



## Being a Personal Representative<sup>1</sup>

Jeffrey E. Tranel<sup>2</sup>

A person named to administer an estate is called a “personal representative”. This title is used whether a person dies with a *Will* or is appointed because there is no *Will*. A personal representative is also commonly referred to as an “executor.”

The role of a personal representative is to carry out the wishes of the decedent as written in the decedent’s *Will* or as authorized by the court and Colorado statutes when there is no *Will*. The personal representative is also responsible for completing the decedent’s business such as paying bills and filing tax returns.

A personal representative must exercise care and prudence must be taken to put the interests of the estate ahead of their own interests in the estate. They have a duty to act impartially with regard to all parties to the estate, and must distribute the estate in accordance with the decedent’s *Will* or as directed by court.

The administration of an estate has now been simplified in Colorado, as the state now allows for an estate to go through probate without court supervision and will step in if it is determined to be necessary. Currently the administration of an estate can take on average 9 to 18 months.

### Burial Arrangements

The personal representative has the authority, prior to being appointed by the court, to carry out

the decedent’s instructions (in the *Will* and other legal documents) related to the body, funeral, and burial arrangements. If the personal representative is unable to do so, the decedent’s spouse can carry out this responsibility.

### Search for Documents

The original *Will* should be located and filed within ten (10) days with the probate court in the county where the decedent lived. If a *Will* cannot be found there is a presumption that the decedent revoked their *Will*. In this case a copy can be submitted, so long as there is enough information presented to the court to show that the decedent did not intend to revoke the original. If the personal representative cannot find the original *Will* or a copy, an attorney can help the personal representative go through the intestate probate process.

The personal representative has the authority to search for any and all-important documents. The search should include the home, place of business, and safe deposit boxes. The personal representative should also look for handwritten instructions, such as letters to the family, and similar documents. Colorado recognizes handwritten *Wills* which do not comply with all the formal *Will* requirements, these are referred to as “*holographic Wills*.” In order to be a valid *holographic Will* the writing must be signed by the decedent and its material provisions must be in their handwriting.

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<sup>1</sup> The purpose of this fact sheet is for educational purposes only. Changes in the law may have occurred since publication. No statements should be considered as legal advice. People should consult with a licensed attorney about their individual cases.

<sup>2</sup> Tranel is an Agricultural Economist with Colorado State University Extension and faculty affiliate with the Department of Agricultural and Resource Economics. Tranel can be contacted at [jtranel@colostate.edu](mailto:jtranel@colostate.edu). This document was reviewed by Jenna H. Keller, an attorney with Keller Law, LLC and CSU’s Agricultural and Business Management Economists. August 2017.

The personal representative should also meet with the decedent's advisors (attorneys, accountants, investment advisors, insurance agents, etc.) will be helpful. Any information and documents indicating that an asset exists and/or that bills need to be paid should be secured for administration of the estate.

Specific items to look for include:

- Original signed *Will*,
- Funeral and burial plans,
- Safe deposit boxes and keys,
- Trust agreements,
- Nuptial agreements,
- Life insurance policies,
- Health insurance papers,
- All financial accounts,
- Tax returns and gift tax returns,
- Marriage certificates and divorce papers,
- Military records
- Notes receivable and payable,
- Automobile titles, deeds, and mortgages,
- Business agreements,
- Accounts regarding stocks and bonds,
- Unpaid bills
- Memberships in organizations, and
- Accounts, passwords, and user names.

The personal representative should also begin to protect and safeguard the decedent's assets, but no assets should be distributed prior to opening the estate.

### **Opening and Closing the Estate**

Colorado has a flexible system of estate administration. Generally, the personal representative can choose how to open and close the estate and the extent of court supervision. Sometimes estates are opened informally and closed formally. Such actions may be desired so as to provide court protection to the personal representative.

"Informal probate" usually occurs when there is an uncontested *Will* or all the potential heirs of the estate agree on the personal representative and the beneficiaries in those cases where there is no *Will*. Filing an application for an informal

probate is usually less expensive and takes less time than formal probate.

"Formal probate" most often occurs when the original signed *Will* cannot be found or if the heirs and beneficiaries cannot agree on the issues. Formal proceedings will result in final and binding court orders and notice of those orders being sent to interested parties and often the need to appear in the probate court.

### **Authority and Specific Duties**

The personal representative will be issued "letters" from the court indicating that they have authority to act on behalf of the state. These letters may need to be shown or sent to banks, insurance companies and other third parties.

Within 30 days of appointment, the personal representative must prepare a notice called a "Information of Appointment" and send it to all the beneficiaries of the decedent's estate. Proof that the notice was sent must be filed with the court.

The personal representative should set up an accounting system for the estate. Records of all cash and other financial transactions pertaining to the estate should be maintained and summaries provided to the heirs. This information will also be required to file tax returns. In a supervised estate administration with a formal closing, the accounting forms will need to be filed with the court.

A written inventory of the decedent's assets should be prepared on a court approved form within three (3) months of opening the estate. Documents supporting the assets values should be attached to the inventory. The inventory must be given to interested persons who request a copy or it may be filed with the court.

The personal representative should collect and pay all the appropriate bills, those which are presented orally should not be paid. The account in the decedent's name should be closed.

Known creditors should be given a notice from the personal representative, informing them that they will need to file a claim in court. The notice

to creditors should also be published in a generally circulated newspaper for unknown creditors. If the notice is not published, the time for creditors to make a claim against the estate is one year from the date of the decedent's death.

