

TESTATE - FORMAL

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TESTATE FORMAL PROCEEDINGS FORMAL **PROBATE OF WILL AND APPOINTMENT OF PERSONAL REPRESENTATIVE** (WITH WILL AFTER NOTICE AND HEARING)

GENERAL INFORMATION - §15-12-401, C.R.S. et. seq.



- Petition for Formal Probate of Will and Formal Appointment of Personal Representative is a request for the court to adjudicate the priority or qualification of one who is seeking appointment as personal representative, that a purported testamentary document is the will of the decedent, and the heirs of the decedent.
- Formal testacy proceeding is the process by which a person is appointed by the court, after notice and hearing and granted authority to administer an estate for the decedent who left a will.
- The petition can be filed by an interested person. In this context, interested persons include heirs, devisees, creditors, and any others having a property right in or claim against the estate of a decedent that may be affected by the proceeding. It also includes persons having priority to be appointed as personal representative. See §15-10-201(27), C.R.S.
- The petition should be filed in the county where the decedent was a resident at the time of death or, if decedent did not reside in Colorado, in the county where assets are located.
- At least 120 hours must have passed from date of death before appointment of personal representative may be made.
- Petition for Formal Probate of Will and Formal Appointment of Personal Representative may request that the court set aside or confirm a prior informal order.
- Petition may request admission of a will to formal probate without appointment of a personal representative. See §15-12-401(2), C.R.S.
- No bond is required unless ordered by the court. See §15-12-603, C.R.S. and §15-12-605, C.R.S.

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- ~~Standardized instructions – JDF 906 are available.~~
- ~~Standardized forms are available at:~~
http://www.courts.state.co.us/Forms/Forms_List.cfm/Form_Type_ID/177
- ~~Filing fee is required.~~

ESTABLISH CASE VIA ECLIPSE OR LEXISjPOD. (Either enter the codes or verify that the attorney selected the correct codes.)

- ~~Check name index to determine if an existing decedent case exists. Also, check if an existing guardianship and/or conservatorship case exists.~~
- ~~Check probate misc. index to determine if a lodged or deposited will exists.~~

Case filed by a self-represented litigant (non-attorney):

- Check name index to determine if a decedent estate case exists.
- If a decedent estate case exists **within your court** accept the Petition, file it in the existing case, inform the party of the case number and that the Petition will be filed in the existing case.
- No filing fee is required.
- Do **NOT** issue Letters.
- Consult with the judicial officer assigned to the case on how to proceed. (That can be done once the Petition is uploaded into jPOD.)
- Also, check if a guardianship and/or conservatorship case exists **within your court**.
- If one exists, relate the decedent estate case to the guardianship/conservatorship case.
- Do a statewide search (SWI) to determine if a decedent case exists **in another court location**. **NOTE:** This does not need to be done at the front counter. It can be done when the case is opened/uploaded into Eclipse/jPOD.
- If a decedent estate case exists **in another court location** accept the Petition.
- Filing fee is required.
- Do **NOT** issue Letters.
- Consult the judicial officer assigned to the case on how to proceed.
- Also, check if a guardianship and/or conservatorship case exists **in another court location**.
- **NOTE:** If a case exists in another court location, be sure to note the other court's location, case number and if the case is a decedent estate, guardianship and/or conservatorship. This can be done with comments in the PTFW code, MINO, etc.

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Case filed by electronically – by an attorney:

- Check name index to determine if a decedent estate case exists.
- If a decedent estate case exists **within your court** reject the pleading with a note to the attorney informing them they may file their Petition in the existing case. Provide them with the case number. **NOTE:** Follow your local policy regarding adding the attorney to the existing case so that they can file into that case.
- Also, check if a guardianship and/or conservatorship case exists **within your court**
- If one exists, relate the decedent estate case to the guardianship/conservatorship case.
- Do a statewide search (SWI) to determine if a decedent case exists **in another court location.**
- If a decedent estate case exists **in another court location** accept the Petition.
- Filing fee is required.
- Do **NOT** issue Letters.
- Consult the judicial officer assigned to the case on how to proceed.
- Also, check if a guardianship and/or conservatorship case exists **in another court location.**
- **NOTE:** If a case exists in another court location, be sure to not the other court's location, case number and if the case is a decedent estate, guardianship and/or conservatorship. This can be done with comments in the PTFW code, MINO, etc.

