

PROBATE ADVISORY WORKGROUP

December 15, 2017 Meeting

The following proposed statutory revisions were approved.

Proposed revision to C.R.S. §15-12-619(4) and (6)

(4) Every public administrator shall procure and maintain a general bond in the sum of ~~twenty-five~~ one hundred thousand dollars covering the public administrator's performance and the performance of the public administrator's employees to the people of the state of Colorado. Such bond shall be conditioned on the faithful discharge of the duties of the office of the public administrator and shall be filed in the office of the secretary of state on an annual basis. If the Colorado attorney general finds reasonable grounds to believe that a public administrator has improperly administered a public administrator's estate, the attorney general may sue upon such bond in the name of the people of the state of Colorado to compensate any party harmed by any neglect or wrongful act by a public administrator or the public administrator's employees. In addition to the above general bond, a public administrator may also be required to give such bonds as are required of other fiduciaries.

(6) Subject to the approval and confirmation by the district or probate court in each judicial district, the public administrator may also appoint one or more deputy public administrators. Deputy public administrators shall be qualified electors over the age of twenty-one. Any deputy public administrator shall serve at the pleasure of the appointing court and the public administrator in that judicial district until such time as the deputy public administrator is discharged by the court or the public administrator or until the deputy public administrator resigns. No resignation of a deputy public administrator shall be effective until it is filed with and approved by the appointing court. The deputy public administrator shall act as directed by the public administrator in the deputy public administrator's district. Deputy public administrators shall be subject to all requirements of public administrators as set forth in this Section, including bond.

Proposed revision to C.R.S. §15-12-621(6)

(6) Small estates, as defined in section 15-12-1201, may be administered by the public administrator using an affidavit as provided in section 15-12-1201, with the same effect as provided in 15-12-1202. The claims period shall end one year from the date of the decedent's death. At the end of the claims period, the public administrator shall summarily make distribution of estate assets by distribution to allowed claimants pursuant to the priorities set

forth in section 15-12-805. The remainder of the estate's funds, if any, shall be distributed to the decedent's heirs or devisees as determined under the Colorado Probate Code. In determining who is entitled to an estate's funds, a public administrator may rely on affidavits by persons who set forth facts to establish their claims, heirship, or the validity of a testamentary document. The public administrator shall not be liable for any improper distributions made in reasonable reliance on information contained in such affidavits. All estates shall be closed by the filing of a public administrator's statement of account with the appointing district or probate court. The statement of account shall set forth all receipts and disbursements made during the administration of the estate including the public administrator's fees and costs, and the fees and costs of the public administrator's staff and investigators. Copies of all fee statements reflecting such fees and costs shall be filed with the statement of account. Upon filing of the public administrator's statement of account, the public administrator shall be discharged and released from all further responsibility and all liability with regards to the estate.

15-12-623

(2) On or before March 1 of each year, each public administrator and deputy public administrator shall complete an annual report using a standard report form directed by the Chief Justice concerning the administration of public administrator cases during the previous calendar year and file such report with the appointing court. In addition to the information required on the standard annual report, the public administrator shall provide in such report any additional information required by the appointing court.

GUIDELINES FOR THE OPERATIONS OF THE OFFICES OF THE PUBLIC ADMINISTRATORS
OF THE STATE OF COLORADO

1. Introduction: The procedures for the appointment and basic responsibilities of the Public Administrators (PA) of the State of Colorado are set forth in C.R.S. 15-12-619-623 and all PAs shall abide by those requirements. When acting on behalf of an estate, PAs are fiduciaries pursuant to the Colorado Probate Code (the Code) and are subject to all of the rights and responsibilities imposed on fiduciaries by the Code. The following procedures are designed to provide additional basic requirements for the operations of the offices of the Public Administrators generally and are not intended to override any statutory responsibilities which apply to all fiduciaries. Note: C.R.S. 15-12-619(6) provides that, subject to the approval and confirmation by the court, a PA may name one or more deputy PAs. All references to the PA shall include deputy PAs.

