

PROBATE GLOSSARY

Addendum: An attachment to a written document, For example, affidavits may be addendum's to a petition.

Administrator: An individual appointed by the court to manage the estate of a person who died without leaving a valid will.

Advanced directive: see *living will*.

Affidavit: A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of a party making it, taken before a person having authority to administer such oath or affirmation.

Agent: A person who has received the power to act on behalf of another, bind that other person as if he or she were themselves making the decisions.

In Probate: An attorney in fact under a durable or non-durable power of attorney, an individual authorized to make decisions for another under the "Colorado Patient Autonomy Act".

Appearance: The act of showing up in court, it implies you accept the power of the court to try the matter (jurisdiction). Appearances are most often made by lawyers on client's behalf and any appearance by a lawyer binds the client.

Application: A written request to the registrar for an order of informal probate or appointment under informal probate and appointment proceedings.

Arbitration: The referral of a dispute to an impartial third person chosen by the parties to the dispute. The parties agree in advance to abide by the arbitrator's decision following a hearing at which both parties have an opportunity to be heard. Sometimes three persons sit as an arbitration panel.

Augmented estate: An estate reduced by funeral and administration expenses, homestead allowance, family allowances, exemptions, and enforceable claims to which is added value of property transferred to anyone other than bona fide purchaser and value of property owned by surviving spouse at decedent's death.

Authenticated: Means certified, when used in reference to copies of official documents, and only certification by the official having custody is required.

Beneficiary: Person named in a will or insurance policy to receive money or property; person who receives benefits from a trust.

As it relates to a trust beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment

or other transfer; as it relates to a charitable trust, includes any person entitled to enforce the trust; as it relates to a “beneficiary of a beneficiary designation”, includes a beneficiary of an insurance or annuity policy, of an account with payment on death (POD) designation, of a security registered in beneficiary form (TOD), or of a pension, profit sharing, retirement, or similar benefit plan or other non probate transfer at death; and as it related to a beneficiary designated in a governing instrument, includes a grantee of a deed, a devisee, a trust beneficiary, a beneficiary of a beneficiary designation, a donee, appointee, or taker in default of a power of appointment, and a person in whose favor a power of attorney or a power held in any individual, fiduciary or representative capacity is exercised.

Beneficiary designation: A governing instrument naming a beneficiary of an insurance or annuity policy, of an account with POD (Payment of Death) designation, of a security registered in the beneficiary form (TOD), or a pension such goods or chattels, profit sharing, retirement, or similar benefit plan, or other non-probate transfer at death.

Bequest: A gift by will of personal property.

Child: An individual entitled to take as a child under the probate code; by Intestate succession from the parent whose relationship is involved and excludes a person who is only a stepchild, a foster child, a grandchild, or any more remote descendant.

Children’s trust: A trust set up as part of a will or outside of a will to provide funds for a child.

Claims: Includes liabilities of the decedent or protected person whether arising in contract, in tort, or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or taxes due the state of Colorado, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

Codicil: A supplement to a will.

Conservator: A person who is appointed by a court to manage the estate of a protected person.

Conservatorship: A guardian, protector, preserver - appointed by the court to manage the affairs of an incompetent person or to liquidate a business, sometimes called a guardian.

Court: The court or division thereof having jurisdiction in matter relating to the affairs of decedents and protected persons. In Colorado this court is the District Court, except in the city and county of Denver where it is the Probate Court.

Custodian: Under the Uniform Transfers to Minors Act, the person appointed to manage and dispense funds for a child without constricting court supervision and accounting requirements.

Descendant: All of the individual's lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in the probate code.

Devise: Used as a noun - means a testamentary disposition of real or personal property. Used as a verb - means to dispose of real or personal property by will.

Devisee: A person designated in a will to receive a devise. For the purpose of Article 12 – Probate of Wills and Administration, in the case of a devise to an existing trust or trustee, or to a trustee in trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

Disability: Cause for a protective order as described in §15-14-401 C.R.S. (protection of property of persons under disability and minors).

Distributee: Means any person who has received property of a decedent from his or her personal representative other than as a creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increments thereto remaining in his or her hands.

Estate: All the property a person owns.

The property of the decedent, trust, or other person whose affairs are subject to the probate code as originally constituted and as it exists from time to time during administration.

Executor: Person named in a will to oversee and manage an estate.

Exempt property: Property of a decedent's estate which is described in §15-11-104

C.R.S. Fiduciary: Includes a personal representative, guardian, conservator, and trustee

Exhibit: A paper document or other physical object introduced into evidence during a trial, hearing, or deposition.

