

INSTRUCTIONS FOR PROBATE WITH A WILL

These standard instructions are for informational purposes only and do not constitute legal advice about your case. There may be exceptions to the information outlined below. Please consult with an attorney if you have specific questions about the Decedent's estate. If you choose to represent yourself, you are bound by the same rules and procedures as you would be if you were an attorney.

DO I NEED TO FILE PROBATE DOCUMENTS WITH THE COURT?

1. Did the Decedent own real estate? Yes No
The following assets are not counted in number 1 above:
◆ Real Estate titled in joint tenancy with a surviving joint tenant.
◆ Real Estate titled with a beneficiary deed.
2. Did the Decedent own non-real estate assets with a total value greater than \$68,000.00? Yes No
The following assets are not counted in number 2 above:
◆ Assets owned in joint tenancy with a surviving joint tenant.
◆ Assets with beneficiary designations, such as Payable-on-Death (POD) or Transferable on Death (TOD) accounts, and some life insurance policies and retirement accounts.

If you answered "No" to number 1 **and** 2, you may not need to file court documents. See Instructions for Completing Affidavit for Collection of Personal Property - **JDF 998**.

If you answered "Yes" to either 1 **or** 2, please read the information below:

HOW CAN I FILE – INFORMALLY **OR** FORMALLY?

A probate case may be commenced in one of two ways.

1. By Application to the Registrar (Informal Proceeding). The Registrar may appoint a Nominee as Personal Representative without prior notice to any Interested Persons, if the Nominee has priority for appointment. The Applicant must provide the Registrar with proof of priority for appointment, which may include documents in addition to the Application such as JDF 912 – Renunciation and/or Nomination of Personal Representative. See §15-12-203, C.R.S.
2. By Petition to the Court (Formal Proceeding). The Probate Judge, Magistrate or Registrar may appoint a Personal Representative and determine Heirs after notice to all Interested Persons and after hearing on any objections.

**If you need assistance with these legal decisions, you should contact an attorney.
Court staff cannot advise you.**

COMMON TERMS

- ☒ Applicant: A person who files an Application for Informal Appointment of a Personal Representative.
- ☒ Creditor/Claimant: A person or entity to whom the Decedent or the estate has a financial or other obligation.
- ☒ Decedent: The person who passed away.
- ☒ Devisee: A person or entity designated in a Will to receive real or personal property.
- ☒ Estate: All of the property (real or personal – non-real estate) owned by a person on the date of death that is subject to probate.

- Formal: Opening an estate after prior notice to Interested Persons.
- Heir: Person(s) entitled to the property of the Decedent under statutes of Intestate Succession. See Heirship Tree on page 6.
- Informal: Opening an estate without prior notice to Interested Persons.
- Interested Persons: Persons identified by Colorado Law who must be given notice of a court proceeding. The term may include heirs, children, spouse, devisees, beneficiaries, creditors, claimants, and persons having priority to serve as personal representative, depending on the circumstances.
- Intestate: Estate in which the Decedent **did not leave a will.**
- Intestate Succession: By Colorado law, a list of who will inherit the property when someone dies without a Will. (§15-11-101, et. seq., C.R.S.)
- Letters: A document issued by the Court, identifying the authority of the Personal Representative
- Nominee: The person seeking appointment as Personal Representative.
- Petitioner: A person who files a Petition for Formal Appointment of Personal Representative and/or Determination of Heirs.
- Personal Representative: A person at least 21, resident or non-resident of Colorado, who has been appointed to administer the estate of the Decedent; previously referred to as Executor/Executrix.
- Right of Survivorship: Property that is owned by two or more people, such that upon the death of one of the co-owners, his or her share passes to the remaining co-owners without the necessity of probate.
- Tenants in Common: Property that is owned by two or more people, such that upon the death of one of the co-owners, his or her share passes to his or her estate rather than to the remaining co-owners. Probate is necessary.
- Testate: Estate in which the Decedent **left a will.**

GENERAL INFORMATION TO FILE YOUR CASE IN PROBATE COURT

- ◆ If the Decedent resided or was domiciled in a Colorado county, the Application/Petition must be filed in that county.
- ◆ If the Decedent resided or was domiciled in another state, the Application/Petition may be filed in the Colorado County where the Decedent owned property.
- ◆ The Court cannot act on an Application or Petition before 120 hours have elapsed since the time of death.
- ◆ The nominated Personal Representative must be 21 years of age or older.
- ◆ A creditor cannot file an Application/Petition for Appointment of Personal Representative until 45 days have elapsed from the date of death.
- ◆ For additional information, please review §§15-12-101 through 1102, C.R.S.
- ◆ If you have a disability and need a reasonable accommodation to access the courts, please contact your local ADA Coordinator. Contact information can be obtained from the following website:
http://www.courts.state.co.us/Administration/HR/ADA/Coordinator_List.cfm

If you do not understand this information, please contact an attorney.

