR'S PROOF OF CLAIM	LATER OF 4 MONTHS AFTER PUBLICATION OF NOTICE TO CREDITORS OR 30 DAYS FROM TIMELY FILING OF CLAIM	F.S. 733.705(2) (extension for good cause shown); Pr. R. 5.496; Pr. R. 5.499 (service of objection within 10 days of filing)
TO BRING INDEPENDENT ACTION ON CLAIM OR DECLARATORY ACTION	30 DAYS FROM DATE OF SERVICE OF OBJECTION	F.S. 733.705(5) (PR must agree in writing to an extension)

## INVENTORY

FILING OF INVENTORY - 60 DAYS AFTER ISSUANCE OF LETTERS	F.S. 733.604; Pr. R. 5.340(a)
P.R. MUST SERVE ON SURVIVING SPOUSE, HEIRS AT LAW, RESIDUARY BENEFICIARIES, AND OTHER INTERESTED PERSONS WHO REQUEST IN WRITING	Pr. R. 5.340(d)
P.R. MUST FILE INVENTORY OF SAFE DEPOSIT BOX WITHIN 10 DAYS OF INITIAL OPENING AND SERVED ON SPOUSE, HEIRS OR BENEFICIARIES, AND OTHERS WHO REQUEST IN WRITING	Pr. R. 5.342

## TO FILE ELECTION TO TAKE ELECTIVE SHARE

THE EARLIER OF 6 MONTHS FROM SERVICE OF NOTICE OF ADMINISTRATION OR 2 YEARS AFTER DEATH	F.S. 732.2135
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## NOTICE OF FILING ACCOUNTING

SHALL BE SERVED ON ALL INTERESTED PERSONS IN PROBATE PROCEEDINGS AND MUST INFORM OF 30 DAYS FOR OBJECTIONS	Pr. R. 5.2405(b); Pr. R. 5.345; Pr. R. 5.401
NOTICE OF HEARING ON OBJECTIONS MUST BE SERVED WITHIN 90 DAYS OR OBJECTIONS ARE DEEMED ABANDONED	Pr. R. 5.401

## PETITION FOR RESIGNATION AND PETITION FOR DISCHARGE OF P.R.

VERIFIED PETITION MUST BE SERVED BY FORMAL NOTICE ON ALL INTERESTED PERSONS AND SURETY, IF ANY	Pr. R. 5.430
NOTICE MUST STATE THAT OBJECTIONS MUST BE FILED WITHIN 30 DAYS	Pr. R. 5.430

## NOTICE OF TRUST

UPON DEATH OF SETTLOR OF A REVOCABLE TRUST (SEE F.S. 733.707(3)), TRUSTEE MUST FILE NOTICE OF TRUST WITH THE COURT IN THE COUNTY OF SETTLOR'S DOMICILE AND THE COURT HAVING JURISDICTION OVER SETTLOR'S ESTATE	F.S. 736.05055
NOTICE MUST CONTAIN SETTLOR'S NAME, DATE OF DEATH, TITLE OF TRUST, DATE OF TRUST, NAME/ADDRESS OF TRUSTEE	F.S. 736.05055
TRUSTEE SHALL GIVE NOTICE TO QUALIFIED BENEFICIARIES WITHIN 60 DAYS AFTER ACCEPTANCE OF TRUST	F.S. 736.0813(1)(a)
TRUSTEE SHALL GIVE NOTICE OF CREATION OF IRREVOCABLE TRUST OR THAT FORMERLY REVOCABLE TRUST HAS BECOME IRREVOCABLE WITHIN 60 DAYS AFTER TRUSTEE ACQUIRES KNOWLEDGE	F.S. 736.0813(1)(b)

## TO CONTEST VALIDITY OF REVOCABLE TRUST

STATUTE OF LIMITATIONS IS PROBABLY 4 YEARS	F.S. 95.11(3); F.S. 95.031; F.S. 95.051
IF SERVED WITH PROPER NOTICE, 6 MONTH PERIOD MAY APPLY	F.S. 736.0604

## BREACH OF TRUST UNDER TRUST CODE

6 MONTHS AFTER RECEIPT OF A LIMITATION NOTICE OR TRUST DISCLOSURE DOCUMENT, WHICHEVER IS RECEIVED LATER	F.S. 736.1008(2)
STATUTE OF LIMITATIONS IS PROBABLY 4 YEARS	F.S. 95.11(3); F.S. 95.031; F.S. 95.051
OUTSIDE BARS: 10 YEARS TO 40 YEARS, PLUS A POSSIBLE 30 YEARS ADDED, DEPENDING ON BENEFICIARY'S KNOWLEDGE AND WHETHER TRUSTEE CONCEALED FACTS	F.S. 736.1008(6)