Fiduciary: A person having a legal relationship of trust and confidence to another and having a duty to act primarily for the other's benefit, e.g., a guardian or trustee.

In Probate: Includes a personal representative, guardian, conservator, and trustee

Foreign personal representative: A personal representative appointed by another jurisdiction.

Governing instrument: A deed, will, trust, insurance or annuity policy, multiple party account, security registered in beneficiary form (TOD), pension, profit sharing, retirement or similar benefit plan, instrument creating or exercising a power of

appointment or power of attorney or a donative, appointive, or nominative instrument of any other type.

Grantor: The person who sets up a trust.

Guardian: A person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

Guardianship: The office, duty, or authority of a guardian.

Heirs: Persons who are entitled by law to inherit the property of the deceased if there is no will specifying how it's divided.

In Probate: Except as controlled by §15-11-711 C.R.S., means persons, including the surviving spouse, who are entitled under the statutes of interstate succession to the property of a decedent.

Holographic will: A handwritten will.

Inadmissible: Information that which, under the established rules of evidence, cannot be admitted or received.

In Camera: Latin for "In chambers"; referring to a hearing or inspection of documents that takes place in private, often in a Judge's chambers.

Incapacitated person: Any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.

Incompetent: A person lacking the capacity, legal qualification, or fitness to manage personal affairs or to discharge a required duty. A guardian may be appointed to conduct the affairs or protect the interests of an incompetent person.

Indigent: Meeting certain standards of poverty, thereby, qualifying a criminal defendant for a public defender, waiver of fees and court-appointed counsel.

Informal proceedings: Conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will, appointment of a personal representative, or determination of a guardian.

Injunction: A court order directing a person to refrain from doing something or ordering the person to do something.

Interested person: Heirs, devisees, children, spouses, creditors, beneficiaries, and any other having a property right in or claim against a trust estate or the estate of a

decedent, ward, or protected person, which may be affected by the proceeding. Also includes persons having priority for an appointment as a personal representative and other fiduciaries representing the interested person. The meaning as it relates to particular persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in any proceedings.

Interim order: One made in the meantime, and until something is done.

Interlineation: An addition of something to a document after it has been signed.

Intervenor: A person who voluntarily interposes in an action or other proceedings with the leave of the court.

Intestate: A person who dies without leaving or having left a valid will.

Issue: In Probate: Of a person means descendant as defined in intestate successions and wills.

Irrevocable living trust: A trust created during the maker's lifetime that does not allow the maker to change it.

Joint property: Sometimes called joint tenancy. Property that names a co-owner on its deed or title. Co-owners retain ownership of the property upon the death of a co-owner. A co-owner in a joint property arrangement cannot give away his or her share of the property.

Joint tenants with right of survivorship/community property with the right of survivorship: The purposes of this code only includes co-owners of property held under circumstances that entitle one or more to the whole of the property on the death of the other or others, but excludes forms of co-ownership registration in which the underlying ownership of each party is in proportion to that party's contribution.

Legatee: Also known as a beneficiary, a Person named in a will to receive property.

Letters: Includes: 1. Letters testamentary - The formal instrument of authority and appointment given to an executor by the probate court, empowering him to enter upon the discharge of his office as executor. It corresponds to letters of administrations; 2. Letters of guardianship - A commission placing ward's property in the care of officer of court as custodian; 3. Letters of administration - Formal document issued by probate court appointing one an administrator of an estate.; 4. Letters of Conservatorship - Formal document issued in probate court appointing one to manage the estate of a protected person.

Living trust: A trust created during the maker's lifetime. Some living trusts are set up so that they can be changed during the maker's lifetime. These are called "revocable." Others, known as "irrevocable," are set up so that they can't be touched.

Living will: Also known as a medical directive or advance directive. A written document that states a person's wishes regarding life-support or other medical treatment in certain circumstances, usually when death is imminent.

Magistrate: Any person other than a judge authorized by statute or by Colorado Rules for Magistrates to enter orders or judgments in judicial proceedings.

Med-arb: A process in which parties begin by mediation, and failing settlement, the same neutral third party acts as arbitrator of the remaining issues.

Mediation: A confidential process whereby a trained neutral third party assists disputing parties to reach their own solution.

Motion: An application for a rule or order, made to the judge.

Next friend: One acting for the benefit of a child or other person without being regularly appointed as guardian.

Nonresident decedent: A decedent who was domiciled in another jurisdiction at the time of his or her death.

Notice of appeal: The document a person must file with the trial court in order to pursue an appeal.

