

PROBATE TERMS

(The following term explanations have been simplified and do not reflect the precise definitions in the statutes or case law.)

Conservator: A person at least 21 years of age appointed or qualified by a court to manage the estate of a protected person..

Descendant: All of the individual's lineal descendants of all generations, with the relationship of parent and child at each generation.

Devise: (Noun) Testamentary disposition of real or personal property by will. (Verb) To dispose of real or personal property by will.

Devisee: Person designated in a will to receive advise.

Durable Power of Attorney: A Power of Attorney that is effective when one is disabled, incapacitated or incompetent.

Elective Share: The right of the surviving spouse of a decedent who dies domiciled in Colorado to take an elective share, not greater than one-half of the "augmented" estate, determined by the length of time the decedent and spouse were married, based on a schedule outlined at CRS 15-11-201. An "augmented" estate is defined at CRS 15-11-202 and outlines in great detail what property is and is not included.

Estate: Property of the decedent, trust, or other person whose affairs are subject to the Probate Code.

Exempt Property: A portion of the decedent's estate by law that goes to the surviving spouse which has priority over all other claims except for the costs and expenses of administration and reasonable funeral and burial, interment or cremation expenses, and if no surviving spouse, it goes to the decedent's dependent children. See CRS 15-11-403.

Family Allowance: An amount that is paid to help support the spouse and/or children of the decedent if the decedent was obligated to support them and was supporting them. This allowance is in addition to "exempt property". See CRS 15-11-404.

Fiduciary. A person acting in a fiduciary capacity including, but not limited to, a trustee of any trust, personal representative, executor, administrator, guardian, conservator, curator, receiver, trustee in bankruptcy, partner, agent, officer of a corporation, public officer, and attorney.

Fiduciary capacity. One is said to act in a fiduciary capacity when the business he transacts, or

the money or property which he handles, is not his own but for the benefit of another person, as to whom he stands in a relation implying and necessitating a great confidence and trust on the one part and a high degree of good faith on the other part.

Formal Proceedings: Proceedings conducted before a judge with notice to interested person.

Guardian: An individual at least 21 years old who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment.

Heirs: Usually persons including the surviving spouse and family members who are entitled under the statutes of intestate succession to the property of a decedent, but there are exceptions at CRS 15-11-711.

Holographic Will: A will in testator's handwriting, signed by testator.

Incapacitated: Lacking the ability to manage property and business affairs effectively by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other disabling cause.

Incapacitated person: An individual, other than a minor, who is unable to effectively receive or evaluate information, or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance.

Informal proceedings: Those proceedings conducted without notice to interested persons by an officer of the court acting as a registrar for probate of a will, appointment of a personal representative, or certain determinations of a guardian.

Interested person. Includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person, which may be affected by the proceeding. It also includes persons having priority for an appointment of a personal representative and other fiduciaries representing the interested person.

Intestate Estate: Any part of a decedent's estate not effectively disposed of by a will or otherwise passes by intestate succession to the decedent's heirs, except as modified by the will, if any.

Legal Representative: Includes a guardian or conservator acting for the respondent, a trustee or custodian of a trust, an agent designated under a power of attorney for health care or property in which the respondent is identified as the principal, a representative payee, and others under the law.

Letters: A court document indicating who has been given authority to act; including letters

testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

Minor: An unemancipated individual who has not attained the age of eighteen.

Non-appearance Hearing: A hearing date scheduled at which no appearances are made, but which essentially sets deadline for filing certain objections of other paperwork. Example: A Petition For Formal Appointment of a Personal Representative can be set for a non-appearance date, and anyone who wishes to object to the appointment must file an objection by the non-appearance date and request an actual hearing be held on the appointment.

Per capita at each generation to the decedent's descendants: A decedent's estate or apart thereof is divided into as many equal shares as there are (a) surviving descendants in the generation nearest to the decedent which contains one or more surviving descendants, and (b) deceased descendants in the same generation who left surviving descendants. Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who are allocated a share and their surviving descendants had predeceased the decedent. See attached chart.

Personal Representative: Includes executor, administrator, successor personal representative, special administrator, and a person who perform substantially the same function under the law governing their status.

Power of Attorney: A document in which an individual authorizes an agent to act for him/her in dealing with the individual's property and financial or other affairs.

Protected Person: A minor or other individual for whom a conservator has been appointed or other protective order made.

Registrar. The official of the court designated to perform the function of registrar as outlined at CRS 15-10-307.

Public Administrator - A person hired by the judicial district to handle estates of decedents and protected persons under certain circumstances, such as a person with no relatives or others available to help with the estate. CRS 15-12-619.

Respondent: An individual for whom the appointment of a guardian or conservator or other protective order is sought.

Small Estate: The fair market value of property owned by the decedent and subject to disposition by will or intestate succession at the time of his or her death, wherever that property is located, less liens and encumbrances, does not exceed sixty thousand dollars. CRS 15-12-1201.

Testacy Proceeding: A proceeding to establish a will or determine intestacy.

Testator: An individual of either sex with a will.

Testatrix refers to a female with a will.

Trust Beneficiary: A person who has any present or future interest in an individual for whom property has been transferred to or held for the individual's use or benefit.

Visitor: A person appointed by the court who visits with the "respondent" in a conservatorship or guardianship proceeding, explains to the respondent the pending Petition the Respondent's rights, the powers and duties of the person to be appointed as guardian or conservator, and other matters outlined in the law, and then files a report with the court.

Ward: An individual for whom a guardian has been appointed.