

PROBATE COURT, CITY AND COUNTY OF DENVER, COLORADO

ADMINISTRATION BY AFFIDAVIT FOR LITIGANTS WITHOUT LAWYERS

The Denver Probate Court has created this packet to serve the needs of litigants who wish to administer a decedent's estate and who are unable or unwilling to hire legal counsel. This document describes the procedures for collecting property from the estate of a decedent where the total value of all property owned by the decedent and subject to disposition by will or intestate succession at the time of his or her death, less liens and encumbrances, does not exceed \$50,000.00 (\$27,000.00 if the decedent died prior to July 1, 2002). The Court advises all parties to hire an attorney. This Court provides the names of attorneys who provide the necessary services on a flat-fee basis, and Colorado law provides that reasonable legal fees incurred by a personal representative are reimbursable from the estate. Many qualified probate attorneys will accept cases based on your ability or the estate's ability to pay fees.

This packet is not a substitute for legal counsel; it will only guide you through the forms often used to administer a decedent's estate. Only an attorney can help you determine whether these forms are appropriate for your situation, and only an attorney can advise you of Colorado's estate administration laws and your continuing responsibilities after opening an estate. Colorado law requires this Court to hold all litigants and personal representatives to the same standards; lack of knowledge of the law is not a defense to a charge of improper administration of an estate.

The explanations and directions in this packet are not exhaustive. Some situations require special proceedings or pleadings, in which case the Registrar will ask you to comply with the additional requirements. An attorney can assist you in determining whether your case requires such special attention. The court maintains a list of attorneys who provide their services on a flat-fee basis and a list of legal aid resources. We also staff a *pro se* office on Monday and Wednesdays from 1:30 - 3:30 in Room 391 of the City and County Building. Court staff cannot give you legal advice.

Court staff cannot help you complete the forms for two reasons. First, staff must remain impartial and cannot assist one party to a court proceeding. Second, staff does not have the time to assist litigants; in 1996 the Probate Court opened over 3200 new cases.

DEPOSITING A WILL

C.R.S. § 15-11-516 requires the custodian of an instrument purporting to be the decedent's will, within 10 days after death or as soon thereafter as the death becomes known to the custodian, to deliver the instrument to the court having probate jurisdiction in the Colorado county where the decedent resided or was domiciled at death. The will may be deposited before or after administration but in no event later than 10 days after death. The lodging of a will does not constitute a probate proceeding and imposes no additional obligation on the depositor. If you believe that a document you possess may be the will of a recently deceased person, you must lodge it with the Court.

IDENTIFYING AND VALUING THE ESTATE

To determine if administration by affidavit is available you must first identify all of the decedent's assets and determine the total value of the decedent's estate. To do this, make a list of all of the assets or property owned by the decedent in his or her name. For example:

1. A car titled in the decedent's name.
2. A bank account titled in the decedent's name.
3. A security deposit due the decedent.
4. A promissory note payable to the decedent.

AVAILABILITY OF ADMINISTRATION BY AFFIDAVIT PROCEEDING

If the decedent owned real estate which is subject to disposition by his or her will or by intestate succession, regardless of value, administration by affidavit cannot be used. If the decedent owned no real estate and the total value of all of the assets identified is equal to or less than \$50,000 you may proceed with administration by affidavit.

Administration by affidavit is not available if an Application or Petition for the appointment of a personal representative is pending or has been granted in any jurisdiction. It also may not be used to transfer ownership of real property.

The intentional improper use of administration by affidavit is a crime. *See* Article 8, Title 18, C.R.S.

ADMINISTERING THE ESTATE

The Court plays no role in administration by affidavit. The administration is handled exclusively between the persons or entities who are holding a decedent's property and the person(s) who is or are entitled to the property. Entitlement is determined by the terms of a properly lodged will, or, if there is no will, under the laws of intestate succession applicable on the date of the decedent's death. The person entitled to the property is referred to as an "interested person."

If you are an interested person, you may present an affidavit, a copy of which is affixed to this packet, to persons or entities holding property of the decedent. You must have your signature notarized before the affidavit becomes effective.

To collect the estate, present the affidavit to those persons or entities holding property of the decedent and ask that he, she, or it release the property to you. Property can be tangible, such as clothes, or intangible, such as a bank account. If the holder of the property refuses to release it, you should hire an attorney. The Court cannot assist you in collecting assets in a proceeding to administer an estate by affidavit.

**AFFIDAVIT FOR COLLECTION OF PERSONAL PROPERTY PURSUANT TO
SMALL ESTATE PROCEEDING**

_____, the affiant(s) declare(s) under oath:

1. That affiant(s) and _____
is/are the successor(s) of _____, deceased.
2. That the fair market value of property owned by the decedent and subject to disposition by will or intestate succession at the time of the decedent's death, wherever that property is located, less liens and encumbrances, does not exceed fifty thousand dollars. *
3. That at least ten days have elapsed since the death of the decedent.
4. That no Application or Petition for the appointment of a personal representative is pending or has been granted in any jurisdiction.
5. That the affiant(s) and _____,
as successor(s) of the decedent, is/are entitled to the payment of any sums of money due and owing to the decedent, and to the delivery of all tangible personal property belonging to the decedent and in the possession of another, and to the delivery of all instruments evidencing a debt, obligation, stock or chose in action belonging to the decedent, in the following respective proportions:

NAME OF SUCCESSOR

PROPORTION

Signature of Affiant

Signature of Affiant

Signature of Affiant

Signature of Affiant

Signed under oath before me on _____.

(If Notary) My commission expires _____.

Notary Public

NOTE: This Affidavit is pursuant to Section 15-12-1201 of the Colorado Probate Code as amended effective July 1, 1981. It can be used either by one affiant on behalf of all successors or by all successors as affiants. It can not be used to transfer the title to any real property owned by the decedent.

* Twenty-seven thousand dollars if decedent died prior to July 1, 2002.