

To Probate or Not To Probate

(what to do when someone dies)

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Probate in Colorado

Timeline

Personal Representative

Probate Without a Will

Probate With a Will

Ancillary Estates

Collection of Personal Property

Fees & Other Expenses

Timeline

What To Do When Someone Dies

- ❑ At Time of Death
 - ❑ If Death Occurred in Hospital, Nursing Home, or Assisted Living Facility
 - ❑ If Death Occurred at Home
 - ❑ Organ and Body Donations
 - ❑ Arrange for Deceased Person's Body



Timeline

What To Do When Someone Dies (Cont.)

- ❑ One to Three Days after Death
 - ❑ Notify Family and Friends
 - ❑ Deceased's Instructions
 - ❑ Complete the Funeral and Burial Arrangements
 - ❑ Financial Assistance
 - ❑ Concerns with Funeral Home? Contact Colorado Funeral Directors Association at (303) 791-2336
 - ❑ Other Assistance

Timeline

What To Do When Someone Dies (Cont.)

- ❑ One to Ten Days after Death
 - ❑ Death Certificates
 - ❑ Contact Persons or Institutions
 - ❑ Personal Representative
 - ❑ Search for the Will
 - ❑ Entry into Safe Deposit Box
 - ❑ Search for Other Documents
 - ❑ Items to Look For



Other Information

- ❑ Power of Attorney
- ❑ Take Care Against Unethical Persons
- ❑ Avoid Immediate Collection of Benefits
- ❑ Social Security
- ❑ Veterans Benefits



Personal Representative

- ❑ A person who is named to administer an estate, regardless of whether that person is named in a will or is appointed because there was no will
- ❑ Purpose is to carry out the wishes of the decedent regarding distribution of his/her assets, and to complete the decedent's business, such as paying bills and filing tax returns

Personal Representative (Cont.)

- ❑ Duties in General:
 - ❑ Collecting and inventorying the assets of the estate;
 - ❑ Managing the assets of the estate during the probate process;
 - ❑ Paying the bills;
 - ❑ Making distribution to the heirs or beneficiaries of the estate
 - ❑ Closing the estate after all of the above responsibilities have been completed
- ❑ Potential Liability

Personal Representative (Cont.)

- ❑ Opening & Closing: Informal v. Formal?
 - ❑ Informal Probate
 - ❑ Formal Probate
- ❑ Creditors
- ❑ Authority & Specific Duties
- ❑ Paying the Bills
- ❑ Paying the Family
- ❑ Notification
- ❑ Paying Taxes
- ❑ Paying Yourself
- ❑ Closing the Estate



Probate

- Small Estates
- Without a Will
- With a Will
- Process

Three Types of Probates

Small Estates (under \$50,000)

- Under \$50,000 and no real property
- Including bank accounts and cash
- May collect your assets using an affidavit

Uncontested Estates (informal)

- When there is a valid will or clear intestacy
 - No contests expected
- Qualified personal representative ready to be appointed

Contested Estates (formal)

- Also includes invalid or questionable wills
- Court may require the personal representative get approval for every transaction

Will My Estate Have to Go Through Probate?

- ❑ Depends on how your assets were owned when you died
- ❑ Certain types of assets that are not governed or distributed per the terms of the will
- ❑ Only assets that were owned by you in your individual name are controlled by the will
- ❑ Colorado law requires that a decedent's will be filed (lodged) with the District Court in which the decedent was domiciled within ten days of the decedent's passing, even if no probate administration is expected

Probate Process

- Generally administered in three ways:
 - (1) Completing an Affidavit for Collection of Personal Property if the total probate estate assets are less than \$50,000 and there is not any real property
 - (2) Filing an informal probate procedure
 - (3) Filing a formal probate procedure
- Personal Representative must notify any possible and known creditors of decedent
- Probate instructions and forms are available on the Colorado Judicial Branch website
 - www.court.state.co.us under the “Forms” tab

Do I Need to File Probate Documents with the Court?

- ❑ Did the Decedent own real estate?
 - ❑ The following assets are not counted:
 - ❑ Real Estate titled in joint tenancy with a surviving joint tenant
 - ❑ Real Estate titled with a beneficiary deed
- ❑ Did the Decedent own non-real estate assets with a total value greater than \$74,000?
 - ❑ The following assets are not counted:
 - ❑ Assets owned in joint tenancy with a surviving joint tenant
 - ❑ Assets with beneficiary designations, such as Payable-on-Death (POD) or Transferable on Death (TOD) accounts, and some life insurance policies and retirement accounts
- ❑ If you answered “No” to both questions, you may not need to file court documents. See Instructions for Completing Affidavit for Collection of Personal Property (JDF 998)
- ❑ If you answered “Yes” to either question you most likely need to file

How Can I File – Formally or Informally?

