



COLORADO PROBATE LAW

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Probate is a general term referring to a court procedure by which a person's estate is transferred to others. In current usage, "probate" has been expanded to generally include all matters pertaining to administration of estates, including trust administration, guardianships, and conservatorships. This *issue brief* provides an overview of probate terminology and probate courts, and discusses probate procedures used in different situations.

Overview and Terminology

Traditionally, probate matters concerned the distribution of the property of a deceased person, called a *decedent*. If the decedent had a will, that person is said to have died *testate*, and the property is distributed in accordance with the directions of the will to *beneficiaries*. Such distribution is made by a *personal representative*,¹ who is named in the will. If the decedent did not have a will, he or she is said to have died *intestate*, and the personal representative, who is appointed by the court, distributes the decedent's property in accordance with state laws or rules.

Not all probate matters concern decedent's property. *Guardians* are charged with the care of individuals, called *wards*, and *conservators* manage the property of *protected persons*.² An individual may require both a guardian and a conservator, and one person may be appointed to serve in both roles.

¹Persons who execute a will were formerly known as executors, which is now included in the definition of personal representative.

²Guardians are also appointed for minors; however, this issue brief focuses on guardians or conservators appointed for adults.

Colorado Probate Courts

The City and County of Denver has the only dedicated probate court in Colorado. Denver's probate court is authorized by the Colorado Constitution to hear probate matters that arise in Denver. Outside of Denver, a district court has constitutional authority to hear probate matters.

Decedent Estates

Colorado has two primary types of procedures for estate administration: formal and informal. The differences in these procedures generally concern the level of involvement by a court. Informal procedures are used when the decedent's will is uncontested, with oversight provided by a court registrar. Formal probate proceedings, used when a will is contested or some other dispute exists, require a judge or magistrate to make formal decisions concerning the estate following hearings or a trial. Issues that may require formal probate proceedings include, but are not limited to, determining the validity of a will, appointing a personal representative, determining whether a creditor has a valid claim, and how property should be distributed.

Colorado law also provides for limited oversight in cases of supervised probate and small estate proceedings. Other than small estate proceedings, a combination of the above procedures may be used. For example, a formal proceeding may be required to appoint a personal representative, but after the appointment, informal procedures may be used to administer the estate.

Guardians and Conservators

Qualifications and appointment. Under Colorado law, an individual, or any person interested in the welfare of another individual, may petition a court for a determination of incapacity and the appointment of a guardian. The appointment of a conservator may be requested by the person to be protected, another interested person, or a person who would be adversely affected by a lack of effective management of the property and business affairs of the person to be protected.

Conservators or guardians must be at least 21 years old and appointed by the court to serve in that capacity. Nominees must provide the court with certain information, including criminal convictions and certain pleas for felonies and misdemeanors; whether he or she is the subject of a restraining order; and other court judgments. Following a hearing, the court can appoint the guardian or conservator it deems appropriate while following a preference of appointments provided in statute.

Once selected, appointees are required to submit annual reports, and courts are required to establish a system for monitoring such guardianships and conservatorships, including reviewing reports. Colorado law does not require a specific review process, nor does it provide deadlines for review. Conservators are also required to furnish a bond conditioned on the faithful discharge of duties. The bond may be paid for out of the estate, and the amount of the bond must be the value of the estate in the conservator's control and one year's estimated income.

Compensation. Conservators are entitled to reasonable compensation and expense reimbursement from the conservatorship estate, as determined on a case-by-case basis by the court. Guardians are entitled to reasonable compensation for services and to reimbursement for room and board provided by the guardian.

Powers and duties. Guardians' and conservators' powers and duties are provided in the letters of appointment issued by the court. Generally, appointees must act in the best interests of the ward or protected person, and

owe a fiduciary duty to that individual, including avoiding transactions that cause a conflict of interest and exercising reasonable care in making decisions. Appointees must encourage the ward or protected person to participate in decisions and act on his or her own behalf.

Colorado law requires guardians to make decisions regarding the ward's support, care, education, health, and welfare, including consenting to medical and other care; and to exercise authority only as necessitated by the ward's limitations. Guardians must also consider the expressed desires and personal values of the ward to the extent they are known.

In addition to the powers provided in the letter of appointment, conservators have specific statutory duties. Within 90 days of being appointed, a conservator must file with the court a financial plan for managing the estate, and an inventory of the estate. An amended financial plan must be filed whenever changed circumstances requires a substantial deviation from the existing plan. Unless the court requires otherwise, conservators are required to file an annual report regarding the administration of the estate.

Termination and removal. A guardianship or conservatorship terminates upon the death of the ward or protected person, or an order of the court. The individual, a guardian, or a person interested in the individual's welfare may petition the court to terminate or amend a guardianship or conservatorship if the individual no longer requires it.

In the case of an emergency where the appointee's actions pose an imminent risk of substantial harm to an individual's health, safety, welfare, or estate, a court may, on its own or upon the request of another, without a hearing or following any required procedures, restrain or suspend the powers of an appointee. If the court does so, it must then hold a hearing to determine permanent action, including restricting the powers of, or permanently removing, the appointee. If an appointee is removed, the court may order the disposition of assets under the appointee's control or appoint a permanent or temporary replacement.