So that there is accurate reporting, copies of the decedent's death certificate also should be given to the three major credit reporting agencies: Experian, Equifax and TransUnion. The credit reporting agencies should also receive all the decedent's addresses for the last five years. At the personal representative's request, the decedent's accounts should all be listed as "Closed. Account Holder is Deceased," and the credit report should state "Deceased. Do Not Issue Credit."

While the estate is being administered, the Colorado Probate Code authorizes a surviving spouse and/or minor children to receive a family allowance of \$33,000. The Code also provides for an additional \$33,000 allowance to the surviving spouse which is generally exempt from creditors of the estate. Such allowances are made before creditors are paid.

Notice should be given to the appropriate entities to re-register titled property, stocks, and bonds in the name of the estate. The letter listing the personal representative will be needed to sell real estate and other titled property. Colorado law emphasizes with the "Prudent Investor Rule," that the investment assets be managed intelligently and carefully with an end goal of permanent disposition of funds.

### **Paying Taxes**

The personal representative is responsible for filing the decedent's final income tax return. When a person dies, their taxable year ends on the date of death. If the estate has any taxable income or has gross income of at least \$600 in any taxable year, an estate income tax return must be filed. Such returns must be filed on or before the 15<sup>th</sup> day of the fourth month following the close of the taxable year. All taxes due must be paid at the time the return is filed.

To be subject to the estate tax and require an estate filing, a person's estate must be at least

\$5,450,000 (as of 2017). For estate tax purposes, the decedent's estate includes non-probate assets such as joint tenancy assets, life insurance, 401(k) and IRA plans, and assets held in trust. Federal estate tax returns are due nine (9) months following the date of death.

The estate is a separate tax paying entity, and thus must have a unique tax identification number. This number will be needed to open estate bank accounts, receive income, and sell assets owned by the estate. A tax identification number can be obtained by filing a Form SS-4 with the Internal Revenue Service.

### **Compensation for the Personal Representative**

The personal representative may choose to be compensated for their efforts of administering the estate, however, they may choose to serve without pay. The amount of compensation is subject to a "reasonableness test" (under Colorado Probate Code) and taxable as ordinary income. Out-of-pocket expenses may be reimbursed by the estate. A detailed record of tasks performed and time spent must be maintained if compensation is taken and for reimbursed expenses.

### **Distribution of Assets**

The assets of the estate belong ultimately to the beneficiaries and not to the personal representative. Distributions or partial distributions from the estate should be made within a reasonable time. In those cases where the court supervises administration of the estate, distributions can be made only following a court hearing and order. Caution should be taken so to avoid distributing assets that may be needed to pay legitimate claims and expenses of the estate.

Colorado statutes have established an order in which assets should generally be distributed. Typically, all debts, administrative fees and any exemptions will be taken out before the estate's assets are distributed to the beneficiaries.

### **Closing the Estate**

An estate does not terminate automatically. If the personal representative chooses to informally close the estate, a closing statement must be filed with the court indicating that the estate has been

fully administered. This limits the time to one year when beneficiaries and creditors can challenge estate administration and distribution of the assets.

If the personal representative chooses to formally close the estate, the administration and proposed distribution of the estate is approved by the court and the personal representative is immediately discharged and released of liability. A formal closing may not require a hearing before a judge.

### **Potential Liability of a Personal Representative**

The personal representative is responsible for managing the estate until the assets are distributed and the estate is closed. The personal representative, once appointed by the court, has full authority and control over the assets owned solely by the decedent or as a co-tenant. Assets held in joint tenancy with right of survivorship are not probate assets, nor are proceeds of life insurance payable to a named beneficiary other than the estate.

Situations in which a personal representative may be found liable include but are not limited to: failure to exercise reasonable care and skill in managing the property of the estate; negligently or intentionally doing something that should not have been done (such as stealing funds from the estate); failure to follow the *Will*; committing actions that breach the fiduciary duties of a personal representative; or failure to pay the heirs or beneficiaries of the estate. The personal representative is liable to the beneficiaries for any loss to the estate and for any gain the estate should have realized but did not, if that is not shown to be from a reasonable risk.

### **Summary**

All estates in Colorado go through probate. However, most estates have little to no court supervision. The court will generally accept the personal representative listed in the decedent's *Will* or appoint one if there is no *Will*.

A personal representative is responsible for carrying out the wishes of the decedent and completing the decedent's business affairs. The personal representative will need to search for documents pertaining to the estate, pay

allowable family members and creditors, file tax returns, and distribute the remaining assets to the decedent's heirs and beneficiaries.

The Colorado Bar Association's web site ([www.cobar.org](http://www.cobar.org)) and Colorado Judicial Branch's Self Help Center ([www.courts.state.co.us](http://www.courts.state.co.us)) have forms and other useful resources for administering an estate. Competent legal and other counsel should be obtained as appropriate and needed by the personal representative.

The information provided in this fact sheet is for educational purposes only. It should not be cited nor relied upon for legal authority. People should seek legal counsel regarding probate and the administration of an estate.

### ***Actions by a Personal Representative***

1. Make funeral and burial arrangements.
2. Search for the decedent's *Will*, other documents, bills to be paid, etc.
3. File the original *Will* – within 10 days – with the probate court in the county where the decedent lived.
4. Decide if the estate will be informally or formally opened and closed.
5. Receive "Letters" from the court indicating authority to act on behalf of the state.
6. Set up an accounting system for the estate to maintain financial records.
7. Pay allowances to a surviving spouse and/or minor children, if applicable.
8. Pay proper bills and creditors, including the personal representative if appropriate.
9. Distribute remaining assets to heirs and beneficiaries.
10. File decedent's final income tax returns and other tax returns (estate, gift, etc.) by appropriate deadlines.
11. Close the estate.