- A probate case may be commenced in one of two ways:
 - (1) By Application to the Registrar (Informal Proceeding)
 - (2) By Petition to the Court (Formal Proceeding).

General Information to File Your Case in Probate Court

- ❑ If the Decedent resided or was domiciled in a Colorado county, the Application/Petition must be filed in that county
- ❑ If the Decedent resided or was domiciled in another state, the Application/Petition may be filed in the Colorado County where the Decedent owned property
- ❑ The Court cannot act on an Application or Petition before 120 hours have elapsed since the time of death
- ❑ The nominated Personal Representative must be 21 years of age or older
- ❑ A creditor cannot file an Application/Petition for Appointment of Personal Representative until 45 days have lapsed from the date of death


Fees & Forms

Fees:

- ❑ A filing fee of \$199 is required
 - ❑ If unable to pay, must complete the Motion to File without Payment and Supporting Financial Affidavit (JDF 205) and submit it to the Court
- ❑ Other Fees:
 - ❑ Certification of Orders and Letters – \$20
 - ❑ Copy of Documents – \$0.75 per page

Forms

- ❑ To access forms online go to www.courts.state.co.us and click on the “Self-Help/Forms” tab
 - ❑ Select Trusts, Estates, and Wills – Decedent’s Estate – New Case – Probate Without a Will or Probate With a Will



Instructions for Probate Without a Will

- ❑ Steps to Filing Your Case
 - ❑ Step 1: Complete Forms
 - ❑ Step 2: File Your Papers with the Court
 - ❑ Step 3: Requirements After the Court Appoints a Personal Representative
 - ❑ Step 4: Closing the Estate

Steps to Filing Your Case

□ Step 1: Complete Forms

□ Application for Informal Appointment of Personal Representative (JDF 916)

OR

□ Petition for Adjudication of Intestacy and Form Appointment of Personal Representative (JDF 922)

AND

□ Acceptance of Appointment (JDF 911)

□ Renunciation and/or Nomination of Personal Representative (JDF 912)

□ Irrevocable Power of Attorney (JDF 721)

□ Notice of Hearing (JDF 711)

□ Letters of Administration (JDF 915)

AND


□ Order for Informal Appointment of Personal Representative (JDF 917)

OR

□ Order of Intestacy, Determination of Heirs and Formal Appointment of Personal Representative (JDF 923)

Steps to Filing Your Case (Cont.)

- ❑ Step 2: You are Ready to File Your Papers with the Court.
 - ❑ Provide the Court with the documents completed in Step 1 above and pay the filing fee
- ❑ Step 3: Requirements After the Court Appoints a Personal Representative
 - ❑ Information of Appointment (JDF 940)
 - ❑ Notice to Creditors by Publication (JDF 943)
 - ❑ Notice to Creditors by Mail or Delivery (JDF 944)
 - ❑ Decedent's Estate Inventory (JDF 941)
 - ❑ Interim/Final Accounting (JDF 942)
- ❑ Step 4: Close the Estate
 - ❑ Must complete forms to close an estate – Instructions are available online at www.courts.state.co.us under the “Self-Help/Forms” tab and then select “Trusts, Estates, and Wills”



Instructions for Probate with a Will

- ❑ Steps to Filing Your Case
 - ❑ Step 1: Complete Forms
 - ❑ Step 2: File Your Papers with the Court
 - ❑ Step 3: Requirements After the Court Appoints a Personal Representative
 - ❑ Step 4: Closing the Estate

Steps to Filing Your Case

- Step 1: Complete Forms

- Application for Informal Probate of Will and Informal Appointment of Personal Representative (JDF 910)

OR

- Petition for Formal Probate of Will and Formal Appointment of Personal Representative (JDF 920)

AND

- Will (original will must be filed)
- Acceptance of Appointment (JDF 911)
- Renunciation and/or Nomination of Personal Representative (JDF 912)
- Irrevocable Power of Attorney (JDF 721)
- Notice of Hearing (JDF 711)
- Letters Testamentary (JDF 915)

AND

- Order for Informal Probate of Will and Informal Appointment of Personal Representative (JDF 913)

OR

- Order Admitting Will to Formal Probate and Formal Appointment of Personal Representative (JDF 921)

Steps to Filing Your Case (Cont.)

