

PROBATE IN COLORADO

SHOULD I TRY TO AVOID PROBATE? Maybe yes; maybe no. Everyone has a unique family and asset situation. For some people the best estate plan consists entirely of non-probate transfers; for others probate is the best course; and sometimes a combination provides the best result - it is not uncommon for a couple's estate planning to be structured so there is only a probate following the second death. A knowledgeable estate planning attorney will help you select the best option for you and your loved ones.

ISN'T PROBATE UNNECESSARILY EXPENSIVE? No. The probate process varies from state to state and because of the lore surrounding it, people sometimes assume that probate should be avoided at all costs. However, Colorado probate can provide an orderly, timely and cost-effective mechanism for settling a decedent's affairs.¹ Many of the tasks necessary to settle a decedent's affairs are required with or without probate. The court fees associated with Colorado probate are minimal and probate can actually reduce the time allowable for creditor claims, help facilitate an orderly administration of your estate, and ensure that assets are distributed as you intend. The state of Colorado does not take a percentage of a probate estate. Attorneys often charge by the hour.

WHAT EXACTLY IS PROBATE? The term "probate" refers to the court process of determining whether a decedent died with a valid will, and the appointment of a personal representative ("PR") to administer a decedent's probate estate. However, the term is frequently used to encompass the entire estate administration process whereby assets are collected and valued, debts are paid, tax returns are filed and assets are distributed to the heirs or devisees. When necessary, probate will occur whether or not a decedent has a will. A decedent's will directs the disposition of his or her probate assets, or they pass by intestacy if the decedent did not leave a will. With intestacy, the Colorado statutes provide a default distribution scheme for probate assets.

WHAT ARE PROBATE ASSETS? Probate assets are: (1) assets owned solely by the decedent without a named beneficiary or with the decedent's estate named as beneficiary; and (2) assets co-owned by the decedent and one or more other persons in tenancy in common.

WHEN IS PROBATE NECESSARY? Probate is necessary if a decedent owns probate assets with a total value of at least \$66,000 (under current Colorado law) or holds any real property (real estate) solely in his or her name.

HOW LONG DOES PROBATE TAKE? Probate can take as few as six months or as long as several years for a complex estate requiring a federal estate tax return.

CAN I MAKE PROBATE EASIER? Yes. Having good estate planning documents prepared while you are alive makes the process following your death easier. It allows you to determine where your assets go after your death and makes your wishes clear to your loved ones. It also provides a clear path for the timely transfer of your assets after your death. It is important that any estate planning documents be carefully prepared and executed, to ensure that they are valid and that they carry out your intentions. Another key to making the probate process go smoothly is good record keeping. It is important that all of your assets can be easily identified and that original title documents can be found. Keeping your bank statements and financial records organized and keeping all of your important documents together in a safe deposit box, home safe or even a designated file cabinet drawer will make your PR's job easier.

¹ This article only discusses Colorado laws. The laws of other states may be different.

WOULD A TRUST BE A BETTER OPTION? For some people yes. For many people no. The best way to determine if a trust would be ideal for you is to consult a knowledgeable estate planning attorney.

CAN'T I JUST PUT MY CHILDREN ON MY ACCOUNTS AND HOUSE? You can. However, despite the best of intentions, the most carefully planned non-probate arrangements for transfers to children often fail to carry out your intent. Children often end up with unequal amounts and have to make transfers to equalize the assets they receive. This can result in hurt feelings and unintentional taxable gifts between siblings. There are other downsides that should be considered as well. Depending on the nature and value of the asset being titled jointly with another person, such as a child, you may unintentionally make a taxable gift. Also, titling property jointly subjects your property to the co-owner's potential creditors, including spouses, accident victims or other tort plaintiffs.

Stover & Spitz LLC can assist you with most facets of both estate planning and probate. We represent personal representatives of estates of all sizes. We are also happy to assist with non-probate transfers.

If you wish to discuss our potential representation for estate planning or following a death, please call us at 303-682-0433 to set an appointment.