

# PROBATE COURT



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## WHAT IS PROBATE?

Probate is the legal process in which the property, monetary interests, and other interests of a decedent are distributed among the proper survivors. All bills and taxes are paid, and debts are collected. Usually, the process includes the appointment of one person to handle all of the remaining affairs on behalf of all of the beneficiaries of the decedent. Probate includes estates that include wills, as well as those that do not.

## INTESTACY

The procedures for intestacy (dying without a will) and testacy (dying with a will) are similar. The main difference is that when someone dies testate, the decedent (person who died), through their will, dictates who receives property and nominates a personal representative to handle the estate. Since many people have not made out a will, laws have been established to distribute property for people who die intestate. Each state has its own laws of intestate succession for those who die without a will. The person appointed to handle the estate must follow the laws of the state where the property is located. This may mean consulting an attorney or checking statutes in multiple states to figure out how the property must be distributed.

### Intestate Succession for Surviving Spouses in Colorado.

A surviving spouse (one who lives 120 hours after decedent's death) inherits different amounts depending on the survivorship of descendants or other relatives as follows:

- If there are no children from the marriage or if there are children (but no step-children), the spouse receives the entire estate.
- If a parent of the decedent survives and there are no children, the spouse receives \$300,000 and 3/4 of the remaining balance of the estate.
- If the spouse has a child that is not the decedent's child (such as from a previous marriage) the spouse receives \$150,000 and 1/2 of the remaining estate.
- See CRS 15-11-102 for more information.

### Intestate Appointment of a Personal Representative.

If a person dies intestate, the surviving spouse or an heir may be appointed as personal representative. The person applying to administer the estate must be 21 years old or older and be found suitable by the court. If more than one person applies, the court decides based on an order of preference. Usually the surviving spouse will get priority over others. If an application is challenged, the court will hold a formal proceeding to determine the most suitable candidate for appointment. If no one is willing to serve, a special administrator may be appointed.

## TESTACY

Any individual who is 18 years of age or older and is of sound mind may make a will in order to distribute property in a certain manner. A valid will disposes of all property. If the property does not go to someone specific, it goes into the residuary. A residual clause further disposes of this property. The will controls unless it is not signed or executed properly, if it specifies an illegal gift or purpose, or if it is revoked through physical act or another document. The personal

representative has a duty to distribute the property according to the specified terms of the will after the payment of taxes, debts, and expenses of burial. Keep in mind there may be property that cannot be given in a will or that can be taken through allowances in the statutes.

### Testate Appointment of a Personal Representative.

The personal representative is usually nominated in the will. Under Colorado law, the individual nominated in the will has first priority for appointment. They have the right to revoke their nomination, which will allow any successor nominees to be appointed. If there is no one specified, an application may be filed by a qualified person to be appointed. If no person requests appointment and there is no one nominated in the will, a special administrator may be appointed.

## PROBATE PROCEDURE

To probate a will or administer an estate under intestacy in Colorado, the decedent must have had their legal residence in Colorado, or had property located within a probate court jurisdiction in Colorado. Certain forms are required to be filed with the court that has jurisdiction. The probate court is located at 105 E. Vermijo, Suite 120 in Colorado Springs. Additionally, necessary forms may be obtained online at: <http://www.courts.state.co.us/Forms/SubCategory.cfm?Category=Trusts>.

- A. Non-probate assets include:
  1. Property in joint tenancy [document will say JT/ROS (Joint tenancy/Right of survivorship)].
  2. POD (payable on death), i.e. bank account Certificate of Deposit.
  3. Named beneficiary, such as an insurance policy.
  4. Items titled under a trust.
  5. Real property transferred through a beneficiary deed.
- B. Check for a will. It is not necessary to obtain a death certificate to file an application for probate. A will must be lodged pursuant to the CPC within 10 days of death. The most likely place to look for the will is in a safe deposit box. It may be with other important personal papers, but all places should be searched in case a subsequent will was executed revoking a former will.
- C. Formal or Informal. An estate may be opened with either formal or informal administration. It may be necessary to have formal proceedings even if the estate is opened with informal appointment of a personal representative. If the appointment is contested, for example, a formal appointment hearing will be held.
- D. Filing an Application or Petition.

Once an application for probate or intestacy is filed, the Court begins to be involved. The application, a blank order appointing a personal representative, and letters of personal representative should all be filed together to speed up the process. The Court will sign the order after any necessary proceedings take place, and then the letters will be issued allowing the person appointed to take action on behalf of the estate. Once letters are issued, the personal representative will have to file an acceptance with the court.

The appointment of a personal representative starts the clock on the estate. Certain deadlines must be met by the personal representative, such as giving notice, filing an inventory and accounting, or paying estate taxes. It may be beneficial to consult a lawyer who is familiar with these deadlines and what is necessary to meet them.

**POINTS OF CONTACT:**

The El Paso County Probate Court is located at 270 S. Tejon Street, Colorado Springs, CO 80903. The administration office is located in Room West 149 and the courtroom is located in Room West 150. The staff is very helpful and will be happy to give you additional guidance on the procedural requirements and filing of forms. However, they are not permitted to give legal advice.

For active duty military members, the appropriate office at the base of assignment should be contacted. For retirees, the appropriate office for the branch of service should be contacted. The Casualty Assistance Office at Peterson AFB is located in Bldg. 350 at 135 Dover St. Ste. 1105, phone # (719) 556-6232. At the Air Force Academy, the address is 10 MSS/DPMPS 5126 Eagle Dr. Ste. K-102 USAFA CO 80840-2608 phone # (719) 333-2129.

**Safe Deposit Boxes (CRS 15-10-111)**

Colorado law allows a successor of the decedent, a person reasonably believed to be an heir, a person nominated to be personal representative in the will, or an attorney of anyone meeting the criteria to access a safe deposit box that the decedent leased by themselves or with another person. If the person requesting access does not have a key, the box can be drilled into at that person's expense. Unless the person had full access to the box during the life of the decedent, the only documents that may initially be removed are wills (or those that appear to be a will), deeds to burial plots, or burial instructions. Once the estate has been adjudicated, the rest of the belongings may be removed in accordance with the court's decree.

*Sources:*

*C.R.S. Title 15;*

*<http://www.courts.state.co.us/Forms/SubCategory.cfm?Category=Trusts>*

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