Parens patriae: Latin for "parent of his country." Used when the government acts on behalf of a child or mentally ill person. Refers to the "state" as the guardian of minors and incompetent people.

Parent: Any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under the probate code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent or grandparent.

Permanent Restraining Order (PRO): An order granting continuous protective relief to prevent assaults and threatened bodily harm, to prevent domestic abuse, to prevent emotional abuse of the elderly, and to prevent stalking.

Personal representative: A person who manages the legal affairs of another, such as a power of attorney or executor.

In Probate: This includes an executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

Petition: A written request to the court for an order after notice.

Power of attorney: A document which gives a person the right or authority to make binding decision for another.

Pro Se: (pronounced pro say) Latin phrase that means "for himself." A person who represents himself in court alone without the help of a lawyer is said to appear pro se.

Probate: Court procedure by which a will is proved to be valid or invalid; though in current usage this term has been expanded to generally include all matters and proceedings pertaining to administration of estates, guardianships, etc.

Pro bono: For the good; used to describe work or services done or performed free of charge.

Protected person: A person for whom a conservator has been appointed or other protective order has been made.

Real property: Land and all the things that are attached to it. Anything that is not real property is personal property and personal property is anything that isn't nailed down dug into or built onto the land. A house is real property, but a dining room set is not.

Registrar: The official of the court designated to perform the functions as provided in and designated by the court by a written order filed and recorded in the office of the court of court and specified by the probate code.

Residuary estate: Also known as residue of the estate. Portion of the estate left after bequests of specific items of property are made. Often the largest portion.

Revocable living trust: A trust created during the maker's lifetime that can be changed. Allows the creator to pass assets on to chosen beneficiaries without going through probate.

Right of survivorship: In a joint-tenancy, the property automatically goes to the co-owners if one of the co-owners dies. A co-owner in a joint tenancy cannot give away his or her share of the property.

Security: Includes any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate; or in general, any interest or instrument commonly known as security; any certificate of interest or participation; any temporary or interim certificate, receipt, or certificate of deposit for, or any warrant or right to subscribe to or purchase any of the items enumerated.

Self-proving will: A will accompanied by a sworn statement from witnesses and signed before a notary public. Many states accept such wills in order to avoid the cumbersome process of requiring an executor to track down the witnesses.

Settlement: In reference to a decedent's estate, means the full process of administration, distribution and closing.

Service of process: The act of notifying the other parties that an action has begun and informing them of the steps they should take in order to respond.

Settlement: In reference to a decedent's estate, means the full process of administration, distribution and closing.

Special Administrator: An appointment to preserve the estate or to secure its proper administration including is administration in circumstances where a general personal representative cannot or should not act – It may appear to the court that an emergency exists.

Subpoena: An order to a witness to appear and testify at a specified time and place.

Successor personal representative: A personal representative, other than a special administrator who is appointed to succeed a previously appointed personal representative.

Successors: Persons other than creditors, who are entitled to property of a decedent under his or her will or this code.

Supervised administration: To secure complete administration and settlement of a decedent's estate under the continuing authority of the Court which extends until entry of an order approving distribution of the estate and discharging the personal representative or other order terminating the proceedings.

Tenancy in common: A type of joint ownership that allows a person to sell his share or leave it in a will without the consent of the other owners. If a person dies without a will, his share goes to his heirs, not to the other owners.

Testacy proceeding: A proceeding to establish a will or determine intestacy.

Testamentary trust: A trust created by the provisions in a will. Typically comes into existence after the writer of the will dies.

Testator: An individual of either sex, who makes or has made a testament or will; one who dies leaving a will. This term is borrowed from civil law.

Testate: One who has died leaving a will, or one who has made a will.

Trust: Property given to a trustee to manage for the benefit of a third person. Generally the beneficiary gets interest and dividends on the trust assets for a set number of years.

Trustee: a: Person or institution that oversees and manages a trust; b: includes an original, additional or successor trustee, whether or not appointed or confirmed by court.

Voir dire: Literally. “to speak the truth.” the preliminary examination of prospective jurors or witnesses. Such an examination of a witness (outside the presence of a jury) may determine whether evidence is admissible. Pronounced “vwa dear”.

Waiver: The intentional and voluntary relinquishment of a legal right.

Ward: A person for who a guardian has been appointed. A minor ward is a minor whom a guardian has been appointed solely because of minority.

Will: Includes any codicil and any testamentary instrument that merely appoints an executor, revokes or revises another will, nominates a guardian, or expressly excludes or limits the right of an individual or class to succeed to property of the decedent passing by intestate succession.