

transferred out of the decedent's name, all legitimate claims are satisfied, all devisees' and/or heirs' interests are satisfied, and applicable tax returns are filed and paid.

Probate instructions and forms, including the Affidavit for Collection of Personal Property are available on the Colorado Judicial Branch website ([www.court.state.co.us](http://www.court.state.co.us) under the "Forms" tab).

### **What are the responsibilities of the personal representative?**

A personal representative has many duties, rights, and responsibilities, including the ability to open and maintain an estate bank account, to sell, transfer, or encumber real property, to sell and/or transfer assets, to consolidate bank accounts, and to deal with creditors.

A personal representative has a fiduciary duty to the estate, devisees, heirs, and other interested parties, including creditors. A personal representative's specific duties included:

1. To act impartial in regards to all parties to the estate.
2. To administer the estate with care and prudence.
3. To put the interests of the estate in front of the personal representative's own interests.
4. To be loyal and treat each party the same.

Other responsibilities of a personal representative include creating an estate inventory of all of the decedent's assets (real and personal). This includes applicable titling and date-of-death values, managing the estate assets until the court approves the closing of the estate, keeping accurate records of the

estate's transactions, and making distributions to creditors, devisees, and/or heirs.

A personal representative is entitled to reasonable compensation for their services, and whether or not they elects to take a fee, the personal representative should keep track of the time they spend working on the administration of the estate.

For additional information, regarding duties and responsibilities review the brochure entitled "So Now You Are a Personal Representative."

### **Fees and Other Expenses of Administration**

An attorney's expertise is usually necessary in identifying what type of probate is necessary, and the scope of the attorney's involvement will depend on the complexity of the estate. Even the most well-planned estates and well-written wills have costs associated with administration, including court fees, attorney fees, and the payment of the decedent's final expenses and legitimate debts. Most attorneys charge an hourly fee, and the rate depends on several factors, such as the attorney's expertise and experience, the novelty and difficulty of the case, the results obtained, and costs involved.

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# *Probate in Colorado*



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## **PROBATE IN COLORADO**

Probate is the legal process that is used to transfer title of assets from the decedent to his or her devisees (recipients named in the will) or heirs (recipients named by law). All wills and intestate estates must be probated, but the degrees of court involvement and complexity range from simple and inexpensive to complicated and costly.

In Colorado there are three types of probates. If there is a will the probate is referred to as testate estates—or if there is no will, it is referred to as intestate estates.

1. Small estates (under \$50,000 and no real property).

Whether or not you have a will when you die, if you have \$50,000 or less in personal property (includes bank accounts and cash) and no real property, your devisees or heirs may collect your assets by using an affidavit and not have to open a probate action through the court. This procedure requires the devisee or heir collecting the assets to swear they are entitled to it and will distribute it to any other entitled devisees or heirs.

2. Uncontested estates (informal).

The informal process is generally allowed when there is a valid will or clear intestacy, no contests are expected, and there is a qualified personal representative ready to be appointed. The court has a limited role in the administration, but ensures that the directions in the will or intestacy law are followed and provides a venue for the devisees or heirs to hold the personal representative accountable.

3. Contested estates and invalid or questionable wills (“formal”).

A formal probate may be required for several reasons, including when a will is contested,

unclear, invalid, or when there are apparent or actual significant challenges (i.e., identifying heirs, property title disputes) in administration. The court may require that the personal representative get approval for every transaction or may allow the personal representative to administer the estate unsupervised.

Both informal and formal probates must be open with the court for at least six months, but full administration of the estate may take much longer.

### **Will my estate have to go through probate?**

Whether or not your devisees or heirs will have to go through probate to transfer title to your assets depends on how your assets were owned when you died. Depending on how your assets are owned, your estate may not have to go through the probate process because your will or the intestacy laws may not control the distribution of some or all of your assets.

There are certain types of assets that are not governed or distributed per the terms of a will. Only assets that were owned by you in your individual name (and that do not have a beneficiary designation) are controlled by the will. Assets that are owned in joint tenancy, such as real property or a bank account, or assets that have a beneficiary designation like a life insurance policy or IRA, pass to the beneficiaries by operation of law, and are not subject to the provisions in the will or the probate process.

\*Note: 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.

### **What is the probate process?**

As described above, “probate assets” are generally administered in one of 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.

If using an Affidavit for Collection of Personal Property, the affiant goes to the institution or individual holding the decedent’s asset, presents the affidavit, and collects the asset. The affiant then distributes the asset to those entitled to it, whether per the terms of the decedent’s will or the intestacy laws. This form must be signed before a notary public.

In an informal and formal probate procedure, the court appoints a personal representative or special administrator who is given the authority to essentially step into the decedent’s shoes and wrap up their business affairs and distribute their assets. The personal representative may be supervised by the court or conduct the administration without supervision, but is considered a fiduciary for purposes of dealing with the decedent’s assets.

Colorado requires that a personal representative notify (by publication in a local newspaper or by mail) any possible and known creditors of the decedent, and to pay legitimate claims. During the creditors’ period, the personal representative will likely deal with valuing, consolidating, and/or liquidating the estate’s assets. After the creditors’ period is over, the personal representative may make distributions to creditors, devisees, and/or heirs. A probate case can close once all of the assets are