

So Now You Are a Personal Representative

Introduction

A person named to administer an estate in Colorado used to be called an “executor.” If you are a woman, you were called the “executrix.” Recently, the term was changed to “Personal Representative.”

Administering an estate is much simpler than years ago, when “going through probate” meant much time and complications. Most Colorado estates can be taken care of in about a year to eighteen months. The purpose of a Personal Representative is to carry out the wishes of the decedent regarding distribution of assets, and to complete the decedent’s business, such as paying bills and filing tax returns.

In a simple estate, for example, where not much money is passed from husband to wife or there is only one beneficiary, you may not need much help. In most other estates, you will want to hire an attorney to help. Generally, you should choose an attorney who specializes in “trusts and estates.” The probate process is important and very technical and should not be left to a professional without significant experience in this area.

Your Specific Duties

- **INVENTORY ASSETS.** You must take an inventory of assets of the estate, and be sure these are protected during the time of your administration.
- **MANAGE ASSETS.** You must manage the assets until the estate is closed, paying estate bills, taxes, etc.
- **DISTRIBUTIONS.** You must make distributions to the heirs or to the beneficiaries under a will.

When carrying out these specific duties, you are expected to be impartial. This means you cannot favor one person or yourself over others involved in the estate. You are also expected to administer the estate with care and prudence (and there are legal definitions about what this means). Remember, you are handling somebody else’s money and assets.

Your Authority

You will be issued “Letters” from the court, which appoint you as Personal Representative. These Letters are evidence that you have authority to act on behalf of the estate. You will need to show or send them to various third parties, such as banks, insurance companies, etc., when you are administering the estate.

Opening and Closing

After a person dies, the estate is “opened” when the proposed Personal Representative files certain forms with the court. Filing these documents lets the court know that an estate is being actively administered. Once an estate is opened, the court will issue you the “Letters” mentioned above. An estate is “closed” when the final papers are filed with the court, saying that bills are paid, assets have been distributed, and everything is in order.

Formal or Informal?

Colorado has a flexible system of estate administration. Generally, you can choose how formally you will open and close the estate and the extent of court supervision over your activities as a Personal Representative.

Formal proceedings will result in final and binding court orders and involve notice being sent to interested parties (beneficiaries, creditors, etc.) about actions to be taken. There may be a court hearing if somebody objects. This option is used if something in the case is out of the ordinary. For example, statutes may require formal opening if the will is irregular. Formal proceedings may also be used to settle a dispute, such as if family members disagree over who should be the Personal Representative or over distributions from the estate.

With informal proceedings, there is no advance notice to parties and no binding orders from the court. This option is usually chosen when there are no controversies or aspects of the case that are out of the ordinary. Sometimes estates are opened informally, but closed formally, so as to get the protection of a court order for the Personal Representative that everything has been done correctly.

Your General Responsibilities

1. Even before you get your Letters from the court, if you are named Personal Representative in a will, you have the power to carry out written instruction of the deceased relating to his body, funeral, cremation and burial arrangements. In addition, you can begin to protect the decedent's assets. **However, no assets should be distributed prior to opening the estate.**
2. Promptly after your appointment, you should prepare a Notice of Appointment form and send it to all those interested in the estate, such as beneficiaries and unpaid creditors, and file proof with the court that the notice was sent. This notice is to let the interested persons know the facts and ground rules regarding administration of the estate, including your name and address, and the court in which the papers are on file.
3. Set up an estate accounting system at the beginning of administration of the estate. For your protection, keep records of all cash and other financial transactions of the estate and provide written accountings to the beneficiaries. This is very important and often not done correctly. In a supervised administration or with a formal closing, the accounting forms are filed with the court. This information will also be required for tax purposes.
4. Within three months, you must prepare a written inventory of the estate assets on a court-approved form. If you decide to close formally, the inventory must be filed with the court. Otherwise, you will just give a copy to interested parties.
5. Being sure that all proper bills are paid is an important part of your job. You should send a Notice of Appointment to known creditors such as credit card companies, physicians, banks, etc. that the person has died and you are the Personal Representative.

You should also publish a notice in the newspaper for unknown creditors. Once the Notice of Appointment is published, if creditors don't send you a bill within four months after first publication, the claim is forever barred. If you don't publish a notice, the time for unknown creditors to make a claim against the estate is extended to a year.

A claim may be given to you or filed with the court. No specific form is required. A bill that comes in the mail is a properly presented claim. However, you should not pay bills that are only presented orally. If you disagree with the claim, you have 60 days to tell the claimant in writing. They then have 60 days to begin proceedings to enforce the claim.

It's a good idea not to pay any claims until you've determined what they all are, and until you've reached the end of the time in which someone can make claims.

6. While the estate is being administered, The Colorado Probate Code authorizes a "family allowance" of \$12,000 for a surviving spouse and/or minor children. This amount can be changed by the court at the request of an interested person. The law also provides for a \$15,000 allowance (in addition to the \$12,000) to the surviving spouse that is generally exempt from creditors of the estate. When the family is entitled to these allowances, they are made before creditors are paid.

The Colorado Code has attempted to ensure that a spouse is not completely "disinherited" from an estate. A child born or adopted after the will and omitted from a will generally has a right to share in the probate estate. If there is a dispute about this, you shouldn't make any distributions until it is worked out. Provisions about this are technical and should be discussed with a lawyer.

7. As Personal Representative, you are responsible for managing the estate until it is distributed. What you can and can't do may be specified in the will.