2. Supervision by the appointing court:

a. On or before March 1 of each year, the Public Administrator shall report to the appointing court, pursuant to C.R.S. §15-12-623(2). A standard report form is to be approved by the Chief Judge of each district, and at a minimum, shall include: the following information on all cases within the PA's control during the reporting year:

~~1.~~ ~~The following information on all cases within the PA's control during the reporting year;~~

~~2-1.~~ Case name;

~~3-2.~~ Case number;

~~4-3.~~ Inventory value;

~~5-4.~~ Amount of the PA's fees collected during the reporting period for each case, as well as the grand total of their fees collected;

~~6-5.~~ Separate from fees, the amount of PA's costs and advances collected during the reporting period for each case, as well as the grand total of all costs collected;

~~7-6.~~ The effective hourly rate charged for each case;

~~8-7.~~ Tally of total caseload;

~~9-8.~~ Indicate if the case is sealed;

~~10-9.~~ Indicate if the PA's bond is current;

~~11-10.~~ Any additional information required by the appointing court.

11. With the consent of the appointing court, the PA of any district shall determine whether any deputy PAs shall file separate reports for any cases within his/her control.

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- b. The appointing court shall meet with the Public Administrator at least annually to review the Public Administrator's annual report, policies, procedures and any other issues impacting the Public Administrator. Nothing herein authorizes ex parte communications regarding specific cases subject to the Court's jurisdiction.

~~Subject to Chief Justice Directive (CJD) 05-01 and applicable statute, the Public Administrator's Reports shall be made available to the public by the appointing court upon request. Requests for copies of the Public Administrator's Annual Report must be submitted to the appointing court.~~

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3. File maintenance and case management:

- a. The Public Administrator shall maintain individual files on each case referred to the Public Administrator's office.
- b. Each individual case file shall contain all relevant information, including any contact information and records of all real and personal property.
- c. All files shall be retained for ten years from the date of the closing of the estate/file.
- d. Upon destruction of the file, the Public Administrator shall retain a record consisting of the death certificate, information on any funeral home, and the disposition and location of a decedent's remains.

~~d-e. In the event the Public Administrator pays any funds from an estate to the Department of the Treasury as unclaimed assets, the Public Administrator shall also maintain a record of such payments including the dates on which such payments were made, the amount of any distributions made to the Office of the State Treasurer for unclaimed estate funds and the date of the transfer.~~

4. Office procedures and record keeping to ensure proper protection and maintenance of Estate assets:

- a. Internal Controls: If a Public Administrator (PA) chooses to use staff of his/her office to assist with any PA duties, the PA shall promulgate a written plan ensuring the segregation of duties for collection and custody of estate assets, authorizations for handling estate transactions, record-keeping, and the reconciliation of estate accounts. Where the resources of the PA do not permit complete segregation of duties, the PA shall promulgate a written plan establishing those internal controls which are feasible.
- b. Investigations and inventorying, securing of estate assets. When a PA is notified of the death of a decedent or when a PA has been appointed as a Conservator or Trustee, the PA shall promptly investigate and determine whether it is appropriate for the PA to take control of and administer the Estate. In making such determination, the PA shall comply with the requirements of C.R.S. 15-12-619-623. The PA shall make an initial determination, based on all circumstances known to the PA at the time, as to whether it is reasonable to collect and store the decedent's or protected person's personal property. The PA may elect to collect and secure all, some or none of such property in

the PA's discretion based on those circumstances. If the PA decides to collect any personal property, the PA shall take all steps necessary to ensure that all such personal property is documented, as required by statute, and credited to the estate.

- c. The search of a residence, if feasible, shall be conducted as soon as possible after notice of the decedent's death is received, or after the PA is appointed as conservator or trustee, and the PA determines that such search is appropriate.
 - d. Either the PA or an employee or agent of the PA shall conduct the initial search of the residence. The employee(s) shall, to the extent feasible, thoroughly search each residence and document for the PA's file the contents and condition of the residence.
 - e. Either the PA or the person(s) authorized by the PA to conduct a search of a residence shall remove cash and easily transportable valuables from the residence to a secure location as soon as is reasonable. The PA shall to the best of his/her ability ensure the secure transportation and storage of cash and valuables removed from the residence.
 - f. After the PA or the PA's employees have searched a residence, it shall be secured, unless the premises are released to the landlord. The PA shall maintain a record reflecting every visit to the residence, the individuals who entered the residence and the reason for the entry. The PA shall maintain keys to such residences in a secure place and control access to such keys.
 - g. Where the PA is required to open a safe deposit box maintained by the decedent, trust or protected person, either the PA or an employee of the PA shall be present at the opening of the box. The PA or the employee(s) shall, to the extent feasible, document the contents of the safe deposit box, and such documentation shall be maintained by the PA in the estate file. The PA shall to the best of his/her ability ensure the secure transportation and storage of cash and valuables removed from safe deposit boxes.
 - h. Confidentiality Policy: The PA shall require that all outside vendors retained, hired, or otherwise used by the PA to provide services, execute a confidentiality and non-disclosure agreement to ensure that all information, documents, etc. of an estate or trust be kept confidential and not disclosed to anyone who is not an interested person in such estate or trust. Such agreements shall be maintained in the files of the PA.
5. Trust and bank accounts: Upon receipt by the PA of any funds for a decedent, trust or protected person from any source the PA shall deposit such funds either to the PA's trust account in compliance with the requirements of C.R.S. 15-12-623(4) or to a separate estate account opened at a financial institution.