OPEN NEW CASE

- Petition for Formal Probate of Will and Formal Appointment of Personal Representative – **JDF 920**, is filed by an interested person.
- The original will, or an authenticated (certified) copy of the will probated in another state, is filed with the petition unless it is already on file with the court (lodged or deposited).
- Open new case.
- Assign a **PR** case number.
- Enter case type as **TF** - Testate Formal.
- Enter **event code PTFW** - Petition Formal Probate of Will & Formal Appointment of Personal Representative – **JDF 920** as the originating event, unless the party filed a Motion to File In Forma Pauperis. Then **MIFP** becomes the originating event and **PTFW** is entered as an event.
 - **NOTE:** The original will, or an authenticated (certified) copy of the will probated in another state, is **to be** filed with the petition unless it is already on file with the court (lodged or deposited).
- Receipt filing fee.

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appointment has not been terminated. See §15-12-403, C.R.S for contents of petition. ~~See §15-11-103, C.R.S. and §15-11-106, C.R.S. for heirs other than spouse.~~

- Whenever it appears that there is an unknown heir or that the address of any heir or devisee is unknown, the personal representative shall promptly notify the Attorney General. See C.R.P.P. 17. For such persons, the petition should also reflect this information.
 - Published Notice of Hearing must be given to interested persons whose names or addresses are unknown. An Affidavit Regarding Due Diligence and Proof of Publication - JDF 714, along with an affidavit from the newspaper, must be filed with the court.
 - Enter event **PRFP** - Proof of Publication and event **AFFI** - Affidavit.

ADMITTING WILL, APPOINT PERSONAL REPRESENTATIVE AND ISSUE LETTERS

- The will is admitted to probate and the personal representative is appointed by the court, or by the registrar (if that is your local practice) when the registrar is satisfied that the requirements of §15-12-303, C.R.S. are met.
- Order Admitting Will to Formal Probate and Formal Appointment of Personal Representative - JDF 921 is signed.
- Enter event **ORFM** - Order Admitting Will to Formal Probate & Appointment of Personal Representative.
- Letters Testamentary - JDF 915 is issued as evidence of appointment and is proof of the personal representative's authority to act.
 - Certified copies are required for most transactions that are conducted by the personal representative on behalf of the estate.
 - Most institutions will want to see require the certification date be not more than 60 to 90 days old.
- Enter event **LTRI** - Letters issued.
- Update party information, as appropriate.
 - Update party information to indicate the personal representative appointed.
 - Enter **PRR** - Party Role for the individual(s) if the applicant or co-applicant (**APL**) was appointed, enter party role as **PRR**, appointed as the personal representative/co-personal representative.
 - If the nominee (**OTH**) was appointed, enter party role as **PRR**.
 - Do not change the party types. They are to remain as originally entered.
- Enter event **CLAD** - Closed, upon the appointment of the personal representative.
- Enter scheduled event.
 - **REVV**. Set for 3-year review. See §15-12-1009, C.R.S.

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- If the registrar manages the review, enter judicial officer as 900000, time and room will be set by local policy.
- If the division staff manages the review, enter time and room per local policy.

POST APPOINTMENT

- The personal representative must give information of his/her appointment to interested persons within 30 days of his/her appointment. The original Information of Appointment - JDF 940, with certificate of service completed, must be filed with the court. See C.R.P.P. 8.4:§15-12-705, C.R.S.
- Enter event **INFA** – Information of Appointment
- A Notice to Creditors by Publication- JDF 943 must be published unless one year or more has elapsed since the death of the decedent. See §15-12-801, C.R.S.
- Enter event **NOTC** - Notice.
- Final date of claims should be entered on the **CCS** screen. The final date for claims is either four months from the date of the first publication or one year from the date of the decedent's death, whichever comes first.
- Proof of Publication should be filed after the notice to creditors has run in a local paper. (Proof of Publication is an affidavit by the editor and a copy of the notice that was published).
- Enter event **PRFP** - Proof of Publication.
- Within three months after appointment, the personal representative must prepare a Decedent's Estate Inventory - JDF 941. See §15-12-706, C.R.S. If filed with the court, enter the following code.
- Enter event **INVN** - Inventory.
- The personal representative may file an accounting - JDF 942. An accounting must be filed if there is a formal closing.
- Enter event **ACTG** - Accounting.

CLOSING ESTATE

- An estate may be closed.
 - Six months after appointment of personal representative if the last date to file claims has passed.
 - One year after date of death, if no Notice to Creditors was given.
 - By the court, if no activity has occurred within the previous three years.
 - See Closing Decedent's Estate Informally and §15-12-1003, C.R.S.
 - See Closing Decedent's Estate Formally and §15-12-1001, C.R.S.
 - See Closing Decedent's Estate – Estates not Closed After Three Years or More and §15-12-1009, C.R.S.

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