Once you're appointed, you have full authority and control over the assets, which the decedent owned in his name alone or as a co-tenant with others. Property held in joint tenancy with right of survivorship is not a probate asset, nor are proceeds of life insurance that are payable to a named beneficiary other than the estate.

To put others on notice of your authority, you should re-register the decedent's assets in the name of the estate with you listed as Personal Representative. You will use your Letters as evidence of your authority. For registered stocks and bonds, submit your Letters to the transfer agent, along with the securities and an affidavit of domicile, which you get from a broker or a bank. If you need to sell some securities to raise money for estate expenses, you can do so without having the securities registered first, although it usually takes longer to get the proceeds. Bearer bonds need not be reregistered. When you sell or distribute any real estate, you will need to use your Letters and sign the deed as Personal Representative of the estate.

Since the administrative period is relatively short in Colorado, you won't need to establish a long-range investment program. The estate needs to have sufficient cash to pay bills, taxes and expenses, but you don't need to convert everything to cash to divide it. Assets owned by the decedent, real estate for example, can be retained, if they're not speculative in nature and as long as there is proper diversity among the estate's investments.

The investment standard you will be held to, as a Personal Representative, is called "The Prudent Investor Rule" under Colorado law. It emphasizes that you manage the assets intelligently and carefully, as the assets of another, with an eye toward permanent disposition of funds.

8. You will need to settle up the taxes. This *always* includes filing a final income tax return for the decedent even if the decedent paid no income taxes in recent years. You may have to file a separate income tax return for the estate.

You may also have to file federal and Colorado estate tax returns if the estate is big enough to require it. Note that for estate tax purposes, the decedent's estate includes non-probate assets such as joint tenancy assets, life insurance, 401(k) and IRA plan, and assets held in trust. Federal estate tax returns are very complicated, and are due nine months from the date of death. If it appears that the total of all the decedent's assets approaches the legal limit for filing, you should see an attorney who specializes in trusts and estates.

When a person dies, his taxable year ends on the date of his death, and his income and deductions are reported through that date. If the decedent was married when he died, the estate can join with the surviving spouse in filing a joint income tax return for the year in which the decedent died. You may also be able to take certain deductions on the decedent's final income tax return or claim them as an expense of administration on the federal estate tax return. You may want to talk to an attorney or an accountant about these elections.

The estate is a separate tax-paying entity and you must get a separate tax identification number from the IRS. File a request for this number through the district director of the IRS on form SS-4. You will need this number to open estate bank accounts as well as to transfer securities into the name of the estate if they are to be held for any period of time. The tax return used to pay income taxes for the estate is called a "Fiduciary Income Tax Return." For the IRS, it is form 1041; for the Colorado Department of Revenue, it is form 104:1. These forms must be filed if the estate has any taxable income or has gross income of \$600 or more in any taxable year. You may use either the calendar year or fiscal year as the "taxable year." Which one you choose will have various financial implications, and you should discuss this with an attorney or accountant.

Estate income tax returns must be filed on or before the 15th day of the fourth month following the close of the taxable year. If you use the calendar year, that means April 15 is your due date. You must pay the entire tax due at that time. After the second year, you must file income tax estimates and make quarterly estimated tax payments.

9. You may choose to be compensated for your duties as Personal Representative. Your compensation and that of your attorney is subject to a "reasonableness test" under the Colorado Probate Code. Family members often choose to serve without pay, except for out-of-pocket costs. If you do this, consider filing a fee waiver with the court. If you take compensation, you must keep a detailed record of tasks performed and the amount of time spent. Your attorney should also. Your compensation will be taxable as ordinary income.

10. The assets of the estate belong ultimately to the beneficiaries and not to you. Make distributions to beneficiaries as soon as it can be done safely.

Generally, estate assets are paid in this order:

- those held by the decedent as a fiduciary, such as if the decedent was serving as a trustee of a trust at the time of death
- family allowances according to Colorado law
- expenses of administration
- funeral costs
- debts and taxes under Federal law
- amounts expended by Colorado under Medicaid
- expense of last illness
- debts and taxes under state law
- bills
- specific gifts under a will
- beneficiaries under a will, or heirs, when there is no will

Distribution doesn't have to wait until the estate is closed. You can make payments as priority is determined. Even partial distributions may be made to beneficiaries during administration. (In the rare cases where administration is supervised, distribution may be made only following a court hearing and order.) But remember, as Personal Representative, you are personally responsible if you distribute assets and then find you need the assets to pay legitimate claims.

11. The estate does not terminate automatically. You may elect to close formally or informally.

In informal closings, a closing affidavit form is filed with the court, indicating that the estate has been fully administered. This limits the time to one year when those who receive assets and creditors can challenge your administration and distribution of the estate.

In formal closings, the administration and proposed distribution of the estate is approved by the court and the Personal Representative is immediately discharged or released from liability by court order. A formal closing usually does not require an actual hearing before a judge.

12. The Colorado Probate Code is intended to speed up the process of administration of estates. Since Colorado has no separate inheritance tax, many smaller estates may be administered and distributed shortly following the end of the credit period, usually within six to twelve months. In such estates the majority of assets may often be distributed well before closing. Larger estates often involve filing estate tax returns and may not be closed until accounts are settled with the taxing authorities. However, if the tax and probate aspects are handled in an organized way, and there are no complicated assets such as family businesses, the great majority of larger taxable estates can be closed with two years.

Your liability: You are liable to the beneficiaries for any loss to the estate and for any gain the estate should have realized but did not, or if you were negligent or intentionally did something you shouldn't, or failed to do something you should have.