- a. The PA shall, without undue delay, marshal and secure the accounts of the estate.

- b. All accounts shall be reconciled on a regular basis.
- c. The PA shall at all times ensure to the best of his/her ability that assets of the estate are maintained in compliance with applicable fiduciary standards.
- d. All disbursements of estate funds shall be supported by invoices or other documentation reflecting the date, nature, and amount of each disbursement, and the estate against which each disbursement is charged.

6. Employment and Personnel Standards: If a PA chooses to employ staff to assist with discharging the duties of the PA, then the PA shall:

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- a. Employ competent staff with the training and experience to provide quality service to the estate or individual. The PA's office shall have a written policy that ensures there is sufficient qualified staff to provide services to each estate.
- b. A PA shall perform/obtain background checks and credit reports on any employee who will be working on PA matters. The choice to hire or retain any individual after obtaining such reports shall be within the discretion of the PA. The PA is responsible for any actions of any employees taken by them in the exercise of their duties on behalf of the PA.

7. Insurance and bonding: PAs shall carry the following types of professional insurance/bond:

- a. Fiduciary Errors and Omissions Insurance
- b. Malpractice Insurance (If the PA is a law firm or practicing attorney)
- c. General Liability or a Business Office Policy
- d. Every public administrator shall procure and maintain a general bond as required by C.R.S. 15-12-619(4), and shall file the bond with the office of the secretary of state.
- e. Bonds should be updated as needed and filed with the office of the secretary of state.
- f. A copy of all updated bonds shall also be filed with the appointing courts.
- ~~f.g.~~ The PA or Deputy PA shall obtain separate bonds as may be imposed by the court for particular cases as provided by the Probate Code.

8. Conflicts of Interest:

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- a. The PA shall avoid all conflicts of interest and self-dealing when handling an estate. Impropriety or conflict of interest arises where the PA has some personal interest that is self-serving or adverse to the position or best interest of the estate. Self-dealing arises when the PA seeks to take advantage of his or her position as a PA and acts for his or her own interests rather than for the interests of the estate.
- b. Neither the PA nor any of his/her employees shall bid on or purchase any property of an estate being administered by the PA.
- c. In the event of the existence or development of a conflict of interest, the PA shall disclose such conflict to the appointing Court and all parties to the case and seek

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instructions from the appointing Court to resolve/address such conflict- [in accordance with the requirements of the Colorado Probate Code.](#)

9. Sale of assets:

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- a. All real property shall be listed for sale in the multiple listing service, or through another method which places the property out to the public for sale, except in the following circumstances:
 1. Exigent or unusual circumstances, such as a pending foreclosure sale;
 2. Extremely distressed condition of the property, especially in estates where there are insufficient funds to improve or repair the property;
 3. When real property is sold to a relative of the decedent/protected person;
 4. Unless otherwise directed by the court.
- b. The Public Administrator may obtain an order approving sales of real property but is not required to do so, except as otherwise required by the Colorado Probate Code (i.e. in conservatorships as required by the Court).
- c. The Public Administrator may sell personal property in any manner the Public Administrator deems reasonable, however the Public Administrator shall endeavor to obtain the highest net return for the estate, taking into consideration all costs of sale and all other relevant circumstances.

10. Public Administrator's Statement in Small Estates:

- a. The Public Administrator shall file with the court as required by C.R.S. 15-12-621(6), a Public Administrator's Statement of Accounts in Small Estates, as 'small estates' is defined in section 15-12-1201.
- b. The Public Administrator shall use JDF XXX for such statement of accounts, or a format that substantially complies with the Judicial Department Form (JDF).
- c. When applicable, the filing fee shall be paid in accordance with statute.

11. Reporting Escheated Estates:

The Public Administrator shall follow [C.R.S. §15-12-914](#) Disposition of Unclaimed Assets when distributing unclaimed estate assets to the Colorado Department of the Treasury. The Public Administrator shall follow the instructions provided by the Colorado Department of the Treasury with respect to such payment and notifications