

12th Judicial District

General Information on Probate Considerations¹

Probate Defined

Probate is the legal process that is used to transfer title of property from the decedent to his or her devisees (named in the will) or heirs (if there is not a will).

Things to Consider

Filing a will through the probate process depends on a number of factors, including:

State laws:

Probate laws vary by state. For example, in Minnesota, probate is required if the deceased's personal property is worth more than \$75,000 or if they owned real estate in their name alone. (The information included in the following sections pertains to probate proceedings in Colorado.)

Estate size:

The size of the estate can affect whether probate is required.

Will:

Probate is required to validate a will, or if the will is contested, unclear, or invalid.

Beneficiaries:

Probate is required if the decedent did not name a beneficiary for certain assets.

Estate planning:

Estate planning can help avoid the need for probate. For example, trusts can help avoid probate court proceedings and reduce estate taxes.

If probate is required, the executor is responsible for filing the will with the probate court. The probate process typically involves distributing assets, paying debts, transferring assets, and resolving any will contests.

If probate is not filed, there may be negative consequences (e.g., assets cannot be passed on, the estate could be sued, and will issues could remain unresolved). A probate attorney can help with the probate process.

Probate is generally required in Colorado for most estates, including those with wills and intestate estates:

Estates over \$80,000:

These estates must go through probate to distribute assets to heirs.

Real estate:

Real estate that is only in the name of the deceased person must go through probate.

Wills and intestate estates:

All wills and intestate estates must be probated.

¹ Please note that this document is intended to provide a broad overview of the probate process in Colorado. This document is not intended to provide legal advice.

There are three types of probate in Colorado:

Small estates:

These estates are worth less than \$50,000 and do not involve real property.

Uncontested estates:

These estates are typically informal and the probate court does not play a large role.

Contested estates:

These estates are considered formal.

There are ways to avoid probate in Colorado, such as using a payable-on-death (POD) designation. A POD designation allows a person to designate beneficiaries who will automatically receive assets upon the person's death, bypassing the probate process.

Generally, there is a three-year window to begin the probate process after death in Colorado.

Whether a will need to be filed with court before death:

A living will does not need to be filed with the court in Colorado. Living wills are only effective while the person is alive. After a person passes away, their will, trust, or Colorado's intestacy laws determine what happens to their assets.

Ways to Avoid Probate:

Create a living trust:

This is one of the easiest ways to avoid probate, as beneficiaries receive assets immediately after the decedent passes away, which avoids the need for court processing.

Set up payable-on-death accounts:

This is another way to avoid the probate process, as the named beneficiary automatically becomes the new owner of the account after the original owner passes away.

Use a transfer-on-death deed:

This allows a person to decide who will inherit their real property interest before they pass away. The person keeps ownership rights to the property during their lifetime.

Establish joint ownership of property:

This creates a right of survivorship, so the surviving owner receives the remaining share of the property when the other owner passes away.

Use a small estate affidavit:

This allows a person to settle an estate without opening a probate action through the court. The person swears they are entitled to collect the assets and that they will distribute them according to the will.

Give away property:

Giving away property while alive helps avoid the need for probate because the property does not have to go through probate if the decedent does not own it at the time of the decedent's death.

Types of Wills:

Below are some relevant statutory provisions codified at §15-11-501 through §15-11-506, C.R.S. For additional information, review Title 15, Article 11, Part 5 of the Colorado Revised Statutes. A link to the Colorado Revised Statutes is included at the bottom of this document.

§15-11-501, C.R.S. – Who may make a will.

“An individual eighteen or more years of age who is of sound mind may make a will.”

§15-11-502, C.R.S. – Execution – witnessed or notarized wills – holographic wills.

(1) Except as otherwise provided in subsection (2) of this section and in sections 15-11-503, 15-11-506, and 15-11-513, a will shall be:

(a) In writing:

(b) Signed by the testator, or in the testator’s name by some other individual in the testator’s conscious presence and by the testator’s direction; and

(c) Either:

(I) Signed by at least two individuals, either prior to or after the testator’s death, each of whom signed within a reasonable time after he or she witnessed either the testator’s signing of the will as described in paragraph (b) of this subsection (1) or the testator’s acknowledgment of the signature or acknowledgment of the will; or

(II) Acknowledged by the testator before a notary public or other individual authorized by law to take acknowledgments. . .²

This is the traditional form of will and can be admitted formally or informally.

Even if a will does not comply with the requirements set forth in subsection (1) of §15-11-502, C.R.S., a document may be admitted as a holographic will if it meets the following criteria:

- The testator signed the document; and
- The material portions of the document are in the testator’s handwriting.

A holographic will need not be witnessed and may be admitted formally or informally.

§15-11-503, C.R.S. – Writings intended as wills.

(1) Although a document, or writing added upon a document, was not executed in compliance with section 15-11-502, the document or writing is treated as if it had been executed in compliance with that section if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:

(a) the decedent’s will;

(b) A partial or complete revocation of the will;

(c) An addition to or an alteration of the will; or

(d) A partial or complete revival of the decedent’s formerly revoked will or a formerly revoked portion of the will. . .³

Whether a document is treated under subsection (1) of §15-11-503, C.R.S. as if it had been properly executed is a question to be decided by the court in formal proceedings only.⁴

² The foregoing is an excerpt of §15-11-502, C.R.S. For additional information, review the entire statute.

³ The foregoing is an excerpt of §15-11-503, C.R.S. For additional information, review the entire statute.

⁴ See also §15-11-504, C.R.S. – Self-proved will; §15-11-505, C.R.S. – Who may witness a will; and §15-11-506, C.R.S. – Choice of law as to execution.

Link for Colorado Revised Statues:

<https://advance.lexis.com/container?config=0345494EJAA5ZjE0MDIyYy1kNzZkLTRkNzktYTkyMS04YmJhNjBINWUwYzYKAFBvZENhdGFsb2e4CaPI4cak6laXLCWyLBO9&crid=52459ba8-6dca-4f69-aed7-fa641b3e3283&prid=2b487e86-f690-4b00-a1df-d3735f828c5b>