

# Probate in Colorado

Probate, also known as estate administration, is the legal process by which the property of the person who has died is distributed. A Colorado court will appoint a person (a “personal representative”) to administer the probate estate. The personal representative should:

- Gather the assets of the estate
- Pay debts and final expenses, and
- Distribute the remaining assets.

## Probate and non-probate assets

As the personal representative gathers the assets of the deceased person (the “decedent”), the personal representative should determine how the assets were titled and whether the assets are probate or non-probate assets.

## Non-probate assets

Not every asset owned by a decedent may need to go through the probate process. Assets that were designated to pass to beneficiaries upon a person’s death generally are transferred outside of the probate process. These assets may include:

- Life insurance proceeds
- IRAs and 401(k)s
- An account with a payable on death designation
- An asset with a transfer on death designation
- An asset owned in joint tenancy, also known as joint tenancy with right of survivorship, or
- An asset that is titled in a trust.

## Small estates

When a person’s probate assets are valued under a specific amount, Colorado law allows the assets to be distributed without opening a probate estate with the court. For a person who died in 2022, probate is not required when the value of their probate assets is below \$74,000 and the decedent did not own any real property. The Colorado courts website has additional information and updates.

## Who are the beneficiaries of an estate?

If the decedent had a valid will, then the beneficiaries of the estate are designated in the decedent’s will.

## Who are the decedent’s beneficiaries if the decedent did not have a will?

A person who dies without a will has died intestate. Colorado has intestacy laws that designate how a decedent’s probate assets pass upon her death if she died intestate. Colorado law assumes that a decedent would want her probate assets to pass first to her surviving spouse and children. If a

decedent had a blended family, Colorado law contains specific terms to provide amounts to the surviving spouse or the decedent’s children from a current or prior partner. If a decedent does not have children or a surviving spouse, generally her probate assets would be inherited first by her parents, if living, and then siblings and other relatives.

## Opening a Probate Estate

In order for a probate estate to be opened, documents need to be filed with the court to ask for the estate to be opened and to appoint a personal representative, the person who will administer the estate.

There are two ways to open a probate estate: informally and formally.

- Informally. Opening an estate informally does not require a hearing but can only be used in specific circumstances. Once the appropriate documents have been filed with the court and the court clerk has checked that the file is complete, the clerk will issue an order opening the estate and appointing the personal representative.
- Formally. Opening an estate formally is required when there is a dispute over the will, who should inherit, or who should serve as personal representative. Formal probate requires that all heirs and beneficiaries receive notice of the documents filed with the court and be given an opportunity to object or respond. If the court does not receive any objection to the documents, the court can move forward to open the estate and appoint a personal representative. However, if the court receives an objection, the court will ask the beneficiaries to set a hearing so the court can hear the dispute.

## The Probate Administration Process

Once the probate estate is opened, the personal representative may need to take the following steps to administer the estate:

- Provide the beneficiaries of the estate and the court with notice of the personal representative’s appointment.
- Obtain a tax identification number for the estate and open an estate bank account.
- Provide notice to creditors of the creditor claim period.
- Prepare an inventory of the probate assets.
- Secure and collect the decedent’s probate assets.
- File state and/or federal tax returns for the decedent or her estate.
- Pay expenses of administration, including burial expenses and professional fees.

- Negotiate and pay creditor claims after expiration of the creditor claim period.
- Close the estate and make final distributions to the heirs and devisees

Depending on the probate assets owned by the decedent, the personal representative may or may not need to follow all of the steps listed above.

## Closing the Estate

After the estate has been administered, an estate can be closed in one of three ways:

- Informally. The personal representative notifies the court that the estate has been fully administered and the personal representative has completed all required acts.
- Formally. The personal representative provides documents to the court and the beneficiaries, including an accounting and a plan for proposed final distributions from the estate, and sets a hearing with the court.
- Administrative. A court may decide to close the estate itself if no action has been taken in the estate in three years.

## Common Probate Questions

### I'm nominated as personal representative or executor in the decedent's will. Do I have authority to act as personal representative before the court appoints me?

A decedent can nominate a person in her will as her personal representative. A person nominated as personal representative in the decedent's will can take a limited number of actions before being appointed by the court. Specifically, a nominated personal representative can make funeral or burial arrangements for the decedent, request that a bank search for an original will in the decedent's safe deposit box, or act to preserve the decedent's assets from premature distribution.

A nominee does not have full authority to act as personal representative until appointed by the court.

Colorado law gives priority to someone nominated as personal representative by the decedent's will. However, the court is not required to appoint the decedent's nominee as personal representative.

### My family member died without a will. How do I know who should be personal representative?

When someone dies intestate, Colorado law gives priority to individuals based upon their familial relationship. If you have questions about who should be personal representative, you should consider speaking with an attorney.

## What is a trust?

A trust is different from a will. A trust document provides instruction for how a person's assets should be managed during their lifetime and after their death. The trustee is responsible for making distributions from the trust. Assets that are titled appropriately in the trust before the decedent's death will be distributed according to the terms of the trust. Assets that are not titled to the trust may need to go through the probate process.

## How can an attorney help?

An attorney with experience in estate administration can provide advice about legal rights and options, prepare legal documents, and represent people in court. For instance, an attorney can answer questions about non-probate assets or whether probate should be opened for a decedent.

## Additional Resources

- *So Now You Are a Personal Representative brochure*
- *Colorado Senior Law Handbook*
- Colorado courts website for Judicial Department Forms and Instructions
- Use the Colorado Bar Association Licensed Lawyer website to search for a lawyer: <https://www.cobar.org/Licensed-Lawyer>

## Definitions

**Probate:** The legal process by which a deceased person's assets are distributed after death. Probate is also known as estate administration.

**Decedent:** The legal term for the person who has died.

**Personal Representative:** The person appointed by a Colorado court to administer a probate estate.

**Intestate:** A decedent died without a will.

**Testate:** A decedent died with a will.

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