



## Probate in Colorado<sup>1</sup>

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Probate is a scary word for many people. The word brings to mind terms like expensive, court, complications, work and hassles for family members. Yet, probate does not have to be difficult.

### What is Probate?

Probate, simply, is the process of settling an estate. It refers to the process whereby certain of decedent's debts may be settled and legal title to the decedent's property held in the decedent's name alone and not otherwise distributed by law is transferred to heirs and beneficiaries. It includes proving that a deceased person's *Will* is valid, inventorying the deceased person's property, having the property appraised, paying debts and taxes, and distributing the remaining property as the *Will* or law directs.

### Will Your Estate Have to Go Through Probate?

Probate has been significantly simplified, now over ninety percent (90%) of estates in Colorado are administered without court supervision. Families are often able to perform most routine estate administration tasks.

If the decedent had a *Will* and property subject to probate, the probate process begins when the personal representative, who is nominated by the decedent in the last *Will* to be the administrator of the decedent's estate, presents the *Will* for

probate in a courthouse in the county where the decedent lived, or owned property.

If there is no *Will*, someone must ask the court to appoint them to be the personal representative or administrator of the decedent's estate. Often, this is the spouse or an adult child of the decedent. Once appointed by the court, the personal representative or administrator becomes the legal representative of the estate.

### Who is in Charge of Administering an Estate?

The person responsible for administering an estate is called a personal representative. They represent the decedent and their estate. A personal representative is also commonly referred to as an executor.

The personal representative has several responsibilities, including:

- Filing all the applicable forms in district court,
- Locating and obtaining values for all assets,
- Giving notice to creditors,
- Paying debts, bills, and taxes,
- Distributing the balance of the estate to heirs and other beneficiaries, and
- Working with an attorney and the court to administer the estate.

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<sup>1</sup> The purpose of this fact sheet is for educational purposes only. Changes in the law may have occurred since publication. No statements should be considered as legal advice. People should consult with a licensed attorney about their individual cases.

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A fact sheet titled "Being a Personal Representative" is available with more details about personal representatives. It can be downloaded at [www.wr.colostate.edu/ABM/](http://www.wr.colostate.edu/ABM/).

### **How Do Assets Transfer to Heirs?**

When a person dies, some of the assets will automatically pass to certain people. Such assets are called "non-probate" assets. They include joint accounts whereby the survivor automatically gets the money and life insurance policies where there is a named death beneficiary. Payable upon death (POD) and transfer upon death (TOD) accounts and titles are non-probate assets.

All other assets are called "probate assets." Such assets do not pass automatically and must be disposed of under the probate system. Generally, household and personal items, bank accounts, stocks, automobiles, real estate, and other property that are solely in the decedent's name or do not have a title are examples of probate assets.

Probate assets are generally administered in one of three ways:

1. By Affidavit. Colorado allows for small estates to use an affidavit to close an estate when the value of probate assets are less than \$64,000 and do not include any real property. A personal representative can collect the estates assets and distribute them to the beneficiaries. The personal representative can close the estate by filing a closing statement with the court.
2. Informally. The vast majority of probates in Colorado are informal – without court supervision. Administration of an estate commences by filing the applicable forms with the appropriate district court. While the forms are not very complicated, assistance by legal counsel may be helpful.

After an estate has been approved to go through an informal probate administration, the personal representative must maintain the estate property by paying all properly payable bills (not those which are presented orally), and any taxes due, these may include

income and estate taxes, and other actions necessary to maintain the estate property. The probate assets are distributed either according to the instructions in the *Will* or under the laws of intestacy if the decedent died without a *Will*.

Following payment of all bills and liabilities and distribution of assets, the estate may be closed by filing a form with the court. The estate administration can take as little as six months and as long as several years. On average estates in Colorado are administered in 9 to 18 months.

3. Supervised. Supervised administration of an estate is needed when there is a dispute among the parties who have an interest in the estate. In these cases, the court may make rulings regarding the dispute(s) and attorneys are likely to be involved.

Colorado law still requires a decedent's *Will* to be filed with the district court within ten (10) days of the date of death, even if there will be no estate administration.

### **Summary**

Probate is often viewed as a terrible thing. Yet, probate for most estates in Colorado is not very complicated. The personal representative will need to file some forms with the district court in the county where the decedent lived or owned property, pay debts and taxes, and distribute the decedent's assets to the beneficiaries.

The Colorado Bar Association's web site ([www.cobar.org](http://www.cobar.org)) and Colorado Judicial Branch's Self Help Center ([www.courts.state.co.us](http://www.courts.state.co.us)) have forms and other useful resources for administering an estate.

The information provided in this fact sheet is for educational purposes only. It should not be cited nor relied upon for legal authority. People should seek legal counsel regarding probate and the administration of an estate.

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