

## PROBATE IN COLORADO

- **SHOULD I TRY TO AVOID PROBATE?** Many of the tasks necessary to settle a decedent's affairs are required with or without probate and, because of some of the lore surrounding probate in our country, people will sometimes try to avoid the probate process in our state. However, Colorado probate can provide an orderly, timely and cost-effective mechanism for settling a decedent's affairs. The court fees associated with Colorado probate are minimal and probate can actually reduce the time allowable for creditor claims, help prevent negative tax consequences, and ensure that assets will be distributed as the decedent intended. Therefore, in Colorado, probate can be advantageous and is usually a process that should not be avoided. For more information on Colorado probate, see Tom Stover's article "Ten Good Reasons Not to Avoid Colorado Probate" (available at [http://www.stoverlawcolorado.com/docs/Ten Good Reasons.pdf](http://www.stoverlawcolorado.com/docs/Ten%20Good%20Reasons.pdf)).
- **WHAT IS PROBATE?** The term "probate" refers to the court process of determining whether a decedent died with a valid will, and appointing a personal representative (PR) to administer a decedent's probate estate. Administering a probate estate requires the PR to accomplish a variety of tasks, such as collecting and valuing the probate assets, paying valid debts, filing any tax returns, and distributing any remaining probate assets to the decedent's heirs or devisees.
- **WHAT ARE PROBATE ASSETS?** Probate assets are assets that are disposed of by a decedent's will, or by intestacy if the decedent did not leave a will. Probate assets are: (1) assets owned by the decedent without a named beneficiary or with the decedent's estate named as beneficiary; and (2) assets co-owned by the decedent and one or more other persons in tenancy in common. All other assets (*i.e.*, assets held with another person in joint tenancy or assets with another person named as beneficiary) are not probate assets and will pass automatically to such other person by law outside of probate.
- **HOW LONG DOES PROBATE TAKE?** Probate can take as little as 6 months for a simple estate, or as long as several years. Typically, the probate process for most estates in Colorado can be completed in 7 to 13 months (if no federal estate tax return is due).
- **HOW DO PROBATE ASSETS PASS TO HEIRS OR DEVISEES?** In Colorado, probate assets are generally administered in one of three ways:
  - **BY AFFIDAVIT.** If the total amount of probate assets in an estate does not exceed \$50,000 and there are no interests in real estate among the probate assets, a successor can execute a small estates affidavit, so that the probate assets can be transferred without the appointment of a PR.
  - **INFORMAL PROCEEDINGS.** The majority of estates in Colorado are administered informally, meaning that the probate process is administrative in nature and requires minimal court procedure and no prior notice to interested persons. Informal proceedings are opened by asking the probate registrar (rather than the Judge) to appoint the PR, who will be given "letters" to allow the PR to administer the estate. At the end, an estate is then closed by filing a form with the probate registrar stating that the PR has performed the PR's duties.

- **FORMAL PROCEEDINGS.** Formal proceedings are similar to informal proceedings except that the PR will petition the Judge (not the probate registrar) for approval of the probate proceedings after prior notice to all interested persons. Formal proceedings result in an order from the Judge that is final, subject to appeal. A formal proceeding may be needed if there are irregularities with the will or if there is a dispute among the heirs or devisees. Sometimes an estate is opened informally, but closed formally, so that the PR will have the protection of a court order for any potential disputed matter that may have arisen during the probate process.
  
- **SUPERVISED VS. UNSUPERVISED PROBATE.** Absent a specific request from the PR or an interested person, the probate administration under either informal proceedings or formal proceedings will typically be “unsupervised,” meaning that, once initiated, the probate process will proceed without further attention from the court or probate registrar until the administration is concluded. Alternatively, proceedings can be “supervised,” which essentially requires the continuous supervision of the court until the entry of an order approving distribution of the estate and discharge of the PR. Except in very limited situations, supervised administration offers little that interested persons cannot obtain at the beginning or the end of the unsupervised proceedings or by specific request to the court.