

The Law Office of
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*Estate, Trust, Tax and
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SPECIAL REPORT

- What to Expect in a Probate Proceeding -

This Special Report explains processes involved in a probate proceeding, geared toward the person who has been appointed personal representative of an estate. The report is not all-inclusive, but offers basic information to help guide you on the steps forward.

PERSONAL REPRESENTATIVE

Every estate requires the appointment of a Personal Representative. This is a critical job, which includes following statutes, filing documents, performing valuation of assets and much more. Our office can help you handle this work, depending upon your needs. The Personal Representative can be appointed by two methods, with varying titles:

- ◆ The PR is also known as the Executor when they are named in the decedent's will to carry out their desires as expressed in the Will and to administer his or her estate under the law. An "Executrix" is the feminine form of the word "Executor."
- ◆ The PR is also known as the "Administrator" when they are appointed by the court to settle the estate in accordance with law when the decedent did not leave a Will. An "Administratrix" is the feminine form of the word "Administrator."

As evidence you have been appointed personal representative of the estate, the clerk of the court issues a document called the Letters Testamentary, which gives you authority to act on behalf of the estate. Our office routinely retains a certified copy of the Letters for recording in the county in which real estate is owned, to allow for the transfer of the decedent's interest in real property. If anyone should question your authority to act as personal representative of the estate, show them the Letters. In the event you need additional copies, they can be obtained from the court which issued them.

PROBATE

Probate, in its narrow meaning, describes the process by which an instrument purporting to be a Will is legally determined to be the effective Last Will and Testament. In its broadest sense, Probate describes the entire process by which a decedent's estate is collected, administered and distributed.

The purpose of the Personal Representative is to administer or settle the estate. This involves the assembly, collection and valuation of the decedent's assets, the payment of debts, expenses of administration and taxes, and the distribution of the remaining assets to the persons entitled thereto.

The first step in the broader probate process is opening the estate and securing the appointment of the personal representative. Once this is set in motion, the administration of the estate begins.

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1. The personal representative is responsible for assembling, collecting and valuation for all of the probate assets and preparing an inventory of these assets within three months from the date of the appointment of the personal representative. Our office can help you with this process.
 - ◆ The assets included in the probate estate include all assets which were titled solely in the decedent's name or payable to his or her probate estate. Any assets which were titled in the decedent's name as a joint owner and any assets which passed pursuant to beneficiary or payable on death designations to individuals other than the probate estate are not included in the probate estate and therefore should not be listed on the inventory.
 - ◆ For purposes of the inventory, the NADA or Kelley Blue Book value for any vehicles can be used. Our office can assist the personal representative with obtaining this value. For those vehicles which do not have blue book values (e.g. older vehicles, the trailer and the ATV), it is still necessary to provide an estimate of their fair market values. One way to accomplish this is to have a used car dealer help you arrive at a value. This value should be documented in writing.
 - ◆ Each of the banks and investment companies where the probate accounts are located must be contacted to request a print-out of the balances as of decedent's date of death. You will need to open an estate checking account and may obtain the date of death values at the time you open this new account.
 - ◆ The date of death values for each of the probate assets will need to be determined not only for purposes of the inventory but also to document the basis adjustment (aka the step-up in basis) received by each asset of the probate estate. It may be necessary in this process to engage the assistance of an accountant to insure you take the greatest advantage available in adjusting the basis in the assets owned by the decedent on the date of his or her death. Once the date of death values for each of the probate assets has been determined the inventory can be finalized.
2. A newspaper notice must be published for claims against the estate. Our office will usually coordinate this process. Claims can be made either by filing with the court or by presentation to the personal representative either by mail or hand delivery within four months after the first publication of notice to creditors. Claims need not be on a special legal form. Generally, a regular bill or other statement for services will suffice as a legal claim. Under the Colorado Probate Code, claims are deemed automatically to be allowed if you, as the personal representative, do not take steps to disallow them within 60 days after the end of the claim period.
 - ◆ The notice to creditors will indicate a specific date by which the creditor must file their claims to the personal representative or the court for payment. The personal representative can also mail a notice to the known creditors of the estate.
 - ◆ It is felt that if a copy of the published notice to creditors is mailed to each creditor and a certificate of mailing prepared, this would be sufficient notice to creditors. If you plan to pay a particular creditor in full at the decedent's death, the notice provisions are not as important. If a claim is to be disputed or intentionally left unpaid the giving of notice becomes extremely important.
3. Complete records should be kept of all cash transactions for the estate. It is generally recommended the accounts in the decedent's name be closed and funds from the closed accounts be deposited into a new estate checking account. The personal representative will need to ensure the tax identification number for the probate

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estate is the number used to open the estate account. Do not open the estate account under the decedent's Social Security number or the Social Security number of the personal representative. Our office usually applies for the taxpayer identification number for the probate estate. As soon as we receive notification from the IRS as to the tax identification number assigned to the estate, we will forward that information to the personal representative.

4. The personal representative should contact an accountant regarding the filing of the final income tax return for the decedent, which will include all of the income through the year of death of the decedent. A federal estate income tax return (Form 1041) for income received by the estate subsequent to the decedent's death will be required in all years in which the estate has income of \$600 or more.
5. The personal representative may need to file a federal estate tax return for the decedent's estate. Colorado does not have an estate or inheritance tax. Such a return is required if the decedent's interest in his or her real and personal property, when combined with all other assets included in his gross taxable estate, has a total value of \$3,500,000 or more. It will be important to value the estate to determine if such a return is necessary.

DISTRIBUTIONS

Generally, we recommend distributions from a probate estate to the beneficiaries not be made until after the expiration of the creditors' period. Interim distributions can be made, however, and if they are it is often necessary to have the distributee sign a distribution agreement regarding the distributed assets and any obligations to refund the distributed amount to the estate if the estate does not have sufficient funds to pay all of the creditors of the estate.

The personal representative is entitled to receive a fee for the services provided to the estate, which fee is considered part of the expenses of administering the estate. If the personal representative wishes to charge a fee, it is necessary to keep detailed time records. Our office can assist the personal representative in determining a reasonable fee for the services of the personal representative if any are to be paid. Any fee the personal representative receives will be income to the personal representative and will need to be reported on the personal income tax return of the personal representative for the year in which it is received. The personal representative has the option of waiving his or her right to receive this fee for income tax or other personal reasons.

After the expiration of the six-month period from the date the personal representative was appointed, final distributions can usually be made from the estate and then the estate can be terminated (usually on an informal basis).

The administration of each estate is a necessary process. It clears the title to the decedent's property. It settles legitimate debts and wipes out others. It may establish a new tax basis for the property in the estate and protects the personal representative in making distribution of the property to the persons entitled thereto.

The estate administration process does not usually require for the personal representative to appear in court. If a dispute arises or the personal representative needs any direction on how to proceed, the court can be asked to intervene to give some direction to the personal representative