FEES

A filing fee of \$199.00 is required. If you are unable to pay, you must complete the Motion to File without Payment and Supporting Financial Affidavit (JDF 205) and submit it to the Court. Once you submit the completed JDF 205 form and a blank Order (JDF 206), the Court will decide whether you need to pay the filing fee.

Other fees that a party to the case may encounter are as follows:

- Certification of Orders and Letters \$ 20.00
- Copy of Documents \$.75 per page

Name	Address (or date of death)	Age, only if Minor	Relationship (e.g. spouse, child, brother, guardian for spouse, etc.)
John Smith,	Date of Death 10.15.08	N/A	Spouse of Decedent
Joe Smith, incapacitated	456 North Street, Denver, CO 80123	N/A	Brother of Decedent
Robert Jones	850 Clark Street, Denver, CO 80266	N/A	Guardian for Joe Smith
Sandy Clark	Date of Death 10.1.05	N/A	Sister of John Smith
John Clark	989 North Avenue, Paris, CA 90222	12	Nephew, son of Sandy Clark
Joe Smith Trust, Sandy Clark Trustee	989 North Avenue, Paris, CA 90222	N/A	Devisee
ABC Charity	456 East Avenue, Denver, CO 80222	N/A	Devisee

- All addresses must be complete and include zip codes.
- List all names previously used by the Decedent in the caption, for example Robert Smith aka Bob Smith, aka Robert A. Smith, aka Robert Aaron Smith. This is important because assets cannot be released if the name on a deed, bank account, etc. is different from the name identified in the Letters.
- This form must be signed and dated.

Will

- The original Will must be filed with the Court.

Acceptance of Appointment (JDF 911).

- The Nominee should complete the form and sign and date.

Renunciation and/or Nomination of Personal Representative (JDF 912).

- To file informally, file this form for any heir who has priority for appointment. To file formally, file this form for any heir who has priority for appointment **or** give notice of hearing to such persons.
- If there are heirs under the age of 18, the Court may require a Conservator to be appointed.
- This form must be signed and dated.

Irrevocable Power of Attorney (JDF 721).

- The nominated Personal Representative must complete this form and sign it before a Notary Public **if** he or she lives out-of-state.

Notice of Hearing (JDF 711).

- For Formal Probate only, obtain a hearing date by contacting the Court.
- Mail or deliver the completed Notice of Hearing and all documents filed with the Court to the persons listed in paragraph 9 of the Petition.
- If the address of any person listed in paragraph 9 or the identity of any heir is unknown, notice must be given by publication (JDF 716).
- The Court may require notice to the Colorado Attorney General's Office on behalf of any heir whose address or identity is unknown.

Order for Informal Probate of Will and Informal Appointment of Personal Representative (JDF 913).

or

Order Admitting Will to Formal Probate and Formal Appointment of Personal Representative (JDF 921).

- Complete all applicable portions in preparation for the Court's signature.

Letters Testamentary (JDF 915).

- Complete only the caption on this form. The Court will complete the remainder of the form.
- Letters are evidence of the Personal Representative's appointment and proof of authority to act on behalf of the estate.

- More than one set of certified Letters may be needed during the administration of the estate. Provide the Court with the number of Letters that are needed immediately. Third parties may require Letters to have been certified within the past 60 days. Letters may be requested as needed.
- The cost to certify Letters is \$20.00 for certification and \$.75 copy fee.**

Step 2: You are ready to file your papers with the Court.

Provide the Court with the documents completed in Step 1 above, the original Will and pay the filing fee.

Step 3: Requirements after the Court appoints a Personal Representative.

It is the responsibility of the Personal Representative to administer the estate. This includes collecting assets, valuing the assets, paying claims and distributing the remaining assets in accordance with the law. In addition, the Personal Representative is required to complete the forms listed below:

Information of Appointment (JDF 940).

- This form informs heirs that the Personal Representative has been appointed and they may contact the Personal Representative with their questions about the estate.
- This completed form must be sent to all heirs within 30 days from appointment. If the address or identity of any heir is unknown, this form must also be sent to the Colorado Attorney General's Office.
- This form, including the completed Certificate of Service, must be filed with the Court.**

Notice to Creditors by Publication (JDF 943).

- This form is used to notify any potential creditors of the Decedent's estate of the deadline for filing any claims.
- Unless one year or more has elapsed since the death of the Decedent, the Personal Representative must publish notice to creditors in a local newspaper once a week for three consecutive weeks.
- Complete the form and provide to a local newspaper.
- The newspaper will provide you with Proof of Publication. File the Proof of Publication with the Court.

Notice to Creditors by Mail or Delivery (JDF 944).

