



Primer on Probate and Real Estate in Colorado

What is Probate?

Probate is the legal process used to transfer the title of assets from a person who has died to his or her devisees (named in a Will - also known as a Last Will and Testament), or heirs (if there was not a Will). Wills are a document in which a person specifies the method to be applied in the management and distribution of his or her estate after his death (testate estate). All testate estates must be probated. If a person dies without a Will (intestate estate), then intestate succession results which is the method of asset distribution as determined by state law. An intestate estate must also be probated. In Colorado, there are three (3) types of probate:

1. Small Estates (approx. \$60,000 and no real property)
 - Do not have to open a probate action through the court
2. Uncontested Estates (the informal process)
 - Valid Will, no contests expected, qualified personal representative ready to act, limited court involvement
3. Contested Estates (the formal process)
 - Will is contested, unclear, or invalid, court supervision may be required for all acts of the personal representative

Formal and Informal probates will be open with the court for at least six (6) months, but final administration will take as long as necessary to administer and close out the estate.

The Estate

Whether or not an asset will need to go through probate will depend on how the asset was owned upon death. Usually only assets that were owned solely by the person that died (individually and/or provided for no beneficiary designation) are controlled by a Will. For real estate, that ownership is almost always evidenced by a deed. A deed is a written legal instrument which conveys "some" right, title, or interest in real property. Title is defined as the legal evidence of a person's ownership right in that real property. Commonly used deeds in Colorado are: General Warranty deeds, Special Warranty deeds, Bargain & Sale deeds, Quitclaim deeds, and various Confirmation deeds (Personal Representative being an example).

The Personal Representative (formerly The Executor)

The Personal Representative has a fiduciary duty (impartiality, undivided loyalty, act prudently) to The Estate. The Personal Representative will open and maintain bank accounts, sell, transfer, or encumber real estate, and deal with creditors for The Estate. The Personal Representative will create an estate inventory (all real and personal assets), manage the assets and that titling, keep accurate records of all transactions, and make distributions to the creditors, devisees and/or heirs.

When is Probate necessary for Real Estate?

As a general rule, if the real estate involved did not automatically pass to another at death and that real estate needs to be sold or transferred, then probate is required. No Community Property is recognized in Colorado. An Illinois Land Trust is not a recognized in Colorado. Assets that automatically pass to the



joint owner or beneficiaries are done so by the operation of law so are not subject to the provisions of a Will and the corresponding probate process.

The following identifies when probate is necessary and when it is not (in most circumstances) regarding real estate ownership:

- Tenants-in-Common (no right of survivorship) YES
- No Beneficiary Designation was made or is available . . . YES
- Tenancy by the Entirety (probably deemed Tenants-in-Common in Colorado) YES
- Joint Tenancy (with right of survivorship) NO
- Beneficiary Designation (like a life insurance policy, IRA, or 401k) NO
- Trusts (no individual ownership; entity ownership) NO
- LLCs (no individual ownership; entity ownership) NO
- Corporations (no individual ownership; entity ownership) NO
- Partnerships (no individual ownership; entity ownership) NO

Timeshares by deeded interest owned by an individual(s) are the same as all other real estate ownership. Probate is therefore required if no Joint Tenancy exists!

Caution: A lawyer’s expertise is usually required in identifying if probate is necessary and what type of probate may be applicable depending on the complexity of the situation.

AN INDEPENDENT AGENCY PROUDLY UNDERWRITTEN BY



Aspen
620 E Hopkins Avenue
Aspen, CO 81611
970-925-3577 | Fax 970-300-4423
**Pitkin, Garfield &
SW Eagle Counties**

Avon/Beaver Creek
10 W. Beaver Creek Blvd., Suite 221
PO Box 980
Avon, CO 81620
970-949-9497 | Fax 970-949-9486
Toll Free 888-949-8133
Toll Free Fax 844-849-4374
Eagle County

Breckenridge
235 S. Ridge Street
PO Box 510
Breckenridge, CO 80424
970-453-6120 | Fax 970-453-9077
Summit County

Craig
dba Northwest Title Company
530 Breeze Street
Craig, CO 81625
970-824-9427 | Fax 970-824-2305
Moffat County

Eagle
1143 Capitol Street, Suite 205
Eagle, CO 81631
970-328-5266
Toll Free Fax 844-849-4374
Eagle County

Edwards
97 Main Street, Suite W-201
Edwards, CO 81632
970-926-0230 | Fax 970-366-4869
Eagle County

Frisco
720 N Summit Blvd, Suite 103
PO Box 879
Frisco, CO 80443
970-668-3558 | Fax 970-372-2761
Summit County

Glenwood Springs
1620 Grand Avenue
Glenwood Springs, CO 81601
970-945-1169 | Fax 844-269-2759
**Roaring Fork Valley (SW Eagle),
Garfield & Gunnison Counties**

Grand Lake
721 Grand Avenue, Suite B
PO Box 1939
Grand Lake, CO 80447
970-627-0400 | Fax 970-627-0401
Toll Free 800-471-5706
Grand County

Leadville
322 Harrison Avenue, Suite 5
Leadville, CO 80461
719-486-2688 | Fax 970-373-1180
Lake County

Rifle
111 E. 3rd Street, Suite 101
Rifle, CO 81650
970-625-5426 | Fax 844-269-2759
**Grand Valley, Gunnison &
Western Garfield Counties**

Steamboat Springs
501 Lincoln Avenue
PO Box 770688
Steamboat Springs, CO 80477
970-879-2980 | Fax 970-879-2948
Routt County

Vail
292 E Meadow Drive, Suite 105
Vail, CO 81657
970-479-6010 | Fax 970-372-4371
Eagle County

Willits
Willits Town Center
Alpine Bank Bldg. Suite 201B
711 East Valley Road
Basalt, CO 81621
970-366-4111 | Fax 970-672-1576
**SW Eagle, Garfield &
Pitkin Counties**

Winter Park
78491 US Highway 40
PO Box 415
Winter Park, CO 80482
970-726-8077 | Fax 970-726-9488
Toll Free 877-660-8077
Grand County