

The personal representative locates and values all the assets; gives notice to creditors; pays debts and taxes; and distributes the balance of the estate to those heirs entitled to receive a portion of the probate estate. For more information, see the Colorado Bar Association's brochure, "So Now You Are a Personal Representative."

### *A Word About Fees*

An attorney's help will usually be needed, and the amount of help will depend on the complexity of the estate. Costs are reduced under Colorado law, but there are still some costs associated with handling an estate. To begin with, a court docket fee will be charged upon filing the petition or application for admission of the will to probate. To view the court fees, go to Self-Help Center at [www.courts.state.co.us](http://www.courts.state.co.us). A lawyer may be engaged to file court documents, prepare tax returns or transfer documents, and will normally bill these services at an hourly rate.

You can reduce some of the legal costs by doing some of the work; your attorney can help you with this.

### *A Word About Living Trusts*

Some recent advertisements would have you believe that everyone needs a "living trust" and that it helps you avoid probate.

Under Colorado law, there's little need to avoid probate. Be wary of persons promoting a trust that may not meet your needs. Some consumers have been overcharged for trust documents that aren't appropriate for their circumstances and are inadequate for their estate planning needs.

If you think you've been a victim of fraud in the sale of a revocable (or "living") trust, call the Colorado Attorney General's Consumer Protection Unit, (303) 866-5189.



# *Probate in Colorado*

*(2008) This pamphlet is published as a public service by the Colorado Bar Association. It was updated by Lou Wilcox in 2008. Its purpose is to inform citizens of their legal rights and obligations and to provide information regarding the legal profession and how it may best serve the community. Changes may have occurred in the law since the time of publication. Before relying on this information, consult an attorney about your individual case.*

*Sponsored by the Colorado Bar Association*

# *Probate in Colorado*

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

People sometimes ask that question as though it were an obstacle course. In truth, probate (the process of formally distributing a person's probate assets after death) has been enormously simplified by the Uniform Probate Code. More than 90 percent of estates in Colorado are not court supervised. Much less attorney time is involved. Usually, families do most of the routine estate administration tasks unassisted, such as paying bills and selling or distributing personal possessions.

## *When is probate required?*

When a person dies, some of their assets will automatically pass by law to certain people. These are called "non-probate" assets. For instance, if a husband and wife have a joint account and the wife dies, the husband gets the money in the account automatically.

The other major categories of non-probate assets are life insurance and retirement accounts where someone specific is named as the beneficiary and real property owned in joint tenancy.

All other assets are called "probate assets." Probate assets do not pass automatically and normally must be disposed of under the probate system.

## *What are "probate assets?"*

Household and personal items, bank accounts, stocks, automobiles, real estate. Generally anything that is solely in the decedent's name or doesn't have a title.

## *How do probate assets get passed to the heirs?*

After all non-probate assets are determined, the remaining "probate assets" are generally administered in one of three ways:

1. By Affidavit: If the amount of probate assets in an estate is less than \$50,000 and the decedent did not own any interest in real property, a successor can fill out a small estate affidavit (available from Bradford Publishing, an attorney's office, or on the Colorado Judicial Branch's website at [www.courts.state.co.us](http://www.courts.state.co.us) under Self-Help Center). The person holding the assets would then release the assets to the decedent's successor without further action. (With the help of an attorney, it may be possible to avoid court involvement by structuring your estate so that it contains less than \$50,000 of probate assets and no interests in real property.)

2. Informally: The vast majority of estates in Colorado are administered informally. This means the estate is not court-supervised. An attorney can have a limited role in these proceedings, and a client should discuss with his or her attorney the amount of help needed.

Administration of an estate is commenced by filing a number of forms with the appropriate district court. The forms are available from Bradford Publishing, an attorney's office, or on the Colorado Judicial Branch's web site at [www.courts.state.co.us](http://www.courts.state.co.us) under Self-Help Center. A trip to the probate clerk's office at a Colorado district court will help you get started. While the forms are not very complicated, there are a number of pitfalls for the unwary. Failure to provide the necessary information will frustrate and delay the process. It may be best to get an attorney's help.

Once the estate is up and running in informal administration, the personal representative will be issued "Letters" by the Court which will allow him or her to pay the bills and taxes as he or she sees fit. The Personal Representative may then distribute the probate assets pursuant to the instructions within the will or if the decedent died without a will, assets will pass pursuant to Colorado's laws of intestate succession.

The estate administration can take as little as six months for a simple estate, and as long as several years. Most estates in Colorado are administered in seven to 12 months.

At the end, an estate may be closed informally by filing a form with the court that states the Personal Representative has paid all debts and taxes and delivered the property to those entitled to it. Consult with your attorney about other details on administering and closing the estate.

3. Supervised: Most estates are not supervised. A supervised administration may be needed if there is a dispute among the interested parties within an estate. In this situation, the court has to settle the dispute and attorneys are likely to be involved the entire time.

*Note: Colorado law requires a decedent's will be filed (lodged) with the district court within ten days of death, even if there will be no estate administration.*

## *Who's in charge of administering an estate?*

This person is called a "personal representative" because he or she represents the estate of the decedent. A will drafted by a competent attorney almost always names a personal representative. Be careful in using unapproved will forms from the Internet or other sources to draft a will yourself. The unapproved forms may be incomplete or incorrect. The unapproved will forms is often more expensive to untangle in court than hiring an attorney to draft a proper will. If a person doesn't have a will with these instructions, an heir or interested party can file a form asking the court to appoint the person to be a personal representative.