- This form is used to notify any known and unpaid creditors of the Decedent's estate of the deadline for filing any claims.
- Unless one year or more has elapsed since the death of the Decedent, a Personal Representative must send this form to any **known** creditors.

Decedent's Estate Inventory (JDF 941).

- This form must be completed within three months from the date of appointment.
- Identify all assets and encumbrances.
- Send the completed form to Interested Persons who request it or file the original with the Court.
- Send a copy of the Inventory to the Attorney General, if heirs are unknown or if there is not a person qualified to receive the distribution.
- This form does not need to be filed with the Court at this time.**

Interim/Final Accounting (JDF 942).

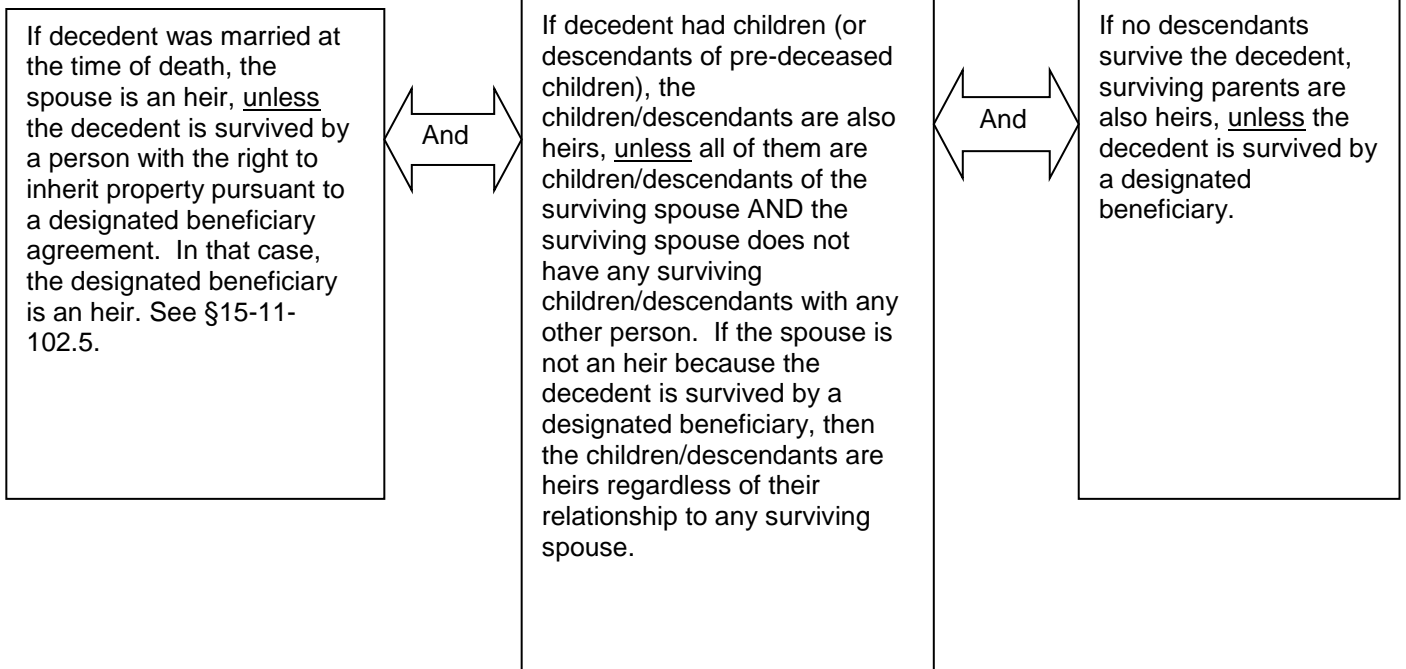
- Send the completed form to Interested Persons who request it.
- This form does not need to be filed with the Court at this time.**

The Colorado Bar Association has various brochures regarding estate administration at www.cobar.org

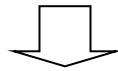
Step 4: Closing the Estate.

The Personal Representative must complete forms to close an estate. Instructions are available. To determine which forms to file and to access the forms and instructions online go to www.courts.state.co.us and click on the "Forms" tab and then select Probate.

Heirs are those people who are entitled by statute to the decedent's property when there is no will (or when the will does not dispose of all assets).

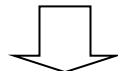


If none of the above, then:



Decedent's brothers and sisters (and descendants of any pre-deceased brothers and sisters) are the heirs.

If none, then:



Decedent's grandparents, or if both grandparents on either side (maternal or paternal) are deceased, the descendants of the pre-deceased grandparents are also heirs.

IMPORTANT NOTE: If any person who would be an heir died before decedent, then their children substitute for them and become the decedent's heirs. Therefore, grandchildren, great-grandchildren, nieces, nephews, etc., must be considered when determining heirship. Heirs must survive the decedent by at least 120 hours.