- ❑ Step 2: You are Ready to File Your Papers with the Court
 - ❑ Provide the Court with the documents completed in Step 1, the Will, and pay filing fee
- ❑ Step 3: Requirements After the Court Appoints a Personal Representative
 - ❑ Information of Appointment (JDF 940)
 - ❑ Notice to Creditors by Publication (JDF 943)
 - ❑ Notice to Creditors by Mail or Delivery (JDF 944)
 - ❑ Decedent's Estate Inventory (JDF 941)
 - ❑ Interim/Final Accounting (JDF 942)
- ❑ Step 4: Close the Estate
 - ❑ Personal Representative must complete forms to close an estate. Available at www.courts.state.co.us under the "Self-Help/Forms" tab and select "Trusts, Estates, and Wills"



Ancillary Estate (Out-Of-State)

- ❑ How Do I Register My Out-Of-State Paperwork in Colorado?
 - ❑ Determine Whether You Meet the Requirements to Register Your Out-Of-State Estate Paperwork in Colorado
 - ❑ Determine What Information You Need Before You Start Your Case
 - ❑ Determine Where to File Your Case
 - ❑ Fill Out the Paperwork to Start Your Case

Determine If You Meet the Requirements to Register Out-Of-State Estate Papers in Colorado

- If you were named as the Personal Representative of the Estate of a deceased person in another state, and there are tasks that you need to complete in Colorado having to do with the estate, you can ask the court in Colorado to register your out-of-state paperwork.
- You CANNOT register your out-of-state paperwork in Colorado if:
 - (1) There is already a Personal Representative who has been named in Colorado
 - OR
 - (2) There is a pending case to name a Personal Representative in Colorado

Determine What Information You Need Before Starting Your Case & Where to File

- Before you start your case in Colorado, you will need authenticated copies of the following:
 - (1) The out-of-state court's order appointing you as Personal Representative of the Estate
 - (2) The out-of-state court's Letters or other documents explaining what your authority is as the Personal Representative of the Estate
- You should file your paperwork with the district court in the Colorado county where the property of the deceased person is located

Fill Out the Paperwork to Start Your Case

- ❑ You (the person in charge of the Estate) will be known as the Personal Representative and the person who has died will be known as “the Deceased” or “the Decedent”
- ❑ Download and complete these forms from the court website:
 - ❑ JDF 929: Domiciliary Foreign Personal Representative’s Sworn Statement
 - ❑ Must be signed in front of a Notary Public or a Court Clerk
 - ❑ Attach authenticated copies of out-of-state orders and Letters or other documents
 - ❑ JDF 930: Certificate of Ancillary Filing – Decedent Estate



Collection of Personal Property of a Decedent

- General Information
- Complete Affidavit

General Information

- ❑ Who May Use JDF 999 (JDF 999 #1) – Successor or Person Acting on Behalf of Successor(s)
- ❑ When to Use JDF 999 (JDF 999 #2, #3, #4, & #5)
 - ❑ (1) At least 10 days have elapsed since the date of death; AND
 - ❑ (2) The value of the property of the estate, less liens and encumbrances, does not exceed \$74,000 if Year of Death was 2022; AND
 - ❑ (3) The appointment of a personal representative is not pending nor has been granted by a Court in Colorado or any other state
- ❑ Description of Assets and Successor Proportions (JDF 999 #6 & #7)
- ❑ Responsibilities of Successor or Person Acting on Behalf of Successor(s) (JDF 999 #8 & #9)
- ❑ How to Use JDF 999
- ❑ Other Notes on Use of JDF 999

Complete Affidavit

- ❑ To access the Affidavit form online go to www.courts.state.co.us and click on the “Self Help/Forms” Tab. Then select Trusts, Estates, and Wills.
- ❑ Complete the Affidavit
- ❑ Sign the Affidavit before a Notary Public. Each entity you work with will keep a copy of the Affidavit. You may wish to have your signature notarized on several copies
- ❑ Attach a copy of the death certificate. Some entities may require a certified copy of the death certificate
- ❑ Present the Affidavit and death certificate to the holder of the assets, e.g. bank. You may wish to have a copy of these instructions to present to the bank identifying the authority to file the Affidavit



Fees and Other Expenses

- ❑ Attorney Fees
- ❑ Costs associated with administration
 - ❑ Including Court Fees
- ❑ Payment of decedent's final expenses and legitimate debts

Questions?

- 12th Judicial District Self-Represented Litigant Coordinator
 - Lisa Mizell – (719) 589-7621
 - 12selfhelp@judicial.state.co.us