

NOTICE OF ADMINISTRATION - WHY IT IS SO IMPORTANT

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If you have ever experienced the administration of an estate, your attorney has probably advised you on the necessity of serving a Notice of Administration on all interested persons of a decedent's estate. The real question is who should be served with such notice and what purpose does it serve.

The main purpose of serving a Notice of Administration is one of due process. The objective of due process is to notify someone that their right to property may be affected by the outcome from adjudication by a court of law. Due process generally is notice to another that they have a right to challenge, defend, explain or protect their property rights within a certain time frame.

A Notice of Administration may be served by the personal representative at any time following the petition for administration. Service of a Notice of Administration acts as due process on the person served because it informs him or her that a decedent's property is being administered and they may be affected by the outcome. It also informs interested persons of the limits of time they have to act to protect their interest in a decedent's property.

The persons that the personal representative must serve Notice of Administration on include a surviving spouse (if any), beneficiaries, the trustee of a decedent's trust (if any), and each beneficiary of a decedent's trust provided each trustee is also a personal representative, and, persons who may be entitled to exempt property. If a person is a minor, the minor's natural parent or custodian is to be notified. In the case of a person who is under a guardianship, the appointed guardian is to be notified.

Although the personal representative is not required to notify the following persons, this author suggests that it is a good idea to serve Notice of Administration on persons who were named in a prior Will or other heirs who may have an interest in the decedent's estate. Situations involving persons who may have an interest in the estate include immediate lineal descendants of the decedent who were specifically excluded from a decedent's Will.

The failure to serve the Notice of Administration on those persons required to be served could result in an objection to the Will, administration proceedings and the person appointed as personal representative. The time limits to object to such administration by persons who were **not** notified is limited to the date the personal representative is discharged of their duties and the administration of the estate is complete.

The Notice of Administration must contain information that informs the surviving spouse, beneficiaries and exempt property takers of the name of the decedent, the probate case number, the designation and address of the Court (sometimes referred to as venue), whether a will or codicils are involved and the dates of those documents.

A Notice of Administration must also contain information instructing interested persons that such persons must file on or before the date that is 3 months after the date of service of a copy of the Notice of Administration any objection that challenges the validity of the Will, the qualifications of the personal representative, venue, or the jurisdiction of the Court. The clock for objecting to the probate proceedings starts at the time of service of the Notice of Administration (signing a return receipt showing delivery of the mailed notice or service by a process server). This is usually accomplished by sending the Notice via certified mail, return receipt; however, using a process server is not out of the question, just more expensive. You should also note that the limitation of time to object is 3 months, and not 90 days and you should also be aware that the date the Court will use for determining if an objection by an interested person is timely filed is based on the date the objector files their objection with the Clerk of Court in the County where the Estate is being administered and not the date it is served.

The Notice of Administration also contains time limit information for those persons who are entitled to exempt property. Exempt property is generally considered; 1) household furniture up to \$20,000.00 in value; 2) two vehicles that each weigh less than 15,000 pounds that are titled in the decedent's name and used by the decedent or his immediate family for personal use; 3) benefits paid pursuant to s. 112.1915, Fla. Statutes (death benefits for school administrators and teachers); and, 4) qualified college tuition plans.

The Notice of Administration also informs the surviving spouse of his or her time limitations to file for an elective share of the decedent's estate. Although an explanation of a spouse's elective share is beyond the scope of this article, it generally entitles a surviving spouse to 30% of the decedent's estate (with some limitations as to what qualifies for the 30% determination).

As you can see, notifying those persons who are required as well as persons who may be affected by the outcome of an estate is a due process issue when it comes to a person's entitlement to property. The service of the Notice of Administration acts as due process and sets limits on the amount of time an interested person has to act (if at all). If you are a person who has received a Notice of Administration or are a person who believes they will be affected by the outcome of an estate proceeding and did not receive a Notice of Administration, you should contact an attorney of your choice to discuss your options before the expiration of your possible rights to a share of a decedent's property. This is especially true if you believe that a Will was inappropriately procured.

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